

STATE OF NEW YORK

8036

IN SENATE

March 21, 2018

Introduced by Sen. CROCI -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to pension forfeiture for public officers under section 7 of article 5 of the state constitution

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 157-a to read as follows:

3 § 157-a. Pension forfeiture of public officers. 1. Notwithstanding any
4 other law to the contrary, it shall be a term and condition of member-
5 ship for every public officer, as defined in section seven of article
6 five of the state constitution, who is a member of any retirement
7 system, that such public officer's rights to a pension in a retirement
8 system that accrue in such retirement system after his or her date of
9 initial membership in the retirement system shall be subject to the
10 provisions of this article.

11 2. In the case of a public officer who stands convicted, by plea of
12 nolo contendere or plea of guilty to, or by conviction after trial, of
13 any felony which has a direct and actual relationship to the performance
14 of the public officer's existing duties, an action shall be commenced in
15 supreme court of the county in which such public officer was convicted
16 of such felony crime, by the district attorney having jurisdiction over
17 such crime, or by the attorney general if the attorney general brought
18 the criminal charge which resulted in such conviction. If the conviction
19 was secured in federal court then the action shall be commenced by the
20 attorney general in Albany county supreme court. The action shall be for
21 an order to reduce or revoke the pension to which such public official
22 is otherwise entitled for service as a public officer. Such complaint
23 shall specify with particularity which felony the defendant has commit-
24 ted, and all other facts that are alleged to qualify such crime as a
25 felony crime which has a direct and actual relationship to the perform-
26 ance of the public officer's existing duties subject to pension
27 reduction or revocation pursuant to section seven of article five of the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 state constitution, and the amount of pension reduction or revocation
2 requested. Such action shall be commenced within six months after such
3 conviction.

4 3. Before commencing an action described in subdivision two of this
5 section, the district attorney or the attorney general, as the case may
6 be, shall serve written notice on the chief administrator of the defend-
7 ant's retirement system stating that he or she has reason to believe
8 that the person convicted committed the crime related to public office
9 in the performance of or failure to perform the public officer's duties
10 and responsibilities. Such notice shall specify with particularity which
11 felony the defendant has committed. Within twenty days after receipt of
12 such notice, the chief administrator of the defendant's retirement
13 system shall submit a notice of applicability to the district attorney
14 or the attorney general as the case may be. The notice of applicability
15 shall contain a statement specifying whether the person convicted is or
16 has been a member or retired member of a retirement system and shall
17 describe the portion of such rights and benefits to which such person is
18 or will be entitled to solely from service as such a public officer.

19 4. No forfeiture action may be commenced by the district attorney or
20 the attorney general until such district attorney or the attorney gener-
21 al, as the case may be, has received and served on the defendant the
22 notice of applicability as set forth in subdivision three of this
23 section.

24 5. The district attorney or the attorney general, or any interested
25 party, may seek, or the court on its own motion may order, that some or
26 all of the pension that would otherwise be reduced or revoked pursuant
27 to this article be paid for the benefit of any dependent persons, as may
28 be in the interests of justice.

29 6. The defendant shall have the right to a hearing.

30 7. The burden of proof shall be upon the district attorney or the
31 attorney general, as the case may be, to prove by clear and convincing
32 evidence the facts necessary to establish a claim of pension forfeiture.
33 The district attorney or the attorney general as the case may be must,
34 at the time of the hearing, prove by clear and convincing evidence that
35 the defendant knowingly and intentionally committed the crime related to
36 public office.

37 8. In determining whether the pension shall be reduced or revoked, the
38 supreme court shall consider and make findings of fact and conclusions
39 of law that include, but shall not be limited to, a consideration of the
40 following factors:

41 (a) Whether the defendant stands convicted of such a felony of a crime
42 related to public office, and the specific paragraph or paragraphs of
43 subdivision one of section one hundred fifty-six of this article that
44 have been proven or not proven;

45 (b) The severity of the crime related to public office of which the
46 defendant stands convicted;

47 (c) The amount of monetary loss suffered by such state or municipality
48 as a result of such crime related to public office;

49 (d) The degree of public trust reposed in the public officer by virtue
50 of the person's position as a public official;

51 (e) If the crime related to public office was part of a fraudulent
52 scheme against the state or a municipality, the role of the public offi-
53 cer in such fraudulent scheme against such state or a municipality;

54 (f) The defendant's criminal history, if any;

55 (g) The impact of forfeiture, in whole or in part, on the defendant's
56 dependents, present or former spouses, or domestic partners;

1 (h) The proportionality of forfeiture of all or part of the pension to
2 the crime committed;

3 (i) The years of service in public office by the defendant where no
4 criminal activity has been found by a court; and

5 (j) Any such other factors as, in the judgment of the supreme court,
6 justice may require.

7 9. At any time during the pendency of a forfeiture action, the court
8 may dismiss the action if it finds that such relief is warranted by the
9 existence of some compelling factor, consideration or circumstance or
10 other information or evidence which demonstrates that forfeiture would
11 not serve the ends of justice. The court may order that some or all of
12 the reduced or revoked pension be paid to satisfy the terms of any
13 existing order for the payment of maintenance, child support or restitu-
14 tion or for the benefit of any dependent persons, as may be in the
15 interests of justice, after taking into consideration the financial
16 needs and resources available for support of such persons.

17 10. (a) Upon a finding by the court by clear and convincing evidence
18 that the defendant knowingly and intentionally committed a crime related
19 to public office, the court may issue an order to the appropriate
20 retirement system to reduce or revoke the defendant's pension to which
21 he or she is otherwise entitled as such a public officer. All orders and
22 findings made by the court pursuant to this section shall be served by
23 the attorney general or the district attorney, as the case may be upon
24 the chief administrator of the defendant's retirement system and the
25 defendant.

26 (b) If the court issues an order pursuant to paragraph (a) of this
27 subdivision, the court shall order payment of a portion of such pension
28 benefit to: (1) the innocent spouse if so requested by such spouse paya-
29 ble at the time the public officer would have been eligible for retire-
30 ment if such spouse has not otherwise waived, in writing, his or her
31 right to such benefit; and (2) innocent minor children and other depen-
32 dents pursuant to law of the public officer in an amount that the court
33 finds just and proper consistent with the pension benefits to which the
34 public official would be entitled and the portion of those benefits
35 which would be used for the support of such minor children or dependents
36 pursuant to law. Such payment to the innocent spouse shall be computed
37 pursuant to paragraph (c) of this subdivision, and payments pursuant to
38 subparagraphs one and two of this paragraph shall be adjusted to reflect
39 interest accrued between the time of such conviction and the time of
40 such payment.

41 (c) When determining the amount of benefits which the defendant's
42 innocent spouse is entitled to receive, the factors contained in para-
43 graph d of subdivision five of part B of section two hundred thirty-six
44 of the domestic relations law shall be considered by the court. However,
45 when determining such apportionment, the court shall not annul or modify
46 any prior court order regarding such benefits.

47 11. The court shall issue a written decision including findings of
48 fact and conclusions of law that are the basis for any order issued
49 pursuant to this section.

50 12. Upon a final determination that reverses or vacates the conviction
51 or convictions of a crime related to public office, or reduces such
52 crime to a violation, misdemeanor or other criminal act that is not a
53 crime related to public office, the public official, or if he or she
54 shall be deceased, his or her estate, shall have such pension retroac-
55 tively restored upon application to the court with jurisdiction over the
56 forfeiture action. Such court, upon finding that such a final determi-

1 nation has occurred, shall issue an order retroactively restoring such
2 pension, together with such other relief deemed appropriate.

3 13. A final judgment entered pursuant to this article may be appealed
4 pursuant to subdivision (a) of section fifty-seven hundred one and
5 section fifty-six hundred two of the civil practice law and rules.

6 14. Except as otherwise provided by this article, the civil practice
7 law and rules shall govern the procedure in all actions commenced pursu-
8 ant to this article, except where the action is specifically regulated
9 by any inconsistent provisions herein.

10 15. "Felonies having a direct and actual relationship to the perform-
11 ance of a public officer's existing duties" shall mean any of the
12 following criminal offenses whether commissioned in this state or in any
13 other jurisdiction by a public officer, as defined by section seven of
14 article five of the state constitution, through the use of his or her
15 public office or by the individual representing he or she was acting
16 with the authority of any governmental entity, and acting as a public
17 officer:

18 (a) a felony for committing, aiding or abetting a larceny of public
19 funds from the state or a municipality;

20 (b) a felony committed in direct connection with service as a public
21 officer; or

22 (c) a felony committed by such person who, with the intent to defraud,
23 realizes or obtains, or attempts to realize or obtain, a profit, gain or
24 advantage for himself or herself or for some other person, through the
25 use or attempted use of the power, rights, privileges or duties of his
26 or her position as a public officer, as defined by section seven of
27 article five of the state constitution.

28 16. Any public officer, as defined by section seven of article five of
29 the state constitution, whose pension is reduced or revoked pursuant to
30 this article shall be entitled to a return of his or her contribution
31 paid into the relevant retirement system, without interest. Notwith-
32 standing the foregoing, no payments in return of contributions shall be
33 made or ordered unless and until the supreme court determines that the
34 public officer whose pension has been reduced or revoked has satisfied
35 in full any judgments or orders rendered by any court of competent
36 jurisdiction for the payment of restitution to the state or a munici-
37 pality for losses incurred as a result of such crime related to public
38 office. If the supreme court determines that such public officer whose
39 pension is to be reduced or revoked has failed to satisfy any outstand-
40 ing judgment or order of restitution rendered by a court of competent
41 jurisdiction, it may order that any funds otherwise due to such public
42 official as a return of contribution, or any portion thereof, be paid in
43 satisfaction of such judgment or order.

44 § 2. This act shall take effect immediately; provided, however, that
45 this act shall be deemed to have been in full force and effect on and
46 after January 1, 2018.