

By Senator Crist

12-1492-04

See HB 163

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A bill to be entitled
An act relating to offenses by public officers
and employees; amending s. 112.3173, F.S.;
providing that a public officer or employee
convicted of child abuse, aggravated child
abuse, or neglect of a child shall forfeit
certain benefits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 112.3173, Florida Statutes, is
amended to read:

112.3173 Felonies involving breach of public trust and
other specified offenses by public officers and employees;
forfeiture of ~~retirement~~ benefits.--

(1) INTENT.--It is the intent of the Legislature to
implement the provisions of s. 8(d), Art. II of the State
Constitution.

(2) DEFINITIONS.--As used in this section, unless the
context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication
of guilt by a court of competent jurisdiction; a plea of
guilty or of nolo contendere; a jury verdict of guilty when
adjudication of guilt is withheld and the accused is placed on
probation; or a conviction by the Senate of an impeachable
offense.

(b) "Court" means any state or federal court of
competent jurisdiction which is exercising its jurisdiction to
consider a proceeding involving the alleged commission of a
specified offense.

1 (c) "Public officer or employee" means an officer or
2 employee of any public body, political subdivision, or public
3 instrumentality within the state.

4 (d) "Public retirement system" means any retirement
5 system or plan to which the provisions of part VII of this
6 chapter apply.

7 (e) "Specified offense" means:

8 1. The committing, aiding, or abetting of an
9 embezzlement of public funds;

10 2. The committing, aiding, or abetting of any theft by
11 a public officer or employee from his or her employer;

12 3. Bribery in connection with the employment of a
13 public officer or employee;

14 4. Any felony specified in chapter 838, except ss.
15 838.15 and 838.16;

16 5. Child abuse, aggravated child abuse, or neglect of
17 a child, as defined in s. 827.03;

18 ~~6.5.~~ The committing of an impeachable offense; or

19 ~~7.6.~~ The committing of any felony by a public officer
20 or employee who, willfully and with intent to defraud the
21 public or the public agency for which the public officer or
22 employee acts or in which he or she is employed of the right
23 to receive the faithful performance of his or her duty as a
24 public officer or employee, realizes or obtains, or attempts
25 to realize or obtain, a profit, gain, or advantage for himself
26 or herself or for some other person through the use or
27 attempted use of the power, rights, privileges, duties, or
28 position of his or her public office or employment position.

29 (3) FORFEITURE.--

30 (a) Any public officer or employee who is convicted of
31 a specified offense committed prior to retirement, or whose

1 office or employment is terminated by reason of his or her
2 admitted commission, aid, or abetment of a specified offense,
3 shall forfeit all rights and benefits under any public
4 retirement system of which he or she is a member, except for
5 the return of his or her accumulated contributions as of the
6 date of termination.

7 (b) Any public officer or employee who is convicted of
8 child abuse, aggravated child abuse, or neglect of a child, as
9 defined in s. 827.03, if the offense was committed prior to
10 retirement, shall, in addition to the penalty provided in
11 paragraph (a), forfeit the right to payment of unused
12 accumulated sick leave and shall be ineligible for the payment
13 of salary for any period during which the employee was
14 suspended pending investigation of, or trial on, the charge of
15 child abuse.

16 (4) NOTICE.--

17 (a) The clerk of a court in which a proceeding
18 involving a specified offense is being conducted against a
19 public officer or employee shall furnish notice of the
20 proceeding to the Commission on Ethics. Such notice is
21 sufficient if it is in the form of a copy of the indictment,
22 information, or other document containing the charges. In
23 addition, if a verdict of guilty is returned by a jury or by
24 the court trying the case without a jury, or a plea of guilty
25 or of nolo contendere is entered in the court by the public
26 officer or employee, the clerk shall furnish a copy thereof to
27 the Commission on Ethics.

28 (b) The Secretary of the Senate shall furnish to the
29 Commission on Ethics notice of any proceeding of impeachment
30 being conducted by the Senate. In addition, if such trial
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1 results in conviction, the Secretary of the Senate shall
2 furnish notice of the conviction to the commission.

3 (c) The employer of any member whose office or
4 employment is terminated by reason of his or her admitted
5 commission, aid, or abetment of a specified offense shall
6 forward notice thereof to the commission.

7 (d) The Commission on Ethics shall forward any notice
8 and any other document received by it pursuant to this
9 subsection to the governing body of the public retirement
10 system of which the public officer or employee is a member or
11 from which the public officer or employee may be entitled to
12 receive a benefit. When called on by the Commission on Ethics,
13 the Department of Management Services shall assist the
14 commission in identifying the appropriate public retirement
15 system.

16 (5) FORFEITURE DETERMINATION.--

17 (a) Whenever the official or board responsible for
18 paying benefits under a public retirement system receives
19 notice pursuant to subsection (4), or otherwise has reason to
20 believe that the rights and privileges of any person under
21 such system are required to be forfeited under this section,
22 such official or board shall give notice and hold a hearing in
23 accordance with chapter 120 for the purpose of determining
24 whether such rights and privileges are required to be
25 forfeited. If the official or board determines that such
26 rights and privileges are required to be forfeited, the
27 official or board shall order such rights and privileges
28 forfeited.

29 (b) Any order of forfeiture of retirement system
30 rights and privileges is appealable to the district court of
31 appeal.

1 (c) The payment of retirement benefits ordered
2 forfeited, except payments drawn from nonemployer
3 contributions to the retiree's account, shall be stayed
4 pending an appeal as to a felony conviction. If such
5 conviction is reversed, no retirement benefits shall be
6 forfeited. If such conviction is affirmed, retirement benefits
7 shall be forfeited as ordered in this section.

8 (d) If any person's rights and privileges under a
9 public retirement system are forfeited pursuant to this
10 section and that person has received benefits from the system
11 in excess of his or her accumulated contributions, such person
12 shall pay back to the system the amount of the benefits
13 received in excess of his or her accumulated contributions. If
14 he or she fails to pay back such amount, the official or board
15 responsible for paying benefits pursuant to the retirement
16 system or pension plan may bring an action in circuit court to
17 recover such amount, plus court costs.

18 (6) FORFEITURE NONEXCLUSIVE.--

19 (a) The forfeiture of retirement rights and privileges
20 pursuant to this section is supplemental to any other
21 forfeiture requirements provided by law.

22 (b) This section does not preclude or otherwise limit
23 the Commission on Ethics in conducting under authority of
24 other law an independent investigation of a complaint which it
25 may receive against a public officer or employee involving a
26 specified offense.

27 Section 2. This act shall take effect upon becoming a
28 law.

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