

**Senator D. Chris Buttars** proposes the following substitute bill:

**PROTECTION OF PRIVATE LAWFULLY**

**OBTAINED PROPERTY**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: D. Chris Buttars**

6	Mike Dmitrich	Dan R. Eastman	Paula F. Julander
7	Ron Allen	Beverly Ann Evans	Sheldon L. Killpack
8	Patrice M. Arent	James M. Evans	Peter C. Knudson
9	Gregory S. Bell	Karen Hale	L. Alma Mansell
10	Leonard M. Blackham	Thomas V. Hatch	Ed P. Mayne
11	Curtis S. Bramble	John W. Hickman	Carlene M. Walker
12	Gene Davis		



**LONG TITLE**

**General Description:**

This bill modifies the Utah Uniform Forfeiture Procedures Act regarding property owner interests, allocation of forfeiture proceeds, and reporting.

**Highlighted Provisions:**

This bill:

- ▶ provides additional definitions;
- ▶ increases innocent owner protections;
- ▶ repeals the provision for depositing forfeiture proceeds in the Uniform School fund;
- ▶ creates a restricted account for specified state forfeiture funds, and provides that funds in the account shall be appropriated to the Commission on Criminal and Juvenile Justice;
- ▶ specifies accountability standards in management of forfeited property and of the proceeds;



- 28           ▶ specifies law enforcement purposes for which the proceeds may be used and those
- 29 purposes for which the proceeds may not be used;
- 30           ▶ specifies standards and procedures for allocation of the proceeds to law enforcement
- 31 agencies by the Commission on Criminal and Juvenile Justice; and
- 32           ▶ requires reporting by agencies and by the Commission on Criminal and Juvenile
- 33 Justice.

**34 Monies Appropriated in this Bill:**

35           None

**36 Other Special Clauses:**

37           This bill provides an immediate effective date.

**38 Utah Code Sections Affected:**

39 AMENDS:

- 40           **24-1-2**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 41           **24-1-3**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 42           **24-1-4**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 43           **24-1-6**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 44           **24-1-7**, as last amended by Chapter 185, Laws of Utah 2002
- 45           **24-1-10**, as last amended by Chapter 185, Laws of Utah 2002
- 46           **24-1-11**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 47           **24-1-12**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 48           **24-1-14**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 49           **24-1-15**, as last amended by Chapter 185, Laws of Utah 2002

50 ENACTS:

- 51           **24-1-3.5**, Utah Code Annotated 1953
- 52           **24-1-17**, Utah Code Annotated 1953
- 53           **24-1-18**, Utah Code Annotated 1953
- 54           **24-1-19**, Utah Code Annotated 1953
- 55           **24-1-20**, Utah Code Annotated 1953

56 REPEALS:

- 57           **24-1-16**, as last amended by Chapter 185, Laws of Utah 2002

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

60 Section 1. Section **24-1-2** is amended to read:

61 **24-1-2. Purpose.**

62 It is the intent of this chapter to:

63 (1) provide [~~for~~] a uniform set of procedures and substantive standards for the criminal  
64 and civil forfeiture of property within the state of Utah;

65 (2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting  
66 contraband and the instrumentalities and proceeds of criminal conduct;

67 (3) protect innocent owners and innocent interest holders from the [~~wrongful taking~~]  
68 forfeiture of their property;

69 (4) ensure that seizures and forfeitures of property from private citizens are [~~not~~  
70 disproportionate] in proportion to the violation or crime committed;

71 (5) ensure direct control and accountability over the use and sale of forfeited property  
72 and [~~the proceeds generated therefrom~~] the revenue resulting from the disposal of forfeited  
73 property; [and]

74 (6) ensure the revenue resulting from property forfeiture allows continued:

75 (a) law enforcement, crime prevention, and drug courts; and

76 (b) other appropriate activities related to the functions under Subsection (6)(a);

77 (7) maximize the benefits of, and accountability for, federal asset forfeiture sharing for  
78 the citizens of the state; and

79 [~~(6)~~] (8) direct that any and all revenues resulting from the sale of forfeited property be  
80 [~~contributed to the Uniform School Fund~~] allocated to the Utah Commission on Criminal and  
81 Juvenile Justice for grants to state and local law enforcement agencies according to specified  
82 guidelines.

83 Section 2. Section **24-1-3** is amended to read:

84 **24-1-3. Definitions.**

85 As used in this section:

86 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
87 24-1-18.

88 [~~(1)~~] (2) "Agency" [shall mean] means any agency of municipal, county, or state  
89 government, including law enforcement agencies, law enforcement personnel, and

90 multi-jurisdictional task forces.

91 (3) "Claimant" means:

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

93 (b) any interest holder as defined in this section; and

94 (c) any other person or entity who asserts a claim to any property seized for forfeiture  
95 under this section.

96 (4) "Complaint" means a civil complaint seeking the forfeiture of any real or personal  
97 property pursuant to this chapter.

98 (5) "Constructive seizure" means a seizure of property where the property is left in the  
99 control of the owner and the seizing agency posts the property with notice of seizure by that  
100 agency for forfeiture.

101 ~~[(2)]~~ (6) "Contraband" [shall mean] means any property, item, or substance which is  
102 unlawful to produce or to possess under state or federal law.

103 (7) (a) "Innocent owner" means an owner or interest holder who held an ownership  
104 interest in property at the time the conduct subjecting the property to seizure occurred, and:

105 (i) did not have actual knowledge of the conduct subjecting the property to seizure; or

106 (ii) upon learning of the conduct subjecting the property to seizure, took reasonable  
107 steps to prohibit the illegal use of the property.

108 (b) "Innocent owner" means an owner or interest holder who acquired an ownership  
109 interest in the property and who had no knowledge that the illegal conduct subjecting the

110 property to seizure had occurred or that the property had been seized for forfeiture, and:

111 (i) acquired the property in a bona fide transaction for value;

112 (ii) was a person, including a minor child, who acquired an interest in the property  
113 through probate or inheritance; or

114 (iii) was a spouse who acquired an interest in property through dissolution of marriage  
115 or by operation of law.

116 (8) (a) "Interest holder" means a secured party as defined in Subsection

117 70A-9a-102(72), a mortgagee, lien creditor, or the beneficiary of a security interest or

118 encumbrance pertaining to an interest in property, whose interest would be perfected against a  
119 good faith purchaser for value.

120 (b) "Interest holder" does not mean a person who holds property for the benefit of or as

121 an agent or nominee for another person, or who is not in substantial compliance with any  
122 statute requiring an interest in property to be recorded or reflected in public records in order to  
123 perfect the interest against a good faith purchaser for value.

124 (9) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not  
125 to exceed 20% of the net value of the forfeited property.

126 (10) "Legislative body" means:

127 (a) (i) the state Legislature, county commission, county council, city commission, city  
128 council, or town council that has fiscal oversight and budgetary approval authority over a  
129 seizing agency; or

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

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

133 ~~[(3)]~~ (11) "Multijurisdictional task force" [shall mean] means a law enforcement task  
134 force or other agency comprised of persons who are employed by or acting under the authority  
135 of different governmental authorities, including federal, state, county or municipal  
136 governments, or any combination [thereof] of these agencies.

137 ~~[(4)]~~ (12) "Owner" [shall mean] means any person or entity, other than an interest  
138 holder as defined in this section, that possesses a bona fide legal or equitable interest in real or  
139 personal property[; including a security interest].

140 (13) "Program" means the Crime Reduction Assistance Program created in Section  
141 24-1-19.

142 ~~[(5)]~~ (14) "Property" [shall mean] means all property, whether real or personal, tangible  
143 or intangible.

144 ~~[(6)]~~ (15) "Prosecuting Attorney" [shall mean the public attorney authorized by a  
145 specific provision of state law to initiate forfeiture proceedings under this chapter.] means:

146 (a) the state attorney general and any assistant attorney general;

147 (b) any district attorney or deputy district attorney; and

148 (c) any county attorney or assistant county attorney;

149 (d) any other attorney authorized to commence an action on behalf of the state under  
150 this chapter or other provisions of state law.

151 (16) "Seize for forfeiture" means seizure of property:

152 (a) by a law enforcement officer or law enforcement agency, including a constructive  
153 seizure; and

154 (b) accompanied by an assertion by the officer or agency or by a prosecuting attorney  
155 that the property is seized for forfeiture in accordance with this chapter.

156 [~~(7) "State law" means all Utah law, including municipal, county and state law.~~]

157 Section 3. Section **24-1-3.5** is enacted to read:

158 **24-1-3.5. Jurisdiction and venue.**

159 (1) A state district court has jurisdiction over any action filed in accordance with this  
160 chapter regarding:

161 (a) all interests in property if the property for which forfeiture is sought is within this  
162 state at the time the action is filed; and

163 (b) the interests of owners or interest holders in the property, if the owner or interest  
164 holder is subject to the personal jurisdiction of the district court.

165 (2) (a) In addition to the venue provided for under Title 78, Chapter 13, Place of  
166 Trial-Venue, or any other provisions of law, a proceeding for forfeiture under this chapter may  
167 be maintained in the judicial district in which:

168 (i) any part of the property is found; or

169 (ii) a civil or criminal action could be maintained against an owner or interest holder  
170 for the conduct alleged to give cause for the forfeiture.

171 (b) A claimant may obtain a change of venue under Section 78-13-9.

172 Section 4. Section **24-1-4** is amended to read:

173 **24-1-4. Civil Procedures.**

174 (1) An agency which seizes property under any provision of state law subjecting [~~an~~  
175 ~~owner's~~] the property to [civil] forfeiture shall, as soon as practicable, but in no case more than  
176 30 days after seizure:

177 (a) prepare a detailed inventory of all property seized and transfer the seized property  
178 to a designated official within the agency, who shall be responsible for holding and maintaining  
179 seized property pending a court order of release or final determination of forfeiture and  
180 disposition of property under this chapter;

181 (b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible  
182 for initiating [~~civil~~] forfeiture proceedings under this chapter of the items of property seized,

183 the place of the seizure and any persons arrested at the time of seizure; and

184 (c) give written notice to all owners and interest holders known, or reasonably  
185 discoverable after due diligence, of [~~the following items~~]:

186 (i) the date of the seizure and the property seized;

187 (ii) the owner's or interest holder's rights and obligations under this chapter, including  
188 the availability of [~~counsel and~~] hardship relief in appropriate circumstances; and

189 (iii) [~~an outline~~] a brief description of the [~~steps in the~~] statutory basis for the forfeiture  
190 and the judicial proceedings by which property is forfeited under this chapter.

191 (2) (a) If the seizing agency fails to provide notice as required in [~~subparagraph~~]  
192 Subsection (1)[~~(c)~~], an owner or interest holder entitled to notice who does not receive notice  
193 may void the forfeiture with respect to the owner's or interest holder's interest in the property  
194 by bringing a motion before the appropriate district court and serving it upon the seizing  
195 agency. [~~Such~~] The motion may be brought at any time prior to the final disposition of the  
196 property under this chapter.

197 (b) If an owner or interest holder brings a motion to void the forfeiture for lack of the  
198 notice required under [~~subparagraph~~] Subsection (1)[~~(c)~~], the court shall void the forfeiture  
199 unless the seizing agency demonstrates:

200 [~~(a)~~] (i) good cause for the failure to give notice to that owner; or

201 [~~(b)~~] (ii) that the owner otherwise had actual notice of the seizure.

202 (3) (a) Within [~~90~~] 60 days of any seizure, the prosecuting attorney shall file a  
203 complaint for forfeiture in the appropriate district court and serve a summons and notice of  
204 intent to seek forfeiture with a copy of the complaint upon all owners and interest holders  
205 known to the prosecuting attorney to have an interest in the property. Service shall be by one  
206 of the following methods:

207 [~~(i) personal service upon each owner whose name and address is known, or by mailing~~  
208 ~~a copy to the last known address; or]~~

209 [~~(ii) upon all other owners whose addresses are not known, by publication in a~~  
210 ~~newspaper of general circulation in the county where the seizure was made for a period of two~~  
211 ~~consecutive weeks;]~~

212 (i) if the owner's or interest holder's name and current address are known, either by  
213 personal service by any person qualified to serve process, by a law enforcement officer, or by

214 certified mail, return receipt requested, to that address;

215 (ii) if the owner's or interest holder's name and address are required by law to be on  
216 record with any state agency in order to perfect an interest in property and the owner's or  
217 interest holder's current address is not known, by mailing a copy of the notice by certified mail,  
218 return receipt requested, to the most recent address listed by any of those agencies; or

219 (iii) if the owner's or interest holder's address is not known and is not on record as  
220 provided in Subsection (3)(a)(i) or (ii), by publication for two successive weeks in a newspaper  
221 of general circulation in the county in which the seizure occurred.

222 (b) Notice is effective upon the earlier of personal service, publication, or the mailing  
223 of a written notice.

224 (c) The summons and notice of intent to seek forfeiture shall:

225 (i) be addressed to the known owners and interest holders of the seized property, and to  
226 the person from whom the property was seized;

227 (ii) contain the name, business address, and business telephone number of the  
228 prosecuting attorney seeking the forfeiture; and

229 (iii) contain:

230 (A) a description of the property which is the subject matter of the forfeiture  
231 proceeding;

232 (B) notice that a complaint for forfeiture has been or will be filed;

233 (C) the time and procedural requirements for filing an answer or claim;

234 (D) notice of the availability of hardship or bond release of the property; and

235 (E) notice that failure to file an answer or other claim regarding the seized property will  
236 result in a default judgment against the seized property.

237 ~~(b)~~ (d) The complaint shall describe with reasonable particularity:

238 (i) the property which is the subject matter of the forfeiture proceeding;

239 (ii) the date and place of seizure; and

240 (iii) the allegations which constitute a basis for forfeiture.

241 (4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the  
242 property in accordance with [subparagraph] Subsection (3), the agency shall promptly return  
243 the property to its owner and the prosecuting attorney [shall] may take no further action to  
244 effect the forfeiture of [such] the property.

245 (b) If the agency knows of more than one owner, it shall return the property to the  
246 owner who was in possession at the time of the seizure.

247 (5) (a) In any case where the prosecuting attorney files a complaint for forfeiture of  
248 property, an owner or interest holder may file a claim and an answer to the complaint.

249 (b) The claim and answer shall be filed within 30 days after the complaint is served in  
250 person or by mail, or where applicable, within 30 days after publication under [subparagraph]  
251 Subsection (3)~~[(a)(ii)]~~.

252 (6) (a) Except as otherwise provided in this chapter, [civil] forfeiture proceedings are  
253 governed by the Utah Rules of Civil Procedure.

254 (b) The court shall take all reasonable steps to expedite forfeiture proceedings and shall  
255 give ~~such~~ these proceedings the same priority as is given to criminal cases.

256 (c) In all suits or actions brought for the civil forfeiture of any property under this  
257 chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing  
258 evidence, to what extent, if any, property is subject to forfeiture.

259 (d) The right to trial by jury applies to [civil] forfeiture proceedings under this chapter.  
260 Section 5. Section **24-1-6** is amended to read:

261 **24-1-6. Innocent owners.**

262 (1) An innocent owner's or interest holder's interest in property ~~shall~~ may not be  
263 forfeited [civilly] under any provision of state law.

264 (2) The prosecuting attorney ~~shall have~~ has the burden of establishing by clear and  
265 convincing evidence that an [~~individual is not an innocent~~] owner~~[-]or interest holder:~~

266 [~~(3) With respect to an ownership interest in existence at the time the conduct~~  
267 ~~subjecting the property to seizure took place, the term "innocent owner" means an owner who:]~~

268 [~~(a) did not have actual knowledge of the conduct subjecting the property to seizure;~~  
269 ~~or]~~

270 [~~(b) upon learning of the conduct subjecting the property to seizure, took reasonable~~  
271 ~~steps to prohibit such use of the property.]~~

272 (a) is criminally responsible for the conduct giving rise to the forfeiture **H**, **SUBJECT TO**  
272a **SUBSECTION (4) h** :

273 (b) knew of **H** [~~or could reasonably have been expected to know of~~] **h** the conduct giving rise  
274 to the forfeiture, and allowed the property to be used in furtherance of the conduct;

275 (c) acquired the property with notice of its actual or constructive seizure for forfeiture

276 under this chapter;

277 (d) acquired the property ~~Ĥ [with reason to believe]~~ **KNOWING** ĥ the property was subject  
 277a to forfeiture

278 under this chapter; or

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

281 ~~[(4)] (3) For purposes of [subparagraph (3)(b), no] this chapter, an owner [shall] or~~  
 282 ~~interest holder may not be required to take steps that he reasonably believes would be likely to~~  
 283 ~~[subject any person (other than the person whose conduct gave rise to the forfeiture) to] result~~  
 284 ~~in physical harm or danger to any person. An owner or interest holder may demonstrate that he~~  
 285 ~~took reasonable action to prohibit [such] the illegal use of the property by, for example:~~

286 ~~(a) timely notifying a law enforcement agency of information that led the owner to~~  
 287 ~~know that conduct subjecting the property to seizure would occur, was occurring, or has~~  
 288 ~~occurred; [or]~~

289 ~~(b) timely revoking or attempting to revoke permission for those engaging in [such] the~~  
 290 ~~illegal conduct to use the property; or~~

291 ~~(c) taking reasonable actions to discourage or prevent the illegal use of the property.~~

292 ~~[(5) With respect to an ownership interest acquired after the conduct subjecting the~~  
 293 ~~property to seizure has occurred, the term "innocent owner" means a person who, at the time he~~  
 294 ~~acquired the interest in the property, had no knowledge that the illegal conduct subjecting the~~  
 295 ~~property to seizure had occurred or that the property had been seized for forfeiture, and:]~~

296 ~~[(a) acquired the property in a bona fide transaction for value;]~~

297 ~~[(b) was a person, including a minor child, who acquired an interest in property~~  
 298 ~~through probate or inheritance; or]~~

299 ~~[(c) was a spouse who acquired an interest in property through dissolution of marriage~~  
 300 ~~or by operation of law.]~~

300a **Ĥ (4) IF THE STATE RELIES ON SUBSECTION (2)(A) TO ESTABLISH THAT A PERSON IS NOT**  
 300b **AN INNOCENT OWNER OR INTEREST HOLDER, AND IF THE OWNER OR THE INTEREST HOLDER IS**  
 300c **CRIMINALLY CHARGED WITH THE CONDUCT GIVING RISE TO THE FORFEITURE AND IS ACQUITTED**  
 300d **OF THAT CHARGE ON THE MERITS:**

300e **(a) THE PROPERTY SUBJECT TO THE FORFEITURE OR THE VALUE OF THE PROPERTY, IF**  
 300f **THE PROPERTY HAS BEEN DISPOSED OF UNDER SUBSECTION 24-1-7(15), SHALL BE RETURNED**  
 300g **TO THE OWNER OR INTEREST HOLDER; AND**

300h **(b) ANY PAYMENTS REQUIRED UNDER THIS CHAPTER REGARDING HOLDING THE**  
 300i **PROPERTY SHALL BE PAID TO THE OWNER OR INTEREST HOLDER. ĥ**

301            [~~(6)~~] ~~H~~ [~~(4)~~] (5) ~~h~~ No owner may assert, under this [~~paragraph~~] section, an ownership  
301a interest in  
302 contraband.

303            ~~H~~ [~~(5)~~] (6) ~~h~~ Property is presumed to be subject to forfeiture under this chapter if the  
303a prosecuting

304 attorney establishes, by clear and convincing evidence, that:

305            (a) the owner or interest holder has engaged in conduct giving cause for forfeiture:

306            (b) the property was acquired by the owner or interest holder during that period of the

307 conduct giving cause for forfeiture or within a reasonable time after that period; and

308 (c) there was no likely source for the purchase or acquisition of the property other than  
309 the conduct giving cause for forfeiture.

310 Ĥ [6] (7) ĥ A finding that property is the proceeds of conduct giving cause for forfeiture  
310a does

311 not require proof that the property was the proceeds of any particular exchange or transaction.

312 Section 6. Section **24-1-7** is amended to read:

313 **24-1-7. Hardship release of seized property.**

314 (1) After property is seized for forfeiture, a person or entity may not alienate, convey,  
315 sequester, or attach that property until the court issues a final order of dismissal or an order of  
316 forfeiture regarding the property.

317 (2) The seizing agency or the prosecuting attorney may authorize the release of  
318 property seized for forfeiture to its owner if retention of actual custody is unnecessary.

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

322 (4) Property seized for forfeiture is considered to be in the custody of the district court  
323 and subject only to:

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

326 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

327 (5) (a) An owner of property seized pursuant to this chapter may obtain release of the  
328 property by posting with the district court a surety bond or cash in an amount equal to the  
329 current fair market value of the property as determined by the court or by the parties'  
330 stipulation.

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

332 (i) the bond tendered is inadequate;

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

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

336 (c) If a surety bond or cash is posted and the property seized and then released on a  
337 bond or cash is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of

338 the property.

339 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30  
340 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the  
341 property seized.

342 (b) The seizing agency shall deposit property that is in the form of cash or other readily  
343 negotiable instruments into a restricted account maintained by the agency solely for the purpose  
344 of managing and protecting the property from commingling, loss, or devaluation during the  
345 pendency of the forfeiture proceedings.

346 (c) The seizing agency shall have in place written policy for the identification, tracking,  
347 management, and safekeeping of seized property, which shall include a prohibition against the  
348 transfer, sale, or auction of forfeited property to any employee of the seizing agency.

349 (d) An agency may not be awarded any funds from forfeiture through the Crime  
350 Reduction Assistance Program under Section 24-1-19 if the agency has not established or  
351 maintained the inventory policy, restricted account, and written policies required by this  
352 Subsection (6).

353 ~~[(+)]~~ (7) An owner is entitled to the immediate release of seized property from the  
354 seizing agency pending the final determination of ~~[civil]~~ forfeiture if:

355 (a) the owner ~~[has]~~ had a possessory interest in the property at the time of seizure;

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

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

359 (ii) preventing any individual from working;

360 (iii) preventing any minor child or student from attending school;

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

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

363 (vi) preventing an owner from retaining counsel to provide a defense in the forfeiture  
364 proceeding; or

365 (vii) leaving any individual homeless, or any other condition that the court determines  
366 causes a substantial hardship; ~~[and]~~

367 (c) the hardship from the continued possession by the agency of the seized property  
368 outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred

369 if it is returned to the owner during the pendency of the proceeding[-]; and

370 (d) determination of substantial hardship under this Subsection (7) is based upon the  
371 property's use prior to the seizure.

372 [~~(2)~~] (8) The right to appointed counsel under Section 24-1-9 applies throughout civil  
373 forfeiture proceedings, including an owner's motion for hardship release.

374 (9) An owner may file a motion for hardship release:

375 (a) in the court in which forfeiture proceedings have commenced; or

376 (b) in any district court having jurisdiction over the property, if forfeiture proceedings  
377 have not yet commenced.

378 (10) The motion for hardship release shall also be served upon the prosecuting attorney  
379 or the seizing agency within ten days after filing the motion.

380 [~~(3)~~] (11) The court shall render a decision on a motion [~~or complaint~~] for hardship  
381 filed under [Subsection (2)] this section not later than [ten] 20 days after the date of filing, or  
382 ten days after service upon the prosecuting attorney or seizing agency, whichever is earlier,  
383 unless [the ten-day] this period is extended by the [consent of the] parties or by the court for  
384 good cause shown.

385 [~~(4)~~] (12) (a) If the owner demonstrates substantial hardship pursuant to [~~subparagraph~~  
386 ~~(4)~~] this section, the court shall order the property immediately released to the owner pending  
387 completion of proceedings by the government to obtain forfeiture of the property.

388 (b) The court may place [~~such~~] conditions on release of the property as it finds [~~are~~]  
389 necessary and appropriate to preserve the availability of the property or its equivalent for  
390 forfeiture.

391 [~~(5) Subparagraph (1) shall~~] (13) The hardship release does not apply if the seized  
392 property is:

393 (a) contraband;

394 (b) currency or other monetary instrument or electronic funds, unless [~~such~~] the  
395 property is used to pay for the reasonable costs of defending against the forfeiture proceeding  
396 or constitutes the assets of a legitimate business; or

397 (c) likely to be used to commit additional illegal acts if returned to the owner.

398 (14) (a) The court may order property which has been seized for forfeiture to be sold as  
399 allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any

400 owner or interest holder, or to preserve the interests of any party on motion of that party.

401 (b) The court may enter orders under Subsection (14)(a) after notice to persons known  
402 to have an interest in the property, and after an opportunity for a hearing.

403 (15) (a) A sale may be ordered under Subsection (14) when the property is liable to  
404 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the  
405 property are disproportionate to its value.

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

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

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

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

414 Section 7. Section **24-1-10** is amended to read:

415 **24-1-10. Prejudgment and postjudgment interest.**

416 In any [~~civil or criminal~~] proceeding to forfeit currency or other negotiable instruments  
417 under this chapter, the court shall award a prevailing [~~owner~~] party prejudgment and  
418 postjudgment interest on the currency or negotiable instruments at the legal rate of interest  
419 established by Section 15-1-1.

420 Section 8. Section **24-1-11** is amended to read:

421 **24-1-11. Attorneys' fees and costs.**

422 In any [~~civil or criminal~~] proceeding to forfeit seized property under this chapter, the  
423 court shall award a prevailing [~~owner~~] party reasonable attorneys' fees and other costs of [~~suit~~]  
424 litigation reasonably incurred by the owner. An owner who prevails only in part [~~shall be~~] is  
425 entitled to recover reasonable attorneys' fees and reasonable costs of suit related to those issues  
426 on which he prevailed.

427 Section 9. Section **24-1-12** is amended to read:

428 **24-1-12. Compensation for damaged property.**

429 (1) [~~In any civil or criminal proceeding;~~] If property seized for forfeiture is returned by  
430 operation of this chapter, an owner [~~shall have a private~~] has a civil right of action against a

431 seizing agency for any claim based upon the negligent destruction, loss, damage or other injury  
432 to seized property while in the possession or custody of ~~[a state]~~ the agency~~[-if the property~~  
433 ~~was seized for the purpose of initiating forfeiture proceedings under this chapter].~~

434 (2) ~~[For the purposes of]~~ As used in this section, "damage or other injury" does not  
435 include normal depreciation, deterioration, or ordinary wear and tear.

436 Section 10. Section **24-1-14** is amended to read:

437 **24-1-14. Proportionality.**

438 (1) (a) An owner's interest in property, excluding contraband, ~~[shall not be civilly or~~  
439 ~~criminally forfeited under a]~~ is not subject to forfeiture under any provision of state law ~~[unless~~  
440 ~~such]~~ if the forfeiture is substantially ~~[proportional to both]~~ disproportional to the use of the  
441 property in committing or facilitating a violation of state law and the value of the property.

442 (b) Forfeiture of property used solely in a manner that is merely incidental and not  
443 instrumental to the commission or facilitation of a violation of law is not proportional~~[-as a~~  
444 ~~matter of law].~~

445 (2) (a) In determining proportionality, the court shall consider:

446 (i) the conduct giving cause for the forfeiture;

447 (ii) what portion of the forfeiture, if any, is remedial in nature;

448 (iii) the gravity of the conduct for which the claimant is responsible in light of the  
449 offense; and

450 (iv) the value of the property.

451 (b) If the court finds that the forfeiture is substantially disproportional to the conduct  
452 for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds  
453 appropriate.

454 (3) The prosecuting attorney has the burden to demonstrate that any forfeiture is  
455 proportional to an alleged violation of state law. It is the province of the court, not the jury, to  
456 decide questions of proportionality.

457 Section 11. Section **24-1-15** is amended to read:

458 **24-1-15. Transfer and sharing procedures.**

459 (1) For purposes of this section, property is ~~[deemed]~~ considered to be "seized"  
460 whenever any agency takes possession of the property or exercises any degree of control over  
461 the property.

462 (2) (a) Seizing agencies or prosecuting attorneys authorized to bring civil or criminal  
463 forfeiture proceedings under this chapter ~~[shall]~~ may not directly or indirectly transfer seized  
464 property to any federal agency or any governmental entity not created under and subject to state  
465 law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the  
466 property to be transferred. The court may not enter an order authorizing a transfer unless:

467 (i) the activity giving rise to the investigation or seizure is interstate in nature and  
468 sufficiently complex to justify ~~[such]~~ the transfer;

469 (ii) the seized property may only be forfeited under federal law; or

470 (iii) pursuing forfeiture under state law would ~~[unduly]~~ unreasonably burden  
471 prosecuting attorneys or state law enforcement agencies.

472 (b) Notwithstanding ~~[Subparagraph]~~ Subsection (2)(a), the court may refuse to enter an  
473 order authorizing a transfer to the federal government if ~~[such]~~ the transfer would circumvent  
474 the protections of the Utah Constitution or of this chapter that would otherwise be available to  
475 the property owner.

476 (c) Prior to granting any order to transfer pursuant to ~~[Subparagraph]~~ Subsection (2)(a),  
477 the court must give any owner the right to be heard with regard to the transfer.

478 (3) (a) ~~[AH]~~ Subject to Subsection (3)(b), all property, money or other things of value  
479 received by an agency pursuant to federal law which authorizes the sharing or transfer of all or  
480 a portion of forfeited property or the proceeds of the sale of forfeited property to an agency  
481 ~~[shall be promptly transferred to the state treasurer and sold and deposited in the Uniform~~  
482 School Fund as provided under Section 24-1-16.]:

483 (i) shall be used in compliance with federal rules and regulations relating to equitable  
484 sharing;

485 (ii) shall be used only for those law enforcement purposes specified in Subsection  
486 24-1-19(8); and

487 (iii) may not be used for those law enforcement purposes prohibited in Subsection  
488 24-1-19(9).

489 (b) If an agency receives forfeiture proceeds under Subsection (3)(a) that equal an  
490 amount that is more than 25% greater than the annual budget of the receiving agency, the  
491 amount of the proceeds that is in excess of 125% of the agency's annual budget shall be passed  
492 through by the agency to the Commission on Criminal and Juvenile Justice to be used for the

493 purposes under Section 24-1-19.

494 ~~[(b)]~~ (c) Subject to ~~[Subparagraph]~~ Subsection (3)(a), state agencies are encouraged to  
495 seek an equitable share of property forfeited by the federal government and to cooperate with  
496 federal law enforcement agencies in all cases in which ~~[such]~~ cooperation is in the interest of  
497 this state.

498 (d) A law enforcement agency awarded any equitable share of property forfeited by the  
499 federal government may only use the award monies after approval or appropriation by the  
500 agency's legislative body.

501 (e) Law enforcement agencies are entitled to their equitable share of property forfeited  
502 by the federal government since March 29, 2001.

503 (f) (i) Each agency awarded any equitable share of property forfeited by the federal  
504 government shall file copies of all federal equitable sharing certifications, applications, and  
505 reports with the state auditor and the Commission on Criminal and Juvenile Justice at least  
506 annually.

507 (ii) This information shall provide details of all awards received from the federal  
508 government during the preceding reporting period, including for each award:

509 (A) the agency's case number or other identification;

510 (B) the amount of the award;

511 (C) the date of the award;

512 (D) the identity of the federal agency involved in the forfeiture;

513 (E) how the awarded property has been used; and

514 (F) a statement signed by both the agency's executive officer or designee and by the  
515 agency's legal counsel, that the agency has only used the awarded property for crime reduction  
516 or law enforcement purposes authorized under Section 24-1-19, and only upon approval or  
517 appropriation by the agency's legislative body.

518 (4) (a) Any agency that violates ~~[Subparagraph]~~ Subsection (2) or (3) is civilly liable to  
519 the state for three times the amount of the forfeiture diverted and for costs of suit and  
520 reasonable attorneys' fees.

521 (b) Any damages awarded to the state shall be paid to the ~~[Uniform School Fund]~~  
522 Criminal Forfeiture Restricted Account created in Section 24-1-18.

523 (c) Any agent, including a state law enforcement ~~[officers who are]~~ officer, detached

524 to, deputized or commissioned by, or working in conjunction with a federal agency, who  
525 knowingly transfers or otherwise ~~[trades]~~ trades seized property in violation of ~~[Subparagraph]~~  
526 Subsection (2)(a) or who receives property, money, or other things of value under  
527 ~~[Subparagraph]~~ Subsection (3)(a) and knowingly fails to transfer ~~[such]~~ the property ~~[to the~~  
528 state treasurer] in accordance with this section is guilty of a class B misdemeanor.

529 Section 12. Section **24-1-17** is enacted to read:

530 **24-1-17. Disposition and allocation of forfeiture property.**

531 (1) Upon finding that property is subject to forfeiture under this chapter, the court shall  
532 order the property forfeited to the state, and the seizing agency shall then:

533 (a) make the payments as required under this chapter; and

534 (b) transfer possession, custody, and control of the net forfeiture property or proceeds  
535 immediately to the Criminal Forfeiture Restricted Account created under Section 24-1-18.

536 (2) If the forfeiture arises from any violation of Section 23-20-1 relating to wildlife  
537 resources, the court shall:

538 (a) direct that the legal costs of the forfeiture proceeding be paid to the prosecuting  
539 agency; and

540 (b) direct that the net forfeited property after the legal costs shall be deposited in the  
541 Wildlife Resources Account created in Section 23-14-13.

542 (3) (a) Prior to transferring forfeited property, the seizing agency shall authorize a  
543 public or otherwise commercially reasonable sale of that property which is not required by law  
544 to be destroyed and that is not harmful to the public.

545 (b) The proceeds of the forfeited property shall remain segregated from other property,  
546 equipment, or assets of the seizing agency until transferred to the state in accordance with this  
547 chapter.

548 (4) From the forfeited property, both currency and the proceeds or revenue from the  
549 property, the seizing agency shall:

550 (a) deduct the seizing agency's direct costs and expenses, as approved by the court, of  
551 obtaining and maintaining the property pending forfeiture; and

552 (b) pay the legal costs to the prosecuting agency for the prosecution of the forfeiture  
553 proceeding.

554 (5) The remaining forfeited property shall then be deposited in the Criminal Forfeiture

555 Restricted Account created in Section 24-1-18.

556 (6) All property and proceeds awarded to the state through forfeiture proceedings under  
557 this chapter shall be deposited in the Criminal Forfeiture Restricted Account created in Section  
558 24-1-18.

559 Section 13. Section **24-1-18** is enacted to read:

560 **24-1-18. Criminal Forfeiture Restricted Account.**

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

563 (2) Proceeds from forfeited property and forfeited monies through state forfeitures shall  
564 be deposited in this account.

565 (3) Money in the account shall be appropriated to the Commission on Criminal and  
566 Juvenile Justice for implementing the Crime Reduction Assistance Program under Section  
567 24-1-19.

568 Section 14. Section **24-1-19** is enacted to read:

569 **24-1-19. Crime Reduction Assistance Program.**

570 (1) There is created the Crime Reduction Assistance Program.

571 (2) The program shall fund crime prevention and law enforcement activities that have  
572 the purpose of:

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

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

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

578 (d) encouraging cooperation between local, state, and multijurisdictional law  
579 enforcement agencies;

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

582 (f) increasing the equitability and accountability of the use of forfeited property used to  
583 assist law enforcement in reducing and preventing crime.

584 (3) (a) When property is forfeited under this chapter and transferred to the fund, the  
585 Commission on Criminal and Juvenile Justice shall make awards of monies from the fund to

586 state, local, or multijurisdictional law enforcement agencies or political subdivisions of the  
587 state in compliance with this section and to further the program purposes under Subsection (2).

588 (b) In granting the awards, the Commission on Criminal and Juvenile Justice shall  
589 ensure that the amount of each award takes into consideration:

590 (i) the demonstrated needs of the agency;

591 (ii) the demonstrated ability of the agency to appropriately use the award;

592 (iii) the degree to which the agency's need is offset through the agency's participation in  
593 federal equitable sharing or through other federal and state grant programs; and

594 (iv) the agency's cooperation with other state and local agencies and task forces.

595 (4) Agencies or political subdivisions shall apply for program awards by completing  
596 and submitting forms specified by the Commission on Criminal and Juvenile Justice.

597 (5) Applying agencies or political subdivisions shall demonstrate compliance with all  
598 reporting and policy requirements applicable under this chapter and under Title 63, Chapter  
599 25a, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

600 (6) Recipient law enforcement agencies may only use program award monies after  
601 approval or appropriation by the agency's legislative body, and the award monies are  
602 nonlapsing.

603 (7) A recipient law enforcement agency or political subdivision shall use program  
604 awards only for law enforcement or controlled substance law enforcement purposes as  
605 described in Subsection (8), and only as these purposes are specified by the agency or political  
606 subdivision in its application for the award.

607 (8) Permissible law enforcement purposes for which award monies may be used  
608 include:

609 (a) controlled substance interdiction and enforcement activities;

610 (b) drug court programs;

611 (c) activities calculated to enhance future investigations;

612 (d) law enforcement training that includes:

613 (i) implementation of the Fourth Amendment of the federal constitution and Article I,  
614 Section 7, of the Utah Constitution, and addresses the protection of the individual's rights of  
615 due process;

616 (ii) protection of the rights of innocent property holders; and

- 617 (iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and  
618 the states' reserved rights;
- 619 (e) law enforcement or detention facilities;  
620 (f) law enforcement operations or equipment which are not routine costs or operational  
621 expenses;  
622 (g) drug, gang, or crime prevention education programs which are sponsored in whole  
623 or in part by the law enforcement agency or its legislative body; and  
624 (h) matching funds for other state or federal law enforcement grants.
- 625 (9) Law enforcement purposes for which award monies may not be granted or used  
626 include:
- 627 (a) payment of salaries, retirement benefits, or bonuses to any person;  
628 (b) payment of enforcement expenses not related to law enforcement;  
629 (c) uses not specified in the agency's award application;  
630 (d) uses not approved or appropriated by the agency's legislative body;  
631 (e) payments, transfers, or pass-through funding to entities other than law enforcement  
632 agencies; or  
633 (f) uses, payments, or expenses that are not within the scope of the agency's functions.
- 634 (10) For each fiscal year, any state, local, or multijurisdictional agency or political  
635 subdivision that received a program award shall prepare, and file with the Utah Commission on  
636 Criminal and Juvenile Justice and the state auditor, a report in a form specified by the Utah  
637 Commission on Criminal and Juvenile Justice. The report shall include the following  
638 regarding each award:
- 639 (a) the agency's name;  
640 (b) the amount of the award;  
641 (c) the date of the award;  
642 (d) how the award has been used; and  
643 (e) a statement signed by both the agency's or political subdivision's executive officer  
644 or designee and by the agency's legal counsel, that:
- 645 (i) the agency or political subdivision has complied with all inventory, policy, and  
646 reporting requirements of this chapter;  
647 (ii) all program awards were used for crime reduction or law enforcement purposes as

648 specified in the application; and

649 (iii) and only upon approval or appropriation by the agency's or political subdivision's  
650 legislative body.

651 (11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to  
652 the legislative Law Enforcement and Criminal Justice Interim Committee annually regarding  
653 the forfeited property transferred to the fund, awards made by the program, uses of program  
654 awards, and any equitable share of property forfeited by the federal government as reported by  
655 agencies pursuant to Subsection 24-1-15(3).

656 Section 15. Section **24-1-20** is enacted to read:

657 **24-1-20. State Law Enforcement Forfeiture Account created -- Revenue sources --**  
658 **Use of account designated.**

659 (1) (a) There is created in the General Fund a restricted account called the "State Law  
660 Enforcement Forfeiture Account."

661 (b) All monies awarded to the Department of Public Safety or the Department of  
662 Corrections, or any division or agency within either department, through the Crime Reduction  
663 Assistance Program created in Section 24-1-19 shall be deposited into the State Law  
664 Enforcement Forfeiture Account.

665 (c) All monies previously deposited, or currently held in the Drug Forfeiture Account  
666 created in Section 58-37-20, and that were in that account when it was repealed by Initiative B,  
667 which passed in 2000, and which became effective March 29, 2001, shall be transferred to and  
668 deposited in the State Law Enforcement Forfeiture Account created in this Subsection (1).

669 (2) The Department of Public Safety and the Department of Corrections may expend  
670 amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture  
671 Account for law enforcement purposes or controlled substance law enforcement purposes as  
672 specified in Section 24-1-19.

673 (3) That portion of funds forfeited or that are required to be disbursed to other  
674 governmental entities under existing contractual agreements or Utah statutory requirements are  
675 exempt from this section.

676 (4) Funds forfeited as a result of the Salt Lake Airport Drug Program operated by the  
677 Department of Public Safety, not to exceed the Department of Public Safety's expenditure to  
678 that program, are exempt from this section.

679           (5) The Department of Public Safety and the Department of Corrections, as part of the  
680 annual legislative budget hearings, shall provide to the legislative Executive Offices and  
681 Criminal Justice Appropriations Subcommittee a complete accounting of expenditures and  
682 revenues from the funds received under this section.

683           (6) The Legislature may annually provide, in an appropriations act, legislative direction  
684 for anticipated expenditures of the monies received under this section.

685           **Section 16. Repealer.**

686           This bill repeals:

687           **Section 24-1-16, Disposition of proceeds from criminal or civil forfeiture.**

688           **Section 17. Effective date.**

689           If approved by two-thirds of all the members elected to each house, this bill takes effect  
690 upon approval by the governor, or the day following the constitutional time limit of Utah  
691 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
692 the date of veto override.