

ACT 178

H.B. NO. 2725

A Bill for an Act Relating to Forfeiture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 712A-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Seizure for evidence” means seizure of property by a law enforcement officer.”

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

“[[§712A-2[]] Jurisdiction. [The State may commence a proceeding in the circuit court if the property for which forfeiture is sought is within this State at the time of the filing of the action or if the courts of this State have in personam jurisdiction of an owner of or interest-holder in the property.] (1) The State may commence an in rem proceeding in the circuit court if the property for which forfeiture is sought is within this State at the time of the filing of the action.

(2) The State may commence a civil in personam proceeding in the circuit court if the courts of this State have in personam jurisdiction of an owner of or interest-holder in the property.

(3) The State may commence a criminal in personam proceeding in the court which has in personam jurisdiction of an owner of or interest-holder in the property.”

SECTION 3. Section 712A-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§712A-6]]~~ **Seizure of property.** (1) [Property] Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

- (a) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;
- (b) By making a seizure for forfeiture on property seized on process issued pursuant to law; or
- (c) By making a seizure for forfeiture without court process as follows:
 - (i) The seizure for forfeiture is of property seized incident to an arrest or search;
 - (ii) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the State or any other state or the federal government in forfeiture proceeding;
 - (iii) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety; or
 - (iv) The law enforcement officer has probable cause to believe that the property is subject to forfeiture.

(2) Real property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer pursuant to court order following a pre-seizure hearing in the circuit court in the circuit in which the property is located with notice of the pre-seizure hearing to be made to the owners and interest holders pursuant to section 712A-8 of this chapter. The court shall order the real property in question to be seized for forfeiture if it finds probable cause that the real property is subject to forfeiture under any provision of the Hawaii Revised Statutes.

~~[(2)]~~ (3) In determining probable cause for seizure, the fact that a firearm, money, or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money, or instrument was the proceeds of contraband or that the firearm, money or instrument was used or intended to be used to facilitate commission of the offense.”

SECTION 4. Section 712A-10, Hawaii Revised Statutes is amended to read as follows:

“**§712A-10 Administrative forfeiture.** The prosecuting attorney may initiate administrative forfeiture of property other than real property, the estimated value of which is less than \$100,000, or of any vehicle or conveyance, regardless of value. Administrative forfeiture shall be processed in the following manner:

- (1) The prosecuting attorney shall file a petition with the attorney general, pursuant to rules adopted by the attorney general.
- (2) The prosecuting attorney shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner

provided in section 712A-8(a) or 712A-8(b) on all persons known to have an interest in the property, together with instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation.

- (3) The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in section 712A-8(c). Notice by publication shall include:
 - (a) A description of the property;
 - (b) The estimated value of the property;
 - (c) The date and place of the seizure;
 - (d) The offense for which the property is subject to forfeiture;
 - (e) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and
 - (f) Notice that the property will be forfeited to the State if a claim and cost or in pauperis bond or petition for remission or mitigation is not filed in substantial compliance with this section.
- (4) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim and cost or in pauperis bond, but not both, with the attorney general, within thirty days of notice by publication or receipt of written notice, whichever is earlier. Notwithstanding section 1-29, the thirty-day time period prescribed herein is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded, and the thirty-day time period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. "Holiday" includes any day designated as a holiday pursuant to section 8-1.
- (5) Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the attorney general. A petition for remission or mitigation shall not be used to challenge the sufficiency of the evidence to support the forfeiture or the actions of any government official but shall presume a valid forfeiture and ask the attorney general to invoke the executive power to pardon the property, in whole or in part. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:
 - (a) A reasonably complete description of the property;
 - (b) A statement of the interest of the petitioner in the property, as owner or interest-holder which may be supported by bills of sale, contracts, or mortgages, or other documentary evidence; and
 - (c) Facts and circumstances sufficient to show whether the petitioner:
 - (i) Owns or holds an interest in the seized property as defined by section 712A-1;
 - (ii) Had any knowledge that the property was or would be involved in any violation of the law;
 - (iii) Had any knowledge of the particular violation which subjected the property to seizure and forfeiture;
 - (iv) Had any knowledge that the user of the property had any record, including arrests, except when the person was acquitted or the charges dismissed due to lack of evidence, for the violation which subjected the property to

seizure and forfeiture or for any crime which is similar in nature.

Any subsequent pleadings or written communications alleging matters pertaining to paragraph (5)(b) or (c) of this section must also be signed by the petitioner and sworn on oath before a notary public.

- (6) If the attorney general, with sole discretion, determines that remission is not warranted, the attorney general may discretionarily mitigate the forfeiture where the petitioner has not met the minimum requirements for remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum requirements for remission have been met but the overall circumstances are such that the attorney general determines that complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner which shall be deposited into the criminal forfeiture fund established under section 712A-16. Extenuating circumstances include:
 - (a) Language or culture barrier;
 - (b) Humanitarian factors such as youth or extreme age;
 - (c) Presence of physical or mental disease, disorder or defect;
 - (d) Limited or peripheral criminal culpability;
 - (e) Cooperation with the seizing agency or the prosecuting attorney; and
 - (f) Any contributory error on the part of government officials.
- (7) It shall be the duty of the attorney general to inquire into the facts and circumstances alleged in a petition for remission or mitigation of forfeiture. However, no petitioner is entitled to a hearing on the petition for remission or mitigation. Hearings, if any, shall be held at the discretion of the attorney general.
- (8) The attorney general shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within sixty days of receipt of the petition unless the circumstances of the case require additional time, in which case the attorney general shall notify the petitioner in writing and with specificity within the sixty-day period that the circumstances of the case require additional time and further notify the petitioner of the expected decision date.
- (9) Any person claiming seized property may seek judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a claim and bond to the State in the amount of ten per cent of the estimated value of the property or in the sum of \$2,500, whichever is greater, with sureties to be approved by the attorney general, upon condition that if the claimant fails to prove that claimant's interest is exempt from forfeiture under section 712A-5, the claimant shall pay the State's costs and expenses, including reasonable attorneys fees incurred in connection with a judicial proceeding. In lieu of a cost bond, a claimant may file an in pauperis bond sworn on oath before a notary public. An in pauperis bond shall be in the form set out in the appendix to the rules of penal procedure. The claim shall be signed by the claimant and sworn on oath before a notary public and shall comply with the requirements of section 712A-12(5). Upon receipt of the claim and bond, the attorney general shall notify the prosecuting attorney who may

discretionarily continue to seek forfeiture by petitioning the circuit court for forfeiture of the property within forty-five days of receipt of notice that a proper claim and bond has been filed. The prosecuting attorney may also elect to honor the claim in which case the prosecuting attorney shall notify the seizing agency and authorize the release of the seizure for forfeiture on the property¹ on any specified interest in it.

- (10) If a judicial forfeiture proceeding is instituted subsequent to notice of administrative forfeiture, no duplicate or repetitive notice shall be required. The judicial proceeding, if any, shall adjudicate all timely filed claims.
- (11) In the event a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general shall order forfeited all property seized for forfeiture. In the event the attorney general, with sole discretion, determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and the prosecuting attorney and order the release of the seizure for forfeiture on the property or on any specified interest in it. There shall be no appeal from the attorney general's decision or order of forfeiture or remission or mitigation.
- (12) Administrative proceedings and the adoption of rules under this section are exempt from the requirements of chapter 91, the Hawaii administrative procedure act, and are adjudicatory functions for the purposes of applicable sections of the Hawaii Revised Statutes."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 21, 1994.)

Note

- 1. Prior to amendment "or" appeared here.