

JAN 19 2022

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# A BILL FOR AN ACT

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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 Hawaii passed  
4 the Hawaii omnibus criminal forfeiture act, codified as  
5 chapter 712A, Hawaii Revised Statutes, that covers 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, and the burden of proof is shifted from the  
12 State to the property owner.

13       Additionally, the legislature finds that there is a  
14 potential incentive to improperly seize property for forfeiture,  
15 as state and county law enforcement agencies are permitted to  
16 retain all proceeds from the sale of the forfeited  
17 property. According to the Institute for Justice, a nonprofit



1 civil liberties law firm, between 2001 and 2018, Hawaii  
2 generated at least \$20,000,000 in forfeiture revenue under state  
3 law and an additional \$29,000,000 under the federal equitable  
4 sharing program where state or local law enforcement agencies  
5 partner with federal agencies and share in the proceeds. The  
6 estimated value of property seized by Hawaii law enforcement  
7 agencies was \$1,050,463 in fiscal year 2018-2019 and \$963,055 in  
8 fiscal year 2019-2020.

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

17 Furthermore, the Institute for Justice recommends other  
18 reforms to make the forfeiture process fairer, beginning with  
19 eliminating potential financial incentives to seize and keep  
20 forfeited property and instead changing the law to direct any  
21 proceeds to the general revenue fund or other neutral



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

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

- 18 (1) Restricting civil asset forfeiture to cases involving  
19 the commission of a felony offense where the property  
20 owner has been convicted of an underlying felony  
21 offense;



- 1           (2) Directing any forfeiture proceeds to the general fund;
- 2           (3) Amending the allowable expenses for moneys in the
- 3                 criminal forfeiture fund;
- 4           (4) Requiring the attorney general to adopt rules
- 5                 necessary to carry out the purpose of the Hawaii
- 6                 omnibus criminal forfeiture act; and
- 7           (5) Amending the deadline for the attorney general to
- 8                 report to the legislature on the use of the Hawaii
- 9                 omnibus criminal forfeiture act.

10           SECTION 2. Chapter 712A, Hawaii Revised Statutes, is

11 amended by adding two new sections to be appropriately

12 designated and to read as follows:

13           "§712A-     Equitable sharing program; restrictions.

14 Notwithstanding the provisions of section 712A-7, a seizing

15 agency or prosecuting attorney shall not enter into an agreement

16 to transfer or refer property seized under section 712A-6,

17 unless the seized property includes United States currency in

18 excess of \$100,000, to a federal agency directly, indirectly,

19 through adoption, through an intergovernmental joint task force

20 or by other means that circumvent the provisions of this

21 section.



1        §712A-        Records of forfeited property.        (1) Each seizing  
2 agency and prosecuting attorney shall maintain records showing:

3        (a)        The authority under which the forfeited property was  
4        forfeited;

5        (b)        The date on which each item of forfeited property was  
6        forfeited;

7        (c)        The department or agency that has possession of the  
8        forfeited property;

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

10       (e)        The estimated value of each item of forfeited  
11       property.

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

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

18       **"§712A-5 Property subject to forfeiture; exemption.        (1)**  
19 The following is subject to forfeiture:

20       (a)        Property described in a statute authorizing  
21       forfeiture;



1 (b) Property used or intended for use in the commission  
2 of, attempt to commit, or conspiracy to commit a  
3 covered offense, or ~~[which]~~ that facilitated or  
4 assisted such activity;

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

12 (d) Contraband or untaxed cigarettes in violation of  
13 chapter 245, which shall be seized and summarily  
14 forfeited to the State without regard to the  
15 procedures set forth in this chapter;

16 (e) Any proceeds or other property acquired, maintained,  
17 or produced by means of or as a result of the  
18 commission of the covered offense;

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



1 (g) Any interest in, security of, claim against, or  
2 property or contractual right of any kind affording a  
3 source of influence over any enterprise  
4 [which] that has been established, participated in,  
5 operated, controlled, or conducted in order to commit  
6 a covered offense; and

7 (h) All books, records, bank statements, accounting  
8 records, microfilms, tapes, computer data, or other  
9 data [which] that are used, intended for use, or  
10 [which] that facilitated or assisted in the commission  
11 of a covered offense, or [which] that document the use  
12 of the proceeds of a covered offense.

13 (2) ~~[Except that:]~~ The following is not subject to  
14 forfeiture; provided that nothing in this paragraph shall be  
15 construed to prevent the seizure of property before conviction  
16 pursuant to section 712A-6:

17 ~~[(a) Real property, or an interest therein, may be~~  
18 ~~forfeited under the provisions of this chapter only in~~  
19 ~~eases in which the covered offense is chargeable as a~~  
20 ~~felony offense under state law;~~



1     ~~(b)]~~     (a) No property shall be forfeited under this chapter  
2             ~~[to the extent of an interest of an owner,]~~ by reason  
3             ~~of [any act or omission established by that owner to~~  
4             ~~have been committed or omitted without the knowledge~~  
5             ~~and consent of that owner,]~~ the commission of any  
6             covered offense unless:

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

9             (ii) The owner has been convicted of the covered  
10                offense by a verdict or plea, including a no  
11                contest plea or a deferred acceptance of guilty  
12                plea or no contest plea;

13     (b) No property shall be forfeited under this chapter by  
14         reason of any act or omission established by the owner  
15         to have been committed or omitted without the  
16         knowledge and consent of the owner;

17     (c) No conveyance used by any person as a common carrier  
18         in the transaction of a business as a common carrier  
19         is subject to forfeiture under this section unless it  
20         appears that the owner or other person in charge of





1 the conveyance is a consenting party or privy to a  
2 violation of this chapter;

3 (d) No conveyance is subject to forfeiture under this  
4 section by reason of any act or omission established  
5 by the owner thereof to have been committed or omitted  
6 without the owner's knowledge or consent; and

7 (e) A forfeiture of a conveyance encumbered by a bona fide  
8 security interest is subject to the interest of the  
9 secured party if the secured party neither had  
10 knowledge of nor consented to the act or omission.

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

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

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

18 "§712A-16 Disposition of property forfeited. (1) All  
19 property forfeited to the State under this chapter shall be  
20 transferred to the attorney general, who:



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

5       ~~(b)]~~    (a)   May sell forfeited property to the public by  
6       public sale; provided that for leasehold real  
7       property:

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



1            reversionary interest shall have thirty days  
2            after acceptance to tender to the attorney  
3            general the purchase price for the leasehold  
4            interest and any improvements, upon which tender  
5            the leasehold interest and improvements shall be  
6            conveyed to the holder of the immediate  
7            reversionary interest~~[-]~~;

8            (ii) If the holder of the immediate reversionary  
9            interest fails to exercise the right of first  
10           refusal provided in subparagraph (i), the  
11           attorney general may proceed to sell the  
12           leasehold interest and any improvements by public  
13           sale~~[-]~~; and

14           (iii) Any dispute between the attorney general and the  
15           holder of the immediate reversionary interest as  
16           to the fair market value of the leasehold  
17           interest and improvements shall be settled by  
18           arbitration pursuant to chapter 658A;

19        ~~[(e)]~~    (b)    May sell or destroy all raw materials, products,  
20           and equipment of any kind used or intended for use in  
21           manufacturing, compounding, or processing a controlled



1 substance or any untaxed cigarettes in violation of  
2 chapter 245;

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

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

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

12 ~~(a) One quarter shall be distributed to the unit or units~~  
13 ~~of state or local government [whose] officers or~~  
14 ~~employees conducted the investigation and caused the~~  
15 ~~arrest of the person whose property was forfeited or~~  
16 ~~seizure of the property for forfeiture;~~

17 ~~(b) One quarter shall be distributed to the prosecuting~~  
18 ~~attorney who instituted the action producing the~~  
19 ~~forfeiture; and~~

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



1       ~~(3) Property and money distributed to units of state and~~  
2       ~~local government shall be used for law enforcement purposes, and~~  
3       ~~shall complement but not supplant the funds regularly~~  
4       ~~appropriated for such purposes.]~~ including reimbursement for any  
5       costs incurred by the department of the attorney general related  
6       to the seizure or storage of seized property, shall be deposited  
7       to the credit of the state general fund.

8       ~~[(4)]~~ (3) There is established in the department of the  
9       attorney general a special fund to be known as the criminal  
10      forfeiture fund, hereinafter referred to as the "fund", ~~[in]~~  
11      into which shall be deposited ~~[one-half of the proceeds of a~~  
12      ~~forfeiture and any penalties paid pursuant to section 712A-~~  
13      ~~10(6)-.]~~ a portion of the proceeds of each sale made pursuant to  
14      this section that is sufficient to cover expenses of  
15      administration and sale. All moneys in the fund shall be  
16      expended by the attorney general and are appropriated for the  
17      ~~[following purposes:]~~

18      ~~(a) The~~ payment of any expenses necessary to seize,  
19                      detain, appraise, inventory, safeguard, maintain,  
20                      advertise, or sell property seized, detained, or  
21                      forfeited pursuant to this chapter or of any other



1 necessary expenses incident to the seizure, detention,  
2 or forfeiture of [such] property and [such] contract  
3 services and payments to reimburse any federal, state,  
4 or county agency for any expenditures made to perform  
5 the foregoing functions[+].

6 ~~[(b) The payment of awards for information or assistance~~  
7 ~~leading to a civil or criminal proceeding,~~

8 ~~(c) The payment of supplemental sums to state and county~~  
9 ~~agencies for law enforcement purposes,~~

10 ~~(d) The payment of expenses arising in connection with~~  
11 ~~programs for training and education of law enforcement~~  
12 ~~officers,~~

13 ~~(e) The payment of expenses arising in connection with~~  
14 ~~enforcement pursuant to the drug nuisance abatement~~  
15 ~~unit in the department of the attorney general; and~~

16 ~~(f) The payment of expenses arising in connection with the~~  
17 ~~law enforcement officer independent review board in~~  
18 ~~the department of the attorney general.~~

19 ~~(5)]~~ (4) The attorney general ~~[may, without regard to the~~  
20 ~~requirements of chapter 91, promulgate]~~ shall adopt rules ~~[and~~  
21 ~~regulations]~~ necessary to carry out the purpose of this chapter,



1 including rules concerning the disposition of property, the use  
2 of the fund, and compromising and paying valid claims against  
3 property forfeited [~~pursuant to this chapter~~].

4 [~~(6)~~] (5) [~~Not~~] No less than [~~twenty~~] forty days [~~prior~~  
5 ~~to~~] before the convening of each regular session, the attorney  
6 general shall provide to the legislature a report on the use of  
7 the Hawaii omnibus criminal forfeiture act during the fiscal  
8 year preceding the legislative session. The report shall  
9 include:

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

12 (b) The total number of administrative and judicial  
13 actions filed by prosecuting attorneys and the  
14 disposition thereof[+] for each action;

15 (c) The total number of claims or petitions for remission  
16 or mitigation filed in administrative actions and the  
17 dispositions thereof[+] for each action;

18 (d) The total amount and type of property forfeited and  
19 the sale proceeds thereof;

20 (e) The total amount and type of property distributed to  
21 units of state and local government;



1       (f)     The amount of money deposited into the ~~[criminal~~  
2             ~~forfeiture]~~ fund; ~~[and]~~

3       (g)     The amount of money deposited into the general fund;  
4             and

5       ~~[(g)]~~   (h)   The amount of money expended by the attorney  
6             general from the criminal forfeiture fund under  
7             subsection ~~[(5)]~~ (4) and the reason for the  
8             expenditures."

9       SECTION 5.   Section 712A-19, Hawaii Revised Statutes, is  
10       repealed.

11       ~~["[§712A-19] Construction. It is the intent of the~~  
12       ~~legislature that this chapter be liberally construed so as to~~  
13       ~~effect the purposes of this chapter."]~~

14       SECTION 6.   This Act does not affect rights and duties that  
15       matured, penalties that were incurred, and proceedings that were  
16       begun before its effective date.

17       SECTION 7.   Statutory material to be repealed is bracketed  
18       and stricken.   New statutory material is underscored.

19       SECTION 8.   This Act shall take effect on July 1, 2022;  
20       provided that the amendments made to section 712A-16, Hawaii  
21       Revised Statutes, by section 4 of this Act shall not be repealed





# S.B. NO. 2004

1 when section 712A-16, Hawaii Revised Statutes, is reenacted on  
2 June 30, 2022, by section 7 of Act 161, Session Laws of Hawaii  
3 2016.

4

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

*Kal Rhoads*



# S.B. NO. 2004

**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.*

