
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) Requiring the attorney general to adopt rules
10 necessary to carry out the purposes of the Hawaii
11 omnibus criminal forfeiture act; and

12 (4) Repealing language that requires the Hawaii omnibus
13 criminal forfeiture act to be construed liberally.

14 SECTION 2. Chapter 712A, Hawaii Revised Statutes, is
15 amended by adding two new sections to be appropriately
16 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 other means that
3 circumvent the provisions of this section, unless the seized
4 property includes United States currency in excess of \$100,000."

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

7 **"§712A-5 Property subject to forfeiture; exemption. (1)**

8 The following 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~~] that facilitated or
14 assisted [~~such~~] the activity;

15 (c) Any firearm [~~which~~] that 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;



- 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~~] that
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~~] that
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~~] that are used, intended for use, or
20 [~~which~~] that facilitated or assisted in the commission



1 of a covered offense, or ~~[which]~~ that 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 ~~felony offense under state law;]~~

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)]~~ (a) 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



1 contest plea or a deferred acceptance of guilty

2 plea or no contest plea;

3 (b) 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.



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

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

19 (i) The attorney general shall first offer the holder
20 of the immediate reversionary interest the right
21 to acquire the leasehold interest and any



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

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



1 attorney general may proceed to sell the
2 leasehold interest and any improvements by public
3 sale~~[+]~~; and

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

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

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

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

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



1 ~~section 7~~] shall, after payment of expenses of administration and
2 sale, be 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 government shall be used for law enforcement purposes, and
15 shall complement but not supplant the funds regularly
16 appropriated for such purposes.

17 (4) There is established in the department of the attorney
18 general a special fund to be known as the criminal forfeiture
19 fund, hereinafter referred to as the "fund", ~~[in]~~ into which
20 shall be deposited one-half of the proceeds of a forfeiture and
21 any penalties paid pursuant to section 712A-10(6). All moneys



1 in the fund shall be expended by the attorney general and are
2 hereby appropriated for the following purposes:

- 3 (a) The payment of any expenses necessary to seize,
4 detain, appraise, inventory, safeguard, maintain,
5 advertise, or sell property seized, detained, or
6 forfeited pursuant to this chapter or of any other
7 necessary expenses incident to the seizure, detention,
8 or forfeiture of ~~such~~ property and ~~such~~ contract
9 services and payments to reimburse any federal, state,
10 or county agency for any expenditures made to perform
11 the foregoing functions;
- 12 (b) The payment of awards for information or assistance
13 leading to a civil or criminal proceeding;
- 14 (c) The payment of supplemental sums to state and county
15 agencies for law enforcement purposes;
- 16 (d) The payment of expenses arising in connection with
17 programs for training and education of law enforcement
18 officers; and
- 19 (e) The payment of expenses arising in connection with
20 enforcement pursuant to the drug nuisance abatement
21 unit in the department of the attorney general.



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

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

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

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

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

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



- 1 (e) The total amount and type of property distributed to
2 units of state and local government;
- 3 (f) The amount of money deposited into the criminal
4 forfeiture fund; and
- 5 (g) The amount of money expended by the attorney general
6 from the criminal forfeiture fund under subsection (5)
7 and the reason for the expenditures."

8 SECTION 5. Section 712A-19, Hawaii Revised Statutes, is
9 repealed.

10 ~~["**[§712A-19] Construction.** It is the intent of the~~
11 ~~legislature that this chapter be liberally construed so as to~~
12 ~~effect the purposes of this chapter."]~~

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

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

18 SECTION 8. This Act shall take effect on July 1, 2050.



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. 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. Effective 7/1/2050 (SD2)

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