

Senator Jacob L. Anderegg proposes the following substitute bill:

**CIVIL ASSET FORFEITURE REVISIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

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

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**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;
- ▶ eliminates the 20% cap on fees and costs;
- ▶ 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



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **24-1-102**, as last amended by Laws of Utah 2014, Chapter 112

29 **24-2-103**, as enacted by Laws of Utah 2013, Chapter 394

30 **24-4-102**, as enacted by Laws of Utah 2013, Chapter 394

31 **24-4-104**, as last amended by Laws of Utah 2014, Chapter 112

32 **24-4-107**, as enacted by Laws of Utah 2013, Chapter 394

33 **24-4-109**, as enacted by Laws of Utah 2013, Chapter 394

34 **24-4-110**, as last amended by Laws of Utah 2014, Chapter 112



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

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

38 **24-1-102. Definitions.**

39 As used in this title:

40 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
41 **24-4-116**.

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

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

- 45 (i) a verdict of guilty on a lesser or reduced charge;
- 46 (ii) a plea of guilty to a lesser or reduced charge; or
- 47 (iii) dismissal of a charge as a result of a negotiated plea agreement.

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

50 (4) "Claimant" means any:

- 51 (a) owner of property as defined in this section; or
- 52 (b) interest holder as defined in this section[~~;~~~~or~~].

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

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

56 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or

57 personal property under this title.

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

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

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

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

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

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

71 or

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

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

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

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

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

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

86 (b) "Interest holder" does not mean a person who holds property for the benefit of or as  
87 an agent or nominee for another person, or who is not in substantial compliance with any

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

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

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

95 (13) "Legislative body" means:

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

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

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

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

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

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

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

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

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

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

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

119 24-4-117.

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

122 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

134 Section 2. Section 24-2-103 is amended to read:

135 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

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

138 (b) The receipt shall describe the:

139 (i) property seized;

140 (ii) date of seizure; and

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

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

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

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

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

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

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

- 150 (2) The agency responsible for maintaining the property shall:
- 151 (a) hold all seized property in safe custody until it can be disposed of as provided in
- 152 this title; and
- 153 (b) maintain a record of the property that includes:
- 154 (i) a detailed inventory of all property seized;
- 155 (ii) the name of the person from whom it was seized; and
- 156 (iii) the agency's case number.
- 157 (3) Property seized under this title is not recoverable by replevin, but is considered in
- 158 the agency's custody subject only to the orders of the court or the official having jurisdiction.
- 159 (4) All controlled substances or other contraband that is seized by a peace officer may
- 160 be processed for evidentiary or investigative purposes, including sampling or other preservation
- 161 procedure prior to disposal or destruction.
- 162 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable
- 163 instruments into a separate, restricted, interest-bearing account maintained by the agency solely
- 164 for the purpose of managing and protecting the property from commingling, loss, or
- 165 devaluation.
- 166 (b) Each agency shall have written policies for the identification, tracking,
- 167 management, and safekeeping of seized property, which shall include a prohibition against the
- 168 transfer, sale, or auction of seized property to any employee of the agency.
- 169 (6) If a peace officer or the officer's employing agency records an interview of a minor
- 170 child during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or
- 171 [76-5-404.1](#), the agency shall retain a copy of the recording for 18 years following the date of
- 172 the last recording unless the prosecuting attorney requests in writing that the recording be
- 173 retained for an additional period of time.
- 174 (7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
- 175 Information Act, governs the disposition of property held by a pawn or secondhand business in
- 176 the course of its business.
- 177 Section 3. Section **24-4-102** is amended to read:
- 178 **24-4-102. Property subject to forfeiture.**
- 179 (1) Except as provided in Subsection (3), [aH] property that has been used to facilitate
- 180 the commission of a federal or state criminal offense and any proceeds of criminal activity may

181 be forfeited under this chapter, including:

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

183 (b) tangible and intangible personal property, including money, rights, privileges,  
184 interests, claims, and securities of any kind.

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

191 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local  
192 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection  
193 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

196 (i) a felony driving under the influence violation under Section 41-6a-502;

197 (ii) a felony violation under Subsection 58-37-8(2)(g); or

198 (iii) automobile homicide under Section 76-5-207; or

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

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

203 (A) Section 41-6a-502;

204 (B) Section 41-6a-517;

205 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

206 (D) Section 41-6a-520;

207 (E) Subsection 58-37-8(2)(g);

208 (F) Section 76-5-207; or

209 (G) a criminal prohibition that the person was charged with violating as a result of a  
210 plea bargain after having been originally charged with violating one or more of the sections or  
211 ordinances described in Subsections (3)(b)(i)(A) through (F); or

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

214 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,  
215 revocation, or disqualification; and

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

218 Section 4. Section 24-4-104 is amended to read:

219 **24-4-104. Civil forfeiture procedure.**

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

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

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

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

226 (iv) files a civil forfeiture complaint.

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

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

229 (ii) date and place of seizure; and

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

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

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

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

237 (i) personal service;

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

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

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

243 (i) in a newspaper of general circulation in the county in which the seizure occurred;  
244 and

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

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

247 (i) personal service;

248 (ii) mailing of a written notice; or

249 (iii) publication.

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

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

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

256 (c) The agency that has custody of the property shall return the property to the claimant  
257 if:

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 ~~[(e)]~~ (b) acquired the property with notice of its actual or constructive seizure for  
307 forfeiture under this chapter;

308 ~~[(d)]~~ (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.

349 Section 6. Section **24-4-109** is amended to read:

350 **24-4-109. Postjudgment interest.**

351 In any proceeding to forfeit currency or other negotiable instruments under this chapter,  
352 the court shall award a prevailing ~~[party]~~ claimant prejudgment and postjudgment interest on  
353 the currency or negotiable instruments at the interest rate established under Section **15-1-4**.

354 Section 7. Section **24-4-110** is amended to read:

355 **24-4-110. Attorney fees and costs.**

356 (1) In any forfeiture proceeding under this chapter, the court shall award a prevailing  
357 ~~[property owner]~~ claimant reasonable:

358 (a) legal costs; and

359 (b) attorney fees.

360 ~~[(2) The legal costs and attorney fees awarded by the court to the prevailing party may~~  
361 ~~not exceed 20% of the value of the property.]~~

362 ~~[(3)]~~ (2) A [property owner] claimant that prevails only in part is entitled to recover  
363 reasonable legal costs and attorney fees only on those issues on which the party prevailed, as  
364 determined by the court.