

PROPERTY DISPOSITION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Code regarding forfeiture provisions and consolidates provisions regarding forfeiture and disposition of property, including mislaid property.

Highlighted Provisions:

This bill:

▶ repeals the current Title 24, Forfeiture Procedures, and enacts a new Title 24, Forfeiture of Property Act, which reinstates forfeiture provisions and also includes various forfeiture provisions previously located in other sections of the Utah Code;

▶ provides that the provisions regarding attorney fees and costs are modified to establish that the prevailing party in a forfeiture action may not claim fees and costs in excess of 20% of the value of the property;

▶ renames the Crime Reduction Assistance Program to the State Asset Forfeiture Grant Program;

⚡▶ provides that the Commission on Criminal and Juvenile Justice may retain up to 3% of the State Asset Forfeiture Grant Program appropriated funds to pay for administrative costs; ⚡

▶ amends sections of the code that include various forfeiture provisions by moving those sections into Title 24, Forfeiture of Property Act;

⚡▶ repeals the State Law Enforcement Forfeiture Account and addresses distribution of money in the account; ⚡

▶ includes tobacco products, in addition to cigarettes, in the tobacco forfeiture provisions;



28 of unclaimed property;

29 ▶ provides that all property that has been used to facilitate the commission of a crime

30 and any proceeds of criminal activity are subject to forfeiture unless a specific law

31 addresses forfeiture, such as DUI and wildlife offense issues; and

32 ▶ amends affected references in other sections.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill takes effect on July 1, 2013.

36a **§→ This bill coordinates with H.B. 287, Return of Weapons Recovered by Law**

36b **Enforcement, by providing for a July 1, 2013 effective date.**

36c **This bill coordinates with H.B. 355, Unclaimed Property Amendments, by providing**

36d **superceding amendments. ←§**

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **23-20-1**, as last amended by Laws of Utah 2011, Chapter 297
- 40 **32B-4-206**, as last amended by Laws of Utah 2011, Chapters 307 and 334
- 41 **41-6a-527**, as last amended by Laws of Utah 2012, Chapter 81
- 42 **53-7-406**, as enacted by Laws of Utah 2007, Chapter 362
- 43 **63J-1-602.1**, as last amended by Laws of Utah 2012, Chapter 332
- 44 **76-6-903**, as last amended by Laws of Utah 1999, Chapter 51
- 45 **76-10-1603.5**, as last amended by Laws of Utah 2007, Chapters 129 and 180
- 46 **77-24a-2**, as enacted by Laws of Utah 1986, Chapter 131
- 47 **77-24a-3**, as enacted by Laws of Utah 1986, Chapter 131
- 48 **77-24a-4**, as enacted by Laws of Utah 1986, Chapter 131
- 49 **77-24a-5**, as last amended by Laws of Utah 2009, Chapter 388

50 ENACTS:

- 51 **24-1-101**, Utah Code Annotated 1953
- 52 **24-1-102**, Utah Code Annotated 1953
- 53 **24-1-103**, Utah Code Annotated 1953
- 54 **24-2-101**, Utah Code Annotated 1953
- 55 **24-2-102**, Utah Code Annotated 1953
- 56 **24-2-103**, Utah Code Annotated 1953
- 57 **24-3-101**, Utah Code Annotated 1953
- 58 **24-3-102**, Utah Code Annotated 1953

90 24-1-9, as enacted by Statewide Initiative B, Nov. 7, 2000
 91 24-1-10, as last amended by Laws of Utah 2004, Chapter 296
 92 24-1-11, as last amended by Laws of Utah 2004, Chapter 296
 93 24-1-12, as last amended by Laws of Utah 2004, Chapter 296
 94 24-1-13, as enacted by Statewide Initiative B, Nov. 7, 2000
 95 24-1-14, as last amended by Laws of Utah 2004, Chapter 296
 96 24-1-15, as last amended by Laws of Utah 2007, Chapter 180
 97 24-1-17, as enacted by Laws of Utah 2004, Chapter 296
 98 24-1-18, as enacted by Laws of Utah 2004, Chapter 296
 99 24-1-19, as last amended by Laws of Utah 2011, Chapter 342
 100 24-1-20, as last amended by Laws of Utah 2011, Chapter 342
 101 41-6a-211, as renumbered and amended by Laws of Utah 2005, Chapter 2
 102 58-37-13, as last amended by Laws of Utah 2002, Chapter 185
 103 76-3-501, as last amended by Laws of Utah 2002, Chapter 185
 104 76-10-525, as enacted by Laws of Utah 1973, Chapter 196
 105 76-10-1107, as last amended by Laws of Utah 2007, Chapter 180
 106 76-10-1908, as last amended by Laws of Utah 2002, Chapter 185
 107 77-24-1, as last amended by Laws of Utah 2005, Chapter 126
 108 77-24-1.5, as last amended by Laws of Utah 2011, Chapter 130
 109 77-24-2, as last amended by Laws of Utah 2012, Chapters 47 and 284
 110 77-24-3, as enacted by Laws of Utah 1980, Chapter 15
 111 77-24-4, as last amended by Laws of Utah 2005, Chapter 126
 112 77-24-5, as last amended by Laws of Utah 2005, Chapter 126

112a **§→ Utah Code Sections Affected by Coordination Clause:**

112b **77-24-2, as last amended by Laws of Utah 2012, Chapters 47 and 284**

112c **77-24a-5, as last amended by Laws of Utah 2009, Chapter 388**

112d **Uncodified Material Affected:**

112e **ENACTS UNCODIFIED MATERIAL ←§**

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

115 Section 1. Section 23-20-1 is amended to read:

116 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**
 117 **of property.**

118 (1) Conservation officers of the division shall enforce the provisions of this title with
 119 the same authority and following the same procedures as other law enforcement officers.

120 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

152 (i) no charges are filed or all charges are dropped which involve the use of the vehicle
153 for the unlawful taking or possessing of wildlife;

154 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
155 wildlife is found by a court to be not guilty; or

156 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

157 Section 2. Section **24-1-101** is enacted to read:

158 **TITLE 24. FORFEITURE ~~§~~ AND DISPOSITION ~~←~~ OF PROPERTY ACT**

159 **CHAPTER 1. GENERAL PROVISIONS**

160 **24-1-101. Title.**

161 (1) This title is known as the "Forfeiture ~~§~~ and Disposition ~~←~~ of Property Act."

162 (2) This chapter is known as "General Provisions."

163 Section 3. Section **24-1-102** is enacted to read:

164 **24-1-102. Definitions.**

165 As used in this title:

166 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section

167 24-4- ~~§~~ [H5] 116 ~~←~~ .

168 (2) (a) "Acquittal" means a finding by a jury or a judge at trial that a claimant is not
169 guilty.

170 (b) An acquittal does not include:

171 (i) a verdict of guilty on a lesser or reduced charge;

172 (ii) a plea of guilty to a lesser or reduced charge; or

173 (iii) dismissal of a charge as a result of a negotiated plea agreement.

174 (3) "Agency" means any agency of municipal, county, or state government, including
175 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

176 (4) (a) "Claimant" means any:

177 (i) owner of property as defined in this section;

178 (ii) interest holder as defined in this section; or

179 (iii) person from whom property is seized for forfeiture.

180 (b) A claimant does not include a person or entity who disclaims in writing ownership
181 of or interest in property.

182 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

214 statute requiring an interest in property to be recorded or reflected in public records in order to
 215 perfect the interest against a good faith purchaser for value.

216 (11) "Known address" means any address provided by a claimant to the agency at the
 217 time the property was seized, or the claimant's most recent address on record with a
 218 governmental entity if no address was provided at the time of the seizure.

219 (12) "Legal costs" means the costs and expenses incurred by a party in a forfeiture
 220 action.

221 (13) "Legislative body" means:

222 (a) (i) the Legislature, county commission, county council, city commission, city
 223 council, or town council that has fiscal oversight and budgetary approval authority over an
 224 agency; or

225 (ii) the agency's governing political subdivision; or

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

228 (14) "Multijurisdictional task force" means a law enforcement task force or other
 229 agency comprised of persons who are employed by or acting under the authority of different
 230 governmental entities, including federal, state, county or municipal governments, or any
 231 combination of these agencies.

232 (15) "Owner" means any person or entity, other than an interest holder, that possesses a
 233 bona fide legal or equitable interest in real or personal property.

234 (16) (a) "Proceeds" means:

235 (i) property of any kind that is obtained directly or indirectly as a result of the
 236 commission of an offense that gives rise to forfeiture; ~~§~~ → [and] or ← ~~§~~

237 (ii) any property acquired directly or indirectly from, produced through, realized
 238 through, or caused by an act or omission regarding property under Subsection (16)(a)(i).

239 (b) "Proceeds" includes any property of any kind without reduction for expenses
 240 incurred in the acquisition, maintenance, or production of that property, or any other purpose
 241 regarding property under Subsection (16)(a)(i).

242 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
 243 gives rise to forfeiture.

244 (17) "Program" means the State Asset Forfeiture Grant Program established in Section

338 (1) When property is received in evidence by the court, the clerk of the court shall
 339 retain the property or the clerk shall return the property to the custody of the peace officer or
 340 the agency employing the peace officer.

341 (2) The property shall be retained by the clerk or the officer or the officer's agency until
 342 all direct appeals and retrials are final, at which time the property shall be disposed of in
 343 accordance with this title.

344 (3) If the prosecuting attorney considers it necessary to retain control over the evidence
 345 in anticipation of possible collateral attacks upon the judgment or for use in a potential
 346 prosecution, the prosecutor may decline to authorize the disposal of the property under this
 347 chapter.

348 Section 10. Section **24-3-103** is enacted to read:

349 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

350 (1) When the prosecuting attorney determines that property no longer needs to be held
 351 as evidence, the prosecuting attorney may:

352 (a) petition the court to apply any property that is money towards restitution, fines,
 353 fees, or monetary judgments owed by the owner of the property;

354 (b) petition the court for an order transferring ownership of any weapons to the seizing
 355 agency for its use and disposal as the seizing agency determines, if the owner:

356 (i) is the person who committed the crime for which the weapon was seized; or

357 (ii) may not lawfully possess the weapon; or

358 (c) notify the agency that has possession of the property that the property may be:

359 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

360 (ii) disposed of, if the property is contraband.

361 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
 362 the property to advise the owner that the property is to be returned.

363 (3) ~~§~~→ (a) ←~~§~~ Before the agency may release property to a person claiming ownership of
 363a the

364 property, the person shall establish to the agency ~~§~~→ pursuant to Subsection (3)(b) ←~~§~~ that the
 364a person:

365 ~~§~~→ [(a)] (i) ←~~§~~ is the rightful owner; and

366 ~~§~~→ [(b)] (ii) ←~~§~~ may lawfully possess the property.

366a ~~§~~→ (b) **The person shall establish ownership under Subsection (3)(a) by**
 366b **providing to the agency:**

366c **(i) identifying proof or documentation of ownership of the property; or**

366d **(ii) a notarized statement, if proof or documentation is not available, ←~~§~~**

367 (4) (a) When property is returned to the owner, a receipt listing in detail the property
 368 returned shall be signed by the owner.

586 prosecuting attorney, order that the testimony of any witness relating to the forfeited property
587 be taken by deposition, and that any book, paper, document, record, recording, or other
588 material shall be produced as provided for depositions and discovery under the Utah Rules of
589 Civil Procedure.

590 (10) (a) (i) Following the entry of an order of forfeiture under this section, the
591 prosecuting attorney shall publish notice of the order's intent to dispose of the property by
592 electronic publication on Utah's Public Legal Notice Website established in Subsection
593 45-1-101(2)(b).

594 (ii) The prosecuting attorney shall also send written notice to any claimants, other than
595 the defendant, known to the prosecuting attorney to have an interest in the property, at the
596 claimant's ~~§~~ → [last] ← ~~§~~ known address.

597 (b) (i) Any claimant, other than the defendant, asserting a legal interest in property that
598 has been ordered forfeited to the state under this section may, within 30 days after the notice
599 has been published or the claimant receives the written notice under Subsection (10)(a),
600 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's
601 alleged interest in the property.

602 (ii) Any genuine issue of material fact, including issues of standing, may be tried to a
603 jury upon demand of any party.

604 (c) The petition shall:

605 (i) be in writing and signed by the claimant under penalty of perjury;

606 (ii) set forth the nature and extent of the claimant's right, title, or interest in the
607 property, the time and circumstances of the claimant's acquisition of the right, title, or interest
608 in the property; and

609 (iii) set forth any additional facts supporting the claimant's claim and the relief sought.

610 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The
611 court may consolidate a trial or hearing on the petition and any petition filed by any claimant
612 other than the defendant under this section. The court shall permit the parties to conduct
613 pretrial discovery pursuant to the Utah Rules of Civil Procedure.

614 (e) (i) At the trial or hearing, the claimant may testify and present evidence and
615 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.
616 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the

896 (1) There is created the State Asset Forfeiture Grant Program.

897 (2) The program shall fund crime prevention and law enforcement activities that have
898 the purpose of:

899 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
900 activities;

901 (b) weakening criminal enterprises by removing the instrumentalities of crime;

902 (c) reducing crimes involving substance abuse by supporting the creation,
903 administration, or operation of drug court programs throughout the state;

904 (d) encouraging cooperation between local, state, and multijurisdictional law
905 enforcement agencies;

906 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
907 proceeds of crime; and

908 (f) increasing the equitability and accountability of the use of forfeited property used to
909 assist law enforcement in reducing and preventing crime.

910 (3) (a) When property is forfeited under this chapter and transferred to the account, ~~§~~
910a upon appropriation ~~←~~§ the

911 commission shall allocate and administer grants ~~§~~ [from the account] ~~←~~§ to state, local, or
912 multijurisdictional law enforcement agencies or political subdivisions of the state in
913 compliance with this section and to further the program purposes under Subsection (2).

914 (b) The commission may retain up to 3% of the annual appropriation from the account
915 to pay for administrative costs incurred by the commission, including salary and benefits,
916 equipment, supplies, or travel costs that are directly related to the administration of the
917 program.

918 (4) Agencies or political subdivisions shall apply for an award from the program by
919 completing and submitting forms specified by the commission.

920 (5) In granting the awards, the commission shall ensure that the amount of each award
921 takes into consideration the:

922 (a) demonstrated needs of the agency;

923 (b) demonstrated ability of the agency to appropriately use the award;

924 (c) degree to which the agency's need is offset through the agency's participation in
925 federal equitable sharing or through other federal and state grant programs; and

926 (d) agency's cooperation with other state and local agencies and task forces.

958 (a) payment of salaries, retirement benefits, or bonuses to any person;
 959 (b) payment of expenses not related to law enforcement;
 960 (c) uses not specified in the agency's award application;
 961 (d) uses not approved by the agency's legislative body;
 962 (e) payments, transfers, or pass-through funding to entities other than law enforcement
 963 agencies; or

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

965 (11) (a) For each fiscal year, any state, local, or multijurisdictional agency or political
 966 subdivision that received an award shall prepare, and file with the commission, a report in a
 967 form specified by the commission.

968 (b) The report shall include the following regarding each award:

969 (i) the agency's name;

970 (ii) the amount of the award;

971 (iii) the date of the award;

972 (iv) how the award has been used; and

973 (v) a statement signed by both the agency's or political subdivision's executive officer
 974 or designee and by the agency's legal counsel, that:

975 (A) the agency or political subdivision has complied with all inventory, policy, and
 976 reporting requirements of this chapter; and

977 (B) all awards were used for crime reduction or law enforcement purposes as specified
 978 in the application and only upon approval by the agency's or political subdivision's legislative
 979 body.

980 (12) (a) The commission shall report in writing to the legislative Law Enforcement and
 981 Criminal Justice Interim Committee annually regarding the forfeited property transferred to the
 982 account, awards made by the program, uses of program awards, and any equitable share of
 983 property forfeited by the federal government as reported by agencies pursuant to Subsection
 984 24-4-114(4).

985 (b) The report shall be submitted annually on or before November 1.

986 Section 29. Section **32B-4-206** is amended to read:

987 **32B-4-206. Searches, seizures, ~~§~~ [forfeitures,] ~~←~~§ and fines.**

988 ~~[(1) The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah~~

1299 Section 38. Section **77-24a-4** is amended to read:

1300 **77-24a-4. Locating owner of property.**

1301 (1) The local law enforcement agency shall take reasonable steps to determine the
1302 identity and location of the owner, and notify ~~[him]~~ the owner that the property is in custody.

1303 (2) The owner may obtain the property only by ~~[making identification of himself and~~
1304 ~~of]~~ providing personal identification, identifying the property, and paying any costs incurred by
1305 the agency, including costs for advertising or storage.

1306 Section 39. Section **77-24a-5** is amended to read:

1307 **77-24a-5. Disposition of unclaimed property.**

1308 (1) (a) If the owner of any ~~[unclaimed]~~ lost or mislaid property cannot be determined or
1309 notified, or if ~~[he]~~ the owner of the property is determined and notified, and fails to appear and
1310 claim the property after three months of its receipt by the local law enforcement agency, the
1311 agency shall:

1312 (i) publish ~~[at least one]~~ notice of the intent to dispose of the unclaimed property[:] on
1313 Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b): ~~§→~~ [and] ~~←§~~

1314 ~~[(A) in a newspaper of general circulation within the county; and]~~

1315 ~~[(B) as required in Section 45-1-101; and]~~

1315a ~~§→~~ (ii) post a similar notice on the public website of the political subdivision within
1315b which the law enforcement agency is located; and ~~←§~~

1316 ~~§→~~ [(iii)] ~~←§~~ (iii) post a similar notice in a public place designated for notice within the law
1317 enforcement agency.

1318 (b) The notice shall:

1319 (i) give a general description of the item; and

1320 (ii) the date of intended disposition.

1321 (c) The agency may not dispose of the ~~[unclaimed]~~ lost or mislaid property until at
1322 least eight days after the date of publication and posting.

1323 (2) (a) If no claim is made for the ~~[unclaimed]~~ lost or mislaid property within nine days
1324 of publication and posting, the agency shall notify the person who turned the property over to
1325 the local law enforcement agency, if it was turned over by a person under Section 77-24a-3.

1326 (b) Except as provided in Subsection (4), if that person has complied with the
1327 provisions of this chapter, the person may take the ~~[unclaimed]~~ lost or mislaid property if the
1328 person:

1329 (i) pays the costs incurred for advertising and storage; and

1361 Section 24-1-14, Proportionality.

1362 Section 24-1-15, Transfer and sharing procedures.

1363 Section 24-1-17, Disposition and allocation of forfeiture property.

1364 Section 24-1-18, Criminal Forfeiture Restricted Account.

1365 Section 24-1-19, Crime Reduction Assistance Program.

1366 Section 24-1-20, State Law Enforcement Forfeiture Account created -- Revenue
1367 sources -- Use of account designated.

1368 Section 41-6a-211, Vehicle subject to forfeiture -- Seizure -- Procedure.

1369 Section 58-37-13, Property subject to forfeiture -- Seizure -- Procedure.

1370 Section 76-3-501, Vehicle subject to forfeiture -- Seizure -- Procedure.

1371 Section 76-10-525, Disposition of weapons after use for court purposes.

1372 Section 76-10-1107, Seizure and sale of devices or equipment used for gambling.

1373 Section 76-10-1908, Forfeiture -- Grounds -- Procedure -- Disposition of property
1374 seized.

1375 Section 77-24-1, Definitions.

1376 Section 77-24-1.5, Safekeeping by officer pending disposition -- Records required.

1377 Section 77-24-2, Property not needed as evidence -- Child interview retention --
1378 Return procedure -- Conflict resolution for secondhand merchandise.

1379 Section 77-24-3, Receipt from owner of returned property.

1380 Section 77-24-4, Disposition of property.

1381 Section 77-24-5, Property seized from person -- Duplicate receipts.

1381a **§→ Section 41. Transfer of funding from repealed account to enacted account.**

1381b **On July 1, 2013, all money in the Criminal Forfeiture Restricted Account created in**
1381c **Section 24-1-18, which is repealed by this bill on July 1, 2013, shall be transferred by the**
1381d **Division of Finance to the Criminal Forfeiture Restricted Account created in this bill by**
1381e **Section 24-4-116 and which has the same purpose as the repealed account.**

1381f **Section 42. Transfer of any remaining funds in repealed account.**

1381g **On July 1, 2013, the Division of Finance is authorized to distribute appropriations for**
1381h **FY 2013 and 2014 from the State Law Enforcement Forfeiture Account, which is repealed by**
1381i **this bill. The Division of Finance shall transfer any money that remains in this account after**
1381j **these distributions to the Criminal Forfeiture Restricted Account created in this bill by**
1381k **Section 24-4-116.**

1381l Section 43. Coordinating H.B. 384 with H.B. 287 -- Providing an effective date.
 1381m If this H.B. 384 and H.B. 287, Return of Weapons Recovered by Law Enforcement,
 1381n both pass and become law, it is the intent of the Legislature that the Office of Legislative
 1381o Research and General Counsel, in preparing the Utah Code database for publication, provide
 1381p that H.B. 287 takes effect on July 1, 2013.
 1381q Section 44. Coordinating H.B. 384 with H.B. 355 -- Providing an effective date and
 1381r superseding amendments.
 1381s If this H.B. 384 and H.B. 355, Unclaimed Property Amendments, both pass and become
 1381t law, it is the intent of the Legislature that the Office of Legislative Research and General
 1381u Counsel, in preparing the Utah Code database for publication, provide that H.B. 355 takes
 1381v effect on July 1, 2013, and provide that Section 77-24a-5 in this H.B. 384 supersedes Section
 1381w 77-24a-5 in H.B. 355. ←§
 1382 Section §→ [41] 43 ←§ . Effective date.
 1383 This bill takes effect on July 1, 2013.

Legislative Review Note
 as of 2-27-13 3:33 PM

Office of Legislative Research and General Counsel