THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 722

JAN 17 2025

A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

SECTION 1. The legislature finds that Hawai'i's civil asset forfeiture process allows law enforcement agencies to seize and keep property based on suspicion that the property is connected to criminal activity. Property, such as vehicles, houses, cash, and jewelry, can be taken without the property owner having been convicted of a crime or even being formally accused of one, and the burden of proof to recover the seized property is shifted from the State to the property owner.

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

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

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

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

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

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

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

(2) Directing any forfeiture proceeds to the general fund;

(3) Amending the allowable expenses for moneys in the criminal forfeiture fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Property described in a statute authorizing forfeiture;

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

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

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

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

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

(g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise [~~which~~] that has been established, participated in, operated,

controlled, or conducted in order to commit a covered offense; and

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

[~~(2) Except that:~~

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

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

[~~(b)~~] (a) No property shall be forfeited under this chapter [~~to the extent of an interest of an owner,~~] by reason of [~~any act or omission established by that owner to have been committed or omitted without the knowledge~~

~~and consent of that owner;~~] the commission of any covered offense unless:

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

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

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

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

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

by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

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

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

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

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

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

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

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

(i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender

the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest[~~.~~];

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

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

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

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

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

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

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

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

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

~~(3) Property and money distributed to units of state and local government shall be used for law enforcement purposes, and shall complement but not supplant the funds regularly appropriated for such purposes.~~] including reimbursement for any

costs incurred by the department of the attorney general related to the seizure or storage of seized property, shall be deposited to the credit of the state general fund.

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

~~(a)~~ ~~The~~] payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of [~~such~~] property and [~~such~~] contract services and payments to reimburse any federal, state,

or county agency for any expenditures made to perform the foregoing functions[~~;~~]. _

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

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

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

~~(e) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general~~.

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

[~~(6)~~] (5) Not less than [~~twenty~~] forty days [~~prior to~~] before the convening of each regular session, the attorney general shall provide to the legislature a report on the use of

the Hawaii omnibus criminal forfeiture act during the fiscal year preceding the legislative session. The report shall include:

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

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

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

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

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

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

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

[~~(g)~~] (h) The amount of money expended by the attorney general from the criminal forfeiture fund under

subsection [~~(5)~~] (4) and the reason for the expenditures."

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

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

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

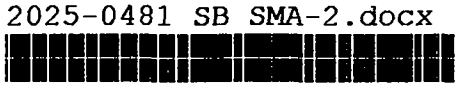
SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2025.

INTRODUCED BY: _____

S.B. NO. 722

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.

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