

---

# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1           SECTION 1. The legislature finds that Hawaii is one of  
2 thirteen states, including the District of Columbia, that does  
3 not have any law that governs the forfeiture of public pensions  
4 for public employees who are convicted of a felony. The  
5 legislature further finds that while existing law requires an  
6 employee of the State or county who is convicted of a felony to  
7 have their employment terminated, the employee is still entitled  
8 to receive their employees' retirement system benefits. Public  
9 employees who have been convicted of a felony that is directly  
10 related to the employee's position or duties ultimately lose the  
11 trust of the public and therefore should no longer be eligible  
12 to receive benefits accrued during employment with the State or  
13 county.

14           The purpose of this Act is to allow a court to order the  
15 forfeiture of one-half of the employees' retirement benefits  
16 upon the determination by the court that the employee is



1 convicted of a felony that the court finds to be related to  
2 their employment.

3 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended  
4 by adding a new section to subpart C of part II to be  
5 appropriately designated and to read as follows:

6 "§88- Forfeiture of benefits; felony convictions. (a)

7 If a member, former member, or retirant is convicted of a felony  
8 and the court finds that the felony is related to the employment  
9 of the member, former member, or retirant by the State or any  
10 county, the court may order, as a civil penalty pursuant to  
11 section 706-605(8), a forfeiture by the member, former member,  
12 or retirant of one-half of any:

- 13 (1) Interest;
- 14 (2) Hypothetical account balance in excess of the amount  
15 representing any employee contributions made by or on  
16 behalf of the member, former member, or retirant;
- 17 (3) Pension;
- 18 (4) Annuity; or
- 19 (5) Retirement allowance,

20 to which the member, former member, or retirant may otherwise be  
21 entitled under this chapter; provided that upon the death of the



1 member, former member, or retirant, the designated beneficiary  
2 of the member, former member, or retirant may receive one-half  
3 benefits to which the beneficiary would otherwise be entitled  
4 under this chapter.

5 (b) Upon receipt of a certified copy of the order  
6 decreeing forfeiture, the system shall comply with the order and  
7 shall reduce, suspend, or deny payment to the member, former  
8 member, or retirant as provided in the order until such time as  
9 the system receives a certified order to:

10 (1) Increase, resume, or make payments to the member,  
11 former member, or retirant; or

12 (2) Quash or reverse the order of forfeiture.

13 The system shall not be required to make inquiry into the  
14 propriety of the order of forfeiture or recoup any payments made  
15 to the member, former member, or retirant prior to receipt by  
16 the system of the order of forfeiture.

17 (c) For the purposes of this section, a felony is "related  
18 to the employment" of an employee of the State or a county if  
19 the employee uses or attempts to use the employee's official  
20 position to commit the felony, including:



1        (1) Felonies in which state or county time, equipment, or  
2            other facilities are used in the commission of the  
3            felony;

4        (2) Bribery;

5        (3) Embezzlement, theft, or other unlawful taking,  
6            receiving, retaining, or failing to account properly  
7            for any property or funds that belong to the State or  
8            any county or any department, bureau, board, or other  
9            agency thereof; or

10       (4) A felony committed against a person over whom the  
11           employee, in the course of the employee's duties,  
12           exercises custody or supervision.

13       (d) This section shall not impair or diminish benefits  
14 accrued prior to the effective date of this section.

15       (e) This section shall not apply to accrued retirement  
16 benefits that are nonforfeitable pursuant to sections 88-73(f),  
17 88-281(g), and 88-331(f)."

18       SECTION 3. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun before its effective date.

21       SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Employees' Retirement System; Retirement Benefits; Felony Convictions; Forfeiture

**Description:**

Authorizes a court to order the forfeiture of Employees' Retirement System benefits of an ERS member, former member, or retirant upon conviction of the individual for a felony related to the State or county employment of the individual. Authorizes designated beneficiaries to receive ERS benefits upon the death of the ERS member, former member, or retirant convicted of the felony. (SD1)

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

