

AMENDED IN ASSEMBLY MAY 19, 2005

CALIFORNIA LEGISLATURE—2005—06 FIRST EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 5**

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**Introduced by Assembly Member Torrico**

May 4, 2005

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An act to add *Section 22010 to the Education Code, and to add Section 31455.5 to, and to add Article 3 (commencing with Section 20085) to Chapter 1 of Part 3 of Division 5 of Title 2 of, the Government Code, relating to public employees' retirement.*

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Torrico. Public employees' retirement: fraud.

(1) Existing law provides that it is a crime to make a knowingly false material statement or representation for the purpose of obtaining workers' compensation, or supporting or denying a workers' compensation claim. ~~Existing law permits the Board of Administration of the Public Employees' Retirement System to make corrections for errors by adjusting future payments, and permits the board to refrain from collecting underpayments in certain situations. The Public Employee's Retirement Law, the Teachers' Retirement Law, and the County Employees Retirement Law of 1937 prescribe the rights, benefits, and duties of members of the retirement systems established by those laws.~~

This bill would make it a crime for a person to make or present false material statements and representations in connection with ~~Public Employees' Retirement System~~ *those retirement systems'* benefits and applications, as specified, or to aid or abet someone in this regard. The bill would also make it a crime for a person to knowingly accept, with the intent to keep for personal benefit, a payment from the ~~system~~ *any of those retirement systems* with the knowledge that one was not

entitled to the benefit. The bill would provide that a violation of these provisions is punishable by up to one year in a county jail, or a fine, or both, or ~~up to 5~~ for a term of 2, 3, or 4 years in state prison, or a fine, or both, and restitution, as specified. The bill would require that criminal prosecutions for these violations be commenced within 3 years of the commission of the offense, and that a civil action for violations be commenced within 3 years after discovery of the commission of the offense. The bill would provide that its provisions are cumulative. By creating a new crime or expanding an existing crime, the bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 22010 is added to the Education Code,
- 2     to read:
- 3     22010. (a) It is unlawful for a person to do any of the
- 4     following:
- 5         (1) Make, or cause to be made, any knowingly false material
- 6         statement or material representation, to knowingly fail to
- 7         disclose a material fact, or to otherwise provide false
- 8         information with the intent to use it, or allow it to be used, to
- 9         obtain, receive, continue, increase, deny, or reduce any benefit
- 10        administered by this system.
- 11        (2) Present, or cause to be presented, any knowingly false
- 12        material statement or material representation for the purpose of
- 13        supporting or opposing an application for any benefit
- 14        administered by this system.
- 15        (3) Knowingly accept or obtain payment from this system with
- 16        knowledge that the recipient is not entitled to the payment under
- 17        the provisions of this part and with the intent to retain the
- 18        payment for personal use or benefit.

1 (4) *Knowingly aid, abet, solicit, or conspire with any person to*  
2 *do an act prohibited by this section.*

3 (b) *For purposes of this section, “statement” includes, but is*  
4 *not limited to, any oral or written application for benefits, report*  
5 *of family relationship, report of injury or physical or mental*  
6 *limitation, hospital records, test results, physician reports, or*  
7 *other medical record, employment records, duty statements,*  
8 *reports of compensation, or any other evidence material to the*  
9 *determination of a person’s initial or continued eligibility for a*  
10 *benefit or the amount of a benefit administered by this system.*

11 (c) *A person who violates any provision of this section is*  
12 *punishable by imprisonment in a county jail not to exceed one*  
13 *year, or by a fine of not more than five thousand dollars*  
14 *(\$5,000), or both that imprisonment and fine, or by imprisonment*  
15 *in the state prison for a term of two, three, or four years, or by a*  
16 *fine of not more than fifty thousand dollars (\$50,000), or by both*  
17 *that imprisonment and fine.*

18 (d) *A person violating any provision of this section may be*  
19 *required by the court in a criminal action or a civil action*  
20 *brought by the board to make restitution to this system, or to any*  
21 *other person determined by the court, for the amount of the*  
22 *benefit unlawfully obtained, unless the court finds that*  
23 *restitution, or a portion of it, is not in the interests of justice.*

24 (e) *Pursuant to Section 801 of the Penal Code, criminal*  
25 *prosecution for a violation of this section shall be commenced*  
26 *within three years of the commission of the offense.*  
27 *Notwithstanding any other provision of law, a civil action for a*  
28 *violation of this section shall be commenced within three years*  
29 *after discovery of the commission of the offense.*

30 (f) *The provisions provided by this section are cumulative and*  
31 *shall not be construed as restricting the application of any other*  
32 *law.*

33 **SECTION 1.—**

34 *SEC. 2.* Article 3 (commencing with Section 20085) is added  
35 to Chapter 1 of Part 3 of Division 5 of Title 2 of the Government  
36 Code, to read:

Article 3. Penalties

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20085. (a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system.

(2) Present, or cause to be presented, any knowingly false material statement or material representation for the purpose of supporting or opposing an application for any benefit administered by this system.

(3) Knowingly accept or obtain payment from this system with knowledge that the recipient is not entitled to the payment under the provisions of this part and with the intent to retain the payment for personal use or benefit.

(4) Knowingly aid, abet, solicit, or conspire with any person to do an act prohibited by this section.

(b) For purposes of this section, ~~statement~~ "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship, report of injury or physical or mental limitation, hospital records, test results, physician reports, or other medical record, employment records, duty statements, reports of compensation, or any other evidence material to the determination of a person's initial or continued eligibility for a benefit or the amount of a benefit administered by this system.

(c) A person who violates any provision of this section is punishable by imprisonment in ~~the a~~ county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or both that imprisonment and fine, or by imprisonment in the state prison ~~not to exceed five~~ for a term of two, three, or four years, or by a fine of not more than fifty thousand dollars (\$50,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action or a civil action brought by the board to make restitution to this system, or to any other person determined by the court, for the amount of the benefit

1 unlawfully obtained, unless the court finds that restitution, or a  
2 portion of it, is not in the interests of justice.

3 (e) Pursuant to Section 801 of the Penal Code, criminal  
4 prosecution for a violation of this section shall be commenced  
5 within three years of the commission of the offense.  
6 Notwithstanding any other provision of law, a civil action for a  
7 violation of this section shall be commenced within three years  
8 after discovery of the commission of the offense.

9 (f) The provisions provided by this section are cumulative and  
10 shall not be construed as restricting the application of any other  
11 law.

12 *SEC. 3. Section 31455.5 is added to the Government Code, to*  
13 *read:*

14 *31455.5. (a) It is unlawful for a person to do any of the*  
15 *following:*

16 *(1) Make, or cause to be made, any knowingly false material*  
17 *statement or material representation, to knowingly fail to*  
18 *disclose a material fact, or to otherwise provide false*  
19 *information with the intent to use it, or allow it to be used, to*  
20 *obtain, receive, continue, increase, deny, or reduce any benefit*  
21 *accrued or accruing to a person under this chapter.*

22 *(2) Present, or cause to be presented, any knowingly false*  
23 *material statement or material representation for the purpose of*  
24 *supporting or opposing an application for any benefit accrued or*  
25 *accruing to a person under this chapter.*

26 *(3) Knowingly accept or obtain payment from a retirement*  
27 *system with knowledge that the recipient is not entitled to the*  
28 *payment under the provisions of this chapter and with the intent*  
29 *to retain the payment for personal use or benefit.*

30 *(4) Knowingly aid, abet, solicit, or conspire with any person to*  
31 *do an act prohibited by this section.*

32 *(b) For purposes of this section, "statement" includes, but is*  
33 *not limited to, any oral or written application for benefits, report*  
34 *of family relationship, report of injury or physical or mental*  
35 *limitation, hospital records, test results, physician reports, or*  
36 *other medical record, employment records, duty statements,*  
37 *reports of compensation, or any other evidence material to the*  
38 *determination of a person's initial or continued eligibility for a*  
39 *benefit or the amount of a benefit accrued or accruing to a*  
40 *person under this chapter.*

1 (c) A person who violates any provision of this section is  
 2 punishable by imprisonment in a county jail not to exceed one  
 3 year, or by a fine of not more than five thousand dollars  
 4 (\$5,000), or both that imprisonment and fine, or by imprisonment  
 5 in the state prison for a term of two, three, or four years, or by a  
 6 fine of not more than fifty thousand dollars (\$50,000), or by both  
 7 that imprisonment and fine.

8 (d) A person violating any provision of this section may be  
 9 required by the court in a criminal action or a civil action  
 10 brought by the board to make restitution to the retirement system,  
 11 or to any other person determined by the court, for the amount of  
 12 the benefit unlawfully obtained, unless the court finds that  
 13 restitution, or a portion of it, is not in the interests of justice.

14 (e) Pursuant to Section 801 of the Penal Code, criminal  
 15 prosecution for a violation of this section shall be commenced  
 16 within three years of the commission of the offense.  
 17 Notwithstanding any other provision of law, a civil action for a  
 18 violation of this section shall be commenced within three years  
 19 after discovery of the commission of the offense.

20 (f) The provisions provided by this section are cumulative and  
 21 shall not be construed as restricting the application of any other  
 22 law.

23 ~~SEC. 2.—~~

24 SEC. 4. No reimbursement is required by this act pursuant to  
 25 Section 6 of Article XIII B of the California Constitution because  
 26 the only costs that may be incurred by a local agency or school  
 27 district will be incurred because this act creates a new crime or  
 28 infraction, eliminates a crime or infraction, or changes the  
 29 penalty for a crime or infraction, within the meaning of Section  
 30 17556 of the Government Code, or changes the definition of a  
 31 crime within the meaning of Section 6 of Article XIII B of the  
 32 California Constitution.

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