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# A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1           SECTION 1. The legislature finds that civil asset  
2 forfeiture frequently leaves innocent citizens deprived of  
3 personal property without having ever been charged or convicted  
4 of any crime. This amounts to government sponsored theft. The  
5 fair administration of justice means ensuring not a single  
6 innocent individual's personal property is permanently seized  
7 without just cause and conviction, or compensation.

8           An injustice anywhere is a threat to justice everywhere,  
9 and the purpose of this Act is to end civil asset forfeiture  
10 without conviction, which undermines the fair administration of  
11 justice and the rule of law.

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

14           "(2) Except that:

15           (a) Real property, or an interest therein, may be

16           forfeited under the provisions of this chapter only in



1 cases in which the covered offense is chargeable as a  
2 felony offense under state law;

3 (b) No property shall be forfeited under this chapter to  
4 the extent of an interest of an owner[~~, by reason of~~  
5 ~~any act or omission established by that owner to have~~  
6 ~~been committed or omitted without the knowledge and~~  
7 ~~consent of that owner;~~] by reason of:

8 (i) The commission of any covered offense unless the:

9 (A) Covered offense is chargeable as a felony  
10 offense under state law; and

11 (B) Owner has been convicted of the covered  
12 offense by a verdict or plea, including a no  
13 contest plea or a deferred acceptance of  
14 guilty plea or no contest plea; or

15 (ii) Any act or omission established by that owner to  
16 have been committed or omitted without the  
17 knowledge and consent of that owner;

18 (c) No conveyance used by any person as a common carrier  
19 in the transaction of a business as a common carrier  
20 is subject to forfeiture under this section unless it  
21 appears that the owner or other person in charge of



1 the conveyance is a consenting party or privy to a  
2 violation of this chapter;

3 (d) No conveyance is subject to forfeiture under this  
4 section by reason of any act or omission established  
5 by the owner thereof to have been committed or omitted  
6 without the owner's knowledge or consent; ~~and~~

7 (e) A forfeiture of a conveyance encumbered by a bona fide  
8 security interest is subject to the interest of the  
9 secured party if the secured party neither had  
10 knowledge of nor consented to the act or omission~~[-]~~;  
11 and

12 (f) This chapter shall not apply to the forfeiture of an  
13 animal prior to disposition of criminal charges  
14 pursuant to section 711-1109.2."

15 SECTION 3. Section 712A-16, Hawaii Revised Statutes, is  
16 amended by amending subsection (2) to read as follows:

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



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

6       ~~(b) One quarter shall be distributed to the prosecuting~~  
7           ~~attorney who instituted the action producing the~~  
8           ~~forfeiture; and~~

9       ~~(c) One half shall be deposited into the criminal~~  
10           ~~forfeiture fund established by this chapter.]~~

11       (a) One half to the Hawaii law enforcement assisted  
12           diversion program or its successor program; and

13       (b) One half to the state general fund."

14       SECTION 4. This Act does not affect rights and duties that  
15       matured, penalties that were incurred, and proceedings that were  
16       begun before its effective date.

17       SECTION 5. Statutory material to be repealed is bracketed  
18       and stricken. New statutory material is underscored.

19       SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Attorney General; Penal Code; Forfeiture; Civil Assets

**Description:**

Prohibits civil asset forfeiture by reason of the commission of a covered offense, to the extent of the property owner's interest, unless the covered offense is a felony for which the property owner has been convicted. Prohibits the forfeiture of an animal prior to the disposition of criminal charges. Requires the Attorney General to distribute one half of all forfeited property and the sale proceeds thereof to the Hawaii law enforcement assisted diversion program, with the remaining half to be distributed to the state general fund. (HB748 HD1)

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

