

**ASSET FORFEITURE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: John Knotwell

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**LONG TITLE**

**General Description:**

This bill modifies the Forfeiture and Disposition of Property Act regarding forfeiture procedures.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of a claimant of property seized for forfeiture;
- ▶ reduces, and makes mandatory, the number of days within which a prosecutor must file a complaint for civil forfeiture;
- ▶ provides that the prosecutor is not required to serve notice on a claimant who has disclaimed ownership of the seized property;
- ▶ requires that service by publication must include a newspaper of general circulation;
- ▶ provides that if the prosecuting attorney does not ~~file a forfeiture complaint~~ **take a specified action regarding forfeiture of the property** within ~~60~~ **75** days after the seizure, the property shall be promptly returned and no further prosecutorial action may be taken;
- ▶ requires that a prevailing property owner shall be awarded reasonable legal and attorney costs;
- ▶ establishes limitations and procedural requirements regarding the transfer of seized property to the federal government; and
- ▶ limits the amount of forfeited property that may be applied to prosecutorial attorney fees to 20% of the value of the property ~~for the actual amount of attorney fees,~~

S.B. 256



28 ~~§~~→ whichever is less] ←~~§~~ .

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **24-1-102**, as enacted by Laws of Utah 2013, Chapter 394

36 **24-4-104**, as enacted by Laws of Utah 2013, Chapter 394

37 **24-4-105**, as enacted by Laws of Utah 2013, Chapter 394

38 **24-4-110**, as enacted by Laws of Utah 2013, Chapter 394

39 **24-4-114**, as enacted by Laws of Utah 2013, Chapter 394

40 **24-4-115**, as enacted by Laws of Utah 2013, Chapter 394



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

43 Section 1. Section **24-1-102** is amended to read:

44 **24-1-102. Definitions.**

45 As used in this title:

46 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
47 **24-4-116**.

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

50 (b) An acquittal does not include:

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

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

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

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

56 (4) ~~(a)~~ "Claimant" means any:

57 ~~(i)~~ (a) owner of property as defined in this section;

58 ~~(ii)~~ (b) interest holder as defined in this section; or

59 ~~[(iii) person from whom property is seized for forfeiture.]~~

60 ~~[(b) A claimant does not include a person or entity who disclaims in writing ownership~~  
61 ~~of or interest in property.]~~

62 (c) person or entity who asserts a claim to any property seized for forfeiture under this  
63 title.

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

65 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or  
66 personal property under this title.

67 (7) "Constructive seizure" means a seizure of property where the property is left in the  
68 control of the owner and the seizing agency posts the property with a notice of intent to seek  
69 forfeiture.

70 (8) (a) "Contraband" means any property, item, or substance that is unlawful to  
71 produce or to possess under state or federal law.

72 (b) All controlled substances that are possessed, transferred, distributed, or offered for  
73 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are  
74 contraband.

75 (9) "Innocent owner" means a claimant who:

76 (a) held an ownership interest in property at the time the conduct subjecting the  
77 property to forfeiture occurred, and:

78 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;

79 or

80 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable  
81 steps to prohibit the illegal use of the property; or

82 (b) acquired an ownership interest in the property and who had no knowledge that the  
83 illegal conduct subjecting the property to forfeiture had occurred or that the property had been  
84 seized for forfeiture, and:

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

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

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

90 (10) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a  
91 mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to  
92 an interest in property, whose interest would be perfected against a good faith purchaser for  
93 value.

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

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

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

103 (13) "Legislative body" means:

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

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

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

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

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

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

117 (i) property of any kind that is obtained directly or indirectly as a result of the  
118 commission of an offense that gives rise to forfeiture; or

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

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

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

126 (17) "Program" means the State Asset Forfeiture Grant Program established in Section  
 127 [24-4-117](#).

128 (18) "Property" means all property, whether real or personal, tangible or intangible, but  
 129 does not include contraband.

130 (19) "Prosecuting attorney" means:

131 (a) the attorney general and any assistant attorney general;

132 (b) any district attorney or deputy district attorney;

133 (c) any county attorney or assistant county attorney; and

134 (d) any other attorney authorized to commence an action on behalf of the state under  
 135 this title.

136 (20) "Public interest use" means a:

137 (a) use by a government agency as determined by the legislative body of the agency's  
 138 jurisdiction; or

139 (b) donation of the property to a nonprofit charity registered with the state.

140 (21) "Real property" means land and includes any building, fixture, improvement,  
 141 appurtenance, structure, or other development that is affixed permanently to land.

142 Section 2. Section **24-4-104** is amended to read:

143 **24-4-104. Civil forfeiture procedure.**

144 (1) (a) ~~Ŝ→ [Within 90] 60 days from the date the property is seized, the prosecuting~~  
 145 ~~attorney [may elect to] shall file a complaint for civil forfeiture in the appropriate district court.]~~  
 145a **The law enforcement agency shall promptly return seized property, and the prosecuting**  
 145b **attorney may take no further action to effect the forfeiture of the property, unless within 75**  
 145c **days after the property is seized the prosecuting attorney:**  
 145d **(i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);**  
 145e **(ii) obtains a restraining order under Subsection 24-4-105(3);**  
 145f **(iii) files a petition under Subsection 24-4-114(1); or**  
 145g **(iv) files a civil forfeiture complaint. ←Ŝ**

146 (b) ~~Ŝ→ [The] A ←Ŝ~~ complaint ~~Ŝ→~~ **for civil forfeiture ←Ŝ** shall describe with reasonable  
 146a particularity the:

147 (i) property that is the subject of the forfeiture proceeding;

148 (ii) date and place of seizure; and

149 (iii) factual allegations that constitute a basis for forfeiture.

150 (2) (a) After ~~the~~ a complaint is filed, the prosecuting attorney shall serve a copy

150a of the

151 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

152 (b) The prosecuting attorney is not required to serve a copy of the complaint or the  
153 summons upon any claimant who has disclaimed, in writing, an ownership interest in the  
154 seized property.

155 ~~[(b)]~~ (c) Service of the complaint and summons shall be by:

156 (i) personal service;

157 (ii) certified mail, return receipt requested, to the claimant's known address; or

158 (iii) service by publication, if the prosecuting attorney demonstrates to the court that  
159 service cannot reasonably be made by personal service or certified mail~~[- the court may then~~  
160 ~~allow service by electronic publication].~~

161 (d) Service by publication shall be by publication of two notices, in two successive  
162 weeks, of the forfeiture proceeding:

163 (i) in a newspaper of general circulation in the county in which the seizure occurred;

164 and

165 (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

166 ~~[(c)]~~ (e) Service is effective upon the earlier of:

167 (i) personal service;

168 (ii) mailing of a written notice; or

169 (iii) ~~[electronic]~~ publication.

170 ~~[(d)]~~ (f) Upon motion of the prosecuting attorney and a showing of good cause, the  
171 court may extend the period to complete service under this section for an additional 60 days.

172 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a  
173 claimant may file an answer to the complaint.

174 (b) The answer shall be filed within 30 days after the complaint is served upon the  
175 claimant as provided in Subsection (2)(b).

176 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed  
177 by the Utah Rules of Civil Procedure.

178 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and  
179 shall give these proceedings the same priority as is given to criminal cases.

180 (6) In all suits or actions brought under this section for the civil forfeiture of any  
181 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing  
182 evidence the extent to which, if any, the property is subject to forfeiture.

183 (7) A claimant may file an answer to a complaint for civil forfeiture without posting  
 184 bond with respect to the property subject to forfeiture.

185 ~~§→ [(8) If the prosecuting attorney does not file a civil complaint for forfeiture within 60~~  
 186 ~~days of the seizure of the property, as required by Subsection 24-4-104(1):~~

187 ~~— (a) the seizing agency shall promptly return the property to the claimant; and~~

188 ~~— (b) the prosecuting attorney may take no further action to effect the forfeiture of the~~  
 189 ~~property.] ←§~~

190 Section 3. Section 24-4-105 is amended to read:

191 **24-4-105. Criminal forfeiture procedure.**

192 (1) If a claimant is criminally prosecuted for conduct giving rise to the forfeiture, the  
 193 prosecuting attorney may elect to seek forfeiture of the claimant's interest in the property  
 194 through the criminal case.

195 (2) If the prosecuting attorney elects to seek forfeiture of the claimant's interest in the  
 196 property through the criminal case, the information or indictment shall state that the claimant's  
 197 interest in the property is subject to forfeiture and the basis for the forfeiture.

198 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining  
 199 orders or injunctions, or take other reasonable actions to preserve for forfeiture under this  
 200 section, any property subject to forfeiture if, after notice to known claimants and claimants who  
 201 can be identified after due diligence and who are known to have an interest in the property, and  
 202 after affording those persons an opportunity for a hearing, the court determines that:

203 (i) there is a substantial probability that the state will prevail on the issue of forfeiture  
 204 and that failure to enter the order will result in the property being sold, transferred, destroyed,  
 205 or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

206 (ii) the need to preserve the availability of the property or prevent its sale, transfer,  
 207 destruction, or removal through the entry of the requested order outweighs the hardship against  
 208 any party against whom the order is to be entered.

209 (b) A temporary restraining order may be entered ex parte upon application of the  
 210 prosecuting attorney before or after an information or indictment has been filed with respect to  
 211 the property, if the prosecuting attorney demonstrates that:

212 (i) there is probable cause to believe that the property with respect to which the order is  
 213 sought would, in the event of a conviction, be subject to forfeiture under this section; and



214 (ii) provision of notice would jeopardize the availability of the property for forfeiture  
215 or would jeopardize an ongoing criminal investigation.

216 (c) The temporary order expires not more than 10 days after entry unless extended for  
217 good cause shown or unless the party against whom it is entered consents to an extension.

218 (d) After service of the temporary order upon any claimants known to the prosecuting  
219 attorney, a hearing concerning the order entered under this section shall be held as soon as  
220 practicable and prior to the expiration of the temporary order.

221 (e) The court is not bound by the Utah Rules of Evidence regarding evidence it may  
222 receive and consider at any hearing under this section.

223 (4) (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the  
224 prosecutor shall ask the finder of fact to make a specific finding as to whether the property or  
225 any part of it is subject to forfeiture.

226 (b) A determination of whether property is subject to forfeiture under this section shall  
227 be proven beyond a reasonable doubt.

228 (5) (a) Upon conviction of a claimant for violating any provision of state law  
229 subjecting a claimant's property to forfeiture and a finding by the trier of fact that the property  
230 is subject to forfeiture, the court shall enter a judgment and order the property forfeited to the  
231 state upon the terms stated by the court in its order.

232 (b) Following the entry of an order declaring property forfeited, the court may, upon  
233 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,  
234 require the execution of satisfactory performance bonds, appoint receivers, conservators,  
235 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in  
236 property ordered forfeited.

237 (6) (a) (i) After property is ordered forfeited under this section, the seizing agency shall  
238 direct the disposition of the property under Section [24-4-115](#).

239 (ii) Any property right or interest under this Subsection (6)(a) not exercisable by or  
240 transferable for value to the state expires and does not revert to the defendant.

241 (iii) The defendant or any person acting in concert with or on behalf of the defendant is  
242 not eligible to purchase forfeited property at any sale held by the seizing agency unless  
243 approved by the judge.

244 (b) The court may stay the sale or disposition of the property pending the conclusion of

245 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that  
246 proceeding with the sale or disposition of the property may result in irreparable injury, harm, or  
247 loss.

248 (7) Except as provided under Subsection (3) or (10), a party claiming an interest in  
249 property subject to forfeiture under this section:

250 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of  
251 property under this section; and

252 (b) may not commence an action at law or equity concerning the validity of the party's  
253 alleged interests in the property subsequent to the filing of an indictment or an information  
254 alleging that the property is subject to forfeiture under this section.

255 (8) The district court that has jurisdiction of a case under this part may enter orders  
256 under this section without regard to the location of any property that may be subject to  
257 forfeiture under this section or that has been ordered forfeited under this section.

258 (9) To facilitate the identification or location of property declared forfeited and to  
259 facilitate the disposition of petitions for remission or mitigation of forfeiture after the entry of  
260 an order declaring property forfeited to the state, the court may, upon application of the  
261 prosecuting attorney, order that the testimony of any witness relating to the forfeited property  
262 be taken by deposition, and that any book, paper, document, record, recording, or other  
263 material shall be produced as provided for depositions and discovery under the Utah Rules of  
264 Civil Procedure.

265 (10) (a) (i) Following the entry of an order of forfeiture under this section, the  
266 prosecuting attorney shall publish notice of the order's intent to dispose of the property by  
267 [electronic] publication. Service by publication shall be by publication of two notices, in two  
268 successive weeks, of the forfeiture proceeding:

269 (A) in a newspaper of general circulation in the county in which the seizure occurred;  
270 and

271 (B) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

272 (ii) The prosecuting attorney shall also send written notice to any claimants, other than  
273 the defendant, known to the prosecuting attorney to have an interest in the property, at the  
274 claimant's known address.

275 (b) (i) Any claimant, other than the defendant, asserting a legal interest in property that

276 has been ordered forfeited to the state under this section may, within 30 days after the notice  
277 has been published or the claimant receives the written notice under Subsection (10)(a),  
278 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's  
279 alleged interest in the property.

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

282 (c) The petition shall:

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

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

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

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

292 (e) (i) At the trial or hearing, the claimant may testify and present evidence and  
293 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.  
294 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the  
295 claim to the property and cross-examine witnesses who appear.

296 (ii) In addition to testimony and evidence presented at the trial or hearing, the court  
297 may consider the relevant portion of the record of the criminal case that resulted in the order of  
298 forfeiture.

299 (iii) Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

300 (f) The court shall amend the order of forfeiture in accordance with its determination, if  
301 after the trial or hearing, the court or jury determines that the petitioner has established by a  
302 preponderance of the evidence that:

303 (i) the claimant has a legal right, title, or interest in the property, and the right, title, or  
304 interest renders the order of forfeiture invalid in whole or in part because the right, title, or  
305 interest was vested in the claimant rather than the defendant or was superior to any right, title,  
306 or interest of the defendant at the time of the commission of the acts or conduct that gave rise

307 to the forfeiture of the property under this section; or

308 (ii) the claimant acquired the right, title, or interest in the property in a bona fide  
309 transaction for value, and, at the time of acquisition, the claimant did not know that the  
310 property was subject to forfeiture.

311 (g) Following the court's disposition of all petitions filed under this Subsection (10), or  
312 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)  
313 for the filing of petitions, the state has clear title to property subject to the order of forfeiture  
314 and may warrant good title to any subsequent purchaser or transferee.

315 Section 4. Section **24-4-110** is amended to read:

316 **24-4-110. Attorney fees and costs.**

317 (1) In any forfeiture proceeding under this chapter, the court [~~may~~] shall award a  
318 prevailing [~~party~~] property owner reasonable:

- 319 (a) legal costs; and
- 320 (b) attorney fees.

321 (2) The legal costs and attorney fees awarded by the court to the prevailing party may  
322 not exceed 20% of the value of the property.

323 (3) A [~~party~~] property owner that prevails only in part is entitled to recover reasonable  
324 legal costs and attorney fees only on those issues on which the party prevailed.

325 Section 5. Section **24-4-114** is amended to read:

326 **24-4-114. Transfer and sharing procedures.**

327 (1) (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture  
328 proceedings under this chapter may not directly or indirectly transfer property held for  
329 forfeiture and not already named in a criminal indictment to any federal agency or any  
330 governmental entity not created under and subject to state law ~~unless[:]~~ the court enters an  
331 order, upon petition of the prosecuting attorney, authorizing the property to be transferred.

332 (b) The court may not enter an order authorizing a transfer under Subsection (1)(a)  
333 unless:

- 334 (i) the conduct giving rise to the investigation or seizure is interstate in nature and  
335 sufficiently complex to justify the transfer;
- 336 (ii) the property may only be forfeited under federal law; or
- 337 (iii) pursuing forfeiture under state law would unreasonably burden prosecuting

338 attorneys or state law enforcement agencies.

339 ~~[(b) In making a determination under this section, a court may conduct an in camera~~  
340 ~~inspection of evidence provided by the prosecuting attorney or seizing agency.]~~

341 (c) A petition to transfer property to a federal agency under this section shall include:

342 (i) a detailed description of the property seized;

343 (ii) the location where the property was seized;

344 (iii) the date the property was seized;

345 (iv) the case number assigned by the seizing law enforcement agency; and

346 (v) a declaration that:

347 (A) states the basis for relinquishing jurisdiction to a federal agency;

348 (B) contains the names and addresses of any claimants then known; and

349 (C) is signed by the prosecutor.

350 (d) The court may not authorize the transfer of property to the federal government if  
351 the transfer would circumvent the protections of the Utah Constitution or of this chapter that  
352 would otherwise be available to the property owner.

353 (e) (i) Prior to granting any order to transfer pursuant to this section, the court shall  
354 give any claimant the right to be heard with regard to the transfer by the mailing of a notice to  
355 each address contained in the declaration.

356 (ii) If no claimant objects to the petition to transfer property within 10 days of the  
357 mailing of the notice, the court shall issue its order under this section.

358 (iii) If the declaration does not include an address for a claimant, the court shall delay  
359 its order under this section for 20 days to allow time for the claimant to appear and make an  
360 objection.

361 (f) (i) If a claimant contests a petition to transfer property to a federal agency, the court  
362 shall promptly set the matter for hearing.

363 (ii) (A) The court shall determine whether the state may relinquish jurisdiction by a  
364 standard of preponderance of the evidence.

365 (B) In making the determination, the court shall consider evidence regarding hardship,  
366 complexity, judicial and law enforcement resources, and any other matter the court determines  
367 to be relevant.

368 (2) All property, money, or other things of value received by an agency pursuant to

369 federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or  
370 the proceeds of the sale of forfeited property to an agency:

371 (a) shall be used in compliance with federal laws and regulations relating to equitable  
372 sharing;

373 (b) may be used for those law enforcement purposes specified in Subsection  
374 24-4-117(9); and

375 (c) may not be used for those law enforcement purposes prohibited in Subsection  
376 24-4-117(10).

377 (3) A state or local law enforcement agency awarded any equitable share of property  
378 forfeited by the federal government may only use the award money after approval of the use by  
379 the agency's legislative body.

380 (4) Each year, every agency awarded any equitable share of property forfeited by the  
381 federal government shall file with the commission:

382 (a) a copy of that agency's federal equitable sharing certification; and

383 (b) information, on a form provided by the commission, that details all awards received  
384 from the federal government during the preceding reporting period, including:

385 (i) the agency's case number or other identification;

386 (ii) the amount of the award;

387 (iii) the date of the award;

388 (iv) the identity of any federal agency involved in the forfeiture;

389 (v) how the awarded property has been used; and

390 (vi) a statement signed by both the agency's executive officer or designee and by the  
391 agency's legal counsel confirming that the agency has only used the awarded property for crime  
392 reduction or law enforcement purposes authorized under Section 24-4-117, and only upon  
393 approval by the agency's legislative body.

394 Section 6. Section 24-4-115 is amended to read:

395 **24-4-115. Disposition and allocation of forfeiture property.**

396 (1) Upon finding that property is subject to forfeiture under this chapter, the court shall  
397 order the property forfeited to the state.

398 (2) (a) If the property is not currency, the seizing agency shall authorize a public or  
399 otherwise commercially reasonable sale of that property that is not required by law to be

400 destroyed and that is not harmful to the public.

401 (b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, it  
402 shall be disposed of as follows:

403 (i) an alcoholic product shall be sold if the alcoholic product is:

404 (A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic  
405 alcohol, or any other deleterious substance or liquid; and

406 (B) otherwise in saleable condition; or

407 (ii) an alcoholic product and its package shall be destroyed if the alcoholic product is  
408 impure, adulterated, or otherwise unfit for sale.

409 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section  
410 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other  
411 tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the  
412 cigarette or tobacco product brand shall be permitted to inspect the cigarette.

413 (d) The proceeds of the sale of forfeited property shall remain segregated from other  
414 property, equipment, or assets of the seizing agency until transferred to the state in accordance  
415 with this chapter.

416 (3) From the forfeited property, both currency and the proceeds or revenue from the  
417 sale of the property, the seizing agency shall:

418 (a) deduct the seizing agency's direct costs and expenses of obtaining and maintaining  
419 the property pending forfeiture; and

420 (b) pay the office of the prosecuting attorney the legal costs [and attorney fees]  
421 associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the  
422 ~~Ŝ→ [seized] forfeited ←Ŝ~~ property in attorney fees ~~Ŝ→ [or the actual amount of the attorney fees,~~  
422a ~~whichever is less] ←Ŝ~~ .

423 (4) If the forfeiture arises from any violation relating to wildlife resources, the  
424 remaining currency and the proceeds or revenue from the sale of the property shall be deposited  
425 in the Wildlife Resources Account created in Section 23-14-13.

426 (5) The remaining currency and the proceeds or revenue from the sale of the property  
427 shall then be transferred to the commission and deposited into the account.

**Legislative Review Note**  
**as of 2-26-14 9:22 AM**

**Office of Legislative Research and General Counsel**