

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4607**

(BY DELEGATES SHOTT, LANE, FOLK, KESSINGER  
AND HOUSEHOLDER)

[Originating in the Committee on the Judiciary;  
February 23, 2016.]



1 A BILL to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating  
2 to adding violations of law upon which a public servant's retirement plan may be forfeited;  
3 changing the definition of less than honorable service; removing the exception of a  
4 misdemeanor from the definition of less than honorable service relating to impeachment  
5 and conviction of a participant or former participant under the Constitution; removing the  
6 exception for certain lesser included crimes to constitute less than honorable service; and  
7 adding additional violations of law which constitute less than honorable service.

*Be it enacted by the Legislature of West Virginia:*

1 That §5-10A-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**

**§5-10A-2. Definitions.**

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to  
3 article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-  
4 two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant  
5 to article twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and  
6 Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of this code; the  
7 West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter  
8 fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a,  
9 chapter fifteen of this code; the state Teachers Retirement System pursuant to article seven-a,  
10 chapter eighteen of this code; the Teachers Defined Contribution Retirement System pursuant to  
11 article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to  
12 article fourteen-d, chapter seven of this code; the higher education retirement plan and  
13 supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen  
14 of this code; the Judges Retirement System pursuant to article nine, chapter fifty-one of this code;

15 the West Virginia Emergency Medical Services Retirement System pursuant to article five-v,  
16 chapter sixteen of this code; and any other plan established pursuant to this code for the payment  
17 of pension, annuity, disability or other benefits to any person by reason of his or her service as an  
18 officer or employee of this state or of any political subdivision, agency or instrumentality thereof,  
19 whenever the plan is supported, in whole or in part, by public funds.

20 (b) "Beneficiary" means any person eligible for or receiving benefits on account of the  
21 service for a public employer by a participant or former participant in a retirement plan.

22 (c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to  
23 a retirement plan.

24 (d) "Conviction" means a conviction on or after the effective date of this article in any  
25 federal or state court of record whether following a plea of guilty, not guilty or nolo contendere  
26 and whether or not the person convicted was serving as an officer or employee of a public  
27 employer at the time of the conviction.

28 (e) "Former participant" means any person who is no longer eligible to receive any benefit  
29 under a retirement plan because full distribution has occurred.

30 (f) "Less than honorable service" means:

31 (1) Impeachment and conviction of a participant or former participant under the provisions  
32 of section nine, article four of the Constitution of West Virginia, ~~except for a misdemeanor~~;

33 (2) Conviction of a participant or former participant of a felony for conduct related to his or  
34 her office or employment which he or she committed while holding the office or during the  
35 employment; or

36 (3) Conduct of a participant or former participant which constitutes all of the elements of a  
37 crime described in either subdivision (1) or (2) of this subsection but for which the participant or  
38 former participant was not convicted because: (i) Having been indicted or having been charged  
39 in an information for the crime, he or she made a plea bargaining agreement pursuant to which  
40 he or she pleaded guilty to or nolo contendere to a lesser crime: ~~Provided, That the lesser crime~~

41 ~~is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or (ii)~~  
42 having been indicted or having been charged in an information for the crime, he or she was  
43 granted immunity from prosecution for the crime; or

44 (4) Conviction of a participant or former participant for any of the following provisions  
45 related to his or her office or employment which he or she committed while holding the office or  
46 employment:

47 (A) Sections thirteen, fourteen, twenty, and twenty-two of article three, chapter sixty-one  
48 of this code;

49 (B) Section one, article four, chapter sixty-one of this code;

50 (C) Any provision of article five, chapter sixty-one, except sections eight through twenty or  
51 sections twenty-five through twenty-nine; and

52 (D) Any provision of article five-a, chapter sixty-one.

53 (g) "Participant" means any person eligible for or receiving any benefit under a retirement  
54 plan on account of his or her service as an officer or employee for a public employer.

55 (h) "Public employer" means the State of West Virginia and any political subdivision,  
56 agency or instrumentality thereof for which there is established a retirement plan.

57 (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the  
58 board of trustees of any municipal retirement fund; the board of trustees of any policemen's or  
59 firemen's retirement plan; the governing board of any supplemental retirement plan instituted  
60 pursuant to authority granted by the previous provisions of section four-a, article twenty-three,  
61 chapter eighteen of this code; and any other board, commission or public body having the duty to  
62 supervise and operate any retirement plan.

NOTE: The purpose of this bill is to add additional violations of law, and removes exceptions for certain lesser included crimes, that could cause the forfeiture of a participant's retirement plan.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.