

JAN 20 2023

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 laws are controversial and have been evolving
3 throughout the country over the thirty years since Hawaii passed
4 the Hawaii omnibus criminal forfeiture act, codified as
5 chapter 712A, Hawaii Revised Statutes, that covers civil asset
6 forfeiture. Hawaii's process allows law enforcement agencies to
7 seize and keep property based on suspicion that the property is
8 connected to criminal activity. Property, such as vehicles,
9 houses, cash, and jewelry, can be taken without the property
10 owner having been convicted of a crime or even being formally
11 accused of one, and the burden of proof to recover the seized
12 property is shifted from the State to the property owner.

13 The legislature also finds that there is a potential
14 incentive to improperly seize property for forfeiture, as state
15 and county law enforcement agencies are permitted to retain all
16 proceeds from the sale of the forfeited property. According to
17 the Institute for Justice, a nonprofit civil liberties law firm,



1 between 2001 and 2018, Hawaii generated at least \$20,000,000 in
2 forfeiture revenue under state law and an additional \$29,000,000
3 under the federal equitable sharing program where state or local
4 law enforcement agencies partner with federal agencies and share
5 in the proceeds. The estimated value of property seized by
6 Hawaii law enforcement agencies was \$1,050,463 in fiscal year
7 2018-2019; \$963,055 in fiscal year 2019-2020; and \$483,506 in
8 fiscal year 2020-2021.

9 The legislature further finds that the Institute for
10 Justice recommends abolishing civil forfeiture entirely, which
11 four states have already done, Maine in 2021, Nebraska in 2016,
12 New Mexico in 2015, and North Carolina in 1985. In those four
13 states a criminal conviction is required prior to someone's
14 assets being seized. The legislature takes note of the
15 Institute of Justice's "D-" (D minus) rating of Hawaii's civil
16 forfeiture laws and the characterization that the State's laws
17 "are among the nation's worst".

18 Furthermore, the legislature finds that the Institute for
19 Justice recommends other reforms to make the forfeiture process
20 just, beginning with eliminating potential financial incentives
21 to seize and keep forfeited property and instead changing the



1 law to direct any proceeds to the general revenue fund or other
2 neutral fund. Currently, eight jurisdictions prohibit law
3 enforcement from keeping the proceeds from forfeited property,
4 and eight prevent participation in the federal equitable sharing
5 program. Another reform is to adopt a high standard of proof to
6 establish a civil asset forfeiture, such as "beyond a reasonable
7 doubt". Eighteen jurisdictions have a standard higher than
8 Hawaii's "preponderance of the evidence" standard, and for ten
9 of those jurisdictions, it is equivalent to beyond a reasonable
10 doubt. The third suggested reform, that a number of
11 jurisdictions have already enacted, involves requiring law
12 enforcement to prove that owners consented to or possessed
13 knowledge of the crime that led to the seizure of their
14 property, restoring the presumption of innocence used in
15 criminal proceedings. The legislature finds that none of these
16 recommendations have been implemented in Hawaii.

17 Accordingly, the purpose of this Act is to make the State's
18 civil asset forfeiture process more just by:

19 (1) Restricting civil asset forfeiture to cases involving
20 the commission of a felony offense where the property



- 1 owner has been convicted of an underlying felony
2 offense;
- 3 (2) Directing any forfeiture proceeds to the general fund;
- 4 (3) Amending the allowable expenses for moneys in the
5 criminal forfeiture fund;
- 6 (4) Requiring the attorney general to adopt rules
7 necessary to carry out the purposes of the Hawaii
8 omnibus criminal forfeiture act; and
- 9 (5) Amending the deadline for the attorney general to
10 report to the legislature on the use of the Hawaii
11 omnibus criminal forfeiture act.

12 SECTION 2. Chapter 712A, Hawaii Revised Statutes, is
13 amended by adding two new section to be appropriately designated
14 and to read as follows:

15 "§712A- Equitable sharing program; restrictions.

16 Notwithstanding the provisions of section 712A-7, a seizing
17 agency or prosecuting attorney shall not enter into an agreement
18 to transfer or refer property seized under section 712A-6,
19 unless the seized property includes United States currency in
20 excess of \$100,000, to a federal agency directly, indirectly,
21 through adoption, through an intergovernmental joint task force



1 or by other means that circumvent the provisions of this
2 section.

3 §712A- Records of forfeited property. (1) Each seizing
4 agency and prosecuting attorney shall maintain records showing:

5 (a) The authority under which the forfeited property was
6 forfeited;

7 (b) The date on which each item of forfeited property was
8 forfeited;

9 (c) The department or agency that has possession of the
10 forfeited property;

11 (d) A description of each item of forfeited property; and

12 (e) The estimated value of each item of forfeited
13 property.

14 (2) The seizing agency shall maintain all records of
15 forfeited property and shall make the records open to
16 inspection. The seizing agency shall post the records on a
17 publicly accessible website."

18 SECTION 3. Section 712A-5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§712A-5 Property subject to forfeiture; exemption. (1)**

21 The following is subject to forfeiture:



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- 1 (a) Property described in a statute authorizing
2 forfeiture;
- 3 (b) Property used or intended for use in the commission
4 of, attempt to commit, or conspiracy to commit a
5 covered offense, or [~~which~~] that facilitated or
6 assisted such activity;
- 7 (c) Any firearm [~~which~~] that is subject to forfeiture
8 under any other subsection of this section or [~~which~~]
9 is carried during, visible, or used in furtherance of
10 the commission, attempt to commit, or conspiracy to
11 commit a covered offense, or any firearm found in
12 proximity to contraband or to instrumentalities of an
13 offense;
- 14 (d) Contraband or untaxed cigarettes in violation of
15 chapter 245, which shall be seized and summarily
16 forfeited to the State without regard to the
17 procedures set forth in this chapter;
- 18 (e) Any proceeds or other property acquired, maintained,
19 or produced by means of or as a result of the
20 commission of the covered offense;



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- 1 (f) Any property derived from any proceeds [~~which~~] that
2 were obtained directly or indirectly from the
3 commission of a covered offense;
- 4 (g) Any interest in, security of, claim against, or
5 property or contractual right of any kind affording a
6 source of influence over any enterprise [~~which~~] that
7 has been established, participated in, operated,
8 controlled, or conducted in order to commit a covered
9 offense; and
- 10 (h) All books, records, bank statements, accounting
11 records, microfilms, tapes, computer data, or other
12 data [~~which~~] that are used, intended for use, or
13 [~~which~~] that facilitated or assisted in the commission
14 of a covered offense, or [~~which~~] that document the use
15 of the proceeds of a covered offense.

16 [~~(2) Except that:~~

- 17 ~~(a) Real property, or an interest therein, may be~~
18 ~~forfeited under the provisions of this chapter only in~~
19 ~~cases in which the covered offense is chargeable as a~~
20 ~~felony offense under state law;~~



1 (2) The following is not subject to forfeiture; provided
2 that nothing in this paragraph shall be construed to prevent the
3 seizure of property before conviction pursuant to section
4 712A-6:
5 ~~[(b)]~~ (a) No property shall be forfeited under this chapter [to
6 the extent of an interest of an owner,] by reason of
7 [any act or omission established by that owner to have
8 been committed or omitted without the knowledge and
9 consent of that owner,] the commission of any covered
10 offense unless:
11 (i) The covered offense is chargeable as a felony
12 offense under state law; and
13 (ii) The owner has been convicted of the covered
14 offense by a verdict or plea, including a no
15 contest plea or a deferred acceptance of guilty
16 plea or no contest plea;
17 (b) No property shall be forfeited under this chapter by
18 reason of any act or omission established by the owner
19 to have been committed or omitted without the
20 knowledge and consent of the owner;



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

7 (d) 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 omitted
10 without the owner's knowledge or consent; and

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

15 (3) This chapter shall not apply to the forfeiture of an
16 animal prior to disposition of criminal charges pursuant to
17 section 711-1109.2.

18 (4) This section shall not prohibit or restrict
19 forfeitures authorized by law other than this chapter."

20 SECTION 4. Section 712A-16, Hawaii Revised Statutes, is
21 amended to read as follows:



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

4 ~~[(a) May transfer property, other than currency, which
5 shall be distributed in accordance with subsection (2)
6 to any local or state government entity, municipality,
7 or law enforcement agency within the State,~~

8 ~~(b)]~~ (a) May sell forfeited property to the public by
9 public sale; provided that for leasehold real
10 property:

11 (i) The attorney general shall first offer the holder
12 of the immediate reversionary interest the right
13 to acquire the leasehold interest and any
14 improvements built or paid for by the lessee for
15 the then fair market value of the leasehold
16 interest and improvements. The holder of the
17 immediate reversionary interest shall have thirty
18 days after receiving written notice within which
19 to accept or reject the offer in writing;
20 provided that the offer shall be deemed to be
21 rejected if the holder of the immediate



1 reversionary interest has not communicated
2 acceptance to the attorney general within the
3 thirty-day period. The holder of the immediate
4 reversionary interest shall have thirty days
5 after acceptance to tender to the attorney
6 general the purchase price for the leasehold
7 interest and any improvements, upon which tender
8 the leasehold interest and improvements shall be
9 conveyed to the holder of the immediate
10 reversionary interest[-]; .

11 (ii) If the holder of the immediate reversionary
12 interest fails to exercise the right of first
13 refusal provided in subparagraph (i), the
14 attorney general may proceed to sell the
15 leasehold interest and any improvements by public
16 sale[-]; and

17 (iii) Any dispute between the attorney general and the
18 holder of the immediate reversionary interest as
19 to the fair market value of the leasehold
20 interest and improvements shall be settled by
21 arbitration pursuant to chapter 658A;



1 ~~[-e)]~~ **(b)** May sell or destroy all raw materials, products,
2 and equipment of any kind used or intended for use in
3 manufacturing, compounding, or processing a controlled
4 substance or any untaxed cigarettes in violation of
5 chapter 245;

6 ~~[-d)]~~ **(c)** May compromise and pay valid claims against
7 property forfeited pursuant to this chapter; or

8 ~~[-e)]~~ **(d)** May make any other disposition of forfeited
9 property authorized by law.

10 (2) All forfeited property and the sale proceeds thereof,
11 ~~[up to a maximum of three million dollars per year, not~~
12 ~~previously transferred pursuant to [subsection] (1) (a) of this~~
13 ~~section, shall,]~~ after payment of expenses of administration and
14 sale, ~~[be distributed as follows:~~

15 ~~(a) One quarter shall be distributed to the unit or units~~
16 ~~of state or local government [whose] officers or~~
17 ~~employees conducted the investigation and caused the~~
18 ~~arrest of the person whose property was forfeited or~~
19 ~~seizure of the property for forfeiture;~~



1 ~~(b) One quarter shall be distributed to the prosecuting~~
2 ~~attorney who instituted the action producing the~~
3 ~~forfeiture, and~~

4 ~~(c) One half shall be deposited into the criminal~~
5 ~~forfeiture fund established by this chapter.~~

6 ~~(3) Property and money distributed to units of state and~~
7 ~~local government shall be used for law enforcement purposes, and~~
8 ~~shall complement but not supplant the funds regularly~~
9 ~~appropriated for such purposes.] including reimbursement for any~~
10 ~~costs incurred by the department of the attorney general related~~
11 ~~to the seizure or storage of seized property, shall be deposited~~
12 ~~to the credit of the state general fund.~~

13 ~~[(4)]~~ (3) There is established in the department of the
14 attorney general a special fund to be known as the criminal
15 forfeiture fund, hereinafter referred to as the "fund", ~~[in]~~
16 into which shall be deposited ~~[one half of the proceeds of a~~
17 ~~forfeiture and any penalties paid pursuant to section 712A-~~
18 ~~10(6).]~~ a portion of the proceeds of each sale made pursuant to
19 this section that is sufficient to cover expenses of
20 administration and sale. All moneys in the fund shall be



1 expended by the attorney general and are appropriated for the
2 ~~following purposes:~~

3 (a) The] payment of any expenses necessary to seize,
4 detain, appraise, inventory, safeguard, maintain,
5 advertise, or sell property seized, detained, or
6 forfeited pursuant to this chapter or of any other
7 necessary expenses incident to the seizure, detention,
8 or forfeiture of [such] property and [such] contract
9 services and payments to reimburse any federal, state,
10 or county agency for any expenditures made to perform
11 the foregoing functions [7] .

12 ~~-(b) The payment of awards for information or assistance~~
13 ~~leading to a civil or criminal proceeding;~~

14 ~~-(c) The payment of supplemental sums to state and county~~
15 ~~agencies for law enforcement purposes;~~

16 ~~-(d) The payment of expenses arising in connection with~~
17 ~~programs for training and education of law enforcement~~
18 ~~officers;~~

19 ~~-(e) The payment of expenses arising in connection with~~
20 ~~enforcement pursuant to the drug nuisance abatement~~
21 ~~unit in the department of the attorney general; and~~



1 ~~(f)~~ ~~The payment of expenses arising in connection with the~~
2 ~~law enforcement officer independent review board in~~
3 ~~the department of the attorney general.~~

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

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

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

18 (b) The total number of administrative and judicial
19 actions filed by prosecuting attorneys and the
20 disposition thereof[+] for each action;



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

16 SECTION 5. Section 712A-19, Hawaii Revised Statutes, is
17 repealed.

18 ~~["[§712A-19] Construction. It is the intent of the~~
19 ~~legislature that this chapter be liberally construed so as to~~
20 ~~effect the purposes of this chapter."]~~



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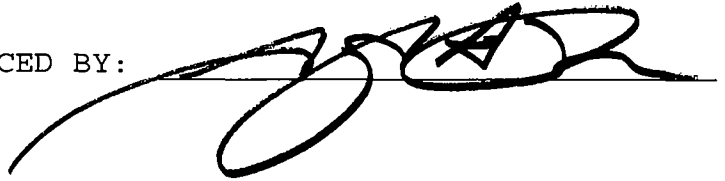
1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2023.

7

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "J. A. R.", written over a horizontal line.

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Report Title:

Civil Asset Forfeiture; Property Forfeiture

Description:

Restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense. Directs forfeiture proceeds to the general fund. Amends the allowable expenses for moneys in the criminal forfeiture fund. Requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act. Amends the deadline for the Attorney General to report to the Legislature on the use of the Hawaii Omnibus Criminal Forfeiture Act. Limits the transfer of certain forfeiture property to federal agencies. Establishes records requirements.

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

