

## SB0052S01 compared with SB0052

~~text~~ shows text that was in SB0052 but was deleted in SB0052S01.

text shows text that was not in SB0052 but was inserted into SB0052S01.

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Senator Howard A. Stephenson proposes the following substitute bill:

### ASSET FORFEITURE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies the Forfeiture and Disposition of Property Act by requiring annual reports from law enforcement agencies conducting forfeitures and a summary of the reports by the Commission on Criminal and Juvenile Justice.

##### Highlighted Provisions:

This bill:

- ▶ deletes current provisions regarding forfeiture reports;
- ▶ establishes detailed requirements for law enforcement agencies to prepare reports providing information regarding any forfeiture actions the agencies have taken;
- ▶ requires agency reports regarding any awards received under the State Asset Forfeiture Grant Program; and
- ▶ establishes a procedure for the compilation of the annual agency reports, the

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preparation of ~~{a summary of}~~ the reports by the Commission on Criminal and Juvenile Justice, and distribution of the ~~{summary}~~ reports to the Legislature.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

#### AMENDS:

**24-4-114**, as last amended by Laws of Utah 2014, Chapter 112

**24-4-117**, as last amended by Laws of Utah 2014, Chapter 171

#### ENACTS:

**24-4-118**, Utah Code Annotated 1953

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

Section 1. Section **24-4-114** is amended to read:

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

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

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

(i) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;

(ii) the property may only be forfeited under federal law; or

(iii) pursuing forfeiture under state law would unreasonably burden prosecuting attorneys or state law enforcement agencies.

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

(i) a detailed description of the property seized;

(ii) the location where the property was seized;

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- (iii) the date the property was seized;
- (iv) the case number assigned by the seizing law enforcement agency; and
- (v) a declaration that:
  - (A) states the basis for relinquishing jurisdiction to a federal agency;
  - (B) contains the names and addresses of any claimants then known; and
  - (C) is signed by the prosecutor.

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

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

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

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

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

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

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

(2) All property, money, or other things of value received by an agency pursuant to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency:

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

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

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

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

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

~~[(a) a copy of that agency's federal equitable sharing certification; and]~~

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

~~[(i) the agency's case number or other identification;]~~

~~[(ii) the amount of the award;]~~

~~[(iii) the date of the award;]~~

~~[(iv) the identity of any federal agency involved in the forfeiture;]~~

~~[(v) how the awarded property has been used; and]~~

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

Section 2. Section **24-4-117** is amended to read:

### **24-4-117. State Asset Forfeiture Grant Program.**

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

(2) The program shall fund crime prevention, crime victim reparations, and law enforcement activities that have the purpose of:

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

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

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

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

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

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

(g) providing aid to victims of criminally injurious conduct, as defined in Section 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office for Victims of Crime.

(3) (a) When property is forfeited under this chapter and transferred to the account, upon appropriation the commission shall allocate and administer grants to state agencies, local law enforcement agencies, multijurisdictional law enforcement agencies, or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2).

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

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

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

(a) demonstrated needs of the agency;

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

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

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

(6) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

(7) (a) Recipient law enforcement agencies may only use award money after approval by the agency's legislative body.

(b) The award money is nonlapsing.

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(8) A recipient state agency, local law enforcement agency, multijurisdictional law enforcement agency, or political subdivision shall use awards only for law enforcement purposes as described in this section or for victim reparations as described in Subsection (2)(g), and only as these purposes are specified by the agency or political subdivision in its application for the award.

(9) Permissible law enforcement purposes for which award money may be used include:

- (a) controlled substance interdiction and enforcement activities;
- (b) drug court programs;
- (c) activities calculated to enhance future law enforcement investigations;
- (d) law enforcement training that includes:
  - (i) implementation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's right of due process;
  - (ii) protection of the rights of innocent property holders; and
  - (iii) the Tenth Amendment to the United States Constitution regarding states' sovereignty and the states' reserved rights;
- (e) law enforcement or detention facilities;
- (f) law enforcement operations or equipment that are not routine costs or operational expenses;
- (g) drug, gang, or crime prevention education programs that are sponsored in whole or in part by the law enforcement agency or its legislative body;
- (h) matching funds for other state or federal law enforcement grants; and
- (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture actions.

(10) Law enforcement purposes for which award money may not be granted or used include:

- (a) payment of salaries, retirement benefits, or bonuses to any person;
- (b) payment of expenses not related to law enforcement;
- (c) uses not specified in the agency's award application;
- (d) uses not approved by the agency's legislative body;

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

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

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

~~[(b) The report shall include the following regarding each award:]~~

~~[(i) the agency's name;]~~

~~[(ii) the amount of the award;]~~

~~[(iii) the date of the award;]~~

~~[(iv) how the award has been used; and]~~

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

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

~~[(B) all awards were used for crime reduction, crime victim reparations, or law enforcement purposes as specified in the application and only upon approval by the agency's or political subdivision's legislative body.]~~

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

~~[(b) The report shall be submitted annually on or before November 1.]~~

Section 3. Section **24-4-118** is enacted to read:

### **24-4-118. Forfeiture reporting requirements.**

(1) On and after January 1, 2016, every state, county, municipal, or other law enforcement agency shall ~~annually on or before April 30:~~

~~(a) compile the data required in this section for the prior calendar year as a report in the format required under Subsection (2); and~~

~~(b) submit the report;~~ when transferring the final disposition of any civil or criminal

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forfeiture matter to the Commission on Criminal and Juvenile Justice ~~in the required format~~ as required under this chapter, provide all available data described in Subsection (5), along with the transfer of any applicable forfeited property.

(2) The Commission on Criminal and Juvenile Justice shall develop a standardized report format that each agency shall use in reporting the data required under this section.

(3) ~~(a)~~ The Commission on Criminal and Juvenile Justice shall annually, on or before April 30, prepare a summary report of the ~~reports~~ case data submitted by each agency under Subsection (1) ~~.~~

~~(b) On or before August 1 of each year, the Commission on Criminal and Juvenile Justice shall submit the summary of the reports to:~~

~~(i) the Utah attorney general;~~

~~(ii) the speaker of the House of Representatives, for referral to any House standing or interim committees with oversight over law enforcement and criminal justice;~~

~~(iii) the president of the Senate, for referral to any Senate standing or interim committees with oversight over law enforcement and criminal justice; and~~

~~(iv) each state, county, municipal, and other law enforcement agency.~~

~~(c) The report described in Subsection (3)(a) shall be published on the Utah Open Government website at open.utah.gov on or before August 15 of each~~ during the prior calendar year.

(4) (a) If an agency does not comply with the reporting requirements under this section, the Commission on Criminal and Juvenile Justice shall contact the agency and request that the agency comply with the required reporting provisions.

(b) If an agency fails to comply with the reporting requirements under this section within 30 days after being contacted by receiving the Commission on Criminal and Juvenile Justice with a request to comply, the Commission on Criminal and Juvenile Justice shall report the noncompliance to the Utah attorney general, the speaker of the House of Representatives, and the president the Senate.

(5) The report required data for any civil or criminal forfeiture matter for which final disposition has been made under Subsection (1) shall include ~~the following information:~~

~~(a) whether the agency seized any property under the provisions of this chapter;~~

~~(b) the following information regarding each seizure of property:~~



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- ~~(fi)a~~ the agency that conducted the seizure;
- ~~(fii)b~~ the case number or other identification;
- ~~(fiii)c~~ the date or dates on which the seizure was conducted;
- (d) each named potential interest holder for each seizure of property;
- ~~(fiv)e~~ the type of property seized, including identifying marks or numbers, the year, make, and model, or other unique identifiers, as applicable;
- ~~(fv)f~~ the alleged offense that was the cause for seizure of the property;
- ~~(fvi)g~~ whether the forfeiture procedure was civil or criminal;
- (h) the final disposition of the matter, including whether final disposition was entered by stipulation of the parties, including the amount of property returned to any claimant, by default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal forfeiture; and
- ~~(fvii)i~~ if the property was transferred to a federal agency or any governmental entity not created under and subject to state law:
  - ~~(fA)i~~ the date of the transfer;
  - ~~(fB)ii~~ the name of the federal agency or entity to which the property was transferred;
  - ~~(C) the approximate market value of the property; and~~
  - ~~(fD)iii~~ a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer; ~~and~~
  - ~~(viii) if the property was not transferred;~~
  - ~~(A) the outcome of any related criminal action, including charges filed, pleas entered, convictions, or acquittals;~~
  - ~~(B)~~
  - (iv) the court or agency where the forfeiture case was heard;
  - ~~(C) whether the owner of the property had legal representation in the forfeiture proceedings;~~
  - ~~(D) the disposition of the property following seizure;~~
  - ~~(fE)v~~ the date of the ~~{disposition}~~ order of transfer of the property;
  - ~~(fF)vi~~ the market value of the property as estimated by the court hearing the forfeiture case; ~~and~~
  - ~~(G) the estimated costs incurred by the agency in conducting the forfeiture process;~~

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including personnel and resources; and

~~— (H) the net amount of money resulting from the property and cash forfeited;~~

~~— (c) and~~

(vii) the value of the property transferred to the federal agency, including currency and the estimated market value of any tangible property.

(6) On and after January 1, 2016, every state, county, municipal, or other law enforcement agency shall annually on or before April 30 submit a report for the prior calendar year to the Commission on Criminal and Juvenile Justice which states:

(a) whether the agency received an award from the State Asset Forfeiture Grant Program under Section 24-4-117 and, if so, the following information for each award:

~~{ — (i) the case number or other case identification;~~

~~{ (iii) i) the amount of the award;~~

~~(iii) ii) the date of the award;~~

~~(iv) iii) how the award was used or is planned to be used; and~~

~~(iv) iv) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that:~~

~~(A) the agency has complied with all inventory, policy, and reporting requirements under Section 24-4-117; and~~

~~(B) all awards were used for crime reduction or law enforcement purposes as specified in the application and that the awards were used only upon approval by the agency's legislative body; and~~

~~(d) b) whether the agency received any property, money, or other things of value pursuant to federal law as described in Subsection 24-4-114(2) and, if so, the following information for each piece of property, money, or other thing of value:~~

~~(i) the case number or other case identification;~~

~~(ii) the value of the award and the property, money, or other things of value received by the agency;~~

~~(iii) the date of the award;~~

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

~~(v) how the awarded property has been used or is planned to be used; and~~

~~(vi) a statement signed by both the agency's executive officer or designee and by the~~

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agency's legal counsel, that the agency has only used the award for crime reduction or law enforcement purposes authorized under Section 24-4-117, and that the award was used only upon approval by the agency's legislative body.

(7) (a) On or before July 1 of each year, the Commission on Criminal and Juvenile Justice shall submit the reports in Subsection (3) and in Subsection (6) to:

(i) the Utah attorney general;

(ii) the speaker of the House of Representatives, for referral to any House standing or interim committees with oversight over law enforcement and criminal justice;

(iii) the president of the Senate, for referral to any Senate standing or interim committees with oversight over law enforcement and criminal justice; and

(iv) each state, county, municipal, and other law enforcement agency.

(b) The reports described in Subsection (3) and Subsection (6), as well as the individual case data described in Subsection (1) for the previous calendar year, shall be published on the Utah Open Government website at [open.utah.gov](http://open.utah.gov) on or before July 15 of each year.

Section 4. **Effective date.**

This bill takes effect on July 1, 2015.

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**Legislative Review Note**

~~as of 11-21-14 8:46 AM~~

~~Office of Legislative Research and General Counsel}~~