

28 **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

29 (1) As used in this section:

30 (a) "CCJJ" means the Commission on Criminal and Juvenile Justice created under Section
31 63-25a-101.

32 (b) "Claimant" means:

33 (i) any owner as defined in this section;

34 (ii) any interest holder as defined in this section, and any other person or entity who asserts
35 a claim to any property seized for forfeiture under this section;

36 (iii) any person who files an answer to a forfeiture complaint in a proceeding instituted
37 under this section; or

38 (iv) any person who files a petition for release of seized property under this section.

39 [(a)] (c) "Complaint" means a verified civil in rem complaint seeking forfeiture or any
40 criminal information or indictment which contains or is amended to include a demand for
41 forfeiture of a defendant's in personam interest in any property which is subject to forfeiture.

42 (d) "Controlled substance law enforcement purposes" means:

43 (i) any law enforcement agency action directed toward reduction in the illegal production,
44 distribution, or use of controlled substances; or

45 (ii) any controlled substance abuse education, prevention, or treatment program sponsored
46 in whole or in part by a state or local governmental entity.

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

52 [(c)] (f) "Drug manufacturing equipment or supplies" includes any illegally possessed
53 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies
54 possessed with intent to engage in clandestine laboratory operation as defined in Section 58-37d-3.

55 [(d)] (g) "Interest holder" means a secured party as defined in Section 70A-9-105(1)(m),
56 a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to
57 an interest in property, whose interest would be perfected against a good faith purchaser for value.
58 A person who holds property for the benefit of or as an agent or nominee for another, or who is

59 not in substantial compliance with any statute requiring an interest in property to be recorded or
60 reflected in public records in order to perfect the interest against a good faith purchaser for value,
61 is not an interest holder.

62 (h) "Multijurisdictional task force" means any law enforcement entity:

63 (i) authorized to enforce this chapter; and

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

65 (i) (i) "Owner" means an individual or entity who holds a legitimate legal or equitable
66 ownership in real or personal property.

67 (ii) "Owner" does not include an individual or entity who holds property as the nominee
68 or nominal owner for another if that nominee or nominal owner has no legitimate interest in the
69 property.

70 [(e)] (j) "Proceeds" means property acquired directly or indirectly from, produced through,
71 realized through, or caused by an act or omission and includes any property of any kind without
72 reduction for expenses incurred in the acquisition, maintenance, or production of that property, or
73 any other purpose.

74 (k) "Prosecuting agency" means:

75 (i) a county attorney;

76 (ii) the district attorney if the prosecution is taking place within a prosecution district; or

77 (iii) the state attorney general.

78 (l) "Real property" means:

79 (i) land; and

80 (ii) any building, fixture, improvement, appurtenance, structure, or other development that
81 is affixed permanently to land.

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

85 (n) "Seizing agency" means any of the following entities that are authorized to enforce this
86 chapter:

87 (i) any municipal, county, or state law enforcement agency or unit; and

88 (ii) any entity comprised of law enforcement officers from more than one state or federal
89 law enforcement entity, including multijurisdictional task forces.

90 [~~(g)~~] (o) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters
91 37, 37a, 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation
92 of the laws of the place where the conduct occurred and which would be a violation of Title 58,
93 Chapters 37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

94 (2) The following [~~are subject to forfeiture and no property right exists in them~~] shall be
95 forfeited:

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

98 (b) all raw materials, products, and equipment of any kind used, or intended for use, in
99 manufacturing, compounding, processing, delivering, importing, or exporting any controlled
100 substance in violation of this chapter;

101 (c) all property used or intended for use as a container for property described in
102 Subsections (2)(a) and (2)(b); and

103 (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used
104 with health food supplements and herbs, used or intended for use to administer controlled
105 substances in violation of this chapter[;].

106 (3) The following are subject to forfeiture, but property rights exist in them as provided
107 in this section regarding innocent owners and interest holders:

108 [~~(e)~~] (a) all conveyances, including aircraft, vehicles, or vessels used or intended for use[;]
109 to transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or
110 concealment of property described in Subsections (2)(a) and (2)(b), except that:

111 (i) a conveyance used by any person as a common carrier in the transaction of business as
112 a common carrier may not be forfeited under this section unless the owner or other person in
113 charge of the conveyance was a consenting party or knew [~~or had reason to know~~] of the violation
114 of this chapter;

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

117 (iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not
118 know [~~or have reason to know after the exercise of reasonable diligence~~] that a violation would
119 or did take place in the use of the conveyance;

120 [~~(f)~~] (b) all books, records, and research, including formulas, microfilm, tapes, and data

121 used or intended for use in violation of this chapter;

122 ~~[(g)]~~ (c) (i) everything of value furnished or intended to be furnished, by the owner of the
123 thing of value, or with the owner's knowledge or consent, in exchange for a controlled substance
124 in violation of this chapter, and all moneys, negotiable instruments, and securities used ~~[or~~
125 ~~intended to be used]~~ by the owner of these items, or with the owner's knowledge or consent, to
126 facilitate any violation of this chapter~~[- An],~~ but an interest in property may not be forfeited under
127 this Subsection (3)(c)(i) unless it is proven by a preponderance of the evidence that the property
128 owner or interest holder knew~~[, had reason to know]~~ of, or consented to the conduct which made
129 the property subject to forfeiture~~[- The];~~ and

130 (ii) the burden of presenting this ~~[evidence shall be]~~ proof is upon the state;

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

133 ~~[(i)]~~ (e) all warehousing, housing, and storage facilities, or interest in real property of any
134 kind used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or
135 manufacturing any controlled substances in violation of this chapter, except that:

136 (i) a court may not grant or order any forfeiture of a housing, warehousing, or storage
137 facility or interest in real property ~~[is subject to the claim of an interest holder who did not know~~
138 ~~or have reason to know after the exercise of reasonable diligence that]~~ unless the state proves that
139 the owner or any interest holder knew, or consented to or participated in a violation ~~[would]~~ of this
140 chapter that would or did take place on the property; and

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

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

151 ~~[(j)]~~ (f) any firearm, weapon, or ammunition carried or used during or in relation to a

152 violation of this chapter or any firearm, weapon, or ammunition kept or located within the
153 proximity of controlled substances or other property subject to forfeiture under this section but
154 only if the owner of the firearm, weapon, or ammunition, or another person acting with the consent
155 and knowledge of the owner, used the weapon, firearm, or ammunition, or intended that the
156 weapon, firearm, or ammunition be used in a manner that would subject it to forfeiture under this
157 Subsection (3)(f); and

158 ~~[(k)]~~ (g) all proceeds ~~[traceable to]~~ proximately resulting from any violation of this
159 chapter, but the burden of proof is upon the prosecuting agency to establish that the proceeds
160 proximately resulted from any violation of this chapter. ~~[There is a rebuttable presumption that~~
161 ~~all money, coins, and currency found in proximity to forfeitable controlled substances, drug~~
162 ~~manufacturing equipment or supplies, drug distributing paraphernalia, or forfeitable records of~~
163 ~~importation, manufacture, or distribution of controlled substances are proceeds traceable to a~~
164 ~~violation of this chapter. The burden of proof is upon the claimant of the property to rebut this~~
165 ~~presumption.]~~

166 ~~[(3)]~~ (4) (a) Property subject to forfeiture under this chapter may be seized by any peace
167 officer of this state upon process issued by any court having jurisdiction over the property.

168 However, seizure without process may be made when:

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

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

173 (iii) the peace officer has probable cause to believe that the property is directly or indirectly
174 dangerous to health or safety; ~~[or]~~

175 (iv) the peace officer has probable cause to believe that the property has been used ~~[or~~
176 ~~intended to be used]~~ in violation of this chapter and has probable cause to believe the property will
177 be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state~~[-];~~

178 or

179 (v) if the property subject to forfeiture is a conveyance under Subsection (4)(a), the law
180 enforcement officer may seize the property based solely upon probable cause to believe:

181 (A) the conveyance has been used in violation of this chapter; and

182 (B) the property is readily mobile and located in an area open to the public at the time of

183 the seizure.

184 (b) (i) ~~[Upon the filing of a complaint, the]~~ The agency responsible for the seizure of the
185 property without process shall apply for a search warrant to the court having jurisdiction.

186 (ii) The application shall be made within 30 days of the seizure and shall contain a
187 statement of the cause justifying the seizure.

188 (iii) The court, upon a showing of probable cause to believe the seized property is subject
189 to forfeiture under this section, shall immediately issue to the seizing agency a warrant for seizure
190 of any property subject to forfeiture which had been seized without a warrant in a manner
191 described in this Subsection (4).

192 (iv) This Subsection (4) does not apply to property seized regarding which a search warrant
193 or seizure warrant was issued prior to the seizure of the property.

194 ~~[(4)]~~ (5) In the event of seizure under Subsection ~~[(3)]~~ (4), forfeiture proceedings under
195 Subsection ~~[(9)]~~ (10) shall be instituted within 90 days of the seizure. The time period may be
196 extended by the court having jurisdiction over the property upon notice to all claimants, owners,
197 and interest holders and for good cause shown.

198 ~~[(5)]~~ (6) (a) Property taken or detained under this section is not repleviable but is in
199 custody of the law enforcement agency making the seizure, subject only to the orders and decrees
200 of the court or the official having jurisdiction. When property is seized under this chapter, the
201 appropriate person or agency ~~[may]~~ shall:

202 ~~[(a)]~~ (i) place the property under seal;

203 ~~[(b)]~~ (ii) remove the property to a place designated by it or the warrant under which it was
204 seized; or

205 ~~[(c)]~~ (iii) take custody of the property and remove it to an appropriate location for
206 disposition in accordance with law.

207 (b) (i) The seizing agency is responsible for the management and safekeeping of any
208 property seized under this chapter, from the time of seizure until an order of forfeiture is entered
209 or the property is ordered to be returned to a claimant or interest holder.

210 (ii) The seizing agency shall deposit property in the form of cash or other readily
211 negotiable instruments into a restricted account maintained by the agency solely for the purpose
212 of managing and protecting the property from commingling, loss, or devaluation during the
213 pendency of the forfeiture action.

214 (iii) The seizing agency shall have in place written rules and protocol for the identification,
215 tracking, management, and safekeeping of seized property.

216 ~~[(6)]~~ (7) (a) All substances listed in [Schedule] Schedules I through V, and all items listed
217 in Subsections (2) and (3)(a), (b), and (d) that are possessed, transferred, distributed, or offered for
218 distribution in violation of this chapter are contraband and [no property right shall exist in them]
219 are subject to summary forfeiture.

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

223 ~~[(7)]~~ (8) (a) All marijuana or any species of plants from which controlled substances in
224 Schedules I and II are derived which have been planted or cultivated in violation of this chapter,
225 or of which the owners or cultivators are unknown, or are wild growths, may be seized and
226 retained for any evidentiary or investigative purpose, including sampling or other preservation
227 prior to disposal or destruction by the state.

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

232 ~~[(8)]~~ (9) When any property is forfeited under this chapter [by a finding of the court that
233 no person is entitled to recover the property, it shall be deposited in the custody of the Division of
234 Finance. ~~Disposition of all], the property [is] shall be disposed of, managed, and used as follows:~~

235 (a) (i) The [state may include] prosecuting agency may in its complaint seeking forfeiture[;
236 a] request that the legislative body having jurisdiction over the seizing agency be awarded the
237 property. The request shall include a statement demonstrating to the court that the agency has
238 established rules and protocol for managing seized property, in accordance with Subsection
239 (6)(b)(iii).

240 (ii) Upon a finding that the seizing agency [is able to use the forfeited property in the
241 enforcement of controlled substances laws] meets the requirements of Subsection (9)(a)(i), the
242 court having jurisdiction over the case shall award the property to the legislative body having
243 jurisdiction over the seizing agency.

244 (iii) Property forfeited under this section may not be applied by the court to costs or fines

245 assessed against any defendant in the case.

246 (iv) The court shall direct that all seized property which is not awarded under Subsection
247 (9)(a)(ii) or is not returned to a claimant, owner, or interest holder be disposed of, and the proceeds
248 deposited in the state General Fund, to be appropriated as determined by the Legislature to CCJJ
249 under Subsection (9)(e).

250 (b) (i) Each [agency shall] law enforcement entity to which is appropriated forfeited
251 property by its legislative body, or to which is awarded forfeited property by CCJJ, may use the
252 forfeited property for controlled substance law enforcement purposes only.

253 (ii) Forfeited property or proceeds from the sale of forfeited property may not be used to
254 pay any cash incentive, award, or bonus to any peace officer or individual acting as an agent for
255 the agency, nor may it be used to supplant any ordinary operating expense of the agency. [The
256 seizing agency shall pay to the prosecuting agency the legal costs incurred in filing and pursuing
257 the forfeiture action. Property forfeited under this section may not be applied by the court to costs
258 or fines assessed against any defendant in the case.]

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

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

274 [(d) If no disposition is made upon an application under Subsection (8)(a) or (b), the
275 director of the Division of Finance shall dispose of the property by public bidding or as considered

276 appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees
277 of the department having charge of the property, and verified by the director of the department or
278 his designated agent.]

279 (c) (i) The legislative body to which forfeited property and proceeds are awarded by the
280 court, by the federal government, or by any other entity shall maintain and account for the property
281 and proceeds.

282 (ii) All forfeited monies shall be deposited in the legislative body's general fund for
283 appropriation by that body. Other forfeited property may be disposed of, and the proceeds
284 deposited in the general fund, or the property may be allocated directly to the seizing agency, if the
285 legislative body determines the allocation results in the most effective use of the property in
286 enforcing controlled substances laws.

287 (iii) From the forfeited monies the legislative body shall first reimburse the prosecuting
288 agency for the legal costs of filing and pursuing the forfeiture, but only to the extent that the
289 monies and property cover those costs.

290 (iv) All appropriations or allocations of forfeited property by the legislative body shall be
291 only as limited by Subsection (9)(b), and may be used for matching grants to be used in controlled
292 substance law enforcement.

293 (d) The legislative body shall appropriate the money for the purposes under Subsection
294 (9)(b)(ii) within three years of receipt of the money, or at the end of the three years shall deposit
295 the remaining money in the state General Fund to be appropriated by the Legislature to CCJJ as
296 provided in Subsection (9)(e).

297 (e) (i) If the forfeited property is not awarded to the seizing agency or returned to a
298 claimant, the court shall order the sale of the property and that the proceeds and monies be
299 deposited in the General Fund. The Legislature shall appropriate these funds to CCJJ as a line
300 item, to be used through its grant program for funding law enforcement agencies' controlled
301 substance law enforcement purposes.

302 (ii) Out of the funds appropriated by the Legislature to CCJJ under Subsection (9)(e)(i),
303 CCJJ shall reimburse each prosecuting agency for the legal costs of filing and pursuing the
304 forfeiture, to the extent of funds resulting from that forfeiture. The balance of the funds shall be
305 allocated by CCJJ to law enforcement agencies through its grant program, but may be used only
306 for the purposes under Subsection (9)(b).

307 (f) (i) If the seizing agency is comprised of actively involved law enforcement officers who
308 are employees of more than one law enforcement entity or jurisdiction, such as a
309 multijurisdictional task force, the various involved law enforcement entities involved shall jointly
310 determine the proportionate distribution of the property or proceeds from the property. The court
311 shall allocate the property in accordance with this determination.

312 (ii) If the involved law enforcement agencies have not established a distribution, the court
313 shall allocate the forfeited property among the involved law enforcement entities.

314 (iii) All property allocated among the various law enforcement entities shall be deposited
315 in the general fund of the political subdivision having jurisdiction over the law enforcement agency
316 to which property is allocated. The legislative body of the political subdivision shall manage and
317 appropriate the property in accordance with Subsection (9)(c).

318 (g) Law enforcement entities authorized to enforce this chapter or any prosecuting agency
319 may not directly or indirectly receive, accept, share, exchange, trade, or otherwise transfer forfeited
320 assets, proceeds, property, or proceeds from property forfeited or seized under this chapter from
321 or with the federal government except as necessary to transfer the property for evidentiary purposes
322 or to dispose of the property under this section.

323 ~~[(9)]~~ (10) Forfeiture proceedings shall be commenced as follows:

324 (a) For actions brought under ~~[Subsections (2)(a) through (2)(j)]~~ Subsection (3)(a), (c), (e),
325 or (f), a complaint shall be prepared by the [county attorney, or if within a prosecution district, the
326 district attorney, or the attorney general] prosecuting agency, and filed in a court of record where
327 the property was seized or is to be seized. In cases in which the claimant of the property is also
328 charged as a criminal defendant, the complaint shall be filed in the county where the criminal
329 charges arose, regardless of the location of the property. The complaint shall include:

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

331 (ii) the date and place of seizure~~[- if known]~~; and

332 (iii) the allegations of conduct which gives rise to forfeiture.

333 (b) (i) In cases brought under Subsection (3)(a), (c), (e), or (f) where the owner or a
334 claimant is also charged as a criminal defendant, the forfeiture shall proceed as part of the criminal
335 prosecution as an in personam action against the defendant's interest in the property subject to
336 forfeiture. A defendant need not file a written answer to the complaint, but may acknowledge or
337 deny interest in the property at the time of first appearance on the criminal charges. If a criminal

338 information or indictment is amended to include a demand for forfeiture, the defendant may
339 respond to the demand at the time of the amendment.

340 [(i)] (ii) Unless motion for disposition is made by the defendant, the determination of
341 forfeiture shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall
342 be before the court without a jury. The court may consider any evidence presented in the criminal
343 case, and receive any other evidence offered by the state or the defendant. The court shall
344 determine by a preponderance of the evidence the issues in the case and order forfeiture or release
345 of the property as it determines.

346 [(ii)] (iii) A defendant may move the court to transfer the forfeiture action, to stay all
347 action, including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial
348 of the criminal charges. Either party may move the court to enter a finding of forfeiture as to
349 defendant's interest in part or all of the property, either by default or by stipulation. ~~[Upon entry~~
350 ~~of a finding, the court shall stay the entry of judgment until resolution of the criminal charges. Any~~
351 ~~finding of forfeiture entered by the court prior to resolution of the criminal charges may not~~
352 ~~constitute a separate judgment, and any motion for disposition, stay, severance, or transfer of the~~
353 ~~forfeiture action may not create a separate proceeding. Upon the granting of a motion by the~~
354 ~~defendant for disposition, stay, severance, or transfer of the forfeiture action, the defendant shall~~
355 ~~be considered to have waived any claim that the defendant has been twice put in jeopardy for the~~
356 ~~same offense.]~~

357 [(iii)] (iv) Any other person claiming an interest in property subject to forfeiture under this
358 subsection may not intervene in a trial or appeal of a complaint filed under this subsection.
359 Following the entry of an in personam forfeiture order, or upon the filing of a petition for release
360 under Subsection (10)(e), the county attorney, district attorney, or attorney general may proceed
361 with a separate in rem action to resolve any other claims upon the property subject to forfeiture.

362 (c) ~~[A complaint]~~ In actions seeking forfeiture under Subsection [(2)(k)] (3)(g), a
363 complaint shall be prepared by the ~~[county attorney, or if within a prosecution district, the district~~
364 ~~attorney, or by the attorney general]~~ prosecuting agency, either in personam as part of a criminal
365 prosecution, or in a separate civil in rem action against the property alleged to be proceeds~~[,] and~~
366 obtained in violation of this chapter. The complaint shall be filed in the county where the property
367 is seized or encumbered, if the proceeds are located outside the state. A finding that property is
368 the proceeds of a violation of this chapter does not require proof that the property is the proceeds

369 of any particular exchange or transaction. Proof that property is proceeds may be shown by
370 evidence which establishes all of the following by a preponderance of the evidence:

371 (i) that the owner, if any claim of ownership is made, and the person [has] from whom the
372 property was seized have engaged in conduct in violation of this chapter;

373 (ii) that the property was acquired by the owner, if any claim of ownership is made, and
374 the person from whom the property was seized during that period when the conduct in violation
375 of this chapter occurred or within a reasonable time after that period; and

376 (iii) that there was no likely source for the property other than conduct in violation of the
377 chapter.

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

381 (i) personal service upon [a] any owner or claimant [who is charged in a criminal
382 information or indictment] in all in personam forfeiture actions, and upon all owners of real
383 property subject to forfeiture in all cases, whether in personam or in rem; and

384 (ii) certified mail to each owner, interest holder, or claimant, in an in rem forfeiture
385 proceeding not affecting real property, whose name and address is known or to each owner whose
386 right, title, or interest is of record in the Division of Motor Vehicles to the address given upon the
387 records of the division, which service is considered complete upon mailing even though the mail
388 is refused or cannot be forwarded.

389 (iii) The [~~county attorney, district attorney, or attorney general~~] prosecuting agency shall
390 make one publication in a newspaper of general circulation in the county where the seizure was
391 made for all other claimants whose addresses are unknown, but who are believed to have an
392 interest in the property.

393 (e) Except under Subsection [~~(9)~~] (10)(a) in personam actions, any claimant or interest
394 holder shall file with the court a verified answer to the complaint within 20 days after service.
395 When property is seized under this chapter, any interest holder or claimant of the property, prior
396 to being served with a complaint under this section, may file a petition in the court having
397 jurisdiction for release of his interest in the property. The petition shall specify the claimant's
398 interest in the property and his right to have it released. A copy shall be served upon the [county
399 attorney or, if within a prosecution district, the district attorney] prosecuting agency in the county

400 of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a
401 complaint of forfeiture.

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

406 (ii) If the ~~[county attorney or district attorney]~~ prosecuting agency has not filed an answer
407 to a petition for release and the court determines from the evidence presented to the court by the
408 petitioner that the petitioner is not entitled to recovery of the property, it shall enter an order
409 directing the county attorney or district attorney to answer the petition within ten days. If no
410 answer is filed within that period, the court shall order the release of the property to the petitioner
411 entitled to receive it.

412 (g) When an answer to a complaint or petition appears of record at the end of 20 days, the
413 court shall set the matter for hearing. At this hearing all ~~[interested parties]~~ claimants, owners, and
414 interest holders may present evidence of their rights of release of the property following the state's
415 evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues
416 in the case and order forfeiture or release of the property as it determines.

417 (h) When the court determines that the claimants under Subsection (10)(g) have no right
418 in the property in whole or in part, it shall declare the property to be forfeited.

419 (i) When the court determines that property, in whole or in part, is not subject to forfeiture,
420 it shall order release of the property to the proper claimant. If the court determines that the
421 property is subject to forfeiture and release in part, it shall order partial release and partial
422 forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall
423 order it sold and the proceeds distributed:

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

425 (ii) second, ~~[to defray the costs of the action, including seizure, storage of the property,~~
426 ~~legal costs of filing and pursuing the forfeiture, and costs of sale; and]~~ by the procedures under
427 Subsection (8).

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

429 (j) In a proceeding under this section where forfeiture is declared, in whole or in part, the
430 court shall assess all costs of the forfeiture proceeding, including seizure and storage of the

431 property, against the individual or individuals whose conduct was the basis of the forfeiture, and
432 may assess costs against any other claimant or claimants to the property as appropriate.

433 Section 3. Section **58-37-15** is amended to read:

434 **58-37-15. Burden of proof in proceedings on violations -- Exemptions -- Enforcement**
435 **officers exempt from liability.**

436 (1) It is not necessary for the state to negate any exemption or exception set forth in this
437 act in any complaint, information, indictment or other pleading or trial, hearing, or other
438 proceeding under this act, and the burden of proof of any exemption or exception is upon the
439 person claiming its benefit.

440 (2) In absence of proof that a person is the duly authorized holder of an appropriate license,
441 registration, order form, or prescription issued under this act, he shall be presumed not to be the
442 holder of a license, registration, order form, or prescription, and the burden of proof is upon him
443 to rebut the presumption.

444 (3) The provisions of Subsections (1) and (2) do not apply to forfeiture proceedings under
445 this chapter.

446 ~~[(3)]~~ (4) No liability shall be imposed upon any duly authorized state or federal officer
447 engaged in the enforcement of this act who is engaged in the enforcement of any law, municipal
448 ordinance, or regulation relating to controlled substances.

449 Section 4. Section **58-37-20** is amended to read:

450 **58-37-20. Drug Forfeiture Account created -- Revenue sources -- Use of account**
451 **designated.**

452 (1) (a) There is created in the General Fund a restricted account called the "Drug Forfeiture
453 Account."

454 (b) All monies and property forfeited ~~[or seized to the state]~~ to the Department of Public
455 Safety or the Department of Corrections, or any division or agency within either department,
456 through the state or federal court process as a result of activity involving a controlled substance
457 violation as prohibited under Title 58, Chapter 37, 37a, 37b, 37c, or 37d, or prohibited under
458 federal law, shall be deposited into the Drug Forfeiture Account.

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

462 (3) That portion of funds forfeited or [siezed] seized that are required to be disbursed to
463 other governmental entities under existing contractual agreements are exempt from this section.

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

467 (5) The Department of Public Safety as part of the annual budget hearings shall provide
468 the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a
469 complete accounting of expenditures and revenues from the funds under this section.

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

Legislative Review Note
as of 2-8-00 1:48 PM

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

Office of Legislative Research and General Counsel