

CIVIL ASSET FORFEITURE REFORM AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- ▶ modifies the elements of qualifying as an innocent owner regarding property subject to forfeiture;
- ▶ requires a direct nexus of the property to a specific alleged criminal exchange or transaction, in order for the property to be forfeited;
- ▶ modifies the definition of proceeds that are from an offense giving rise to a forfeiture;
- ▶ requires the prosecutor to bring an action for civil forfeiture in a timely manner;
- ▶ modifies the process for a claimant to bring an action to claim forfeited property;
- ▶ provides that any person may assert an interest in seized property or file an answer to a forfeiture complaint without posting bond;
- ▶ provides that the hardship provisions include use of funds to allow an individual to obtain a legal defense in the forfeiture proceeding or the related criminal proceeding and assets of a legitimate business;
- ▶ provides that prejudgment interest shall be awarded, in addition to the current postjudgment interest;
- ▶ removes the cap of 20% of the value of the property subject to forfeiture when awarding legal costs and attorney fees;
- ▶ modifies the obligations of a claimant regarding illegal use of the property subject to forfeiture;
- ▶ modifies the allocation of the proceeds from asset forfeiture to provide for:
 - victim restitution; and
 - reimbursement of direct costs by the prosecuting agency and the law

33 enforcement agencies involved in the case; and
 34 ▶ provides that if the defendant is acquitted of the criminal charge subsequent to the
 35 civil forfeiture proceeding, the forfeited assets shall be returned and the defendant
 36 shall be reimbursed for interest and costs as listed.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **24-1-102**, as last amended by Laws of Utah 2014, Chapter 112

44 **24-4-102**, as enacted by Laws of Utah 2013, Chapter 394

45 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

46 **24-4-104**, as last amended by Laws of Utah 2014, Chapter 112

47 **24-4-105**, as last amended by Laws of Utah 2014, Chapter 112

48 **24-4-107**, as enacted by Laws of Utah 2013, Chapter 394

49 **24-4-108**, as enacted by Laws of Utah 2013, Chapter 394

50 **24-4-109**, as enacted by Laws of Utah 2013, Chapter 394

51 **24-4-110**, as last amended by Laws of Utah 2014, Chapter 112

52 **24-4-115**, as last amended by Laws of Utah 2014, Chapter 112

53 **24-4-116**, as enacted by Laws of Utah 2013, Chapter 394

54 **24-4-117**, as last amended by Laws of Utah 2015, Chapter 134

55

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

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

58 **24-1-102. Definitions.**

59 As used in this title:

60 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
 61 24-4-116.

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

64 (b) An acquittal does not include:

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

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

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

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

70 (4) "Claimant" means any:

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

72 (b) interest holder as defined in this section; or

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

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

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

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

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

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

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

87 (a) (i) held an ownership interest in property at the time the conduct subjecting the
88 property to forfeiture occurred~~[, and];~~

89 ~~[(i) did not have actual knowledge of the conduct subjecting the property to forfeiture;~~
90 ~~or]~~

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

93 (ii) did not give permission for the conduct or participate in the conduct;

94 (iii) did not directly commit the offense; and

95 (iv) did not solicit, request, command, encourage, or intentionally aid another person to
96 engage in the conduct; or

97 (b) (i) acquired an ownership interest in the property and who had no knowledge that
98 the illegal conduct subjecting the property to forfeiture had occurred or that the property had
99 been seized for forfeiture[-]; and[+]

100 [(+)] (ii) (A) acquired the property in a bona fide transaction for value;

101 [(+)] (B) was a person, including a minor child, who acquired an interest in the
102 property through probate or inheritance; or

103 [(+)] (C) was a spouse who acquired an interest in property through dissolution of
104 marriage or by operation of law.

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

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

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

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

118 (13) "Legislative body" means:

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

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

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

125 (14) "Multijurisdictional task force" means a law enforcement task force or other

126 agency comprised of persons who are employed by or acting under the authority of different
127 governmental entities, including federal, state, county or municipal governments, or any
128 combination of these agencies.

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

131 (16) ~~[(a)]~~ "Proceeds" means:

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

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

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

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

141 (a) property of any kind that is:

142 (i) obtained directly as a result of the commission of an offense that gives rise to
143 forfeiture; and

144 (ii) limited to only that portion of property that is obtained directly as a result of the
145 commission of the offense giving rise to the forfeiture; and

146 (b) cash received from the direct sale of, and property received from the direct transfer
147 of, property described in Subsection (16)(a).

148 (17) "Program" means the State Asset Forfeiture Grant Program established in Section
149 24-4-117.

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

152 (19) "Prosecuting attorney" means:

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

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

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

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

157 this title.

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

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

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

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

164 Section 2. Section **24-4-102** is amended to read:

165 **24-4-102. Property subject to forfeiture.**

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

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

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

172 (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205,
173 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to
174 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise
175 of an affected party's rights under the First Amendment to the Constitution of the United States
176 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the
177 exercise of those rights.

178 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local
179 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection
180 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

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

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

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

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

188 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
 189 was imposed because of a violation under:
 190 (A) Section 41-6a-502;
 191 (B) Section 41-6a-517;
 192 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
 193 (D) Section 41-6a-520;
 194 (E) Subsection 58-37-8(2)(g);
 195 (F) Section 76-5-207; or
 196 (G) a criminal prohibition that the person was charged with violating as a result of a
 197 plea bargain after having been originally charged with violating one or more of the sections or
 198 ordinances described in Subsections (3)(b)(i)(A) through (F); or

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

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

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

205 Section 3. Section **24-4-103** is amended to read:

206 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

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

211 (i) date of the seizure;

212 (ii) property seized;

213 (iii) alleged relationship of the seized property to the conduct giving rise to forfeiture;

214 [~~(iii)~~] (iv) claimant's rights and obligations under this chapter, including the availability
 215 of hardship relief in appropriate circumstances; and

216 [~~(iv)~~] (v) statutory basis for the forfeiture, including the judicial proceedings by which
 217 property may be forfeited under this chapter.

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

- 219 (i) certified mail, return receipt requested, to the claimant's known address; or
 220 (ii) personal service.
- 221 (d) The court may void any forfeiture made without notice under Subsection (1)(a),
 222 unless the agency demonstrates:
- 223 (i) good cause for the failure to give notice to the claimant; or
 224 (ii) that the claimant had actual notice of the seizure.
- 225 (2) (a) ~~Once~~ After the agency has served each claimant with a notice of intent to seek
 226 forfeiture, but no later than 60 days from the date that property is seized, the agency shall
 227 present a written request for forfeiture to the prosecuting attorney.
- 228 (b) The written request shall:
- 229 (i) describe the property to be forfeited; and
 230 (ii) include a copy of all reports, supporting documents, and other evidence necessary
 231 for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.
- 232 (3) If a law enforcement agency does not notify claimants and present a request for
 233 forfeiture in compliance with Subsections (1) and (2), the law enforcement agency shall
 234 promptly return the seized property to the claimant or claimants.
- 235 (4) A prosecuting attorney may take no further action to effect the forfeiture of the
 236 seized property, unless within 75 days after the property is seized the prosecuting attorney:
- 237 (a) files a criminal information or indictment under Subsection 24-4-105(2);
 238 (b) files a petition under Subsection 24-4-114(1) regarding transfer or sharing of
 239 forfeiture proceeds; or
- 240 (c) files a civil forfeiture complaint under Section 24-4-104.
- 241 Section 4. Section **24-4-104** is amended to read:
- 242 **24-4-104. Civil forfeiture procedure.**
- 243 ~~[(1) (a) The law enforcement agency shall promptly return seized property, and the~~
 244 ~~prosecuting attorney may take no further action to effect the forfeiture of the property, unless~~
 245 ~~within 75 days after the property is seized the prosecuting attorney:]~~
- 246 ~~[(i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);]~~
 247 ~~[(ii) obtains a restraining order under Subsection 24-4-105(3);]~~
 248 ~~[(iii) files a petition under Subsection 24-4-114(1); or]~~
 249 ~~[(iv) files a civil forfeiture complaint.]~~

250 (1) (a) When a prosecuting attorney files a civil forfeiture complaint under this section,
251 the prosecutor may not pursue any forfeiture proceeding regarding a claimant's interest in the
252 seized property until after the claimant is convicted of a criminal offense that has a direct nexus
253 to the property that is subject to the forfeiture complaint.

254 (b) If a conviction is not obtained regarding the direct nexus offense charged under
255 Subsection (1)(a) and all opportunities to prosecute have been exhausted or abandoned, the law
256 enforcement agency shall promptly return the seized property to the claimant and the
257 prosecuting attorney shall move the court to dismiss the complaint for civil forfeiture.

258 (c) Notwithstanding Subsections (a) and (b), a prosecuting attorney may pursue a
259 complaint for civil forfeiture in compliance with this Section if:

260 (i) the seized property has been in the custody of the law enforcement agency for 180
261 days;

262 (ii) the law enforcement agency has made a concerted and reasonable effort to locate
263 and identify the owner of the property;

264 (iii) the seized property is believed to have a direct nexus to criminal activity; and

265 (iv) no owner or potential claimant has been found or, if an owner or potential claimant
266 has been found, the claimant or claimants have disclaimed, in writing, any ownership interest
267 in the seized property.

268 ~~[(b)]~~ (2) A complaint for civil forfeiture shall describe with reasonable particularity
269 ~~[the]~~:

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

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

272 (c) a direct nexus between the seized property and the conduct giving rise to the
273 forfeiture under Subsection 24-4-102(2); and

274 ~~[(iii)]~~ (d) specific factual allegations that constitute a basis for forfeiture.

275 ~~[(2)]~~ (3) (a) After a complaint that meets the requirements of Subsections (1) and (2) is
276 filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each
277 claimant known to the prosecuting attorney within 30 days.

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

281 ~~[(c) Service of the complaint and summons shall be by:]~~
282 ~~[(i) personal service;]~~
283 ~~[(ii) certified mail, return receipt requested, to the claimant's known address; or]~~
284 ~~[(iii) service by publication, if the prosecuting attorney demonstrates to the court that~~
285 ~~service cannot reasonably be made by personal service or certified mail.]~~
286 ~~[(d) Service by publication shall be by publication of two notices, in two successive~~
287 ~~weeks, of the forfeiture proceeding:]~~
288 ~~[(i) in a newspaper of general circulation in the county in which the seizure occurred;~~
289 ~~and]~~
290 ~~[(ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b);]~~
291 ~~[(e) Service is effective upon the earlier of:]~~
292 ~~[(i) personal service;]~~
293 ~~[(ii) mailing of a written notice; or]~~
294 ~~[(iii) publication.]~~
295 ~~[(f) Upon motion of the prosecuting attorney and a showing of good cause, the court~~
296 ~~may extend the period to complete service under this section for an additional 60 days.]~~
297 (4) The prosecutor shall take all reasonable steps to ensure a forfeiture proceeding
298 initiated under this section is concluded in a timely manner.
299 ~~[(3)(a)]~~ (5) In any case where the prosecuting attorney files a complaint for civil
300 forfeiture, [a claimant may file an answer to the complaint] any person may assert an interest in
301 seized property or file an answer to a complaint for civil forfeiture without posting bond with
302 respect to the property that is the subject of the seizure or forfeiture action.
303 ~~[(b) The answer shall be filed within 30 days after the complaint is served upon the~~
304 ~~claimant as provided in Subsection (2)(b).]~~
305 ~~[(4)]~~ (6) Except as otherwise provided in this chapter, forfeiture proceedings are
306 governed by the Utah Rules of Civil Procedure.
307 ~~[(5)]~~ (7) The court shall take all reasonable steps to expedite civil forfeiture
308 proceedings and shall give these proceedings the same priority as is given to criminal cases.
309 ~~[(6)]~~ (8) In all suits or actions brought under this section for the civil forfeiture of any
310 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
311 evidence the extent to which, if any, the property is subject to forfeiture.

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

314 Section 5. Section **24-4-105** is amended to read:

315 **24-4-105. Criminal forfeiture procedure.**

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

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

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

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

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

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

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

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

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

342 (d) After service of the temporary order upon any claimants known to the prosecuting

343 attorney, a hearing concerning the order entered under this section shall be held as soon as
344 practicable and prior to the expiration of the temporary order.

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

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

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

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

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

361 (6) (a) (i) After property is ordered forfeited under this section, the seizing agency shall
362 direct the disposition of the property under Section 24-4-115.

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

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

368 (b) The court may stay the sale or disposition of the property pending the conclusion of
369 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that
370 proceeding with the sale or disposition of the property may result in irreparable injury, harm, or
371 loss.

372 (7) [~~Except as provided under Subsection (3) or (10), a party claiming~~] A claimant
373 asserting an interest in property subject to forfeiture under this section:

374 (a) may [not] intervene in a trial or appeal of a criminal case involving the forfeiture of
375 property under this section; and

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

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

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

389 (10) (a) (i) Following the entry of an order of forfeiture under this section, the
390 prosecuting attorney shall publish notice of the order's intent to dispose of the property by
391 publication. Service by publication shall be by publication of two notices, in two successive
392 weeks, of the forfeiture proceeding:

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

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

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

399 (b) (i) Any claimant, other than the defendant, asserting a legal interest in property that
400 has been ordered forfeited to the state under this section may, within 30 days after the notice
401 has been published or the claimant receives the written notice under Subsection (10)(a),
402 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's
403 alleged interest in the property.

404 (ii) Any genuine issue of material fact, including issues of standing, may be tried to a

405 jury upon demand of any party.

406 (c) The petition shall:

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

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

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

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

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

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

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

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

427 (i) the claimant has a legal right, title, or interest in the property, and the right, title, or
428 interest renders the order of forfeiture invalid in whole or in part because the right, title, or
429 interest was vested in the claimant rather than the defendant or was superior to any right, title,
430 or interest of the defendant at the time of the commission of the acts or conduct that gave rise
431 to the forfeiture of the property under this section; or

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

435 (g) Following the court's disposition of all petitions filed under this Subsection (10), or

436 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)
437 for the filing of petitions, the state has clear title to property subject to the order of forfeiture
438 and may warrant good title to any subsequent purchaser or transferee.

439 Section 6. Section **24-4-107** is amended to read:

440 **24-4-107. Innocent owners.**

441 (1) An innocent owner's interest in property may not be forfeited under any provision
442 of state law.

443 (2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the
444 burden of [~~establishing evidence~~] proving by the applicable standard of proof that [a] the
445 claimant:

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

447 (b) knew of the conduct giving rise to the forfeiture, and allowed the property to be
448 used in furtherance of the conduct, subject to Subsection (4);

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

451 (d) acquired the property knowing the property was subject to forfeiture under this
452 chapter; or

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

455 (3) [(a)] A claimant [~~under this chapter is not required to~~] does not have an obligation
456 under this section to take steps to prevent illegal use or criminal activity regarding the seized
457 property [that the claimant reasonably believes would be likely to result in physical harm or
458 danger to any person].

459 [(b)] (4) A claimant may demonstrate that the claimant was not responsible for the
460 conduct giving rise to forfeiture or did not allow the property to be used in the furtherance of
461 the conduct by providing evidence that the claimant took reasonable action to prohibit the
462 illegal use of the property by:

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

466 [(ii)] (b) timely revoking or attempting to revoke permission to use the property

467 regarding those engaging in the illegal conduct; or

468 ~~[(iii)]~~ (c) taking reasonable actions to discourage or prevent the illegal use of the
469 property.

470 ~~[(4)]~~ (5) If the state relies on Subsection (2)~~[(a)]~~ to establish that a claimant is not an
471 innocent owner, and if the claimant is criminally charged with the conduct giving rise to the
472 forfeiture and is acquitted of that charge on the merits:

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

476 (b) any payments required under this chapter regarding holding the property shall be
477 paid to the claimant~~[-]; and~~

478 (c) interest on the fair market value of all forfeited property or proceeds; and

479 (d) court costs and reasonable attorney fees incurred in defending against the civil
480 forfeiture action.

481 ~~[(5)]~~ (6) A person may not assert under this chapter an ownership interest in
482 contraband.

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

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

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

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

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

492 Section 7. Section **24-4-108** is amended to read:

493 **24-4-108. Release of property held for forfeiture on certain grounds.**

494 (1) After the seizing agency gives notice that the property is to be held for forfeiture, a
495 person or entity may not alienate, convey, sequester, or attach that property until the court
496 issues a final order of dismissal or an order of forfeiture regarding the property.

497 (2) The seizing agency or the prosecuting attorney may authorize the release of

498 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

499 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
500 discontinue forfeiture proceedings and transfer the action to another state or federal agency that
501 has initiated forfeiture proceedings involving the same property.

502 (4) Property held for forfeiture is considered to be in the custody of the district court
503 and subject only to:

504 (a) the orders and decrees of the court having jurisdiction over the property or the
505 forfeiture proceedings; and

506 (b) the acts of the agency that possesses the property or the prosecuting attorney
507 pursuant to this chapter.

508 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
509 district court a surety bond or cash in an amount equal to the current fair market value of the
510 property as determined by the court or by the parties' stipulation.

511 (b) The district court may refuse to order the release of the property if:

512 (i) the bond tendered is inadequate;

513 (ii) the property is contraband or is retained as evidence; or

514 (iii) the property is particularly altered or designed for use in conduct giving cause for
515 forfeiture.

516 (c) If a surety bond or cash is posted and the court later determines that the property is
517 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
518 property.

519 (6) A claimant is entitled to the immediate release of property held for forfeiture
520 pending the final determination of forfeiture if:

521 (a) the claimant had a possessory interest in the property at the time of seizure;

522 (b) continued possession by the agency or the state pending the final disposition of the
523 forfeiture proceedings will cause substantial hardship to the claimant, such as:

524 (i) preventing the functioning of a legitimate business;

525 (ii) preventing any individual from working;

526 (iii) preventing any child from attending elementary or secondary school;

527 (iv) preventing or hindering any person from receiving necessary medical care;

528 (v) hindering the care of an elderly or disabled dependent child or adult;

- 529 (vi) leaving any individual homeless; ~~[or]~~
- 530 (vii) preventing a claimant from retaining counsel to provide a defense in the forfeiture
- 531 proceeding or related criminal proceeding; or
- 532 ~~[(vii)]~~ (viii) any other condition that the court determines causes a substantial hardship;
- 533 (c) the hardship from the continued possession of the property by the agency outweighs
- 534 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
- 535 returned to the claimant during the pendency of the proceeding; and
- 536 (d) determination of substantial hardship under this Subsection (6) is based upon the
- 537 property's use prior to the seizure.
- 538 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
- 539 claimant may file a motion for hardship release:
- 540 (a) in the court in which forfeiture proceedings have commenced; or
- 541 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
- 542 have not yet commenced.
- 543 (8) The motion for hardship release shall also be served upon the prosecuting attorney
- 544 or the seizing agency within 10 days after filing the motion.
- 545 (9) The court shall render a decision on a motion for hardship filed under this section
- 546 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
- 547 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement
- 548 of both parties or by the court for good cause shown.
- 549 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
- 550 court shall order the property immediately released to the claimant pending completion of
- 551 proceedings by the government to obtain forfeiture of the property.
- 552 (b) The court may place conditions on release of the property as it finds necessary and
- 553 appropriate to preserve the availability of the property or its equivalent for forfeiture.
- 554 (11) The hardship release under this section does not apply to:
- 555 (a) contraband;
- 556 (b) currency or other monetary instrument or electronic funds~~[or]~~, unless any of these:
- 557 (i) are used to pay for the reasonable costs of defending against the forfeiture
- 558 proceedings or related criminal proceedings; or
- 559 (ii) constitute the assets of a legitimate business; or

560 (c) property that is likely to be used to commit additional illegal acts if returned to the
561 claimant.

562 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed
563 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
564 to preserve the interests of any party on motion of that party.

565 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
566 known to have an interest in the property, and after an opportunity for a hearing.

567 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to
568 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
569 property are disproportionate to its value.

570 (b) A third party designated by the court shall dispose of the property by commercially
571 reasonable public sale and distribute the proceeds in the following order of priority:

572 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

573 (ii) second, for the satisfaction of any interests, including those of interest holders, in
574 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

575 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
576 custody of the court, in an interest-bearing account, subject to further proceedings under this
577 chapter.

578 Section 8. Section **24-4-109** is amended to read:

579 **24-4-109. Prejudgment and postjudgment interest.**

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

583 Section 9. Section **24-4-110** is amended to read:

584 **24-4-110. Attorney fees and costs.**

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

587 (a) legal costs; and

588 (b) attorney fees.

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

591 ~~(3)~~ (2) A ~~[property owner]~~ claimant that prevails only in part is entitled to recover
592 reasonable legal costs and attorney fees only on those issues on which the party prevailed, as
593 determined by the court.

594 Section 10. Section **24-4-115** is amended to read:

595 **24-4-115. Disposition and allocation of forfeiture property from civil and**
596 **criminal forfeiture actions.**

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

599 (2) (a) If the property is not currency, the seizing agency shall authorize a public or
600 otherwise commercially reasonable sale of that property that is not required by law to be
601 destroyed and that is not harmful to the public.

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

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

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

607 (B) otherwise in saleable condition; or

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

610 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section
611 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other
612 tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the
613 cigarette or tobacco product brand shall be permitted to inspect the cigarette.

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

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

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

621 (b) pay the office of the prosecuting attorney the legal costs associated with the

622 litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in
623 attorney fees.

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

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

629 Section 11. Section **24-4-116** is amended to read:

630 **24-4-116. Criminal Forfeiture Restricted Account.**

631 (1) There is created within the General Fund a restricted account known as the
632 "Criminal Forfeiture Restricted Account."

633 (2) Proceeds from [~~forfeited~~] property and [~~forfeited~~] money forfeited through state
634 forfeitures shall be deposited into the account.

635 (3) Money in the account shall be appropriated to the commission for implementing the
636 program under Section 24-4-117.

637 Section 12. Section **24-4-117** is amended to read:

638 **24-4-117. State Asset Forfeiture Grant Program.**

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

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

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

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

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

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

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

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

653 (g) providing aid to victims of criminally injurious conduct, as defined in Section
654 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
655 for Victims of Crime.

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

661 ~~[(b)]~~ (4) The commission may retain up to 3% of the annual appropriation from the
662 account to pay for administrative costs incurred by the commission, including salary and
663 benefits, equipment, supplies, or travel costs that are directly related to the administration of
664 the program.

665 ~~[(4)]~~ (5) Agencies or political subdivisions shall apply for an award from the program
666 by completing and submitting forms specified by the commission.

667 ~~[(5)]~~ (6) In granting the awards, the commission shall ensure that the amount of each
668 award takes into consideration the:

- 669 (a) demonstrated needs of the agency;
670 (b) demonstrated ability of the agency to appropriately use the award;
671 (c) degree to which the agency's need is offset through the agency's participation in
672 federal equitable sharing or through other federal and state grant programs; and
673 (d) agency's cooperation with other state and local agencies and task forces.

674 (7) The program shall pay restitution and costs under Section 24-4-107 regarding
675 defendants who are acquitted of the nexus criminal charge.

676 ~~[(6)]~~ (8) Applying agencies or political subdivisions shall demonstrate compliance with
677 all reporting and policy requirements applicable under this chapter and under Title 63M,
678 Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award
679 recipient.

680 ~~[(7)]~~ (9) (a) Recipient law enforcement agencies may only use award money after
681 approval by the agency's legislative body.

682 (b) The award money is nonlapsing.

683 ~~[(8)]~~ (10) A recipient state agency, local law enforcement agency, multijurisdictional

684 law enforcement agency, or political subdivision shall use awards only for law enforcement
685 purposes as described in this section or for victim reparations as described in Subsection (2)(g),
686 and only as these purposes are specified by the agency or political subdivision in its application
687 for the award.

688 ~~[(9)]~~ (11) Permissible law enforcement purposes for which award money may be used
689 include:

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

708 ~~[(10)]~~ (12) Law enforcement purposes for which award money may not be granted or
709 used include:

- 710 (a) payment of salaries, retirement benefits, or bonuses to any person;
- 711 (b) payment of expenses not related to law enforcement;
- 712 (c) uses not specified in the agency's award application;
- 713 (d) uses not approved by the agency's legislative body;
- 714 (e) payments, transfers, or pass-through funding to entities other than law enforcement

715 agencies; or

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