H.B. NO. ¹²⁶ H.D. 1 S.D. 1 Proposed

A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1	SECT	FION 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		<pre>property forfeiture;</pre>
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.

2025-2144 HB126 SD1 SMA.docx



1	SECI	'ION 2. Chapter 712A, Hawaii Revised Statutes, is
2	amended b	by adding two new sections to be appropriately
3	designate	ed and to read as follows:
4	" <u>§7</u> 1	2A- Records of forfeited property. (1) Each
5	seizing a	gency shall maintain the following records for all
6	property	seized for purposes of forfeiture:
7	<u>(a)</u>	The authority under which the property was forfeited;
8	(b)	The date on which each item of property was forfeited;
9	(C)	The department or agency that has possession of the
10		forfeited property;
11	(d)	A description of each item of forfeited property; and
12	(e)	The estimated value of each item of forfeited
13		property.
14	(2)	The seizing agency shall:
15	<u>(a)</u>	Maintain all records of forfeited property;
16	<u>(b)</u>	Make the records open to inspection; and
17	<u>(C)</u>	Post the records on a publicly accessible website.
18	<u>§712</u>	A- Equitable sharing program; restrictions.
19	Notwithst	anding the provisions of section 712A-7, a seizing
20	agency or	prosecuting attorney shall not enter into an agreement
21	to transf	er or refer property seized under section 712A-6 to a





1	<u>federal</u> a	gency directly, indirectly, through adoption, through				
2	<u>an interc</u>	governmental joint task force, or by other means that				
3	circumver	t the provisions of this section, unless the seized				
4	property	includes United States currency in excess of \$100,000."				
5	SECI	SECTION 3. Section 712A-5, Hawaii Revised Statutes, is				
6	amended t	to read as follows:				
7	"§71	2A-5 Property subject to forfeiture; exemption. (1)				
8	The follo	owing is subject to forfeiture:				
9	(a)	Property described in a statute authorizing				
10		forfeiture;				
11	(b)	Property used or intended for use in the commission				
12		of, attempt to commit, or conspiracy to commit a				
13		covered offense, or [which] <u>that</u> facilitated or				
14		assisted [such] <u>the</u> activity;				
15	(C)	Any firearm [which] <u>that</u> is subject to forfeiture				
16		under any other subsection of this section or $[which]$				
17		is carried during, visible, or used in furtherance of				
18		the commission, attempt to commit, or conspiracy to				
19		commit a covered offense, or any firearm found in				
20		proximity to contraband or to instrumentalities of an				
21		offense;				

Page 3

Page 4



1	(d)	Contraband or untaxed cigarettes in violation of
2		chapter 245, shall be seized and summarily forfeited
3		to the State without regard to the procedures set
4		forth in this chapter;
5	(e)	Any proceeds or other property acquired, maintained,
6		or produced by means of or as a result of the
7		commission of the covered offense;
8	(f)	Any property derived from any proceeds [which] <u>that</u>
9		were obtained directly or indirectly from the
10		commission of a covered offense;
11	(g)	Any interest in, security of, claim against, or
12		property or contractual right of any kind affording a
13		source of influence over any enterprise [which] <u>that</u>
14		has been established, participated in, operated,
15		controlled, or conducted in order to commit a covered
16		offense; and
17	(h)	All books, records, bank statements, accounting
18		records, microfilms, tapes, computer data, or other
19		data [which] <u>that</u> are used, intended for use, or
20		[which] that facilitated or assisted in the commission

2025-2144 HB126 SD1 SMA.docx



1	of a covered offense, or [which] <u>that</u> document the use
2	of the proceeds of a covered offense.
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	<pre>felony offense under state law;</pre>
8	(2) The following is not subject to forfeiture; provided
9	that nothing in this paragraph shall be construed to prevent the
10	seizure of property before conviction pursuant to section
11	712A-6:
12	[(b)] <u>(a)</u> No property shall be forfeited under this chapter
13	[to the extent of an interest of an owner,] by reason
14	of [any act or omission established by that owner to
15	have been committed or omitted without the knowledge
16	and consent of that owner;] the commission of any
17	covered offense unless:
18	(i) The covered offense is chargeable as a felony
19	offense under state law; and
20	(ii) The owner has been convicted of the covered
21	offense by a verdict or plea, including a no



H.B. NO. ¹²⁶ H.D. 1 S.D. 1 Proposed

1		contest plea or a deferred acceptance of guilty
2		plea or no contest plea;
3	<u>(b)</u>	No property shall be forfeited under this chapter by
4		reason of any act or omission established by the owner
5		to have been committed or omitted without the
6		knowledge and consent of the owner;
7	(C)	No conveyance used by any person as a common carrier
8		in the transaction of a business as a common carrier
9		is subject to forfeiture under this section unless it
10		appears that the owner or other person in charge of
11		the conveyance is a consenting party or privy to a
12		violation of this chapter;
13	(d)	No conveyance is subject to forfeiture under this
14		section by reason of any act or omission established
15		by the owner thereof to have been committed or omitted
16		without the owner's knowledge or consent; and
17	(e)	A forfeiture of a conveyance encumbered by a bona fide
18		security interest is subject to the interest of the
19		secured party if the secured party neither had
20		knowledge of nor consented to the act or omission.

2025-2144 HB126 SD1 SMA.docx

Page 7



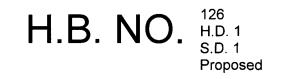
1	(3) This chapter shall not apply to the forfeiture of an
2	animal before disposition of criminal charges pursuant to
3	section 711-1109.2.
4	(4) This section shall not prohibit or restrict
5	forfeitures authorized by law other than this chapter."
6	SECTION 4. Section 712A-16, Hawaii Revised Statutes, 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		<pre>reversionary interest[-];</pre>
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

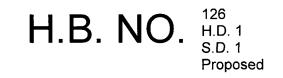


1	leasehold interest and any improvements by public
2	<pre>sale[-]; and</pre>
3	(iii) Any dispute between the attorney general and the
4	holder of the immediate reversionary interest as
5	to the fair market value of the leasehold
6	interest and improvements shall be settled by
7	arbitration pursuant to chapter 658A;
8	[(c) 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	[(c) May make] (d) Make any other disposition of forfeited
17	property authorized by law.
18	(2) All forfeited property and the sale proceeds thereof,
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, [b e	-distributed as follows:
3	.(a)	One quarter shall be distributed to the unit or units
4		of state or local government [whose] officers or
5		employees conducted the investigation and caused the
6		arrest of the person whose property was forfeited or
7		seizure of the property for forfeiture;
8	(b)	One quarter shall be distributed to the prosecuting
9		attorney who instituted the action producing the
10		forfeiture; and
11	(c)	One half shall be deposited into the criminal
12		forfeiture fund established by this chapter.
13	(3)	-Property and money distributed to units of state and
14	local gov	ernment shall be used for law enforcement purposes, and
15	shall com	plement but not supplant the funds regularly
16	appropria	ted for such purposes.] including reimbursement for any
17	<u>costs inc</u>	urred by the department of the attorney general related
18	to the se	izure or storage of seized property, shall be deposited
19	to the cr	edit of the state general fund.
20	[(4)] (3) There is established in the department of the
21	attorney	general a special fund to be known as the criminal

Page 11



1	forfeiture fund, hereinafter referred to as the "fund" <u>,</u> [in]
2	into which shall be deposited [one-half of the proceeds of a
3	forfeiture and any penalties paid pursuant to section 712A-
4	$\frac{10(6)}{10}$ a portion of the proceeds of each sale made pursuant to
5	this section that is sufficient to cover expenses of
6	administration and sale. All moneys in the fund shall be
7	expended by the attorney general and are hereby appropriated for
8	the [following purposes:
9	(a) The] payment of any expenses necessary to seize,
10	detain, appraise, inventory, safeguard, maintain,
11	advertise, or sell property seized, detained, or
12	forfeited pursuant to this chapter or of any other
13	necessary expenses incident to the seizure, detention,
14	or forfeiture of [such] property and [such] contract
15	services and payments to reimburse any federal, state,
16	or county agency for any expenditures made to perform
17	the foregoing functions[+].
18	[(b) The payment of awards for information or assistance
19	leading to a civil or criminal proceeding;
20	(c) The payment of supplemental sums to state and county

agencies for law enforcement purposes;

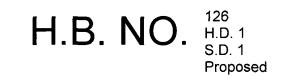
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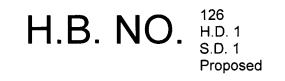
Page 12



1	(d)	The payment of expenses arising in connection with
2		programs for training and education of law enforcement
3		officers; and
4	(e)	The payment of expenses arising in connection with
5		enforcement pursuant to the drug nuisance abatement
6		unit in the department of the attorney general.
7	(5)]	(4) The attorney general [may, without regard to the
8	requireme	nts of chapter 91, promulgate] shall adopt rules [and
9	regulatio	ms] necessary to carry out the purpose of this chapter,
10	including	rules concerning the disposition of property, the use
11	of the fu	nd, and compromising and paying valid claims against
12	property	forfeited [pursuant to this chapter].
13	[(6)] <u>(5)</u> Not less than [twenty] <u>forty</u> days [prior to]
14	<u>before</u> th	e convening of each regular session, the attorney
15	general s	hall provide to the legislature a report on the use of
16	the Hawai	i omnibus criminal forfeiture act during the fiscal
17	year prec	eding the legislative session. The report shall
18	include:	
19	(a)	The total amount and type of property seized by law
20		enforcement agencies;



1	(b)	The total number of administrative and judicial
2		actions filed by prosecuting attorneys and the
3		disposition thereof[+] for each action;
4	(c)	The total number of claims or petitions for remission
5		or mitigation filed in administrative actions and the
6		dispositions thereof [+] for each action;
7	(d)	The total amount and type of property forfeited and
8		the sale proceeds thereof;
9	(e)	The total amount and type of property distributed to
10		units of state and local government;
11	(f)	The amount of money deposited into the [criminal
12		<pre>forfeiture] fund; [and]</pre>
13	<u>(g)</u>	The amount of money deposited into the general fund;
14		and
15	[(g)]	(h) The amount of money expended by the attorney
16		general from the criminal forfeiture fund under
17		subsection $[(5)]$ (4) and the reason for the
18		expenditures."
19	SECTI	ION 5. Section 712A-19, Hawaii Revised Statutes, is
20	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 6. 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 7. Statutory material to be repealed is bracketed
8	and stricken. New statutory material is underscored.
9	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. (Proposed SD1)

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

