



SPONSOR: Sen. S. McBride & Rep. K. Williams & Rep. Mitchell &
Rep. Ramone
Sens. Gay, Sokola, Sturgeon, Townsend; Rep. Morrison

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 256

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:

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

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

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

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

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

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

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

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

(b) Official misconduct shall be punished as follows:

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

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

(3) Official Misconduct is a class F felony where the value of the personal benefit received, or the harm 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 where the harm caused is death.

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

38 (d) No person convicted under this section for conduct charged on or after July 1, 2022 shall be permitted to hold
39 public office in the State of Delaware.

40 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