

JAN 23 2009

A BILL FOR AN ACT

RELATING TO FORFEITURE.

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

1 SECTION 1. The Hawaii supreme court in the case of
2 *Carlisle v. One (1) Boat, et al.* (No. 26995, November 17, 2008),
3 held that the State's forfeiture laws as applied to natural
4 resource violations do not provide the requisite specificity to
5 statutorily authorize forfeiture claims by the State.

6 The purpose of this Act is to clarify that the forfeiture
7 laws apply to violations of conservation and resources statutes
8 and rules and to the protection of caves, historic preservation,
9 and the Kaho'olawe island reserve.

10 SECTION 2. Section 187A-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§187A-5 Rules.** (a) Subject to chapter 91, the
13 department shall adopt, amend, and repeal rules for and
14 concerning the protection and propagation of introduced and
15 transplanted aquatic life, or the conservation and allocation of
16 the natural supply of aquatic life in any area. The rules may
17 include the following:



- 1 (1) Size limits;
- 2 (2) Bag limits;
- 3 (3) Open and closed fishing seasons;
- 4 (4) Specifications and numbers of fishing or taking gear
- 5 which may be used or possessed; and
- 6 (5) Prescribe and limit the kind and amount of bait that
- 7 may be used in taking aquatic life, and the conditions
- 8 for entry into areas for taking aquatic life.

9 (b) The rules may vary from one county to another and may
10 specify certain days of the week or certain hours of the day in
11 designating open seasons. All rules shall have the force and
12 effect of law. Any person who violates any of the rules adopted
13 pursuant to this section shall be [guilty]:

- 14 (1) Guilty of a petty misdemeanor [~~and upon conviction~~
- 15 ~~thereof shall be punished];~~
- 16 (2) Punished as provided by section 188-70[-], upon
- 17 conviction; and
- 18 (3) Subject to forfeiture proceedings under chapter 712A."

19 SECTION 3. Section 188-70, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:

21 "(a) Any person violating any provision of this chapter,
22 excepting section 188-23, or any rule adopted pursuant thereto,

1 is guilty of a petty misdemeanor and, in addition to any other
2 penalties, shall be fined not less than:

- 3 (1) \$100 for a first offense;
- 4 (2) \$200 for a second offense; and
- 5 (3) \$500 for a third or subsequent offense.

6 Forfeiture proceedings under chapter 712A shall apply to a
7 violation of this subsection.

8 (b) Any person violating section 188-23, is guilty of a
9 class C felony and shall be sentenced pursuant to chapter 706;
10 provided that the court, in addition to any term of imprisonment
11 or any other terms and conditions of probation, shall order the
12 defendant to pay a fine of not less than \$1,000.

13 Notwithstanding section 706-669 and any other law to the
14 contrary, any person in violation of subsection (b), as a first
15 offense, shall be sentenced to a mandatory minimum period of
16 imprisonment without possibility of parole for thirty days.

17 Repeat offenders shall be sentenced pursuant to chapter 706.

18 Forfeiture proceedings under chapter 712A shall apply to a
19 violation of this subsection."

20 SECTION 4. Section 712A-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§712A-4 Covered offenses.** Offenses for which property is
2 subject to forfeiture under this chapter are:

3 (a) All offenses which specifically authorize forfeiture;

4 (b) Murder, kidnapping, gambling, criminal property
5 damage, robbery, bribery, extortion, theft,
6 unauthorized entry into motor vehicle, burglary, money
7 laundering, trademark counterfeiting, insurance fraud,
8 promoting a dangerous, harmful, or detrimental drug,
9 commercial promotion of marijuana, unlawful
10 methamphetamine trafficking, manufacturing of a
11 controlled substance with a child present, promoting
12 child abuse, or electronic enticement of a child which
13 is chargeable as a felony offense under state law;

14 (c) The manufacture, sale, or distribution of a controlled
15 substance in violation of chapter 329, promoting
16 detrimental drugs or intoxicating compounds, promoting
17 pornography, promoting pornography for minors, or
18 promoting prostitution, which is chargeable as a
19 felony or misdemeanor offense, but not as a petty
20 misdemeanor, under state law; [~~and~~]



1 (d) The attempt, conspiracy, solicitation, coercion, or
2 intimidation of another to commit any offense for
3 which property is subject to forfeiture[-]; and

4 (e) Offenses under Title 12 and any rules adopted
5 thereunder, whether or not forfeiture is specified as
6 a penalty in the applicable chapter.

7 (f) Offenses under chapters 6D, 6E, and 6K and any rules
8 adopted thereunder, whether or not forfeiture is
9 specified as a penalty in the applicable chapter."

10 SECTION 5. Section 712A-5, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) The following is subject to forfeiture:

13 (a) Property described in a statute authorizing
14 forfeiture;

15 (b) Property used or intended for use in the commission
16 of, attempt to commit, or conspiracy to commit a
17 covered offense, or which facilitated or assisted such
18 activity;

19 (c) Any firearm which is subject to forfeiture under any
20 other subsection of this section or which is carried
21 during, visible, or used in furtherance of the
22 commission, attempt to commit, or conspiracy to commit



- 1 a covered offense, or any firearm found in proximity
2 to contraband or to instrumentalities of an offense;
- 3 (d) Contraband or untaxed cigarettes in violation of
4 chapter 245, shall be seized and summarily forfeited
5 to the State without regard to the procedures set
6 forth in this chapter;
- 7 (e) Any proceeds or other property acquired, maintained,
8 or produced by means of or as a result of the
9 commission of the covered offense;
- 10 (f) Any property derived from any proceeds which were
11 obtained directly or indirectly from the commission of
12 a covered offense;
- 13 (g) Any interest in, security of, claim against, or
14 property or contractual right of any kind affording a
15 source of influence over any enterprise which has been
16 established, participated in, operated, controlled, or
17 conducted in order to commit a covered offense;
- 18 (h) All books, records, bank statements, accounting
19 records, microfilms, tapes, computer data, or other
20 data which are used, intended for use, or which
21 facilitated or assisted in the commission of a covered



1 offense, or which document the use of the proceeds of
2 a covered offense[-];

3 (i) Any property that is the subject of offenses under
4 Title 12 and any rules adopted thereunder, whether or
5 not forfeiture is specified as a penalty in the
6 applicable chapter; and

7 (j) Any property that is the subject of offenses under
8 chapters 6D, 6E, and 6K and any rules adopted
9 thereunder, whether or not forfeiture is specified as
10 a penalty in the applicable chapter."

11 SECTION 6. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun, before its effective date.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon its approval.

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Report Title:

Natural Resources; Forfeiture

Description:

Clarifies that the forfeiture laws apply to violations of conservation and resources statutes and rules and to protection of caves, historic preservation, and the Kaho'olawe island reserve.

