



SPONSOR: Sen. S. McBride & Rep. K. Williams  
Sens. Gay, Hansen, Hoffner, Lockman, Paradee, Sokola,  
Sturgeon, Townsend; Reps. Baumbach, Griffith,  
Heffernan, S. Moore, Morrison, Ramone

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 67

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO MISCONDUCT BY PUBLIC OFFICIALS.

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

1 Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 1211 Official misconduct; class A misdemeanor, class G, F, D, B felony.

4 (a) A public servant is guilty of official misconduct when, intending to obtain a personal benefit or to cause harm  
5 to ~~another person~~; another person, the public servant knowingly does any of the following:

6 (1) ~~The public servant commits~~ Commits an act constituting an unauthorized exercise of official  
7 functions, knowing that the act is ~~unauthorized~~; or unauthorized.

8 (2) ~~The public servant knowingly refrains~~ Refrains from performing a ~~duty~~ duty, or breaches a duty  
9 which is imposed by law or is clearly inherent in the nature of the ~~office~~; or office.

10 (3) ~~The public servant performs~~ Performs official functions in a way intended to benefit the public  
11 servant's own property or financial interests under circumstances in which the public servant's actions would not  
12 have been reasonably justified in consideration of the factors which ought to have been taken into account in  
13 performing official ~~functions~~; or functions.

14 (4) ~~The public servant knowingly performs~~ Performs official functions in a way intended to practice  
15 discrimination on the basis of race, ~~ereed~~, religion, color, disability, sexual orientation, sex, age, handicapped  
16 ~~status or national origin~~ gender identity, national origin, or ancestry.

17 (5) Uses or relies upon their position of trust or authority to engage in criminal conduct.

18 (b) Official misconduct shall be punished as follows:

19 (1) For a violation of either subsection (a)(1) or (a)(2) the offense shall be a class A misdemeanor.

20 (2) For a violation of subsection (a)(3), (a)(4), or (a)(5) the offense shall be a class G felony.

21                   (3) Official Misconduct is a class F felony where the value of the personal benefit received, or the harm  
22                   caused, is \$1,500 or more.

23                   (4) Official Misconduct is a class D felony where the value of the personal benefit received, or the harm  
24                   caused, is \$50,000 or more, but less than \$100,000.

25                   (5) Official Misconduct is a class B felony where the value of the personal benefit received, or the harm  
26                   caused, is \$100,000 or more.

27                   (6) Official Misconduct is a class F felony where the harm caused is physical injury, or the public servant  
28                   engages in conduct constituting an offense which is punishable as an unclassified misdemeanor, a class B  
29                   misdemeanor, or a class A misdemeanor.

30                   (7) Official Misconduct is a class D felony where the harm caused is serious physical injury, or the public  
31                   servant engages in conduct constituting an offense which is punishable as a class G felony, a class F felony, or a  
32                   class E felony.

33                   (8) Official Misconduct shall be one grade higher than the underlying offense where the public servant  
34                   engages in conduct constituting an offense which is punishable as a Class D felony or a Class C felony.

35                   (9) Official Misconduct shall be a Class A felony where the public servant engages in conduct  
36                   constituting an offense which is punishable as a Class B felony or a Class A felony or where the harm caused is  
37                   death.

38                   (c) The Superior Court has exclusive jurisdiction over a violation of this section.

39                   Section 2. This Act will be known as the “Abuse of Power Prevention Act”.

#### SYNOPSIS

This Act updates the crime of official misconduct to ensure appropriate accountability of public servants who abuse their positions of power and public trust. The statute establishes a grade in the penalty for the official misconduct to be commensurate to the gravity of the misconduct. In addition, this statute conforms the discrimination language to the language used in the Hate Crimes statute. It also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act will be known as the “Abuse of Power Prevention Act.”

Author: Senator S. McBride