
A BILL FOR AN ACT

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

9 (3) Directing any forfeiture proceeds to the general fund;

10 (4) Amending the allowable expenses for moneys in the
11 criminal forfeiture fund;

12 (5) Requiring the attorney general to adopt rules
13 necessary to carry out the purposes of the Hawaii
14 omnibus criminal forfeiture act; and

15 (6) Repealing language that requires the Hawaii omnibus
16 criminal forfeiture act to be construed liberally.



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

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

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

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

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

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

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

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

(2) The seizing agency shall:

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

(b) Make the records open to inspection; and

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



1 **§712A- Equitable sharing program; restrictions.**

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

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

11 **"§712A-5 Property subject to forfeiture; exemption. (1)**

12 The following is subject to forfeiture:

- 13 (a) Property described in a statute authorizing
14 forfeiture;
- 15 (b) Property used or intended for use in the commission
16 of, attempt to commit, or conspiracy to commit a
17 covered offense, or [~~which~~] that facilitated or
18 assisted [~~such~~] the activity;
- 19 (c) Any firearm [~~which~~] that is subject to forfeiture
20 under any other subsection of this section or [~~which~~]
21 is carried during, visible, or used in furtherance of



1 the commission, attempt to commit, or conspiracy to
2 commit a covered offense, or any firearm found in
3 proximity to contraband or to instrumentalities of an
4 offense;

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

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

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

15 (g) Any interest in, security of, claim against, or
16 property or contractual right of any kind affording a
17 source of influence over any enterprise [~~which~~] that
18 has been established, participated in, operated,
19 controlled, or conducted in order to commit a covered
20 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:



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

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

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

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

17 (d) No conveyance is subject to forfeiture under this
18 section by reason of any act or omission established
19 by the owner thereof to have been committed or omitted
20 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 before 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[+] may:

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



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

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

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



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

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

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

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

16 ~~(3) Property and money distributed to units of state and~~
17 ~~local government shall be used for law enforcement purposes, and~~
18 ~~shall complement but not supplant the funds regularly~~
19 ~~appropriated for such purposes.]~~ including reimbursement for any
20 costs incurred by the department of the attorney general related



1 to the seizure or storage of seized property, shall be deposited
2 to the credit of the state general fund.

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

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



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

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

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

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

11 ~~(5)]~~ (4) The attorney general ~~[may, without regard to the~~
12 ~~requirements of chapter 91, promulgate]~~ shall adopt rules [and
13 ~~regulations]~~ necessary to carry out the purpose of this chapter,
14 including rules concerning the disposition of property, the use
15 of the fund, and compromising and paying valid claims against
16 property forfeited ~~[pursuant to this chapter].~~

17 ~~[(6)]~~ (5) Not less than ~~[twenty]~~ forty days prior to the
18 convening of each regular session, the attorney general shall
19 provide to the legislature a report on the use of the Hawaii
20 omnibus criminal forfeiture act during the fiscal year preceding
21 the legislative session. The report shall include:



- 1 (a) The total amount and type of property seized by law
2 enforcement agencies;
- 3 (b) The total number of administrative and judicial
4 actions filed by prosecuting attorneys and the
5 disposition thereof[+] for each action;
- 6 (c) The total number of claims or petitions for remission
7 or mitigation filed in administrative actions and the
8 dispositions thereof[+] for each action;
- 9 (d) The total amount and type of property forfeited and
10 the sale proceeds thereof;
- 11 (e) The total amount and type of property distributed to
12 units of state and local government;
- 13 (f) The amount of money deposited into the [~~criminal~~
14 ~~forfeiture~~] fund; [and]
- 15 (g) The amount of money deposited into the general fund;
16 and
- 17 ~~[+g+]~~ (h) The amount of money expended by the attorney
18 general from the criminal forfeiture fund under
19 subsection ~~[+5+]~~ (4) and the reason for the
20 expenditures."



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

3 ["~~[§712A-19] Construction. It is the intent of the~~
4 ~~legislature that this chapter be liberally construed so as to~~
5 ~~effect the purposes of this chapter.~~"]

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

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

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



Report Title:

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

Description:

Increases transparency and accountability surrounding property forfeiture. 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. Limits the transfer of certain forfeiture property to federal agencies. Establishes records requirements. Repeals language that requires the Hawaii Omnibus Criminal Forfeiture Act to be construed liberally. (SD1)

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