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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 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; and

8           (4) Repealing language that requires the Hawaii Omnibus

9 Criminal Forfeiture Act to be construed liberally.

10       SECTION 2. Chapter 712A, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13       "§712A-       Records of forfeited property. (1) Each  
14 seizing agency shall maintain the following records for all  
15 property seized for purposes of forfeiture:

16           (a) The authority under which the property was forfeited;

17           (b) The date on which each item of property was forfeited;



1        (c) The department or agency that has possession of the  
2        forfeited property;

3        (d) A description of each item of forfeited property; and

4        (e) The estimated value of each item of forfeited  
5        property.

6        (2) The seizing agency shall:

7        (a) Maintain all records of forfeited property;

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

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

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

12       **"§712A-5 Property subject to forfeiture; exemption. (1)**

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

14       (a) Property described in a statute authorizing  
15       forfeiture;

16       (b) Property used or intended for use in the commission  
17       of, attempt to commit, or conspiracy to commit a  
18       covered offense, or [~~which~~] that facilitated or  
19       assisted [~~such~~] the activity;

20       (c) Any firearm [~~which~~] that is subject to forfeiture  
21       under any other subsection of this section [~~or which~~]



1 ~~is~~; carried or visible during~~[~~visible~~]~~ or used in  
2 furtherance of the commission, attempt to commit, or  
3 conspiracy to commit a covered offense~~[~~r~~]~~; or [~~any~~  
4 ~~firearm~~] found in proximity to contraband or [~~to~~]  
5 instrumentalities of an offense;

6 (d) Contraband or untaxed cigarettes in violation of  
7 chapter 245, shall be seized and summarily forfeited  
8 to the State without regard to the procedures set  
9 forth in this chapter;

10 (e) Any proceeds or other property acquired, maintained,  
11 or produced by means of or as a result of the  
12 commission of the covered offense;

13 (f) Any property derived from any proceeds [~~which~~] that  
14 were obtained directly or indirectly from the  
15 commission of a covered offense;

16 (g) Any interest in, security of, claim against, or  
17 property or contractual right of any kind affording a  
18 source of influence over any enterprise [~~which~~] that  
19 has been established, participated in, operated,  
20 controlled, or conducted in order to commit a covered  
21 offense; and



1 (h) All books, records, bank statements, accounting  
2 records, microfilms, tapes, computer data, or other  
3 data ~~[which]~~ that are used, intended for use, or  
4 ~~[which]~~ that facilitated or assisted in the commission  
5 of a covered offense, or ~~[which]~~ that document the use  
6 of the proceeds of a covered offense.

7 (2) Except that:

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

12 (b) No property shall be forfeited under this chapter ~~[to~~  
13 ~~the extent of an interest of an owner,~~] by reason of  
14 any act or omission established by ~~[that]~~ the owner  
15 thereof to have been committed or omitted without the  
16 knowledge ~~[and]~~ or consent of ~~[that]~~ the owner;

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



1 charge of the conveyance is a consenting party or  
2 privy to a violation of this chapter;

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

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

13 (3) This chapter shall not apply to the forfeiture of an  
14 animal pursuant to section 711-1109.2.

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

17 SECTION 4. Section 712A-16, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§712A-16 Disposition of property forfeited.** (1) All  
20 property forfeited to the State under this chapter shall be  
21 transferred to the attorney general, who ~~[÷]~~ may:



1       ~~[(a) May transfer property, other than currency, which~~  
2           ~~shall be distributed in accordance with subsection (2)~~  
3           ~~to any local or state government entity, municipality,~~  
4           ~~or law enforcement agency within the State;~~

5       ~~(b) May sell]~~ (a) Sell forfeited property to the public  
6           by public sale; provided that for leasehold real  
7           property:

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



1           reversionary interest shall have thirty days  
2           after acceptance to tender to the attorney  
3           general the purchase price for the leasehold  
4           interest and any improvements, upon which tender  
5           the leasehold interest and improvements shall be  
6           conveyed to the holder of the immediate  
7           reversionary interest~~[+]~~;

8           (ii) If the holder of the immediate reversionary  
9           interest fails to exercise the right of first  
10          refusal provided in subparagraph (i), the  
11          attorney general may proceed to sell the  
12          leasehold interest and any improvements by public  
13          sale~~[+]~~; and

14          (iii) Any dispute between the attorney general and the  
15          holder of the immediate reversionary interest as  
16          to the fair market value of the leasehold  
17          interest and improvements shall be settled by  
18          arbitration pursuant to chapter 658A;

19          ~~[(e) May sell]~~ (b) Sell or destroy all raw materials,  
20          products, and equipment of any kind used or intended  
21          for use in manufacturing, compounding, or processing a



1 controlled substance or any untaxed cigarettes in  
2 violation of chapter 245;

3 ~~[(d) May compromise]~~ (c) Compromise and pay valid claims  
4 against property forfeited pursuant to this chapter;  
5 or

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

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

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

19 (b) One quarter shall be distributed to the prosecuting  
20 attorney who instituted the action producing the  
21 forfeiture; and



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

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

10 (4) There [~~is~~] shall be established in the department of  
11 the attorney general a special fund to be known as the criminal  
12 forfeiture fund[, ~~hereinafter referred to as the "fund" in~~] into  
13 which shall be deposited [one-half of] the proceeds of a  
14 forfeiture and any penalties paid pursuant to section 712A-  
15 10(6). All moneys in the criminal forfeiture fund except for  
16 those disbursements provided for in subsection (2) (a) and (b)  
17 shall be expended by the attorney general and are hereby  
18 appropriated for the following purposes:

19 (a) The payment of any expenses necessary to seize,  
20 detain, appraise, inventory, safeguard, maintain,  
21 advertise, or sell property seized, detained, or



1 forfeited pursuant to this chapter or of any other  
2 necessary expenses incident to the seizure, detention,  
3 or forfeiture of [such] property and [such] contract  
4 services and payments to reimburse any federal, state,  
5 or county agency for any expenditures made to perform  
6 the foregoing functions;

7 ~~[(b)] The payment of awards for information or assistance~~  
8 ~~leading to a civil or criminal proceeding;~~

9 ~~[(e)] The payment of supplemental sums to state and county~~  
10 ~~agencies for law enforcement purposes;~~

11 ~~[(d)]~~ (b) The payment of expenses arising in connection  
12 with programs for training and education of law  
13 enforcement officers; and

14 ~~[(e)]~~ (c) The payment of expenses arising in connection  
15 with enforcement pursuant to the drug nuisance  
16 abatement unit in the department of the attorney  
17 general.

18 All unencumbered and unexpended moneys in excess of \$1,000,000  
19 remaining on balance in the criminal forfeiture fund at the  
20 close of June 30 of each year shall be deposited to the credit  
21 of the state general fund.



1 (5) The attorney general may, without regard to the  
2 requirements of chapter 91, promulgate rules [~~and regulations~~]  
3 necessary to carry out the purpose of this chapter, including  
4 rules concerning the disposition of property, the use of the  
5 criminal forfeiture fund, and compromising and paying valid  
6 claims against property forfeited [~~pursuant to this chapter~~].

7 (6) [~~Not~~] No less than twenty days [~~prior to~~] before the  
8 convening of each regular session, the attorney general shall  
9 provide to the legislature a report on the use of the Hawaii  
10 omnibus criminal forfeiture act during the fiscal year preceding  
11 the legislative session. The report shall include:

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

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

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

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



- 1 (e) The total amount and type of property distributed to  
2 units of state and local government;
- 3 (f) The amount of money deposited into the criminal  
4 forfeiture fund; ~~and~~
- 5 (g) The amount of money deposited into the general fund;  
6 and
- 7 ~~[-g-]~~ (h) The amount of money expended by the attorney  
8 general from the criminal forfeiture fund under  
9 subsection (5) and the reason for the expenditures."

10 SECTION 5. Section 712A-19, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~+~~]**\$712A-19**[~~+~~] **Construction.** It is the intent of the  
13 legislature that this chapter be [~~liberally~~] construed so as to  
14 effect the purposes of this chapter."

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

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



1 SECTION 8. This Act shall take effect on July 1, 3000.



**Report Title:**

Hawaii Omnibus Criminal Forfeiture Act

**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. Repeals language that requires the Hawaii Omnibus Criminal Forfeiture Act to be construed liberally. Effective 7/1/3000. (HD1)

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

