

SB0087S02 compared with SB0087

~~{deleted text}~~ shows text that was in SB0087 but was deleted in SB0087S02.

Inserted text shows text that was not in SB0087 but was inserted into SB0087S02.

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Representative Brian M. Greene proposes the following substitute bill:

CIVIL ASSET FORFEITURE REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: ~~{ }~~ Eric K. Hutchings

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}~~ property 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

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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:

AMENDS:

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

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

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

24-4-103, as enacted by Laws of Utah 2013, Chapter 394

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

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

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

24-4-117, as last amended by Laws of Utah 2015, Chapter 134

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

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

24-1-102. Definitions.

As used in this title:

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

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

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

- a verdict of guilty on a lesser or reduced charge;
- a plea of guilty to a lesser or reduced charge; or
- dismissal of a charge as a result of a negotiated plea agreement.

(3) "Agency" means any agency of municipal, county, or state government, including

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law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

(4) "Claimant" means any:

(a) owner of property as defined in this section; ~~{or}~~

(b) interest holder as defined in this section ~~{ff}~~; or ~~{fs}~~

~~{ff}~~(c) person or entity who asserts a claim to any property seized for forfeiture under this title. ~~{ff}~~

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

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

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

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

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

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

(a) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred, and ~~{~~

~~———}~~ (i) ~~{}~~ ~~]~~ did not have actual knowledge of the conduct subjecting the property to forfeiture; or

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

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

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

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

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

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

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

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

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

(13) "Legislative body" means:

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

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

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

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

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

(16) (a) "Proceeds" means:

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

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

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

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

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

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

(19) "Prosecuting attorney" means:

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

(b) any district attorney or deputy district attorney;

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

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

(20) "Public interest use" means a:

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

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

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

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

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

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

(b) The receipt shall describe the:

(i) property seized;

(ii) date of seizure; and

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

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

- (i) important time periods in the forfeiture process;
- (ii) what happens to the property upon conviction or acquittal; and
- (iii) how to make a claim for the return of the property.

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

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

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

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

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

- (i) a detailed inventory of all property seized;
- (ii) the name of the person from whom it was seized; and
- (iii) the agency's case number.

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

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

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

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

(6) If a peace officer or the officer's employing agency records an interview of a minor child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of the last recording unless the prosecuting attorney requests in writing that the recording be

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retained for an additional period of time.

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

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

24-4-102. Property subject to forfeiture.

(1) Except as provided in Subsection ~~[(3)]~~ (4), ~~all~~ property that has been used to facilitate the commission of a federal or state criminal offense and any proceeds of criminal activity may be forfeited under this chapter, including:

- (a) real property, including things growing on, affixed to, and found in land; and
- (b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.

(2) Property that is subject to forfeiture under this chapter may be forfeited if the prosecuting attorney establishes that:

- (a) the claimant has engaged in conduct giving rise to forfeiture;
- (b) the property was acquired by the claimant during that portion of the conduct that gives rise to forfeiture, or within a reasonable time after that conduct is committed; and
- (c) there is no likely source for the purchase or acquisition of the property other than the conduct that gives rise to forfeiture.

~~[(2)]~~ (3) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.

~~[(3)]~~ (4) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

- (a) the operator of the vehicle has previously been convicted of a violation, committed after May 12, 2009, of:
 - (i) a felony driving under the influence violation under Section 41-6a-502;

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

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

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

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

(A) Section 41-6a-502;

(B) Section 41-6a-517;

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

(D) Section 41-6a-520;

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

(F) Section 76-5-207; or

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

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

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

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

Section 4. Section 24-4-103 is amended to read:

24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.

(1) (a) Within 30 days from the date that property is seized, an agency seeking to forfeit property shall serve a notice of intent to seek forfeiture upon any claimants known to the agency.

(b) The notice of intent to seek forfeiture shall describe the:

(i) date of the seizure;

(ii) property seized;

(iii) claimant's rights and obligations under this chapter, including the availability of hardship relief in appropriate circumstances; and

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(iv) statutory basis for the forfeiture, including the judicial proceedings by which property may be forfeited under this chapter.

(c) The notice of intent to seek forfeiture shall be served by:

- (i) certified mail, return receipt requested, to the claimant's known address; or
- (ii) personal service.

(d) The court may void any forfeiture made without notice under Subsection (1)(a), unless the agency demonstrates:

- (i) good cause for the failure to give notice to the claimant; or
- (ii) that the claimant had actual notice of the seizure.

(2) (a) ~~Once~~ After the agency has served each claimant with a notice of intent to seek forfeiture, but no later than 60 days from the date that property is seized, the agency shall present a written request for forfeiture to the prosecuting attorney.

(b) The written request shall:

- (i) describe the property to be forfeited; and
- (ii) include a copy of all reports, supporting documents, and other evidence necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.

(3) If a law enforcement agency does not notify claimants and present a request for forfeiture in compliance with Subsections (1) and (2), the law enforcement agency shall promptly return the seized property to the claimant or claimants.

(4) A prosecuting attorney may take no further action to effect the forfeiture of the seized property, unless within 75 days after the property is seized the prosecuting attorney:

(a) files a criminal information or indictment under Subsection 24-4-105(2);

(b) files a petition under Subsection 24-4-114(1) regarding transfer or sharing of forfeiture proceeds; or

(c) files a civil forfeiture complaint under Section 24-4-104.

Section ~~4~~5. Section **24-4-104** is amended to read:

24-4-104. Civil forfeiture procedure.

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

~~1~~1(i) files a criminal ~~forfeiture~~ ~~indictment or information~~ under Subsection

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~~24-4-105(2);~~

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

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

~~[(iv) files a civil forfeiture complaint.]~~

~~[(b)] (1) A complaint for civil forfeiture shall describe with reasonable particularity~~

the:

~~[(i)] (a) property that is the subject of the forfeiture proceeding;~~

~~[(ii)] (b) date and place of seizure; and~~

~~[(iii)] (c) factual allegations that constitute a basis for forfeiture.~~

(2) ~~[(a)]~~ (a) After a civil forfeiture complaint is filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

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

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

(i) personal service;

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

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

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

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

and

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

(e) Service is effective upon the earlier of:

(i) personal service;

(ii) mailing of a written notice; or

(iii) publication.

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

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

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

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

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

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

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

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

(e) If the property subject to forfeiture is not returned under the provisions of Subsection (3)(c) and the claimant is subsequently successful in an action to recover the property, notwithstanding Subsection 24-4-110(2), the claimant shall be entitled to recover costs and attorney fees incurred in the action to recover the property.

(4) (a) Upon motion of the prosecuting attorney, the court may extend the time limit in Subsection (3)(c)(i)(B) for a reasonable time period if:

(a) the value of the property has yet to be determined; or

(b) the investigation into the criminal conduct giving rise to the forfeiture has not been completed.

~~[(4)]~~ [(5)] Except as otherwise provided in this chapter, forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

~~[(5)]~~ [(6)] The court shall take all reasonable steps to expedite civil forfeiture proceedings and shall give these proceedings the same priority as is given to criminal cases.

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~~[(6)]~~1(7) In all suits or actions brought under this section for the civil forfeiture of any property, the burden of proof is on the prosecuting attorney to establish by clear and convincing evidence ~~[the extent to which, if any, the property is subject to forfeiture]~~ that the claimant engaged in conduct giving rise to the forfeiture.

~~[(7)]~~1(8) A claimant may file an answer to a complaint for civil forfeiture without posting bond with respect to the property subject to forfeiture.

~~{~~ ~~— (8) Property is subject to forfeiture under this chapter if the prosecuting attorney establishes that:~~

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

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

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

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

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

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

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

(c) court costs and reasonable attorney fees incurred in defending against the civil forfeiture action shall be paid to the claimant, as provided in this chapter.

Section ~~{5}~~6. Section **24-4-107** is amended to read:

24-4-107. Innocent owners.

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

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

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

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

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

~~[(d) (c) acquired the property knowing the property was subject to forfeiture under this chapter; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) An innocent owner other than a defendant may recover possession of seized property that is subject to forfeiture ~~{at any time subsequent to the seizure of property }~~by:

~~— (a) }~~ contacting the seizing agency or prosecuting attorney ~~{;}~~ within 30 days of the seizure ~~and~~

~~— (b) }~~ providing to the seizing agency or ~~{ the }~~ prosecuting attorney:

~~(i) }~~ evidence that establishes proof of ownership; and

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

~~{~~

Legislative Review Note

~~Office of Legislative Research and General Counsel~~ (b) A seizing agency or prosecuting attorney who receives a claim from a potentially innocent owner utilizing the procedure in Subsection (5)(a) shall issue a written response to that claim within 45 days of receipt, indicating whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by statute subject to the following:

(i) if the claim is denied for failure to provide the information required by statute, the potentially innocent owner has 15 days from the date of denial to submit additional information before the prosecuting attorney may commence a civil action seeking to forfeit the property; and

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(ii) if the seizing agency or prosecuting attorney fails to issue a written response within 45 days the property shall be returned.

(c) Any property returned under Subsection (5)(b), either because the claim was granted or because the seizing agency or prosecuting attorney failed to respond within 45 days may not include any expenses, costs, or attorney fees.

(d) Notwithstanding Subsection 24-4-110(2), an innocent owner who utilizes the procedures in Subsection (5)(a) and whose claim is denied on the merits by the seizing agency or prosecuting attorney, but who is later determined by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within the meaning of this section, may collect reasonable attorney fees and court costs from the date on which the seizing agency or prosecuting attorney denied the claim.

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

24-4-110. Attorney fees and costs.

(1) [~~It~~] Except as provided in Section 24-4-104 and 24-4-107, in any forfeiture proceeding under this chapter, the court shall award a prevailing [~~property owner~~] claimant reasonable:

(a) legal costs; and

(b) attorney fees.

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

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

Section 8. 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];~~

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

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

(e) allowing the legitimate 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)] (4) 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)] (5) Agencies or political subdivisions shall apply for an award from the program by completing and submitting forms specified by the commission.

[(5)] (6) 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)] (7) Applying agencies or political subdivisions shall demonstrate compliance with

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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)]~~ (8) (a) Recipient law enforcement agencies may only use award money after approval by the agency's legislative body.

(b) The award money is nonlapsing.

~~[(8)]~~ (9) 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)]~~ (10) 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.

SB0087S02 compared with SB0087

~~[(10)]~~ (11) 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;

(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.