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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 purpose of this Act is to make the State's  
2 property forfeiture process more just by:

3       (1) Increasing transparency and accountability surrounding  
4 property forfeiture;

5       (2) Clarifying which property is subject to forfeiture;

6       (3) Amending the authorized disposition of forfeited  
7 property and the proceeds thereof;

8       (4) Requiring the attorney general to adopt rules  
9 necessary to carry out the purpose of the Hawaii  
10 Omnibus Criminal Forfeiture Act; and

11       (5) Repealing language that requires the Hawaii Omnibus  
12 Criminal Forfeiture Act to be construed liberally.

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



1        **"§712A-        Records of seized or forfeited property.    (1)**

2    Each seizing agency shall maintain the following records for all  
3    property seized for purposes of forfeiture:

4        (a)    The authority under which the property was seized or  
5        forfeited;

6        (b)    The date on which each item of property was seized or  
7        forfeited;

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

10       (d)    A description of each item of seized or forfeited  
11       property; and

12       (e)    The estimated value of each item of seized or  
13       forfeited property.

14       (2)    The seizing agency shall:

15       (a)    Maintain all records of seized or forfeited property;

16       (b)    Make the records open to inspection; and

17       (c)    Post the records on a publicly accessible website.

18       **§712A-        Equitable sharing program; restrictions.**

19    Notwithstanding the provisions of section 712A-7, a seizing  
20    agency or prosecuting attorney shall not enter into an agreement  
21    to transfer or refer property seized under section 712A-6 to a



1 federal agency directly, indirectly, through adoption, through  
2 an intergovernmental joint task force, or by any other means  
3 that would circumvent the provisions of this chapter, unless the  
4 seized property includes United States currency in excess of  
5 \$100,000."

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

8 **"§712A-5 Property subject to forfeiture; exemption. (1)**

9 The following [~~is~~] shall be subject to forfeiture:

10 (a) Property described in a statute authorizing  
11 forfeiture;

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

16 (c) Any firearm [~~which~~] that is subject to forfeiture  
17 under any other subsection of this section or [~~which~~]  
18 that is carried during, visible, or used in  
19 furtherance of the commission, attempt to commit, or  
20 conspiracy to commit a covered offense, or any firearm



1 found in proximity to contraband or to  
2 instrumentalities of an offense;

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

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

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

13 (g) Any interest in, security of, claim against, or  
14 property or contractual right of any kind affording a  
15 source of influence over any enterprise [~~which~~] that  
16 has been established, participated in, operated,  
17 controlled, or conducted in order to commit a covered  
18 offense; and

19 (h) All books, records, bank statements, accounting  
20 records, microfilms, tapes, computer data, or other  
21 data [~~which~~] that are used, intended for use, or



1           ~~[which]~~ that facilitated or assisted in the commission  
2           of a covered offense, or ~~[which]~~ that document the use  
3           of the proceeds of a covered offense.

4           ~~[(2) Except that:~~

5           ~~(a)]~~ (2) Real property, or an interest therein, may be  
6           forfeited under the provisions of this chapter only in  
7           cases in which the covered offense is chargeable as a  
8           felony offense under state law~~[+]~~.

9           (3) The following limitations shall apply to the  
10          forfeiture of property under this chapter; provided that nothing  
11          in this subsection shall be construed to prevent the seizure of  
12          property before conviction pursuant to section 712A-6:

13          ~~[(b)]~~ (a) No property shall be forfeited under this chapter  
14          ~~[to the extent of an interest of an owner,]~~ by reason  
15          of ~~[any act or omission established by that owner to~~  
16          ~~have been committed or omitted without the knowledge~~  
17          ~~and consent of that owner,]~~ the commission of any  
18          covered offense unless the owner has received a charge  
19          for the covered offense. If no such charge is filed  
20          within one year from the date of seizure, all property  
21          seized shall be returned to the legal owner, as



1 determined by the department or agency in possession  
2 of the property, one year from the date of seizure;  
3 provided that property that is contraband or otherwise  
4 unlawful shall not be returned and shall be disposed  
5 of pursuant to rules adopted by the attorney general;  
6 provided further that if the legal owner cannot be  
7 determined or located, the department or agency in  
8 possession of the property shall follow procedures set  
9 forth in rules adopted by the attorney general to  
10 determine or locate the owner;

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]~~ shall be subject to forfeiture under this section  
18 unless it appears that the owner or other person in  
19 charge of the conveyance is a consenting party or  
20 privy to a violation of this chapter;



(d) No conveyance [~~is~~] shall be 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~~] shall be subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

(4) This chapter shall not apply to the forfeiture of an animal pursuant to section 711-1109.2.

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

SECTION 4. Section 712A-11, Hawaii Revised Statutes, is amended by amending subsection (10) to read as follows:

"(10) All property, including all interest in such property, declared forfeited under this chapter vests in this State on the commission of the act or omission giving rise to forfeiture under this chapter together with the proceeds of the property after the act or omission. Any property or proceeds



1 transferred to any person after the act or omission are subject  
2 to forfeiture and thereafter shall be ordered forfeited unless  
3 the transferee claims and establishes in a hearing pursuant to  
4 this chapter the showings set out in section 712A-5(2) [÷] and  
5 (3)."

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

8 **"§712A-16 Disposition of property forfeited.** (1) All  
9 property forfeited to the State under this chapter shall be  
10 transferred to the attorney general, who[÷] may:

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

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

18 (i) The attorney general shall first offer the holder  
19 of the immediate reversionary interest the right  
20 to acquire the leasehold interest and any  
21 improvements built or paid for by the lessee for





1 the then fair market value of the leasehold  
2 interest and improvements. The holder of the  
3 immediate reversionary interest shall have thirty  
4 days after receiving written notice within which  
5 to accept or reject the offer in writing;  
6 provided that the offer shall be deemed to be  
7 rejected if the holder of the immediate  
8 reversionary interest has not communicated  
9 acceptance to the attorney general within the  
10 thirty-day period. The holder of the immediate  
11 reversionary interest shall have thirty days  
12 after acceptance to tender to the attorney  
13 general the purchase price for the leasehold  
14 interest and any improvements, upon which tender  
15 the leasehold interest and improvements shall be  
16 conveyed to the holder of the immediate  
17 reversionary interest[-];

18 (ii) If the holder of the immediate reversionary  
19 interest fails to exercise the right of first  
20 refusal provided in subparagraph (i), the  
21 attorney general may proceed to sell the



1 leasehold interest and any improvements by public  
2 sale~~[7]~~; and

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

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

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

16 [~~(e) May make~~] (d) Make any other disposition of forfeited  
17 property authorized by law.

18 (2) All forfeited property and the sale proceeds thereof~~[7]~~  
19 ~~up to a maximum of three million dollars per year, not~~  
20 ~~previously transferred pursuant to [subsection] (1) (a) of this~~



1 ~~section,~~] shall, after payment of expenses of administration and  
2 sale, be distributed or retained as follows:

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

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

12 (c) One half shall be ~~[deposited into]~~ retained in the  
13 criminal forfeiture fund established by this chapter.

14 (3) ~~[Property]~~ All property and money distributed to units  
15 of state ~~[and]~~ or local government pursuant to subsection (2) (a)  
16 and (b) shall be used for law enforcement purposes, including  
17 but not limited to drug recognition expert training and public  
18 awareness or outreach efforts, and shall complement but not  
19 supplant the funds regularly appropriated for ~~[such]~~ these  
20 purposes.



1           (4) There [~~is~~] shall be established in the department of  
2 the attorney general a special fund to be known as the criminal  
3 forfeiture fund[, ~~hereinafter referred to as the "fund" in~~] into  
4 which shall be deposited [~~one-half of~~] the proceeds of a  
5 forfeiture and any penalties paid pursuant to section 712A-  
6 10(6). All moneys in the criminal forfeiture fund except for  
7 those disbursements provided for in subsection (2)(a) and (b)  
8 shall be expended by the attorney general and are hereby  
9 appropriated for the following purposes:

10           (a) The payment of any expenses necessary to seize,  
11                detain, appraise, inventory, safeguard, maintain,  
12                advertise, or sell property seized, detained, or  
13                forfeited pursuant to this chapter or of any other  
14                necessary expenses incident to the seizure, detention,  
15                or forfeiture of [~~sueh~~] property and [~~sueh~~] contract  
16                services and payments to reimburse any federal, state,  
17                or county agency for any expenditures made to perform  
18                the foregoing functions;

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



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

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

6       ~~[(e)]~~ (c) The payment of expenses arising in connection  
7       with enforcement pursuant to the drug nuisance  
8       abatement unit in the department of the attorney  
9       general.

10       (5) The attorney general ~~[may, without regard to the~~  
11 ~~requirements of chapter 91, promulgate]~~ shall adopt rules [and  
12 ~~regulations]~~ necessary to carry out the purpose of this chapter,  
13 including rules concerning the return of seized property, the  
14 disposition of property, the use of the criminal forfeiture  
15 fund, and compromising and paying valid claims against property  
16 forfeited ~~[pursuant to this chapter]~~.

17       (6) ~~[Not]~~ No less than ~~[twenty]~~ forty days ~~[prior to]~~  
18 before the convening of each regular session, the attorney  
19 general shall provide to the legislature a report on the use of  
20 the Hawaii omnibus criminal forfeiture act during the fiscal



1 year preceding the legislative session. The report shall  
2 include:

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

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

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

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

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

15 (f) The amount of money deposited into the criminal  
16 forfeiture fund; and

17 (g) The amount of money expended by the attorney general  
18 from the criminal forfeiture fund under subsection (5)  
19 and the reason for the expenditures."

20 SECTION 6. Section 712A-19, Hawaii Revised Statutes, is  
21 repealed.



1       ~~["**\$712A-19** **Construction.** It is the intent of the~~  
2       ~~legislature that this chapter be liberally construed so as to~~  
3       ~~effect the purposes of this chapter."]~~

4       SECTION 7. This Act does not affect rights and duties that  
5       matured, penalties that were incurred, and proceedings that were  
6       begun before its effective date.

7       SECTION 8. Statutory material to be repealed is bracketed  
8       and stricken. New statutory material is underscored.

9       SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

Hawaii Omnibus Criminal Forfeiture Act; Civil Asset Forfeiture;  
Property Forfeiture

**Description:**

Increases transparency and accountability surrounding property forfeiture. Clarifies which property is subject to forfeiture. Amends the authorized disposition of forfeited property and the proceeds thereof. Requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act. Repeals language that requires the Hawaii Omnibus Criminal Forfeiture Act to be construed liberally. (CD1)

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

