

JAN 21 2021

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 twenty years since Hawaii passed
4 the Omnibus Criminal Forfeiture Act, codified as chapter 712A,
5 Hawaii Revised Statutes, which provides for 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, leaving innocent citizens deprived of personal
12 property.

13 The legislature further finds that a 2018 state auditor's
14 report found a lack of accountability by the department of the
15 attorney general over the storage, preservation, and disposal of
16 forfeited property. Additionally, the legislature finds that
17 there is great incentive for state and county law enforcement



1 agencies to seize property for forfeiture, as these agencies are
2 permitted to retain proceeds from the sale of the property.
3 Under Hawaii law, one hundred per cent of the proceeds are
4 divided among the state and county law enforcement agencies that
5 were involved in the seizure and forfeiture.

6 The legislature takes note of the Institute for Justice's
7 D- rating of Hawaii's civil forfeiture laws and the
8 characterization that our laws "are among the nation's worst".
9 The Institute for Justice, a nonprofit civil liberties law firm,
10 recommends abolishing civil forfeiture entirely as at least
11 three states, Nebraska, North Carolina, and New Mexico, have
12 done. Fifteen states now require a criminal conviction for most
13 or all forfeiture cases.

14 Additionally, the Institute for Justice recommends other
15 reforms to make the forfeiture process more fair, beginning with
16 eliminating financial incentives for law enforcement to seize
17 and keep forfeited property and instead directing any proceeds
18 to the general revenue fund or another neutral fund. Eight
19 jurisdictions now prohibit law enforcement from keeping the
20 proceeds from forfeited property. A second reform is to adopt a
21 high standard of proof, such as "beyond a reasonable doubt," in



1 order to forfeit property in civil proceedings. Eighteen
2 jurisdictions have a standard higher than Hawaii's
3 "preponderance of the evidence" standard, and for ten of those
4 jurisdictions it is equivalent to "beyond a reasonable doubt".
5 Third, law enforcement should be required to prove that owners
6 consented to or possessed knowledge of the crime that led to the
7 seizure of their property, restoring the presumption of
8 innocence used in criminal proceedings. Here, again, a number
9 of jurisdictions have already made this reform. The legislature
10 finds that none of these recommendations have been implemented
11 in Hawaii.

12 Accordingly, the purpose of this Act is to make Hawaii's
13 civil asset forfeiture process more just by:

- 14 (1) Restricting asset forfeiture to cases involving the
15 commission of a covered criminal misdemeanor or felony
16 offense;
- 17 (2) Requiring seized property to be forfeited only when
18 the property owner has been convicted of an underlying
19 covered criminal misdemeanor or felony offense;
- 20 (3) Changing the standard of proof that the State must
21 meet in order for property to be forfeited, from



- 1 "preponderance of the evidence" to "beyond a
2 reasonable doubt";
- 3 (4) Requiring the State to prove that owners consented to
4 or possessed knowledge of the crime that led to the
5 seizure of their property;
- 6 (5) Requiring that the agency seizing the property pay for
7 safe and secure storage of the seized property until
8 the completion of the forfeiture proceeding or final
9 disposition of the property;
- 10 (6) Directing any proceeds from a civil forfeiture to the
11 general revenue fund for public education purposes;
12 and
- 13 (7) Repealing administrative forfeiture proceedings, so
14 that any forfeiture proceedings must be brought in
15 court.

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

18 "§712A-4 Covered offenses. Offenses for which property is
19 subject to forfeiture under this chapter are:

- 20 (a) All felony and misdemeanor offenses that specifically
21 authorize forfeiture;



- 1 (b) Murder, kidnapping, labor trafficking, unlicensed sale
2 of liquor, unlicensed manufacture of liquor, gambling,
3 criminal property damage, robbery, bribery, extortion,
4 theft, unauthorized entry into motor vehicle,
5 burglary, money laundering, trademark counterfeiting,
6 insurance fraud, promoting a dangerous, harmful, or
7 detrimental drug, commercial promotion of marijuana,
8 methamphetamine trafficking, manufacturing of a
9 controlled substance with a child present, promoting
10 child abuse, promoting prostitution, sex trafficking,
11 solicitation of a minor for prostitution, habitual
12 solicitation of prostitution, or electronic enticement
13 of a child [~~that is~~] when chargeable as a felony
14 offense under state law;
- 15 (c) The manufacture, sale, or distribution of a controlled
16 substance in violation of chapter 329, promoting
17 detrimental drugs or intoxicating compounds, promoting
18 pornography, promoting pornography for minors, or
19 solicitation of prostitution near schools or public
20 parks, [~~which is~~] when chargeable as a felony or



1 misdemeanor offense, but not as a petty misdemeanor,
2 under state law; and

3 (d) The attempt, conspiracy, solicitation, coercion, or
4 intimidation of another to commit any felony or
5 misdemeanor offense for which property is subject to
6 forfeiture[~~-~~] under this section."

7 SECTION 3. Section 712A-5, Hawaii Revised Statutes, is
8 amended by amending subsection (2) to read as follows:

9 "(2) Except that:

10 (a) Real property, or an interest therein, may be
11 forfeited under the provisions of this chapter only in
12 cases in which the covered offense is chargeable as a
13 felony offense under state law;

14 (b) No property shall be forfeited under this chapter to
15 the extent of an interest of an owner[~~, by~~]:

16 (i) By reason of the commission of any covered
17 offense unless:

18 (A) The covered offense is chargeable as a
19 felony or misdemeanor offense under state
20 law; and

21 (B) The owner has been convicted of the covered



1 offense by a verdict or plea, including a no
2 contest plea or a deferred acceptance of
3 guilty or no contest plea; or

4 (ii) By reason of any act or omission [established by
5 that] of the owner [to have been] unless the
6 State has proven beyond a reasonable doubt that
7 the act or omission was committed or omitted
8 [without] with the owner's knowledge and consent
9 [of that owner];

10 provided that nothing in this subsection shall be construed to
11 prevent the seizure of property prior to conviction pursuant to
12 section 712A-6.

13 (c) No conveyance used by any person as a common carrier
14 in the transaction of a business as a common carrier
15 is subject to forfeiture under this section unless [~~it~~
16 ~~appears~~] the State has proven beyond a reasonable
17 doubt that the owner or other person in charge of the
18 conveyance is a consenting party or privy to a
19 violation of this chapter;

20 (d) No conveyance is subject to forfeiture under this
21 section by reason of any act or omission [~~established~~



1 by] of the owner [thereof to have been] unless the
 2 State has proven beyond a reasonable doubt that the
 3 act or omission was committed or omitted [without]
 4 with the owner's knowledge or consent; [and]

5 (e) A forfeiture of a conveyance encumbered by a bona fide
 6 security interest is subject to the interest of the
 7 secured party [~~if~~] unless the State has proven beyond
 8 a reasonable doubt that the secured party [neither]
 9 had knowledge of [~~nor~~] or consented to the act or
 10 omission[-]; and

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

14 SECTION 4. Section 712A-6, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "**§712A-6 Seizure of property.** (1) Personal property
 17 subject to forfeiture under this chapter may be seized for
 18 forfeiture by a law enforcement officer:

19 (a) On process issued pursuant to the rules of civil
 20 procedure or the provisions of this chapter including
 21 a seizure warrant;



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- 1 (b) By making a seizure for forfeiture on property seized
2 on process issued pursuant to law; or
- 3 (c) By making a seizure for forfeiture without court
4 process as follows:
- 5 (i) The seizure for forfeiture is of property seized
6 incident to an arrest or search;
- 7 (ii) The property subject to seizure for forfeiture
8 has been the subject of a prior judgment in favor
9 of the State or any other state or the federal
10 government in forfeiture proceeding;
- 11 (iii) The law enforcement officer has probable cause to
12 believe that the property seized for forfeiture
13 is directly or indirectly dangerous to health or
14 safety;
- 15 (iv) The law enforcement officer has probable cause to
16 believe that the property is subject to
17 forfeiture; or
- 18 (v) The seizure for forfeiture is of perishable
19 natural resources seized and sold, pursuant to
20 section 199-7, prior to forfeiture proceeding.



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

11 (3) In determining probable cause for seizure, the fact
12 that a firearm, money, or any negotiable instrument was found in
13 proximity to contraband or to instrumentalities of an offense
14 gives rise to an inference that the money[7] or instrument was
15 the proceeds of contraband or that the firearm, money, or
16 instrument was used or intended to be used to facilitate
17 commission of the offense.

18 (4) When a law enforcement officer seizes property that is
19 subject to forfeiture under this chapter, the officer shall
20 provide an itemized receipt to the person possessing the
21 property or, in the absence of a person to whom the receipt



1 could be given, shall leave the receipt in the place where the
2 property was found, if possible."

3 SECTION 5. Section 712A-7, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (2) to read:

6 "(2) If property is seized for forfeiture under section
7 712A-6 pending forfeiture and final disposition, the seizing
8 agency, at the agency's expense, shall ensure the safe and
9 secure storage of the property until the completion of
10 forfeiture proceedings or other disposition of the property as
11 provided in this chapter. Consistent with these requirements,
12 the seizing agency may do any of the following:

13 (a) Place the property under constructive seizure by
14 posting notice of seizure for forfeiture on the
15 property or by filing notice of seizure for forfeiture
16 or notice of pending forfeiture in any appropriate
17 public record relating to the property;

18 (b) Remove the property to a storage area for safekeeping
19 or, if the property is a negotiable instrument or
20 money, deposit it in an interest bearing account;



1 (c) Remove the property to a place designated by the
2 court; or

3 (d) Provide for another agency to take custody of the
4 property and remove it to an appropriate location
5 within the jurisdiction of the court."

6 2. By amending subsection (4) to read:

7 "(4) In the event of a seizure for forfeiture under
8 section 712A-6, the seizing agency shall send to a prosecuting
9 attorney a written [~~request for forfeiture~~] notice of the
10 seizure within thirty days, which shall include a statement of
11 facts and circumstances of the seizure, the appraised or
12 estimated value of the property, and a summary of the facts
13 relied on for forfeiture."

14 SECTION 6. Section 712A-9, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) The prosecuting attorney shall determine whether it
17 is probable that the property is subject to forfeiture and, if
18 so, shall initiate [~~administrative or~~] judicial proceedings
19 against the property within forty-five days [~~of receipt of a~~
20 ~~written request for forfeiture from a seizing agency.~~] after the
21 owner of the property has been convicted of a covered offense as



1 set forth in section 712A-4 and the property is subject to
2 forfeiture pursuant to section 712A-5. If [~~7-on~~]:

3 (a) On inquiry and examination, the prosecuting attorney
4 determines, with sole discretion, that the proceedings
5 probably cannot be sustained or that justice does not
6 require the institution of proceedings [~~7~~]; or

7 (b) Upon entering of nolle prosequi or a verdict of not
8 guilty for all covered offenses relating to the
9 seizure,

10 the prosecuting attorney shall notify the seizing agency, and as
11 soon as practicable authorize the release of the seizure for
12 forfeiture on the property or on any specified interest in it.

13 A determination by the prosecuting attorney to forego initiation
14 of proceedings shall not be a bar to initiation of proceedings
15 against the same property based on the same circumstances at a
16 later time."

17 SECTION 7. Section 712A-11, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§712A-11 Judicial forfeiture proceedings; general. (1)
20 [~~In any judicial or administrative proceeding]~~ All forfeiture
21 proceedings pursuant to this chapter [~~7-the~~] shall be conducted



1 in the circuit court, and no property shall be forfeited except
2 after conviction of a covered offense as provided under section
3 712A-4 and the property is subject to forfeiture pursuant to
4 section 712A-5. The court, on application of the State, may
5 enter any restraining order or injunction, require the execution
6 of satisfactory performance bonds, create receiverships, appoint
7 conservators, appraisers, accountants or trustees, or take any
8 other action to seize, secure, maintain, or preserve the
9 availability of property subject to forfeiture under this
10 chapter, including a warrant for its seizure, whether before or
11 after the filing of a petition for forfeiture, complaint, or
12 indictment.

13 (2) If property is seized for forfeiture without a seizure
14 warrant, a prior judicial order of forfeiture, or a hearing
15 pursuant to section 712A-13, a court, on an application filed by
16 an owner or interest-holder within fifteen days after notice of
17 its seizure for forfeiture or actual knowledge of it, whichever
18 is earlier, and complying with the requirements for claims in
19 section 712A-12, may issue an order to show cause to the seizing
20 agency, with thirty days' notice to the prosecuting attorney,
21 for a hearing on the issue of whether probable cause for



1 forfeiture of the applicant's interest then exists[7] to
2 validate the continued seizure of the property pending the
3 outcome of a judicial forfeiture proceeding; provided that[7]
4 the order to show cause shall be set aside upon the filing of a
5 petition for [~~either administrative or~~] judicial forfeiture
6 prior to the hearing, in which event forfeiture proceedings
7 shall be in accordance with this chapter.

8 (3) [~~There shall be a rebuttable presumption that any~~] Any
9 property of a person is subject to forfeiture under this chapter
10 if the State establishes [~~, by the standard of proof applicable~~
11 ~~to that proceeding, all of the following:~~

12 ~~(a) That~~] that the person has [~~engaged in~~] been convicted
13 of criminal conduct for which property is subject to
14 forfeiture[7], and the State establishes beyond a
15 reasonable doubt:

16 [~~(b)~~] (a) That the property was acquired by the person
17 during the period of the criminal conduct or within a
18 reasonable time after that period; and

19 [~~(e)~~] (b) That there was no likely source for the property
20 other than the criminal conduct giving rise to
21 forfeiture.



1 (4) A finding that property is the proceeds of criminal
2 conduct giving rise to forfeiture does not require proof that
3 the property is the proceeds [+]of[+] any particular exchange or
4 transaction.

5 (5) A defendant convicted in any criminal proceeding shall
6 be precluded from subsequently denying the essential allegations
7 of the criminal offense of which the defendant was convicted in
8 any proceeding pursuant to this chapter. For the purposes of
9 this chapter, a conviction may result from a verdict or plea,
10 including a no contest plea, [~~or~~] deferred acceptance of guilty
11 plea, or deferred acceptance of no contest plea.

12 ~~[(6) An acquittal or dismissal in a criminal proceeding~~
13 ~~shall not preclude civil proceedings under this chapter.~~

14 ~~+(7)]~~ (6) In any judicial forfeiture proceeding pursuant to
15 this chapter, if a defense is based on an exemption provided for
16 in this chapter, the burden of proving the existence of the
17 exemption is on the claimant or party raising the defense, and
18 it is not necessary to negate the exemption in any petition,
19 application, complaint, or indictment.

20 ~~+(8)]~~ (7) For good cause shown, on motion by the
21 prosecuting attorney, the court may stay discovery against the



1 State in civil forfeiture proceedings prior to trial on a
2 criminal complaint or indictment arising from the same conduct
3 and against a claimant who is a defendant in the criminal
4 proceeding after making provision to prevent loss to any party
5 resulting from the delay. The stay provided by this subsection
6 shall not be available pending appeal of any order or judgment
7 in the criminal proceeding.

8 ~~[(+9)]~~ (8) The court shall receive and consider, at any
9 hearing held pursuant to this chapter, except the hearing on
10 claims pursuant to sections 712A-12(4) through (8) and
11 712A-13(7), evidence and information which would be admissible
12 under the rules of penal procedure relating to preliminary
13 hearings.

14 ~~[(+10)]~~ (9) All property, including all interest in such
15 property, declared forfeited under this chapter vests in this
16 State on the commission of the act or omission giving rise to
17 forfeiture under this chapter together with the proceeds of the
18 property after the act or omission. Any property or proceeds
19 transferred to any person after the act or omission are subject
20 to forfeiture and thereafter shall be ordered forfeited [~~unless~~
21 ~~the transferee claims and establishes in a hearing pursuant to~~



1 ~~this chapter]~~ if the State has proven beyond a reasonable doubt
2 the showings set out in section 712A-5(2)."

3 SECTION 8. Section 712A-12, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsections (1) and (2) to read:

6 "(1) In rem forfeiture proceedings are not permitted
7 except when the owner of the property has died without
8 successors in interest, cannot be located, or has abandoned
9 claims of ownership, and when the owner was deemed convicted of
10 a covered offense, as provided in section 712A-4 and the
11 property is subject to forfeiture under section 712A-5 or when
12 the State claims that the owner would have been deemed convicted
13 if the owner had not died or disappeared. If a forfeiture is
14 authorized by law, it shall be ordered by a court on an action
15 in rem brought by the prosecuting attorney on a verified
16 petition for forfeiture filed in the criminal or civil division
17 of the circuit court.

18 (2) A civil in rem action may be brought in addition to or
19 in lieu of the civil and criminal in personam forfeiture
20 procedures set forth in sections 712A-13 and 712A-14 [~~or the~~
21 ~~administrative forfeiture as set forth in section 712A-10]~~.



1 Judicial in rem forfeiture proceedings are in the nature of an
2 action in rem and are governed by the rules of civil procedure
3 whether brought in the criminal or civil division of the circuit
4 court, unless a different procedure is provided by law."

5 2. By amending subsections (8) and (9) to read:

6 "(8) The State has the [~~initial~~] burden of [~~showing by a~~
7 ~~preponderance of the evidence~~] proving beyond a reasonable doubt
8 that the claimant's interest in the property is subject to
9 forfeiture. On such a showing by the State, the claimant has
10 the burden [~~of showing by a preponderance of the evidence that~~
11 ~~the claimant's interest in the property is not subject to~~
12 ~~forfeiture.~~] to show that the claimant holds a legal right,
13 title, or interest in the property seized and that the claimant
14 held an ownership interest in the seized property at the time
15 the illegal conduct that gave rise to the seizure of the
16 property occurred.

17 (9) In accordance with its findings at the hearing, the
18 court shall order an interest in property immediately returned
19 or conveyed to the claimant, if any, [~~who has established by a~~
20 ~~preponderance of the evidence that the~~] where the State has
21 failed to prove beyond a reasonable doubt that:



1 doubt that the owner or interest-holder's interest in the
2 property is subject to forfeiture[-] pursuant to section 712A-5.
3 [~~On such a showing by the State, the owner or interest holder~~
4 ~~has the burden of showing by a preponderance of the evidence~~
5 ~~that the owner or interest holder's interest in the property is~~
6 ~~not subject to forfeiture.] "~~

7 2. By amending subsection (7) to read:

8 "(7) Procedures subsequent to the verdict or finding of
9 liability and order of forfeiture shall be as follows:

10 (a) Following the entry of an order of forfeiture, the
11 clerk of the court shall give notice of pending
12 forfeiture to owners and interest-holders who have not
13 previously been given notice, if any, in the manner
14 provided in section 712A-8;

15 (b) Any owner or interest-holder, other than a party or a
16 defendant in the underlying in personam action,
17 asserting an interest in property that has been
18 ordered forfeited pursuant to such action, within
19 thirty days after initial notice of pending forfeiture
20 or after notice under paragraph (a) of this
21 subsection, whichever is earlier, may file a claim as



1 described in section 712A-12(5), in the court for a
2 hearing to adjudicate the validity of the person's
3 claimed interest in the property;

4 (c) The hearing on the claim, to the extent practicable
5 and consistent with the interest of justice, shall be
6 held within sixty days after the order of forfeiture.
7 The court may consolidate the hearing on the claim
8 with a hearing on any other claim filed by a person
9 other than a party or defendant in the underlying
10 action and concerning the same property;

11 (d) The hearing shall be conducted in the manner provided
12 for in rem judicial forfeiture actions including the
13 provisions of section 712A-12(7) and (8). In addition
14 to testimony and evidence presented at the hearing,
15 the court shall consider the relevant portions of the
16 record of the underlying civil or criminal action that
17 resulted in the order of forfeiture; and

18 (e) In accordance with its findings at the hearing, the
19 court may amend the order of forfeiture if it
20 determines that any claimant has ~~[established by a~~
21 ~~preponderance of the evidence that]~~ met the burden of



1 showing that the claimant has a legal interest in the
2 property, and the State has failed to prove beyond a
3 reasonable doubt that the claimant's interest is
4 ~~[property designated as not]~~ subject to forfeiture
5 ~~[by]~~ pursuant to section 712A-5."

6 SECTION 10. Section 712A-15, Hawaii Revised Statutes, is
7 amended by amending subsections (4) and (5) to read as follows:

8 "(4) Upon entry of judgment for a claimant or claimants in
9 any proceeding to forfeit property under this chapter ~~[such]~~,
10 the property or interest in property shall be immediately
11 returned or conveyed to the claimant or claimants designated by
12 the court. If it appears that there was reasonable cause for
13 the seizure for forfeiture or the filing of the complaint, the
14 court ~~[shall]~~ may cause a finding to be entered, and the
15 claimant is not, in such case, entitled to costs or damages.
16 Nor, in such case, is the person or seizing agency, or its
17 agents, who made the seizure, or the prosecuting attorney or the
18 attorney general liable to suit or judgment on account of ~~[such]~~
19 the seizure, suit, or prosecution.

20 (5) The court ~~[shall]~~ may order any claimant who fails to
21 establish that the claimant's entire interest is exempt from



1 forfeiture under section 712A-5 to pay the costs of any claimant
2 who establishes that the entire interest is exempt from
3 forfeiture under section 712A-5, and the State's costs and
4 expenses of the investigation and prosecution of the matter,
5 including reasonable attorney fees."

6 SECTION 11. Section 712A-16, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§712A-16 Disposition of property forfeited. (1) All
9 property forfeited to the State under this chapter shall be
10 transferred to the attorney general, who:

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

15 ~~(b)]~~ (a) May sell forfeited property to the public by
16 public sale; provided that for leasehold real
17 property:

18 (i) The attorney general shall first offer the holder
19 of the immediate reversionary interest the right
20 to acquire the leasehold interest and any
21 improvements built or paid for by the lessee for



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

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



1 leasehold interest and any improvements by public
2 sale[-]; and

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

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

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

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

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 this~~
20 ~~section, shall]~~, after payment of expenses of administration and
21 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 ~~(3) Property and money distributed to units of state and~~
12 ~~local government shall be used for law enforcement purposes,]~~
13 transferred to the general fund for public education purposes
14 consistent with article X, section 1, of the state constitution,
15 and shall complement but not supplant the funds regularly
16 appropriated for [~~such~~] these purposes.

17 ~~[(4)]~~ (3) There is established in the department of the
18 attorney general a revolving fund to be known as the criminal
19 forfeiture fund, hereinafter referred to as the "fund" in which
20 shall be deposited [~~one half of the proceeds of a forfeiture and~~
21 ~~any penalties paid pursuant to section 712A-10(6).]~~ a portion of



1 the proceeds of each sale made pursuant to this section that is
2 sufficient to cover expenses of administration and sale. All
3 moneys in the fund shall be expended by the attorney general and
4 are appropriated for [~~the following purposes:~~

- 5 (a) ~~The~~ 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~~] the property and [~~such~~] the
11 contract services and payments to reimburse any
12 federal, state, or county agency for any expenditures
13 made to perform 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;~~



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; and~~

4 ~~(f) The payment of expenses arising in connection with the~~
5 ~~law enforcement officer independent review board in~~
6 ~~the department of the attorney general].~~

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

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

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



1 (b) The total number of [~~administrative and judicial~~
2 forfeiture actions filed by prosecuting attorneys and
3 the disposition thereof;

4 [~~(c)~~] ~~The total number of claims or petitions for remission~~
5 ~~or mitigation filed in administrative actions and the~~
6 ~~dispositions thereof;~~

7 ~~(d)~~] (c) The total amount and type of property forfeited
8 and the sale proceeds thereof;

9 ~~(e)~~] (d) The total amount and type of property
10 distributed to units of state and local government;

11 ~~(f)~~] (e) The amount of money deposited into the criminal
12 forfeiture fund; and

13 ~~(g)~~] (f) The amount of money expended by the attorney
14 general from the criminal forfeiture fund under
15 subsection (5) and the reason for the expenditures."

16 SECTION 12. Section 712A-10, Hawaii Revised Statutes, is
17 repealed.

18 [~~"§712A-10 Administrative forfeiture. The prosecuting~~
19 ~~attorney may initiate administrative forfeiture of property~~
20 ~~other than real property, the estimated value of which is less~~
21 ~~than \$100,000, or of any vehicle or conveyance, regardless of~~



1 value. ~~Administrative forfeiture shall be processed in the~~
2 ~~following manner:~~

3 ~~(1) The prosecuting attorney shall file a petition with~~
4 ~~the attorney general, pursuant to rules adopted by the~~
5 ~~attorney general.~~

6 ~~(2) The prosecuting attorney shall give notice of pending~~
7 ~~forfeiture by making reasonable efforts to serve a~~
8 ~~copy of the petition in a manner provided in section~~
9 ~~712A-8(a) or 712A-8(b) on all persons known to have an~~
10 ~~interest in the property, together with instructions~~
11 ~~for filing a claim and cost or in pauperis bond, or a~~
12 ~~petition for remission or mitigation.~~

13 ~~(3) The attorney general shall give notice of intention to~~
14 ~~forfeit the property administratively by publication~~
15 ~~in the manner provided in section 712A-8(c). Notice~~
16 ~~by publication shall include:~~

17 ~~(a) A description of the property;~~

18 ~~(b) The estimated value of the property;~~

19 ~~(c) The date and place of the seizure;~~

20 ~~(d) The offense for which the property is subject to~~
21 ~~forfeiture;~~



1 ~~(e) Instructions for filing a claim and cost or in~~
2 ~~pauperis bond, or a petition for remission or~~
3 ~~mitigation; and~~
4 ~~(f) Notice that the property will be forfeited to the~~
5 ~~State if a claim and cost or in pauperis bond or~~
6 ~~petition for remission or mitigation is not filed~~
7 ~~in substantial compliance with this section.~~
8 ~~(4) Persons claiming an interest in the property may file~~
9 ~~either a petition for remission or mitigation of~~
10 ~~forfeiture, or a claim and cost or in pauperis bond,~~
11 ~~but not both, with the attorney general, within thirty~~
12 ~~days of notice by publication or receipt of written~~
13 ~~notice, whichever is earlier. Notwithstanding section~~
14 ~~1-29, the thirty day time period prescribed herein is~~
15 ~~computed by excluding the first day and including the~~
16 ~~last day, unless the last day is a Saturday, Sunday,~~
17 ~~or holiday and then it is also excluded, and the~~
18 ~~thirty day time period runs until the end of the next~~
19 ~~day which is not a Saturday, Sunday, or a holiday.~~
20 ~~"Holiday" includes any day designated as a holiday~~
21 ~~pursuant to section 8-1.~~



1 ~~(5) Any person claiming seized property may seek remission~~
2 ~~or mitigation of the forfeiture by timely filing a~~
3 ~~petition with the attorney general. A petition for~~
4 ~~remission or mitigation shall not be used to challenge~~
5 ~~the sufficiency of the evidence to support the~~
6 ~~forfeiture or the actions of any government official~~
7 ~~but shall presume a valid forfeiture and ask the~~
8 ~~attorney general to invoke the executive power to~~
9 ~~pardon the property, in whole or in part. The~~
10 ~~petition shall be signed by the petitioner and sworn~~
11 ~~on oath before a notary public and shall contain the~~
12 ~~following:~~

13 ~~(a) A reasonably complete description of the~~
14 ~~property;~~

15 ~~(b) A statement of the interest of the petitioner in~~
16 ~~the property, as owner or interest holder which~~
17 ~~may be supported by bills of sale, contracts, or~~
18 ~~mortgages, or other documentary evidence; and~~

19 ~~(c) Facts and circumstances sufficient to show~~
20 ~~whether the petitioner:~~



- 1 ~~(i) Owns or holds an interest in the seized~~
- 2 ~~property as defined by section 712A-1;~~
- 3 ~~(ii) Had any knowledge that the property was or~~
- 4 ~~would be involved in any violation of the~~
- 5 ~~law;~~
- 6 ~~(iii) Had any knowledge of the particular~~
- 7 ~~violation which subjected the property to~~
- 8 ~~seizure and forfeiture;~~
- 9 ~~(iv) Had any knowledge that the user of the~~
- 10 ~~property had any record, including arrests,~~
- 11 ~~except when the person was acquitted or the~~
- 12 ~~charges dismissed due to lack of evidence,~~
- 13 ~~for the violation which subjected the~~
- 14 ~~property to seizure and forfeiture or for~~
- 15 ~~any crime which is similar in nature.~~

- 16 ~~Any subsequent pleadings or written communications~~
- 17 ~~alleging matters pertaining to [subparagraph] (b) or~~
- 18 ~~(c) of this [paragraph] must also be signed by the~~
- 19 ~~petitioner and sworn on oath before a notary public.~~

- 20 ~~(6) If the attorney general, with sole discretion,~~
- 21 ~~determines that remission is not warranted, the~~



1 ~~attorney general may discretionarily mitigate the~~
2 ~~forfeiture where the petitioner has not met the~~
3 ~~minimum requirements for remission but where there are~~
4 ~~present other extenuating circumstances indicating~~
5 ~~that some relief should be granted to avoid extreme~~
6 ~~hardship. Mitigation may also be granted where the~~
7 ~~minimum requirements for remission have been met but~~
8 ~~the overall circumstances are such that the attorney~~
9 ~~general determines that complete relief is not~~
10 ~~warranted. Mitigation shall take the form of a money~~
11 ~~penalty imposed upon the petitioner which shall be~~
12 ~~deposited into the criminal forfeiture fund~~
13 ~~established under section 712A 16. Extenuating~~
14 ~~circumstances include:~~

- 15 ~~(a) Language or culture barrier;~~
16 ~~(b) Humanitarian factors such as youth or extreme~~
17 ~~age;~~
18 ~~(c) Presence of physical or mental disease, disorder,~~
19 ~~or defect;~~
20 ~~(d) Limited or peripheral criminal culpability;~~



- 1 ~~(e) Cooperation with the seizing agency or the~~
- 2 ~~prosecuting attorney; and~~
- 3 ~~(f) Any contributory error on the part of government~~
- 4 ~~officials.~~
- 5 ~~(7) It shall be the duty of the attorney general to~~
- 6 ~~inquire into the facts and circumstances alleged in a~~
- 7 ~~petition for remission or mitigation of forfeiture.~~
- 8 ~~However, no petitioner is entitled to a hearing on the~~
- 9 ~~petition for remission or mitigation. Hearings, if~~
- 10 ~~any, shall be held at the discretion of the attorney~~
- 11 ~~general.~~
- 12 ~~(8) The attorney general shall provide the seizing agency~~
- 13 ~~and the petitioner a written decision on each petition~~
- 14 ~~for remission or mitigation within sixty days of~~
- 15 ~~receipt of the petition unless the circumstances of~~
- 16 ~~the case require additional time, in which case the~~
- 17 ~~attorney general shall notify the petitioner in~~
- 18 ~~writing and with specificity within the sixty day~~
- 19 ~~period that the circumstances of the case require~~
- 20 ~~additional time and further notify the petitioner of~~
- 21 ~~the expected decision date.~~



1 ~~(9) Any person claiming seized property may seek judicial~~
2 ~~review of the seizure and proposed forfeiture by~~
3 ~~timely filing with the attorney general a claim and~~
4 ~~bond to the State in the amount of ten per cent of the~~
5 ~~estimated value of the property or in the sum of~~
6 ~~\$2,500, whichever is greater, with sureties to be~~
7 ~~approved by the attorney general, upon condition that~~
8 ~~if the claimant fails to prove that claimant's~~
9 ~~interest is exempt from forfeiture under section 712A-~~
10 ~~5, the claimant shall pay the State's costs and~~
11 ~~expenses, including reasonable attorneys fees incurred~~
12 ~~in connection with a judicial proceeding. In lieu of~~
13 ~~a cost bond, a claimant may file an in pauperis bond~~
14 ~~sworn on oath before a notary public. An in pauperis~~
15 ~~bond shall be in the form set out in the appendix to~~
16 ~~the rules of penal procedure. The claim shall be~~
17 ~~signed by the claimant and sworn on oath before a~~
18 ~~notary public and shall comply with the requirements~~
19 ~~of section 712A 12(5). Upon receipt of the claim and~~
20 ~~bond, the attorney general shall notify the~~
21 ~~prosecuting attorney who may discretionarily continue~~



1 ~~to seek forfeiture by petitioning the circuit court~~
2 ~~for forfeiture of the property within forty five days~~
3 ~~of receipt of notice that a proper claim and bond has~~
4 ~~been filed. The prosecuting attorney may also elect~~
5 ~~to honor the claim in which case the prosecuting~~
6 ~~attorney shall notify the seizing agency and authorize~~
7 ~~the release of the seizure for forfeiture on the~~
8 ~~property or on any specified interest in it.~~

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



1 ~~interest in the property is subject to forfeiture. On~~
2 ~~such a showing by the State, the claimant has the~~
3 ~~burden of showing by a preponderance of the evidence~~
4 ~~that the claimant's interest in the property is not~~
5 ~~subject to forfeiture.~~

6 ~~(11) In the event a claim and bond has not been filed in~~
7 ~~substantial compliance with this section, or if the~~
8 ~~attorney general, with sole discretion, determines~~
9 ~~that remission or mitigation is not warranted, the~~
10 ~~attorney general shall order forfeited all property~~
11 ~~seized for forfeiture. In the event the attorney~~
12 ~~general, with sole discretion, determines that~~
13 ~~remission or mitigation is warranted, the attorney~~
14 ~~general shall notify the seizing agency and the~~
15 ~~prosecuting attorney and order the release of the~~
16 ~~seizure for forfeiture on the property or on any~~
17 ~~specified interest in it. There shall be no appeal~~
18 ~~from the attorney general's decision or order of~~
19 ~~forfeiture or remission or mitigation.~~

20 ~~(12) Administrative proceedings and the adoption of rules~~
21 ~~under this section are exempt from the requirements of~~



1 ~~chapter 91, the Hawaii administrative procedure act,~~
2 ~~and are adjudicatory functions for the purposes of~~
3 ~~applicable sections of the Hawaii Revised Statutes."]~~

4 SECTION 13. This Act does not affect rights and duties
5 that matured, penalties that were incurred, and proceedings that
6 were begun before its effective date.

7 SECTION 14. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 15. This Act shall take effect on December 31,
10 2021; provided that the amendments made to section 712A-16,
11 Hawaii Revised Statutes, by section 11 of this Act shall not be
12 repealed when that section is reenacted on June 30, 2022,
13 pursuant to section 7(3) of Act 161, Session Laws of Hawaii
14 2016.

15

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line.

S.B. NO. 149

Report Title:

Attorney General; Penal Code; Forfeiture; Civil Assets

Description:

Restricts asset forfeiture to cases involving the commission of a covered criminal misdemeanor or felony offense. Requires seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal misdemeanor or felony offense. Changes the standard of proof that the State must meet in order for property to be forfeited from "preponderance of the evidence" to "beyond a reasonable doubt". Requires the State to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property. Requires that the agency seizing the property pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property. Directs any proceeds from a civil forfeiture to the general revenue fund for public education purposes. Repeals administrative forfeiture proceedings.

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

