

2013 -- S 0556

=====  
LC01038  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————  
A N A C T

RELATING TO CRIMINAL OFFENSES -- CRIMES AGAINST THE PUBLIC TRUST

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 28, 2013

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 69

4 CRIMES AGAINST THE PUBLIC TRUST

5 **11-69-1. Definitions. --** (a) As used in this chapter:

6 (1) "Administrative proceeding" means any proceeding, other than a judicial proceeding,  
7 the outcome of which is required to be based on a record or documentation prescribed by law, or  
8 in which law or regulation is particularized in applications to individuals.

9 (2) "Approval" means and includes, but is not limited to, recommendation, failure to  
10 disapprove, or another manifestation of favor or acquiescence.

11 (3) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or  
12 advantage, including benefit to any other person or entity in whose welfare he or she is interested,  
13 but not an advantage promised generally to a group or class of voters as a consequence of public  
14 measures which a candidate engages to support or oppose.

15 (4) "Disapproval" means and includes, but is not limited to, failure to approve, or any  
16 other manifestation of disfavor or nonacquiescence.

17 (5) "Government" means any branch, subdivision or agency of the state of Rhode Island  
18 or any locality within.

19 (6) "Harm" means loss, disadvantage or injury, or anything so regarded by the person

1 affected, including loss, disadvantage or injury to any other person or entity in whose welfare he  
2 or she is interested.

3 (7) "Official proceeding" means a proceeding heard or which may be heard before any  
4 legislative, judicial, administrative or other governmental agency or official authorized to take  
5 evidence under oath, including any referee, hearing examiner, commissioner, notary or other  
6 person taking testimony or deposition in connection with any such proceeding;

7 (8) "Party official" means a person who holds an elective or appointive post in a political  
8 party in the United States by virtue of which he or she directs or conducts, or participates in  
9 directing or conducting party affairs at any level of responsibility.

10 (9) "Pecuniary benefit" means a benefit in the form of money, property, commercial  
11 interests or anything else the primary significance of which is economic gain.

12 (10) "Public servant" means:

13 (i) Any full-time or part-time employee in the classified, nonclassified and unclassified  
14 service of the state or of any city or town employee within the state, any individual serving in any  
15 appointed state or municipal position, any employee of any public or quasi-public state or  
16 municipal board, commission or corporation, and any contractual employee of the state or any  
17 city or town within the state; and

18 (ii) Any officer or member of a state or municipal agency as defined in subdivision 36-  
19 14-2(8) who is appointed for a term of office specified by the constitution or a statute of this state  
20 or a charter or ordinance of any city or town or who is appointed by or through the governing  
21 body or highest official of state or municipal government; and

22 (iii) Any person holding any elective public office pursuant to a general or special  
23 election.

24 (11) "Services" means labor, professional service, transportation, telephone or other  
25 public service, accommodation in hotels, restaurants or elsewhere, admission to exhibition, use of  
26 vehicles or other movable property. Where compensation for service is ordinarily paid  
27 immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to  
28 pay or absconding without payment or offer to pay gives rise to a presumption that the service  
29 was obtained by deception as to intention to pay.

30 (12) "Special influence" means power to influence though kinship, friendship or other  
31 relationship, apart from merits of the transaction.

32 **11-69-2. Bribery in official and political matters. -- (a) It is unlawful for a public**  
33 **servant to offer, confer, agree to confer upon another, solicit, accept or agree to accept from**  
34 **another:**

1 (1) Any pecuniary benefit as consideration for the recipient's decision, opinion,  
2 recommendation, vote or other exercise of discretion as a public servant or party official;

3 (2) Any benefit as consideration for the recipient's decision, vote, recommendation or  
4 other exercise of official discretion in a judicial or administrative proceeding; or

5 (3) Any benefit as consideration for a violation of a known legal duty as a public servant  
6 or party official.

7 (b) Any person convicted of a violation of this section shall be guilty of a felony and  
8 subject to imprisonment for up to ten (10) years or a fine of not more than ten thousand dollars  
9 (\$10,000) or both.

10 (c) It is no defense to prosecution under this section that a person whom the actor sought  
11 to influence was not qualified to act in the desired way whether because he or she had not yet  
12 assumed the office, lacked jurisdiction, or for any other reason.

13 **11-69-3. Selling political endorsements -- Special influence. --** (a) It shall be unlawful  
14 for a public servant to:

15 (1) Solicit, receive, agree to receive, or agree that any political party or other person shall  
16 receive, any pecuniary benefit as consideration for approval or disapproval of an appointment or  
17 advancement in public service, or for approval or disapproval of any person or transaction for any  
18 benefit conferred by a public servant or agency of government;

19 (2) Solicit, receive or agree to receive any pecuniary benefit as consideration for exerting  
20 special influence upon a public servant or procuring another to do so; or

21 (3) Offer, confer or agree to confer any pecuniary benefit, receipt of which is in violation  
22 of this section.

23 (b) Any person convicted of a violation of this section shall be guilty of a felony and  
24 subject to imprisonment for up to ten (10) years or a fine of not more than ten thousand dollars  
25 (\$10,000) or both.

26 **11-69-4. Speculating or wagering on official action or information. --** (a) It is  
27 unlawful for a public servant, in contemplation of official action by himself or herself or by a  
28 governmental unit with which he or she is associated, or in reliance on information to which he or  
29 she has access in his or her official capacity and which has not been made public, he or she:

30 (1) Acquires a pecuniary interest in any property, transaction or enterprise which may be  
31 affected by such information of official action;

32 (2) Speculates or wagers on the basis of such information or official action; or

33 (3) Aids another to do any of the foregoing.

34 (b) Any person convicted of a violation of this section shall be guilty of a felony and

1 subject to imprisonment for up to ten (10) years or a fine of not more than ten thousand dollars  
2 (\$10,000) or both.

3 **11-69-5. Theft of honest services.** -- (a) A public servant commits theft of honest  
4 services if, having control over the disposition of services of others, to which he or she is not  
5 entitled, he or she knowingly diverts such services to his or her own benefit or to the benefit of  
6 another not entitled thereto.

7 (b) Any person convicted of a violation of this section shall be guilty of a felony and  
8 subject to imprisonment of up to ten (10) years or a fine of not more than one hundred fifty  
9 thousand dollars (\$150,000) or both.

10 **11-69-6. Civil damages for engaging in illegal acts.** -- In addition to any criminal  
11 penalties, a public servant convicted of a misdemeanor or felony or attempted felony or  
12 misdemeanor under the laws of the United States, the state of Rhode Island or any other  
13 jurisdiction knowingly committed in his or her official capacity shall be liable for the restitution  
14 of anything of value received by him or her in the course of such violation. Action for recovery of  
15 amounts under this section shall be brought in the superior court of any county in which any  
16 element of the crime occurred. The actions shall be brought in the name of the state by the  
17 attorney general for the benefit and use of the state.

18 SECTION 2. Section 12-12-17 of the General Laws in Chapter 12-12 entitled  
19 "Indictments, Informations and Complaints" is hereby amended to read as follows:

20 **12-12-17. Statute of limitations.** -- (a) There shall be no statute of limitations for the  
21 following offenses: treason against the state, any homicide, arson, first degree arson, second  
22 degree arson, third degree arson, burglary, counterfeiting, forgery, robbery, rape, first degree  
23 sexual assault, first degree child molestation sexual assault, second degree child molestation  
24 sexual assault, bigamy, manufacturing, selling, distribution or possession with intent to  
25 manufacture, sell or distribute a controlled substance under the Uniform Controlled Substance  
26 Act, chapter 28 of title 21, or any other offense for which the maximum penalty provided is life  
27 imprisonment.

28 (b) The statute of limitations for the following offenses shall be ten (10) years: larceny  
29 under section 11-41-2 (receiving stolen goods), section 11-41-3 (embezzlement and fraudulent  
30 conversion), section 11-41-4 (obtaining property by false pretenses or personation), section 11-  
31 41-11 (embezzlement by bank officer or employee), section 11-41-12 (fraudulent conversion by  
32 agent or factor), and section 11-41-13 (obtaining signature by false pretenses), or any larceny  
33 which is punishable as a felony; any violation of chapter 7 of title 11 (bribery); any violation of  
34 section 11-18-1 (giving false document to agent, employee, or public official); perjury; any

1 violation of chapter 42 of title 11 (threats and extortion); any violation of chapter 15 of title 7  
2 (racketeer influenced and corrupt organizations); any violation of chapter 57 of title 11 (racketeer  
3 violence); or any violation of chapter 36 of title 6 (antitrust law); any violation of section 11-41-  
4 27 (wrongful conversion by officer or state or municipal employee); or any violation of chapter  
5 69 of title 11 entitled, "Crimes Against The Public Trust."

6 (c) The statute of limitations for any other criminal offense shall be three (3) years unless  
7 a longer statute of limitations is otherwise provided for in the general laws.

8 (d) Any person who participates in any offense, either as a principal accessory, or  
9 conspirator shall be subject to the same statute of limitations as if the person had committed the  
10 substantive offense.

11 (e) The statute of limitations for any violation of chapter 18.9 of title 23 (refuse  
12 disposal), chapter 19 of title 23 (solid waste management corporation), chapter 19.1 of title 23  
13 (hazardous waste management), chapter 12 of title 46 (water pollution), and chapter 13 of title 46  
14 (public drinking water supply) shall be seven (7) years from the time that the facts constituting  
15 the offense or violation shall have become known to law enforcement authorities, unless a longer  
16 statute of limitations is otherwise provided for in the general laws.

17 SECTION 3. Section 36-10.1-2 of the General Laws in Chapter 36-10.1 entitled "Rhode  
18 Island Public Employee Pension Revocation and Reduction Act" is hereby amended to read as  
19 follows:

20 **36-10.1-2. Definitions.** -- (a) "Crime related to public office or public employment" shall  
21 mean any of the following criminal offenses:

22 (1) The committing, aiding, or abetting of an embezzlement of public funds;

23 (2) The committing, aiding, or abetting of any felonious theft by a public officer or  
24 employee from his or her employer;

25 (3) Bribery in connection with employment of a public officer or employee; and

26 (4) The committing of any felony by a public officer or employee ~~who, willfully and~~  
27 ~~with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a profit, gain, or~~  
28 ~~advantage for himself or herself or for some other person~~ through the use or attempted use of the  
29 power, rights, privileges, duties, or position of his or her public office or employment position.

30 (b) "Public official" or "public employee" shall mean any current or former state or  
31 municipal elected official as defined in section 36-14-2(10), state or municipal appointed official  
32 as defined in section 36-14-2(4), and any employee of state or local government, of boards,  
33 commissions or agencies as defined in section 36-14-2(8)(i), (ii), who is otherwise entitled to  
34 receive or who is receiving retirement benefits under this title, under title 16, under title 45, under

1 title 8, under chapter 30 of title 28, under chapter 43 of title 31, or under chapter 28 of title 42,  
2 whether that person is acting on a permanent or temporary basis and whether or not compensated  
3 on a full-time or part-time basis. For the purposes of this chapter, all these persons are deemed to  
4 be engaged in public employment.

5 (c) As used in this chapter, the phrase "pleads guilty or nolo contendere" shall not  
6 include any plea of nolo contendere which does not constitute a conviction by virtue of section  
7 12-10-12 or 12-18-3.

8 (d) For purposes of this chapter, "domestic partner" shall be defined as a person who,  
9 prior to the decedent's death, was in an exclusive, intimate and committed relationship with the  
10 decedent, and who certifies by affidavit that their relationship met the following qualifications:

11 (1) Both partners were at least eighteen (18) years of age and were mentally competent  
12 to contract;

13 (2) Neither partner was married to anyone else;

14 (3) Partners were not related by blood to a degree which would prohibit marriage in the  
15 state of Rhode Island;

16 (4) Partners resided together and had resided together for at least one year at the time of  
17 death; and

18 (5) Partners were financially interdependent as evidenced by at least two (2) of the  
19 following:

20 (i) Domestic partnership agreement or relationship contract;

21 (ii) Joint mortgage or joint ownership of primary residence;

22 (iii) Two (2) of: (A) joint ownership of motor vehicle; (B) joint checking account; (C)  
23 joint credit account; (D) joint lease; and/or

24 (iv) The domestic partner had been designated as a beneficiary for the decedent's will,  
25 retirement contract or life insurance.

26 SECTION 4. This act shall take effect upon passage.

=====  
LC01038  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL OFFENSES -- CRIMES AGAINST THE PUBLIC TRUST

\*\*\*

1           This act would create a new chapter defining and punishing specific criminal offenses to  
2 be known as "crimes against the public trust." Further, this act would provide that public servants  
3 who are convicted of any felony or misdemeanor or attempted felony or misdemeanor that was  
4 knowingly committed by them while in their official capacity would be liable for the restitution to  
5 the state or municipality of anything of value received by them in the course of such violation.  
6 This act would also extend the statute of limitations to ten (10) years for commission of crimes  
7 against the public trust and would provide for the possible pension revocation or reduction for  
8 any job-related felony.

9           This act would take effect upon passage.

=====  
LC01038  
=====