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



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

3 The purpose of this Act is to make the State's civil asset  
4 forfeiture process more just by:

- 5 (1) Restricting civil asset forfeiture to specific,  
6 limited cases;
- 7 (2) Adopting a higher standard of proof for property  
8 forfeiture;
- 9 (3) Allowing for the transfer of certain property to any  
10 local or state government entity, municipality, or law  
11 enforcement agency within the State for use for a  
12 period of no longer than twelve months, before  
13 transferring back to the attorney general;
- 14 (4) Directing forfeiture proceeds to certain involved  
15 state and local governments and to the general fund;
- 16 (5) Amending the allowable expenses for moneys in the  
17 criminal forfeiture fund;
- 18 (6) Requiring the attorney general to adopt rules  
19 necessary to carry out the purposes of the Hawaii  
20 omnibus criminal forfeiture act; and



1 (7) 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;]~~ the commission of any covered  
13 offense unless:

14 (i) A person exercising some degree of control over  
15 the property was charged with an offense related  
16 to the property prior to the forfeiture of the  
17 property interest;

18 (ii) All of the property owners are unknown or cannot  
19 be clearly identified; or

20 (iii) The owner has provided a law enforcement officer  
21 with assistance in a related criminal



1                   investigation and the property is otherwise  
 2                   subject to forfeiture pursuant to this chapter;  
 3                   provided that nothing in this paragraph shall be  
 4                   construed to prevent the seizure of property pursuant  
 5                   to section 712A-6 before the filing of the criminal  
 6                   charge;

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 instructions for filing a claim and cost or in  
2 pauperis bond, or a petition for remission or  
3 mitigation[~~-~~];

4 (3) The attorney general shall give notice of intention to  
5 forfeit the property administratively by publication  
6 in the manner provided in section 712A-8(c). Notice  
7 by publication shall include:

8 (a) A description of the property;

9 (b) The estimated value of the property;

10 (c) The date and place of the seizure;

11 (d) The offense for which the property is subject to  
12 forfeiture;

13 (e) Instructions for filing a claim and cost or in  
14 pauperis bond, or a petition for remission or  
15 mitigation; and

16 (f) Notice that the property will be forfeited to the  
17 State if a claim and cost or in pauperis bond or  
18 petition for remission or mitigation is not filed  
19 in substantial compliance with this section[~~-~~];

20 (4) Persons claiming an interest in the property may file  
21 either a petition for remission or mitigation of



1 forfeiture, or a claim and cost or in pauperis bond,  
2 but not both, with the attorney general, within thirty  
3 days of notice by publication or receipt of written  
4 notice, whichever is earlier. Notwithstanding section  
5 1-29, the thirty-day time period prescribed herein is  
6 computed by excluding the first day and including the  
7 last day, unless the last day is a Saturday, Sunday,  
8 or holiday and then it is also excluded, and the  
9 thirty-day time period runs until the end of the next  
10 day which is not a Saturday, Sunday, or a holiday.  
11 "Holiday" includes any day designated as a holiday  
12 pursuant to section 8-1[-];

- 13 (5) Any person claiming seized property may seek remission  
14 or mitigation of the forfeiture by timely filing a  
15 petition with the attorney general. A petition for  
16 remission or mitigation shall not be used to challenge  
17 the sufficiency of the evidence to support the  
18 forfeiture or the actions of any government official  
19 but shall presume a valid forfeiture and ask the  
20 attorney general to invoke the executive power to  
21 pardon the property, in whole or in part. The



1 petition shall be signed by the petitioner and sworn  
2 on oath before a notary public and shall contain the  
3 following:

4 (a) A reasonably complete description of the  
5 property;

6 (b) A statement of the interest of the petitioner in  
7 the property, as owner or interest-holder which  
8 may be supported by bills of sale, contracts, or  
9 mortgages, or other documentary evidence; and

10 (c) Facts and circumstances sufficient to show  
11 whether the petitioner:

12 (i) Owns or holds an interest in the seized  
13 property as defined by section 712A-1;

14 (ii) Had any knowledge that the property was or  
15 would be involved in any violation of the  
16 law;

17 (iii) Had any knowledge of the particular  
18 violation which subjected the property to  
19 seizure and forfeiture;

20 (iv) Had any knowledge that the user of the  
21 property had any record, including arrests,



1                   except when the person was acquitted or the  
2                   charges dismissed due to lack of evidence,  
3                   for the violation which subjected the  
4                   property to seizure and forfeiture or for  
5                   any crime which is similar in nature.

6                   Any subsequent pleadings or written communications  
7                   alleging matters pertaining to [+]subparagraph[+] (b)  
8                   or (c) of this [+]paragraph[+~~must~~] shall also be  
9                   signed by the petitioner and sworn on oath before a  
10                  notary public[~~-~~];

11               (6) If the attorney general, with sole discretion,  
12               determines that remission is not warranted, the  
13               attorney general may discretionarily mitigate the  
14               forfeiture where the petitioner has not met the  
15               minimum requirements for remission but where there are  
16               present other extenuating circumstances indicating  
17               that some relief should be granted to avoid extreme  
18               hardship. Mitigation may also be granted where the  
19               minimum requirements for remission have been met but  
20               the overall circumstances are such that the attorney  
21               general determines that complete relief is not



1 warranted. Mitigation shall take the form of a money  
2 penalty imposed upon the petitioner which shall be  
3 deposited into the criminal forfeiture fund  
4 established under section 712A-16. Extenuating  
5 circumstances include:

- 6 (a) Language or culture barrier;  
7 (b) Humanitarian factors such as youth or extreme  
8 age;  
9 (c) Presence of physical or mental disease, disorder,  
10 or defect;  
11 (d) Limited or peripheral criminal culpability;  
12 (e) Cooperation with the seizing agency or the  
13 prosecuting attorney; and  
14 (f) Any contributory error on the part of government  
15 officials[-];

16 (7) It shall be the duty of the attorney general to  
17 inquire into the facts and circumstances alleged in a  
18 petition for remission or mitigation of forfeiture.  
19 However, no petitioner is entitled to a hearing on the  
20 petition for remission or mitigation. Hearings, if



1 any, shall be held at the discretion of the attorney  
2 general[-];

3 (8) The attorney general shall provide the seizing agency  
4 and the petitioner a written decision on each petition  
5 for remission or mitigation within sixty days of  
6 receipt of the petition unless the circumstances of  
7 the case require additional time, in which case the  
8 attorney general shall notify the petitioner in  
9 writing and with specificity within the sixty-day  
10 period that the circumstances of the case require  
11 additional time and further notify the petitioner of  
12 the expected decision date[-];

13 (9) Any person claiming seized property may seek judicial  
14 review of the seizure and proposed forfeiture by  
15 timely filing with the attorney general a claim and  
16 bond to the State in the amount of ten per cent of the  
17 estimated value of the property or in the sum of  
18 \$2,500, whichever is greater, with sureties to be  
19 approved by the attorney general, upon condition that  
20 if the claimant fails to prove that claimant's  
21 interest is exempt from forfeiture under section 712A-



1           5, the claimant shall pay the State's costs and  
2           expenses, including reasonable attorneys fees incurred  
3           in connection with a judicial proceeding. In lieu of  
4           a cost bond, a claimant may file an in pauperis bond  
5           sworn on oath before a notary public. An in pauperis  
6           bond shall be in the form set out in the appendix to  
7           the rules of penal procedure. The claim shall be  
8           signed by the claimant and sworn on oath before a  
9           notary public and shall comply with the requirements  
10          of section 712A-12(5). Upon receipt of the claim and  
11          bond, the attorney general shall notify the  
12          prosecuting attorney who may discretionarily continue  
13          to seek forfeiture by petitioning the circuit court  
14          for forfeiture of the property within forty-five days  
15          of receipt of notice that a proper claim and bond has  
16          been filed. The prosecuting attorney may also elect  
17          to honor the claim in which case the prosecuting  
18          attorney shall notify the seizing agency and authorize  
19          the release of the seizure for forfeiture on the  
20          property or on any specified interest in it[-];



- 1 (10) If a judicial forfeiture proceeding is instituted  
2 subsequent to notice of administrative forfeiture  
3 pursuant to paragraph (9), no duplicate or repetitive  
4 notice shall be required. The judicial proceeding, if  
5 any, shall adjudicate all timely filed claims. At the  
6 judicial proceeding, the claimant may testify, present  
7 evidence and witnesses on the claimant's behalf, and  
8 cross-examine witnesses who appear at the hearing.  
9 The State may present evidence and witnesses in  
10 rebuttal and in defense of its claim to the property  
11 and cross-examine witnesses who appear at the hearing.  
12 The State has the initial burden of showing by [~~a~~  
13 ~~preponderance of the~~] clear and convincing evidence  
14 that the claimant's interest in the property is  
15 subject to forfeiture. On such a showing by the  
16 State, the claimant has the burden of showing by [~~a~~  
17 ~~preponderance of the~~] clear and convincing evidence  
18 that the claimant's interest in the property is not  
19 subject to forfeiture[~~-~~];
- 20 (11) In the event a claim and bond has not been filed in  
21 substantial compliance with this section, or if the



1 attorney general, with sole discretion, determines  
2 that remission or mitigation is not warranted, the  
3 attorney general, upon a finding that the State has  
4 established by clear and convincing evidence that the  
5 property seized for forfeiture is subject to  
6 forfeiture, shall order forfeited all property seized  
7 for forfeiture. In the event the attorney general,  
8 with sole discretion, determines that remission or  
9 mitigation is warranted, the attorney general shall  
10 notify the seizing agency and the prosecuting attorney  
11 and order the release of the seizure for forfeiture on  
12 the property or on any specified interest in it.  
13 There shall be no appeal from the attorney general's  
14 decision or order of forfeiture or remission or  
15 mitigation[-]; and

16 (12) Administrative proceedings and the adoption of rules  
17 under this section are exempt from the requirements of  
18 chapter 91, the Hawaii administrative procedure act,  
19 and are adjudicatory functions for the purposes of  
20 applicable sections of the Hawaii Revised Statutes."



1 SECTION 4. Section 712A-12, Hawaii Revised Statutes, is  
2 amended by amending subsection (8) to read as follows:

3 "(8) The State has the initial burden of showing by [~~a~~  
4 ~~preponderance of the]~~ clear and convincing evidence that the  
5 claimant's interest in the property is subject to forfeiture.  
6 On such a showing by the State, the claimant has the burden of  
7 showing by [~~a preponderance of the]~~ clear and convincing  
8 evidence that the claimant's interest in the property is not  
9 subject to forfeiture."

10 SECTION 5. Section 712A-13, Hawaii Revised Statutes, is  
11 amended by amending subsection (1) to read as follows:

12 "(1) If a forfeiture is authorized by law, it shall be  
13 ordered by a court on a petition for forfeiture filed by the  
14 prosecuting attorney in an in personam civil or criminal action.  
15 In any civil in personam action brought under this section, the  
16 owner or interest-holder may testify, present evidence and  
17 witnesses on the owner or interest-holder's behalf, and cross-  
18 examine witnesses who appear at the hearing. The State may  
19 present evidence and witnesses in rebuttal and in defense of its  
20 claim to the property and cross-examine witnesses who appear at  
21 the hearing. The State has the initial burden of showing by [~~a~~



1 ~~preponderance of the]~~ clear and convincing evidence that the  
 2 owner or interest-holder's interest in the property is subject  
 3 to forfeiture. On such a showing by the State, the owner or  
 4 interest-holder has the burden of showing by [~~a preponderance of~~  
 5 ~~the]~~ clear and convincing evidence that the owner or interest-  
 6 holder's interest in the property is not subject to forfeiture."

7 SECTION 6. Section 712A-16, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9 "**§712A-16 Disposition of property forfeited.** (1) All  
 10 property forfeited to the State under this chapter shall be  
 11 transferred to the attorney general, who:

12 (a) May transfer property, other than currency, [~~which~~  
 13 ~~shall be distributed in accordance with subsection~~  
 14 ~~(2)] to any local or state government entity,  
 15 municipality, or law enforcement agency within the  
 16 State[+] for use for a period of no longer than twelve  
 17 months before transfer of the property back to the  
 18 attorney general;~~

19 (b) May sell forfeited property to the public by public  
 20 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[-];



- 1           (ii) If the holder of the immediate reversionary
- 2                   interest fails to exercise the right of first
- 3                   refusal provided in subparagraph (i), the
- 4                   attorney general may proceed to sell the
- 5                   leasehold interest and any improvements by public
- 6                   sale~~[-]~~; and
- 7           (iii) Any dispute between the attorney general and the
- 8                   holder of the immediate reversionary interest as
- 9                   to the fair market value of the leasehold
- 10                  interest and improvements shall be settled by
- 11                  arbitration pursuant to chapter 658A;
- 12           (c) May sell or destroy all raw materials, products, and
- 13                  equipment of any kind used or intended for use in
- 14                  manufacturing, compounding, or processing a controlled
- 15                  substance or any untaxed cigarettes in violation of
- 16                  chapter 245;
- 17           (d) May compromise and pay valid claims against property
- 18                  forfeited pursuant to this chapter; or
- 19           (e) May make any other disposition of forfeited property
- 20                  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, shall 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; and

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]. The remainder, including~~  
20 reimbursement for any costs incurred by the department of the  
21 attorney general related to the seizure or storage of seized



1 property, shall be deposited to the credit of the state general  
2 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 which  
6 shall be deposited ~~[one-half of the proceeds of a forfeiture and~~  
7 ~~any penalties paid pursuant to section 712A-10(6).]~~ a portion of  
8 the proceeds of each sale made pursuant to this section that is  
9 sufficient to cover expenses of administration and sale. All  
10 moneys in the fund shall be expended by the attorney general and  
11 ~~[are]~~ shall be appropriated for ~~[the following purposes:]~~

- 12 (a) ~~The]~~ the payment of any expenses necessary to seize,  
13 detain, appraise, inventory, safeguard, maintain,  
14 advertise, or sell property seized, detained, or  
15 forfeited pursuant to this chapter or of any other  
16 necessary expenses incident to the seizure, detention,  
17 or forfeiture of ~~[such]~~ property and ~~[such]~~ contract  
18 services and payments to reimburse any federal, state,  
19 or county agency for any expenditures made to perform  
20 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;~~
- 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; and~~
- 11       ~~(f) The payment of expenses arising in connection with the~~
- 12          ~~law enforcement officer independent review board in~~
- 13          ~~the department of the attorney general].~~

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

20       ~~[(6)]~~ (5) ~~[Not]~~ No less than ~~[twenty]~~ forty days ~~[prior~~  
 21 ~~to]~~ before the convening of each regular session, the attorney



1 general shall provide to the legislature a report on the use of  
2 the Hawaii omnibus criminal forfeiture act during the fiscal  
3 year preceding the legislative session. The report shall  
4 include:

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

7 (b) The total number of administrative and judicial  
8 actions filed by prosecuting attorneys and the  
9 disposition thereof;

10 (c) The total number of claims or petitions for remission  
11 or mitigation filed in administrative actions and the  
12 dispositions thereof;

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

15 (e) The total amount and type of property distributed to  
16 units of state and local government;

17 (f) The amount of money deposited into the criminal  
18 forfeiture fund; and

19 (g) The amount of money expended by the attorney general  
20 from the criminal forfeiture fund under subsection  
21 [~~4~~] (3) and the reason for the expenditures."



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

4 SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on January 1, 2222;  
7 provided that the amendments made to section 712A-16, Hawaii  
8 Revised Statutes, by section 6 of this Act shall not be repealed  
9 when section 712A-16, Hawaii Revised Statutes, is reenacted on  
10 June 30, 2022, by section 7 of Act 161, Session Laws of Hawaii  
11 2016.

12



**Report Title:**

Property Forfeiture; Disposition; Criminal Forfeiture

**Description:**

Restricts civil asset forfeiture to specific, limited cases. Raises the burden of proof for property forfeiture to clear and convincing evidence. Authorizes the use of certain forfeited property by local or state agencies for a limited time. Directs forfeiture proceeds to certain involved state and local governments and to the general fund. Amends the allowable uses of moneys in the criminal forfeiture fund. Requires the Attorney General to adopt rules. Advances the deadline for the Attorney General to report to the Legislature on the Hawaii omnibus criminal forfeiture act. Effective 1/1/2222. (HD2)

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

