**No. 2. An act relating to civil forfeiture of retirement payments to public officials convicted of certain crimes.**

(H.41)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. chapter 7, subchapter 7 is added to read:

Subchapter 7. Forfeiture of Public Employee Retirement Benefits

§ 621. STATEMENT OF PURPOSE

It is the purpose of this subchapter to establish a procedure by which the pension benefits of a public employee convicted of certain crimes may be forfeited. Honorable public service is a condition precedent for a public employee to receive retirement benefits, and any public employee who is convicted of any of the designated crimes relating to his or her public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to forfeiture.

§ 622. DEFINITIONS

As used in this subchapter:

(1) "Contribution" shall have the same meaning as "accumulated contribution" set forth in 3 V.S.A. § 455(a)(1), 16 V.S.A. § 1931(1), and 24 V.S.A. § 5051(1), and shall include the sum of all amounts deducted from the compensation of a member of any defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any earnings or losses on those contributions, and the sum of all amounts deducted from the compensation of a member of any other retirement plan of a municipality authorized under the Internal

Revenue Code, 26 U.S.C. § 401, and any earnings or losses on those contributions.

(2) "Crime related to public office" means any of the following criminal offenses if the offense is a felony and is committed in connection with employment as a member:

(A) any offense under 13 V.S.A. chapter 21;

(B) false personation as defined in 13 V.S.A. § 2001;

(C) false pretenses or tokens as defined in 13 V.S.A. § 2002;

(D) grand larceny as defined in 13 V.S.A. § 2501;

(E) person holding property in official capacity or belonging to the state or a municipality as defined in 13 V.S.A. § 2537;

(F) false claim as defined in 13 V.S.A. § 3016;

(G) a felony under the laws of the United States or any other state, including a territory, commonwealth, the District of Columbia, or military, federal, or tribal court, an element of which involves:

(i) a larceny;

(ii) an embezzlement;

(iii) the fraudulent conversion of money, property, or other valuable things for personal or other use; or

(iv) an intent to defraud; or

(H) an attempt to commit, or aiding in the commission of, any offense listed in this subdivision (2).

(3) "Member" shall have the same meaning as in 3 V.S.A. § 455(a)(11), 16 V.S.A. § 1931(10), and 24 V.S.A. § 5051(13), and shall include anyone participating in a defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

(4) "Retirement benefits" shall have the same meaning as "pensions" as defined in 3 V.S.A. § 455(a)(14), 16 V.S.A. § 1931(12), and 24 V.S.A. § 5051(16), and shall also mean benefits derived from employer contributions to defined contribution plans under 3 V.S.A. § 500, 24 V.S.A. § 5070, and benefits derived from employer contributions to any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

§ 623. FORFEITURE OF PUBLIC EMPLOYEE RETIREMENT BENEFITS

(a) Honorable public service is a condition precedent to receiving retirement benefits. Each time a member is hired, reassigned, promoted, demoted, enters into a new collective bargaining contract, or otherwise changes his or her employment relationship or status, he or she shall be deemed to consent and agree to be subject to the provisions of this subchapter, including to this condition precedent.

(b) Notwithstanding any other provision of law to the contrary, any member who is convicted of any crime related to public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to forfeiture.

(c) If a member is convicted of a crime related to public office, the Attorney General or State's Attorney shall file an action in the Civil Division of the Superior Court to forfeit the member's retirement benefits in whole or in part.

(d) A copy of the complaint shall be served on the member and any known spouse, dependent, or designated beneficiary of the member.

(e) Hearings under this subchapter shall be conducted by the Court without a jury, and the Attorney General or State's Attorney shall have the burden of proof.

(f) The Court shall grant the petition if it finds by a preponderance of the evidence that:

(1) the person is a member as defined in this subchapter; and

(2) the person was convicted of a crime related to public office.

(g) If the Court grants the petition, it shall then determine the degree, if any, to which the member's retirement benefits shall be forfeited. In making the determination, the Court shall consider and make findings on the following factors:

(1) the severity of the crime related to public office for which the member has been convicted;

(2) the amount of monetary loss suffered by the State, a county, a municipality, or by any other person as a result of the crime related to public office;

(3) the degree of public trust reposed in the member; and

(4) any other factors as, in the judgment of the Court, justice may require.

(h) If the Court determines that a member's retirement benefits should be forfeited to any degree, the maximum value of the benefits ordered forfeited shall not be greater than ten times the amount of monetary loss suffered by the State, a county, a municipality, or by any other person as a result of the crime related to public office.

(i) If the Court determines that a member's retirement benefits should be forfeited to any degree, it may order that some or all of the retirement benefits be paid to any innocent spouse, dependent, or beneficiary as justice may require. In determining whether to make an award under this section, the Court may consider:

(1) the degree of knowledge, if any, possessed by the member's spouse, dependent, or designated beneficiary in connection with the offense;

(2) the financial needs and resources of the member's spouse, dependent, or designated beneficiary; and

(3) any other factors as, in the judgment of the Court, justice may require.

(j) If the Court determines that a member's retirement benefits should not be forfeited to any degree, it shall order that retirement benefits be made to the member.

§ 624. VENUE, PROCEDURE, AND APPEALS

(a) Proceedings to forfeit retirement benefits under this subchapter shall be heard in the Civil Division of the Superior Court. Venue may be in the Washington unit, the unit where the conviction for the crime related to public office occurred, or in any unit where the member or any known spouse, dependent, or designated beneficiary resides.

(b) The Supreme Court, pursuant to 12 V.S.A. § 1, may enact rules and develop procedures consistent with this subchapter to govern proceedings to forfeit retirement payments.

(c) An order under this subchapter may be appealed as a matter of right to the Supreme Court by the Attorney General or State's Attorney that filed the petition, the member, or the member's spouse, dependent, or designated beneficiary.

§ 625. RETURN OF CONTRIBUTIONS; EXEMPTIONS; QUALIFIED DOMESTIC RELATIONS ORDERS

(a) Any member whose retirement benefits are forfeited to any degree pursuant to section 623 of this title shall be entitled to a return of his or her contribution in the same manner as provided by the relevant retirement system.

(b) Notwithstanding the provisions of subsection (a) of this section, returns of contributions shall not be made or ordered unless and until the Civil Division of the Superior Court determines that the member whose retirement benefits have been forfeited to any degree pursuant to section 623 of this title

has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred as a result of the crime related to public office. If the Court determines that the member whose retirement benefits have been forfeited to any degree under section 623 has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction that relates to the crime related to public office of which the member was convicted, it may order that any funds otherwise due such member as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order.

(c) A provision of section 623 of this title or this section shall not be construed to prohibit or limit any payment made pursuant to a qualified domestic relations order issued prior to any such conviction and applicable to:

(1) any member who is convicted of any crime related to public office; or

(2) any state, county, or municipal agency responsible for the administration of such payment on behalf of such member.

(d) Notwithstanding the provisions of section 623 of this title, retirement benefits shall not be forfeited to any degree if the Internal Revenue Service determines that such forfeiture will negatively affect or invalidate the status of a retirement plan under the Internal Revenue Code, 26 U.S.C. § 401, or any subsequent corresponding Internal Revenue Code of the United States, as may be amended.

§ 626. APPLICATION; COLLECTIVE BARGAINING AGREEMENTS

(a) This subchapter shall not apply to retirement benefits that accrued prior to the effective date of this subchapter or to crimes committed before the effective date of this subchapter.

(b) No collective bargaining agreement or other employment agreement entered into on or after the effective date of this subchapter shall contain any provision that limits the application of the provisions of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

Date the Governor signed the bill: March 20, 2013