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:

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

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

2. In the case of a public officer who stands convicted, by plea of nolo contendere or plea of guilty to, or by conviction after trial, of any felony which has a direct and actual relationship to the performance of the public officer's existing duties, an action shall be commenced in supreme court of the county in which such public officer was convicted of such felony crime, by the district attorney having jurisdiction over such crime, or by the attorney general if the attorney general brought the criminal charge which resulted in such conviction. If the conviction was secured in federal court then the action shall be commenced by the attorney general in Albany county supreme court. The action shall be for an order to reduce or revoke the pension to which such public official is otherwise entitled for service as a public officer. Such complaint shall specify with particularity which felony the defendant has committed, and all other facts that are alleged to qualify such crime as a felony crime which has a direct and actual relationship to the performance of the public officer's existing duties subject to pension 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.

LBD14011-06-8

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

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

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

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

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

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

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

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

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

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

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

(e) If the crime related to public office was part of a fraudulent scheme against the state or a municipality, the role of the public officer in such fraudulent scheme against such state or a municipality;

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

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

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

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

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

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

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

(b) If the court issues an order pursuant to paragraph (a) of this subdivision, the court shall order payment of a portion of such pension benefit to: (1) the innocent spouse if so requested by such spouse payable at the time the public officer would have been eligible for retirement if such spouse has not otherwise waived, in writing, his or her right to such benefit; and (2) innocent minor children and other dependents pursuant to law of the public officer in an amount that the court finds just and proper consistent with the pension benefits to which the public official would be entitled and the portion of those benefits which would be used for the support of such minor children or dependents pursuant to law. Such payment to the innocent spouse shall be computed pursuant to paragraph (c) of this subdivision, and payments pursuant to subparagraphs one and two of this paragraph shall be adjusted to reflect interest accrued between the time of such conviction and the time of such payment.

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

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

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

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

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

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

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

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

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

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

16. Any public officer, as defined by section seven of article five of the state constitution, whose pension is reduced or revoked pursuant to this article shall be entitled to a return of his or her contribution paid into the relevant retirement system, without interest. Notwithstanding the foregoing, no payments in return of contributions shall be made or ordered unless and until the supreme court determines that the public officer whose pension has been reduced or revoked has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution to the state or a municipality for losses incurred as a result of such crime related to public office. If the supreme court determines that such public officer whose pension is to be reduced or revoked has failed to satisfy any outstanding judgment or order of restitution rendered by a court of competent jurisdiction, it may order that any funds otherwise due to such public official as a return of contribution, or any portion thereof, be paid in satisfaction of such judgment or order.

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