

## ACT 84

H.B. NO. 670

A Bill for an Act Relating to the Employees' Retirement System.

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to subpart C of part II to be appropriately designated and to read as follows:

**“§88- Forfeiture of benefits; felony convictions.** (a) If a member, former member, or retirant is convicted of a felony and the court finds that, by a preponderance of the evidence, the felony is related to the employment of the member, former member, or retirant by the State or any county, the court may decree pursuant to section 706-605(8), a civil penalty of forfeiture by the member, former member, or retirant of one-half of any:

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

to which the member, former member, or retirant may otherwise be entitled under this chapter; provided that upon the death of the member, former member, or retirant, the designated beneficiary of the member, former member, or retirant may receive the reduced benefits to which the member, former member, or retirant would be entitled under this section; provided further that a designated beneficiary who is also convicted of a felony based on the same set of circumstances as the member, former member, or retirant who were subject to civil penalty under this section, shall not receive any benefits.

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

- (1) Increase, resume, or make payments to the member, former member, retirant, or designated beneficiary; or
- (2) Quash or reverse the decree of forfeiture.

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The system shall not be required to make inquiry into the propriety of the order decreeing forfeiture or recoup any payments made to the member, former member, retiree, or designated beneficiary prior to receipt by the system of the order decreeing forfeiture.

(c) For the purposes of this section, a felony is “related to the employment” of an employee of the State or a county if the employee uses or attempts to use the employee’s official position to commit the felony, including:

- (1) Felonies in which state or county time, equipment, or other facilities are used in the commission of the felony;
- (2) Bribery;
- (3) Embezzlement, theft, or other unlawful taking, receiving, retaining, or failing to account properly for, any property or funds that belong to the State or any county, or any department, bureau, board, or other agency thereof; or
- (4) Felonies committed against a person over whom the employee, in the course of the employee’s duties, exercises custody or supervision.

(d) This section shall not impair or diminish benefits accrued prior to the effective date of Act \_\_\_\_\_, Session Laws of Hawaii 2021.

(e) This section shall not apply to felonies committed prior to the effective date of Act \_\_\_\_\_, Session Laws of Hawaii 2021.

(f) This section shall not apply to accrued retirement benefits that are non-forfeitable pursuant to sections 88-73(f), 88-281(g), and 88-331(f).”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 24, 2021.)

### Note

1. Edited pursuant to HRS §23G-16.5.