

JAN 15 2025

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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 Hawaii's civil asset  
2 forfeiture process allows law enforcement agencies to seize and  
3 keep property based on suspicion that the property is connected  
4 to criminal activity. Property, such as vehicles, houses, cash,  
5 and jewelry, can be taken without the property owner having been  
6 convicted of a crime or even being formally accused of one, and  
7 the burden of proof to recover the seized property is shifted  
8 from the State to the property owner.

9           The legislature also finds that there is a potential  
10 incentive to improperly seize property for forfeiture, as state  
11 and county law enforcement agencies are permitted to retain all  
12 proceeds from the sale of the forfeited property. According to  
13 the Institute for Justice, a nonprofit civil liberties law firm,  
14 between 2001 and 2018, Hawaii generated at least \$20,000,000 in  
15 forfeiture revenue under state law and an additional \$29,000,000  
16 under the federal equitable sharing program where state or local  
17 law enforcement agencies partner with federal agencies and share



1 in the proceeds. The estimated value of property seized by  
2 Hawaii law enforcement agencies was \$1,050,463 in fiscal year  
3 2018-2019; \$963,055 in fiscal year 2019-2020; and \$483,506 in  
4 fiscal year 2020-2021.

5 The legislature further finds that the Institute for  
6 Justice recommends abolishing civil forfeiture entirely, which  
7 four states have already done: Maine, in 2021; Nebraska, in  
8 2016; New Mexico, in 2015; and North Carolina, in 1985. In  
9 those four states, a criminal conviction is required prior to  
10 someone's assets being seized. The legislature takes note of  
11 the Institute of Justice's "D-" (D minus) rating of Hawaii's  
12 civil forfeiture laws and the characterization that the State's  
13 laws "are among the nation's worst".

14 Furthermore, the legislature finds that the Institute for  
15 Justice recommends other reforms to make the forfeiture process  
16 more just, beginning with eliminating potential financial  
17 incentives to seize and keep forfeited property and instead  
18 changing the law to direct any proceeds to the general revenue  
19 fund or other neutral fund. Currently, eight jurisdictions  
20 prohibit law enforcement agencies from keeping the proceeds from  
21 forfeited property, and eight prevent participation in the



1 federal equitable sharing program. Another recommended reform  
2 is to adopt a high standard of proof to establish a civil asset  
3 forfeiture, such as "beyond a reasonable doubt". Eighteen  
4 jurisdictions have a standard higher than Hawaii's  
5 "preponderance of the evidence" standard, and for ten of those  
6 jurisdictions, it is equivalent to beyond a reasonable doubt.  
7 The third recommended reform, which a number of jurisdictions  
8 have already enacted, involves requiring law enforcement  
9 agencies to prove that owners consented to or possessed  
10 knowledge of the crime that led to the seizure of their  
11 property, which would restore the presumption of innocence used  
12 in criminal proceedings. The legislature finds that none of  
13 these recommendations have been implemented in Hawaii.

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

- 16 (1) Limiting the transfer of certain forfeiture property  
17 to federal agencies;
- 18 (2) Establishing records requirements;
- 19 (3) 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 (4) Directing any forfeiture proceeds to the general fund;
- 4 (5) Amending the allowable expenses for moneys in the
- 5 criminal forfeiture fund;
- 6 (6) Requiring the attorney general to adopt rules
- 7 necessary to carry out the purposes of the Hawaii
- 8 omnibus criminal forfeiture act; and
- 9 (7) 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 sections to be appropriately  
14 designated 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  
4 seizing agency and prosecuting attorney shall maintain records  
5 showing:

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

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

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

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

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

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

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



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

2 The following is subject to forfeiture:

3           (a) Property described in a statute authorizing  
4                 forfeiture;

5           (b) Property used or intended for use in the commission  
6                 of, attempt to commit, or conspiracy to commit a  
7                 covered offense, or [~~which~~] that facilitated or  
8                 assisted [~~such~~] that activity;

9           (c) Any firearm [~~which~~] that is subject to forfeiture  
10                under any other subsection of this section or [~~which~~]  
11                is carried during, visible, or used in furtherance of  
12                the commission, attempt to commit, or conspiracy to  
13                commit a covered offense, or any firearm found in  
14                proximity to contraband or to instrumentalities of an  
15                offense;

16           (d) Contraband or untaxed cigarettes in violation of  
17                chapter 245, which shall be seized and summarily  
18                forfeited to the State without regard to the  
19                procedures set forth in this chapter;



1 (e) Any proceeds or other property acquired, maintained,  
2 or produced by means of or as a result of the  
3 commission of the covered offense;

4 (f) Any property derived from any proceeds [~~which~~] that  
5 were obtained directly or indirectly from the  
6 commission of a covered offense;

7 (g) Any interest in, security of, claim against, or  
8 property or contractual right of any kind affording a  
9 source of influence over any enterprise [~~which~~] that  
10 has been established, participated in, operated,  
11 controlled, or conducted in order to commit a covered  
12 offense; and

13 (h) All books, records, bank statements, accounting  
14 records, microfilms, tapes, computer data, or other  
15 data [~~which~~] that are used, intended for use, or  
16 [~~which~~] that facilitated or assisted in the commission  
17 of a covered offense, or [~~which~~] that document the use  
18 of the proceeds of a covered offense.

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

20 ~~(a) Real property, or an interest therein, may be~~  
21 ~~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 (2) The following is not subject to forfeiture; provided  
4 that nothing in this paragraph shall be construed to prevent the  
5 seizure of property before conviction pursuant to section  
6 712A-6:

7 ~~[(b)]~~ (a) No property shall be forfeited under this chapter  
8 ~~[to the extent of an interest of an owner,]~~ by reason  
9 of ~~[any act or omission established by that owner to~~  
10 ~~have been committed or omitted without the knowledge~~  
11 ~~and consent of that owner,]~~ the commission of any  
12 covered offense unless:

13 (i) The covered offense is chargeable as a felony  
14 offense under state law; and

15 (ii) The property owner has been convicted of the  
16 covered offense by a verdict or plea, including a  
17 no contest plea or a deferred acceptance of  
18 guilty plea or no contest plea;

19 (b) No property shall be forfeited under this chapter by  
20 reason of any act or omission if the property owner  
21 demonstrates by a preponderance of evidence that the





1           act or omission occurred without the property owner's  
2           knowledge and consent;

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

9           (d) 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 omitted  
12          without the owner's knowledge or consent; and

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

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

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



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

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

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

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

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



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

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

19 (iii) Any dispute between the attorney general and the  
20 holder of the immediate reversionary interest as  
21 to the fair market value of the leasehold



1 interest and improvements shall be settled by  
2 arbitration pursuant to chapter 658A;

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

8 ~~[(d)]~~ (c) May compromise and pay valid claims against  
9 property forfeited pursuant to this chapter; or

10 ~~[(e)]~~ (d) May make any other disposition of forfeited  
11 property authorized by law.

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

17 ~~(a) One quarter shall be distributed to the unit or units~~  
18 ~~of state or local government [whose] officers or~~  
19 ~~employees conducted the investigation and caused the~~  
20 ~~arrest of the person whose property was forfeited or~~  
21 ~~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~~  
18       ~~712A-10(6).] a portion of the proceeds of each sale made~~  
19       ~~pursuant to 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[+].~~

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."~~]





# S.B. NO. 320

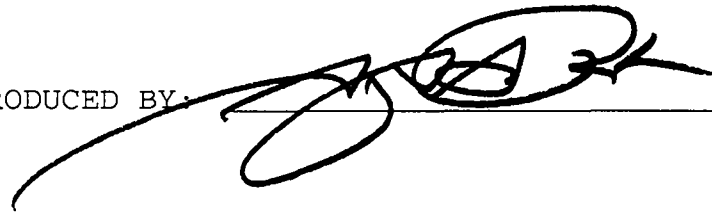
1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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, 2025.

7

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher, but it appears to be a name with a prominent initial.

# S.B. NO. 320

**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.*

