

Effective 5/3/2023

**Part 1
General Provisions**

77-11b-101 Definitions.

As used in this chapter:

- (1)
 - (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.
 - (b) "Acquitted" does not include:
 - (i) a verdict of guilty on a lesser or reduced charge;
 - (ii) a plea of guilty to a lesser or reduced charge; or
 - (iii) dismissal of a charge as a result of a negotiated plea agreement.
- (2) "Agency" means the same as that term is defined in Section 77-11a-101.
- (3) "Claimant" means the same as that term is defined in Section 77-11a-101.
- (4) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
- (5) "Complaint" means a civil or criminal complaint seeking the forfeiture of any property under this chapter.
- (6) "Forfeit" means to divest a claimant of an ownership interest in property seized under Section 77-11a-201.
- (7) "Innocent owner" means the same as that term is defined in Section 77-11a-101.
- (8) "Interest holder" means the same as that term is defined in Section 77-11a-101.
- (9) "Known address" means:
 - (a) any address provided by a claimant to the peace officer or agency at the time the property is seized; or
 - (b) the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.
- (10) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.
- (11) "Legislative body" means the same as that term is defined in Section 77-11a-101.
- (12) "Peace officer" means the same as that term is defined in Section 77-11a-101.
- (13) "Proceeds" means the same as that term is defined in Section 77-11a-101.
- (14) "Program" means the State Asset Forfeiture Grant Program created in Section 77-11b-403.
- (15) "Property" means the same as that term is defined in Section 77-11a-101.
- (16) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.
- (17) "Seized property" means the same as that term is defined in Section 77-11a-101.

Enacted by Chapter 448, 2023 General Session

77-11b-102 Property subject to forfeiture.

- (1)
 - (a) Except as provided in Subsection (2), (3), (4), or (5), an agency may seek to forfeit:
 - (i) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; or
 - (ii) seized proceeds.
 - (b) An agency, or the prosecuting attorney, may not forfeit the seized property of an innocent owner or an interest holder.

- (2) If seized property is used to facilitate an offense that is a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, an agency may not forfeit the property if the forfeiture would 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 otherwise unlawfully interfere with the exercise of the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.
- (3) If a motor vehicle is used in an offense that is 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 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the motor vehicle, unless:
 - (a) the operator of the vehicle has previously been convicted of an offense committed after May 12, 2009, that is:
 - (i) a felony driving under the influence violation under Section 41-6a-502 or Subsection 76-5-102.1(2)(a);
 - (ii) a felony violation under Subsection 76-5-102.1(2)(b);
 - (iii) a violation under Section 76-5-207; or
 - (iv) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g); 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-520.1;
 - (E) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (F) Section 76-5-102.1;
 - (G) Section 76-5-207; or
 - (H) a criminal prohibition 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 (G); or
 - (ii) the denial, suspension, revocation, or disqualification described in Subsection (3)(b)(i):
 - (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 Subsection (3)(b)(i).
- (4) If a peace officer seizes property incident to an arrest solely for possession of a controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 58-37-8(2)(b)(i), an agency may not seek to forfeit the property that was seized in accordance with the arrest.
- (5) If a peace officer seizes an individual's firearm as the result of an offense under Section 76-10-529, an agency may not seek to forfeit the individual's firearm if the individual may lawfully possess the firearm.

Amended by Chapter 415, 2023 General Session

Amended by Chapter 422, 2023 General Session
Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-103 Trial by jury.

The right to trial by jury applies to forfeiture proceedings under this chapter.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-104 Venue.

Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, or any other provision of law, a person may bring an action or proceeding under this chapter in the judicial district in which:

- (1) the property is seized;
- (2) any part of the property is found; or
- (3) a civil or criminal action could be maintained against a claimant for the offense subjecting the property to forfeiture under this chapter.

Enacted by Chapter 448, 2023 General Session

77-11b-105 Training requirements.

- (1) As used in this section:
 - (a) "Council" means the Utah Prosecution Council created in Section 67-5a-1.
 - (b) "Division" means the Peace Officers Standards and Training Division created in Section 53-6-103.
- (2) To participate in the program, an agency shall have at least one employee who is certified by the division as an asset forfeiture specialist through the completion of an online asset forfeiture course by the division.
- (3) The division shall:
 - (a) develop an online asset forfeiture specialist course that is available to an agency for certification purposes;
 - (b) certify an employee of an agency who meets the course requirements to be an asset forfeiture specialist;
 - (c) recertify, every 36 months, an employee who is designated as an asset forfeiture specialist by an agency;
 - (d) submit annually a report to the commission no later than April 30 that contains a list of the names of the employees and agencies participating in the certification courses;
 - (e) review and update the asset forfeiture specialist course each year to comply with state and federal law; and
 - (f) provide asset forfeiture training to all peace officers in basic training programs.
- (4) To be reimbursed for costs under Subsection 77-11b-401(3)(b), a prosecuting agency shall have at least one employee who is certified by the council as an asset forfeiture specialist through the completion of an online asset forfeiture course.
- (5) The council shall:
 - (a) develop an online asset forfeiture specialist course that is available to a prosecuting agency for certification purposes;
 - (b) certify an employee of a prosecuting agency who meets the course requirements to be an asset forfeiture specialist;

- (c) submit annually a report to the commission no later than April 30 that contains a list of the names of the employees and prosecuting agencies participating in certification courses by the council; and
- (d) review and update the asset forfeiture specialist course each year to comply with state and federal law.

Renumbered and Amended by Chapter 448, 2023 General Session