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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 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



- 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~~[r]~~ 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)~~] (b) on all persons known to  
12 have an interest in the property, together with  
13 instructions for filing a claim and cost or in  
14 pauperis bond, or a petition for remission or  
15 mitigation[-];

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

20 (a) A description of the property;

21 (b) The estimated value of the property;



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





1 day which is not a Saturday, Sunday, or a holiday.

2 "Holiday" includes any day designated as a holiday  
3 pursuant to section 8-1[-];

4 (5) Any person claiming seized property may seek remission  
5 or mitigation of the forfeiture by timely filing a  
6 petition with the attorney general. A petition for  
7 remission or mitigation shall not be used to challenge  
8 the sufficiency of the evidence to support the  
9 forfeiture or the actions of any government official  
10 but shall presume a valid forfeiture and ask the  
11 attorney general to invoke the executive power to  
12 pardon the property, in whole or in part. The  
13 petition shall be signed by the petitioner and sworn  
14 on oath before a notary public and shall contain the  
15 following:

16 (a) A reasonably complete description of the  
17 property;

18 (b) A statement of the interest of the petitioner in  
19 the property, as owner or interest-holder which  
20 may be supported by bills of sale, contracts, or  
21 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~~ shall also be



1 signed by the petitioner and sworn on oath before a  
2 notary 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  
9 forfeiture[-];

10 (11) In the event a claim and bond has not been filed in  
11 substantial compliance with this section, or if the  
12 attorney general, with sole discretion, determines  
13 that remission or mitigation is not warranted, the  
14 attorney general shall order forfeited all property  
15 seized for forfeiture. In the event the attorney  
16 general, with sole discretion, determines that  
17 remission or mitigation is warranted, the attorney  
18 general shall notify the seizing agency and the  
19 prosecuting attorney and order the release of the  
20 seizure for forfeiture on the property or on any  
21 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[-]; and  
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~~[+]~~;

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 January 1, 2222;  
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





**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 1/1/2222. (HD1)

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

