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# A BILL FOR AN ACT

RELATING TO VICTIM RESTITUTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In 2012, the legislature enacted the justice  
2 reinvestment initiative, Act 139, Session Laws of Hawaii 2012,  
3 to reduce corrections spending, increase efficiency, decrease  
4 recidivism, and increase offender accountability through data-  
5 driven strategies. One justice reinvestment initiative strategy  
6 to increase offender accountability was to increase the amount  
7 of victim restitution collected from inmates with unpaid  
8 restitution orders. Section 353-22.6, Hawaii Revised Statutes,  
9 was amended to increase the amount of restitution collected from  
10 inmates from ten per cent of inmate earnings to twenty-five per  
11 cent of all inmate earnings, deposits, and credits. The  
12 legislature intended the amendment to apply to all unpaid  
13 restitution orders.

14           While it was the legislature's intent that crime victims  
15 achieve financial justice through increased restitution  
16 collection, the collection of twenty-five per cent from inmates'  
17 earnings, deposits, and credits has not been uniformly applied  
18 to all inmates in all correctional facilities.



1           The legislature finds that some courts have ordered  
2   restitution payments of less than twenty-five per cent of all  
3   inmate earnings, deposits, and credits and that the department  
4   of public safety had been advised to comply with the court  
5   orders instead of section 353-22.6, Hawaii Revised Statutes.  
6   The legislature further finds that the department of public  
7   safety was also advised that the twenty-five per cent deduction  
8   from all inmate earnings, deposits, and credits could not be  
9   applied to sentences imposed prior to July 1, 2012, the  
10   effective date of the law that increased the deductions to  
11   twenty-five per cent. These limitations to the application of  
12   section 353-22.6, Hawaii Revised Statutes, are contrary to the  
13   legislature's intent, which was to increase the collection of  
14   restitution from all inmates.

15           The purpose of this Act is to clarify that twenty-five per  
16   cent of inmate earnings, deposits, and credits shall be deducted  
17   to satisfy victim restitution orders and that amount shall not  
18   be lowered by any other existing statute or court order. This  
19   Act also clarifies that the twenty-five per cent deduction shall  
20   apply to all restitution orders imposed prior to the effective  
21   date of this Act. While the Supreme Court of Hawaii has not  
22   addressed the ex post facto issue raised by a retroactive



1 application of the statute, the Ninth Circuit Court of Appeals  
2 in *Quarles v. Kane*, 482 F.3d 1154 (9th Cir. 2007), found that  
3 the ex post facto prohibition is not implicated when the rate of  
4 payment, and not the amount of restitution, is modified.

5 SECTION 2. Section 353-22.6, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§353-22.6 Victim restitution.** The director of public  
8 safety shall enforce victim restitution orders against all  
9 moneys earned by the inmate or deposited or credited to the  
10 inmate's individual account while incarcerated. [~~The~~]  
11 Notwithstanding any other law or court order to the contrary,  
12 the amount deducted shall be twenty-five per cent of the total  
13 of all moneys earned, new deposits, and credits to the inmate's  
14 individual account. The moneys intended for victim restitution  
15 shall be deducted monthly and paid to the victim once the amount  
16 reaches \$25, or annually, whichever is sooner. This section  
17 shall not apply to moneys earned on work furlough pursuant to  
18 section 353-17."

19 SECTION 3. Section 706-646, Hawaii Revised Statutes, is  
20 amended by amending subsection (3) to read as follows:

21 "(3) In ordering restitution, the court shall not consider  
22 the defendant's financial ability to make restitution in



1 determining the amount of restitution to order. The court,  
2 however, shall consider the defendant's financial ability to  
3 make restitution for the purpose of establishing the time and  
4 manner of payment. The court shall specify the time and manner  
5 in which restitution is to be paid[-]; provided that the court's  
6 order shall comply with the requirements of section 353-22.6.

7 Restitution shall be a dollar amount that is sufficient to  
8 reimburse any victim fully for losses, including but not limited  
9 to:

- 10 (a) Full value of stolen or damaged property, as  
11 determined by replacement costs of like property, or  
12 the actual or estimated cost of repair, if repair is  
13 possible;
- 14 (b) Medical expenses; and
- 15 (c) Funeral and burial expenses incurred as a result of  
16 the crime."

17 SECTION 4. This Act shall apply to orders for restitution  
18 in effect on and entered after the effective date of this Act.

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 2030.



**Report Title:**

Crime Victim Compensation; Restitution

**Description:**

Clarifies the Director of Public Safety's authority to deduct twenty-five per cent of all moneys earned, new deposits, and credits to an inmate's individual account for restitution. Applies to orders for restitution in effect on and entered after the effective date of this Act. Effective July 1, 2030. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

