

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4573

BY DELEGATES SHOTT AND HANSHAW

[Introduced February 13, 2018; Referred
to the Committee on Pensions and Retirement then
the Judiciary.]

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:

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 §5-10-1 *et seq.* of this code; each municipal employees retirement plan pursuant to §8-22-1 *et*
 4 *seq.* of this code; each policemen’s and firemen’s pension and relief fund pursuant to §8-22-1 *et*
 5 *seq.* of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System
 6 pursuant to §8-22A-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and
 7 Retirement Fund pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police
 8 Retirement System pursuant to §15-2A-1 *et seq.* of this code; the state Teachers Retirement
 9 System pursuant to §18-7A-1 *et seq.* of this code; the Teachers Defined Contribution Retirement
 10 System pursuant to §18-7B-1 *et seq.* of this code; the Deputy Sheriff Retirement System pursuant
 11 to §7-14D-1 *et seq.* of this code; the higher education retirement plan and supplemental retirement
 12 plans pursuant to §18-23-4a of this code; the Judges Retirement System pursuant to §51-9-1 *et*
 13 *seq.* of this code; the West Virginia Emergency Medical Services Retirement System pursuant to
 14 §16-5V-1 *et seq.* of this code; and any other plan established pursuant to this code for the
 15 payment of pension, annuity, disability, or other benefits to any person by reason of his or her
 16 service as an officer or employee of this state or of any political subdivision, agency, or

17 instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

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

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

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

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

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

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

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

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

42 (4) Conviction of a participant or former participant for the misdemeanor offenses provided
43 in the following sections of this code related to his or her office or employment which he or she
44 committed while holding the office or during the employment:

45 (A) §61-3-13, §61-3-14, §61-3-20 of this code;

46 (B) §61-5-1, §61-5-2, §61-5-3, §61-5-6, §61-5-21, §61-5-22, §61-5-23, and §61-5-24 of
47 this code; and

48 (C) §61-5A-4, §61-5A-5, §61-5A-6, and §61-5A-7 of this code.

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

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

53 (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the
54 board of trustees of any municipal retirement fund; the board of trustees of any policemen's or
55 firemen's retirement plan; the governing board of any supplemental retirement plan instituted
56 pursuant to authority granted by the previous provisions of §18-23-4a of this code; and any other
57 board, commission, or public body having the duty to supervise and operate any retirement plan.

NOTE: The purpose of this bill is to add additional violations of law and remove 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.