

JAN 22 2016

S.B. NO. 2466

A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1 SECTION 1. Chapter 712A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§712A- Criminal forfeiture special fund; established.

5 (a) There is established the criminal forfeiture special fund
6 within the treasury of the State and into which shall be
7 deposited all proceeds of each forfeiture under this chapter and
8 any penalties paid pursuant to section 712A-10(6).

9 All interest accrued by the revenues of the special fund
10 shall become part of the special fund.

11 (b) Moneys in the criminal forfeiture special fund shall
12 be allocated by the legislature through appropriations out of
13 the special fund and for the sole purpose of providing
14 assistance to victims of crime and their families.

15 (c) The criminal forfeiture special fund shall not be
16 subject to sections 36-27, 36-30, and 37-53."



1 SECTION 2. 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 to
9 the extent of an interest of an owner[~~, by~~]:

10 (i) By reason of the commission of any covered
11 offense unless the owner has been convicted of
12 the covered offense by a verdict or plea,
13 including a no contest plea or a deferred
14 acceptance of guilty or no contest plea; or

15 (ii) By reason of any act or omission established by
16 that owner to have been committed or omitted
17 without the knowledge and consent of that owner;

18 (c) No conveyance used by any person as a common carrier
19 in the transaction of a business as a common carrier
20 is subject to forfeiture under this section unless it
21 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 SECTION 3. Section 712A-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§712A-10 Administrative forfeiture. The prosecuting
14 attorney may initiate administrative forfeiture of property
15 other than real property, the estimated value of which is less
16 than \$100,000, or of any vehicle or conveyance, regardless of
17 value. Administrative forfeiture shall be processed in the
18 following manner:

19 (1) The prosecuting attorney shall file a petition with
20 the attorney general, pursuant to rules adopted by the
21 attorney general[-];



1 (2) The prosecuting attorney shall give notice of pending
2 forfeiture by making reasonable efforts to serve a
3 copy of the petition in a manner provided in section
4 712A-8(a) or 712A-8(b) on all persons known to have an
5 interest in the property, together with instructions
6 for filing a claim and cost or in pauperis bond, or a
7 petition for remission or mitigation[-];

8 (3) The attorney general shall give notice of intention to
9 forfeit the property administratively by publication
10 in the manner provided in section 712A-8(c). Notice
11 by publication shall include:

- 12 (a) A description of the property;
- 13 (b) The estimated value of the property;
- 14 (c) The date and place of the seizure;
- 15 (d) The offense for which the property is subject to
16 forfeiture;
- 17 (e) Instructions for filing a claim and cost or in
18 pauperis bond, or a petition for remission or
19 mitigation; and
- 20 (f) Notice that the property will be forfeited to the
21 State if a claim and cost or in pauperis bond or



- 1 petition for remission or mitigation is not filed
2 in substantial compliance with this section[-];
- 3 (4) Persons claiming an interest in the property may file
4 either a petition for remission or mitigation of
5 forfeiture, or a claim and cost or in pauperis bond,
6 but not both, with the attorney general, within thirty
7 days of notice by publication or receipt of written
8 notice, whichever is earlier. Notwithstanding section
9 1-29, the thirty-day time period prescribed herein is
10 computed by excluding the first day and including the
11 last day, unless the last day is a Saturday, Sunday,
12 or holiday and then it is also excluded, and the
13 thirty-day time period runs until the end of the next
14 day [~~which~~] that is not a Saturday, Sunday, or a
15 holiday. "Holiday" includes any day designated as a
16 holiday pursuant to section 8-1[-];
- 17 (5) Any person claiming seized property may seek remission
18 or mitigation of the forfeiture by timely filing a
19 petition with the attorney general. A petition for
20 remission or mitigation shall not be used to challenge
21 the sufficiency of the evidence to support the



1 forfeiture or the actions of any government official
2 but shall presume a valid forfeiture and ask the
3 attorney general to invoke the executive power to
4 pardon the property, in whole or in part. The
5 petition shall be signed by the petitioner and sworn
6 on oath before a notary public and shall contain the
7 following:

- 8 (a) A reasonably complete description of the
9 property;
- 10 (b) A statement of the interest of the petitioner in
11 the property, as owner or interest-holder, which
12 may be supported by bills of sale, contracts, or
13 mortgages, or other documentary evidence; and
- 14 (c) Facts and circumstances sufficient to show
15 whether the petitioner:
 - 16 (i) Owns or holds an interest in the seized
17 property as defined by section 712A-1;
 - 18 (ii) Had any knowledge that the property was or
19 would be involved in any violation of the
20 law;



1 that some relief should be granted to avoid extreme
2 hardship. Mitigation may also be granted where the
3 minimum requirements for remission have been met but
4 the overall circumstances are such that the attorney
5 general determines that complete relief is not
6 warranted. Mitigation shall take the form of a money
7 penalty imposed upon the petitioner, which shall be
8 deposited into the criminal forfeiture special fund
9 established under section [~~712A-16.~~] 712A-_____.

10 Extenuating circumstances include:

- 11 (a) Language or culture barrier;
- 12 (b) Humanitarian factors such as youth or extreme
13 age;
- 14 (c) Presence of physical or mental disease, disorder,
15 or defect;
- 16 (d) Limited or peripheral criminal culpability;
- 17 (e) Cooperation with the seizing agency or the
18 prosecuting attorney; and
- 19 (f) Any contributory error on the part of government
20 officials[-];



- 1 (7) ~~[It shall be the duty of the]~~ The attorney general
2 ~~[to]~~ shall inquire into the facts and circumstances
3 alleged in a petition for remission or mitigation of
4 forfeiture. However, no petitioner is entitled to a
5 hearing on the petition for remission or mitigation.
6 Hearings, if any, shall be held at the discretion of
7 the attorney general~~[-]~~;
- 8 (8) The attorney general shall provide the seizing agency
9 and the petitioner a written decision on each petition
10 for remission or mitigation within sixty days of
11 receipt of the petition unless the circumstances of
12 the case require additional time, in which case the
13 attorney general shall notify the petitioner in
14 writing and with specificity within the sixty-day
15 period that the circumstances of the case require
16 additional time and further notify the petitioner of
17 the expected decision date~~[-]~~;
- 18 (9) Any person claiming seized property may seek judicial
19 review of the seizure and proposed forfeiture by
20 timely filing with the attorney general a claim and
21 bond to the State in the amount of ten per cent of the



1 estimated value of the property or in the sum of
2 \$2,500, whichever is greater, with sureties to be
3 approved by the attorney general, upon condition that
4 if the claimant fails to prove that claimant's
5 interest is exempt from forfeiture under section 712A-
6 5, the claimant shall pay the State's costs and
7 expenses, including reasonable attorneys fees incurred
8 in connection with a judicial proceeding. In lieu of
9 a cost bond, a claimant may file an in pauperis bond
10 sworn on oath before a notary public. An in pauperis
11 bond shall be in the form set out in the appendix to
12 the rules of penal procedure. The claim shall be
13 signed by the claimant and sworn on oath before a
14 notary public and shall comply with the requirements
15 of section 712A-12(5). Upon receipt of the claim and
16 bond, the attorney general shall notify the
17 prosecuting attorney who may discretionarily continue
18 to seek forfeiture by petitioning the circuit court
19 for forfeiture of the property within forty-five days
20 of receipt of notice that a proper claim and bond has
21 been filed. The prosecuting attorney may also elect



1 to honor the claim in which case the prosecuting
2 attorney shall notify the seizing agency and authorize
3 the release of the seizure for forfeiture on the
4 property or on any specified interest in it[-];

- 5 (10) If a judicial forfeiture proceeding is instituted
6 subsequent to notice of administrative forfeiture
7 pursuant to paragraph (9), no duplicate or repetitive
8 notice shall be required. The judicial proceeding, if
9 any, shall adjudicate all timely filed claims. At the
10 judicial proceeding, the claimant may testify, present
11 evidence and witnesses on the claimant's behalf, and
12 cross-examine witnesses who appear at the hearing.
13 The State may present evidence and witnesses in
14 rebuttal and in defense of its claim to the property
15 and cross-examine witnesses who appear at the hearing.
16 The State has the initial burden of showing by a
17 preponderance of the evidence that the claimant's
18 interest in the property is subject to forfeiture. On
19 such a showing by the State, the claimant has the
20 burden of showing by a preponderance of the evidence



1 that the claimant's interest in the property is not
2 subject to forfeiture~~[-]~~;

3 (11) ~~[In the event]~~ If a claim and bond has not been filed
4 in substantial compliance with this section, or if the
5 attorney general, with sole discretion, determines
6 that remission or mitigation is not warranted, the
7 attorney general shall order forfeited all property
8 seized for forfeiture. ~~[In the event]~~ If the attorney
9 general, with sole discretion, determines that
10 remission or mitigation is warranted, the attorney
11 general shall notify the seizing agency and the
12 prosecuting attorney and order the release of the
13 seizure for forfeiture on the property or on any
14 specified interest in it. There shall be no appeal
15 from the attorney general's decision or order of
16 forfeiture or remission or mitigation~~[-]~~; and

17 (12) Administrative proceedings and the adoption of rules
18 under this section are exempt from the requirements of
19 chapter 91, ~~[the Hawaii administrative procedure act,]~~
20 and are adjudicatory functions for the purposes of
21 applicable sections of the Hawaii Revised Statutes."



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

3 "§712A-16 Disposition of property forfeited. (1) All
4 property forfeited to the State under this chapter shall be
5 transferred to the attorney general who:

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

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

13 (i) The attorney general shall first offer the holder
14 of the immediate reversionary interest the right
15 to acquire the leasehold interest and any
16 improvements built or paid for by the lessee for
17 the then fair market value of the leasehold
18 interest and improvements. The holder of the
19 immediate reversionary interest shall have thirty
20 days after receiving written notice within which
21 to accept or reject the offer in writing;



1 provided that the offer shall be deemed to be
2 rejected if the holder of the immediate
3 reversionary interest has not communicated
4 acceptance to the attorney general within the
5 thirty-day period. The holder of the immediate
6 reversionary interest shall have thirty days
7 after acceptance to tender to the attorney
8 general the purchase price for the leasehold
9 interest and any improvements, upon which tender
10 the leasehold interest and improvements shall be
11 conveyed to the holder of the immediate
12 reversionary interest ~~[]~~;

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

19 (iii) Any dispute between the attorney general and the
20 holder of the immediate reversionary interest as
21 to the fair market value of the leasehold



1 interest and improvements shall be settled by
2 arbitration pursuant to chapter 658A;
3 [~~(e)~~] (b) May sell or destroy all raw materials, products,
4 and equipment of any kind used or intended for use in
5 manufacturing, compounding, or processing a controlled
6 substance or any untaxed cigarettes in violation of
7 chapter 245;
8 [~~(d)~~] (c) May compromise and pay valid claims against
9 property forfeited pursuant to this chapter; or
10 [~~(e)~~] (d) May make any other disposition of forfeited
11 property authorized by law.

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

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



1 ~~(b) One quarter shall be distributed to the prosecuting~~
2 ~~attorney who instituted the action producing the~~
3 ~~forfeiture, and~~

4 ~~(e) One half shall be] deposited into the criminal~~
5 ~~forfeiture special fund established [by this chapter.]~~
6 ~~under section 712A- .~~

7 ~~[(3) Property and money distributed to units of state and~~
8 ~~local government shall be used for law enforcement purposes, and~~
9 ~~shall complement but not supplant the funds regularly~~
10 ~~appropriated for such purposes.~~

11 ~~(4) There is established in the department of the attorney~~
12 ~~general a revolving fund to be known as the criminal forfeiture~~
13 ~~fund, hereinafter referred to as the "fund" in which shall be~~
14 ~~deposited one half of the proceeds of a forfeiture and any~~
15 ~~penalties paid pursuant to section 712A 10(6). All moneys in~~
16 ~~the fund shall be expended by the attorney general and are~~
17 ~~hereby appropriated for the 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; and~~

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.~~

16 ~~(5)]~~ (3) The attorney general may, without regard to the
17 requirements of chapter 91, [~~promulgate~~] adopt rules [~~and~~
18 ~~regulations~~] concerning the disposition of property[, ~~the use of~~
19 ~~the fund,~~] and compromising and paying valid claims against
20 property forfeited pursuant to this chapter.



1 [~~(6)~~] (4) Not less than twenty days prior to the convening
2 of each regular session, the attorney general shall provide to
3 the legislature a report on the use of the Hawaii omnibus
4 criminal forfeiture act during the fiscal year preceding the
5 legislative session. The report shall include:

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

8 (b) The total number of administrative and judicial
9 actions filed by prosecuting attorneys and the
10 disposition thereof;

11 (c) The total number of claims or petitions for remission
12 or mitigation filed in administrative actions and the
13 dispositions thereof;

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

16 [~~(e)~~] ~~The total amount and type of property distributed to~~
17 ~~units of state and local government;~~

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



1 ~~(g) The amount of money expended by the attorney general~~
 2 ~~from the criminal forfeiture fund under subsection (5)~~
 3 ~~and the reason for the expenditures]."~~

4 SECTION 5. All unencumbered and unexpended moneys
 5 remaining on balance at the close of June 30, 2016, in the
 6 criminal forfeiture fund established under section 712A-16(4),
 7 Hawaii Revised Statutes, as that section read one day prior to
 8 the effective date of this Act, shall be transferred to the
 9 credit of the criminal forfeiture special fund established in
 10 section 1 of this Act.

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

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

16 SECTION 8. This Act shall take effect on July 1, 2016.

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INTRODUCED BY:

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S.B. NO. 2466

Report Title:

Property; Hawaii Omnibus Criminal Forfeiture Act

Description:

Prohibits civil asset forfeiture based upon the commission of a covered offense, with regard to the property owner's interest, unless the property owner has been convicted of the offense. Requires the deposit of all proceeds from forfeitures into a special fund administered by the Legislature to provide assistance to crime victims and their families.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

