

JAN 27 2016

S.B. NO. 2756

---

---

# 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, excluding real  
5           estate or an interest therein, may be forfeited under  
6           the provisions of this chapter only in cases in which  
7           the covered offense is chargeable as a felony offense  
8           under state law;

9           (b) Real estate, or an interest therein, may be forfeited  
10           under the provisions of this chapter only in cases in  
11           which the covered offense is chargeable as a felony  
12           offense under state law and related to the  
13           manufacture, sale, or distribution of a controlled  
14           substance in violation of chapter 329;

15           ~~[(b)]~~ (c) No property shall be forfeited under this chapter  
16           to the extent of an interest of an owner, by reason of  
17           any act or omission ~~[established by that owner]~~ to



1           have been committed or omitted without the knowledge  
2           and consent of that owner;

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

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

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

17          For the purposes of this subsection, "real estate" shall  
18          have the same meaning as in section 467-1."

19          SECTION 2. Section 712A-8, Hawaii Revised Statutes, is  
20          amended to read as follows:



1           "§712A-8 Notice of forfeiture proceedings. (1) Unless  
2 otherwise provided, whenever notice is required under this  
3 chapter it shall be given in one of the following ways:

4           (a) If the owner's or interest-holder's name and current  
5 address are known:

6           (i) By personal service [7] for property other than  
7 real estate; or

8           (ii) By mail; provided that notice shall be sent by  
9 certified mail on two separate occasions for real  
10 estate subject to forfeiture pursuant to section  
11 712A-5(2) (b);

12           (b) If the owner's or interest-holder's interest is  
13 required by law to be on record with a state or  
14 federal agency in order to perfect an interest in the  
15 property, but the person's current address is not  
16 known, by mailing a copy of the notice by certified  
17 mail to any address on the record [7] for property  
18 other than real estate, and by mailing a copy of the  
19 notice by certified mail on two separate occasions for  
20 real estate subject to forfeiture pursuant to section  
21 712A-5(2) (b); or



1 (c) If the owner's or interest-holder's address is not  
2 known, and is not on record pursuant to paragraph (b),  
3 or if the person's interest is not known, by  
4 publication in one issue of a newspaper of general  
5 circulation in the county in which the seizure occurs.

6 (2) For the purposes of this section, "real estate" shall  
7 have the same meaning as in section 467-1."

8 SECTION 3. Section 712A-10, Hawaii Revised Statutes, is  
9 amended by amending subsection (10) to read as follows:

10 "(10) If a judicial forfeiture proceeding is instituted  
11 subsequent to notice of administrative forfeiture pursuant to  
12 paragraph (9), no duplicate or repetitive notice shall be  
13 required. The judicial proceeding, if any, shall adjudicate all  
14 timely filed claims. At the judicial proceeding, the claimant  
15 may testify, present evidence and witnesses on the claimant's  
16 behalf, and cross-examine witnesses who appear at the hearing.  
17 The State may present evidence and witnesses in rebuttal and in  
18 defense of its claim to the property and cross-examine witnesses  
19 who appear at the hearing. The State has the ~~[initial]~~ burden  
20 of showing by ~~[a preponderance of the]~~ clear and convincing  
21 evidence that the claimant's interest in the property is subject



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

9 SECTION 4. Section 712A-11, Hawaii Revised Statutes, is  
10 amended by amending subsections (1) and (2) to read as follows:

11 "(1) In any judicial or administrative proceeding pursuant  
12 to this chapter, the court, on application of the State, may  
13 enter any restraining order or injunction, [~~require the~~  
14 ~~execution of satisfactory performance bonds,]~~ create  
15 receiverships, appoint conservators, appraisers, accountants or  
16 trustees, or take any other action to seize, secure, maintain,  
17 or preserve the availability of property subject to forfeiture  
18 under this chapter, including a warrant for its seizure, whether  
19 before or after the filing of a petition for forfeiture,  
20 complaint, or indictment.



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

16           SECTION 5. Section 712A-12, Hawaii Revised Statutes, is  
17 amended by amending subsection (8) to read as follows:

18           "(8) The State has the [~~initial~~] burden of showing by [~~a~~  
19 ~~preponderance of the~~] clear and convincing evidence that the  
20 claimant's interest in the property is subject to forfeiture[~~-~~  
21 ~~On such a showing by the State, the claimant has the burden of~~



1 ~~showing by a preponderance of the evidence that the claimant's~~  
2 ~~interest in the property is not subject to forfeiture.] and that~~  
3 the claimant consented to the use of the property with knowledge  
4 that it would be or was used for a purpose for which forfeiture  
5 is authorized."

6 SECTION 6. Section 712A-13, Hawaii Revised Statutes, is  
7 amended by amending subsection (1) to read as follows:

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



1 ~~the evidence that the owner or interest holder's interest in the~~  
2 ~~property is not subject to forfeiture.] and that the claimant  
3 consented to the use of the property with knowledge that it  
4 would be or was used for a purpose for which forfeiture is  
5 authorized; provided that if the claimant prevails, only the  
6 prevailing claimant shall recover attorneys' fees and costs."~~

7 SECTION 7. Section 712A-16, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§712A-16 **Disposition of property forfeited.** (1) All  
10 property forfeited to the State under this chapter shall be  
11 transferred to the attorney general who:

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

17 (b) May sell forfeited property to the public by public  
18 sale; provided that for leasehold real property:

19 (i) The attorney general shall first offer the holder  
20 of the immediate reversionary interest the right  
21 to acquire the leasehold interest and any





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

19 (ii) If the holder of the immediate reversionary  
20 interest fails to exercise the right of first  
21 refusal provided in subparagraph (i), the



1 attorney general may proceed to sell the  
2 leasehold interest and any improvements by public  
3 sale.

4 (iii) Any dispute between the attorney general and the  
5 holder of the immediate reversionary interest as  
6 to the fair market value of the leasehold  
7 interest and improvements shall be settled by  
8 arbitration pursuant to chapter 658A;

9 (c) May sell or destroy all raw materials, products, and  
10 equipment of any kind used or intended for use in  
11 manufacturing, compounding, or processing a controlled  
12 substance or any untaxed cigarettes in violation of  
13 chapter 245;

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

16 (e) May make any other disposition of forfeited property  
17 authorized by law.

18 (2) All forfeited property and the sale proceeds thereof,  
19 up to a maximum of three million dollars per year, not  
20 previously transferred pursuant to [‡]subsection[‡] (1)(a) of



1 this section, shall, after payment of expenses of administration  
2 and sale, be distributed as follows:

3 (a) ~~One [quarter shall be distributed to the unit or units~~  
4 ~~of state or local government [whose] officers or~~  
5 ~~employees conducted the investigation and caused the~~  
6 ~~arrest of the person whose property was forfeited or~~  
7 ~~seizure of the property for forfeiture;~~

8 ~~(b) One quarter shall be distributed to the prosecuting~~  
9 ~~attorney who instituted the action producing the~~  
10 ~~forfeiture; and] half shall be deposited in the~~  
11 ~~general fund of the State to support the judiciary;~~  
12 ~~and~~

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

15 ~~[-(3) Property and money distributed to units of state and~~  
16 ~~local government shall be used for law enforcement purposes, and~~  
17 ~~shall complement but not supplant the funds regularly~~  
18 ~~appropriated for such purposes.~~

19 ~~-(4)] (3) There is established in the department of the~~  
20 ~~attorney general a revolving fund to be known as the criminal~~  
21 ~~forfeiture fund, hereinafter referred to as the "fund" in which~~



1 shall be deposited one-half of the proceeds of a forfeiture and  
2 any penalties paid pursuant to section 712A-10(6). All moneys  
3 in the fund shall be expended by the attorney general and are  
4 hereby appropriated for the following purposes:

- 5 (a) The payment of any expenses necessary to seize,  
6 detain, appraise, inventory, safeguard, maintain,  
7 advertise, or sell property seized, detained, or  
8 forfeited pursuant to this chapter or of any other  
9 necessary expenses incident to the seizure, detention,  
10 or forfeiture of such property and such contract  
11 services and payments to reimburse any federal, state,  
12 or county agency for any expenditures made to perform  
13 the foregoing functions;
- 14 (b) The payment of awards for information or assistance  
15 leading to a civil or criminal proceeding;
- 16 (c) The payment of supplemental sums to state and county  
17 agencies for law enforcement purposes;
- 18 (d) The payment of expenses arising in connection with  
19 programs for training and education of law enforcement  
20 officers; and



1 (e) The payment of expenses arising in connection with  
2 enforcement pursuant to the drug nuisance abatement  
3 unit in the department of the attorney general.

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

9 [~~6~~] (5) Not less than twenty days prior to the convening  
10 of each regular session, the attorney general shall provide to  
11 the legislature a report on the use of the Hawaii omnibus  
12 criminal forfeiture act during the fiscal year preceding the  
13 legislative session. The report shall include:

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

16 (b) The total number of administrative and judicial  
17 actions filed by prosecuting attorneys and the  
18 disposition thereof;

19 (c) The total number of claims or petitions for remission  
20 or mitigation filed in administrative actions and the  
21 dispositions thereof;



- 1 (d) The total amount and type of property forfeited and
- 2 the sale proceeds thereof;
- 3 (e) ~~[The total amount and type of property distributed to~~
- 4 ~~units of state and local government,]~~ The amount of
- 5 money deposited into the general fund of the State;
- 6 (f) The amount of money deposited into the criminal
- 7 forfeiture fund; and
- 8 (g) The amount of money expended by the attorney general
- 9 from the criminal forfeiture fund under subsection
- 10 ~~[-(5)]~~ (3) and the reason for the expenditures."

11 SECTION 8. 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 9. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.

17

INTRODUCED BY: Will Evers

*[Handwritten signatures: Dan Claitor, Bob Johnson, Michelle Kidani]*



# S.B. NO. 2756

**Report Title:**

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

**Description:**

Specifies that real estate shall only be forfeited in cases in which the covered offense is chargeable as a felony offense under state law and related to the manufacture, sale, or distribution of a controlled substance in violation of chapter 329. Requires that a real estate owner receive a copy of a pre-seizure hearing notice by certified mail on two separate occasions. Requires the State to show by clear and convincing evidence that a claimant's interest in 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.*

