

1 **PROPERTY FORFEITURE AMENDMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John L. Valentine**

5 **This act modifies the Utah Uniform Forfeiture Procedures Act. This act provides**
6 **additional definitions, expands reporting and accountability requirements, repeals**
7 **provisions regarding criminal forfeiture, and specifies that all forfeiture proceedings**
8 **under the act are civil. This act creates the Law Enforcement Forfeiture Account, and**
9 **transfers funds remaining in the repealed Drug Forfeiture Account to the new account.**
10 **This act creates a special revenue fund known as the Attorney General Law Enforcement**
11 **Assistance Fund. The fund shall receive 2/3 of net forfeiture proceeds, to be used under**
12 **specified qualifications and terms for law enforcement activity. This act also creates the**
13 **Substance Abuse Forfeiture Account, and provides that 1/3 of net forfeiture proceeds will**
14 **go to this account. The Administrative Office of the Courts shall use these funds for drug**
15 **court purposes. This act repeals provisions allowing for forfeiture defense costs to be**
16 **allocated from forfeited property. This act also makes technical amendments. This act**
17 **has an immediate effective date.**

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

19 AMENDS:

20 **24-1-2**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

21 **24-1-3**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

22 **24-1-4**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

23 **24-1-6**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24 **24-1-7**, as last amended by Chapter 185, Laws of Utah 2002

25 **24-1-10**, as last amended by Chapter 185, Laws of Utah 2002

26 **24-1-11**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

27 **24-1-12**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000



28 **24-1-13**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

29 **24-1-14**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

30 **24-1-15**, as last amended by Chapter 185, Laws of Utah 2002

31 **32A-13-103**, as last amended by Chapter 185, Laws of Utah 2002

32 ENACTS:

33 **24-1-3.5**, Utah Code Annotated 1953

34 **24-1-17**, Utah Code Annotated 1953

35 **24-1-18**, Utah Code Annotated 1953

36 **24-1-19**, Utah Code Annotated 1953

37 **24-1-20**, Utah Code Annotated 1953

38 **62A-15-113**, Utah Code Annotated 1953

39 REPEALS:

40 **24-1-8**, as last amended by Chapter 185, Laws of Utah 2002

41 **24-1-9**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

42 **24-1-16**, as last amended by Chapter 185, Laws of Utah 2002

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

44 Section 1. Section **24-1-2** is amended to read:

45 **24-1-2. Purpose.**

46 It is the intent of this chapter to:

47 (1) provide [~~for~~] a uniform set of procedures and substantive standards for the

48 [~~criminal and~~] civil forfeiture of property within the state [~~of Utah~~];

49 (2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting
50 contraband and the instrumentalities and proceeds of criminal conduct;

51 (3) protect innocent owners and interest holders from the [~~wrongful taking~~] forfeiture
52 of their property;

53 (4) ensure that seizures and forfeitures of property from private citizens are [~~not~~
54 ~~disproportionate~~] in proportion to the violation or crime committed;

55 (5) ensure direct control and accountability over the use and sale of forfeited property
56 and [~~the proceeds generated therefrom~~] the revenue resulting from the disposal of forfeited
57 property; [~~and~~]

58 (6) ensure the revenue resulting from property forfeiture allows continued law

59 enforcement, crime prevention, drug courts, and other appropriate activities related to these
60 functions;

61 (7) maximize the benefits of, and accountability of, federal asset forfeiture sharing for
62 the citizens of the state; and

63 ~~[(6)]~~ (8) direct that any and all revenues resulting from the sale of forfeited property be
64 [contributed to the Uniform School Fund] allocated to the Administrative Office of the Courts
65 for use in conducting drug courts, and to the state attorney general for grants to state and local
66 law enforcement agencies according to specified guidelines.

67 Section 2. Section **24-1-3** is amended to read:

68 **24-1-3. Definitions.**

69 As used in this section:

70 (1) "Agency" ~~[shall mean]~~ means any agency of municipal, county, or state
71 government, including law enforcement agencies, law enforcement personnel, and
72 multijurisdictional task forces.

73 (2) "Claimant" means:

74 (a) any owner of property as defined in this section;

75 (b) any interest holder as defined in this section; and

76 (c) any other person or entity who asserts a claim to any property seized for forfeiture
77 under this section.

78 (3) "Complaint" means a verified civil complaint seeking the forfeiture of any real or
79 personal property pursuant to this chapter.

80 ~~[(2)]~~ (4) "Contraband" ~~[shall mean]~~ means any property, item, or substance which is
81 unlawful to produce or to possess under state or federal law.

82 (5) "Fund" means the Attorney General Law Enforcement Assistance Fund created in
83 Section 24-1-18.

84 (6) (a) "Innocent owner" means an owner or interest holder who held an ownership
85 interest in property at the time the conduct subjecting the property to seizure occurred, and:

86 (i) did not have actual knowledge of the conduct subjecting the property to seizure; or

87 (ii) upon learning of the conduct subjecting the property to seizure, took reasonable
88 steps to prohibit the illegal use of the property.

89 (b) "Innocent owner" means an owner or interest holder who acquired an ownership

90 interest in the property after the conduct subjecting the property to seizure has occurred, and
91 who had no knowledge that the illegal conduct subjecting the property to seizure had occurred
92 or that the property had been seized for forfeiture, and:

93 (i) acquired the property in a bona fide transaction for value;

94 (ii) was a person, including a minor child, who acquired an interest in the property
95 through probate or inheritance; or

96 (iii) was a spouse who acquired an interest in property through dissolution of marriage
97 or by operation of law.

98 (7) (a) "Interest holder" means a secured party as defined in Subsection
99 70A-9a-102(72), a mortgagee, lien creditor, or the beneficiary of a security interest or
100 encumbrance pertaining to an interest in property, whose interest would be perfected against a
101 good faith purchaser for value.

102 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
103 an agent or nominee for another person, or who is not in substantial compliance with any
104 statute requiring an interest in property to be recorded or reflected in public records in order to
105 perfect the interest against a good faith purchaser for value.

106 (8) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not
107 to exceed 20% of the net value of the forfeited property.

108 (9) "Legislative body" means:

109 (a) the state Legislature, county commission, county council, city commission, city
110 council, or town council that has fiscal oversight and budgetary approval authority over a
111 seizing agency or the seizing agency's governing political subdivision; or

112 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
113 memorandum of understanding executed by the agencies participating in the task force.

114 ~~[(3)]~~ (10) "Multijurisdictional task force" ~~[shall mean]~~ means a law enforcement task
115 force or other agency comprised of persons who are employed by or acting under the authority
116 of different governmental authorities, including federal, state, county, or municipal
117 governments, or any combination ~~[thereof]~~ of these agencies.

118 ~~[(4)]~~ (11) "Owner" ~~[shall mean]~~ means any person or entity, other than an interest
119 holder as defined in this section, that possesses a bona fide legal or equitable interest in real or
120 personal property~~[- including a security interest].~~

121 (12) "Program" means the Attorney General Law Enforcement Assistance Program
 122 created in Section 24-1-19.

123 ~~[(5)]~~ (13) "Property" [shall mean] means all property, whether real or personal, tangible
 124 or intangible.

125 ~~[(6)]~~ (14) "Prosecuting Attorney" [shall mean the public attorney authorized by a
 126 specific provision of state law to initiate forfeiture proceedings under this chapter] means the
 127 attorney general, and any assistant attorney general, district attorney, deputy district attorney,
 128 county attorney, assistant county attorney, or other attorney authorized to commence an action
 129 on behalf of the state under this chapter or other provisions of state law.

130 (15) "Seize for forfeiture" means seizure of property:

131 (a) by a law enforcement officer or law enforcement agency, including a constructive
 132 seizure; and

133 (b) accompanied by an assertion by the officer or agency or by a prosecuting attorney
 134 that the property is seized for forfeiture in accordance with this chapter.

135 ~~[(7) "State law" means all Utah law, including municipal, county and state law.]~~

136 Section 3. Section **24-1-3.5** is enacted to read:

137 **24-1-3.5. Jurisdiction and venue.**

138 (1) The state district court has jurisdiction over any action filed in accordance with this
 139 chapter regarding:

140 (a) all interests in property if the property for which forfeiture is sought is within this
 141 state at the time the action is filed; and

142 (b) the interests of owners or interest holders in the property, if the owner or interest
 143 holder is subject to the personal jurisdiction of the district court.

144 (2) (a) In addition to the venue provided for under Title 78, Chapter 13, Place of Trial -
 145 Venue, or any other provisions of law, a proceeding for forfeiture under this chapter may be
 146 maintained in the judicial district in which:

147 (i) any part of the property is found; or

148 (ii) a civil or criminal action could be maintained against an owner or interest holder
 149 for the conduct alleged to give cause for the forfeiture.

150 (b) A claimant may obtain a change of venue under Section 78-13-9.

151 Section 4. Section **24-1-4** is amended to read:

152 **24-1-4. Forfeiture proceedings -- Agency notice of seizure -- Voiding of forfeiture.**

153 (1) An agency which seizes property under any provision of state law subjecting [an
154 owner's] the property to [civil] forfeiture shall, as soon as practicable, but in no case more than
155 30 days after seizure:

156 (a) prepare a detailed inventory of all property seized and transfer the seized property
157 to a designated official within the agency, who shall be responsible for holding and maintaining
158 seized property pending a court order of release or final determination of forfeiture and
159 disposition of property under this chapter;

160 (b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible
161 for initiating [civil] forfeiture proceedings under this chapter of the items of property seized,
162 the place of the seizure, and any persons arrested at the time of seizure; and

163 (c) give written notice to all owners and interest holders known, or reasonably
164 discoverable after due diligence, of [~~the following items~~]:

165 (i) the date of the seizure and the property seized;

166 (ii) the owner's or interest holder's rights and obligations under this chapter, including
167 the availability of [~~counsel and~~] hardship relief in appropriate circumstances; and

168 (iii) [~~an outline~~] a brief description of the [~~steps in the~~] statutory basis for the forfeiture
169 and the judicial proceedings by which property is forfeited under this chapter.

170 (2) (a) If the seizing agency fails to provide notice as required in [~~subparagraph (1)(c)]~~
171 Subsection (1), an owner or interest holder entitled to notice who does not receive notice may
172 void the forfeiture with respect to the owner's or interest holder's interest in the property by
173 bringing a motion before the appropriate district court and serving it upon the seizing agency.
174 [~~Such~~] The motion may be brought at any time prior to the final disposition of the property
175 under this chapter.

176 (b) If an owner or interest holder brings a motion to void the forfeiture for lack of the
177 notice required under [~~subparagraph (1)(c)]~~ Subsection (1), the court shall void the forfeiture
178 unless the seizing agency demonstrates:

179 [~~(a)~~] (i) good cause for the failure to give notice to that owner; or

180 [~~(b)~~] (ii) that the owner otherwise had actual notice of the seizure.

181 (3) (a) Within [~~90~~] 60 days of any seizure, the prosecuting attorney shall file a
182 complaint for forfeiture in the appropriate district court and serve a summons and notice of

183 intent to seek forfeiture with a copy of the complaint upon all owners and interest holders
184 known to the prosecuting attorney to have an interest in the property. Service shall be by one
185 of the following methods:

186 ~~[(i) personal service upon each owner whose name and address is known, or by mailing~~
187 ~~a copy to the last known address; or]~~

188 ~~[(ii) upon all other owners whose addresses are not known, by publication in a~~
189 ~~newspaper of general circulation in the county where the seizure was made for a period of two~~
190 ~~consecutive weeks.]~~

191 (i) if the owner's or interest holder's name and current address are known, either by
192 personal service by any person qualified to serve process, by a law enforcement officer, or by
193 certified mail, return receipt requested, to that address;

194 (ii) if the owner's or interest holder's name and address are required by law to be on
195 record with any state agency in order to perfect an interest in property, and the owner's or
196 interest holder's current address is not known, by mailing a copy of the notice by certified mail,
197 return receipt requested, to the most recent address listed by any of those agencies; or

198 (iii) if the owner's or interest holder's address is not known and is not on record as
199 provided in Subsections (3)(a)(i) or (ii), by publication for two successive weeks in a
200 newspaper of general circulation in the county in which the seizure occurred.

201 (b) Notice is effective upon the earlier of personal service, publication, or the mailing
202 of a written notice.

203 (c) The summons and notice of intent to seek forfeiture shall:

204 (i) be addressed to the known owners and interest holders of the seized property, and to
205 the person from whom the property was seized;

206 (ii) contain the name, business address, and business telephone number of the
207 prosecuting attorney seeking the forfeiture; and

208 (iii) contain:

209 (A) a description of the property which is the subject matter of the forfeiture
210 proceeding;

211 (B) notice that a complaint for forfeiture has been or will be filed;

212 (C) the time and procedural requirements for filing an answer or claim;

213 (D) notice of the availability of hardship or bond release of the property; and

214 (E) notice that failure to file an answer or other claim to the seized property will result
 215 in a default judgment against the seized property.

216 ~~[(b)]~~ (d) The complaint shall describe with reasonable particularity:

217 (i) the property which is the subject matter of the forfeiture proceeding;

218 (ii) the date and place of seizure; and

219 (iii) the allegations which constitute a basis for forfeiture.

220 (4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the
 221 property in accordance with ~~[subparagraph]~~ Subsection (3), the agency shall promptly return
 222 the property to its owner and the prosecuting attorney ~~[shall]~~ may take no further action to
 223 effect the forfeiture of ~~[such]~~ the property.

224 (b) If the agency knows of more than one owner, it shall return the property to the
 225 owner who was in possession at the time of the seizure.

226 (5) In any case where the prosecuting attorney files a complaint for forfeiture of
 227 property, an owner or interest holder may file a claim and an answer to the complaint. The
 228 claim and answer shall be filed within 30 days after the complaint is served in person or by
 229 mail, or where applicable, within 30 days after publication under ~~[subparagraph (3)(a)(ii)]~~
 230 Subsection (3).

231 (6) (a) Except as otherwise provided in this chapter, ~~[civil]~~ forfeiture proceedings are
 232 governed by the Utah Rules of Civil Procedure.

233 (b) The court shall take all reasonable steps to expedite forfeiture proceedings ~~[and~~
 234 ~~shall give such proceedings the same priority as is given to criminal cases]~~.

235 (c) In all suits or actions brought for the ~~[civil]~~ forfeiture of any property under this
 236 chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing
 237 evidence, to what extent, if any, property is subject to forfeiture.

238 (d) The right to trial by jury applies to ~~[civil]~~ forfeiture proceedings under this chapter.
 239 Section 5. Section **24-1-6** is amended to read:

240 **24-1-6. Innocent owners.**

241 (1) An innocent owner's or interest holder's interest in property ~~[shall]~~ may not be
 242 forfeited ~~[civilly]~~ under any provision of state law.

243 (2) The prosecuting attorney ~~[shall have]~~ has the burden of establishing by clear and
 244 convincing evidence that an ~~[individual is not an innocent]~~ owner[-] or interest holder:

245 (a) is criminally responsible for the conduct giving rise to the forfeiture;
246 (b) knew of or could reasonably have been expected to know of the conduct giving rise
247 to the forfeiture, and allowed the property to be used in furtherance of the conduct;
248 (c) acquired the property with notice of its actual or constructive seizure for forfeiture
249 under this chapter;
250 (d) acquired the property with reason to believe the property was subject to forfeiture
251 under this chapter; or
252 (e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful
253 seizure or forfeiture under any provision of state law.
254 ~~[(3) With respect to an ownership interest in existence at the time the conduct~~
255 ~~subjecting the property to seizure took place, the term "innocent owner" means an owner who:]~~
256 ~~[(a) did not have actual knowledge of the conduct subjecting the property to seizure;~~
257 ~~or]~~
258 ~~[(b) upon learning of the conduct subjecting the property to seizure, took reasonable~~
259 ~~steps to prohibit such use of the property.]~~
260 ~~[(4)] (3) For purposes of [subparagraph (3)(b)] this chapter, [no] an owner [shall] or~~
261 ~~interest holder may not be required to take steps that he reasonably believes would be likely to~~
262 ~~[subject any person (other than the person whose conduct gave rise to the forfeiture) to] result~~
263 ~~in physical harm or danger to any person. An owner or interest holder may demonstrate that he~~
264 ~~took reasonable action to prohibit [such] the illegal use of the property by, for example:~~
265 ~~(a) timely notifying a law enforcement agency of information that led the owner to~~
266 ~~know that conduct subjecting the property to seizure would occur, was occurring, or has~~
267 ~~occurred; [or]~~
268 ~~(b) timely revoking or attempting to revoke permission for those engaging in [such] the~~
269 ~~illegal conduct to use the property; or~~
270 ~~(c) taking reasonable actions to discourage or prevent the illegal use of the property.~~
271 ~~[(5) With respect to an ownership interest acquired after the conduct subjecting the~~
272 ~~property to seizure has occurred, the term "innocent owner" means a person who, at the time he~~
273 ~~acquired the interest in the property, had no knowledge that the illegal conduct subjecting the~~
274 ~~property to seizure had occurred or that the property had been seized for forfeiture, and:]~~
275 ~~[(a) acquired the property in a bona fide transaction for value;]~~

276 ~~[(b) was a person, including a minor child, who acquired an interest in property~~
277 ~~through probate or inheritance; or]~~

278 ~~[(c) was a spouse who acquired an interest in property through dissolution of marriage~~
279 ~~or by operation of law.]~~

280 ~~[(6)]~~ (4) No owner may assert, under this ~~[paragraph]~~ section, an ownership interest in
281 contraband.

282 (5) Property is presumed to be subject to forfeiture under this chapter if the prosecuting
283 attorney establishes, by clear and convincing evidence, that:

284 (a) the owner or interest holder has engaged in conduct giving cause for forfeiture;

285 (b) the property was acquired by the owner or interest holder during that period of the
286 conduct giving cause for forfeiture or within a reasonable time after that period; and

287 (c) there was no likely source for the purchase or acquisition of the property other than
288 the conduct giving cause for forfeiture.

289 (6) A finding that property is the proceeds of conduct giving cause for forfeiture does
290 not require proof that the property was the proceeds of any particular exchange or transaction.

291 Section 6. Section **24-1-7** is amended to read:

292 **24-1-7. Property management and preservation -- Hardship release of seized**
293 **property.**

294 (1) After property is seized for forfeiture, a person or entity may not alienate, convey,
295 sequester, or attach that property until the court issues a final order of dismissal or an order of
296 forfeiture regarding the property.

297 (2) The seizing agency or the prosecuting attorney may authorize the release of
298 property seized for forfeiture to its owner if retention of actual custody is unnecessary.

299 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
300 discontinue forfeiture proceedings and transfer the action to another state or federal agency
301 which has initiated forfeiture proceedings involving the same property.

302 (4) Property seized for forfeiture is considered to be in the custody of the district court
303 and subject only to:

304 (a) the orders and decrees of the court having jurisdiction over the property or the
305 forfeiture proceedings; and

306 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

307 (5) (a) An owner of property seized pursuant to this chapter may obtain release of the
308 property by posting with the district court a surety bond or cash in an amount equal to the
309 current fair market value of the property as determined by the court or by the parties'
310 stipulation.

311 (b) The district court may refuse to order the release of the property if:

312 (i) the bond tendered is inadequate;

313 (ii) the property is contraband or is retained as evidence; or

314 (iii) the property is particularly altered or designed for use in conduct giving cause for
315 forfeiture.

316 (c) If a surety bond or cash is posted and the property seized and then released on a
317 bond or cash is forfeited, the court shall forfeit the surety bond or cash in lieu of the property.

318 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30
319 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the
320 property seized.

321 (b) The seizing agency shall deposit property that is in the form of cash or other readily
322 negotiable instruments into a restricted account maintained by the agency solely for the purpose
323 of managing and protecting the property from commingling, loss, or devaluation during the
324 pendency of the forfeiture proceedings.

325 (c) The seizing agency shall have in place written policy for the identification, tracking,
326 management, and safekeeping of seized property, which shall include a prohibition against the
327 transfer, sale, or auction of forfeited property to any employee of the seizing agency.

328 (d) An agency may not be awarded any funds from forfeiture through the Attorney
329 General Law Enforcement Assistance Program under Section 24-1-19 if the agency has not
330 established or maintained the inventory policy, restricted account, and written policies required
331 by this Subsection (6).

332 [(+)] (7) An owner is entitled to the immediate release of seized property from the
333 seizing agency pending the final determination of [civ] forfeiture if:

334 (a) the owner [has] had a possessory interest in the property at the time of seizure;

335 (b) continued possession by the agency or the state pending the final disposition of the
336 forfeiture proceedings will cause substantial hardship to the owner, such as:

337 (i) preventing the functioning of a legitimate business;

- 338 (ii) preventing any individual from working;
- 339 (iii) preventing any minor child or student from attending school;
- 340 (iv) preventing or hindering any person from receiving necessary medical care;
- 341 (v) hindering the care of an elderly or disabled dependent child or adult;
- 342 [~~(vi) preventing an owner from retaining counsel to provide a defense in the forfeiture~~
- 343 ~~proceeding; or~~
- 344 [~~(vii)~~] (vi) leaving any individual homeless[;]; or
- 345 (vii) any other condition that the court determines causes a substantial hardship; [~~and~~]
- 346 (c) the hardship from the continued possession by the agency of the seized property
- 347 substantially outweighs the risk that the property will be destroyed, damaged, lost, concealed,
- 348 or transferred if it is returned to the owner during the pendency of the proceeding[-]; and
- 349 (d) substantial hardship under this Subsection (7) is determined based upon the
- 350 property's use prior to the seizure.
- 351 [~~(2) The right to appointed counsel under Section 24-1-9 applies throughout civil~~
- 352 ~~forfeiture proceedings, including an owner's motion for hardship release.]~~
- 353 (8) An owner may file a motion for hardship release:
- 354 (a) in the court in which forfeiture proceedings have commenced; or
- 355 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
- 356 have not yet commenced.
- 357 (9) The motion for hardship release must also be served upon the prosecuting attorney
- 358 and the seizing agency within ten days after filing the motion.
- 359 [~~(3)~~] (10) The court shall render a decision on a motion [~~or complaint~~] for hardship
- 360 release filed under [~~Subsection (2)~~] this section not later than [~~ten~~] 20 days after the date of
- 361 filing, or ten days after service upon the prosecuting attorney and seizing agency, whichever is
- 362 earlier, unless [~~the ten-day~~] this period is extended by the [~~consent of the~~] parties or by the
- 363 court for good cause shown.
- 364 [~~(4)~~] (11) (a) If the owner demonstrates substantial hardship pursuant to [~~subparagraph~~
- 365 ~~(4)~~] this section, the court shall order the property immediately released to the owner pending
- 366 completion of proceedings by the government to obtain forfeiture of the property.
- 367 (b) The court may place [~~such~~] conditions on release of the property as it finds [~~are~~]
- 368 necessary and appropriate to preserve the availability of the property or its equivalent for

369 forfeiture.

370 ~~[(5)]~~ (12) ~~[Subparagraph (1) shall]~~ The hardship release does not apply if the seized
 371 property is:

372 (a) contraband;

373 (b) currency or other monetary ~~[instrument]~~ instruments or electronic funds~~[-unless~~
 374 such property is used to pay for the costs of defending against the forfeiture proceeding or
 375 constitutes the assets of a legitimate business]; or

376 (c) likely to be used to commit additional illegal acts if returned to the owner.

377 (13) (a) The court may order property which has been seized for forfeiture to be sold as
 378 allowed by Subsection (14), leased, rented, or operated to satisfy a specified interest of any
 379 owner or interest holder, or to preserve the interests of any party on motion of that party.

380 (b) The court may enter orders under Subsection (13)(a) after notice to persons known
 381 to have an interest in the property, and after an opportunity for a hearing.

382 (14) A sale may be ordered under Subsection (13) when the property is liable to perish,
 383 waste, be foreclosed, or significantly reduced in value, or when the expenses of maintaining the
 384 property are disproportionate to its value. A third party designated by the court shall dispose of
 385 the property by commercially reasonable public sale and distribute the proceeds in the
 386 following order of priority:

387 (a) first, for the payment of reasonable expenses incurred in connection with the sale;

388 (b) second, for the satisfaction of exempt interests in the order of their priority as
 389 determined by Title 70A, Uniform Commercial Code; and

390 (c) third, any balance of the proceeds shall be preserved in the actual or constructive
 391 custody of the court, in an interest-bearing account, subject to further proceedings under this
 392 chapter.

393 Section 7. Section **24-1-10** is amended to read:

394 **24-1-10. Prejudgment and postjudgment interest.**

395 In any ~~[civil or criminal]~~ proceeding to forfeit currency or other negotiable instruments
 396 under this chapter, the court shall award a prevailing ~~[owner]~~ party prejudgment and
 397 postjudgment interest on the currency or negotiable instruments at the legal rate of interest
 398 established by Section 15-1-1.

399 Section 8. Section **24-1-11** is amended to read:

400 **24-1-11. Attorneys' fees and costs.**

401 (1) In any ~~[civil or criminal]~~ proceeding to forfeit seized property under this chapter,
402 the court ~~[shall]~~ may award a prevailing ~~[owner]~~ party reasonable attorneys' fees and other
403 costs of ~~[suit]~~ litigation reasonably incurred ~~[by the owner. An owner who prevails only in part~~
404 ~~shall be entitled to recover reasonable attorneys' fees and reasonable costs of suit related to~~
405 ~~those issues on which he prevailed].~~

406 (2) In determining whether or not to award attorneys' fees and costs, the court shall
407 consider the merit of each parties' allegations and pleadings, and whether a seizure, complaint,
408 claim, or answer was reasonable and based upon good faith, or was made for any improper
409 purpose.

410 Section 9. Section **24-1-12** is amended to read:

411 **24-1-12. Compensation for damaged property.**

412 (1) ~~[In any civil or criminal proceeding,]~~ If property seized for forfeiture is returned by
413 operation of this chapter, an owner ~~[shall have]~~ has a ~~[private]~~ civil right of action against a
414 seizing agency for any claim based upon the negligent destruction, loss, damage, or other injury
415 to seized property while in the possession or custody of ~~[a state]~~ the agency~~[, if the property~~
416 ~~was seized for the purpose of initiating forfeiture proceedings under this chapter].~~

417 (2) ~~[For the purposes of]~~ As used in this section, "damage or other injury" does not
418 include normal depreciation, deterioration, or ordinary wear and tear.

419 Section 10. Section **24-1-13** is amended to read:

420 **24-1-13. Limitation on fees for holding seized property.**

421 In any ~~[civil or criminal]~~ proceeding under this chapter in which a judgment is entered
422 in favor of an owner, ~~[or where a forfeiture proceeding against an owner is voluntarily~~
423 ~~dismissed by the prosecuting attorney,]~~ the seizing agency ~~[shall be prohibited from charging]~~
424 may not charge that owner any fee for holding the seized property.

425 Section 11. Section **24-1-14** is amended to read:

426 **24-1-14. Proportionality.**

427 (1) (a) An owner's interest in property, excluding contraband, ~~[shall]~~ is not ~~[be civilly~~
428 ~~or criminally forfeited]~~ subject to forfeiture under ~~[a]~~ any provision of state law ~~[unless such]~~ if
429 the forfeiture is ~~[substantially proportional]~~ grossly disproportional to ~~[both]~~ the use of the
430 property in committing or facilitating a violation of state law and the value of the property.

431 (b) Forfeiture of property used solely in a manner that is merely incidental and not
 432 instrumental to the commission or facilitation of a violation of law is not proportional~~[, as a~~
 433 ~~matter of law].~~

434 (2) (a) In determining proportionality, the court shall consider:

435 (i) the conduct giving cause for the forfeiture;

436 (ii) what portion of the forfeiture, if any, is remedial in nature; and

437 (iii) the gravity of the conduct for which the claimant is responsible in light of the
 438 offense.

439 (b) If the court finds that the forfeiture is grossly disproportional to the conduct for
 440 which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds
 441 appropriate.

442 (3) (a) The prosecuting attorney has the burden to demonstrate that any forfeiture is
 443 proportional to an alleged violation of state law. [It is the province of the court, not the jury, to
 444 decide questions of proportionality.]

445 (b) All proceedings in determining whether a forfeiture is grossly disproportional shall
 446 be at a hearing conducted by the court without a jury.

447 Section 12. Section **24-1-15** is amended to read:

448 **24-1-15. Transfer and sharing procedures.**

449 ~~[(1) For purposes of this section, property is deemed to be "seized" whenever any~~
 450 ~~agency takes possession of the property or exercises any degree of control over the property.]~~

451 ~~[(2) (a) Seizing agencies or prosecuting attorneys authorized to bring civil or criminal~~
 452 ~~forfeiture proceedings under this chapter shall not directly or indirectly transfer seized property~~
 453 ~~to any federal agency or any governmental entity not created under and subject to state law~~
 454 ~~unless the court enters an order, upon petition of the prosecuting attorney, authorizing the~~
 455 ~~property to be transferred. The court may not enter an order authorizing a transfer unless:]~~

456 ~~[(i) the activity giving rise to the investigation or seizure is interstate in nature and~~
 457 ~~sufficiently complex to justify such transfer;]~~

458 ~~[(ii) the seized property may only be forfeited under federal law; or]~~

459 ~~[(iii) pursuing forfeiture under state law would unduly burden prosecuting attorneys or~~
 460 ~~state law enforcement agencies.]~~

461 ~~[(b) Notwithstanding Subparagraph (2)(a), the court may refuse to enter an order~~

462 ~~authorizing a transfer to the federal government if such transfer would circumvent the~~
463 ~~protections of the Utah Constitution or this chapter that would otherwise be available to the~~
464 ~~property owner.]~~

465 ~~[(c) Prior to granting any order to transfer pursuant to Subparagraph (2)(a), the court~~
466 ~~must give any owner the right to be heard with regard to the transfer.]~~

467 ~~[(3) (a) All property, money or other things of value received by an agency pursuant to~~
468 ~~federal law which authorizes the sharing or transfer of all or a portion of forfeited property or~~
469 ~~the proceeds of the sale of forfeited property to an agency shall be promptly transferred to the~~
470 ~~state treasurer and sold and deposited in the Uniform School Fund as provided under Section~~
471 ~~24-1-16.]~~

472 ~~[(b) Subject to Subparagraph (3)(a), state]~~

473 (1) State agencies are encouraged to seek an equitable share of property forfeited by the
474 federal government and to cooperate with federal law enforcement agencies in all cases in
475 which [such] cooperation is in the interest of this state.

476 (2) In order for any property seized for forfeiture to be transferred to an agency of the
477 federal government for federal forfeiture proceedings:

478 (a) the district court with jurisdiction over the seized property must authorize the
479 transfer; or

480 (b) the federal agency seeking jurisdiction over the property must obtain a seizure
481 warrant, search warrant, arrest warrant in rem, or other federal process mandating the transfer.

482 (3) Each agency awarded any equitable share of property forfeited by the federal
483 government shall file copies of all federal equitable sharing certifications, applications, and
484 reports with the state auditor and the attorney general at least annually. This information shall
485 provide details of all awards received from the federal government during the preceding
486 reporting period, including for each award:

487 (a) the agency's case number or other identification;

488 (b) the amount of the award;

489 (c) the date of the award;

490 (d) the identity of the federal agency involved in the forfeiture; and

491 (e) how the awarded property has been used.

492 ~~[(4) Any agency that violates Subparagraph (2) or (3) is civilly liable to the state for~~

493 ~~three times the amount of the forfeiture diverted and for costs of suit and reasonable attorneys'~~
494 ~~fees. Any damages awarded to the state shall be paid to the Uniform School Fund. Any agent,~~
495 ~~including state law enforcement officers who are detached to, deputized or commissioned by,~~
496 ~~or working in conjunction with a federal agency, who knowingly transfers or otherwise trades~~
497 ~~seized property in violation of Subparagraph (2)(a) or who receives property, money or other~~
498 ~~things of value under Subparagraph (3)(a) and knowingly fails to transfer such property to the~~
499 ~~state treasurer is guilty of a class B misdemeanor.]~~

500 (4) Law enforcement agencies awarded any equitable share of property forfeited by the
501 federal government may only use that equitable share upon approval or appropriation by the
502 agency's legislative body.

503 Section 13. Section **24-1-17** is enacted to read:

504 **24-1-17. Disposition and allocation of forfeiture property.**

505 (1) Upon finding that property is subject to forfeiture under this chapter, the court shall
506 order the property forfeited to the state, and the seizing agency shall then:

507 (a) make the payments as required under this chapter; and

508 (b) transfer possession, custody, and control of the net forfeiture property or proceeds
509 immediately to the state treasurer's office.

510 (2) If the forfeiture arises from any violation of Section 23-20-1 relating to wildlife
511 resources, the court shall:

512 (a) direct that the legal costs of the forfeiture proceeding be paid to the prosecuting
513 agency; and

514 (b) direct that the net forfeited property after the legal costs shall be deposited in the
515 Wildlife Resources Account created in Section 23-14-13.

516 (3) (a) Prior to transferring forfeited property, the seizing agency shall authorize a
517 public or otherwise commercially reasonable sale of that property which is not required by law
518 to be destroyed and that is not harmful to the public.

519 (b) The proceeds of the forfeited property shall remain segregated from other property,
520 equipment, or assets of the seizing agency until transferred to the state in accordance with this
521 chapter.

522 (4) From the forfeited property, both currency and the proceeds or revenue from the
523 property, the seizing agency shall:

524 (a) deduct the seizing agency's costs, as approved by the court, for maintaining the
525 property pending forfeiture; and

526 (b) pay the legal costs to the prosecuting agency for the prosecution of the forfeiture
527 proceeding.

528 (5) One-third of the remaining forfeited property shall then be transferred by the
529 seizing agency to the state treasurer, to be deposited in the Substance Abuse Forfeiture Account
530 created in Section 62A-15-113 for appropriation by the Legislature.

531 (6) The residual 2/3 of the remaining forfeited property shall then be transferred by the
532 seizing agency to the state treasurer, to be deposited in the Attorney General Law Enforcement
533 Assistance Fund created in this section for award and distribution pursuant to the Attorney
534 General Law Enforcement Assistance Program created in Section 24-1-19.

535 (7) (a) All property and proceeds awarded to the state through forfeiture proceedings
536 under this chapter and transferred to the fund shall be held by the state treasurer until the
537 attorney general approves awards and disbursements under the program.

538 (b) The property and proceeds held by the state treasurer shall be segregated from other
539 property, equipment, or assets of the state and from any department, office, or agency of the
540 state until awarded through the program.

541 Section 14. Section **24-1-18** is enacted to read:

542 **24-1-18. Attorney General Law Enforcement Assistance Fund.**

543 (1) (a) There is created a special revenue fund known as the Attorney General Law
544 Enforcement Assistance Fund for the purpose of providing funding for the Attorney General
545 Law Enforcement Assistance Program, as created by Section 24-1-19.

546 (b) The attorney general may expend monies from the fund for the program purposes
547 under Section 24-1-19.

548 (c) The attorney general may pay program administrative costs from the fund.

549 (2) The fund consists of all monies deposited to the fund under Section 24-1-17.

550 (3) (a) The fund shall earn interest.

551 (b) All interest earned on fund monies shall be deposited into the fund.

552 Section 15. Section **24-1-19** is enacted to read:

553 **24-1-19. Attorney General Law Enforcement Assistance Program.**

554 (1) There is created the Attorney General Law Enforcement Assistance Program.

- 555 (2) The program shall fund law enforcement activities that have the purpose of:
556 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
557 activities;
558 (b) weakening criminal enterprises by removing the instrumentalities of crime;
559 (c) encouraging cooperation between local, state, and multijurisdictional law
560 enforcement agencies;
561 (d) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
562 proceeds of crime;
563 (e) increasing the equitability and accountability of the use of forfeited property used to
564 assist law enforcement; and
565 (f) removing direct control of forfeited property from the seizing agency.
566 (3) (a) When property is forfeited under this chapter and transferred to the fund, the
567 attorney general shall make awards of monies from the fund to state, local, or
568 multijurisdictional law enforcement agencies in compliance with this section and to further the
569 program purposes under Subsection (2).
570 (b) In granting the awards, the attorney general shall ensure that the amount of each
571 award takes into consideration:
572 (i) the demonstrated needs of the law enforcement agency;
573 (ii) the demonstrated ability of the law enforcement agency to appropriately use the
574 award;
575 (iii) the degree to which the law enforcement agency's need is offset through the
576 agency's participation in federal equitable sharing or through other federal and state grant
577 programs; and
578 (iv) the law enforcement agency's cooperation with other state and local agencies and
579 task forces.
580 (4) Law enforcement agencies shall apply for program awards by completing and
581 submitting forms specified by the attorney general.
582 (5) Applying agencies shall demonstrate compliance with all reporting and policy
583 requirements applicable under this chapter in order to qualify as a potential award recipient.
584 (6) Recipient agencies may only use program awards after approval or appropriation by
585 the agency's legislative body.

586 (7) A recipient law enforcement agency shall use program awards only for law
587 enforcement or controlled substance law enforcement purposes as described in Subsection (8),
588 and only as these purposes are specified by the agency in its application for the award.

589 (8) Permissible law enforcement purposes and controlled substance law enforcement
590 purposes for which award monies may be used include:

591 (a) controlled substance interdiction and enforcement activities;

592 (b) activities calculated to enhance future investigations;

593 (c) law enforcement training;

594 (d) law enforcement operations or equipment which are not routine costs or operational
595 expenses;

596 (e) drug, gang, or crime prevention education programs which are sponsored in whole
597 or in part by the law enforcement agency or its legislative body; and

598 (f) matching funds for other state or federal law enforcement grants.

599 (9) Law enforcement purposes for which award monies may not be granted or used
600 include:

601 (a) payment of salaries or bonuses to any person;

602 (b) payment of enforcement expenses not related to law enforcement;

603 (c) uses not specified in the agency's award application;

604 (d) uses not approved or appropriated by the agency's legislative body;

605 (e) payments, transfers, or pass-through funding to entities other than law enforcement
606 agencies;

607 (f) uses, payments, or expenses that are not within the scope of the agency's functions;

608 or

609 (g) unreasonable expenditures.

610 (10) For each fiscal year, any state, local, or multijurisdictional agency that received a
611 program award shall execute, and file with the attorney general and the state auditor, a report in
612 a form specified by the attorney general. The report shall include the following regarding each
613 award:

614 (a) the agency's name;

615 (b) the amount of the award;

616 (c) the date of the award;

617 (d) how the award has been used; and

618 (e) a statement signed by both the agency's executive officer or designee and by the
619 agency's legal counsel, that the agency has complied with all inventory, policy, and reporting
620 requirements of this chapter, and that all program awards were used for law enforcement
621 purposes, as specified in the agency's application, and only upon approval or appropriation by
622 the agency's legislative body.

623 (11) The attorney general shall report in writing to the Legislature annually regarding
624 the forfeited property transferred to the fund, awards made by the program, and law
625 enforcement agency uses of program awards.

626 Section 16. Section **24-1-20** is enacted to read:

627 **24-1-20. State Law Enforcement Forfeiture Account created -- Revenue sources --**
628 **Use of account designated.**

629 (1) (a) There is created in the General Fund a restricted account called the "State Law
630 Enforcement Forfeiture Account."

631 (b) All monies awarded to the Department of Public Safety or the Department of
632 Corrections, or any division or agency within either department, through federal asset forfeiture
633 equitable sharing or through the Attorney General Law Enforcement Assistance Program
634 created in Section 24-1-19 shall be deposited into the State Law Enforcement Forfeiture
635 Account.

636 (c) All monies previously deposited, or currently held in the Drug Forfeiture Account
637 created in Section 58-37-20, and that were in that account when it was repealed by Initiative B,
638 2000, which was adopted November 7, 2000, shall be transferred to and deposited in the State
639 Law Enforcement Forfeiture Account created in this Subsection (1).

640 (2) The Department of Public Safety and the Department of Corrections may expend
641 amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture
642 Account for law enforcement purposes or controlled substance law enforcement purposes as
643 specified in Subsection 24-1-19(8).

644 (3) That portion of funds forfeited or that are required to be disbursed to other
645 governmental entities under existing contractual agreements or statutory requirements are
646 exempt from this section.

647 (4) Funds forfeited as a result of the Salt Lake Airport Drug Program, not to exceed the

648 Department of Public Safety's expenditure to that program, are exempt from this section.

649 (5) The Department of Public Safety and the Department of Corrections, as part of the
650 annual legislative budget hearings, shall provide to the Executive Offices and Criminal Justice
651 Appropriations Subcommittee a complete accounting of expenditures and revenues from the
652 funds received under this section.

653 (6) The Legislature may annually provide, in the appropriations act, legislative
654 direction for anticipated expenditures of the monies received under this section.

655 Section 17. Section **32A-13-103** is amended to read:

656 **32A-13-103. Searches, seizures, and forfeitures.**

657 (1) The following are subject to forfeiture pursuant to the procedures and substantive
658 protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

659 (a) all alcoholic products possessed, used, offered for sale, sold, given, furnished,
660 supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried,
661 transported, or distributed in violation of this title or commission rules;

662 (b) all packages or property used or intended for use as a container for an alcoholic
663 product in violation of this title or commission rules;

664 (c) all raw materials, products, and equipment used, or intended for use, in
665 manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic
666 product in violation of this title or commission rules;

667 (d) all implements, furniture, fixtures, or other personal property used or kept for any
668 violation of this title or commission rules;

669 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to
670 transport or in any manner facilitate the transportation, sale, receipt, possession, or
671 concealment of property described in Subsection (1)(a), (b), (c), or (d); and

672 (f) all books, records, receipts, ledgers, or other documents used or intended for use in
673 violation of this title or commission rules.

674 (2) Any of the property subject to forfeiture under this title may be seized by any peace
675 officer of this state or any other person authorized by law upon process issued by any court
676 having jurisdiction over the property in accordance with the procedures provided in Title 77,
677 Chapter 23, Part 2, Search Warrants. However, seizure without process may be made when:

678 (a) the seizure is incident to an arrest or search under a search warrant or an inspection

679 under an administrative inspection warrant;

680 (b) the property subject to seizure has been the subject of a prior judgment in favor of
681 the state in a criminal injunction or forfeiture proceeding under this title;

682 (c) the peace officer or other person authorized by law has probable cause to believe
683 that the property is directly or indirectly dangerous to health or safety; or

684 (d) the peace officer or other person authorized by law has probable cause to believe
685 that the property is being or has been used, intended to be used, held, or kept in violation of this
686 title or commission rules.

687 (3) If the property is seized pursuant to a search or administrative warrant, the peace
688 officer or other person authorized by law shall make a proper receipt, return, and inventory and
689 ensure the safekeeping of the property as required by Sections 77-23-206 through 77-23-208.
690 If the magistrate who issued the warrant is a justice court judge, upon the filing of the return
691 the jurisdiction of the justice court shall cease and the magistrate shall certify the record and all
692 files without delay to the district court of the county in which the property was located. From
693 the time of this filing, the district court has jurisdiction of the case.

694 (4) In the event of seizure of property without process, the peace officer or other person
695 authorized by law shall make a return of his acts without delay directly to the district court of
696 the county in which the property was located, and the district court shall have jurisdiction of
697 the case. The return shall describe all property seized, the place where it was seized, and any
698 persons in apparent possession of the property. The officer or other person shall also promptly
699 deliver a written inventory of anything seized to any person in apparent authority at the
700 premises where the seizure was made, or post it in a conspicuous place at the premises. The
701 inventory shall state the place where the property is being held.

702 (5) Property taken or detained under this section is not repleviable but is considered in
703 custody of the law enforcement agency making the seizure subject only to the orders of the
704 court or the official having jurisdiction. When property is seized under this title, the
705 appropriate person or agency may:

706 (a) place the property under seal;

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

709 (c) take custody of the property and remove it to an appropriate location for disposition

710 in accordance with law.

711 (6) When any property is subject to forfeiture under this section, proceedings shall be
712 instituted in accordance with the procedures and substantive protections of Title 24, Chapter 1,
713 Utah Uniform Forfeiture Procedures Act.

714 (7) When any property is ordered forfeited under Title 24, Chapter 1, Utah Uniform
715 Forfeiture Procedures Act, by a finding of the court that no person is entitled to recover the
716 property, the property, if an alcoholic product or a package used as a container for an alcoholic
717 product, shall be disposed of as follows:

718 (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or
719 impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in
720 saleable condition, sold in accordance with Section [~~24-1-16~~] 24-1-17.

721 (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its
722 package or container shall be destroyed by the department under competent supervision.

723 Section 18. Section **62A-15-113** is enacted to read:

724 **62A-15-113. Substance Abuse Forfeiture Account created -- Revenue sources --**
725 **Use of account designated.**

726 (1) (a) There is created in the General Fund a restricted account called the "Substance
727 Abuse Forfeiture Account."

728 (b) All monies awarded to or paid to the state treasurer through forfeitures in
729 accordance with Subsection 24-1-17(5) shall be deposited into the Substance Abuse Forfeiture
730 Account.

731 (2) The Administrative Office of the Courts shall expend amounts as appropriated by
732 the Legislature from the Substance Abuse Forfeiture Account to aid in the creation,
733 administration, or operation of drug courts throughout the state through grants, awards, and
734 contracts with drug courts.

735 (3) The Administrative Office of the Courts, as part of the annual budget hearings,
736 shall provide the Executive Offices and Criminal Justice Appropriations Subcommittee and the
737 Health and Human Services Appropriations Subcommittee with a complete accounting of
738 expenditures and revenues from the funds received under this section.

739 (4) The Legislature may annually provide, in the appropriations act, legislative
740 direction for anticipated expenditures of the monies received under this section.

741 Section 19. **Repealer.**
 742 This act repeals:
 743 Section **24-1-8, Criminal procedures.**
 744 Section **24-1-9, Appointment of counsel for indigent claimants in civil and criminal**
 745 **forfeiture proceedings.**
 746 Section **24-1-16, Disposition of proceeds from criminal or civil forfeiture.**
 747 Section 20. **Effective date.**
 748 If approved by two-thirds of all the members elected to each house, this act takes effect
 749 upon approval by the governor, or the day following the constitutional time limit of Utah
 750 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
 751 the date of veto override.

Legislative Review Note
 as of 12-19-02 10:18 AM

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

Office of Legislative Research and General Counsel

Interim Committee Note
 as of 02-05-03 6:03 PM

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.