

Representative Bill Wright proposes to substitute the following bill:

ASSET FORFEITURE REVISIONS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

John E. Swallow

AN ACT RELATING TO CRIMINAL LAW AND PROCEDURE; AMENDING FORFEITURE PROCESS UNDER THE CONTROLLED SUBSTANCES LAW, INCLUDING CHANGING CERTAIN BURDENS OF PROOF AND AMENDING PROCEDURES FOR CONTROL OF FORFEITED PROPERTY.

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

AMENDS:

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

58-37-15, as enacted by Chapter 145, Laws of Utah 1971

58-37-20, as last amended by Chapter 36, Laws of Utah 1996

ENACTS:

58-37-1.5, Utah Code Annotated 1953

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

Section 1. Section **58-37-1.5** is enacted to read:

58-37-1.5. Purpose.

It is the intent of this chapter to:

(1) discourage the illegal use of controlled substances by restricting availability, licensing, labeling, and packaging of controlled substances and the equipment used solely for the illegal manufacturing controlled substances;

(2) recognize the need to prohibit and curtail illegal use of controlled substances while acknowledging that property rights of innocent property owners must be protected; and

26 (3) limit law enforcement entities' seizures and forfeitures to the extent necessary to protect
27 private citizens from unjustified intrusions, and ensure direct legislative control and accountability
28 over the use of forfeited property and revenue acquired from the disposal of forfeited property.

29 Section 2. Section **58-37-13** is amended to read:

30 **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

31 (1) As used in this section:

32 (a) "CCJJ" means the Commission on Criminal and Juvenile Justice created under Section
33 63-25a-101.

34 (b) "Claimant" means:

35 (i) any owner as defined in this section;

36 (ii) any interest holder as defined in this section, and any other person or entity who asserts
37 a claim to any property seized for forfeiture under this section;

38 (iii) any person who files an answer to a forfeiture complaint in a proceeding instituted
39 under this section; or

40 (iv) any person who files a petition for release of seized property under this section.

41 ~~[(a)]~~ (c) "Complaint" means a verified civil in rem complaint seeking forfeiture or any
42 criminal information or indictment which contains or is amended to include a demand for
43 forfeiture of a defendant's in personam interest in any property which is subject to forfeiture.

44 (d) "Controlled substance law enforcement purposes" means:

45 (i) any law enforcement agency action directed toward reduction in the illegal production,
46 distribution, or use of controlled substances; or

47 (ii) any controlled substance abuse education, prevention, or treatment program sponsored
48 in whole or in part by the seizing agency or the legislative body.

49 ~~[(b)]~~ (e) "Drug distributing paraphernalia" means any property used or designed to be used
50 in the illegal transportation, storage, shipping, or circulation of a controlled substance. Property
51 is considered "designed to be used" for one or more of the above-listed purposes if the property
52 has been altered or modified to include a feature or device which would actually promote or
53 conceal a violation of this chapter.

54 ~~[(c)]~~ (f) "Drug manufacturing equipment or supplies" includes any illegally possessed
55 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies
56 possessed with intent to engage in clandestine laboratory operation as defined in Section 58-37d-3.

57 ~~[(d)]~~ (g) "Interest holder" means a secured party as defined in Section 70A-9-105(1)(m),
58 a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to
59 an interest in property, whose interest would be perfected against a good faith purchaser for value.
60 A person who holds property for the benefit of or as an agent or nominee for another, or who is
61 not in substantial compliance with any statute requiring an interest in property to be recorded or
62 reflected in public records in order to perfect the interest against a good faith purchaser for value,
63 is not an interest holder.

64 (h) "Legal costs" means the costs incurred by the prosecuting agency and reasonable
65 attorney fees not to exceed 20% of the value of the forfeited property.

66 (i) "Legislative body" means:

67 (i) a county commission or county council, a city commission, city council, or town
68 council that has fiscal oversight of the seizing agency; and

69 (ii) the lead governmental entity of a multijurisdictional task force, as designated in the
70 memorandum of understanding among the agencies participating in the task force.

71 (j) "Multijurisdictional task force" means any law enforcement entity:

72 (i) authorized to enforce this chapter; and

73 (ii) that has a jurisdiction that crosses municipal, county, or state boundaries.

74 (k) (i) "Owner" means an individual or entity who holds a legitimate legal or equitable
75 ownership in real or personal property.

76 (ii) "Owner" does not include an individual or entity who holds property as the nominee
77 or nominal owner for another if that nominee or nominal owner has no legitimate interest in the
78 property.

79 ~~[(e)]~~ (l) "Proceeds" means property acquired directly or indirectly from, produced through,
80 realized through, or caused by an act or omission and includes any property of any kind without
81 reduction for expenses incurred in the acquisition, maintenance, or production of that property, or
82 any other purpose.

83 (m) "Prosecuting agency" means:

84 (i) a county attorney;

85 (ii) the district attorney if the prosecution is taking place within a prosecution district; or

86 (iii) the state attorney general.

87 (n) "Real property" means:

88 (i) land; and
89 (ii) any building, fixture, improvement, appurtenance, structure, or other development that
90 is affixed permanently to land.

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

94 (p) "Seizing agency" means any of the following entities that are authorized to enforce this
95 chapter:

96 (i) any municipal, county, or state law enforcement agency or unit; and

97 (ii) any entity comprised of law enforcement officers from more than one state or federal
98 law enforcement entity, including multijurisdictional task forces.

99 ~~[(g)]~~ (q) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters
100 37, 37a, 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation
101 of the laws of the place where the conduct occurred and which would be a violation of Title 58,
102 Chapters 37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

103 (2) The following are ~~[subject to forfeiture]~~ contraband, are summarily forfeited upon
104 seizure, and no property right exists in them:

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

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

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

112 (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used
113 with health food supplements and herbs, used or intended for use to administer controlled
114 substances in violation of this chapter[;].

115 (3) The following are subject to forfeiture, but property rights exist in them as provided
116 in this section regarding innocent owners and interest holders:

117 ~~[(e)]~~ (a) all conveyances, including aircraft, vehicles, or vessels used or intended for use[;]
118 to transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or

119 concealment of property described in Subsections (2)(a) and (2)(b), except that:

120 (i) a conveyance used by any person as a common carrier in the transaction of business as
 121 a common carrier may not be forfeited under this section unless the owner or other person in
 122 charge of the conveyance was a consenting party or knew ~~[or had reason to know]~~ of or
 123 participated in the violation of this chapter;

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

126 (iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not
 127 know ~~[or have reason to know]~~ after the exercise of reasonable diligence that a violation would
 128 or did take place in the use of the conveyance, or consent to or participate in the violation;

129 ~~[(f)]~~ (b) all books, records, and research, including formulas, microfilm, tapes, and data
 130 used or intended for use in violation of this chapter;

131 ~~[(g)]~~ (c) (i) everything of value furnished or intended to be furnished, by the owner of the
 132 thing of value, or with the owner's knowledge or consent, in exchange for a controlled substance
 133 in violation of this chapter, and all moneys, negotiable instruments, and securities used ~~[or~~
 134 ~~intended to be used]~~ by the owner of these items, or with the owner's knowledge or consent, to
 135 facilitate any violation of this chapter~~[- An], but an~~ interest in property may not be forfeited under
 136 this Subsection (3)(c)(i) unless it is proven by a preponderance of the evidence that the property
 137 owner or interest holder knew~~[-had reason to know]~~ of, participated in, or consented to the
 138 conduct which made the property subject to forfeiture~~[- The]; and~~

139 (ii) the burden of presenting this ~~[evidence shall be]~~ proof is upon the state;

140 ~~[(h)]~~ (d) all imitation controlled substances as defined in Section 58-37b-2, Imitation
 141 Controlled Substances Act;

142 ~~[(i)]~~ (e) all warehousing, housing, and storage facilities, or interest in real property of any
 143 kind used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or
 144 manufacturing any controlled substances in violation of this chapter, except that:

145 (i) a court may not grant or order any forfeiture of a housing, warehousing, or storage
 146 facility or interest in real property ~~[is subject to the claim of an interest holder who did not know~~
 147 ~~or have reason to know after the exercise of reasonable diligence that]~~ unless the state proves that
 148 the owner or any interest holder knew, or consented to, or participated in a violation ~~[would]~~ of
 149 this chapter that would or did take place on the property; and

150 (ii) an interest in real property may not be forfeited under this Subsection ~~(3)(e)(ii)~~ if the
151 owner or interest holder did not know ~~[or have reason to know]~~ of or participate in the conduct
152 which made the property subject to forfeiture, or did not willingly consent to the conduct; ~~[and]~~

153 ~~[(iii) unless the premises are used in producing, cultivating, or manufacturing controlled~~
154 ~~substances, a housing, warehousing, or storage facility or interest in real property may not be~~
155 ~~forfeited under this subsection unless cumulative sales of controlled substances on the property~~
156 ~~within a two-month period total or exceed \$1,000, or the street value of any controlled substances~~
157 ~~found on the premises at any given time totals or exceeds \$1,000. A narcotics officer experienced~~
158 ~~in controlled substances law enforcement may testify to establish the street value of the controlled~~
159 ~~substances for purposes of this subsection;]~~

160 ~~[(j)]~~ (f) any firearm, weapon, or ammunition carried or used during or in relation to a
161 violation of this chapter or any firearm, weapon, or ammunition kept or located within the
162 proximity of controlled substances or other property subject to forfeiture under this section but
163 only if the owner of the firearm, weapon, or ammunition, or another person acting with the consent
164 and knowledge of the owner, used the weapon, firearm, or ammunition, or intended that the
165 weapon, firearm, or ammunition be used in a manner that would subject it to forfeiture under this
166 Subsection (3)(f); and

167 ~~[(k)]~~ (g) all proceeds traceable to any violation of this chapter~~[- There is a rebuttable~~
168 ~~presumption that all],~~ but the burden of proof is upon the prosecuting agency to establish that the
169 proceeds are traceable to a violation of this chapter; the discovery of money, coins, and currency
170 found in proximity to forfeitable controlled substances, drug manufacturing equipment or supplies,
171 drug distributing paraphernalia, or forfeitable records of importation, manufacture, or distribution
172 of controlled substances is evidence that the money, coins, and currency are proceeds traceable to
173 a violation of this chapter. [The burden of proof is upon the claimant of the property to rebut this
174 presumption.]

175 ~~[(3)]~~ (4) (a) Property subject to forfeiture under this chapter may be seized by any peace
176 officer of this state upon process issued by any court having jurisdiction over the property.
177 However, seizure without process may be made when:

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

180 (ii) the property subject to seizure has been the subject of a prior judgment in favor of the

181 state in a criminal injunction or forfeiture proceeding under this chapter;

182 (iii) the peace officer has probable cause to believe that the property is directly or indirectly
183 dangerous to health or safety; [~~or~~]

184 (iv) the peace officer has probable cause to believe that the property has been used or
185 intended to be used in violation of this chapter and has probable cause to believe the property will
186 be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state[-];

187 or

188 (v) if the property subject to forfeiture is a conveyance under Subsection (4)(a), the law
189 enforcement officer may seize the property based solely upon probable cause to believe:

190 (A) the conveyance has been used in violation of this chapter; and

191 (B) the property is readily mobile and located in an area open to the public at the time of
192 the seizure.

193 (b) (i) [~~Upon the filing of a complaint, the~~] The agency responsible for the seizure of the
194 property without process shall apply for a search warrant to the court having jurisdiction.

195 (ii) The application shall be made within 30 days of the seizure and shall contain a
196 statement of the cause justifying the seizure.

197 (iii) The court, upon a showing of probable cause to believe the seized property is subject
198 to forfeiture under this section, shall immediately issue to the seizing agency a warrant for seizure
199 of any property subject to forfeiture which had been seized without a warrant in a manner
200 described in this Subsection (4).

201 (iv) This Subsection (4) does not apply to property seized regarding which a search warrant
202 or seizure warrant was issued prior to the seizure of the property.

203 (v) Property listed in Subsection (3)(e) may not be seized without:

204 (A) notice to all owners and interest holders; and

205 (B) a hearing being held prior to a seizure warrant being issued.

206 [~~(4)~~] (5) In the event of seizure under Subsection [(3)] (4), forfeiture proceedings under
207 Subsection [(9)] (10) shall be instituted within 90 days of the seizure. The time period may be
208 extended by the court having jurisdiction over the property upon notice to all claimants, owners,
209 and interest holders and for good cause shown.

210 [~~(5)~~] (6) (a) Property taken or detained under this section is not repleviable but is in
211 custody of the law enforcement agency making the seizure, subject only to the orders and decrees

212 of the court or the official having jurisdiction. When property is seized under this chapter, the
213 appropriate person or agency ~~may~~ shall:

214 ~~[(a)]~~ (i) place the property under seal;

215 ~~[(b)]~~ (ii) remove the property to a place designated by it or the warrant under which it was
216 seized; or

217 ~~[(c)]~~ (iii) take custody of the property and remove it to an appropriate location for
218 disposition in accordance with law.

219 (b) (i) The seizing agency is responsible for the management and safekeeping of any
220 property seized under this chapter, from the time of seizure until an order of forfeiture is entered
221 or the property is ordered to be returned to a claimant or interest holder.

222 (ii) The seizing agency shall deposit property in the form of cash or other readily
223 negotiable instruments into a restricted account maintained by the agency solely for the purpose
224 of managing and protecting the property from commingling, loss, or devaluation during the
225 pendency of the forfeiture action.

226 (iii) (A) The seizing agency shall have in place written rules and protocol for the
227 identification, tracking, management, and safekeeping of seized property. These rules shall include
228 a prohibition against the sale or personal use of forfeited property by any employee of the seizing
229 agency.

230 (B) If the seizing agency has not established rules in compliance with this Subsection
231 (6)(b)(iii), the agency may not be awarded forfeited property under Subsection (10).

232 ~~[(6)]~~ (7) (a) All substances listed in ~~[Schedule]~~ Schedules I through V, and all items listed
233 in Subsections (2) and (3)(a), (b), and (d) that are possessed, transferred, distributed, or offered for
234 distribution in violation of this chapter are contraband, are summarily forfeited, and no property
235 right ~~[shall exist]~~ exists in them.

236 (b) All substances listed in Schedule I which are seized or come into the possession of the
237 state may be retained for any evidentiary or investigative purpose, including sampling or other
238 preservation prior to disposal or destruction by the state.

239 ~~[(7)]~~ (8) (a) All marijuana or any species of plants from which controlled substances in
240 Schedules I and II are derived which have been planted or cultivated in violation of this chapter,
241 or of which the owners or cultivators are unknown, or are wild growths, may be seized and
242 retained for any evidentiary or investigative purpose, including sampling or other preservation

243 prior to disposal or destruction by the state.

244 (b) Failure, upon demand by the department or its authorized agent, of any person in
245 occupancy or in control of land or premises upon which species of plants are growing or being
246 stored, to produce an appropriate license or proof that he is the holder of a license, is authority for
247 the seizure and forfeiture of the plants.

248 ~~[(8)] (9)~~ When any property is forfeited under this chapter ~~[by a finding of the court that~~
249 ~~no person is entitled to recover the property, it shall be deposited in the custody of the Division of~~
250 ~~Finance. Disposition of all]~~, the property ~~[is]~~ shall be disposed of, managed, and used as follows:

251 (a) (i) ~~The [state may include] prosecuting agency may in its complaint seeking forfeiture[;~~
252 ~~a]~~ request that the seizing agency be awarded the property. The request shall include a statement
253 demonstrating to the court that the agency has established rules and protocol for managing seized
254 property, in accordance with Subsection (6)(b)(iii).

255 (ii) Upon a finding that the seizing agency ~~[is able to use the forfeited property in the~~
256 ~~enforcement of controlled substances laws]~~ meets the requirements of Subsection (9)(a)(i), the
257 court having jurisdiction over the case shall award the property to the seizing agency. [Each
258 agency shall use the forfeited property for controlled substance law enforcement purposes only.]

259 (iii) Property forfeited under this section may not be applied by the court to costs or fines
260 assessed against any defendant in the case.

261 (iv) The court shall direct that all forfeited property which is not awarded under Subsection
262 (9)(a)(ii) or is not returned to a claimant, owner, or interest holder be disposed of, and the proceeds
263 deposited in the State Drug Forfeiture Account established in Section 58-37-20.

264 (b) (i) The legislative body shall ensure that the prosecuting agency is reimbursed for the
265 legal costs of filing and pursuing the forfeiture from forfeited property and proceeds of the sale of
266 forfeited property, but only to the extent that the monies and property cover these costs.

267 (ii) The balance of forfeited property and proceeds remaining after reimbursement under
268 Subsection (9)(b)(i), may be used for purposes listed under Subsection (9)(b)(iii), and shall be used
269 only in amounts approved by the legislative body.

270 (iii) (A) Forfeited property or proceeds ~~h~~ [should] shall ~~h~~ be used for controlled substance
270a law
271 enforcement purposes.

272 (B) In allocating forfeited property or proceeds, the legislative body ~~h~~ [should] shall ~~h~~
272a allocate the

273 forfeited property or proceeds for controlled substance law enforcement purposes, upon a finding

274 by the legislative body that the allocation results in the most effective use of the property, taking
275 into consideration the seizing agency's controlled substances law enforcement budget and the
276 economic impact of controlled substance violations in the community.

277 (C) If the legislative body of a multijurisdictional task force chooses to apply the funds to
278 substance abuse programs, the funds must equally benefit all participating agencies.

279 (iv) Forfeited property or proceeds from the sale of forfeited property may not be used to
280 pay any cash incentive, award, or bonus to any peace officer or individual acting as an agent for
281 the agency, nor may it be used to supplant any ordinary operating expense of ~~[the]~~ a law
282 enforcement agency. ~~[The seizing agency shall pay to the prosecuting agency the legal costs~~
283 ~~incurred in filing and pursuing the forfeiture action. Property forfeited under this section may not~~
284 ~~be applied by the court to costs or fines assessed against any defendant in the case.]~~

285 ~~[(b) The seizing agency, or if it makes no application, any state agency, bureau, county,~~
286 ~~or municipality, which demonstrates a need for specific property or classes of property subject to~~
287 ~~forfeiture shall be given the property for use in enforcement of controlled substances laws upon~~
288 ~~the payment of costs to the county attorney or, if within a prosecution district, the district attorney~~
289 ~~for legal costs for filing and pursuing the forfeiture and upon application for the property to the~~
290 ~~director of the Division of Finance. The application shall clearly set forth the need for the property~~
291 ~~and the use to which the property will be put.]~~

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

300 ~~[(d) If no disposition is made upon an application under Subsection (8)(a) or (b), the~~
301 ~~director of the Division of Finance shall dispose of the property by public bidding or as considered~~
302 ~~appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees~~
303 ~~of the department having charge of the property, and verified by the director of the department or~~
304 ~~his designated agent.]~~

305 (c) (i) The agency to which forfeited property and proceeds are awarded by the court, by
 306 the federal government, or by any other entity shall:

307 (A) maintain the property and proceeds in accordance with this Subsection (9)(c); and

308 (B) file an annual report with CCJJ that provides a complete accounting of the deposits
 309 and expenditures from the restricted account and the disposition of all forfeited property that is
 310 allocated without being sold.

311 (ii) The seizing agency shall place all forfeited monies in a restricted account. Monies in
 312 the account ~~h~~ ~~[may]~~ shall ~~h~~ be used in accordance with Subsection (9)(b). Forfeited property may
 312a be sold,

313 and the proceeds deposited in the restricted account, or the forfeited property may be allocated
 314 directly to the seizing agency, upon a finding by the legislative body that the allocation results in
 315 the most effective use of the property in accordance with Subsection (9)(b).

316 (iii) All allocations of forfeited property or proceeds by the legislative body are subject to
 317 Subsection (9)(b), and may be used for matching grants to be used in controlled substance law
 318 enforcement.

319 (d) The legislative body shall allocate the money for the purposes under Subsection
 320 (9)(b)(ii) within three years of receipt of the money, or at the end of the three years shall deposit
 321 the remaining money in the State Drug Forfeiture Account established in Section 58-37-20.

322 ~~[(9)]~~ (10) Forfeiture proceedings shall be commenced as follows:

323 (a) For actions brought under ~~[Subsections (2)(a) through (2)(j)]~~ Subsection (3)(a), (c), (e),
 324 or (f), a complaint shall be prepared by the ~~[county attorney, or if within a prosecution district, the~~
 325 ~~district attorney, or the attorney general]~~ prosecuting agency, and filed in a court of record where
 326 the property was seized or is to be seized. In cases in which the claimant of the property is also
 327 charged as a criminal defendant, the complaint shall be filed in the county where the criminal
 328 charges arose, regardless of the location of the property. The complaint shall include:

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

330 (ii) the date and place of seizure~~[-, if known]~~; and

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

332 (b) (i) In cases brought under Subsection (3)(a), (c), (e), or (f) where the owner or a
 333 claimant is also charged as a criminal defendant, the forfeiture shall proceed as part of the criminal
 334 prosecution as an in personam action against the defendant's interest in the property subject to
 335 forfeiture. A defendant need not file a written answer to the complaint, but may acknowledge or

336 deny interest in the property at the time of first appearance on the criminal charges. If a criminal
337 information or indictment is amended to include a demand for forfeiture, the defendant may
338 respond to the demand at the time of the amendment.

339 ~~[(i)]~~ (ii) Unless motion for disposition is made by the defendant, the determination of
340 forfeiture shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall
341 be before the court without a jury. The court may consider any evidence presented in the criminal
342 case, and receive any other evidence offered by the state or the defendant. The court shall
343 determine by a preponderance of the evidence the issues in the case and order forfeiture or release
344 of the property as it determines.

345 ~~[(ii)]~~ (iii) A defendant may move the court to transfer the forfeiture action, to stay all
346 action, including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial
347 of the criminal charges. Either party may move the court to enter a finding of forfeiture as to
348 defendant's interest in part or all of the property, either by default or by stipulation. ~~[Upon entry~~
349 ~~of a finding, the court shall stay the entry of judgment until resolution of the criminal charges. Any~~
350 ~~finding of forfeiture entered by the court prior to resolution of the criminal charges may not~~
351 ~~constitute a separate judgment, and any motion for disposition, stay, severance, or transfer of the~~
352 ~~forfeiture action may not create a separate proceeding. Upon the granting of a motion by the~~
353 ~~defendant for disposition, stay, severance, or transfer of the forfeiture action, the defendant shall~~
354 ~~be considered to have waived any claim that the defendant has been twice put in jeopardy for the~~
355 ~~same offense.]~~

356 ~~[(iii)]~~ (iv) Any other person claiming an interest in property subject to forfeiture under this
357 subsection may not intervene in a trial or appeal of a complaint filed under this subsection.
358 Following the entry of an in personam forfeiture order, or upon the filing of a petition for release
359 under Subsection (10)(e), the county attorney, district attorney, or attorney general may proceed
360 with a separate in rem action to resolve any other claims upon the property subject to forfeiture.

361 (c) ~~[A complaint]~~ In actions seeking forfeiture under Subsection ~~[(2)(k)]~~ (3)(g), a
362 complaint shall be prepared by the ~~[county attorney, or if within a prosecution district, the district~~
363 ~~attorney, or by the attorney general]~~ prosecuting agency, either in personam as part of a criminal
364 prosecution, or in a separate civil in rem action against the property alleged to be proceeds~~[-and]~~
365 obtained in violation of this chapter. The complaint shall be filed in the county where the property
366 is seized or encumbered, if the proceeds are located outside the state. A finding that property is

367 the proceeds of a violation of this chapter does not require proof that the property is the proceeds
368 of any particular exchange or transaction. Proof that property is proceeds may be shown by
369 evidence which establishes all of the following by a preponderance of the evidence:

370 (i) that the owner, if any claim of ownership is made, and the person [has] from whom the
371 property was seized have engaged in conduct in violation of this chapter;

372 (ii) that the property was acquired by the owner, if any claim of ownership is made, and
373 the person from whom the property was seized during that period when the conduct in violation
374 of this chapter occurred or within a reasonable time after that period; and

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

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

380 (i) personal service upon [~~a~~] any owner or claimant [who is charged in a criminal
381 information or indictment] in all in personam forfeiture actions, and upon all owners of real
382 property subject to forfeiture in all cases, whether in personam or in rem; [and]

383 (ii) certified mail to each owner, interest holder, or claimant, in an in rem forfeiture
384 proceeding not affecting real property, whose name and address is known or to each owner whose
385 right, title, or interest is of record in the Division of Motor Vehicles to the address given upon the
386 records of the division, which service is considered complete upon mailing even though the mail
387 is refused or cannot be forwarded[-]; and

388 (iii) [~~The county attorney, district attorney, or attorney general shall make~~] one
389 publication, made by the prosecuting agency, in a newspaper of general circulation in the county
390 where the seizure was made for all other claimants whose addresses are unknown, but who are
391 believed to have an interest in the property.

392 (e) Except under Subsection [~~(9)~~] (10)(a) in personam actions, any claimant or interest
393 holder shall file with the court a verified answer to the complaint within 20 days after service.
394 When property is seized under this chapter, any interest holder or claimant of the property, prior
395 to being served with a complaint under this section, may file a petition in the court having
396 jurisdiction for release of his interest in the property. The petition shall specify the claimant's
397 interest in the property and his right to have it released. A copy shall be served upon the [county

398 attorney or, if within a prosecution district, the district attorney] prosecuting agency in the county
399 of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a
400 complaint of forfeiture.

401 (f) (i) For civil actions in rem, after 20 days following service of a complaint or petition
402 for release, the court shall examine the record and if no answer is on file, the court shall allow the
403 complainant or petitioner an opportunity to present evidence in support of his claim and order
404 forfeiture or release of the property as the court determines.

405 (ii) If the [~~county attorney or district attorney~~] prosecuting agency has not filed an answer
406 to a petition for release and the court determines from the evidence presented to the court by the
407 petitioner that the petitioner is not entitled to recovery of the property, it shall enter an order
408 directing the county attorney or district attorney to answer the petition within ten days. If no
409 answer is filed within that period, the court shall order the release of the property to the petitioner
410 entitled to receive it.

411 (g) When an answer to a complaint or petition appears of record at the end of 20 days, the
412 court shall set the matter for hearing. At this hearing all [~~interested parties~~] claimants, owners, and
413 interest holders may present evidence of their rights of release of the property following the state's
414 evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues
415 in the case and order forfeiture or release of the property as it determines.

416 (h) When the court determines that the claimants under Subsection (10)(g) have no right
417 in the property in whole or in part, it shall declare the property to be forfeited.

418 (i) When the court determines that property, in whole or in part, is not subject to forfeiture,
419 it shall order release of the property to the proper claimant. If the court determines that the
420 property is subject to forfeiture and release in part, it shall order partial release and partial
421 forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall
422 order it sold and the proceeds distributed:

423 (i) first, proportionally among the legitimate claimants; and

424 (ii) second, [~~to defray the costs of the action, including seizure, storage of the property,~~
425 ~~legal costs of filing and pursuing the forfeiture, and costs of sale; and~~] by the procedures under
426 Subsection (8).

427 [~~(iii) third, to the Division of Finance for the General Fund.~~]

428 (j) In a proceeding under this section where forfeiture is declared, in whole or in part, the

429 court shall assess all costs of the forfeiture proceeding, including seizure and storage of the
430 property, against the individual or individuals whose conduct was the basis of the forfeiture, and
431 may assess costs against any other claimant or claimants to the property as appropriate.

432 Section 3. Section **58-37-15** is amended to read:

433 **58-37-15. Burden of proof in proceedings on violations -- Exemptions -- Enforcement**
434 **officers exempt from liability.**

435 (1) It is not necessary for the state to negate any exemption or exception set forth in this
436 act in any complaint, information, indictment or other pleading or trial, hearing, or other
437 proceeding under this act, and the burden of proof of any exemption or exception is upon the
438 person claiming its benefit.

439 (2) In absence of proof that a person is the duly authorized holder of an appropriate license,
440 registration, order form, or prescription issued under this act, he shall be presumed not to be the
441 holder of a license, registration, order form, or prescription, and the burden of proof is upon him
442 to rebut the presumption.

443 (3) The provisions of Subsections (1) and (2) do not apply to forfeiture proceedings under
444 this chapter.

445 ~~[(3)]~~ (4) No liability shall be imposed upon any duly authorized state or federal officer
446 engaged in the enforcement of this act who is engaged in the enforcement of any law, municipal
447 ordinance, or regulation relating to controlled substances.

448 Section 4. Section **58-37-20** is amended to read:

449 **58-37-20. Drug Forfeiture Account created -- Revenue sources -- Use of account**
450 **designated.**

451 (1) (a) There is created in the General Fund a restricted account called the "Drug Forfeiture
452 Account."

453 (b) All monies and property forfeited ~~[or seized to the state]~~ to the Department of Public
454 Safety or the Department of Corrections, or any division or agency within either department,
455 through the state or federal court process as a result of activity involving a controlled substance
456 violation as prohibited under Title 58, Chapter 37, 37a, 37b, 37c, or 37d, or prohibited under
457 federal law, shall be deposited into the Drug Forfeiture Account.

458 (2) The Department of Public Safety and the Commission on Criminal and Juvenile Justice
459 may expend amounts as appropriated by the Legislature from the Drug Forfeiture Account to aid

460 in enforcement efforts to combat drug trafficking.

461 (3) That portion of funds forfeited or [~~sized~~] seized that are required to be disbursed to
462 other governmental entities under existing contractual agreements are exempt from this section.

463 (4) Funds forfeited or seized as a result of the Salt Lake Airport Drug Program, not to
464 exceed the Department of Public Safety's expenditure to that program, are exempt from this
465 section.

466 (5) The Department of Public Safety as part of the annual budget hearings shall provide
467 the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a
468 complete accounting of expenditures and revenues from the funds under this section.

469 (6) The Legislature may annually provide, in the Appropriations Act, legislative direction
470 for anticipated expenditures of the monies received under this section.