

SENATE, No. 2812

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

3

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 gravity of the offense as revealed by its nature, its
28 context, and the identity of the victim, and shall assess the
29 qualifications required of the specific public office, position or
30 employment. The court may make a determination that an offense
31 was related directly to the person's performance in, or
32 circumstances flowing from, the specific public office, position or
33 employment held by the person notwithstanding the fact that the
34 offense did not take place during employment hours or on
35 employment grounds.

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

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

42 (2) Upon application of the county prosecutor or the Attorney
43 General, when the forfeiture is based upon a conviction of an
44 offense under the laws of another state or of the United States. An
45 order of forfeiture pursuant to this paragraph shall be deemed to

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 have taken effect on the date the person was found guilty by the
2 trier of fact or pled guilty to the offense.

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

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

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

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

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

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

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

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

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

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

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STATEMENT

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

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

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

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

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

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

46 This bill would add the language in Moore to the provisions of
47 N.J.S.2C:51-2. Under the bill, the “involving or touching on his
48 public office, position or employment” definition would include the

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