

1                                   **FUNDS FOR YOUTH DRUG TREATMENT**

2   1998 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Loretta Baca**

5 AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; PROVIDING FOR 20% OF  
6 FORFEITED MONEYS IN DRUG CASES TO GO TO THE DIVISION OF SUBSTANCE  
7 ABUSE WITHIN THE DEPARTMENT OF HUMAN SERVICES FOR USE IN DRUG  
8 TREATMENT PROGRAMS FOR CHILDREN AND YOUTH.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11               **58-37-13**, as last amended by Chapters 198 and 294, Laws of Utah 1996

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

13               Section 1. Section **58-37-13** is amended to read:

14               **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

15               (1) As used in this section:

16               (a) "Complaint" means a verified civil in rem complaint seeking forfeiture or any criminal  
17 information or indictment which contains or is amended to include a demand for forfeiture of a  
18 defendant's in personam interest in any property which is subject to forfeiture.

19               (b) "Drug distributing paraphernalia" means any property used or designed to be used in  
20 the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is  
21 considered "designed to be used" for one or more of the above-listed purposes if the property has  
22 been altered or modified to include a feature or device which would actually promote or conceal  
23 a violation of this chapter.

24               (c) "Drug manufacturing equipment or supplies" includes any illegally possessed  
25 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies  
26 possessed with intent to engage in clandestine laboratory operation as defined in Section 58-37d-3.

27               (d) "Interest holder" means a secured party as defined in Section 70A-9-105(1)(m), a

1 mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an  
2 interest in property, whose interest would be perfected against a good faith purchaser for value.  
3 A person who holds property for the benefit of or as an agent or nominee for another, or who is  
4 not in substantial compliance with any statute requiring an interest in property to be recorded or  
5 reflected in public records in order to perfect the interest against a good faith purchaser for value,  
6 is not an interest holder.

7 (e) "Proceeds" means property acquired directly or indirectly from, produced through,  
8 realized through, or caused by an act or omission and includes any property of any kind without  
9 reduction for expenses incurred in the acquisition, maintenance, or production of that property, or  
10 any other purpose.

11 (f) "Resolution of criminal charges" occurs at the time a claimant who is also charged with  
12 violations under Title 58, Chapters 37, 37a, 37b, 37c, or 37d enters a plea, upon return of a jury  
13 verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

14 (g) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters 37, 37a,  
15 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation of the laws  
16 of the place where the conduct occurred and which would be a violation of Title 58, Chapters 37,  
17 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

18 (2) The following are subject to forfeiture and no property right exists in them:

19 (a) all controlled substances which have been manufactured, distributed, dispensed, or  
20 acquired in violation of this chapter;

21 (b) all raw materials, products, and equipment of any kind used, or intended for use, in  
22 manufacturing, compounding, processing, delivering, importing, or exporting any controlled  
23 substance in violation of this chapter;

24 (c) all property used or intended for use as a container for property described in  
25 Subsections (2)(a) and (2)(b);

26 (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used  
27 with health food supplements and herbs, used or intended for use to administer controlled  
28 substances in violation of this chapter;

29 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to  
30 transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or  
31 concealment of property described in Subsections (2)(a) and (2)(b), except that:

1 (i) a conveyance used by any person as a common carrier in the transaction of business as  
2 a common carrier may not be forfeited under this section unless the owner or other person in  
3 charge of the conveyance was a consenting party or knew or had reason to know of the violation  
4 of this chapter;

5 (ii) a conveyance may not be forfeited under this section by reason of any act or omission  
6 committed or omitted without the owner's knowledge or consent; and

7 (iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not  
8 know or have reason to know after the exercise of reasonable diligence that a violation would or  
9 did take place in the use of the conveyance;

10 (f) all books, records, and research, including formulas, microfilm, tapes, and data used  
11 or intended for use in violation of this chapter;

12 (g) everything of value furnished or intended to be furnished in exchange for a controlled  
13 substance in violation of this chapter, and all moneys, negotiable instruments, and securities used  
14 or intended to be used to facilitate any violation of this chapter. An interest in property may not  
15 be forfeited under this subsection unless it is proven by a preponderance of the evidence that the  
16 interest holder knew, had reason to know of, or consented to the conduct which made the property  
17 subject to forfeiture. The burden of presenting this evidence shall be upon the state;

18 (h) all imitation controlled substances as defined in Section 58-37b-2, Imitation Controlled  
19 Substances Act;

20 (i) all warehousing, housing, and storage facilities, or interest in real property of any kind  
21 used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or  
22 manufacturing any controlled substances in violation of this chapter, except that:

23 (i) any forfeiture of a housing, warehousing, or storage facility or interest in real property  
24 is subject to the claim of an interest holder who did not know or have reason to know after the  
25 exercise of reasonable diligence that a violation would take place on the property;

26 (ii) an interest in property may not be forfeited under this subsection if the interest holder  
27 did not know or have reason to know of the conduct which made the property subject to forfeiture,  
28 or did not willingly consent to the conduct; and

29 (iii) unless the premises are used in producing, cultivating, or manufacturing controlled  
30 substances, a housing, warehousing, or storage facility or interest in real property may not be  
31 forfeited under this subsection unless cumulative sales of controlled substances on the property

1 within a two-month period total or exceed \$1,000, or the street value of any controlled substances  
2 found on the premises at any given time totals or exceeds \$1,000. A narcotics officer experienced  
3 in controlled substances law enforcement may testify to establish the street value of the controlled  
4 substances for purposes of this subsection;

5 (j) any firearm, weapon, or ammunition carried or used during or in relation to a violation  
6 of this chapter or any firearm, weapon, or ammunition kept or located within the proximity of  
7 controlled substances or other property subject to forfeiture under this section; and

8 (k) all proceeds traceable to any violation of this chapter. There is a rebuttable  
9 presumption that all money, coins, and currency found in proximity to forfeitable controlled  
10 substances, drug manufacturing equipment or supplies, drug distributing paraphernalia, or  
11 forfeitable records of importation, manufacture, or distribution of controlled substances are  
12 proceeds traceable to a violation of this chapter. The burden of proof is upon the claimant of the  
13 property to rebut this presumption.

14 (3) (a) Property subject to forfeiture under this chapter may be seized by any peace officer  
15 of this state upon process issued by any court having jurisdiction over the property. However,  
16 seizure without process may be made when:

17 (i) the seizure is incident to an arrest or search under a search warrant or an inspection  
18 under an administrative inspection warrant;

19 (ii) the property subject to seizure has been the subject of a prior judgment in favor of the  
20 state in a criminal injunction or forfeiture proceeding under this chapter;

21 (iii) the peace officer has probable cause to believe that the property is directly or  
22 indirectly dangerous to health or safety; or

23 (iv) the peace officer has probable cause to believe that the property has been used or  
24 intended to be used in violation of this chapter and has probable cause to believe the property will  
25 be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state.

26 (b) Upon the filing of a complaint, the court shall immediately issue to the seizing agency  
27 a warrant for seizure of any property subject to forfeiture which had been seized without a warrant  
28 in a manner described in this subsection.

29 (4) In the event of seizure under Subsection (3), forfeiture proceedings under Subsection  
30 (9) shall be instituted within 90 days of the seizure. The time period may be extended by the court  
31 having jurisdiction over the property upon notice to all claimants and interest holders and for good

1 cause shown.

2 (5) Property taken or detained under this section is not repleviable but is in custody of the  
3 law enforcement agency making the seizure, subject only to the orders and decrees of the court or  
4 the official having jurisdiction. When property is seized under this chapter, the appropriate person  
5 or agency may:

6 (a) place the property under seal;

7 (b) remove the property to a place designated by it or the warrant under which it was  
8 seized; or

9 (c) take custody of the property and remove it to an appropriate location for disposition  
10 in accordance with law.

11 (6) All substances listed in Schedule I that are possessed, transferred, distributed, or  
12 offered for distribution in violation of this chapter are contraband and no property right shall exist  
13 in them. All substances listed in Schedule I which are seized or come into the possession of the  
14 state may be retained for any evidentiary or investigative purpose, including sampling or other  
15 preservation prior to disposal or destruction by the state.

16 (7) All marijuana or any species of plants from which controlled substances in Schedules  
17 I and II are derived which have been planted or cultivated in violation of this chapter, or of which  
18 the owners or cultivators are unknown, or are wild growths, may be seized and retained for any  
19 evidentiary or investigative purpose, including sampling or other preservation prior to disposal or  
20 destruction by the state. Failure, upon demand by the department or its authorized agent, of any  
21 person in occupancy or in control of land or premises upon which species of plants are growing  
22 or being stored, to produce an appropriate license or proof that he is the holder of a license, is  
23 authority for the seizure and forfeiture of the plants.

24 (8) When any property is forfeited under this chapter by a finding of the court that no  
25 person is entitled to recover the property, it shall be deposited in the custody of the Division of  
26 Finance. Disposition of all property is as follows:

27 (a) Twenty percent of all money, currency, or proceeds from the sale of forfeited property  
28 shall be deposited with the Division of Substance Abuse within the Department of Human Services  
29 to be used to provide drug treatment programs for children and youth.

30 (b) The remainder of all money, currency, or proceeds from the sale of forfeited property  
31 and any property not converted into money or currency, shall be disposed of as follows:

1           (i) The state may include in its complaint seeking forfeiture, a request that the seizing  
2 agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited  
3 property in the enforcement of controlled substances laws, the court having jurisdiction over the  
4 case shall award the property to the seizing agency. Each agency shall use the forfeited property  
5 for controlled substance law enforcement purposes only. Forfeited property or proceeds from the  
6 sale of forfeited property may not be used to pay any cash incentive, award, or bonus to any peace  
7 officer or individual acting as an agent for the agency, nor may it be used to supplant any ordinary  
8 operating expense of the agency. The seizing agency shall pay to the prosecuting agency the legal  
9 costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section  
10 may not be applied by the court to costs or fines assessed against any defendant in the case.

11           [(b)] (ii) The seizing agency, or if it makes no application, any state agency, bureau,  
12 county, or municipality, which demonstrates a need for specific property or classes of property  
13 subject to forfeiture shall be given the property for use in enforcement of controlled substances  
14 laws upon the payment of costs to the county attorney or, if within a prosecution district, the  
15 district attorney for legal costs for filing and pursuing the forfeiture and upon application for the  
16 property to the director of the Division of Finance. The application shall clearly set forth the need  
17 for the property and the use to which the property will be put.

18           [(c)] (iii) The director of the Division of Finance shall review all applications for property  
19 submitted under Subsection (8)(b)(ii) and, if the seizing agency makes no application, make a  
20 determination based on necessity and advisability as to final disposition and shall notify the  
21 designated applicant or seizing agency, where no application is made, who may obtain the property  
22 upon payment of all costs to the appropriate department. The Division of Finance shall in turn  
23 reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action,  
24 not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds  
25 remaining after payment shall be returned to the seizing agency or agencies.

26           [(d)] (iv) If no disposition is made upon an application under Subsection (8)[(a)](b)(i) or  
27 [(b)](ii), the director of the Division of Finance shall dispose of the property by public bidding or  
28 as considered appropriate, by destruction. Proof of destruction shall be upon oath of two officers  
29 or employees of the department having charge of the property, and verified by the director of the  
30 department or his designated agent.

31           (9) Forfeiture proceedings shall be commenced as follows:

1 (a) For actions brought under Subsections (2)(a) through (2)(j), a complaint shall be  
2 prepared by the county attorney, or if within a prosecution district, the district attorney, or the  
3 attorney general, and filed in a court of record where the property was seized or is to be seized. In  
4 cases in which the claimant of the property is also charged as a criminal defendant, the complaint  
5 shall be filed in the county where the criminal charges arose, regardless of the location of the  
6 property. The complaint shall include:

7 (i) a description of the property which is subject to forfeiture;

8 (ii) the date and place of seizure, if known; and

9 (iii) the allegations of conduct which gives rise to forfeiture.

10 (b) In cases where a claimant is also charged as a criminal defendant, the forfeiture shall  
11 proceed as part of the criminal prosecution as an in personam action against the defendant's  
12 interest in the property subject to forfeiture. A defendant need not file a written answer to the  
13 complaint, but may acknowledge or deny interest in the property at the time of first appearance  
14 on the criminal charges. If a criminal information or indictment is amended to include a demand  
15 for forfeiture, the defendant may respond to the demand at the time of the amendment.

16 (i) Unless motion for disposition is made by the defendant, the determination of forfeiture  
17 shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall be before  
18 the court without a jury. The court may consider any evidence presented in the criminal case, and  
19 receive any other evidence offered by the state or the defendant. The court shall determine by a  
20 preponderance of the evidence the issues in the case and order forfeiture or release of the property  
21 as it determines.

22 (ii) A defendant may move the court to transfer the forfeiture action, to stay all action,  
23 including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial of the  
24 criminal charges. Either party may move the court to enter a finding of forfeiture as to defendant's  
25 interest in part or all of the property, either by default or by stipulation. Upon entry of a finding,  
26 the court shall stay the entry of judgment until resolution of the criminal charges. Any finding of  
27 forfeiture entered by the court prior to resolution of the criminal charges may not constitute a  
28 separate judgment, and any motion for disposition, stay, severance, or transfer of the forfeiture  
29 action may not create a separate proceeding. Upon the granting of a motion by the defendant for  
30 disposition, stay, severance, or transfer of the forfeiture action, the defendant shall be considered  
31 to have waived any claim that the defendant has been twice put in jeopardy for the same offense.

1 (iii) Any other person claiming an interest in property subject to forfeiture under this  
2 subsection may not intervene in a trial or appeal of a complaint filed under this subsection.  
3 Following the entry of an in personam forfeiture order, or upon the filing of a petition for release  
4 under Subsection (9)(e), the county attorney, district attorney, or attorney general may proceed  
5 with a separate in rem action to resolve any other claims upon the property subject to forfeiture.

6 (c) A complaint seeking forfeiture under Subsection (2)(k) shall be prepared by the county  
7 attorney, or if within a prosecution district, the district attorney, or by the attorney general, either  
8 in personam as part of a criminal prosecution, or in a separate civil in rem action against the  
9 property alleged to be proceeds, and filed in the county where the property is seized or  
10 encumbered, if the proceeds are located outside the state. A finding that property is the proceeds  
11 of a violation of this chapter does not require proof that the property is the proceeds of any  
12 particular exchange or transaction. Proof that property is proceeds may be shown by evidence  
13 which establishes all of the following by a preponderance of the evidence:

14 (i) that the person has engaged in conduct in violation of this chapter;

15 (ii) that the property was acquired by the person during that period when the conduct in  
16 violation of this chapter occurred or within a reasonable time after that period; and

17 (iii) that there was no likely source for the property other than conduct in violation of the  
18 chapter.

19 (d) Notice of the seizure and intended forfeiture shall be filed with the clerk of the court,  
20 and served upon all persons known to the county attorney or district attorney to have a claim in  
21 the property by:

22 (i) personal service upon a claimant who is charged in a criminal information or  
23 indictment; and

24 (ii) certified mail to each claimant whose name and address is known or to each owner  
25 whose right, title, or interest is of record in the Division of Motor Vehicles to the address given  
26 upon the records of the division, which service is considered complete even though the mail is  
27 refused or cannot be forwarded. The county attorney, district attorney, or attorney general shall  
28 make one publication in a newspaper of general circulation in the county where the seizure was  
29 made for all other claimants whose addresses are unknown, but who are believed to have an  
30 interest in the property.

31 (e) Except under Subsection (9)(a) in personam actions, any claimant or interest holder



1 shall file with the court a verified answer to the complaint within 20 days after service. When  
2 property is seized under this chapter, any interest holder or claimant of the property, prior to being  
3 served with a complaint under this section, may file a petition in the court having jurisdiction for  
4 release of his interest in the property. The petition shall specify the claimant's interest in the  
5 property and his right to have it released. A copy shall be served upon the county attorney or, if  
6 within a prosecution district, the district attorney in the county of the seizure, who shall answer  
7 the petition within 20 days. A petitioner need not answer a complaint of forfeiture.

8 (f) For civil actions in rem, after 20 days following service of a complaint or petition for  
9 release, the court shall examine the record and if no answer is on file, the court shall allow the  
10 complainant or petitioner an opportunity to present evidence in support of his claim and order  
11 forfeiture or release of the property as the court determines. If the county attorney or district  
12 attorney has not filed an answer to a petition for release and the court determines from the evidence  
13 that the petitioner is not entitled to recovery of the property, it shall enter an order directing the  
14 county attorney or district attorney to answer the petition within ten days. If no answer is filed  
15 within that period, the court shall order the release of the property to the petitioner entitled to  
16 receive it.

17 (g) When an answer to a complaint or petition appears of record at the end of 20 days, the  
18 court shall set the matter for hearing. At this hearing all interested parties may present evidence  
19 of their rights of release of the property following the state's evidence for forfeiture. The court  
20 shall determine by a preponderance of the evidence the issues in the case and order forfeiture or  
21 release of the property as it determines.

22 (h) When the court determines that claimants have no right in the property in whole or in  
23 part, it shall declare the property to be forfeited.

24 (i) When the court determines that property, in whole or in part, is not subject to forfeiture,  
25 it shall order release of the property to the proper claimant. If the court determines that the  
26 property is subject to forfeiture and release in part, it shall order partial release and partial  
27 forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall  
28 order it sold and the proceeds distributed:

29 (i) first, proportionally among the legitimate claimants;

30 (ii) second, to defray the costs of the action, including seizure, storage of the property,  
31 legal costs of filing and pursuing the forfeiture, and costs of sale; and

- 1           (iii) third, to the Division of Finance for the General Fund.
- 2           (j) In a proceeding under this section where forfeiture is declared, in whole or in part, the
- 3 court shall assess all costs of the forfeiture proceeding, including seizure and storage of the
- 4 property, against the individual or individuals whose conduct was the basis of the forfeiture, and
- 5 may assess costs against any other claimant or claimants to the property as appropriate.

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**Legislative Review Note**  
**as of 1-13-98 7:22 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**