

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO FORFEITURE.

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

1       SECTION 1. Section 712A-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (2) to read as follows:

3       "(2) Except that:

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

8       **(b) No property shall be forfeited under this chapter**  
9       **unless the owner or interest-holder of the property**  
10       **has been convicted of a covered offense or indicted**  
11       **for a covered offense and there is a significant risk**  
12       **that the property will be destroyed or otherwise made**  
13       **unavailable, and the State has met the rebuttable**  
14       **presumption established in section 712A-11(3);**

15       ~~[(b)]~~ **(c)** No property shall be forfeited under this  
16       chapter to the extent of an interest of an owner, by  
17       reason of any act or omission established by that



1 owner to have been committed or omitted without the  
2 knowledge and consent of that owner;

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

9 [~~(d)~~] (e) No conveyance is subject to forfeiture under  
10 this section by reason of any act or omission  
11 established by the owner thereof to have been  
12 committed or omitted without the owner's knowledge or  
13 consent; and

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

18 SECTION 2. Section 712A-10, Hawaii Revised Statutes, is  
19 amended by amending subsection (10) to read as follows:

20 "(10) If a judicial forfeiture proceeding is instituted  
21 subsequent to notice of administrative forfeiture pursuant to



1 paragraph (9), no duplicate or repetitive notice shall be  
2 required. The judicial proceeding, if any, shall adjudicate all  
3 timely filed claims. At the judicial proceeding, the claimant  
4 may testify, present evidence and witnesses on the claimant's  
5 behalf, and cross-examine witnesses who appear at the hearing.  
6 The State may present evidence and witnesses in rebuttal and in  
7 defense of its claim to the property and cross-examine witnesses  
8 who appear at the hearing. The State has the initial burden of  
9 showing by ~~[a preponderance of the]~~ clear and convincing  
10 evidence that the claimant's interest in the property is subject  
11 to forfeiture. On such a showing by the State, the claimant has  
12 the burden of showing by a preponderance of the evidence that  
13 the claimant's interest in the property is not subject to  
14 forfeiture."

15 SECTION 3. Section 712A-11, Hawaii Revised Statutes, is  
16 amended by amending subsections (1), (2), and (3) to read as  
17 follows:

18 "(1) In any judicial or administrative proceeding pursuant  
19 to this chapter, the court, on application of the State, may  
20 enter any restraining order or injunction, require the execution  
21 of satisfactory performance bonds, create receiverships, appoint



1 conservators, appraisers, accountants or trustees, or take any  
2 other action to seize, secure, maintain, or preserve the  
3 availability of property subject to forfeiture under this  
4 chapter, including a warrant for its seizure, whether before or  
5 after the filing of a petition for forfeiture[, ~~complaint,~~] or  
6 after an indictment.

7 (2) If property is seized for forfeiture without a seizure  
8 warrant, a prior judicial order of forfeiture, or a hearing  
9 pursuant to section 712A-13, a court, on an application filed by  
10 an owner or interest-holder within fifteen days after notice of  
11 its seizure for forfeiture or actual knowledge of it, whichever  
12 is earlier, and complying with the requirements for claims in  
13 section 712A-12, may issue an order to show cause to the seizing  
14 agency, with thirty days' notice to the prosecuting attorney,  
15 for a hearing on the issue of whether [~~probable cause~~] clear and  
16 convincing evidence exists for the forfeiture of the applicant's  
17 interest [~~then exists,~~]; provided that[~~7~~] the order to show  
18 cause shall be set aside upon the filing of a petition for  
19 either administrative or judicial forfeiture prior to the  
20 hearing, in which event forfeiture proceedings shall be in  
21 accordance with this chapter.



1           (3) There shall be a rebuttable presumption that any  
2 property of a person is subject to forfeiture under this chapter  
3 if the State establishes, by the standard of proof applicable to  
4 that proceeding, all of the following:

5           (a) That the person has [~~engaged in criminal conduct~~] been  
6 convicted of a covered offense for which property is  
7 subject to forfeiture[+] or indicted for a covered  
8 offense and there is a significant risk that the  
9 property will be destroyed or otherwise made  
10 unavailable, pursuant to section 712A-5(2)(b);

11           (b) That the property was acquired by the person during  
12 the period of the criminal conduct or within a  
13 reasonable time after that period; and

14           (c) That there was no likely source for the property other  
15 than the criminal conduct giving rise to forfeiture."

16           SECTION 4. Section 712A-12, Hawaii Revised Statutes, is  
17 amended by amending subsection (8) to read as follows:

18           "(8) The State has the initial burden of showing by [a  
19 ~~preponderance of the~~] clear and convincing evidence that the  
20 claimant's interest in the property is subject to forfeiture.

21 On such a showing by the State, the claimant has the burden of



1 showing by a preponderance of the evidence that the claimant's  
2 interest in the property is not subject to forfeiture."

3 SECTION 5. Section 712A-13, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

5 "(1) If a forfeiture is authorized by law, it shall be  
6 ordered by a court on a petition for forfeiture filed by the  
7 prosecuting attorney in an in personam civil or criminal action.  
8 In any civil in personam action brought under this section, the  
9 owner or interest-holder may testify, present evidence and  
10 witnesses on the owner or interest-holder's behalf, and cross-  
11 examine witnesses who appear at the hearing. The State may  
12 present evidence and witnesses in rebuttal and in defense of its  
13 claim to the property and cross-examine witnesses who appear at  
14 the hearing. The State has the initial burden of showing by [a  
15 ~~preponderance of the~~ clear and convincing evidence that the  
16 owner or interest-holder's interest in the property is subject  
17 to forfeiture. On such a showing by the State, the owner or  
18 interest-holder has the burden of showing by a preponderance of  
19 the evidence that the owner or interest-holder's interest in the  
20 property is not subject to forfeiture."



# S.B. NO. 2262

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 upon its approval.

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# S.B. NO. 2262

**Report Title:**

Law Enforcement; Property Subject to Forfeiture; Burden of Proof

**Description:**

Specifies that no property shall be forfeited unless the owner or interest-holder of the property has been convicted of a covered offense or indicted for a covered offense and there is a significant risk that the property will be destroyed or otherwise made unavailable, and the State has met its rebuttable presumption for forfeiture. Requires the State to show by clear and convincing evidence that a claimant's interest in the property is subject to forfeiture.

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