

which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(Pub. L. 93-406, title I, § 409, Sept. 2, 1974, 88 Stat. 886.)

#### **§ 1110. Exculpatory provisions; insurance**

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart<sup>1</sup> shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

(Pub. L. 93-406, title I, § 410, Sept. 2, 1974, 88 Stat. 886.)

#### **§ 1111. Persons prohibited from holding certain positions**

##### **(a) Conviction or imprisonment**

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this subchapter. Prior to making any such determination the court shall hold a hearing and shall give notice to<sup>1</sup> such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such court that such service would be inconsistent with the intention of this section.

##### **(b) Penalty**

Any person who intentionally violates this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

##### **(c) Definitions**

For the purpose of this section—

(1) A person shall be deemed to have been “convicted” and under the disability of “conviction” from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) The term “consultant” means any person who, for compensation, advises, or represents

<sup>1</sup> So in original. This part does not contain subparts.

<sup>1</sup> So in original. Probably should be “of”.

an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole or supervised release shall not be considered as part of a period of imprisonment.

**(d) Salary of person barred from employee benefit plan office during appeal of conviction**

Whenever any person—

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute<sup>2</sup> from assuming any position from which such person was previously barred.

(Pub. L. 93-406, title I, § 411, Sept. 2, 1974, 88 Stat. 887; Pub. L. 98-473, title II, §§ 229, 230, 802, Oct. 12, 1984, 98 Stat. 2031, 2131; Pub. L. 100-182, § 15(b), Dec. 7, 1987, 101 Stat. 1269.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (a), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-182, in concluding provisions, substituted "if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28," for "the United States Parole Commission", "court shall" for "Commission shall", "court's" for "Commission's", "such court" for "such Parole Commission", and "a hearing" for "an administrative hearing".

1984—Subsec. (a). Pub. L. 98-473, § 229, which directed substitution of "if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the

district in which the offense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to section 994(a) of title 28," for "the Board of Parole of the United States Justice Department", "court" and "court's" for "Board" and "Board's", respectively, and "a" for "an administrative", was (except for the last substitution) incapable of execution in view of the previous amendment by section 802 of Pub. L. 98-473 which became effective prior to the effective date of the amendment by section 229. See note below.

Pub. L. 98-473, § 802(a), in amending provisions after "the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401)," generally, inserted provisions relating to abuse or misuse of employment in a labor organization or employee benefit plan, in cl. (1) substituted "employee, or representative in any capacity" for "or employee", in cl. (2) substituted "consultant or adviser to an" for "consultant to any", added cl. (3), substituted "the period of thirteen years" for "five years", "unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period," for "unless prior to the end of such five-year period," in cl. (B) substituted "the United States Parole Commission" for "the Board of Parole of the United States Department of Justice" and "paragraphs (1) through (3)" for "paragraph (1) or (2)", and in provisions following cl. (B) substituted "Commission" and "Commission's" for "Board" and "Board's", respectively, inserted provision of notice to the Secretary of Labor, and substituted "hire, retain, employ, or otherwise place any other person to serve in any capacity" for "permit any other person to serve in any capacity referred to in paragraph (1) or (2)" and "Parole Commission" for "Board of Parole".

Subsec. (b). Pub. L. 98-473, § 802(b), substituted "five years" for "one year".

Subsec. (c)(1). Pub. L. 98-473, § 802(c), substituted "regardless of whether that judgment remains under appeal" for "or the date of the final sustaining of such judgment on appeal, whichever is the later event".

Subsec. (c)(3). Pub. L. 98-473, § 230, inserted "or supervised release" after "parole".

Subsec. (d). Pub. L. 98-473, § 802(d), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendments by sections 229 and 230 of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendments, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Amendment by section 802 of Pub. L. 98-473 effective with respect to any judgment of conviction entered by the trial court after Oct. 12, 1984, except as otherwise provided, see section 804 of Pub. L. 98-473, set out as a note under section 504 of this title.

**§ 1112. Bonding**

**(a) Requisite bonding of plan officials**

Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section,

<sup>2</sup> So in original. Probably should be "section".