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

10 SECTION 2. Chapter 6K, Hawaii Revised Statutes, is amended
11 by adding a new section to be appropriately designated and to
12 read as follows:

13 "§6K- Forfeiture; civil remedies. In addition to
14 criminal penalties to be imposed for violations of this chapter
15 or rules and regulations adopted pursuant to this chapter,
16 violators shall also be subject to forfeiture proceedings
17 pursuant to chapter 712A."



1 SECTION 3. Section 187A-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§187A-5 Rules.** (a) Subject to chapter 91, the
4 department shall adopt, amend, and repeal rules for and
5 concerning the protection and propagation of introduced and
6 transplanted aquatic life, or the conservation and allocation of
7 the natural supply of aquatic life in any area. The rules may
8 include the following:

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

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



1 (1) Guilty of a petty misdemeanor [~~and upon conviction~~
2 ~~thereof shall be punished.~~];

3 (2) Punished as provided by section 188-70 [-], upon
4 conviction; and

5 (3) Subject to forfeiture proceedings under chapter 712A."

6 SECTION 4. Section 188-70, Hawaii Revised Statutes, is
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) Any person violating any provision of this chapter,
9 excepting section 188-23, or any rule adopted pursuant thereto,
10 is guilty of a petty misdemeanor and, in addition to any other
11 penalties, shall be fined not less than:

- 12 (1) \$100 for a first offense;
- 13 (2) \$200 for a second offense; and
- 14 (3) \$500 for a third or subsequent offense.

15 Forfeiture proceedings under chapter 712A shall apply to a
16 violation of this subsection.

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

22 Notwithstanding section 706-669 and any other law to the



1 contrary, any person in violation of subsection (b), as a first
 2 offense, shall be sentenced to a mandatory minimum period of
 3 imprisonment without possibility of parole for thirty days.
 4 Repeat offenders shall be sentenced pursuant to chapter 706.
 5 Forfeiture proceedings under chapter 712A shall apply to a
 6 violation of this subsection."

7 SECTION 5. Section 712A-4, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "§712A-4 Covered offenses. Offenses for which property is
 10 subject to forfeiture under this chapter are:

11 [~~(a)~~] (1) All offenses which specifically authorize forfeiture;

12 [~~(b)~~] (2) Murder, kidnapping, gambling, criminal property
 13 damage, robbery, bribery, extortion, theft,
 14 unauthorized entry into motor vehicle, burglary, money
 15 laundering, trademark counterfeiting, insurance fraud,
 16 promoting a dangerous, harmful, or detrimental drug,
 17 commercial promotion of marijuana, unlawful
 18 methamphetamine trafficking, manufacturing of a
 19 controlled substance with a child present, promoting
 20 child abuse, or electronic enticement of a child which
 21 is chargeable as a felony offense under state law;



- 1 ~~[-(e)]~~ (3) The manufacture, sale, or distribution of a controlled
2 substance in violation of chapter 329, promoting
3 detrimental drugs or intoxicating compounds, promoting
4 pornography, promoting pornography for minors, or
5 promoting prostitution, which is chargeable as a
6 felony or misdemeanor offense, but not as a petty
7 misdemeanor, under state law; ~~[and]~~
- 8 ~~[-(d)]~~ (4) The attempt, conspiracy, solicitation, coercion, or
9 intimidation of another to commit any offense for
10 which property is subject to forfeiture~~[-]~~;
- 11 (5) Offenses under Title 12 and any rules adopted
12 thereunder, whether or not forfeiture is specified as
13 a penalty in the applicable chapter; and
- 14 (6) Offenses under chapters 6D, 6E, and 6K and any rules
15 adopted thereunder, whether or not forfeiture is
16 specified as a penalty in the applicable chapter."

17 SECTION 6. Section 712A-5, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

- 19 "(1) The following is subject to forfeiture:
20 (a) Property described in a statute authorizing
21 forfeiture;



- 1 (b) Property used or intended for use in the commission
2 of, attempt to commit, or conspiracy to commit a
3 covered offense, or which facilitated or assisted such
4 activity;
- 5 (c) Any firearm which is subject to forfeiture under any
6 other subsection of this section or which is carried
7 during, visible, or used in furtherance of the
8 commission, attempt to commit, or conspiracy to commit
9 a covered offense, or any firearm found in proximity
10 to contraband or to instrumentalities of an offense;
- 11 (d) Contraband or untaxed cigarettes in violation of
12 chapter 245, shall be seized and summarily forfeited
13 to the State without regard to the procedures set
14 forth in this chapter;
- 15 (e) Any proceeds or other property acquired, maintained,
16 or produced by means of or as a result of the
17 commission of the covered offense;
- 18 (f) Any property derived from any proceeds which were
19 obtained directly or indirectly from the commission of
20 a covered offense;
- 21 (g) Any interest in, security of, claim against, or
22 property or contractual right of any kind affording a



1 source of influence over any enterprise which has been
2 established, participated in, operated, controlled, or
3 conducted [~~in order~~] to commit a covered offense;

4 (h) All books, records, bank statements, accounting
5 records, microfilms, tapes, computer data, or other
6 data which are used, intended for use, or which
7 facilitated or assisted in the commission of a covered
8 offense, or which document the use of the proceeds of
9 a covered offense[-];

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

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

18 SECTION 7. 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 8. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval.



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. (HB665 HD1)

