

ASSEMBLY, No. 2781

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

Requires immediate forfeiture of public office, position or employment, without application by the prosecutor, for public officials and employees convicted under Federal law of certain public corruption offenses.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning 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 b. A court of this State shall enter an order of forfeiture
27 pursuant to subsection a.:

28 (1) (a) Immediately upon a finding of guilt by the trier of fact
29 or a plea of guilty entered in any court of this State; and

30 (b) Immediately upon notice to a court of this State by the
31 county prosecutor or the Attorney General, following a finding of
32 guilt by the trier of fact or a plea of guilty entered in any court of
33 the United States,

34 unless the court, for good cause shown, orders a stay of such
35 forfeiture pending a hearing on the merits at the time of sentencing,
36 or at the time of the forfeiture notice concerning a conviction in any
37 court of the United States, as applicable; or

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

44 c. No court shall grant a stay of an order of forfeiture pending
45 appeal of a conviction or forfeiture order unless the court is clearly

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 convinced that there is a substantial likelihood of success on the
2 merits. If the conviction be reversed or the order of forfeiture be
3 overturned, he shall be restored, if feasible, to his office, position or
4 employment with all the rights, emoluments and salary thereof from
5 the date of forfeiture.

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

13 d. In addition to the punishment prescribed for the offense, and
14 the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person
15 convicted of an offense involving or touching on his public office,
16 position or employment shall be forever disqualified from holding
17 any office or position of honor, trust or profit under this State or
18 any of its administrative or political subdivisions. As used in this
19 subsection, "involving or touching on his public office, position or
20 employment" means that the offense was related directly to the
21 person's performance in, or circumstances flowing from, the
22 specific public office, position or employment held by the person.

23 e. Any forfeiture or disqualification under subsection a., b. or
24 d. which is based upon a conviction of a disorderly persons or petty
25 disorderly persons offense may be waived by the court upon
26 application of the county prosecutor or the Attorney General and for
27 good cause shown.

28 f. Except as may otherwise be ordered by the Attorney General
29 as the public need may require, any person convicted of an offense
30 under section 97 of P.L.1999, c.440 (C.2C:21-34), N.J.S.2C:27-2,
31 N.J.S.2C:27-3, N.J.S.2C:27-5, section 100 of P.L.1999, c.440
32 (C.2C:27-9), section 5 of P.L.2003, c.255 (C.2C:27-10), section 6
33 of P.L.2003, c.255 (C.2C:27-11), N.J.S.2C:29-4, N.J.S.2C:30-2, or
34 N.J.S.2C:30-3 of this Title shall be ineligible, either directly or
35 indirectly, to submit a bid, enter into any contract, or to conduct any
36 business with any board, agency, authority, department,
37 commission, public corporation, or other body of this State, of this
38 or one or more other states, or of one or more political subdivisions
39 of this State for a period of, but not more than, 10 years from the
40 date of conviction for a crime of the second degree, or five years
41 from the date of conviction for a crime of the third degree. It is the
42 purpose of this subsection to bar any individual convicted of any of
43 the above enumerated offenses and any business, including any
44 corporation, partnership, association or proprietorship in which
45 such individual is a principal, or with respect to which such
46 individual owns, directly or indirectly, or controls 5% or more of
47 the stock or other equity interest of such business, from conducting
48 business with public entities.

1 The State Treasurer shall keep and maintain a list of all
2 corporations barred from conducting such business pursuant to this
3 section.

4 g. In any case in which the issue of forfeiture is not raised in a
5 court of this State at the time of a finding of guilt, entry of guilty
6 plea or sentencing, a forfeiture of public office, position or
7 employment required by this section may be ordered by a court of
8 this State upon application of the county prosecutor or the Attorney
9 General or upon application of the public officer or public entity
10 having authority to remove the person convicted from his public
11 office, position or employment. The fact that a court has declined
12 to order forfeiture shall not preclude the public officer or public
13 entity having authority to remove the person convicted from
14 seeking to remove or suspend the person from his office, position or
15 employment on the ground that the conduct giving rise to the
16 conviction demonstrates that the person is unfit to hold the office,
17 position or employment.

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

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20 2. This act shall take effect immediately and shall apply to any
21 person convicted of an offense prior to, on, or after the effective
22 date.

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STATEMENT

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27 This bill would provide that State and local public officials and
28 employees convicted under Federal law of certain public corruption
29 offenses would forfeit their office, position, or employment
30 immediately, without application by the prosecutor. Immediate
31 forfeiture without application by the prosecutor is required under
32 current law for State and local public officials and employees
33 convicted under State law.

34 Currently, N.J.S.2C:51-2 provides that public officials and public
35 employees convicted of certain criminal offenses must forfeit their
36 public office, position or employment. Forfeiture applies if the
37 person is convicted under State law of an offense involving
38 dishonesty or of a crime of the third degree or above, or if the
39 person is convicted under the laws of another state or under Federal
40 law of a criminal offense which, if committed in New Jersey, would
41 be an offense involving dishonesty or of a crime of the third degree
42 or above. Forfeiture also applies if the person is convicted of an
43 offense involving or touching such office, position or employment,
44 or if the Constitution so provides.

45 N.J.S.2C:51-2 provides that if a person is found guilty or pleads
46 guilty in State court to an applicable offense, the State court must
47 enter an order of forfeiture immediately unless the court, for good
48 cause shown, orders a stay pending a hearing on the merits at the

1 time of sentencing. However, if the person is convicted of an
2 applicable offense in Federal court or under the laws of another
3 state, a New Jersey court can enter an order of forfeiture only upon
4 application of the county prosecutor or the Attorney General.

5 Under the bill, if a defendant is convicted in Federal court of an
6 applicable offense, the county prosecutor or the Attorney General
7 would notify a State court and the State court would enter the order
8 of forfeiture immediately. The bill would not affect the procedures
9 for persons convicted of an offense under the laws of another state;
10 in those cases the county prosecutor or Attorney General would still
11 be required to bring an application to a New Jersey court for an
12 order of forfeiture.