

1 State of Arkansas *As Engrossed: H2/22/13 H2/27/13 H3/8/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1354

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5 By: Representatives Branscum, Shepherd, Steel, Vines, Wright

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## For An Act To Be Entitled

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AN ACT TO DEFINE THE TERM "INFAMOUS CRIME" FOR THE

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PURPOSES OF WHO SHALL NOT BE A CANDIDATE FOR OR HOLD

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PUBLIC OFFICE; AND FOR OTHER PURPOSES.

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## Subtitle

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TO DEFINE THE TERM "INFAMOUS CRIME" FOR

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THE PURPOSES OF WHO SHALL NOT BE A

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CANDIDATE FOR OR HOLD PUBLIC OFFICE.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. DO NOT CODIFY. Legislative intent.

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(1) Article 5, § 9, of the Constitution of the State of Arkansas

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states that "[n]o person hereafter convicted of embezzlement of public money,

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bribery, forgery or other infamous crime, shall be eligible to the General

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Assembly or capable of holding any office of trust or profit in this State."

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(2) In interpreting that constitutional provision, the Supreme Court

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of Arkansas has "consistently recognized that a person convicted of a felony

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or one of the specifically enumerated offenses is disqualified from holding

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public office under Article 5, Section 9, of the Arkansas Constitution."

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State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005). However, while the

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Court has expounded on what constitutes an "infamous crime", such as when it

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spoke of an offense "indicative of great moral turpitude", State v. Irby, 190

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Ark. 786, 81 S.W.2d 419 (1935), it has not until very recently attempted to

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define the term.

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(3) In 2005, the Supreme Court determined that, aside from the

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specifically named crimes in Article 5, § 9, an "infamous crime" involved



1 dishonesty. Oldner, 361 Ark. at 327, 206 S.W.3d at 822. In 2010, the Supreme  
2 Court specifically held that theft constituted an "infamous crime". Edwards  
3 v. Campbell, 2010 Ark. 398, 370 S.W.3d 250 (2010). This, however, is as  
4 specific as the Supreme Court has gotten, as it further noted that "a crime  
5 is not considered infamous based on the available punishment but rather is  
6 considered infamous based on the underlying nature of that crime." Id.

7 (4) Because of the uncertainty associated with the term "infamous  
8 crime", and in the interests of educating the general public and potential  
9 office holders about who is or is not eligible to hold public office in this  
10 state, it is the intent of the General Assembly to define the term "infamous  
11 crime" for the purpose of assisting the judiciary in its further definitional  
12 refinements.

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14 SECTION 2. DO NOT CODIFY. Legislative findings.

15 The General Assembly finds that:

16 (1) Article 5, § 9, of the Constitution of the State of Arkansas  
17 states that "[n]o person hereafter convicted of embezzlement of public money,  
18 bribery, forgery or other infamous crime, shall be eligible to the General  
19 Assembly or capable of holding any office of trust or profit in this State";

20 (2) A definition of "infamous crime" should also encompass those  
21 criminal offenses that lead to a loss of public confidence as well as  
22 offenses in the nature of perjury or subornation of perjury, false statement,  
23 criminal fraud, embezzlement, false pretense, or any other offense that  
24 involves some element of deceitfulness, untruthfulness, or falsification; and

25 (3) A reviewing court should also measure certain variables when  
26 determining what constitutes an "infamous crime", such as the attendant  
27 mental state of the offense, the particular circumstances surrounding the  
28 charged offense, the age and education of the person committing the offense,  
29 and, if the offense occurred before the person has assumed public office, the  
30 age of the person at the time of the conviction itself.

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32 SECTION 3. Arkansas Code § 7-1-101 is amended to add a new definition  
33 to read as follows:

34 (35) "Infamous crimes" for the purposes of Arkansas Constitution  
35 Article 5, § 9, includes:

36 (A) A felony offense;

- 1                   (B) A misdemeanor theft of property offense;
- 2                   (C) Abuse of office, § 5-52-107;
- 3                   (D) Tampering, § 5-53-110; or
- 4                   (E) A misdemeanor offense in which the finder of fact was
- 5 required to find, or the defendant to admit, an act of deceit, fraud, or
- 6 false statement.

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/s/Branscum