

## ACT 150

H.B. NO. 287

A Bill for an Act Relating to Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the public trust in government has been shaken by recent criminal convictions of public officials. The legislature believes that public officials and other public employees who are convicted of a felony for conduct in violation of their duties should be removed from office or terminated.

The purpose of this Act is to allow for the removal of a public official or termination of a public employee if the public official or public employee is convicted of a felony related to their public office or duties. This Act also provides for reinstatement and back pay, under certain circumstances, if the public employee's conviction is overturned and the employee is not otherwise terminated in accordance with any other provision of law.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§78- Public employees; termination.** (a) If a public employee is convicted of a felony for conduct related to the public employee's duties, the public employee shall be terminated from the public employee's position.

(b) If the felony conviction that results in the termination of a public employee pursuant to subsection (a) is overturned on appeal, the public employee shall receive back pay and be returned to the position the public employee held prior to conviction, or an equivalent position if the public employee's position was filled; provided that the employee is not terminated from the employee's position in accordance with any other provision of law.

(c) For purposes of this section:

- (1) "Public employee" means any public employee of the State or any county, and the political subdivisions and agencies thereof, any employees under contract with the State or county, any civil service employees, and any probationary or provisional employees of the State or county;
- (2) Employees covered by chapter 89 shall be entitled to a grievance procedure culminating in a final and binding decision; and
- (3) A rebuttable presumption shall arise that the criminal conviction is just and proper cause for the employee's termination."

SECTION 3. Section 831-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A public office held at the time of conviction is forfeited as of the date of the conviction, if the conviction is in this State, or, if the conviction is in another state or in a federal court, as of the date a certification of the conviction from the trial court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section[, but if the conviction is reversed the defendant shall be restored to any public office forfeited under this chapter from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture].

For purposes of this section[, "time of conviction"]:

"Public office" means an office held by an elected official, department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor, chief justice, office of Hawaiian affairs, or the judicial selection commission, or are required by law to be confirmed by the senate.

"Time of conviction" means the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 4, 2003.)

**Note**

1. Edited pursuant to HRS §23G-16.5.