

1 **FORFEITURE RELATING TO SEXUAL**
2 **OFFENSES AGAINST CHILDREN**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Perry L. Buckner**

6 AN ACT RELATING TO CRIMINAL CONDUCT; PROVIDING FOR THE FORFEITURE OF
7 COMPUTERS AND COMPUTER EQUIPMENT USED IN THE SEXUAL EXPLOITATION
8 OR ABUSE OF A MINOR; AND SPECIFYING USE OF FORFEITURE PROCEEDS.

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

10 AMENDS:

11 **53A-16-101**, as last amended by Chapter 38, Laws of Utah 1997

12 ENACTS:

13 **76-3-502**, Utah Code Annotated 1953

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

15 Section 1. Section **53A-16-101** is amended to read:

16 **53A-16-101. Uniform School Fund -- Sources enumerated.**

17 The Uniform School Fund established by Utah Constitution, Article X, Section 5, consists
18 of money received in the state treasury from the following sources:

19 (1) interest on the State School Fund;

20 (2) escheats and forfeitures and proceeds from the sale or other disposition of property that
21 may accrue to the state by escheat or forfeiture, except under Section 58-37-13, regarding
22 controlled substances, ~~[and Section]~~ Sections 41-6-13.7 and 76-3-501, regarding vehicles
23 ~~[involved in police pursuits]~~, and Section 76-3-502, regarding computers and personal property
24 used in sexual offenses involving minors;

25 (3) unclaimed shares and proceeds from the sale or other disposition of those shares and
26 unclaimed dividends of any corporation incorporated under Utah law;

27 (4) all revenues derived from renewable resources on school and state lands, other than

28 those granted for specific purposes;

29 (5) the proceeds derived from the leasing or renting of school lands and other state lands,
30 including all forfeitures, penalties, and grazing and other fees received in connection with the
31 leases and rentals;

32 (6) money received from leases or rentals of land acquired by the state through foreclosure
33 of mortgages securing common school funds or through deeds from mortgagors or owners of those
34 lands; and

35 (7) all other constitutional or legislative allocations to the fund, including revenues
36 received under Utah Constitution, Article XIII, Section 12(3), from taxes on income or intangible
37 property, except for those income tax revenues appropriated to the state's higher education system.

38 Section 2. Section **76-3-502** is enacted to read:

39 **76-3-502. Forfeiture of computer equipment used in sexual offenses involving minors.**

40 (1) As used in this section:

41 (a) "Computer equipment" means:

42 (i) computers;

43 (ii) computer equipment or devices of any kind;

44 (iii) computer software; and

45 (iv) technological equipment or other apparatus intended for use with a computer.

46 (b) "Internet service provider" means:

47 (i) a facility owned or operated by a telephone corporation, as defined by Section 54-2-1,

48 that is used to provide access to the internet; or

49 (ii) an entity whose purpose is to provide access to the internet through telecommunication
50 facilities.

51 (c) "Sexual offense involving a minor" means a violation of:

52 (i) Section 76-5a-3, sexual exploitation of a minor;

53 (ii) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

54 (iii) Section 76-10-1206, dealing in harmful material to a minor;

55 (iv) Section 76-5-402.1, rape of a child; or

56 (v) Section 76-5-403.1, sodomy on a child.

57 (2) Any computer equipment is subject to forfeiture if the computer equipment was used

58 by a defendant in the commission of a sexual offense involving a minor, and:

59 (a) ~~h [(i)] h~~ the defendant is the owner of the computer equipment used in the commission of
60 the offense;

61 ~~h [(ii)] (b) h~~ the defendant exercised direct and personal control over the computer equipment
61a in

62 committing the offense; and

63 ~~h [(iii)] (c) h~~ the defendant is convicted for the offense regarding which the defendant used
63a the

64 computer equipment h [;

65 ~~—— (b) the owner of the computer equipment used in the commission of the offense was a~~
66 ~~knowing and intentional participant in the offense for which the defendant is convicted; or~~

67 ~~—— (c) the owner of the computer equipment used in the commission of the offense voluntarily~~
68 ~~and knowingly allowed the computer equipment to be used to commit the offense for which the~~
69 ~~defendant is convicted] h .~~

70 (3) (a) The computer equipment of an internet service provider is subject to forfeiture
71 under this section only if the court finds the internet service provider was a knowing and
72 intentional participant in the commission of a sexual offense involving a minor.

73 (b) As used in this Subsection (3), a "knowing and intentional participant" does not include
74 an internet service provider who:

75 (i) provides the client's internet access solely as a passive conduit; and

76 (ii) does not exercise any influence or control over the content of the client's web site or
77 page other than as may be authorized by the contract between the client and the internet service
78 provider.

79 (4) Any forfeiture of computer equipment under this section subject to any bona fide
80 security interest is subject to the interest of any secured party h [-who could not have known by the
81 exercise of reasonable diligence that a sexual offense involving a minor would or did take place
82 in the course of use of the computer equipment] h .

83 (5) When computer equipment is seized under this section, any interested person or
84 claimant of the computer equipment may file a petition in the court having jurisdiction for h THE h
84a release h TO HIM h

85 of his interest in the computer equipment. h THE PETITION SHALL SPECIFY THE CLAIMANT'S
85a INTEREST IN THE PROPERTY AND THE CLAIMANT'S RIGHT TO HAVE IT RELEASED. A COPY
SHALL

85b BE SERVED UPON THE COUNTY ATTORNEY OR, IF WITHIN A PROSECUTION DISTRICT, A DISTRICT
85c ATTORNEY IN THE COUNTY OF THE SEIZURE. h Action on the petition shall be h [the same as in
85d Section

86 ~~76-3-501~~ IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (6) h .

87 (6) Forfeiture proceedings shall be in accordance with ^h THE PROCEDURES UNDER ^h
87a Subsections 76-3-501(3) through
88 (9), except that:
88a ^h (a) HEARINGS REGARDING FORFEITURE MAY NOT BE INITIATED UNTIL AFTER
88b RESOLUTION OF THE CRIMINAL CHARGES BROUGHT UNDER THIS SECTION; AND ^h
89 ^h [(a) if the court, prior to the resolution of the criminal charges, enters a finding and] ^h

90 ~~h [judgment that any computer equipment seized under this section is not subject to forfeiture and~~
 91 ~~shall be released to the claimant, the court shall stay the entry of that judgment until resolution of~~
 92 ~~the criminal charges if the prosecution demonstrates to the court by a preponderance of the~~
 93 ~~evidence that the computer equipment subject to the judgment of release is required for the~~
 94 ~~criminal proceedings for evidentiary purposes; and] h~~

95 (b) ~~the net proceeds from any forfeiture under this section shall be deposited in the General~~
 96 ~~Fund, rather than as provided in Subsection 76-3-501(8).~~

97 (7) (a) ~~Any computer equipment that has been held as evidence in the prosecution of an~~
 98 ~~offense involving a minor under this section and that has not been claimed under Subsection (6)~~
 99 ~~shall be returned to the true owner, except as provided under Subsection (7)(b).~~

100 (b) ~~The computer equipment shall be forfeited under the procedures described in this~~
 101 ~~section if the owner of the computer equipment:~~

102 (i) ~~cannot be identified after diligent effort by the law enforcement agency responsible for~~
 103 ~~seizure of the computer equipment; h OR h~~

104 (ii) ~~is the person convicted of a sexual offense involving minors that involved the use of~~
 105 ~~the computer equipment h [; and~~

106 ~~—— (iii) was a knowing participant in the commission of a sexual offense involving a minor,~~
 107 ~~the commission of which also involved the use of the owner's computer equipment, and another~~
 108 ~~person was convicted for the offense; or~~

109 ~~—— (iv) voluntarily and knowingly allowed the computer equipment to be used to commit a~~
 110 ~~sexual offense involving a minor for which another person was convicted] h .~~

Legislative Review Note

as of 9-13-99 8:41 AM

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

Office of Legislative Research and General Counsel

Committee Note

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.