

JAN 18 2019

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# A BILL FOR AN ACT

RELATED TO CIVIL FORFEITURE.

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

1 SECTION 1. 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[+], after holding the  
6 property for a minimum of nine months from the date of  
7 forfeiture:

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

12 (b) May sell forfeited property to the public by public  
13 sale; provided that for leasehold real property:

14 (i) The attorney general shall first offer the holder  
15 of the immediate reversionary interest the right  
16 to acquire the leasehold interest and any  
17 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[-]; 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 (c) May sell or destroy all raw materials, products, and  
9 equipment of any kind used or intended for use in  
10 manufacturing, compounding, or processing a controlled  
11 substance or any untaxed cigarettes in violation of  
12 chapter 245;

13 (d) May compromise and pay valid claims against property  
14 forfeited pursuant to this chapter; or

15 (e) May make any other disposition of forfeited property  
16 authorized by law.

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



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

6 (b) One quarter shall be distributed to the office of the  
7 prosecuting attorney who instituted the action  
8 producing the forfeiture; and

9 (c) One half shall be deposited into the criminal  
10 forfeiture fund established by this chapter.

11 (3) Property and money distributed to units of state and  
12 local government shall be used for law enforcement purposes, and  
13 shall complement but not supplant the funds regularly  
14 appropriated for such purposes.

15 (4) There is established in the department of the attorney  
16 general a revolving fund to be known as the criminal forfeiture  
17 fund, hereinafter referred to as the "fund" in which shall be  
18 deposited one-half of the proceeds of a forfeiture and any  
19 penalties paid pursuant to section 712A-10(6). All moneys in  
20 the fund shall be expended by the attorney general and are  
21 appropriated for the following purposes:



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



1 (f) The payment of expenses arising in connection with the  
2 law enforcement officer independent review board in  
3 the department of the attorney general.

4 (5) The attorney general may, without regard to the  
5 requirements of chapter 91, promulgate rules and regulations  
6 concerning the disposition of property, the use of the fund, and  
7 compromising and paying valid claims against property forfeited  
8 pursuant to this chapter.

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

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

16 (b) The total number of administrative and judicial  
17 actions filed by prosecuting attorneys and the  
18 disposition thereof;

19 (c) The total number of claims or petitions for remission  
20 or mitigation filed in administrative actions and the  
21 dispositions thereof;



- 1 (d) The total amount and type of property forfeited and
- 2 the sale proceeds thereof;
- 3 (e) The total amount and type of property distributed to
- 4 units of state and local government;
- 5 (f) The amount of money deposited into the criminal
- 6 forfeiture fund; and
- 7 (g) The amount of money expended by the attorney general
- 8 from the criminal forfeiture fund under subsection (5)
- 9 and the reason for the expenditures.
- 10 (7) The legal owner of the forfeited property may submit a
- 11 claim to the attorney general to pick up the forfeited property,
- 12 provided that the legal owner shall submit a claim to pick up
- 13 the forfeited property within sixty days following the mandatory
- 14 nine-month holding period required by subsection (1); provided
- 15 further that if a claim for pick up is not submitted within
- 16 sixty days, a thirty-day grace period may be granted on a case-
- 17 by-case basis by the attorney general. If the forfeited
- 18 property is not picked up within sixty days, the attorney
- 19 general may initiate the transfer or sale of forfeited property
- 20 pursuant to subsection (1) (a) and (b).



1       (8) The attorney general shall notify the legal owner of  
2 the legal owner's right to collect the forfeited property three  
3 times:

4       (a) On the last day of the nine-month holding period;

5       (b) On the thirtieth day following the last day of the  
6 nine-month holding period; and

7       (c) On the fifty-third day following last day of the nine-  
8 month holding period.

9       (9) The legal owner of the forfeited property may initiate  
10 a claim pursuant to subsection (7) and pick up the property only  
11 if:

12       (a) The property was legally the claimant's property  
13 before forfeiture;

14       (b) The mandatory nine-month holding period required by  
15 subsection (1) has been fulfilled; and

16       (c) The claimant did not receive a conviction before or  
17 during the mandatory nine-month holding period."

18       SECTION 2. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

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# S.B. NO. 355

**Report Title:**

Civil Forfeiture; Disposition of Forfeited Property; Attorney General

**Description:**

Requires a nine-month holding period before disposition of forfeited property by the attorney general. Establishes a claims process for a legal owner to pick up forfeited property within sixty days following the mandatory nine-month holding period, including notification requirements, if certain conditions are met.

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

