

ASSEMBLY, No. 4641

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2022

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman SADAF F. JAFFER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

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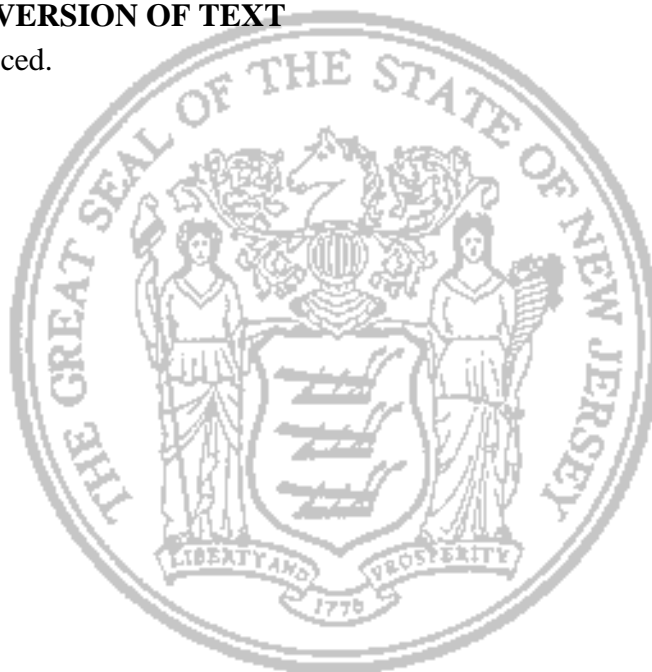
Assemblymen Space, Wirths and Freiman

SYNOPSIS

Requires public officer or employee forfeit pension upon conviction of certain crimes; alters factors determining honorable service; opens pension to garnishment upon conviction of certain offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2022)

1 AN ACT concerning the garnishment and forfeiture of public
2 pensions for conviction of certain crimes involving or touching
3 public office or employment and amending various parts of the
4 statutory law.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read as
10 follows:

11 1. a. The receipt of a public pension or retirement benefit is
12 hereby expressly conditioned upon the rendering of honorable
13 service by a public officer or employee.

14 b. The board of trustees of any State or locally-administered
15 pension fund or retirement system created under the laws of this
16 State is authorized to order the forfeiture of all or part of the earned
17 service credit or pension or retirement benefit of any member of the
18 fund or system for misconduct occurring during the member's
19 public service which renders the member's service **[or part thereof]**
20 dishonorable and to implement any pension forfeiture ordered by a
21 court pursuant to section 2 of P.L.2007, c.49 (C.43:1-3.1).

22 c. In evaluating a member's misconduct to determine whether it
23 constitutes a breach of the condition that public service be
24 honorable and whether forfeiture **[or partial forfeiture]** of earned
25 service credit or earned pension or retirement benefits is
26 appropriate, the board of trustees shall consider **[and balance]** only
27 the following factors **[in view of the goals to be achieved under the**
28 **pension laws]**:

29 **[(1)]** the member's length of service;

30 (2) the basis for retirement;

31 (3) the extent to which the member's pension has vested;

32 (4) the duties of the particular member;

33 (5) the member's public employment history and record covered
34 under the retirement system;

35 (6) any other public employment or service;

36 **[(7)]** (1) the nature of the misconduct or crime, including the
37 gravity or substantiality of the offense, whether it was a single or
38 multiple offense and whether it was continuing or isolated;

39 **[(8)]** (2) the relationship between the misconduct and the
40 member's public duties; and

41 **[(9)]** (3) the quality of moral turpitude or the degree of guilt or
42 culpability, including the member's motives and reasons, personal
43 gain and similar considerations**;**

44 (10) the availability and adequacy of other penal sanctions; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (11) other personal circumstances relating to the member which
2 bear upon the justness of forfeiture】.

3 The board of trustees additionally may consider, but shall not be
4 required to, the following mitigating factors in determining whether
5 the member should nonetheless receive a portion of their earned
6 service credit or pension or retirement benefit:

7 (1) the member's length of service;

8 (2) the member's public employment history and record covered
9 under the retirement system;

10 (3) any other public employment or service; or

11 (4) other personal circumstances relating to the member which
12 bear upon the justness of forfeiture.

13 d. Whenever a board of trustees determines, pursuant to this
14 section, that a partial forfeiture of earned service credit or earned
15 pension or retirement benefits is warranted, it shall order that
16 benefits be calculated as if the accrual of pension rights terminated
17 as of the date the misconduct first occurred or, if termination as of
18 that date would in light of the nature and extent of the misconduct
19 result in an excessive pension or retirement benefit or in an
20 excessive forfeiture, a date reasonably calculated to impose a
21 forfeiture that reflects the nature and extent of the misconduct and
22 the years of honorable service.

23 e. Notwithstanding any other law to the contrary, a member who
24 has been found to have served dishonorably, and therefore forfeits
25 their earned service credit or pension or retirement benefit, shall
26 receive a refund of their contributions which, at the discretion of the
27 board of trustees of the pension fund or retirement system, may be
28 with or without any accrued interest.

29 (cf: P.L.2007, c.49, s.1)

30
31 2. Section 2 of P.L.2007, c.49 (C.43:1-3.1) is amended to read
32 as follows:

33 2. a. A person who holds or has held any public office, position,
34 or employment, elective or appointive, under the government of this
35 State or any agency or political subdivision thereof, who is
36 convicted of, or pleads guilty or nolo contendere to, any crime set
37 forth in subsection b. of this section, or of a substantially similar
38 offense under the laws of another state or the United States which
39 would have been such a crime under the laws of this State, which
40 crime or offense involves or touches such office, position or
41 employment, shall forfeit all of the pension or retirement benefit
42 earned as a member of any State or locally-administered pension
43 fund or retirement system in which he participated at the time of the
44 commission of the offense and which covered the office, position or
45 employment involved in the offense. As used in this section, a
46 crime or offense that "involves or touches such office, position or
47 employment" means that the crime or offense was related directly to

1 the person's performance in, or circumstances flowing from, the
2 specific public office or employment held by the person.

3 b. Subsection a. of this section applies to **【a conviction of any**
4 **of】** the following crimes:

5 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal
6 coercion;

7 (2) N.J.S.2C:20-4, theft by deception, if the amount involved
8 exceeds \$10,000;

9 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

10 (4) N.J.S.2C:20-9, theft by failure to make required disposition
11 of property received, if the amount involved exceeds \$10,000;

12 (5) N.J.S.2C:21-10, commercial bribery;

13 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money
14 laundering;

15 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
16 payment claims;

17 (8) N.J.S.2C:27-2, bribery in official matters;

18 (9) N.J.S.2C:27-3, threats and other improper influence in
19 official and political matters;

20 (10)Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
21 official business transaction where interest is involved;

22 (11)Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
23 receipt of unlawful benefit by public servant for official behavior;

24 (12)Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of unlawful
25 benefit to public servant for official behavior;

26 (13)N.J.S.2C:28-1, perjury;

27 (14)N.J.S.2C:28-5, tampering with witnesses;

28 (15)N.J.S.2C:28-7, tampering with public records or
29 information;

30 (16)N.J.S.2C:29-4, compounding;

31 (17)N.J.S.2C:30-2, official misconduct;

32 (18)N.J.S.2C:30-3, speculating or wagering on official action or
33 information;

34 (19)Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
35 misconduct;

36 (20)Paragraph (1) of subsection a. of section 1 of P.L.2007,
37 c.158 (C.2C:27-12), corruption of public resources, if the amount or
38 value of the public resource is \$500,000 or more;

39 (21)N.J.S.2C:14-2, sexual assault;

40 (22)N.J.S.2C:14-3, sexual contact; **【or】**

41 (23)N.J.S.2C:14-4, lewdness; or

42 (24) Any other crime of the first or second degree, or an offense
43 substantially similar under the laws of another state or the United
44 States.

45 c. A court of this State shall enter an order of pension
46 forfeiture pursuant to this section:

47 (1) Immediately upon a finding of guilt by the trier of fact or a
48 plea of guilty or nolo contendere entered in any court of this State

1 unless the court, for good cause shown, orders a stay of the pension
2 forfeiture pending a hearing on the merits at the time of sentencing;
3 or

4 (2) Upon application of the county prosecutor or the Attorney
5 General, when the pension forfeiture is based upon a conviction of,
6 or plea of guilty or nolo contendere to, an offense under the laws of
7 another state or of the United States. An order of pension forfeiture
8 pursuant to this paragraph shall be deemed to have taken effect on
9 the date the person was found guilty by the trier of fact or pled
10 guilty or nolo contendere to the offense.

11 d. No court shall grant a stay of an order of pension forfeiture
12 pending appeal of a conviction or pension forfeiture order unless
13 the court is clearly convinced that there is a substantial likelihood of
14 success on the merits. If the conviction be reversed or the order of
15 pension forfeiture be overturned, his pension rights and benefits
16 shall be restored from the date of pension forfeiture.

17 e. Nothing in this section shall be deemed to preclude the
18 authority of the board of trustees of any State or locally-
19 administered pension fund or retirement system created under the
20 laws of this State from ordering the forfeiture of **all or part of** the
21 earned service credit or pension or retirement benefit of any
22 member of the fund or system for misconduct occurring during the
23 member's public service pursuant to the provisions of P.L.1995,
24 c.408 (C.43:1-3 et seq.), including in a case where the court does
25 not enter an order of forfeiture pursuant to this section.

26 f. Notwithstanding any other law to the contrary, a member
27 against whom an order of pension forfeiture has been entered under
28 this section shall receive a refund of their contributions which, at
29 the discretion of the board of trustees of the pension fund or
30 retirement system, may be with or without any accrued interest.

31 (cf. P.L.2019, c.190, s.1)
32

33 3. N.J.S.18A:66-51 is amended to read as follows:

34 18A:66-51. The right of a person to a pension, an annuity, or a
35 retirement allowance, to the return of contributions, any benefit or
36 right accrued or accruing to a person under the provisions of this
37 article, and the moneys in the various funds created under this
38 article~~],~~;

39 a. shall be exempt from any State or municipal tax and from
40 levy and sale, garnishment, attachment or any other process arising
41 out of any State or Federal court, except that the State or other
42 public employer shall be entitled to the enforcement of an order of
43 garnishment against the withdrawal of any contributions by, or the
44 payment of a retirement allowance to, a member or beneficiary in
45 the amount of a money judgment obtained by the State or other
46 public employer and rendered against that member if that member is

1 convicted of, or pleads guilty or nolo contendere to, an offense
2 under the provisions of chapter 27 of Title 2C of the New Jersey
3 Statutes, or any other offense involving a theft or misuse of public
4 funds, or any attempt or conspiracy to commit any such offense.
5 Such judgment may include the cost of prosecution as well as the
6 amount of restitution ordered; and[.]

7 b. except as hereafter in this section and as in this article
8 otherwise provided, shall be unassignable.

9 Nothing in this section shall prohibit any person insured under a
10 group insurance policy, pursuant to an arrangement among the
11 insured, the group policyholder and the insurer, from making to any
12 person other than his employer, a gift assignment of the rights and
13 benefits conferred on him by any provision of such policy or by law
14 including specifically but not by way of limitation the right to
15 exercise the conversion privilege and the right to name a
16 beneficiary. Any such assignment, whether made before or after the
17 effective date of this act, shall entitle the insurer to deal with the
18 assignee as the owner of all rights and benefits conferred on the
19 insured under the policy in accordance with the terms of the
20 assignment.

21 (cf: P.L.1969, c.98, s.1)

22
23 4. Section 41 of P.L.1973, c.140 (C.43:6A-41) is amended to
24 read as follows:

25 41. The right of a person to a pension, retirement allowance or
26 any benefit or right accrued or accruing to a person under the
27 provisions of this act and the moneys in the various funds created
28 under this act[.];

29 a. shall be exempt from any State or municipal tax and from
30 levy and sale, garnishment, attachment or any other process arising
31 out of any State or federal court, except that the State or other
32 public employer shall be entitled to the enforcement of an order of
33 garnishment against the withdrawal of any contributions by, or the
34 payment of a retirement allowance to, a member or beneficiary in
35 the amount of a money judgment obtained by the State or other
36 public employer and rendered against that member if that member is
37 convicted of, or pleads guilty or nolo contendere to, an offense
38 under the provisions of chapter 27 of Title 2C of the New Jersey
39 Statutes, or any other offense involving a theft or misuse of public
40 funds, or any attempt or conspiracy to commit any such
41 offense. Such judgment may include the cost of prosecution as well
42 as the amount of restitution ordered; and[.]

43 b. except as hereinafter in this section and as in this act
44 otherwise provided, shall be unassignable.

1 Nothing in this section shall prohibit any person insured under a
2 group insurance policy, pursuant to an arrangement among the
3 insured, the group policyholder and the insurer, from making to any
4 person other than his employer, a gift assignment of the rights and
5 benefits conferred on him by any provision of such policy or by law
6 including specifically but not by way of limitation the right to
7 exercise the conversion privilege and the right to name a
8 beneficiary. Any such assignment, whether made before or after the
9 effective date of this act, shall entitle the insurer to deal with the
10 assignee as the owner of all rights and benefits conferred on the
11 insured under the policy in accordance with the terms of the
12 assignment.
13 (cf: P.L.1981, c.470, s.21)
14

15 5. Section 53 of P.L.1954, c.84 (C.43:15A-53) is amended to
16 read as follows:

17 53. The right of a person to a pension, an annuity, or a retirement
18 allowance, to the return of contributions, any benefit or right
19 accrued or accruing to a person under the provisions of this act and
20 the moneys in the various funds created under this act **[.]:**

21 a. shall be exempt from any State or municipal tax and from
22 levy and sale, garnishment, attachment or any other process arising
23 out of any State or Federal court, except that the State or other
24 public employer shall be entitled to the enforcement of an order of
25 garnishment against the withdrawal of any contributions by, or the
26 payment of a retirement allowance to, a member or beneficiary in
27 the amount of a money judgment obtained by the State or other
28 public employer and rendered against that member if that member is
29 convicted of, or pleads guilty or nolo contendere to, an offense
30 under the provisions of chapter 27 of Title 2C of the New Jersey
31 Statutes, or any other offense involving a theft or misuse of public
32 funds, or any attempt or conspiracy to commit any such
33 offense. Such judgment may include the cost of prosecution as well
34 as the amount of restitution ordered; and[.]

35 b. except as in this section and in this act otherwise provided,
36 shall be unassignable.

37 Nothing in this section shall prohibit any person insured under a
38 group insurance policy, pursuant to an arrangement among the
39 insured, the group policyholder and the insurer, from making to any
40 person other than his employer, a gift assignment of the rights and
41 benefits conferred on him by any provision of such policy or by law
42 including specifically but not by way of limitation the right to
43 exercise the conversion privilege and the right to name a
44 beneficiary. Any such assignment, whether made before or after the

1 effective date of this act, shall entitle the insurer to deal with the
2 assignee as the owner of all rights and benefits conferred on the
3 insured under the policy in accordance with the terms of the
4 assignment.

5 (cf: P.L.1969, c.98, s.2)

6
7 6. Section 17 of P.L.1944, c.255 (C.43:16A-17) is amended to
8 read as follows:

9 17. The right of a person to a pension, an annuity, or a
10 retirement allowance, to the return of contributions, any benefit or
11 right accrued or accruing to a person under the provisions of this act
12 and the moneys in the various funds created under this act~~],]~~:

13 a. shall be exempt from any State or municipal tax and from
14 levy and sale, garnishment, attachment or any other process, except
15 that the State or other public employer shall be entitled to the
16 enforcement of an order of garnishment against the withdrawal of
17 any contributions by, or the payment of a retirement allowance to, a
18 member or beneficiary in the amount of a money judgment obtained
19 by the State or other public employer and rendered against that
20 member if that member is convicted of, or pleads guilty or nolo
21 contendere to, an offense under the provisions of chapter 27 of Title
22 2C of the New Jersey Statutes, or any other offense involving a
23 theft or misuse of public funds, or any attempt or conspiracy to
24 commit any such offense. Such judgment may include the cost of
25 prosecution as well as the amount of restitution ordered; and

26 b. except as hereinafter in this section and as in this act
27 otherwise provided, shall be unassignable.

28 Nothing in this section shall prohibit any person insured under a
29 group insurance policy, pursuant to an arrangement among the
30 insured, the group policyholder and the insurer, from making to any
31 person other than his employer, a gift assignment of the rights and
32 benefits conferred on him by any provision of such policy or by law
33 including specifically but not by way of limitation the right to
34 exercise the conversion privilege and the right to name a
35 beneficiary. Any such assignment, whether made before or after the
36 effective date of this act, shall entitle the insurer to deal with the
37 assignee as the owner of all rights and benefits conferred on the
38 insured under the policy in accordance with the terms of the
39 assignment.

40 (cf: P.L.1969, c.98, s.3)

41
42 7. Section 45 of P.L.1965, c.89 (C.53:5A-45) is amended to read
43 as follows:

a. shall be exempt from any State or municipal tax and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court, except that the State or other public employer shall be entitled to the enforcement of an order of garnishment against the withdrawal of any contributions by, or the payment of a retirement allowance to, a member or beneficiary in the amount of a money judgment obtained by the State or other public employer and rendered against that member if that member is convicted of, or pleads guilty or nolo contendere to, an offense under the provisions of chapter 27 of Title 2C of the New Jersey Statutes, or any other offense involving a theft or misuse of public funds, or any attempt or conspiracy to commit any such offense. Such judgment may include the cost of prosecution as well as the amount of restitution ordered; and[.]

Nothing in this section shall prohibit any person insured under a group insurance policy, pursuant to an arrangement among the insured, the group policyholder and the insurer, from making to any person other than his employer, a gift assignment of the rights and benefits conferred on him by any provision of such policy or by law including specifically but not by way of limitation the right to exercise the conversion privilege and the right to name a beneficiary. Any such assignment, whether made before or after the effective date of this act, shall entitle the insurer to deal with the assignee as the owner of all rights and benefits conferred on the insured under the policy in accordance with the terms of the assignment.

8. This act shall take effect immediately.

This bill would change the factors to be considered by the boards of State or locally administered retirement systems hearing pension forfeiture cases concerning public employees. It would emphasize the nature of the misconduct, the relationship between the misconduct and the person's public duties, and the person's moral turpitude, and require the board to direct the person's entire pension

1 be forfeited based on these factors. Additional factors may only be
2 used subsequently to mitigate this full forfeiture to a partial
3 forfeiture. Where a forfeiture is warranted, this bill requires that
4 the person receive a refund of their contributions, but allows for the
5 board to determine whether that refund is with or without any
6 accrued interest.

7 This bill would require the forfeiture of the pension or retirement
8 benefit of a person if the person is convicted of any crime of the
9 first or second degree, or the equivalent under the laws of another
10 state or of the United States, when the offense is related to the
11 person's performance in or circumstances flowing from the public
12 office or employment held by the person. This bill also specifies
13 that pension forfeiture applies in cases that result in qualifying
14 guilty or nolo contendere pleas, in addition to convictions.

15 This bill would also open a person's public pension to
16 garnishment in order to fulfill court ordered restitution of public
17 funds when a person has been convicted of, or plead guilty or nolo
18 contendere to, certain offenses.