

---

# A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1           SECTION 1. The legislature finds that civil asset  
2 forfeiture laws are controversial and have been evolving  
3 throughout the country over the thirty years since Hawaii passed  
4 the Hawaii omnibus criminal forfeiture act, codified as  
5 chapter 712A, Hawaii Revised Statutes, that covers civil asset  
6 forfeiture. Hawaii's process allows law enforcement agencies to  
7 seize and keep property based on suspicion that the property is  
8 connected to criminal activity. Property, such as vehicles,  
9 houses, cash, and jewelry, can be taken without the property  
10 owner having been convicted of a crime or even being formally  
11 accused of one.

12           Additionally, the legislature finds that there is great  
13 incentive for state and county law enforcement agencies to seize  
14 property for forfeiture, as these agencies are permitted to  
15 retain proceeds from the sale of the property. Under state law,  
16 one hundred per cent of the proceeds are divided among the state



1 and county law enforcement agencies that were involved in the  
2 seizure and forfeiture.

3 The legislature notes that the Institute for Justice, a  
4 nonprofit civil liberties law firm, recommends abolishing civil  
5 forfeiture entirely, as at least three states - Nebraska, New  
6 Mexico, and North Carolina - have done. Fifteen states now  
7 require a criminal conviction for most or all forfeiture cases.  
8 Additionally, the legislature takes note of the Institute of  
9 Justice's "D-" rating of Hawaii's civil forfeiture laws and the  
10 characterization that the State's laws "are among the nation's  
11 worst".

12 Furthermore, the Institute for Justice recommends other  
13 reforms to make the forfeiture process fairer, beginning with  
14 eliminating financial incentives for law enforcement to seize  
15 and keep forfeited property and, instead, directing any proceeds  
16 to the general revenue fund or other neutral fund. Eight  
17 jurisdictions now prohibit law enforcement from keeping the  
18 proceeds from forfeited property. A second reform is to adopt a  
19 high standard of proof, such as beyond a reasonable doubt, in  
20 order to forfeit property in civil proceedings. Eighteen  
21 jurisdictions have a standard higher than Hawaii's preponderance



1 of the evidence standard, and for ten of those jurisdictions, it  
 2 is equivalent to beyond a reasonable doubt. The third suggested  
 3 reform, which a number of jurisdictions have already made,  
 4 involves requiring law enforcement to prove that owners  
 5 consented to or possessed knowledge of the crime that led to the  
 6 seizure of their property, restoring the presumption of  
 7 innocence used in criminal proceedings. The legislature finds  
 8 that none of these recommendations have been implemented in  
 9 Hawaii.

10 Accordingly, the purpose of this Act is to make the State's  
 11 civil asset forfeiture process more just by:

- 12 (1) Restricting civil asset forfeiture to cases involving  
 13 the commission of a felony offense where the property  
 14 owner has been convicted of an underlying felony  
 15 offense;
- 16 (2) Directing any forfeiture proceeds to the general fund;
- 17 (3) Amend the allowable expenses for moneys in the  
 18 criminal forfeiture fund;
- 19 (4) Require the attorney general to adopt rules necessary  
 20 to carry out the purpose of the Hawaii omnibus  
 21 criminal forfeiture act; and



1 (5) Amending the deadline for the attorney general to  
2 report to the legislature on the use of the Hawaii  
3 omnibus criminal forfeiture act.

4 SECTION 2. Section 712A-5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§712A-5 Property subject to forfeiture; exemption. (1)**

7 The following is subject to forfeiture:

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



- 1 (d) Contraband or untaxed cigarettes in violation of  
2 chapter 245, which shall be seized and summarily  
3 forfeited to the State without regard to the  
4 procedures set 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 (b) No property shall be forfeited under this chapter to  
9 the extent of an interest of an owner~~[7]~~ by reason of  
10 ~~[any act or omission established by that owner to have~~  
11 ~~been committed or omitted without the knowledge and~~  
12 ~~consent of that owner;]~~ :

13 (i) The commission of any covered offense unless:

14 (A) The covered offense is chargeable as a  
15 felony offense under state law; and

16 (B) The owner has been convicted of the covered  
17 offense by a verdict or plea, including a no  
18 contest plea or a deferred acceptance of  
19 guilty plea or no contest plea; or



1           (ii) Any act or omission established by that owner to  
2                   have been committed or omitted without the  
3                   knowledge and consent of that owner;  
4           provided that nothing in this paragraph shall be  
5           construed to prevent the seizure of property before  
6           conviction pursuant to section 712A-6;

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[~~-~~];  
21                   and

1        (f) This chapter shall not apply to the forfeiture of an  
2                    animal prior to disposition of criminal charges  
3                    pursuant to section 711-1109.2.

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

6        SECTION 3. 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:

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)] (a) May sell forfeited property to the public by~~  
16                    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~~[.]~~; 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)]~~ (b) May sell or destroy all raw materials, products,  
9 and 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)]~~ (c) May compromise and pay valid claims against  
14 property forfeited pursuant to this chapter; or

15 ~~[(e)]~~ (d) May make any other disposition of forfeited  
16 property 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 this~~  
20 ~~section, shall,]~~ after payment of expenses of administration and  
21 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 prosecuting~~  
7       ~~attorney who instituted the action producing the~~  
8       ~~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.] including reimbursement for any~~  
15       ~~costs incurred by the department of the attorney general related~~  
16       ~~to the seizure or storage of seized property, shall be deposited~~  
17       ~~to the credit of the state general fund.~~

18       ~~[-(4)]~~ (3) There is established in the department of the  
19       attorney general a revolving fund to be known as the criminal  
20       forfeiture fund, hereinafter referred to as the "fund" in which  
21       shall be deposited ~~[one half of the proceeds of a forfeiture and~~



1 ~~any penalties paid pursuant to section 712A-10(6).~~ a portion of  
2 the proceeds of each sale made pursuant to this section that is  
3 sufficient to cover expenses of administration and sale. All  
4 moneys in the fund shall be expended by the attorney general and  
5 are appropriated for ~~[the following purposes:~~

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

15       ~~(b) The payment of awards for information or assistance~~  
16           ~~leading to a civil or criminal proceeding;~~

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

19       ~~(d) The payment of expenses arising in connection with~~  
20           ~~programs for training and education of law enforcement~~  
21           ~~officers;~~



1       ~~(e) The payment of expenses arising in connection with~~  
2           ~~enforcement pursuant to the drug nuisance abatement~~  
3           ~~unit in the department of the attorney general; and~~  
4       ~~(f) The payment of expenses arising in connection with the~~  
5           ~~law enforcement officer independent review board in~~  
6           ~~the department of the attorney general].~~

7       ~~[(5)]~~ (4) The attorney general ~~[may, without regard to the~~  
8 ~~requirements of chapter 91, promulgate]~~ shall adopt rules ~~[and~~  
9 ~~regulations]~~ necessary to carry out the purpose of this chapter,  
10 including rules concerning the disposition of property, the use  
11 of the fund, and compromising and paying valid claims against  
12 property forfeited ~~[pursuant to this chapter].~~

13       ~~[(6)]~~ (5) ~~[Not]~~ No less than ~~[twenty]~~ forty days ~~[prior~~  
14 ~~to]~~ before the convening of each regular session, the attorney  
15 general shall provide to the legislature a report on the use of  
16 the Hawaii omnibus criminal forfeiture act during the fiscal  
17 year preceding 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;
- 4 (c) The total number of claims or petitions for remission
- 5 or mitigation filed in administrative actions and the
- 6 dispositions thereof;
- 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 forfeiture fund; and
- 13 (g) The amount of money expended by the attorney general
- 14 from the criminal forfeiture fund under
- 15 subsection [~~5~~] (4) and the reason for the
- 16 expenditures."

17 SECTION 4. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on July 1, 3021;  
2 provided that the amendments made to section 712A-16, Hawaii  
3 Revised Statutes, by section 3 of this Act shall not be repealed  
4 when section 712A-16, Hawaii Revised Statutes, is reenacted on  
5 June 30, 2022, by section 7 of Act 161, Session Laws of Hawaii  
6 2016.



**Report Title:**

Property Forfeiture; Disposition

**Description:**

Restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of the underlying felony offense, subject to certain circumstances. Directs any forfeiture proceeds to the general fund. Amends the allowable expenses for moneys in the criminal forfeiture fund. Amends the requirements for the attorney general to adopt rules and report on the Hawaii omnibus criminal forfeiture act. Effective 7/1/3021. (HD1)

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

