

CIVIL ASSET FORFEITURE REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Brian M. Greene

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends specified definitions;
- ▶ amends provisions regarding the determination that property is subject to forfeiture;
- ▶ amends civil forfeiture procedures to provide for seized currency to be returned to the claimant in specified circumstances;
- ▶ provides that when property valued at less than \$10,000 is seized, the property shall be returned to the claimant;
- ▶ provides that when property is determined to be subject to forfeiture, and the claimant is then acquitted of the offense giving rise to the forfeiture, the property shall be returned; and
- ▶ facilitates the return of seized property to an innocent owner.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 24-1-102, as last amended by Laws of Utah 2014, Chapter 112

30 24-2-103, as enacted by Laws of Utah 2013, Chapter 394

31 24-4-102, as enacted by Laws of Utah 2013, Chapter 394

32 24-4-104, as last amended by Laws of Utah 2014, Chapter 112

33 24-4-107, as enacted by Laws of Utah 2013, Chapter 394



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

36 Section 1. Section 24-1-102 is amended to read:

37 **24-1-102. Definitions.**

38 As used in this title:

39 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
40 24-4-116.

41 (2) (a) [~~"Acquittal"~~] "Acquitted" means a finding by a jury or a judge at trial that a
42 claimant is not guilty.

43 (b) [~~An acquittal~~] "Acquitted" does not include:

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

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

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

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

49 (4) "Claimant" means any:

50 (a) owner of property as defined in this section; or

51 (b) interest holder as defined in this section[~~; or~~].

52 [~~(c) person or entity who asserts a claim to any property seized for forfeiture under this~~
53 ~~title.~~]

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

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

57 (7) "Constructive seizure" means a seizure of property where the property is left in the
58 control of the owner and the seizing agency posts the property with a notice of intent to seek

59 forfeiture.

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

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

65 (9) "Innocent owner" means a third-party claimant who provides to the prosecuting
66 attorney evidence that the third party:

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

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

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

73 (b) acquired an ownership interest in the property and [~~who~~] had no knowledge that the
74 illegal conduct subjecting the property to forfeiture had occurred or that the property had been
75 seized for forfeiture, and:

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

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

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

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

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

89 (11) "Known address" means any address provided by a claimant to the agency at the

90 time the property was seized, or the claimant's most recent address on record with a
91 governmental entity if no address was provided at the time of the seizure.

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

94 (13) "Legislative body" means:

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

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

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

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

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

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

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

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

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

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

117 (17) "Program" means the State Asset Forfeiture Grant Program established in Section
118 [24-4-117](#).

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

121 (19) "Prosecuting attorney" means:
 122 (a) the attorney general and any assistant attorney general;
 123 (b) any district attorney or deputy district attorney;
 124 (c) any county attorney or assistant county attorney; and
 125 (d) any other attorney authorized to commence an action on behalf of the state under
 126 this title.

127 (20) "Public interest use" means a:
 128 (a) use by a government agency as determined by the legislative body of the agency's
 129 jurisdiction; or
 130 (b) donation of the property to a nonprofit charity registered with the state.

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

133 Section 2. Section **24-2-103** is amended to read:

134 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

135 (1) (a) When property is seized by a peace officer, the peace officer or the officer's
 136 employing agency shall provide a receipt to the person from whom the property was seized.

137 (b) The receipt shall describe the:

138 (i) property seized;

139 (ii) date of seizure; and

140 (iii) name and contact information of the officer's employing agency.

141 (c) In addition to the receipt, the person from whom the property was seized shall be
 142 provided with information regarding the forfeiture process, including:

143 (i) important time periods in the forfeiture process;

144 (ii) what happens to the property upon conviction or acquittal; and

145 (iii) how to make a claim for the return of the property.

146 [~~(c)~~] (d) A copy of the receipt shall be maintained by the agency.

147 [~~(d)~~] (e) If custody of the property is transferred to another agency, a copy of the receipt
 148 under Subsection (1)(a) shall be provided with the property.

149 (2) The agency responsible for maintaining the property shall:

150 (a) hold all seized property in safe custody until it can be disposed of as provided in
 151 this title; and

152 (b) maintain a record of the property that includes:

153 (i) a detailed inventory of all property seized;

154 (ii) the name of the person from whom it was seized; and

155 (iii) the agency's case number.

156 (3) Property seized under this title is not recoverable by replevin, but is considered in
157 the agency's custody subject only to the orders of the court or the official having jurisdiction.

158 (4) All controlled substances or other contraband that is seized by a peace officer may
159 be processed for evidentiary or investigative purposes, including sampling or other preservation
160 procedure prior to disposal or destruction.

161 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable
162 instruments into a separate, restricted, interest-bearing account maintained by the agency solely
163 for the purpose of managing and protecting the property from commingling, loss, or
164 devaluation.

165 (b) Each agency shall have written policies for the identification, tracking,
166 management, and safekeeping of seized property, which shall include a prohibition against the
167 transfer, sale, or auction of seized property to any employee of the agency.

168 (6) If a peace officer or the officer's employing agency records an interview of a minor
169 child during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or
170 [76-5-404.1](#), the agency shall retain a copy of the recording for 18 years following the date of
171 the last recording unless the prosecuting attorney requests in writing that the recording be
172 retained for an additional period of time.

173 (7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
174 Information Act, governs the disposition of property held by a pawn or secondhand business in
175 the course of its business.

176 Section 3. Section **24-4-102** is amended to read:

177 **24-4-102. Property subject to forfeiture.**

178 (1) Except as provided in Subsection (3), [aH] property that has been used to facilitate
179 the commission of a federal or state criminal offense and any proceeds of criminal activity may
180 be forfeited under this chapter, including:

181 (a) real property, including things growing on, affixed to, and found in land; and

182 (b) tangible and intangible personal property, including money, rights, privileges,

183 interests, claims, and securities of any kind.

184 (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205,
185 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to
186 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise
187 of an affected party's rights under the First Amendment to the Constitution of the United States
188 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the
189 exercise of those rights.

190 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local
191 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection
192 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

193 (a) the operator of the vehicle has previously been convicted of a violation, committed
194 after May 12, 2009, of:

- 195 (i) a felony driving under the influence violation under Section 41-6a-502;
196 (ii) a felony violation under Subsection 58-37-8(2)(g); or
197 (iii) automobile homicide under Section 76-5-207; or

198 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
199 disqualified license; and

200 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
201 was imposed because of a violation under:

- 202 (A) Section 41-6a-502;
203 (B) Section 41-6a-517;
204 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
205 (D) Section 41-6a-520;
206 (E) Subsection 58-37-8(2)(g);
207 (F) Section 76-5-207; or
208 (G) a criminal prohibition that the person was charged with violating as a result of a
209 plea bargain after having been originally charged with violating one or more of the sections or
210 ordinances described in Subsections (3)(b)(i)(A) through (F); or

211 (ii) the denial, suspension, revocation, or disqualification described in Subsections
212 (3)(b)(i)(A) through (G):

213 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,

214 revocation, or disqualification; and

215 (B) the original denial, suspension, revocation, or disqualification was imposed
216 because of a violation described in Subsections (3)(b)(i)(A) through (G).

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

218 **24-4-104. Civil forfeiture procedure.**

219 (1) (a) The law enforcement agency shall promptly return seized property, and the
220 prosecuting attorney may take no further action to effect the forfeiture of the property, unless
221 within 75 days after the property is seized the prosecuting attorney:

222 (i) files a criminal [~~forfeiture~~] indictment or information under Subsection 24-4-105(2);

223 (ii) obtains a restraining order under Subsection 24-4-105(3);

224 (iii) files a petition under Subsection 24-4-114(1); or

225 (iv) files a civil forfeiture complaint.

226 (b) A complaint for civil forfeiture shall describe with reasonable particularity the:

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

228 (ii) date and place of seizure; and

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

230 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
231 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

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

235 (c) Service of the complaint and summons shall be by:

236 (i) personal service;

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

238 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
239 service cannot reasonably be made by personal service or certified mail.

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

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

243 and

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

245 (e) Service is effective upon the earlier of:

246 (i) personal service;

247 (ii) mailing of a written notice; or

248 (iii) publication.

249 (f) Upon motion of the prosecuting attorney and a showing of good cause, the court
250 may extend the period to complete service under this section for an additional 60 days.

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

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

255 (c) When the property subject to forfeiture is cash or currency, or both, the agency that
256 has custody of the property shall return the property to the claimant if the property is valued at
257 less than \$10,000 in United States currency, and:

258 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
259 filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
260 and

261 (B) the prosecuting attorney has not filed an information or indictment for criminal
262 conduct giving rise to the forfeiture within 60 days after the date that service of the complaint
263 on the claimant was completed; or

264 (ii) the information or indictment for criminal conduct giving rise to the forfeiture was
265 dismissed and the prosecuting attorney has not refiled the information or indictment within
266 seven days of the dismissal.

267 (d) The return of property to the claimant under Subsection (3)(c) does not include any
268 expenses, costs, or attorney fees.

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

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

273 (6) In all suits or actions brought under this section for the civil forfeiture of any
274 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
275 evidence [~~the extent to which, if any, the property is subject to forfeiture~~] that the claimant

276 engaged in conduct giving rise to the forfeiture.

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

279 (8) Property is subject to forfeiture under this chapter if the prosecuting attorney
280 establishes that:

281 (a) the claimant has engaged in conduct giving rise to forfeiture;

282 (b) the property was acquired by the claimant during that portion of the conduct that
283 gives rise to forfeiture, or within a reasonable time after that conduct is committed; and

284 (c) there is no likely source for the purchase or acquisition of the property other than
285 the conduct that gives rise to forfeiture.

286 (9) A finding by the court that property is the proceeds of conduct giving rise to
287 forfeiture does not require proof that the property was the proceeds of any particular exchange
288 or transaction.

289 (10) If the prosecutor establishes that the property is subject to forfeiture, but the
290 claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is
291 acquitted of that charge on the merits:

292 (a) the property subject to the forfeiture or the open market value of the property, if the
293 property has been disposed of under Subsection 24-4-108(13), shall be returned to the
294 claimant; and

295 (b) any payments required under this chapter regarding the costs of holding the
296 property shall be paid to the claimant.

297 Section 5. Section **24-4-107** is amended to read:

298 **24-4-107. Innocent owners.**

299 (1) An innocent owner's interest in property may not be forfeited.

300 (2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the
301 burden of establishing evidence that ~~[a claimant]~~ an innocent owner:

302 ~~[(a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection~~
303 ~~(4);]~~

304 ~~[(b)]~~ (a) knew of the conduct giving rise to the forfeiture, and allowed the property to be
305 used in furtherance of the conduct;

306 ~~[(c)]~~ (b) acquired the property with notice of its actual or constructive seizure for

307 forfeiture under this chapter;

308 ~~[(4)]~~ (c) acquired the property knowing the property was subject to forfeiture under this
 309 chapter; or

310 ~~[(e)]~~ (d) acquired the property in an effort to conceal, prevent, hinder, or delay its
 311 lawful seizure or forfeiture under any provision of state law.

312 (3) (a) ~~[A claimant]~~ An innocent owner under this chapter is not required to take steps
 313 to prevent illegal use or criminal activity regarding the property that the ~~[claimant]~~ innocent
 314 owner reasonably believes would be likely to result in physical harm or danger to any person.

315 (b) ~~[A claimant]~~ An innocent owner may demonstrate that the ~~[claimant]~~ innocent
 316 owner took reasonable action to prohibit the illegal use of the property by:

317 (i) making a timely notification to a law enforcement agency of information that led the
 318 ~~[claimant]~~ innocent owner to know that conduct subjecting the property to seizure would occur,
 319 was occurring, or has occurred;

320 (ii) timely revoking or attempting to revoke permission to use the property regarding
 321 those engaging in the illegal conduct; or

322 (iii) taking reasonable actions to discourage or prevent the illegal use of the property.

323 ~~[(4) If the state relies on Subsection (2)(a) to establish that a claimant is not an~~
 324 ~~innocent owner, and if the claimant is criminally charged with the conduct giving rise to the~~
 325 ~~forfeiture and is acquitted of that charge on the merits:]~~

326 ~~[(a) the property subject to the forfeiture or the open market value of the property, if~~
 327 ~~the property has been disposed of under Subsection 24-4-108(13), shall be returned to the~~
 328 ~~claimant; and]~~

329 ~~[(b) any payments required under this chapter regarding holding the property shall be~~
 330 ~~paid to the claimant.]~~

331 ~~[(5)]~~ (4) A person may not assert under this chapter an ownership interest in
 332 contraband.

333 ~~[(6) Property is presumed to be subject to forfeiture under this chapter if the~~
 334 ~~prosecuting attorney establishes that:]~~

335 ~~[(a) the claimant has engaged in conduct giving cause for forfeiture;]~~

336 ~~[(b) the property was acquired by the claimant during that period of the conduct giving~~
 337 ~~cause for forfeiture or within a reasonable time after that period; and]~~

338 ~~[(c) there was no likely source for the purchase or acquisition of the property other than~~
339 ~~the conduct giving cause for forfeiture.]~~

340 ~~[(7) A finding that property is the proceeds of conduct giving cause for forfeiture does~~
341 ~~not require proof that the property was the proceeds of any particular exchange or transaction.]~~

342 (5) An innocent owner may recover possession of seized property that is subject to
343 forfeiture at any time subsequent to the seizure of property by:

344 (a) contacting the seizing agency or prosecuting attorney; and

345 (b) providing to the seizing agency or the prosecuting attorney:

346 (i) evidence that establishes proof of ownership; and

347 (ii) a brief description of the date, time, and place that the innocent owner mislaid or
348 relinquished possession of the seized property.

Legislative Review Note
Office of Legislative Research and General Counsel