
A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

1 SECTION 1. The purpose of this Act is to make the State's
2 property forfeiture process more just by:

3 (1) Increasing transparency and accountability surrounding
4 property forfeiture;

5 (2) Clarifying which property is subject to forfeiture;

6 (3) Amending the authorized disposition of forfeited
7 property and the proceeds thereof;

8 (4) Requiring the attorney general to adopt rules
9 necessary to carry out the purpose of the Hawaii
10 Omnibus Criminal Forfeiture Act; and

11 (5) Repealing language that requires the Hawaii Omnibus
12 Criminal Forfeiture Act to be construed liberally.

13 SECTION 2. Chapter 712A, Hawaii Revised Statutes, is
14 amended by adding two new sections to be appropriately
15 designated and to read as follows:



1 **"§712A- Records of seized or forfeited property. (1)**

2 Each seizing agency shall maintain the following records for all
3 property seized for purposes of forfeiture:

4 (a) The authority under which the property was seized or
5 forfeited;

6 (b) The date on which each item of property was seized or
7 forfeited;

8 (c) The department or agency that has possession of the
9 seized or forfeited property;

10 (d) A description of each item of seized or forfeited
11 property; and

12 (e) The estimated value of each item of seized or
13 forfeited property.

14 (2) The seizing agency shall:

15 (a) Maintain all records of seized or forfeited property;

16 (b) Make the records open to inspection; and

17 (c) Post the records on a publicly accessible website.

18 **§712A- Equitable sharing program; restrictions.**

19 Notwithstanding the provisions of section 712A-7, a seizing
20 agency or prosecuting attorney shall not enter into an agreement
21 to transfer or refer property seized under section 712A-6 to a



1 federal agency directly, indirectly, through adoption, through
2 an intergovernmental joint task force, or by any other means
3 that would circumvent the provisions of this chapter, unless the
4 seized property includes United States currency in excess of
5 \$100,000."

6 SECTION 3. Section 712A-5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§712A-5 Property subject to forfeiture; exemption. (1)**

9 The following [~~is~~] shall be subject to forfeiture:

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



- 1 found in proximity to contraband or to
2 instrumentalities of an offense;
- 3 (d) Contraband or untaxed cigarettes in violation of
4 chapter 245, shall be seized and summarily forfeited
5 to the State without regard to the procedures set
6 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)]~~ (2) 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 (3) The following limitations shall apply to the
10 forfeiture of property under this chapter; provided that nothing
11 in this subsection shall be construed to prevent the seizure of
12 property before conviction pursuant to section 712A-6:

13 ~~[(b)]~~ (a) No property shall be forfeited under this chapter
14 ~~[to the extent of an interest of an owner,]~~ by reason
15 of ~~[any act or omission established by that owner to~~
16 ~~have been committed or omitted without the knowledge~~
17 ~~and consent of that owner;]~~ the commission of any
18 covered offense unless the owner has received a charge
19 for the covered offense. If no such charge is filed
20 within one year from the date of seizure, all property
21 seized shall be returned to the legal owner, as



1 determined by the department or agency in possession
2 of the property, one year from the date of seizure;
3 provided that property that is contraband or otherwise
4 unlawful shall not be returned and shall be disposed
5 of pursuant to rules adopted by the attorney general;
6 provided further that if the legal owner cannot be
7 determined or located, the department or agency in
8 possession of the property shall follow procedures set
9 forth in rules adopted by the attorney general to
10 determine or locate the owner;

11 (b) No property shall be forfeited under this chapter by
12 reason of any act or omission established by the owner
13 to have been committed or omitted without the
14 knowledge and consent of the owner;

15 (c) No conveyance used by any person as a common carrier
16 in the transaction of a business as a common carrier
17 [~~is~~] shall be subject to forfeiture under this section
18 unless it appears that the owner or other person in
19 charge of the conveyance is a consenting party or
20 privy to a violation of this chapter;



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

6 (e) A forfeiture of a conveyance encumbered by a bona fide
7 security interest [~~is~~] shall be subject to the
8 interest of the secured party if the secured party
9 neither had knowledge of nor consented to the act or
10 omission.

11 (4) This chapter shall not apply to the forfeiture of an
12 animal pursuant to section 711-1109.2.

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

15 SECTION 4. Section 712A-11, Hawaii Revised Statutes, is
16 amended by amending subsection (10) to read as follows:

17 "(10) All property, including all interest in such
18 property, declared forfeited under this chapter vests in this
19 State on the commission of the act or omission giving rise to
20 forfeiture under this chapter together with the proceeds of the
21 property after the act or omission. Any property or proceeds



1 transferred to any person after the act or omission are subject
2 to forfeiture and thereafter shall be ordered forfeited unless
3 the transferee claims and establishes in a hearing pursuant to
4 this chapter the showings set out in section 712A-5(2) [-] and
5 (3)."

6 SECTION 5. 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[+] may:

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) May sell]~~ (a) Sell forfeited property to the public
16 by 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) May sell~~] (b) Sell or destroy all raw materials,
9 products, and equipment of any kind used or intended
10 for use in manufacturing, compounding, or processing a
11 controlled substance or any untaxed cigarettes in
12 violation of chapter 245;

13 [~~(d) May compromise~~] (c) Compromise and pay valid claims
14 against property forfeited pursuant to this chapter;
15 or

16 [~~(e) May make~~] (d) Make any other disposition of forfeited
17 property authorized by law.

18 (2) All forfeited property and the sale proceeds thereof~~[-]~~
19 ~~up to a maximum of three million dollars per year, not~~
20 ~~previously transferred pursuant to [subsection] (1) (a) of this~~



1 ~~section,~~] shall, after payment of expenses of administration and
2 sale, be distributed or retained as follows:

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

9 (b) One quarter shall be distributed to the prosecuting
10 attorney who instituted the action producing the
11 forfeiture; and

12 (c) One half shall be [~~deposited into~~] retained in the
13 criminal forfeiture fund established by this chapter.

14 (3) [~~Property~~] All property and money distributed to units
15 of state [~~and~~] or local government pursuant to subsection (2) (a)
16 and (b) shall be used for law enforcement purposes, including
17 but not limited to drug recognition expert training and public
18 awareness or outreach efforts, and shall complement but not
19 supplant the funds regularly appropriated for [~~such~~] these
20 purposes.



1 (4) There [~~is~~] shall be established in the department of
2 the attorney general a special fund to be known as the criminal
3 forfeiture fund[~~, hereinafter referred to as the "fund" in~~] into
4 which shall be deposited [~~one-half of~~] the proceeds of a
5 forfeiture and any penalties paid pursuant to section 712A-
6 10(6). All moneys in the criminal forfeiture fund except for
7 those disbursements provided for in subsection (2) (a) and (b)
8 shall be expended by the attorney general and are hereby
9 appropriated for the following purposes:

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

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



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

3 ~~(d)]~~ (b) The payment of expenses arising in connection
4 with programs for training and education of law
5 enforcement officers; and

6 ~~[(e)]~~ (c) The payment of expenses arising in connection
7 with enforcement pursuant to the drug nuisance
8 abatement unit in the department of the attorney
9 general.

10 (5) The attorney general [~~may, without regard to the~~
11 ~~requirements of chapter 91, promulgate]~~ shall adopt rules [and
12 ~~regulations]~~ necessary to carry out the purpose of this chapter,
13 including rules concerning the return of seized property, the
14 disposition of property, the use of the criminal forfeiture
15 fund, and compromising and paying valid claims against property
16 forfeited [~~pursuant to this chapter]~~.

17 (6) [~~Not]~~ No less than [~~twenty]~~ forty days [~~prior to]~~
18 before the convening of each regular session, the attorney
19 general shall provide to the legislature a report on the use of
20 the Hawaii omnibus criminal forfeiture act during the fiscal



1 year preceding the legislative session. The report shall
2 include:

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

5 (b) The total number of administrative and judicial
6 actions filed by prosecuting attorneys and the
7 disposition thereof[+] for each action;

8 (c) The total number of claims or petitions for remission
9 or mitigation filed in administrative actions and the
10 dispositions thereof[+] for each action;

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

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

15 (f) The amount of money deposited into the criminal
16 forfeiture fund; and

17 (g) The amount of money expended by the attorney general
18 from the criminal forfeiture fund under subsection (5)
19 and the reason for the expenditures."

20 SECTION 6. Section 712A-19, Hawaii Revised Statutes, is
21 repealed.



1 ~~["**§712A-19** **Construction.** It is the intent of the~~
2 ~~legislature that this chapter be liberally construed so as to~~
3 ~~effect the purposes of this chapter."]~~

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

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

9 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Hawaii Omnibus Criminal Forfeiture Act; Civil Asset Forfeiture;
Property Forfeiture

Description:

Increases transparency and accountability surrounding property forfeiture. Clarifies which property is subject to forfeiture. Amends the authorized disposition of forfeited property and the proceeds thereof. Requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act. Repeals language that requires the Hawaii Omnibus Criminal Forfeiture Act to be construed liberally. (CD1)

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