

JAN 22 2016

A BILL FOR AN ACT

RELATING TO FORFEITURE.

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

1 SECTION 1. Section 712A-5, Hawaii Revised Statutes, is
2 amended by amending subsection (2) to read as follows:

3 "(2) Except that:

4 (a) Real property, or an interest therein, may be
5 forfeited under the provisions of this chapter only in
6 cases in which the covered offense is chargeable as a
7 felony offense under state law;

8 **(b) No property shall be forfeited under this chapter**
9 **unless the owner or interest-holder of the property**
10 **has been convicted of a covered offense and the State**
11 **has met the rebuttable presumption established in**
12 **section 712A-11(3);**

13 ~~[(b)]~~ (c) No property shall be forfeited under this chapter
14 to the extent of an interest of an owner, by reason of
15 any act or omission ~~[established by that owner]~~ to
16 have been committed or omitted without the knowledge
17 and consent of that owner;



1 [~~(e)~~] (d) No conveyance used by any person as a common
2 carrier in the transaction of a business as a common
3 carrier is subject to forfeiture under this section
4 unless it appears that the owner or other person in
5 charge of the conveyance is a consenting party or
6 privy to a violation of this chapter;

7 [~~(d)~~] (e) No conveyance is subject to forfeiture under this
8 section by reason of any act or omission [~~established~~
9 ~~by the owner~~] thereof to have been committed or
10 omitted without the owner's knowledge or consent; and

11 [~~(e)~~] (f) A forfeiture of a conveyance encumbered by a bona
12 fide security interest is subject to the interest of
13 the secured party if the secured party neither had
14 knowledge of nor consented to the act or omission."

15 SECTION 2. Section 712A-10, Hawaii Revised Statutes, is
16 amended by amending subsection (10) to read as follows:

17 "(10) If a judicial forfeiture proceeding is instituted
18 subsequent to notice of administrative forfeiture pursuant to
19 paragraph (9), no duplicate or repetitive notice shall be
20 required. The judicial proceeding, if any, shall adjudicate all
21 timely filed claims. At the judicial proceeding, the claimant



1 may testify, present evidence and witnesses on the claimant's
2 behalf, and cross-examine witnesses who appear at the hearing.
3 The State may present evidence and witnesses in rebuttal and in
4 defense of its claim to the property and cross-examine witnesses
5 who appear at the hearing. The State has the ~~[initial]~~ burden
6 of showing by ~~[a preponderance of the]~~ clear and convincing
7 evidence that the claimant's interest in the property is subject
8 to forfeiture [~~. On such a showing by the State, the claimant~~
9 ~~has the burden of showing by a preponderance of the evidence~~
10 ~~that the claimant's interest in the property is not subject to~~
11 ~~forfeiture.] and that the claimant consented to the use of the
12 property with knowledge that it would be or was used for a
13 purpose for which forfeiture is authorized; provided that if the
14 claimant prevails, only the prevailing claimant shall recover
15 attorneys' fees and costs."~~

16 SECTION 3. Section 712A-11, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending subsections (1), (2), and (3) to read:

19 "(1) In any judicial or administrative proceeding pursuant
20 to this chapter, the court, on application of the State, may
21 enter any restraining order or injunction, ~~[require the~~



1 ~~execution of satisfactory performance bonds,~~] create
2 receiverships, appoint conservators, appraisers, accountants or
3 trustees, or take any other action to seize, secure, maintain,
4 or preserve the availability of property subject to forfeiture
5 under this chapter, including a warrant for its seizure, whether
6 before or after the filing of a petition for forfeiture [~~7~~
7 ~~complaint, or indictment~~].

8 (2) If property is seized for forfeiture without a seizure
9 warrant, a prior judicial order of forfeiture, or a hearing
10 pursuant to section 712A-13, a court, on an application filed by
11 an owner or interest-holder within [~~fifteen~~] thirty days after
12 notice of its seizure for forfeiture or actual knowledge of it,
13 whichever is earlier, and complying with the requirements for
14 claims in section 712A-12, may issue an order to show cause to
15 the seizing agency, with thirty days' notice to the prosecuting
16 attorney, for a hearing on the issue of whether [~~probable cause~~]
17 clear and convincing evidence exists for the forfeiture of the
18 applicant's interest [~~then exists,~~]; provided that [~~7~~] the order
19 to show cause shall be set aside upon the filing of a petition
20 for either administrative or judicial forfeiture prior to the



1 hearing, in which event forfeiture proceedings shall be in
2 accordance with this chapter.

3 (3) There shall be a rebuttable presumption that any
4 property of a person is subject to forfeiture under this chapter
5 if the State establishes, by the standard of proof applicable to
6 that proceeding, all of the following:

7 (a) That the person has [~~engaged in criminal conduct~~] been
8 convicted of a covered offense for which property is
9 subject to forfeiture[+] pursuant to section 712A-
10 5(2)(b);

11 (b) That the property was acquired by the person during
12 the period of the criminal conduct or within a
13 reasonable time after that period; and

14 (c) That there was no likely source for the property other
15 than the criminal conduct giving rise to forfeiture."

16 2. By amending subsection (6) to read:

17 "(6) An acquittal or dismissal in a criminal proceeding
18 shall [~~not~~] preclude civil proceedings under this chapter."

19 SECTION 4. Section 712A-12, Hawaii Revised Statutes, is
20 amended by amending subsection (8) to read as follows:



1 "(8) The State has the [~~initial~~] burden of showing by [a
2 ~~preponderance of the~~] clear and convincing evidence that the
3 claimant's interest in the property is subject to forfeiture [~~-~~
4 ~~On such a showing by the State, the claimant has the burden of~~
5 ~~showing by a preponderance of the evidence that the claimant's~~
6 ~~interest in the property is not subject to forfeiture.] and that
7 the claimant consented to the use of the property with knowledge
8 that it would be or was used for a purpose for which forfeiture
9 is authorized."~~

10 SECTION 5. Section 712A-13, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) If a forfeiture is authorized by law, it shall be
13 ordered by a court on a petition for forfeiture filed by the
14 prosecuting attorney in an in personam civil or criminal action.
15 In any civil in personam action brought under this section, the
16 owner or interest-holder may testify, present evidence and
17 witnesses on the owner or interest-holder's behalf, and cross-
18 examine witnesses who appear at the hearing. The State may
19 present evidence and witnesses in rebuttal and in defense of its
20 claim to the property and cross-examine witnesses who appear at
21 the hearing. The State has the [~~initial~~] burden of showing by



1 ~~[a preponderance of the]~~ clear and convincing evidence that the
2 owner or interest-holder's interest in the property is subject
3 to forfeiture ~~[. On such a showing by the State, the owner or~~
4 ~~interest holder has the burden of showing by a preponderance of~~
5 ~~the evidence that the owner or interest holder's interest in the~~
6 ~~property is not subject to forfeiture.]~~ and that the claimant
7 consented to the use of the property with knowledge that it
8 would be or was used for a purpose for which forfeiture is
9 authorized; provided that if the claimant prevails, only the
10 prevailing claimant shall recover attorneys' fees and costs."

11 SECTION 6. Section 712A-16, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§712A-16 Disposition of property forfeited.** (1) All
14 property forfeited to the State under this chapter shall be
15 transferred to the attorney general who:

16 (a) May transfer property, other than currency, which
17 shall be distributed in accordance with subsection (2)
18 ~~[to any local or state government entity,~~
19 ~~municipality, or law enforcement agency within the~~
20 ~~State];~~



1 (b) May sell forfeited property to the public by public
2 sale; provided that for leasehold real property:
3 (i) The attorney general shall first offer the holder
4 of the immediate reversionary interest the right
5 to acquire the leasehold interest and any
6 improvements built or paid for by the lessee for
7 the then fair market value of the leasehold
8 interest and improvements. The holder of the
9 immediate reversionary interest shall have thirty
10 days after receiving written notice within which
11 to accept or reject the offer in writing;
12 provided that the offer shall be deemed to be
13 rejected if the holder of the immediate
14 reversionary interest has not communicated
15 acceptance to the attorney general within the
16 thirty-day period. The holder of the immediate
17 reversionary interest shall have thirty days
18 after acceptance to tender to the attorney
19 general the purchase price for the leasehold
20 interest and any improvements, upon which tender
21 the leasehold interest and improvements shall be



1 conveyed to the holder of the immediate
2 reversionary interest.

3 (ii) If the holder of the immediate reversionary
4 interest fails to exercise the right of first
5 refusal provided in subparagraph (i), the
6 attorney general may proceed to sell the
7 leasehold interest and any improvements by public
8 sale.

9 (iii) Any dispute between the attorney general and the
10 holder of the immediate reversionary interest as
11 to the fair market value of the leasehold
12 interest and improvements shall be settled by
13 arbitration pursuant to chapter 658A;

14 (c) May sell or destroy all raw materials, products, and
15 equipment of any kind used or intended for use in
16 manufacturing, compounding, or processing a controlled
17 substance or any untaxed cigarettes in violation of
18 chapter 245;

19 (d) May compromise and pay valid claims against property
20 forfeited pursuant to this chapter; or



1 (e) May make any other disposition of forfeited property
2 authorized by law.

3 (2) All forfeited property and the sale proceeds thereof,
4 up to a maximum of three million dollars per year, not
5 previously transferred pursuant to ~~[+]~~ subsection ~~[+]~~ (1) (a) of
6 this section, shall, after payment of expenses of administration
7 and sale, be distributed as follows:

8 (a) One ~~[quarter shall be distributed to the unit or units~~
9 ~~of state or local government [whose] officers or~~
10 ~~employees conducted the investigation and caused the~~
11 ~~arrest of the person whose property was forfeited or~~
12 ~~seizure of the property for forfeiture;~~

13 ~~(b) One quarter shall be distributed to the prosecuting~~
14 ~~attorney who instituted the action producing the~~
15 ~~forfeiture; and] half shall be deposited in the~~
16 ~~general fund of the State to support the judiciary;~~
17 and

18 ~~[(e)]~~ (b) One half shall be deposited into the criminal
19 forfeiture fund established by this chapter.

20 ~~[(3) Property and money distributed to units of state and~~
21 ~~local government shall be used for law enforcement purposes, and~~



1 ~~shall complement but not supplant the funds regularly~~
2 ~~appropriated for such purposes.~~

3 ~~(4)]~~ (3) There is established in the department of the
4 attorney general a revolving fund to be known as the criminal
5 forfeiture fund, hereinafter referred to as the "fund" in which
6 shall be deposited one-half of the proceeds of a forfeiture and
7 any penalties paid pursuant to section 712A-10(6). All moneys
8 in the fund shall be expended by the attorney general and are
9 hereby appropriated for the following purposes:

10 (a) The payment of any expenses necessary to seize,
11 detain, appraise, inventory, safeguard, maintain,
12 advertise, or sell property seized, detained, or
13 forfeited pursuant to this chapter or of any other
14 necessary expenses incident to the seizure, detention,
15 or forfeiture of such property and such contract
16 services and payments to reimburse any federal, state,
17 or county agency for any expenditures made to perform
18 the foregoing functions;

19 (b) The payment of awards for information or assistance
20 leading to a civil or criminal proceeding;



1 (c) The payment of supplemental sums to state and county
2 agencies for law enforcement purposes;

3 (d) The payment of expenses arising in connection with
4 programs for training and education of law enforcement
5 officers; and

6 (e) The payment of expenses arising in connection with
7 enforcement pursuant to the drug nuisance abatement
8 unit in the department of the attorney general.

9 [~~5~~] (4) The attorney general may, without regard to the
10 requirements of chapter 91, promulgate rules and regulations
11 concerning the disposition of property, the use of the fund, and
12 compromising and paying valid claims against property forfeited
13 pursuant to this chapter.

14 [~~6~~] (5) Not less than twenty days prior to the convening
15 of each regular session, the attorney general shall provide to
16 the legislature a report on the use of the Hawaii omnibus
17 criminal forfeiture act during the fiscal year preceding the
18 legislative session. The report shall include:

19 (a) The total amount and type of property seized by law
20 enforcement agencies;



- 1 (b) The total number of administrative and judicial
- 2 actions filed by prosecuting attorneys and the
- 3 disposition thereof;
- 4 (c) The total number of claims or petitions for remission
- 5 or mitigation filed in administrative actions and the
- 6 dispositions thereof;
- 7 (d) The total amount and type of property forfeited and
- 8 the sale proceeds thereof;
- 9 (e) ~~[The total amount and type of property distributed to~~
- 10 ~~units of state and local government,]~~ The amount of
- 11 money deposited into the general fund of the State;
- 12 (f) The amount of money deposited into the criminal
- 13 forfeiture fund; and
- 14 (g) The amount of money expended by the attorney general
- 15 from the criminal forfeiture fund under subsection
- 16 ~~[-(5)]~~ (3) and the reason for the expenditures."

17 SECTION 7. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 8. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY: Will Eyo

Michelle Leland

Joshua
Dan O'Neil



S.B. NO. 2635

Report Title:

Law Enforcement; Property Subject to Forfeiture; Burden of Proof; Disposition of Property Forfeited; General Fund

Description:

Specifies that no property shall be forfeited unless the owner or interest-holder of the property has been convicted of a covered offense and the State has met its rebuttable presumption for forfeiture. Requires the State to show by clear and convincing evidence that a claimant's interest in the property is subject to forfeiture. Limits the authority to recover attorneys' fees and costs to a prevailing claimant only. Requires half of any forfeited property and sales proceeds to be deposited in the general fund of the State to support the judiciary.

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

