

ACT 233

H.B. NO. 1178

A Bill for an Act Relating to Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

“§199-7 Search and seizure; forfeiture of property. (a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapters 6E and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, “natural resource” includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds.

(b) Any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource seized is subject to forfeiture pursuant to chapter 712A.

[Notwithstanding section 712A-16 or any other law to the contrary, any natural resource forfeited shall be turned over to the department of land and natural resources for disposition as determined by that department and may be destroyed, if illegal, or may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the department or other state agency, may be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and public notice thereof to be given within the judicial circuit at least once before the auction, the first notice to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.] Unless otherwise directed by the court pursuant to chapter 712A, any item, other than a natural resource, seized shall be ordered forfeited to the State for disposition as determined by the department, or may be destroyed, or may be kept and retained and utilized by the department or any other state agency. If not needed or required by the department or other state agency, the forfeited items shall be disposed of as provided by chapter 712A. Notwithstanding any other law to the contrary, any live natural resource seized may be immediately returned to its natural environment or suitable habitat or may be disposed of as determined by the department; provided that if the natural resource disposed of was unlawfully seized, the department shall be liable to the owner for the fair market value of the items disposed of.

(c) The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, vessels, or any natural resource forfeited as provided in this section and shall publish the list in its annual report.

(d) Notwithstanding any other law to the contrary, the department of land and natural resources may sell or take actions to cause the sale of any perishable natural resource that is seized to prevent the waste of the natural resource and to ensure the economic value of such natural resource; provided that the department may not sell or cause the sale of any threatened or endangered species or any other species whose sale is prohibited by law. The department of land and natural resources may require the person or persons who took the natural resources to sell the seized natural resources at fair market value. The department of land and natural resources may require any person purchasing any seized natural resource to deliver the proceeds of the sale to the department of land and natural resources or its authorized representative. Any person who refuses to sell the seized natural resources at fair market value or any person who fails to deliver the proceeds of the sale, as directed by the department of land and natural resources, shall be in violation of this subsection and punishable as provided by law. The department of land and natural resources shall deposit and keep the proceeds of the sale in an interest bearing account until such time as the suspected violation is settled between the person or persons who took the natural resource, consignee or consignees, if any, and the department of land and natural resources. Should a settlement not be reached, the department of land and natural resources shall submit the proceeds of the sale to the court. The proceeds of the sale, after deducting any reasonable costs of the sale incurred by the department of land and natural resources, shall be subject to any administrative or judicial proceedings in the same manner as the seized natural resource would have been, including an action in rem for the forfeiture of the proceeds. Seizure and sale of a natural resource is without prejudice to any other remedy or sanction authorized by law."

SECTION 2. Section 712A-6, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

- (a) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;
- (b) By making a seizure for forfeiture on property seized on process issued pursuant to law; or
- (c) By making a seizure for forfeiture without court process as follows:
 - (i) The seizure for forfeiture is of property seized incident to an arrest or search;
 - (ii) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the State or any other state or the federal government in forfeiture proceeding;
 - (iii) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety; [or]
 - (iv) The law enforcement officer has probable cause to believe that the property is subject to forfeiture[.]; or
 - (v) The seizure for forfeiture is of perishable natural resources seized and sold, pursuant to section 199-7, prior to a forfeiture proceeding.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)