

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1           SECTION 1. The legislature finds that civil asset  
2 forfeiture laws are controversial and have been evolving  
3 throughout the country over the thirty years since Hawai'i passed  
4 the Omnibus Criminal Forfeiture Act, codified as chapter 712A,  
5 Hawaii Revised Statutes, that covers civil asset forfeiture.  
6 Hawai'i's process allows law enforcement agencies to seize and  
7 keep property based on suspicion that the property is connected  
8 to criminal activity. Property, such as vehicles, houses, cash,  
9 and jewelry, can be taken without the property owner having been  
10 convicted of a crime or even being formally accused of one.  
11 According to a 2018 state auditor's report, property in Hawai'i  
12 was forfeited without a corresponding criminal charge in  
13 twenty-six per cent of the asset forfeiture cases that were  
14 closed during fiscal year 2015.

15           The legislature further finds that the auditor's report  
16 found a lack of accountability by the department of the attorney  
17 general over the storage, preservation, and disposal of



1 forfeited property. The report also documented the three-decade  
2 lack of enactment of administrative rules that would provide  
3 internal guidance to the county law enforcement agencies and the  
4 general public. The legislature notes that in late 2019, the  
5 department of the attorney general promulgated rules.

6 Additionally, the legislature finds that there is great  
7 incentive for state and county law enforcement agencies to seize  
8 property for forfeiture, as these agencies are permitted to  
9 retain proceeds from the sale of the property. Under state law,  
10 one hundred per cent of the proceeds are divided among the state  
11 and county law enforcement agencies that were involved in the  
12 seizure and forfeiture.

13 The legislature notes that the Institute for Justice, a  
14 nonprofit civil liberties law firm, recommends abolishing civil  
15 forfeiture entirely, as at least three states - Nebraska, New  
16 Mexico, and North Carolina - have done. Fifteen states now  
17 require a criminal conviction for most or all forfeiture cases.  
18 Additionally, the legislature takes note of the Institute of  
19 Justice's "D-" rating of Hawai'i's civil forfeiture laws and the  
20 characterization that the State's laws "are among the nation's  
21 worst".



1           Furthermore, the Institute for Justice recommends other  
2 reforms to make the forfeiture process fairer, beginning with  
3 eliminating financial incentives for law enforcement to seize  
4 and keep forfeited property and, instead, directing any proceeds  
5 to the general revenue fund or other neutral fund. Eight  
6 jurisdictions now prohibit law enforcement from keeping the  
7 proceeds from forfeited property. A second reform is to adopt a  
8 high standard of proof, such as "beyond a reasonable doubt", in  
9 order to forfeit property in civil proceedings. Eighteen  
10 jurisdictions have a standard higher than Hawai'i's  
11 "preponderance of the evidence" standard, and for ten of those  
12 jurisdictions, it is equivalent to "beyond a reasonable doubt".  
13 The third suggested reform, which a number of jurisdictions have  
14 already made, involves requiring law enforcement to prove that  
15 owners consented to or possessed knowledge of the crime that led  
16 to the seizure of their property, restoring the presumption of  
17 innocence used in criminal proceedings. The legislature finds  
18 that none of these recommendations have been implemented in  
19 Hawai'i.

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



1 (1) Restricting civil asset forfeiture to cases involving  
2 the commission of a felony offense where the property  
3 owner has been convicted of an underlying felony  
4 offense; and

5 (2) Directing any forfeiture proceeds to the general fund.

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

8 "(2) Except that:

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

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

18 (i) The commission of any covered offense unless:

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



- 1            (B) The owner has been convicted of the covered  
2            offense by a verdict or plea, including a no  
3            contest plea or a deferred acceptance of  
4            guilty plea or no contest plea; or  
5            (ii) Any act or omission established by that owner to  
6            have been committed or omitted without the  
7            knowledge and consent of that owner;  
8            provided that nothing in this paragraph shall be  
9            construed to prevent the seizure of property prior to  
10           conviction pursuant to section 712A-6;  
11           (c) No conveyance used by any person as a common carrier  
12           in the transaction of a business as a common carrier  
13           is subject to forfeiture under this section unless it  
14           appears that the owner or other person in charge of  
15           the conveyance is a consenting party or privy to a  
16           violation of this chapter;  
17           (d) No conveyance is subject to forfeiture under this  
18           section by reason of any act or omission established  
19           by the owner thereof to have been committed or omitted  
20           without the owner's knowledge or consent; [~~and~~]



1 (e) A forfeiture of a conveyance encumbered by a bona fide  
2 security interest is subject to the interest of the  
3 secured party if the secured party neither had  
4 knowledge of nor consented to the act or omission[-];  
5 and

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

9 SECTION 3. Section 712A-16, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§712A-16 Disposition of property forfeited.** (1) All  
12 property forfeited to the State under this chapter shall be  
13 transferred to the attorney general, who:

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

18 ~~(b)]~~ (a) May sell forfeited property to the public by  
19 public sale; provided that for leasehold real  
20 property:



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



- 1           (ii) If the holder of the immediate reversionary  
2           interest fails to exercise the right of first  
3           refusal provided in subparagraph (i), the  
4           attorney general may proceed to sell the  
5           leasehold interest and any improvements by public  
6           sale ~~[ ]~~; and
- 7           (iii) Any dispute between the attorney general and the  
8           holder of the immediate reversionary interest as  
9           to the fair market value of the leasehold  
10          interest and improvements shall be settled by  
11          arbitration pursuant to chapter 658A;
- 12   ~~[(e)]~~   (b) May sell or destroy all raw materials, products,  
13           and equipment of any kind used or intended for use in  
14           manufacturing, compounding, or processing a controlled  
15           substance or any untaxed cigarettes in violation of  
16           chapter 245;
- 17   ~~[(d)]~~   (c) May compromise and pay valid claims against  
18           property forfeited pursuant to this chapter; or
- 19   ~~[(e)]~~   (d) May make any other disposition of forfeited  
20           property authorized by law.





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

6           ~~(a) One quarter shall be distributed to the unit or units~~  
7           ~~of state or local government [whose] officers or~~  
8           ~~employees conducted the investigation and caused the~~  
9           ~~arrest of the person whose property was forfeited or~~  
10           ~~seizure of the property for forfeiture;~~

11           ~~(b) One quarter shall be distributed to the prosecuting~~  
12           ~~attorney who instituted the action producing the~~  
13           ~~forfeiture; and~~

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

16           ~~(3) Property and money distributed to units of state and~~  
17 ~~local government shall be used for law enforcement purposes, and~~  
18 ~~shall complement but not supplant the funds regularly~~  
19 ~~appropriated for such purposes.] including reimbursement for any~~  
20 ~~costs incurred by the department of the attorney general related~~



1 to the seizure or storage of seized property, shall be deposited  
2 to the credit of the state general fund.

3 ~~[(4)]~~ (3) There is established in the department of the  
4 attorney general a revolving fund to be known as the criminal  
5 forfeiture fund, hereinafter referred to as the "fund" in which  
6 shall be deposited ~~[one-half of the proceeds of a forfeiture and~~  
7 ~~any penalties paid pursuant to section 712A-10(6).]~~ a portion of  
8 the proceeds of each sale made pursuant to this section that is  
9 sufficient to cover expenses of administration and sale. All  
10 moneys in the fund shall be expended by the attorney general and  
11 are appropriated for ~~[the following purposes:~~

12 ~~(a) The]~~ the payment of any expenses necessary to seize,  
13 detain, appraise, inventory, safeguard, maintain,  
14 advertise, or sell property seized, detained, or  
15 forfeited pursuant to this chapter or of any other  
16 necessary expenses incident to the seizure, detention,  
17 or forfeiture of ~~[such]~~ property and ~~[such]~~ contract  
18 services and payments to reimburse any federal, state,  
19 or county agency for any expenditures made to perform  
20 the foregoing functions[~~+~~



- 1       ~~(b) The payment of awards for information or assistance~~  
2           ~~leading to a civil or criminal proceeding;~~
- 3       ~~(c) The payment of supplemental sums to state and county~~  
4           ~~agencies for law enforcement purposes;~~
- 5       ~~(d) The payment of expenses arising in connection with~~  
6           ~~programs for training and education of law enforcement~~  
7           ~~officers;~~
- 8       ~~(e) The payment of expenses arising in connection with~~  
9           ~~enforcement pursuant to the drug nuisance abatement~~  
10          ~~unit in the department of the attorney general; and~~
- 11       ~~(f) The payment of expenses arising in connection with the~~  
12          ~~law enforcement officer independent review board in~~  
13          ~~the department of the attorney general].~~

14           ~~[(5)]~~ (4) The attorney general ~~[may, without regard to the~~  
15 ~~requirements of chapter 91, promulgate]~~ shall adopt rules ~~[and~~  
16 ~~regulations]~~ necessary to carry out the purpose of this chapter,  
17 including rules concerning the disposition of property, the use  
18 of the fund, and compromising and paying valid claims against  
19 property forfeited ~~[pursuant to this chapter].~~

20           ~~[(6)]~~ (5) Not less than ~~[twenty]~~ forty days prior to the  
21 convening of each regular session, the attorney general shall



1 provide to the legislature a report on the use of the Hawaii  
2 omnibus criminal forfeiture act during the fiscal year preceding  
3 the legislative session. The report shall include:

- 4 (a) The total amount and type of property seized by law  
5 enforcement agencies;
- 6 (b) The total number of administrative and judicial  
7 actions filed by prosecuting attorneys and the  
8 disposition thereof;
- 9 (c) The total number of claims or petitions for remission  
10 or mitigation filed in administrative actions and the  
11 dispositions thereof;
- 12 (d) The total amount and type of property forfeited and  
13 the sale proceeds thereof;
- 14 (e) The total amount and type of property distributed to  
15 units of state and local government;
- 16 (f) The amount of money deposited into the criminal  
17 forfeiture fund; and
- 18 (g) The amount of money expended by the attorney general  
19 from the criminal forfeiture fund under subsection  
20 [~~5~~] (4) and the reason for the expenditures."



S.B. NO. 294

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

6 SECTION 6. This Act shall take effect upon its approval;  
7 provided that the amendments made to section 712A-16, Hawaii  
8 Revised Statutes, by section 3 of this Act shall not be repealed  
9 when section 712A-16, Hawaii Revised Statutes, is reenacted on  
10 June 30, 2022, by section 7 of Act 161, Session Laws of Hawaii  
11 2016.

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INTRODUCED BY: \_\_\_\_\_

*Karl Rhoad*



# S.B. NO. 294

**Report Title:**

Property Forfeiture; Disposition

**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 any forfeiture proceeds to the general fund.

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

