

ASSEMBLY, No. 2715

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

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District 14 (Mercer and Middlesex)

SYNOPSIS

Imposes mandatory forfeiture of public office, position or employment upon conviction of certain offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/13/2020)

1 AN ACT concerning the forfeiture of public office and amending
2 N.J.S.2C:51-2.

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

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7 1. N.J.S.2C:51-2 is amended to read as follows:

8 2C:51-2. Forfeiture of Public Office, Position, or Employment.

9 a. A person holding any public office, position, or
10 employment, elective or appointive, under the government of this
11 State or any agency or political subdivision thereof, who is
12 convicted of an offense shall forfeit such office, position or
13 employment if:

14 (1) He is convicted under the laws of this State of an offense
15 involving dishonesty or of a crime of the third degree or above or
16 under the laws of another state or of the United States of an offense
17 or a crime which, if committed in this State, would be such an
18 offense or crime;

19 (2) He is convicted of an offense involving or touching such
20 office, position or employment; or

21 (3) The Constitution so provides.

22 As used in this subsection, "involving or touching such office,
23 position or employment" means that the offense was related directly
24 to the person's performance in, or circumstances flowing from, the
25 specific public office, position or employment held by the person.
26 In determining whether the offense was so related, the court shall
27 assess the identity of the victim, and shall assess the qualifications
28 required of the specific public office, position or employment. The
29 court may make a determination that an offense was related directly
30 to the person's performance in, or circumstances flowing from, the
31 specific public office, position or employment held by the person
32 notwithstanding the fact that the offense did not take place during
33 employment hours or on employment grounds.

34 b. A court of this State shall enter an order of forfeiture
35 pursuant to subsection a.:

36 (1) Immediately upon a finding of guilt by the trier of fact or a
37 plea of guilty entered in any court of this State unless the court, for
38 good cause shown, orders a stay of such forfeiture pending a
39 hearing on the merits at the time of sentencing; or

40 (2) Upon application of the county prosecutor or the Attorney
41 General, when the forfeiture is based upon a conviction of an
42 offense under the laws of another state or of the United States. An
43 order of forfeiture pursuant to this paragraph shall be deemed to
44 have taken effect on the date the person was found guilty by the
45 trier of fact or pled guilty to the offense.

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 c. No court shall grant a stay of an order of forfeiture pending
2 appeal of a conviction or forfeiture order unless the court is clearly
3 convinced that there is a substantial likelihood of success on the
4 merits. If the conviction be reversed or the order of forfeiture be
5 overturned, he shall be restored, if feasible, to his office, position or
6 employment with all the rights, emoluments and salary thereof from
7 the date of forfeiture.

8 Any official action taken by the convicted person on or after the
9 date as of which a forfeiture of the person's office shall take effect
10 shall, during a period of 60 days following the date on which an
11 order of forfeiture shall have been issued hereunder, be voidable by
12 the person's successor in office or, if the office of the person was
13 that of member of the governing body of a county, municipality or
14 independent authority, by that governing body.

15 d. In addition to the punishment prescribed for the offense, and
16 the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person
17 convicted of an offense involving or touching on his public office,
18 position or employment shall be forever disqualified from holding
19 any office or position of honor, trust or profit under this State or
20 any of its administrative or political subdivisions. As used in this
21 subsection, "involving or touching on his public office, position or
22 employment" means that the offense was related directly to the
23 person's performance in, or circumstances flowing from, the
24 specific public office, position or employment held by the person.
25 In determining whether the offense was so related, the court shall
26 assess the gravity of the offense as revealed by its nature, its
27 context, and the identity of the victim, and shall assess the
28 qualifications required of the specific public office, position or
29 employment. The court may make a determination that an offense
30 was related directly to the person's performance in, or
31 circumstances flowing from, the specific public office, position or
32 employment held by the person notwithstanding the fact that the
33 offense did not take place during employment hours or on
34 employment grounds.

35 e. Any forfeiture or disqualification under subsection a., b. or
36 d. which is based upon a conviction of a disorderly persons or petty
37 disorderly persons offense may be waived by the court upon
38 application of the county prosecutor or the Attorney General and for
39 good cause shown.

40 f. Except as may otherwise be ordered by the Attorney General
41 as the public need may require, any person convicted of an offense
42 under section 97 of P.L.1999, c.440 (C.2C:21-34), N.J.S.2C:27-2,
43 N.J.S.2C:27-3, N.J.S.2C:27-5, section 100 of P.L.1999, c. 440
44 (C.2C:27-9), section 5 of P.L.2003, c.255 (C.2C:27-10), section 6
45 of P.L.2003, c.255 (C.2C:27-11), N.J.S.2C:29-4, N.J.S.2C:30-2, or
46 N.J.S.2C:30-3 of this Title shall be ineligible, either directly or
47 indirectly, to submit a bid, enter into any contract, or to conduct any
48 business with any board, agency, authority, department,

1 commission, public corporation, or other body of this State, of this
2 or one or more other states, or of one or more political subdivisions
3 of this State for a period of, but not more than, 10 years from the
4 date of conviction for a crime of the second degree, or five years
5 from the date of conviction for a crime of the third degree. It is the
6 purpose of this subsection to bar any individual convicted of any of
7 the above enumerated offenses and any business, including any
8 corporation, partnership, association or proprietorship in which
9 such individual is a principal, or with respect to which such
10 individual owns, directly or indirectly, or controls 5% or more of
11 the stock or other equity interest of such business, from conducting
12 business with public entities.

13 The State Treasurer shall keep and maintain a list of all
14 corporations barred from conducting such business pursuant to this
15 section.

16 g. In any case in which the issue of forfeiture is not raised in a
17 court of this State at the time of a finding of guilt, entry of guilty
18 plea or sentencing, a forfeiture of public office, position or
19 employment required by this section may be ordered by a court of
20 this State upon application of the county prosecutor or the Attorney
21 General or upon application of the public officer or public entity
22 having authority to remove the person convicted from his public
23 office, position or employment. The fact that a court has declined
24 to order forfeiture shall not preclude the public officer or public
25 entity having authority to remove the person convicted from
26 seeking to remove or suspend the person from his office, position or
27 employment on the ground that the conduct giving rise to the
28 conviction demonstrates that the person is unfit to hold the office,
29 position or employment.

30 (cf: P.L.2007, c.49, s.5)

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32 2. This act shall take effect on the 60th day following enactment
33 and shall apply to offenses committed on or after the effective date.

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STATEMENT

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38 This bill would require that persons convicted of certain offenses
39 must forfeit their public office, position or employment. These
40 persons would also be permanently barred from holding public
41 office, position or employment in the future.

42 Under current law, set out in N.J.S.2C:51-2, a person must forfeit
43 his public office, position or employment and be barred from
44 holding any future office or position of honor, trust or profit under
45 this State or any of its administrative or political subdivisions if,
46 among other grounds, he is convicted of an offense involving or
47 touching on the office, position or employment. The statute
48 provides that the phrase “involving or touching on his public office,

1 position or employment” means that “the offense was related
2 directly to the person's performance in, or circumstances flowing
3 from, the specific public office, position or employment held by the
4 person.” This definition was added to the statute by P.L.2007, c.49,
5 which increased the penalties for public corruption crimes. As
6 noted in that bill statement, the definition was in accordance with a
7 ruling by the New Jersey Supreme Court, McCann v. Clerk of the
8 City of Jersey City, 167 N.J. 311 (2001), that interpreted the
9 “involving or touching” language in N.J.S.2C:51-2.

10 However, it is the view of the sponsor that the definition in
11 McCann and in the 2007 enactment is not expansive enough and
12 does not encompass certain situations where public employees’
13 abuse of the public trust should warrant their dismissal from
14 employment. For example, in State v. Hupka, 203 N.J. 222 (2010),
15 the New Jersey Supreme Court held that forfeiture of office and
16 disqualification from future public employment were not warranted
17 in a case where a sheriff’s officer, who also worked part-time as a
18 police officer, pled guilty to criminal sexual contact, a crime of the
19 fourth degree. He had originally been indicted for aggravated
20 sexual assault, a crime of the first degree, and sexual assault, a
21 crime of the second degree, after a female friend alleged that he had
22 sexually assaulted her in her apartment. (A crime of the fourth
23 degree is punishable by a term of imprisonment of up to 18 months
24 or a fine of up to \$10,000, or both; a crime of the second degree, by
25 a term of five to 10 years or a fine of up to \$150,000, or both; and a
26 crime of the first degree, by a term of 10 to 20 years or a fine of up
27 to \$200,000 or both.)

28 In a 3-2 decision, the Supreme Court held that Mr. Hupka’s
29 conviction was not sufficiently related to his position as a law
30 enforcement officer to trigger the forfeiture and disqualification
31 provisions of the statute, because he was off-duty at the time of the
32 incident, in a private home with a person that he knew. In a
33 dissenting opinion, Chief Justice Rabner wrote that, in his view, Mr.
34 Hupka’s actions did warrant forfeiture and disqualification, as they
35 directly related to his performance as a law enforcement official.

36 The Chief Justice wrote that the decision in an older Supreme
37 Court case, Moore v. Youth Correctional Institute, 119 N.J. 256
38 (1990), set out the appropriate standards for review. In that
39 decision, the court held that in determining whether an offense
40 involves and touches on employment, “there is a need to assess the
41 gravity of the crime as revealed by its nature, its context, and the
42 identity of the victim ... [and] to assess the qualifications
43 required of the employee’s public employment.”

44 This bill would add the language in Moore to the provisions of
45 N.J.S.2C:51-2. Under the bill, the “involving or touching on his
46 public office, position or employment” definition would include the
47 following new language: “In determining whether the offense was
48 so related, the court shall assess the gravity of the offense as

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1 revealed by its nature, its context, and the identity of the victim, and
2 shall assess the qualifications required of the specific public office,
3 position or employment.” In addition, the bill specifies that the
4 court may make a determination that an offense was related directly
5 to the person's performance in, or circumstances flowing from, the
6 specific public office, position or employment held by the person
7 notwithstanding the fact that the offense did not take place during
8 employment hours or on employment grounds.