

JAN 20 2023

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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 Hawai'i's civil asset  
2 forfeiture process allows law enforcement agencies to seize and  
3 keep property based on suspicion that the property is connected  
4 to criminal activity. Property, such as vehicles, houses, cash,  
5 and jewelry, can be taken without the property owner having been  
6 convicted of a crime or even being formally accused of one, and  
7 the burden of proof to recover the seized property is shifted  
8 from the State to the property owner.

9           The legislature also finds that there is a potential  
10 incentive to improperly seize property for forfeiture, as state  
11 and county law enforcement agencies are permitted to retain all  
12 proceeds from the sale of the forfeited property. According to  
13 the Institute for Justice, a nonprofit civil liberties law firm,  
14 between 2001 and 2018, Hawai'i generated at least \$20,000,000 in  
15 forfeiture revenue under state law and an additional \$29,000,000  
16 under the federal equitable sharing program where state or local  
17 law enforcement agencies partner with federal agencies and share



1 in the proceeds. The estimated value of property seized by  
2 Hawai'i law enforcement agencies was \$1,050,463 in fiscal year  
3 2018-2019, \$963,055 in fiscal year 2019-2020, and \$483,506 in  
4 fiscal year 2020-2021.

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

14 Furthermore, the legislature finds that the Institute for  
15 Justice recommends other reforms to make the forfeiture process  
16 just, beginning with eliminating potential financial incentives  
17 to seize and keep forfeited property and instead changing the  
18 law to direct any proceeds to the general revenue fund or other  
19 neutral fund. Currently, eight jurisdictions prohibit law  
20 enforcement from keeping the proceeds from forfeited property,  
21 and eight prevent participation in the federal equitable sharing



1 program. Another reform is to adopt a high standard of proof to  
2 establish a civil asset forfeiture, such as "beyond a reasonable  
3 doubt". Eighteen jurisdictions have a standard higher than  
4 Hawai'i's "preponderance of the evidence" standard, and for ten  
5 of those jurisdictions, it is equivalent to beyond a reasonable  
6 doubt. The third suggested reform, that a number of  
7 jurisdictions have already enacted, involves requiring law  
8 enforcement to prove that owners consented to or possessed  
9 knowledge of the crime that led to the seizure of their  
10 property, restoring the presumption of innocence used in  
11 criminal proceedings. The legislature finds that none of these  
12 recommendations have been implemented in Hawai'i.

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

- 15 (1) Restricting civil asset forfeiture to cases involving  
16 the commission of a felony offense where the property  
17 owner has been convicted of an underlying felony  
18 offense;
- 19 (2) Directing any forfeiture proceeds to the general fund;
- 20 (3) Amending the allowable expenses for moneys in the  
21 criminal forfeiture fund;



1           (4) Requiring the attorney general to adopt rules  
 2                    necessary to carry out the purposes of the Hawai'i  
 3                    omnibus criminal forfeiture act; and

4           (5) Amending the deadline for the attorney general to  
 5                    report to the legislature on the use of the Hawai'i  
 6                    omnibus criminal forfeiture act.

7           SECTION 2. Chapter 712A, Hawaii Revised Statutes, is  
 8 amended by adding two new sections to be appropriately  
 9 designated and to read as follows:

10           "§712A- Equitable sharing program; restrictions.  
 11 Notwithstanding the provisions of section 712A-7, a seizing  
 12 agency or prosecuting attorney shall not enter into an agreement  
 13 to transfer or refer property seized under section 712A-6,  
 14 unless the seized property includes United States currency in  
 15 excess of \$100,000, to a federal agency directly, indirectly,  
 16 through adoption, through an intergovernmental joint task force  
 17 or by other means that circumvent the provisions of this  
 18 section.

19           §712A- Records of forfeited property. (1) Each seizing  
 20 agency and prosecuting attorney shall maintain records showing:





- 1 covered offense, or [~~which~~] that facilitated or  
2 assisted such activity;
- 3 (c) Any firearm [~~which~~] that is subject to forfeiture  
4 under any other subsection of this section or [~~which~~]  
5 is carried during, visible, or used in furtherance of  
6 the commission, attempt to commit, or conspiracy to  
7 commit a covered offense, or any firearm found in  
8 proximity to contraband or to instrumentalities of an  
9 offense;
- 10 (d) Contraband or untaxed cigarettes in violation of  
11 chapter 245, [~~which~~] shall be seized and summarily  
12 forfeited to the State without regard to the  
13 procedures set forth in this chapter;
- 14 (e) Any proceeds or other property acquired, maintained,  
15 or produced by means of or as a result of the  
16 commission of the covered offense;
- 17 (f) Any property derived from any proceeds [~~which~~] that  
18 were obtained directly or indirectly from the  
19 commission of a covered offense;
- 20 (g) Any interest in, security of, claim against, or  
21 property or contractual right of any kind affording a



1 source of influence over any enterprise [~~which~~] that  
2 has been established, participated in, operated,  
3 controlled, or conducted in order to commit a covered  
4 offense; and

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

11 [~~(2) Except that:~~

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

16 (2) The following is not subject to forfeiture; provided  
17 that nothing in this paragraph shall be construed to prevent the  
18 seizure of property before conviction pursuant to section  
19 712A-6:

20 [~~(b)~~] (a) No property shall be forfeited under this chapter [~~to~~  
21 ~~the extent of an interest of an owner,]~~ by reason of



1           ~~[any act or omission established by that owner to have~~  
2           ~~been committed or omitted without the knowledge and~~  
3           ~~consent of that owner,]~~ the commission of any covered  
4           offense unless:

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

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

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

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



1 (d) No conveyance is subject to forfeiture under this  
 2 section by reason of any act or omission established  
 3 by the owner thereof to have been committed or omitted  
 4 without 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 the secured party neither had  
 8 knowledge of nor consented to the act or omission.

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

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

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

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

19 [~~(a) May transfer property, other than currency, which~~  
 20 ~~shall be distributed in accordance with subsection (2)~~]



1           ~~to any local or state government entity, municipality,~~  
2           ~~or law enforcement agency within the State;~~

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

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



1           general the purchase price for the leasehold  
 2           interest and any improvements, upon which tender  
 3           the leasehold interest and improvements shall be  
 4           conveyed to the holder of the immediate  
 5           reversionary interest[-];

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

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

17          [-(e)]    **(b)** May sell or destroy all raw materials, products,  
 18          and equipment of any kind used or intended for use in  
 19          manufacturing, compounding, or processing a controlled  
 20          substance or any untaxed cigarettes in violation of  
 21          chapter 245;



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

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

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

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

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

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

20            ~~(3) Property and money distributed to units of state and~~  
21     ~~local government shall be used for law enforcement purposes, and~~



1 ~~shall complement but not supplant the funds regularly~~  
2 ~~appropriated for such purposes.]~~ including reimbursement for any  
3 costs incurred by the department of the attorney general related  
4 to the seizure or storage of seized property, shall be deposited  
5 to the credit of the state general fund.

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

16 ~~(a)~~ The] payment of any expenses necessary to seize,  
17 detain, appraise, inventory, safeguard, maintain,  
18 advertise, or sell property seized, detained, or  
19 forfeited pursuant to this chapter or of any other  
20 necessary expenses incident to the seizure, detention,  
21 or forfeiture of ~~[such]~~ property and ~~[such]~~ contract



1 services and payments to reimburse any federal, state,  
2 or county agency for any expenditures made to perform  
3 the foregoing functions [7].

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

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

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

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

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

17 ~~(5)]~~ (4) The attorney general ~~[may, without regard to the~~  
18 ~~requirements of chapter 91, promulgate]~~ shall adopt rules [and  
19 regulations] necessary to carry out the purpose of this chapter,  
20 including rules concerning the disposition of property, the use



1 of the fund, and compromising and paying valid claims against  
2 property forfeited [~~pursuant to this chapter~~].

3 [~~(6)~~] (5) [~~Not~~] No less than [~~twenty~~] forty days [~~prior~~  
4 ~~to~~] before the convening of each regular session, the attorney  
5 general shall provide to the legislature a report on the use of  
6 the Hawaii omnibus criminal forfeiture act during the fiscal  
7 year preceding the legislative session. The report shall  
8 include:

- 9 (a) The total amount and type of property seized by law  
10 enforcement agencies;
- 11 (b) The total number of administrative and judicial  
12 actions filed by prosecuting attorneys and the  
13 disposition thereof [~~+~~] for each action;
- 14 (c) The total number of claims or petitions for remission  
15 or mitigation filed in administrative actions and the  
16 dispositions thereof [~~+~~] for each action;
- 17 (d) The total amount and type of property forfeited and  
18 the sale proceeds thereof;
- 19 (e) The total amount and type of property distributed to  
20 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, 2023.

20 INTRODUCED BY: Kal Rhoan



# S.B. NO. 909

**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.*

