

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/18/13 S4/4/13
A Bill

HOUSE BILL 1867

By: Representative Hammer
By: Senator J. Hutchinson

For An Act To Be Entitled

AN ACT TO PROMOTE THE INTEGRITY OF A PUBLIC SERVANT OR PUBLIC OFFICIAL; TO REQUIRE THAT A PUBLIC SERVANT OR PUBLIC OFFICIAL FOUND GUILTY OF CERTAIN OFFENSES REPAY HIS OR HER DEBT AND A CERTAIN AMOUNT OF HIS OR HER SALARY AND BENEFITS; AND FOR OTHER PURPOSES.

Subtitle

TO PROMOTE THE INTEGRITY OF A PUBLIC SERVANT OR PUBLIC OFFICIAL; AND TO REQUIRE THAT A PUBLIC SERVANT OR PUBLIC OFFICIAL FOUND GUILTY OF CERTAIN OFFENSES REPAY HIS OR HER DEBT AND A CERTAIN AMOUNT OF HIS OR HER SALARY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 25-16-1101 is amended to read as follows: 25-16-1101. Legislative intent.

(a) It is the policy of the State of Arkansas to promote integrity in public employment.

(b) It is the intent of this subchapter to require that a public servant who pleads guilty to or nolo contendere to or is found guilty of ~~any felony offense relating to his or her office, position, or employment~~ the following to forfeit his or her office, position, or employment, and thereafter he or she is disqualified from holding ~~any~~ an office, position, or employment with a governmental body:



(1) A felony offense relating to his or her office, position, or employment;

(2) A misdemeanor offense involving fraud, dishonesty, bribery, forgery, or other form of corruption relating to his or her office, position, or employment; or

(3) Theft of property under § 5-36-103 when the victim of the theft is the governmental body with which the public servant is associated.

SECTION 2. Arkansas Code § 25-16-1102(3), concerning the definition of a public servant, is amended to read as follows:

(3)(A) "Public servant" means a public official, public employee, or public appointee; ~~and~~ .

(B) "Public servant" does not mean a member of the General Assembly or a person holding an office of trust or profit in the state under Arkansas Constitution, Article 5, § 9; and

SECTION 3. Arkansas Code § 25-16-1102, concerning the definition of a public official, is amended to add an additional subdivision to read as follows:

(5) "Public official" means a member of the General Assembly or person holding an office of trust or profit in the state under Arkansas Constitution, Article 5, § 9.

SECTION 4. Arkansas Code § 25-16-1103 is amended to read as follows:
25-16-1103. Forfeiture of office.

(a) ~~Except as provided in subsection (b) of this section,~~ a A public servant holding ~~any~~ an office, position, or employment in a governmental body shall forfeit the office, position, or employment if he or she pleads guilty or nolo contendere to or is found guilty of ~~a~~:

(1) A felony offense relating to the public servant's office, position, or employment;

(2) A misdemeanor offense involving fraud, dishonesty, bribery, forgery, or other form of corruption relating to the public servant's office, position, or employment; or

(3) Theft of property under § 5-36-103 when the victim of the theft is the governmental body with which the public servant is associated.

(b)(1) ~~This section does not apply to a member of the General Assembly subject to removal from office under the Arkansas Constitution, Article 5~~ A public official may be removed from office under Arkansas Constitution, Article 5.

(2) The General Assembly or the state may consider the following offenses when determining if a public official is qualified:

(A) A felony offense;

(B) Theft of property under § 5-36-103;

(C) Abuse of office under § 5-52-107; or

(D) Witness tampering under § 5-53-110.

(c) A public official or public servant may hold a public office after he or she is removed from an office, position, or employment with a governing body if an offense indentified in subdivision (b)(2) of this section is expunged and permitted under applicable law.

SECTION 5. Arkansas Code § 25-16-1104 is amended to read as follows:
25-16-1104. Disqualification from office.

A ~~person~~ public servant who pleads guilty or nolo contendere to or is found guilty of ~~a felony offense relating to his or her office, position, or employment in a governmental body~~ an offense under § 25-16-1103(a) shall be disqualified and barred from holding ~~any~~ an office, position, or employment in a governmental body.

SECTION 6. Arkansas Code § 25-16-1105 is amended to read as follows:
25-16-1105. Enforcement.

(a)(1) Forfeiture of an office, position, or employment may be raised at the time a public servant pleads guilty or nolo contendere to or is found guilty of ~~a felony offense relating to his or her office, position, or employment in a governmental body~~ an offense under § 25-16-1103(a).

(2)(A) If the issue of forfeiture is raised against a public servant, the circuit court shall order the public servant to pay a penalty.

(B) The circuit court shall determine the amount of the penalty under subdivision (a)(2)(A) of this section by considering the following:

(i) The length of time over which the offense occurred;

(ii) The amount of money the offense cost the governmental body;

(iii) The amount of the public servant's salary during the time period in which the offense occurred;

(iv) The severity of the public servant's breach of public trust; and

(v) Any other information the court considers relevant.

(C) A penalty paid under subdivision (a)(2) of this section is in addition to an award to the state for restitution and the sentence of the public servant.

(3) If the issue of forfeiture is raised against a public servant, following sentencing a circuit court shall order forfeiture of an office, position, or employment upon a finding that § 25-16-1103 applies to the public servant.

(b)(1) If the issue of forfeiture is not raised under subsection (a) of this section, an action may be brought to remove the public servant in the manner provided by law to prevent usurpation of office under § 16-118-105.

(2)(A) If a public servant is removed under subdivision (b)(1) of this section, the circuit court shall order the public servant to pay a penalty to the state.

(B) The circuit court shall determine the amount of the penalty under subdivision (b)(2)(A) of this section by considering the factors under subdivision (a)(2)(B) of this section.

(C) A penalty paid under subdivision (b)(2) of this section is in addition to an award to the state for restitution and the sentence of the public servant.

(c)(1) A public official who is removed from office under Arkansas Constitution, Article 5, § 9, may be ordered to pay a penalty if he or she pleads guilty or nolo contendere to or is found guilty of one (1) of the following offenses:

(A) A felony offense;

(B) Theft of property under § 5-36-103;

(C) Abuse of office under § 5-52-107; or

(D) Witness tampering under § 5-53-110.

(2) The circuit court shall determine the amount of the penalty

under subdivision (c)(1) of this section by considering the factors under subdivision (a)(2)(B) of this section.

(3) A penalty paid under subdivision (c)(1) of this section is in addition to an award to the state for restitution and the sentence of the public official.

~~(e)~~(d) If a person holding an office, position, or employment in ~~any~~ a governmental body is disqualified from the office, position, or employment under § 25-16-1104, an action may be brought to remove the person in the manner provided by law to prevent usurpation of office under § 16-118-105.

~~(d)~~(e) This section ~~shall~~ does not prohibit a taxpayer from bringing a civil action under ~~the~~ Arkansas Constitution, Article 16, § 13.

/s/Hammer