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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. Section 712A-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§712A-4 Covered offenses. Offenses for which property is  
4 subject to forfeiture under this chapter are[+] as follows  
5 provided they shall be chargeable as misdemeanor or felony:

- 6           (a) All offenses that specifically authorize forfeiture;
- 7           (b) Murder, kidnapping, labor trafficking, gambling, \*
- 8           criminal property damage, robbery, bribery, extortion,
- 9           theft, unauthorized entry into motor vehicle,
- 10           burglary, money laundering, trademark counterfeiting,
- 11           insurance fraud, promoting a dangerous, harmful, or
- 12           detrimental drug, commercial promotion of marijuana,
- 13           methamphetamine trafficking, manufacturing of a
- 14           controlled substance with a child present, promoting
- 15           child abuse, promoting prostitution, solicitation of a
- 16           minor for prostitution, habitual solicitation of



1 prostitution, or electronic enticement of a child that  
2 is chargeable as a felony offense under state law;

3 (c) The manufacture, sale, or distribution of a controlled  
4 substance in violation of chapter 329, promoting  
5 detrimental drugs or intoxicating compounds, promoting  
6 pornography, promoting pornography for minors, or  
7 solicitation of prostitution near schools or public  
8 parks, which is chargeable as a felony or misdemeanor  
9 offense, but not as a petty misdemeanor, under state  
10 law; and

11 (d) The attempt, conspiracy, solicitation, coercion, or  
12 intimidation of another to commit any offense for  
13 which property is subject to forfeiture."

14 SECTION 2. Section 712A-5, Hawaii Revised Statutes, is  
15 amended by amending subsection (2) to read as follows:

16 "(2) Except that:

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



1 (b) No property shall be forfeited under this chapter to  
2 the extent of an interest of an owner [~~by~~]:

3 (i) By reason of the commission of any covered  
4 offense unless:

5 (A) The covered offense is chargeable as a  
6 felony or misdemeanor offense under state  
7 law; and

8 (B) The owner has been convicted of the covered  
9 offense by a verdict or plea, including a no  
10 contest plea or a deferred acceptance of  
11 guilty plea or no contest plea; or

12 (ii) By reason of any act or omission established by  
13 that owner to have been committed or omitted without  
14 the knowledge and consent of that 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 subject to forfeiture under this section unless it  
18 appears that the owner or other person in charge of  
19 the conveyance is a consenting party or privy to a  
20 violation of this chapter;



- 1 (d) No conveyance is subject to forfeiture under this
- 2 section by reason of any act or omission established
- 3 by the owner thereof to have been committed or omitted
- 4 without the owner's knowledge or consent; [~~and~~]
- 5 (e) A forfeiture of a conveyance encumbered by a bona fide
- 6 security interest is subject to the interest of the
- 7 secured party if the secured party neither had
- 8 knowledge of nor consented to the act or
- 9 omission[~~-~~]; and
- 10 (f) This chapter shall not apply to the forfeiture of an
- 11 animal prior to disposition of criminal charges
- 12 pursuant to section 711-1109.2."

13 SECTION 3. Section 712A-7, Hawaii Revised Statutes, is  
 14 amended as follows:

- 15 1. By amending subsection (2) to read:
- 16 "(2) If property is seized for forfeiture under section
- 17 712A-6 pending forfeiture and final disposition, the seizing
- 18 agency shall ensure, at the agency's expense, for the safe and
- 19 secure storage of the property until the completion of
- 20 forfeiture proceedings or other disposition of the property as



1 provided in this chapter. Consistent with such requirements,  
2 the seizing agency may do any of the following:

- 3 (a) Place the property under constructive seizure by  
4 posting notice of seizure for forfeiture on the  
5 property or by filing notice of seizure for forfeiture  
6 or notice of pending forfeiture in any appropriate  
7 public record relating to the property;
- 8 (b) Remove the property to a storage area for safekeeping  
9 or, if the property is a negotiable instrument or  
10 money, deposit it in an interest bearing account;
- 11 (c) Remove the property to a place designated by the  
12 court; or
- 13 (d) Provide for another agency to take custody of the  
14 property and remove it to an appropriate location  
15 within the jurisdiction of the court."

16 2. By amending subsection (4) to read:

17 "(4) In the event of a seizure for forfeiture under  
18 section 712A-6, the seizing agency shall send to a prosecuting  
19 attorney a written [~~request for forfeiture~~] notice of the  
20 seizure within thirty days, which shall include a statement of  
21 facts and circumstances of the seizure, the appraised or



1 estimated value of the property, and a summary of the facts  
2 relied on for forfeiture."

3 SECTION 4. Section 712A-9, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

5 "(1) The prosecuting attorney shall determine whether it  
6 is probable that the property is subject to forfeiture and, if  
7 so, shall initiate [~~administrative or~~] judicial proceedings  
8 against the property within forty-five days [~~of receipt of a~~  
9 ~~written request for forfeiture from a seizing agency.~~] after the  
10 owner of property has been convicted of a covered crime as set  
11 forth in section 712A-5. If, on inquiry and examination, the  
12 prosecuting attorney determines, with sole discretion, that the  
13 proceedings probably cannot be sustained or that justice does  
14 not require the institution of proceedings, the prosecuting  
15 attorney shall notify the seizing agency, and as soon as  
16 practicable authorize the release of the seizure for forfeiture  
17 on the property or on any specified interest in it. A  
18 determination by the prosecuting attorney to forego initiation  
19 of proceedings shall not be a bar to initiation of proceedings  
20 against the same property based on the same circumstances at a  
21 later time."



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

3 "§712A-11 Judicial forfeiture proceedings; general. (1)

4 [~~In any judicial or administrative proceeding~~] All forfeiture  
5 proceedings pursuant to this chapter~~[, the]~~ shall be conducted

6 in circuit court, and no property shall be forfeited except

7 after a conviction of an offense chargeable as provided under

8 section 712A-5. The court, on application of the State, may

9 enter any restraining order or injunction, require the execution

10 of satisfactory performance bonds, create receiverships, appoint

11 conservators, appraisers, accountants or trustees, or take any

12 other action to seize, secure, maintain, or preserve the

13 availability of property subject to forfeiture under this

14 chapter, including a warrant for its seizure, whether before or

15 after the filing of a petition for forfeiture, complaint, or

16 indictment.

17 (2) If property is seized for forfeiture without a seizure

18 warrant, a prior judicial order of forfeiture, or a hearing

19 pursuant to section 712A-13, a court, on an application filed by

20 an owner or interest-holder within fifteen days after notice of

21 its seizure for forfeiture or actual knowledge of it, whichever



1 is earlier, and complying with the requirements for claims in  
2 section 712A-12, may issue an order to show cause to the seizing  
3 agency, with thirty days' notice to the prosecuting attorney,  
4 for a hearing on the issue of whether probable cause for  
5 forfeiture of the applicant's interest then exists [7] to  
6 validate the continued seizure of the property pending the  
7 outcome of a judicial forfeiture proceeding, provided that, the  
8 order to show cause shall be set aside upon the filing of a  
9 petition for [~~either administrative or~~] judicial forfeiture  
10 prior to the hearing, in which event forfeiture proceedings  
11 shall be in accordance with this chapter.

12 (3) There shall be a rebuttable presumption that any  
13 property of a person is subject to forfeiture under this chapter  
14 if the State establishes, by the standard of proof applicable to  
15 that proceeding, all of the following:

16 (a) That the person has engaged in and been convicted of  
17 criminal conduct for which property is subject to  
18 forfeiture;

19 (b) That the property was acquired by the person during  
20 the period of the criminal conduct or within a  
21 reasonable time after that period; and





1 (c) That there was no likely source for the property other  
2 than the criminal conduct giving rise to forfeiture.

3 (4) A finding that property is the proceeds of criminal  
4 conduct giving rise to forfeiture does not require proof that  
5 the property is the proceeds [+]of[+] any particular exchange or  
6 transaction.

7 (5) A defendant convicted in any criminal proceeding shall  
8 be precluded from subsequently denying the essential allegations  
9 of the criminal offense of which the defendant was convicted in  
10 any proceeding pursuant to this chapter. For the purposes of  
11 this chapter, a conviction may result from a verdict or plea,  
12 including a no contest plea, or deferred acceptance of guilty  
13 plea, or no contest plea.

14 [~~(6) An acquittal or dismissal in a criminal proceeding~~  
15 ~~shall not preclude civil proceedings under this chapter.~~]

16 [(+)] (6) In any judicial forfeiture proceeding pursuant  
17 to this chapter, if a defense is based on an exemption provided  
18 for in this chapter, the burden of proving the existence of the  
19 exemption is on the claimant or party raising the defense, and  
20 it is not necessary to negate the exemption in any petition,  
21 application, complaint, or indictment.



1           ~~[(8)]~~ (7) For good cause shown, on motion by the  
2 prosecuting attorney, the court may stay discovery against the  
3 State in civil forfeiture proceedings prior to trial on a  
4 criminal complaint or indictment arising from the same conduct  
5 and against a claimant who is a defendant in the criminal  
6 proceeding after making provision to prevent loss to any party  
7 resulting from the delay. The stay provided by this subsection  
8 shall not be available pending appeal of any order or judgment  
9 in the criminal proceeding.

10           ~~[(9)]~~ (8) The court shall receive and consider, at any  
11 hearing held pursuant to this chapter, except the hearing on  
12 claims pursuant to sections 712A-12(4) through (8) and 712A-  
13 13(7), evidence and information which would be admissible under  
14 the rules of penal procedure relating to preliminary hearings.

15           ~~[(10)]~~ (9) All property, including all interest in such  
16 property, declared forfeited under this chapter vests in this  
17 State on the commission of the act or omission giving rise to  
18 forfeiture under this chapter together with the proceeds of the  
19 property after the act or omission. Any property or proceeds  
20 transferred to any person after the act or omission are subject  
21 to forfeiture and thereafter shall be ordered forfeited unless



1 the transferee claims and establishes in a hearing pursuant to  
2 this chapter the showings set out in section 712A-5(2)."

3 SECTION 6. Section 712A-12, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

5 "(1) In rem forfeiture proceedings are not permitted  
6 except when the owner of the property has died without  
7 successors in interest, cannot be located, or has abandoned  
8 claims of ownership, and when the owner was deemed convicted of  
9 a covered crime, as provided in section 712A-5 or when the State  
10 claims that the owner would have been deemed convicted if the  
11 owner had not died or disappeared. If a forfeiture is  
12 authorized by law, it shall be ordered by a court on an action  
13 in rem brought by the prosecuting attorney on a verified  
14 petition for forfeiture filed in the criminal or civil division  
15 of the circuit court."

16 SECTION 7. Section 712A-10, Hawaii Revised Statutes, is  
17 repealed.

18 [~~§712A-10 Administrative forfeiture. The prosecuting~~  
19 ~~attorney may initiate administrative forfeiture of property~~  
20 ~~other than real property, the estimated value of which is less~~  
21 ~~than \$100,000, or of any vehicle or conveyance, regardless of~~



1 ~~value. Administrative forfeiture shall be processed in the~~  
2 ~~following manner:~~

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

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

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

17 ~~(a) A description of the property;~~

18 ~~(b) The estimated value of the property;~~

19 ~~(c) The date and place of the seizure;~~

20 ~~(d) The offense for which the property is subject to~~  
21 ~~forfeiture;~~



1           ~~(e) Instructions for filing a claim and cost or in~~  
2           ~~pauperis bond, or a petition for remission or~~  
3           ~~mitigation; and~~

4           ~~(f) Notice that the property will be forfeited to the~~  
5           ~~State if a claim and cost or in pauperis bond or~~  
6           ~~petition for remission or mitigation is not filed~~  
7           ~~in substantial compliance with this section.~~

8           ~~(4) Persons claiming an interest in the property may file~~  
9           ~~either a petition for remission or mitigation of~~  
10           ~~forfeiture, or a claim and cost or in pauperis bond,~~  
11           ~~but not both, with the attorney general, within thirty~~  
12           ~~days of notice by publication or receipt of written~~  
13           ~~notice, whichever is earlier. Notwithstanding section~~  
14           ~~1-29, the thirty day time period prescribed herein is~~  
15           ~~computed by excluding the first day and including the~~  
16           ~~last day, unless the last day is a Saturday, Sunday,~~  
17           ~~or holiday and then it is also excluded, and the~~  
18           ~~thirty day time period runs until the end of the next~~  
19           ~~day which is not a Saturday, Sunday, or a holiday.~~  
20           ~~"Holiday" includes any day designated as a holiday~~  
21           ~~pursuant to section 8-1.~~



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



- 1           ~~(i) Owns or holds an interest in the seized~~
- 2           ~~property as defined by section 712A 1,~~
- 3           ~~(ii) Had any knowledge that the property was or~~
- 4           ~~would be involved in any violation of the~~
- 5           ~~law,~~
- 6           ~~(iii) Had any knowledge of the particular~~
- 7           ~~violation which subjected the property to~~
- 8           ~~seizure and forfeiture,~~
- 9           ~~(iv) Had any knowledge that the user of the~~
- 10           ~~property had any record, including arrests,~~
- 11           ~~except when the person was acquitted or the~~
- 12           ~~charges dismissed due to lack of evidence,~~
- 13           ~~for the violation which subjected the~~
- 14           ~~property to seizure and forfeiture or for~~
- 15           ~~any crime which is similar in nature.~~

16           ~~Any subsequent pleadings or written communications~~  
 17           ~~alleging matters pertaining to [subparagraph] (b) or~~  
 18           ~~(c) of this [paragraph] must also be signed by the~~  
 19           ~~petitioner and sworn on oath before a notary public.~~

20           ~~(6) If the attorney general, with sole discretion,~~  
 21           ~~determines that remission is not warranted, the~~



1 ~~attorney general may discretionarily mitigate the~~  
2 ~~forfeiture where the petitioner has not met the~~  
3 ~~minimum requirements for remission but where there are~~  
4 ~~present other extenuating circumstances indicating~~  
5 ~~that some relief should be granted to avoid extreme~~  
6 ~~hardship. Mitigation may also be granted where the~~  
7 ~~minimum requirements for remission have been met but~~  
8 ~~the overall circumstances are such that the attorney~~  
9 ~~general determines that complete relief is not~~  
10 ~~warranted. Mitigation shall take the form of a money~~  
11 ~~penalty imposed upon the petitioner which shall be~~  
12 ~~deposited into the criminal forfeiture fund~~  
13 ~~established under section 712A-16. Extenuating~~  
14 ~~circumstances include:~~  
15 ~~(a) Language or culture barrier,~~  
16 ~~(b) Humanitarian factors such as youth or extreme~~  
17 ~~age,~~  
18 ~~(c) Presence of physical or mental disease, disorder,~~  
19 ~~or defect,~~  
20 ~~(d) Limited or peripheral criminal culpability,~~





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



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



1 ~~to seek forfeiture by petitioning the circuit court~~  
2 ~~for forfeiture of the property within forty five days~~  
3 ~~of receipt of notice that a proper claim and bond has~~  
4 ~~been filed. The prosecuting attorney may also elect~~  
5 ~~to honor the claim in which case the prosecuting~~  
6 ~~attorney shall notify the seizing agency and authorize~~  
7 ~~the release of the seizure for forfeiture on the~~  
8 ~~property or on any specified interest in it.~~

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



1 ~~interest in the property is subject to forfeiture. On~~  
2 ~~such a showing by the State, the claimant has the~~  
3 ~~burden of showing by a preponderance of the evidence~~  
4 ~~that the claimant's interest in the property is not~~  
5 ~~subject to forfeiture.~~

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

20 ~~(12) Administrative proceedings and the adoption of rules~~  
21 ~~under this section are exempt from the requirements of~~



1 ~~chapter 91, the Hawaii administrative procedure act,~~  
2 ~~and are adjudicatory functions for the purposes of~~  
3 ~~applicable sections of the Hawaii Revised Statutes." ]~~

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

9 SECTION 10. This Act shall take effect upon its approval.



**Report Title:**

Civil Asset Forfeiture

**Description:**

Restricts asset forfeitures to cases involving the commission of a covered misdemeanor or felony offense. Repeals administrative forfeiture proceedings. Requires the agency to pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property. Provides that the property is forfeited only when the property owner has been convicted of a underlying felony or misdemeanor covered offense. (HB1559 HD1)

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

