

1                                   **ASSET FORFEITURE AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Bill Wright**

5 AN ACT RELATING TO CRIMINAL LAW; AMENDING THE CONTROLLED SUBSTANCE  
6 ACT FORFEITURE PROVISIONS, INCLUDING PROCEDURES, BURDEN OF PROOF, AND  
7 USE OF FORFEITED PROPERTY OR PROCEEDS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10           **58-37-2**, as last amended by Chapter 64, Laws of Utah 1997

11           **58-37-12**, as last amended by Chapter 64, Laws of Utah 1997

12           **58-37-13**, as last amended by Chapters 198 and 294, Laws of Utah 1996

13           **58-37-15**, as enacted by Chapter 145, Laws of Utah 1971

14           **58-37-20**, as last amended by Chapter 36, Laws of Utah 1996

15 ENACTS:

16           **58-37-1.5**, Utah Code Annotated 1953

17 *Be it enacted by the Legislature of the state of Utah:*

18           Section 1. Section **58-37-1.5** is enacted to read:

19           **58-37-1.5. Purpose.**

20           It is the intent of this chapter to:

21           (1) discourage the use of controlled substances by restricting availability, licensing,  
22 labeling, and packaging of controlled substances and the equipment used solely for manufacturing  
23 controlled substances;

24           (2) recognize the need to prohibit and curtail illegal use of controlled substances while  
25 acknowledging that property rights of innocent property owners must be protected; and

26           (3) limit law enforcement entities' seizures and forfeitures to the extent necessary to protect  
27 private citizens from unjustified intrusions, and ensure direct legislative control and accountability

28 over the use of forfeited property and revenue acquired from the disposal of forfeited property.

29 Section 2. Section **58-37-2** is amended to read:

30 **58-37-2. Definitions.**

31 (1) As used in this chapter:

32 (a) "Administer" means the direct application of a controlled substance, whether by  
33 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

34 (i) a practitioner or, in his presence, by his authorized agent; or

35 (ii) the patient or research subject at the direction and in the presence of the practitioner.

36 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a  
37 manufacturer, distributor, or practitioner but does not include a motor carrier, public  
38 warehouseman, or employee of any of them.

39 (c) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership,  
40 corporation, business trust, association, or other legal entity, and any union or groups of  
41 individuals associated in fact although not a legal entity, and includes illicit as well as licit entities  
42 created or maintained for the purpose of engaging in conduct which constitutes the commission  
43 of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c, or 37d, which  
44 episodes are not isolated, but have the same or similar purposes, results, participants, victims,  
45 methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken  
46 together, the episodes shall demonstrate continuing unlawful conduct and be related either to each  
47 other or to the enterprise.

48 (d) "Control" means to add, remove, or change the placement of a drug, substance, or  
49 immediate precursor under Section 58-37-3.

50 (e) (i) "Controlled substance" means a drug or substance included in Schedules I, II, III,  
51 IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III,  
52 IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substance  
53 analog.

54 (ii) "Controlled substance" does not include:

55 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title  
56 32A, regarding tobacco or food;

57 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
58 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,

59 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred,  
60 or furnished as an over-the-counter medication without prescription; or

61 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances including  
62 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally  
63 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to  
64 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

65 (f) (i) "Controlled substance analog" means a substance the chemical structure of which  
66 is substantially similar to the chemical structure of a controlled substance listed in Schedules I and  
67 II of Section 58-37-4, or in Schedules I and II of the federal Controlled Substances Act, Title II,  
68 P.L. 91-513:

69 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
70 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central  
71 nervous system of controlled substances in the schedules set forth in this [subsection] chapter; or

72 (B) which, with respect to a particular individual, is represented or intended to have a  
73 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar  
74 to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled  
75 substances in the schedules set forth in this Subsection (1)(f)(i)(B).

76 (ii) Controlled substance analog does not include:

77 (A) a controlled substance currently scheduled in Schedules I through V of Section  
78 58-37-4;

79 (B) a substance for which there is an approved new drug application;

80 (C) a substance with respect to which an exemption is in effect for investigational use by  
81 a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 366, to the  
82 extent the conduct with respect to the substance is permitted by the exemption; or

83 (D) any substance to the extent not intended for human consumption before an exemption  
84 takes effect with respect to the substance.

85 (E) Any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
86 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
87 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred,  
88 or furnished as an over-the-counter medication without prescription.

89 (F) Dietary supplements, vitamins, minerals, herbs, or other similar substances including

90 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally  
91 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to  
92 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

93 (g) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea,  
94 whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a, 37b, 37c,  
95 or 37d, or for any offense under the laws of the United States and any other state which, if  
96 committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b, 37c, or 37d.

97 (h) "Counterfeit substance" means:

98 (i) any substance or container or labeling of any substance that without authorization bears  
99 the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of  
100 them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact  
101 manufactured, distributed, or dispensed the substance which falsely purports to be a controlled  
102 substance distributed by, any other manufacturer, distributor, or dispenser; or

103 (ii) any substance that is represented to be a controlled substance.

104 (i) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
105 controlled substance or a listed chemical, whether or not an agency relationship exists.

106 (j) "Department" means the Department of Commerce.

107 (k) "Depressant or stimulant substance" means:

108 (i) a drug which contains any quantity of:

109 (A) barbituric acid or any of the salts of barbituric acid; or

110 (B) any derivative of barbituric acid which has been designated by the Secretary of  
111 Agriculture as habit-forming under Section 502 (d) of the federal Food, Drug, and Cosmetic Act,  
112 21 U.S.C. 352 (d);

113 (ii) a drug which contains any quantity of:

114 (A) amphetamine or any of its optical isomers;

115 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

116 (C) any substance which the Secretary of Health and Human Services or the Attorney  
117 General of the United States after investigation has found and by regulation designated  
118 habit-forming because of its stimulant effect on the central nervous system; or

119 (iii) lysergic acid diethylamide; or

120 (iv) any drug which contains any quantity of a substance which the Secretary of Health and

121 Human Services or the Attorney General of the United States after investigation has found to have,  
122 and by regulation designated as having, a potential for abuse because of its depressant or stimulant  
123 effect on the central nervous system or its hallucinogenic effect.

124 (l) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate  
125 user pursuant to the lawful order or prescription of a practitioner, and includes distributing to,  
126 leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or  
127 compounding necessary to prepare the substance for delivery.

128 (m) "Dispenser" means a pharmacist who dispenses a controlled substance.

129 (n) "Distribute" means to deliver other than by administering or dispensing a controlled  
130 substance or a listed chemical.

131 (o) "Distributor" means a person who distributes controlled substances.

132 (p) "Drug" means:

133 (i) articles recognized in the official United States Pharmacopoeia, Official Homeopathic  
134 Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of  
135 them;

136 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of  
137 disease in man or other animals;

138 (iii) articles, other than food, intended to affect the structure or function of man or other  
139 animals; and

140 (iv) articles intended for use as a component of any articles specified in Subsection  
141 (1)(p)(i), (ii), or (iii); but does not include devices or their components, parts, or accessories.

142 (q) "Drug dependent person" means any individual who unlawfully and habitually uses any  
143 controlled substance to endanger the public morals, health, safety, or welfare, or who is so  
144 dependent upon the use of controlled substances as to have lost the power of self-control with  
145 reference to his dependency.

146 (r) "Food" means:

147 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as  
148 specified in this chapter, and normally ingested by human beings; and

149 (ii) foods for special dietary uses as exist by reason of a physical, physiological,  
150 pathological, or other condition including but not limited to the conditions of disease,  
151 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and

152 overweight; uses for supplying a particular dietary need which exist by reason of age including but  
153 not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying  
154 the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food.  
155 Any particular use of a food is a special dietary use regardless of the nutritional purposes.

156 (s) "Government attorney" means the state attorney general, any county or district attorney,  
157 any municipal attorney, any deputy or assistant attorney in the office of any of these attorneys, and  
158 any attorney authorized to prosecute violations of Title 58, Chapter 37, Controlled Substances.

159 (t) "Governmental entity" means:

160 (i) the state or any agency, authority, instrumentality, quasi-governmental entity, or  
161 institution of the state;

162 (ii) any county or municipal or quasi-municipal corporation, political subdivision, law  
163 enforcement entity, multijurisdictional task force, agency, school district, special district, or other  
164 governmental entity, including military forces, or any combination of these; or

165 (iii) the federal government, including any agency, authority, instrumentality,  
166 quasi-governmental entity, or institution of the federal government.

167 ~~[(s)]~~ (u) "Immediate precursor" means a substance which the Attorney General of the  
168 United States has found to be, and by regulation designated as being, the principal compound used  
169 or produced primarily for use in the manufacture of a controlled substance, or which is an  
170 immediate chemical intermediary used or likely to be used in the manufacture of a controlled  
171 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the  
172 controlled substance.

173 (v) "Law enforcement entity" means any of the following entities that are authorized to  
174 enforce this chapter:

175 (i) any municipal, county, or state agency or unit; and

176 (ii) any entity comprised of law enforcement officers from more than one law enforcement  
177 entity or jurisdiction.

178 ~~[(t)]~~ (w) "Manufacture" means the production, preparation, propagation, compounding,  
179 or processing of a controlled substance, either directly or indirectly by extraction from substances  
180 of natural origin, or independently by means of chemical synthesis or by a combination of  
181 extraction and chemical synthesis.

182 ~~[(t)]~~ (x) "Manufacturer" includes any person who packages, repackages, or labels any

183 container of any controlled substance, except pharmacists who dispense or compound prescription  
184 orders for delivery to the ultimate consumer.

185 ~~[(v)]~~ (y) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
186 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
187 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.  
188 The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake  
189 made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or  
190 preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the  
191 sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the  
192 substances contained in the plant cannabis sativa or any other species of the genus cannabis which  
193 are chemically indistinguishable and pharmacologically active are also included.

194 ~~[(w)]~~ (z) "Money" means officially issued coin and currency of the United States or any  
195 foreign country.

196 (aa) "Multijurisdictional task force" means any law enforcement entity:

197 (i) authorized to enforce this chapter; and

198 (ii) that has a jurisdiction that crosses municipal, county, or state boundaries.

199 ~~[(x)]~~ (bb) "Narcotic drug" means any of the following, whether produced directly or  
200 indirectly by extraction from substances of vegetable origin, or independently by means of  
201 chemical synthesis, or by a combination of extraction and chemical synthesis:

202 (i) opium, coca leaves, and opiates;

203 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or  
204 opiates;

205 (iii) opium poppy and poppy straw; or

206 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the  
207 substance, which is chemically identical with any of the substances referred to in Subsection  
208 (1)(bb)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts  
209 of coca leaves which do not contain cocaine or ecgonine.

210 ~~[(y)]~~ (cc) "Negotiable instrument" means documents, containing an unconditional promise  
211 to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

212 ~~[(z)]~~ (dd) "Opiate" means any drug or other substance having an addiction-forming or  
213 addiction-sustaining liability similar to morphine or being capable of conversion into a drug having

214 addiction-forming or addiction-sustaining liability.

215           [(aa)] (ee) "Opium poppy" means the plant of the species papaver somniferum L., except  
216 the seeds of the plant.

217           [(bb)] (ff) "Person" means any corporation, association, partnership, trust, other institution  
218 or entity or one or more individuals.

219           [(cc)] (gg) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
220 mowing.

221           [(dd)] (hh) "Possession" or "use" means the joint or individual ownership, control,  
222 occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing,  
223 injection, or consumption, as distinguished from distribution, of controlled substances and includes  
224 individual, joint, or group possession or use of controlled substances. For a person to be a  
225 possessor or user of a controlled substance, it is not required that he be shown to have individually  
226 possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly  
227 participated with one or more persons in the use, possession, or control of any substances with  
228 knowledge that the activity was occurring, or the controlled substance is found in a place or under  
229 circumstances indicating that the person had the ability and the intent to exercise dominion and  
230 control over it.

231           [(ee)] (ii) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific  
232 investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to  
233 distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical  
234 analysis a controlled substance in the course of professional practice or research in this state.

235           [(ff)] (jj) "Prescribe" means to issue a prescription orally or in writing.

236           [(gg)] (kk) "Prescription" means an order issued by a licensed practitioner, in the course  
237 of that practitioner's professional practice, for a controlled substance, other drug, or device which  
238 it dispenses or administers for use by a patient or an animal. The order may be issued by word of  
239 mouth, written document, telephone, facsimile transmission, computer, or other electronic means  
240 of communication as defined by rule.

241           [(hh)] (ll) "Production" means the manufacture, planting, cultivation, growing, or  
242 harvesting of a controlled substance.

243           [(ii)] (mm) "Securities" means any stocks, bonds, notes, or other evidences of debt or of  
244 property.

245 ~~[(jj)]~~ (nn) "State" means the state of Utah.

246 (oo) "Transfer jurisdiction" means:

247 (i) the referral, facilitation, or submittal of any request, petition, application, or filing by  
248 any law enforcement entity or government attorney that enables seizure or forfeiture of any assets,  
249 proceeds, property, or proceeds from property by any governmental entity that is not created by and  
250 subject to the laws of the state; and

251 (ii) the participation by the state, a law enforcement entity, or a government attorney in  
252 federal asset-sharing programs such as those that can be initiated by filing U.S. Justice Department  
253 Form DAG-71 or any similar form that authorizes the transfer of jurisdiction regarding a controlled  
254 substance investigation or prosecution to the federal government.

255 ~~[(kk)]~~ (pp) "Ultimate user" means any person who lawfully possesses a controlled  
256 substance for his own use, for the use of a member of his household, or for administration to an  
257 animal owned by him or a member of his household.

258 (2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah  
259 Criminal Code, shall apply.

260 Section 3. Section **58-37-12** is amended to read:

261 **58-37-12. Enforcement -- Coordination and cooperation of federal and state agencies**  
262 **-- Powers.**

263 (1) The department and all law enforcement agencies charged with enforcing this [act]  
264 chapter shall cooperate with federal and other state agencies in discharging their responsibilities  
265 concerning traffic in controlled substances and in suppressing the abuse of controlled substances.  
266 To this end, they are authorized to:

267 ~~[(1) Arrange]~~ (a) arrange for the exchange of information between governmental officials  
268 concerning the use and abuse of dangerous substances[-];

269 ~~[(2) Coordinate]~~ (b) coordinate and cooperate in training programs in controlled substance  
270 law enforcement at the local and state levels[-];

271 ~~[(3) Cooperate]~~ (c) cooperate with the United States Department of Justice and the Utah  
272 Department of Public Safety by establishing a centralized unit which will receive, catalog, file, and  
273 collect statistics, including records of drug-dependent persons and other controlled substance law  
274 offenders within the state, and make the information available for federal, state, and local law  
275 enforcement purposes[-]; and

276 ~~[(4) Conduct]~~ (d) conduct programs of eradication aimed at destroying the wild or illicit  
277 growth of plant species from which controlled substances may be extracted.

278 (2) (a) Officers or agents of law enforcement entities authorized to enforce this chapter or  
279 any government attorney may not transfer jurisdiction of any seizure or forfeiture initiated under  
280 this chapter.

281 (b) Any person who violates this Subsection (2) is civilly liable for three times the amount  
282 of actual damages sustained by the plaintiff, and for costs of suit and reasonable attorneys' fees.

283 (3) (a) Law enforcement entities authorized to enforce this chapter or any government  
284 attorney may not directly or indirectly receive, accept, share, exchange, trade, or otherwise transfer  
285 forfeited assets, proceeds, property, or proceeds from property forfeited or seized under this  
286 chapter from or with the federal government, or any other governmental entity not created under  
287 and subject to the authority of the state.

288 (b) These seized or forfeited assets, proceeds, property, or proceeds from property may  
289 only be deposited directly into the General Fund of the state or of a municipality or county, as  
290 required under this chapter.

291 (c) Any person who violates this Subsection (3) is civilly liable for three times the amount  
292 of actual damages sustained by the plaintiff, and for costs of suit and reasonable attorneys' fees.

293 Section 4. Section **58-37-13** is amended to read:

294 **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

295 (1) As used in this section:

296 (a) "Complaint" means a verified civil in rem complaint seeking forfeiture or any criminal  
297 information or indictment which contains or is amended to include a demand for forfeiture of a  
298 defendant's in personam interest in any property which is subject to forfeiture.

299 (b) "Drug distributing paraphernalia" means any property used or designed to be used in  
300 the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is  
301 considered "designed to be used" for one or more of the above-listed purposes if the property has  
302 been altered or modified to include a feature or device which would actually promote or conceal  
303 a violation of this chapter.

304 (c) "Drug manufacturing equipment or supplies" includes any illegally possessed  
305 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies  
306 possessed with intent to engage in clandestine laboratory operation as defined in Section 58-37d-3.

307 (d) "Interest holder" means a secured party as defined in Section 70A-9-105(1)(m), a  
308 mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an  
309 interest in property, whose interest would be perfected against a good faith purchaser for value.  
310 A person who holds property for the benefit of or as an agent or nominee for another, or who is  
311 not in substantial compliance with any statute requiring an interest in property to be recorded or  
312 reflected in public records in order to perfect the interest against a good faith purchaser for value,  
313 is not an interest holder.

314 (e) "Owner" means an individual who possesses a legal or equitable ownership in real or  
315 personal property, or if title to the property is held in the name of a partnership, trust, corporation,  
316 or other legal entity, an individual who possesses a legal or equitable ownership interest in the  
317 partnership, trust, corporation, or other legal entity.

318 [(e)] (f) "Proceeds" means property, other than contraband, acquired directly or indirectly  
319 from, produced through, realized through, or caused by an act or omission and includes any  
320 property of any kind without reduction for expenses incurred in the acquisition, maintenance, or  
321 production of that property, or any other purpose.

322 (g) "Real property" means:

323 (i) land; and

324 (ii) any building, fixture, improvement, appurtenance, structure, or other development that  
325 is affixed to land.

326 [(f)] (h) "Resolution of criminal charges" occurs at the time a claimant who is also charged  
327 with violations under Title 58, Chapters 37, 37a, 37b, 37c, or 37d enters a plea, upon return of a  
328 jury verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

329 [(g)] (i) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters 37,  
330 37a, 37b, 37c, or 37d [~~or any conduct occurring outside the state which would be a violation of the~~  
331 ~~laws of the place where the conduct occurred and which would be a violation of Title 58, Chapters~~  
332 ~~37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state].~~

333 (2) (a) [~~The following are~~] Property described in Subsections (3)(a) through (k) is subject  
334 to forfeiture [and no] under this section, except that property described in Subsections (3)(b), (c),  
335 (d), (e), (f), and (g), Subsection (3)(i), and Subsection (3)(j) is subject to forfeiture only as part of  
336 an in personam action against a defendant, and the forfeiture shall be proportional, as provided in  
337 Subsection (2)(b), to the use of the property in violation of this chapter.

338           **(b) Forfeiture of property** ~~[right exists in them:]~~ under this section shall be proportional  
339 to the use of the property in violation of this chapter only if the property is not contraband or  
340 paraphernalia.

341           **(3) The following property is subject to forfeiture under this section in accordance with**  
342 the limitation established under Subsection (2):

343           (a) all controlled substances which have been manufactured, distributed, dispensed, or  
344 acquired in violation of this chapter;

345           (b) all raw materials, products, and equipment of any kind used~~[, or]~~ and intended by the  
346 owner for use, or used with the knowing consent of the owner, in manufacturing, compounding,  
347 processing, delivering, importing, or exporting any controlled substance in violation of this  
348 chapter;

349           (c) all property used ~~[or]~~ and intended by the owner for use, or used with the knowing  
350 consent of the owner, as a container for property described in Subsections ~~[(2)]~~ (3)(a) and ~~[(2)]~~  
351 (3)(b);

352           (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used  
353 with health food supplements and herbs, used ~~[or]~~ and intended by the owner for use, or used with  
354 the knowing consent of the owner, to administer controlled substances in violation of this chapter;

355           (e) all conveyances, including aircraft, vehicles, or vessels used ~~[or]~~ and intended by an  
356 interest holder for use, or used with the knowing consent of the owner, to transport, or in any  
357 manner facilitate the transportation, sale, receipt, simple possession, or concealment of property  
358 described in Subsections ~~[(2)]~~ (3)(a) and ~~[(2)]~~ (3)(b), except that:

359           (i) a conveyance used by any person as a common carrier in the transaction of business as  
360 a common carrier may not be forfeited under this section unless the owner or other person in  
361 charge of the conveyance was a consenting party or knew or had reason to know of the violation  
362 of this chapter;

363           (ii) a conveyance may not be forfeited under this section by reason of any act or omission  
364 committed or omitted without the owner's knowledge or consent; and

365           (iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not  
366 know or have reason to know after the exercise of reasonable diligence that a violation would or  
367 did take place in the use of the conveyance;

368           (f) all books, records, and research, including formulas, microfilm, tapes, and data used

369 ~~[or] and intended by the owner for use, or used with the knowing consent of the owner,~~ in violation  
370 of this chapter;

371 (g) everything of value furnished ~~[or], and intended by the owner~~ to be furnished, in  
372 exchange for a controlled substance in violation of this chapter, and all moneys, negotiable  
373 instruments, and securities used ~~[or] and intended [to be used] by the owner for use, or used with~~  
374 ~~the knowing consent of the owner,~~ to facilitate any violation of this chapter~~[-An]; however,~~  
375 interest in property may not be forfeited under this Subsection (3)(g) unless it is proven by [a  
376 preponderance of the] clear and convincing evidence that the owner or interest holder knew, had  
377 reason to know of, or consented to the conduct which made the property subject to forfeiture~~[-~~  
378 ~~The], and the burden of presenting this evidence [shall be] is upon the state;~~

379 (h) all imitation controlled substances as defined in Section 58-37b-2~~[- Imitation~~  
380 ~~Controlled Substances Act];~~

381 (i) all warehousing, housing, and storage facilities, or interest in real property of any kind  
382 used, ~~[or] and intended by an interest holder for use, or used with the knowing consent of the~~  
383 owner, in producing, cultivating, warehousing, storing, protecting, or manufacturing any controlled  
384 substances in violation of this chapter, except that:

385 (i) any forfeiture of a housing, warehousing, or storage facility or interest in real property  
386 is subject to the claim of an owner or interest holder who did not know or have reason to know  
387 ~~[after the exercise of reasonable diligence]~~ that a violation would take place on the property; and

388 (ii) an interest in property may not be forfeited under this Subsection (3)(i) if the owner  
389 or interest holder did not know or have reason to know of the conduct which made the property  
390 subject to forfeiture, or did not willingly consent to the conduct; ~~[and]~~

391 ~~[(iii) unless the premises are used in producing, cultivating, or manufacturing controlled~~  
392 ~~substances, a housing, warehousing, or storage facility or interest in real property may not be~~  
393 ~~forfeited under this subsection unless cumulative sales of controlled substances on the property~~  
394 ~~within a two-month period total or exceed \$1,000, or the street value of any controlled substances~~  
395 ~~found on the premises at any given time totals or exceeds \$1,000. A narcotics officer experienced~~  
396 ~~in controlled substances law enforcement may testify to establish the street value of the controlled~~  
397 ~~substances for purposes of this subsection;]~~

398 (j) any firearm, weapon, or ammunition carried or used, and intended by the owner to be  
399 carried or used, or carried or used with the knowing consent of the owner, during or in relation to

400 a violation of this chapter [~~or any firearm, weapon, or ammunition kept or located within the~~  
401 ~~proximity of controlled substances or other property subject to forfeiture under this section~~]; and

402 (k) [~~all~~] proceeds [~~traceable to~~] proximately resulting from any violation of this chapter[~~-~~  
403 ~~There is a rebuttable presumption that all money, coins, and currency found in proximity to~~  
404 ~~forfeitable controlled substances, drug manufacturing equipment or supplies, drug distributing~~  
405 ~~paraphernalia, or forfeitable records of importation, manufacture, or distribution of controlled~~  
406 ~~substances are~~], and the burden for proving proceeds [~~traceable to a~~] proximately result from any  
407 violation of this chapter[~~. The burden of proof~~] is upon the [~~claimant of the property to rebut this~~  
408 ~~presumption~~] state.

409 [~~(3)~~] (4) (a) Property subject to forfeiture under this chapter may be seized by any peace  
410 officer of this state upon process issued by any court having jurisdiction over the property.

411 However, seizure without process may be made when:

412 (i) the seizure is incident to an arrest or search under a search warrant or an inspection  
413 under an administrative inspection warrant;

414 (ii) the property subject to seizure has been the subject of a prior judgment in favor of the  
415 state in a criminal injunction or forfeiture proceeding under this chapter;

416 (iii) the peace officer has probable cause to believe that the property is directly or indirectly  
417 dangerous to health or safety; or

418 (iv) the peace officer has probable cause to believe that the property, other than real  
419 property, has been used or intended to be used in violation of this chapter and has probable cause  
420 to believe the property will be damaged, intentionally diminished in value, destroyed, concealed,  
421 or removed from the state.

422 (b) Subsection (4)(a) does not limit a law enforcement entity's authority under Amendment  
423 IV, Constitution of the United States, or under Article 1, Sec. 14, Constitution of Utah.

424 [~~(b)~~] (c) Upon the filing of a complaint, the court [~~shall immediately~~] may, upon probable  
425 cause, issue to the seizing agency a warrant for seizure of any property subject to forfeiture which  
426 had been seized without a warrant in a manner described in this Subsection (4).

427 [~~(4)~~] (5) (a) In the event of seizure under Subsection [~~(3)~~] (4), forfeiture proceedings under  
428 Subsection [~~(9)~~] (10) shall be instituted within [~~90~~] 30 days of the seizure.

429 (b) The time period may be extended by the court having jurisdiction over the property  
430 [~~upon notice to~~] for good cause shown and upon approval by all claimants and interest holders [~~and~~

431 for good cause shown].

432 [(5)] (6) Property taken or detained under this section is not repleviable but is in custody  
433 of the law enforcement agency making the seizure, subject only to the orders and decrees of the  
434 court or the official having jurisdiction. When property is seized under this chapter, the  
435 appropriate person or agency [may] shall:

436 (a) place the property under seal;

437 (b) remove the property to a place designated by it or the warrant under which it was  
438 seized; or

439 (c) take custody of the property and remove it to an appropriate location for disposition  
440 in accordance with law.

441 [(6)] (7) (a) All substances listed in Schedule I that are possessed, transferred, distributed,  
442 or offered for distribution in violation of this chapter are contraband and no property right [shall  
443 exist] exists in them.

444 (b) All substances listed in Schedule I which are seized or come into the possession of the  
445 state may be retained for any evidentiary or investigative purpose, including sampling or other  
446 preservation prior to disposal or destruction by the state.

447 [(7)] (8) (a) All marijuana or any species of plants from which controlled substances in  
448 Schedules I and II are derived which have been planted or cultivated in violation of this chapter,  
449 or of which the owners or cultivators are unknown, or are wild growths, may be seized and  
450 retained for any evidentiary or investigative purpose, including sampling or other preservation  
451 prior to disposal or destruction by the state.

452 (b) Failure, upon demand by the department or its authorized agent, of any person in  
453 occupancy or in control of land or premises upon which species of plants are growing or being  
454 stored, to produce an appropriate license or proof that he is the holder of a license, is authority for  
455 the seizure and forfeiture of the plants.

456 [(8)] (9) (a) When any property is forfeited under this chapter by a finding of the court that  
457 no person is entitled to recover the property, [it shall be deposited in the custody of the Division  
458 of Finance. ~~Disposition of all property is as follows:~~] the treasurer of the county or the  
459 municipality where the property subject to seizure or forfeiture was initially located has authority  
460 to dispose of the property forfeited as provided in this section. However, if a multijurisdictional  
461 task force or employees of more than one law enforcement entity are actively involved in an

462 investigation which has resulted in property that is subject to seizure and forfeiture, the various law  
463 enforcement entities involved shall jointly determine the proportionate distribution of the property  
464 or proceeds from the property.

465 ~~[(a) The state may include in its complaint seeking forfeiture, a request that the seizing~~  
466 ~~agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited~~  
467 ~~property in the enforcement of controlled substances laws, the court having jurisdiction over the~~  
468 ~~case shall award the property to the seizing agency. Each agency shall use the forfeited property~~  
469 ~~for controlled substance law enforcement purposes only. Forfeited property or proceeds from the~~  
470 ~~sale of forfeited property may not be used to pay any cash incentive, award, or bonus to any peace~~  
471 ~~officer or individual acting as an agent for the agency, nor may it be used to supplant any ordinary~~  
472 ~~operating expense of the agency. The seizing agency shall pay to the prosecuting agency the legal~~  
473 ~~costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section may~~  
474 ~~not be applied by the court to costs or fines assessed against any defendant in the case.]~~

475 ~~[(b) The seizing agency, or if it makes no application, any state agency, bureau, county,~~  
476 ~~or municipality, which demonstrates a need for specific property or classes of property subject to~~  
477 ~~forfeiture shall be given the property for use in enforcement of controlled substances laws upon~~  
478 ~~the payment of costs to the county attorney or, if within a prosecution district, the district attorney~~  
479 ~~for legal costs for filing and pursuing the forfeiture and upon application for the property to the~~  
480 ~~director of the Division of Finance. The application shall clearly set forth the need for the property~~  
481 ~~and the use to which the property will be put.]~~

482 ~~[(c) The director of the Division of Finance shall review all applications for property~~  
483 ~~submitted under Subsection (8)(b) and, if the seizing agency makes no application, make a~~  
484 ~~determination based on necessity and advisability as to final disposition and shall notify the~~  
485 ~~designated applicant or seizing agency, where no application is made, who may obtain the property~~  
486 ~~upon payment of all costs to the appropriate department. The Division of Finance shall in turn~~  
487 ~~reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action,~~  
488 ~~not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds~~  
489 ~~remaining after payment shall be returned to the seizing agency or agencies.]~~

490 ~~[(d) If no disposition is made upon an application]~~

491 ~~(b) (i) The treasurer under Subsection [(8)] (9)(a) [or (b), the director of the Division of~~  
492 ~~Finance] shall dispose of the property by public bidding [or as considered appropriate, by~~

493 ~~destruction. Proof of destruction shall be upon oath of two officers or employees of the~~  
494 ~~department having charge of the property, and verified by the director of the department or his~~  
495 ~~designated agent.] and deposit the proceeds in the general fund of the municipality or the county,~~  
496 ~~as applicable, except:~~

497 (A) if the property is cash, it shall be deposited in the general fund of the county or the  
498 municipality, as applicable, or in the Drug Forfeiture Account, if a state law enforcement entity  
499 receives the cash; and

500 (B) if the property is contraband or paraphernalia, or of no value, it may be destroyed as  
501 provided in Subsection (9)(b)(ii) below.

502 (ii) If the forfeited property is determined to have no value, is paraphernalia, or otherwise  
503 does not have a lawful purpose, as stated upon the signed statement of two persons who have no  
504 legal or personal interest in the property and who are employees of the treasurer authorized to  
505 dispose of the property, or if the treasurer does not have two employees, two employees of the  
506 political subdivision employing the treasurer, other than employees of the law enforcement entity,  
507 the treasurer may direct the destruction of the property.

508 (c) The proceeds under this section may be appropriated only by the respective state,  
509 county, or municipal legislative body.

510 (d) (i) An officer with a law enforcement entity, a government attorney, an employee of  
511 either of these, or any informant or witness who is part of the criminal case regarding which the  
512 property is forfeited may not receive, accept, share, exchange, trade, or otherwise exercise control  
513 over any forfeited assets, proceeds, property, or proceeds from property, except as necessary to  
514 transfer the property for evidentiary purposes or to transfer the property to the treasurer under  
515 Subsection (9)(b)(i).

516 (ii) Any person who violates this Subsection (9) is civilly liable for three times the amount  
517 of actual damages sustained by the plaintiff, and for costs of suit and reasonable attorneys' fees.

518 ~~[(9)] (10) Forfeiture proceedings shall be commenced as follows:~~

519 ~~(a) For actions brought [under Subsections (2)(a) through (2)(j)] regarding property under~~  
520 ~~Subsection (3), a complaint shall be prepared by the county attorney, or if within a prosecution~~  
521 ~~district, the district attorney, or the attorney general, and filed in a court of record where the~~  
522 ~~property was seized or is to be seized. In cases in which the claimant of the property is also~~  
523 ~~charged as a criminal defendant, the complaint shall be filed in the county where the criminal~~

524 charges arose, regardless of the location of the property. The complaint shall include:

525 (i) a description of the property which is subject to forfeiture;

526 (ii) the date and place of seizure, if known; and

527 (iii) the allegations of conduct by the owner which gives rise to forfeiture.

528 (b) (i) In cases where a claimant is also charged as a criminal defendant, the forfeiture shall  
529 proceed as part of the criminal prosecution as an in personam action against the defendant's  
530 interest in the property subject to forfeiture. A defendant need not file a written answer to the  
531 complaint, but may acknowledge or deny interest in the property at the time of first appearance on  
532 the criminal charges. If a criminal information or indictment is amended to include a demand for  
533 forfeiture, the defendant may respond to the demand at the time of the amendment.

534 [(i)] (ii) Unless a motion for disposition is made by the defendant, the determination of  
535 forfeiture shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall  
536 be before the court [without a jury], or before a jury if a demand is submitted. However, a jury  
537 trial is considered waived unless demanded. The court may consider any evidence presented in  
538 the criminal case, and receive any other evidence offered by the state or the defendant. The court  
539 shall [determine by a preponderance of the evidence the issues in the case and order forfeiture or  
540 release of the property as it determines] release the property to the claimants unless the court finds  
541 the state has proven the property is subject to forfeiture under this section by clear and convincing  
542 evidence.

543 [(ii)] (iii) A defendant may move the court to transfer the forfeiture action, to stay all  
544 action, including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial  
545 of the criminal charges. Either party may move the court to enter a finding of forfeiture as to  
546 defendant's interest in part or all of the property, either by default or by stipulation. Upon entry  
547 of a finding, the court shall stay the entry of judgment until resolution of the criminal charges.  
548 [~~Any finding of forfeiture entered by the court prior to resolution of the criminal charges may not~~  
549 ~~constitute a separate judgment, and any motion for disposition, stay, severance, or transfer of the~~  
550 ~~forfeiture action may not create a separate proceeding. Upon the granting of a motion by the~~  
551 ~~defendant for disposition, stay, severance, or transfer of the forfeiture action, the defendant shall~~  
552 ~~be considered to have waived any claim that the defendant has been twice put in jeopardy for the~~  
553 ~~same offense.]~~

554 [(iii)] (iv) Any other person claiming an interest in property subject to forfeiture under this

555 Subsection (10) may not intervene in a trial or appeal of a complaint filed under this subsection.  
556 Following the entry of an in personam forfeiture order, or upon the filing of a petition for release  
557 under Subsection (10)(e), the county attorney, district attorney, or attorney general may proceed  
558 with a separate in rem action to resolve any other claims upon the property that is not contraband,  
559 paraphernalia, or proceeds, and that is subject to forfeiture.

560 (c) (i) A complaint seeking forfeiture under Subsection [(2)] (3)(k), regarding proceeds,  
561 shall be prepared by the county attorney, or if within a prosecution district, the district attorney,  
562 or by the attorney general, either in personam as part of a criminal prosecution, or in a separate  
563 civil in rem action against the property alleged to be proceeds, and filed in the county where the  
564 property is seized or encumbered, if the proceeds are located outside the state.

565 (ii) A finding that property is the proximate result of proceeds of a violation of this chapter  
566 [~~does not require~~] requires proof that the property is the proceeds of [any] a particular exchange  
567 or transaction. Proof that property is the proximate result of the proceeds [may] shall be shown  
568 by [~~evidence which establishes all of the following by a preponderance of the~~] the state by clear  
569 and convincing evidence[:].

570 [(i) that the person has engaged in conduct in violation of this chapter;]

571 [(ii) that the property was acquired by the person during that period when the conduct in  
572 violation of this chapter occurred or within a reasonable time after that period; and]

573 [(iii) that there was no likely source for the property other than conduct in violation of the  
574 chapter.]

575 (d) Notice of the seizure and intended forfeiture shall be filed with the clerk of the court,  
576 and served upon all persons known to the county attorney or district attorney to have a claim in the  
577 property by:

578 (i) personal service upon [~~a claimant who is charged in a criminal information or~~  
579 indictment] all claimants whose addresses are known; and

580 (ii) [~~certified mail to each claimant whose name and address is known or to each owner~~  
581 whose right, title, or interest is of record in the Division of Motor Vehicles to the address given  
582 upon the records of the division, which service is considered complete even though the mail is  
583 refused or cannot be forwarded. The] if the addresses of claimants under Subsection (10)(d) are  
584 unknown, the county attorney, district attorney, or attorney general shall make [~~one publication~~]  
585 three publications in a newspaper of general circulation in the county where the seizure was made

586 [for all other claimants whose addresses are unknown, but who are believed to have an interest in  
587 the property].

588 (e) (i) Except under Subsection [(9)] (10)(a) in personam actions, when property is seized  
589 under this section, any claimant or interest holder shall file with the court a verified answer to the  
590 complaint within 20 days after receipt of service. [~~When property is seized under this chapter, any]~~

591 (ii) A claimant or interest holder [~~or claimant of the property~~], prior to being served with  
592 a complaint under this [section] chapter, may file a petition in the court having jurisdiction for  
593 release of his interest in the property. The petition shall specify the claimant's interest in the  
594 property and his right to have it released. A copy shall be served upon the county attorney or, if  
595 within a prosecution district, the district attorney in the county of the seizure[~~, who~~]. The  
596 government attorney shall answer the petition within 20 days. A petitioner need not subsequently  
597 answer a complaint of forfeiture.

598 (f) (i) For civil actions in rem, after 20 days following service of a complaint or petition  
599 for release, the court shall examine the record and if no answer is on file, the court shall allow the  
600 complainant or petitioner an opportunity to present evidence in support of his claim and order  
601 forfeiture or release of the property as the court determines.

602 (ii) If the county attorney or district attorney has not filed an answer to a petition for  
603 release and the court determines from the evidence that the petitioner is not entitled to recovery  
604 of the property, it shall enter an order directing the county attorney or district attorney to answer  
605 the petition within ten days. If no answer is filed within that period, the court shall order the  
606 release of the property to the petitioner entitled to receive it.

607 (g) When an answer to a complaint or petition appears of record at the end of 20 days, the  
608 court shall set the matter for hearing. At this hearing all interested parties may present evidence  
609 of their rights of release of the property following the state's evidence for forfeiture. The court  
610 shall [~~determine by a preponderance of the evidence the issues in the case and order~~] release the  
611 property to the petitioner unless the state proves its case for forfeiture [or release] of the property  
612 [~~as it determines~~] by clear and convincing evidence. If the state fails to meet its burden, the  
613 property shall be released and the court shall award reasonable attorney fees and costs.

614 (h) When the court determines that claimants have no right in the property in whole or in  
615 part, it shall declare the property to be forfeited.

616 (i) When the court determines that property, in whole or in part, is not subject to forfeiture,

617 it shall order release of the property to the proper claimant. If the court determines that the  
618 property is subject to forfeiture and release in part, it shall order partial release and partial  
619 forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall  
620 order it sold and the proceeds distributed:

621 (i) first, proportionally among the legitimate claimants; and

622 (ii) second, [~~to defray the costs of the action, including seizure, storage of the property,~~  
623 ~~legal costs of filing and pursuing the forfeiture, and costs of sale; and~~] by the procedures described  
624 in Subsection (9).

625 [~~(iii) third, to the Division of Finance for the General Fund.]~~

626 [(j) In a proceeding under this section where forfeiture is declared, in whole or in part, the  
627 court shall assess all costs of the forfeiture proceeding, including seizure and storage of the  
628 property, against the individual or individuals whose conduct was the basis of the forfeiture, and  
629 may assess costs against any other claimant or claimants to the property as appropriate.]

630 Section 5. Section **58-37-15** is amended to read:

631 **58-37-15. Burden of proof in proceedings on violations -- Enforcement officers**  
632 **exempt from liability.**

633 (1) [~~It is not necessary for~~] The burden of proof is upon the state to negate any exemption  
634 or exception set forth in this [act] chapter in any complaint, information, indictment or other  
635 pleading or trial, hearing, or other proceeding under this [act, and the burden of proof of any  
636 exemption or exception is upon the person claiming its benefit] chapter.

637 (2) In absence of proof that a person is the [~~duty~~] authorized holder of an appropriate  
638 license, registration, order form, or prescription issued under this [act] chapter, he shall be  
639 presumed not to be the holder of a license, registration, order form, or prescription, and the burden  
640 of proof is upon [~~him~~] the state to rebut the presumption.

641 (3) No liability [~~shall be~~] is imposed upon any [~~duty~~] authorized state or federal officer in  
642 good faith engaged in the enforcement of this [act] chapter who is engaged in the enforcement of  
643 any law, municipal ordinance, or regulation relating to controlled substances.

644 Section 6. Section **58-37-20** is amended to read:

645 **58-37-20. Drug Forfeiture Account created -- Revenue sources -- Use of account**  
646 **designated.**

647 (1) (a) There is created in the General Fund a restricted account called the "Drug Forfeiture

648 Account."

649 (b) All monies forfeited or seized to the state through the state or federal court process as  
650 a result of activity involving a controlled substance violation as prohibited under Title 58, Chapter  
651 37, 37a, 37b, 37c, or 37d, or prohibited under federal law, shall be deposited into the Drug  
652 Forfeiture Account.

653 (2) The Department of Public Safety may expend amounts as appropriated by the  
654 Legislature from the Drug Forfeiture Account to aid in enforcement efforts to combat drug  
655 trafficking.

656 (3) (a) That portion of funds forfeited or [siezed] seized that are required to be disbursed  
657 to other governmental entities under existing contractual agreements, including agreements  
658 established under Section 58-37-13, regarding involvement of more than one law enforcement  
659 entity, are exempt from this section.

660 (b) Property and proceeds subject to Subsection 58-37-13(9) are exempt from this section.

661 (4) Funds forfeited or seized as a result of the Salt Lake Airport Drug Program, not to  
662 exceed the Department of Public Safety's expenditure to that program, are exempt from this  
663 section.

664 (5) The Department of Public Safety as part of the annual budget hearings shall:

665 (a) provide the Executive Offices, Criminal Justice, and Legislature Appropriations  
666 Subcommittee with a complete accounting of expenditures and revenues from the funds under this  
667 section; and

668 (b) submit a request for appropriations for the coming fiscal year from the Drug Forfeiture  
669 Account, which shall enumerate the specific purposes for which the appropriation is requested.

670 (6) The Legislature may annually provide, in the Appropriations Act, legislative direction  
671 for anticipated expenditures of the monies received under this section.

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**Legislative Review Note**  
**as of 2-15-99 9:43 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**