
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 cases involving
6 the commission of a covered offense where the person
7 exercising some degree of control over the property is
8 charged with an offense related to the property;
- 9 (2) Adopting a higher standard of proof for the State to
10 forfeit property;
- 11 (3) Allowing for the transfer of certain property to any
12 local or state government entity, municipality, or law
13 enforcement agency within the State for use for a
14 period of no longer than twelve months, before
15 transferring back to the attorney general;
- 16 (4) Directing forfeiture proceeds to certain involved
17 state and local governments and to the general fund;
- 18 (5) Amending the allowable expenses for moneys in the
19 criminal forfeiture fund;



- 1 (6) Requiring the attorney general to adopt rules
- 2 necessary to carry out the purpose of the Hawaii
- 3 omnibus criminal forfeiture act; and
- 4 (7) Amending the deadline for the attorney general to
- 5 report to the legislature on the use of the Hawaii
- 6 omnibus criminal forfeiture act.

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

9 "**§712A-5 Property subject to forfeiture; exemption.** (1)

10 The following is subject to forfeiture:

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



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



1 ~~[which]~~ that facilitated or assisted in the commission
2 of a covered offense, or ~~[which]~~ that document the use
3 of the proceeds of a covered offense.

4 (2) Except that:

5 (a) Real property, or an interest therein, may be
6 forfeited under the provisions of this chapter only in
7 cases in which the covered offense is chargeable as a
8 felony offense under state law;

9 (b) No property shall be forfeited under this chapter to
10 the extent of an interest of an owner~~[7]~~ by reason of
11 ~~[any act or omission established by that owner to have~~
12 ~~been committed or omitted without the knowledge and~~
13 ~~consent of that owner;]~~ the commission of any covered
14 offense unless a person exercising some degree of
15 control over the property is charged with an offense
16 related to the property; provided that nothing in this
17 paragraph shall be construed to prevent the seizure of
18 property before conviction pursuant to section 712A-6;

19 (c) No conveyance used by any person as a common carrier
20 in the transaction of a business as a common carrier
21 is subject to forfeiture under this section unless it



1 appears that the owner or other person in charge of
2 the conveyance is a consenting party or privy to a
3 violation of this chapter;

4 (d) No conveyance is subject to forfeiture under this
5 section by reason of any act or omission established
6 by the owner thereof to have been committed or omitted
7 without the owner's knowledge or consent; [~~and~~]

8 (e) A forfeiture of a conveyance encumbered by a bona fide
9 security interest is subject to the interest of the
10 secured party if the secured party neither had
11 knowledge of nor consented to the act or omission[~~+~~];
12 and

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

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

18 SECTION 3. Section 712A-10, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§712A-10 Administrative forfeiture.** The prosecuting
21 attorney may initiate administrative forfeiture of property



1 other than real property, the estimated value of which is less
2 than \$100,000, or of any vehicle or conveyance, regardless of
3 value. Administrative forfeiture shall be processed in the
4 following manner:

5 (1) The prosecuting attorney shall file a petition with
6 the attorney general, pursuant to rules adopted by the
7 attorney general.

8 (2) The prosecuting attorney shall give notice of pending
9 forfeiture by making reasonable efforts to serve a
10 copy of the petition in a manner provided in section
11 712A-8(a) or 712A-8(b) on all persons known to have an
12 interest in the property, together with instructions
13 for filing a claim and cost or in pauperis bond, or a
14 petition for remission or mitigation.

15 (3) The attorney general shall give notice of intention to
16 forfeit the property administratively by publication
17 in the manner provided in section 712A-8(c). Notice
18 by publication shall include:

- 19 (a) A description of the property;
20 (b) The estimated value of the property;
21 (c) The date and place of the seizure;



- 1 (d) The offense for which the property is subject to
2 forfeiture;
- 3 (e) Instructions for filing a claim and cost or in
4 pauperis bond, or a petition for remission or
5 mitigation; and
- 6 (f) Notice that the property will be forfeited to the
7 State if a claim and cost or in pauperis bond or
8 petition for remission or mitigation is not filed
9 in substantial compliance with this section.
- 10 (4) Persons claiming an interest in the property may file
11 either a petition for remission or mitigation of
12 forfeiture, or a claim and cost or in pauperis bond,
13 but not both, with the attorney general, within thirty
14 days of notice by publication or receipt of written
15 notice, whichever is earlier. Notwithstanding section
16 1-29, the thirty-day time period prescribed herein is
17 computed by excluding the first day and including the
18 last day, unless the last day is a Saturday, Sunday,
19 or holiday and then it is also excluded, and the
20 thirty-day time period runs until the end of the next
21 day which is not a Saturday, Sunday, or a holiday.



1 "Holiday" includes any day designated as a holiday
2 pursuant to section 8-1.
3 (5) Any person claiming seized property may seek remission
4 or mitigation of the forfeiture by timely filing a
5 petition with the attorney general. A petition for
6 remission or mitigation shall not be used to challenge
7 the sufficiency of the evidence to support the
8 forfeiture or the actions of any government official
9 but shall presume a valid forfeiture and ask the
10 attorney general to invoke the executive power to
11 pardon the property, in whole or in part. The
12 petition shall be signed by the petitioner and sworn
13 on oath before a notary public and shall contain the
14 following:
15 (a) A reasonably complete description of the
16 property;
17 (b) A statement of the interest of the petitioner in
18 the property, as owner or interest-holder which
19 may be supported by bills of sale, contracts, or
20 mortgages, or other documentary evidence; and



1 (c) Facts and circumstances sufficient to show
2 whether the petitioner:
3 (i) Owns or holds an interest in the seized
4 property as defined by section 712A-1;
5 (ii) Had any knowledge that the property was or
6 would be involved in any violation of the
7 law;
8 (iii) Had any knowledge of the particular
9 violation which subjected the property to
10 seizure and forfeiture;
11 (iv) Had any knowledge that the user of the
12 property had any record, including arrests,
13 except when the person was acquitted or the
14 charges dismissed due to lack of evidence,
15 for the violation which subjected the
16 property to seizure and forfeiture or for
17 any crime which is similar in nature.
18 Any subsequent pleadings or written communications
19 alleging matters pertaining to [‡]subparagraph[‡] (b)
20 or (c) of this [‡]paragraph[‡] must also be signed by



1 the petitioner and sworn on oath before a notary
2 public.

3 (6) If the attorney general, with sole discretion,
4 determines that remission is not warranted, the
5 attorney general may discretionarily mitigate the
6 forfeiture where the petitioner has not met the
7 minimum requirements for remission but where there are
8 present other extenuating circumstances indicating
9 that some relief should be granted to avoid extreme
10 hardship. Mitigation may also be granted where the
11 minimum requirements for remission have been met but
12 the overall circumstances are such that the attorney
13 general determines that complete relief is not
14 warranted. Mitigation shall take the form of a money
15 penalty imposed upon the petitioner which shall be
16 deposited into the criminal forfeiture fund
17 established under section 712A-16. Extenuating
18 circumstances include:

19 (a) Language or culture barrier;
20 (b) Humanitarian factors such as youth or extreme
21 age;



- 1 (c) Presence of physical or mental disease, disorder,
2 or defect;
- 3 (d) Limited or peripheral criminal culpability;
- 4 (e) Cooperation with the seizing agency or the
5 prosecuting attorney; and
- 6 (f) Any contributory error on the part of government
7 officials.
- 8 (7) It shall be the duty of the attorney general to
9 inquire into the facts and circumstances alleged in a
10 petition for remission or mitigation of forfeiture.
11 However, no petitioner is entitled to a hearing on the
12 petition for remission or mitigation. Hearings, if
13 any, shall be held at the discretion of the attorney
14 general.
- 15 (8) The attorney general shall provide the seizing agency
16 and the petitioner a written decision on each petition
17 for remission or mitigation within sixty days of
18 receipt of the petition unless the circumstances of
19 the case require additional time, in which case the
20 attorney general shall notify the petitioner in
21 writing and with specificity within the sixty-day



1 period that the circumstances of the case require
2 additional time and further notify the petitioner of
3 the expected decision date.

- 4 (9) Any person claiming seized property may seek judicial
5 review of the seizure and proposed forfeiture by
6 timely filing with the attorney general a claim and
7 bond to the State in the amount of ten per cent of the
8 estimated value of the property or in the sum of
9 \$2,500, whichever is greater, with sureties to be
10 approved by the attorney general, upon condition that
11 if the claimant fails to prove that claimant's
12 interest is exempt from forfeiture under section 712A-
13 5, the claimant shall pay the State's costs and
14 expenses, including reasonable attorneys fees incurred
15 in connection with a judicial proceeding. In lieu of
16 a cost bond, a claimant may file an in pauperis bond
17 sworn on oath before a notary public. An in pauperis
18 bond shall be in the form set out in the appendix to
19 the rules of penal procedure. The claim shall be
20 signed by the claimant and sworn on oath before a
21 notary public and shall comply with the requirements



1 of section 712A-12(5). Upon receipt of the claim and
2 bond, the attorney general shall notify the
3 prosecuting attorney who may discretionarily continue
4 to seek forfeiture by petitioning the circuit court
5 for forfeiture of the property within forty-five days
6 of receipt of notice that a proper claim and bond has
7 been filed. The prosecuting attorney may also elect
8 to honor the claim in which case the prosecuting
9 attorney shall notify the seizing agency and authorize
10 the release of the seizure for forfeiture on the
11 property or on any specified interest in it.

12 (10) If a judicial forfeiture proceeding is instituted
13 subsequent to notice of administrative forfeiture
14 pursuant to paragraph (9), no duplicate or repetitive
15 notice shall be required. The judicial proceeding, if
16 any, shall adjudicate all timely filed claims. At the
17 judicial proceeding, the claimant may testify, present
18 evidence and witnesses on the claimant's behalf, and
19 cross-examine witnesses who appear at the hearing.
20 The State may present evidence and witnesses in
21 rebuttal and in defense of its claim to the property



1 and cross-examine witnesses who appear at the hearing.

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

9 (11) In the event a claim and bond has not been filed in
10 substantial compliance with this section, or if the
11 attorney general, with sole discretion, determines
12 that remission or mitigation is not warranted, the
13 attorney general shall order forfeited all property
14 seized for forfeiture. In the event the attorney
15 general, with sole discretion, determines that
16 remission or mitigation is warranted, the attorney
17 general shall notify the seizing agency and the
18 prosecuting attorney and order the release of the
19 seizure for forfeiture on the property or on any
20 specified interest in it. There shall be no appeal



1 from the attorney general's decision or order of
2 forfeiture or remission or mitigation.

3 (12) Administrative proceedings and the adoption of rules
4 under this section are exempt from the requirements of
5 chapter 91, the Hawaii administrative procedure act,
6 and are adjudicatory functions for the purposes of
7 applicable sections of the Hawaii Revised Statutes."

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

10 "(8) The State has the initial burden of showing by [a
11 ~~preponderance of the~~ clear and convincing evidence that the
12 claimant's interest in the property is subject to forfeiture.
13 On such a showing by the State, the claimant has the burden of
14 showing by a preponderance of the evidence that the claimant's
15 interest in the property is not subject to forfeiture."

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

18 "(1) If a forfeiture is authorized by law, it shall be
19 ordered by a court on a petition for forfeiture filed by the
20 prosecuting attorney in an in personam civil or criminal action.
21 In any civil in personam action brought under this section, the



1 owner or interest-holder may testify, present evidence and
2 witnesses on the owner or interest-holder's behalf, and cross-
3 examine witnesses who appear at the hearing. The State may
4 present evidence and witnesses in rebuttal and in defense of its
5 claim to the property and cross-examine witnesses who appear at
6 the hearing. The State has the initial burden of showing by [~~a~~
7 ~~preponderance of the~~] clear and convincing evidence that the
8 owner or interest-holder's interest in the property is subject
9 to forfeiture. On such a showing by the State, the owner or
10 interest-holder has the burden of showing by a preponderance of
11 the evidence that the owner or interest-holder's interest in the
12 property is not subject to forfeiture."

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

15 "**§712A-16 Disposition of property forfeited.** (1) All
16 property forfeited to the State under this chapter shall be
17 transferred to the attorney general, who:

18 (a) May transfer property, other than currency, [~~which~~
19 ~~shall be distributed in accordance with subsection~~
20 ~~(2)] to any local or state government entity,
21 municipality, or law enforcement agency within the~~



1 State[+] to be used for a period of no longer than
2 twelve months before being transferred back to the
3 attorney general;

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

6 (i) The attorney general shall first offer the holder
7 of the immediate reversionary interest the right
8 to acquire the leasehold interest and any
9 improvements built or paid for by the lessee for
10 the then fair market value of the leasehold
11 interest and improvements. The holder of the
12 immediate reversionary interest shall have thirty
13 days after receiving written notice within which
14 to accept or reject the offer in writing;
15 provided that the offer shall be deemed to be
16 rejected if the holder of the immediate
17 reversionary interest has not communicated
18 acceptance to the attorney general within the
19 thirty-day period. The holder of the immediate
20 reversionary interest shall have thirty days
21 after acceptance to tender to the attorney



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



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

3 (e) May make any other disposition of forfeited property
4 authorized by law.

5 (2) All forfeited property and the sale proceeds thereof,
6 ~~[up to a maximum of three million dollars per year, not~~
7 ~~previously transferred pursuant to [subsection] (1) (a) of this~~
8 ~~section,]~~ shall, after payment of expenses of administration and
9 sale, be distributed as follows:

10 (a) One quarter shall be distributed to the unit or units
11 of state or local government ~~[+]~~whose~~[+]~~ officers or
12 employees conducted the investigation and caused the
13 arrest of the person whose property was forfeited or
14 seizure of the property for forfeiture; and

15 (b) One quarter shall be distributed to the prosecuting
16 attorney who instituted the action producing the
17 forfeiture~~;~~ ~~and~~

18 ~~(c) One half shall be deposited into the criminal~~
19 ~~forfeiture fund established by this chapter.~~

20 ~~(3) Property and money distributed to units of state and~~
21 ~~local government shall be used for law enforcement purposes, and~~



1 ~~shall complement but not supplant the funds regularly~~
2 ~~appropriated for such purposes].~~ The remainder, including
3 reimbursement for any costs incurred by the department of the
4 attorney general related to the seizure or storage of seized
5 property, shall be deposited to the credit of the state general
6 fund.

7 ~~[-(4)]~~ (3) There is established in the department of the
8 attorney general a special fund to be known as the criminal
9 forfeiture fund, hereinafter referred to as the "fund" in which
10 shall be deposited ~~[one-half of the proceeds of a forfeiture and~~
11 ~~any penalties paid pursuant to section 712A-10(6).]~~ a portion of
12 the proceeds of each sale made pursuant to this section that is
13 sufficient to cover expenses of administration and sale. All
14 moneys in the fund shall be expended by the attorney general and
15 are appropriated for ~~[the following purposes:]~~

16 (a) ~~The]~~ the payment of any expenses necessary to seize,
17 detain, appraise, inventory, safeguard, maintain,
18 advertise, or sell property seized, detained, or
19 forfeited pursuant to this chapter or of any other
20 necessary expenses incident to the seizure, detention,
21 or forfeiture of ~~[such]~~ property and ~~[such]~~ contract



1 services and payments to reimburse any federal, state,
2 or county agency for any expenditures made to perform
3 the foregoing functions[+
4 ~~(b) The payment of awards for information or assistance~~
5 ~~leading to a civil or criminal proceeding;~~
6 ~~(c) The payment of supplemental sums to state and county~~
7 ~~agencies for law enforcement purposes;~~
8 ~~(d) The payment of expenses arising in connection with~~
9 ~~programs for training and education of law enforcement~~
10 ~~officers;~~
11 ~~(e) The payment of expenses arising in connection with~~
12 ~~enforcement pursuant to the drug nuisance abatement~~
13 ~~unit in the department of the attorney general; and~~
14 ~~(f) The payment of expenses arising in connection with the~~
15 ~~law enforcement officer independent review board in~~
16 ~~the department of the attorney general].~~

17 [~~5~~] (4) The attorney general, ~~[may,~~ without regard to
18 the requirements of chapter 91, ~~[promulgate]~~ shall adopt rules
19 ~~[and regulations]~~ necessary to carry out the purpose of this
20 chapter, including rules concerning the disposition of property,



1 the use of the fund, and compromising and paying valid claims
2 against property forfeited [~~pursuant to this chapter~~].
3 [~~(6)~~] (5) [~~Not~~] No less than [~~twenty~~] forty days [~~prior~~
4 ~~to~~] before the convening of each regular session, the attorney
5 general shall provide to the legislature a report on the use of
6 the Hawaii omnibus criminal forfeiture act during the fiscal
7 year preceding the legislative session. The report shall
8 include:
9 (a) The total amount and type of property seized by law
10 enforcement agencies;
11 (b) The total number of administrative and judicial
12 actions filed by prosecuting attorneys and the
13 disposition thereof;
14 (c) The total number of claims or petitions for remission
15 or mitigation filed in administrative actions and the
16 dispositions thereof;
17 (d) The total amount and type of property forfeited and
18 the sale proceeds thereof;
19 (e) The total amount and type of property distributed to
20 units of state and local government;



- 1 (f) The amount of money deposited into the criminal
- 2 forfeiture fund; and
- 3 (g) The amount of money expended by the attorney general
- 4 from the criminal forfeiture fund under subsection
- 5 ~~[-(5)]~~ (4) and the reason for the expenditures."

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

9 SECTION 8. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect on June 29, 2022;
 12 provided that the amendments made to section 712A-16, Hawaii
 13 Revised Statutes, by section 6 of this Act shall not be repealed
 14 when section 712A-16, Hawaii Revised Statutes, is reenacted on
 15 June 30, 2022, by section 7 of Act 161, Session Laws of Hawaii
 16 2016.

17

INTRODUCED BY:



JAN 24 2022



H.B. NO. 1965

Report Title:

Property Forfeiture; Disposition; Criminal Forfeiture

Description:

Restricts civil asset forfeiture to cases involving the commission of a covered offense where the person exercising some degree of control over the property is charged with an offense related to the property. Raises the State's standard for 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 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 6/29/2022.

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

