

PROTECTION OF PRIVATE LAWFULLY

OBTAINED PROPERTY

2004 GENERAL SESSION

STATE OF UTAH

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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 special revenue fund known as the Crime Reduction Assistance Fund, to be managed by the Commission on Criminal and Juvenile Justice;
- ▶ specifies accountability standards in management of forfeited property and of the proceeds;
- ▶ specifies law enforcement purposes for which the proceeds may be used and those purposes for which the proceeds may not be used;
- ▶ specifies standards and procedures for allocation of the proceeds to law enforcement



30 agencies by the Commission on Criminal and Juvenile Justice; and

31 ▶ requires reporting by agencies and by the Commission on Criminal and Juvenile
32 Justice.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides an immediate effective date.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **24-1-2**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

40 **24-1-3**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

41 **24-1-4**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

42 **24-1-6**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

43 **24-1-7**, as last amended by Chapter 185, Laws of Utah 2002

44 **24-1-10**, as last amended by Chapter 185, Laws of Utah 2002

45 **24-1-11**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

46 **24-1-12**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

47 **24-1-14**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

48 **24-1-15**, as last amended by Chapter 185, Laws of Utah 2002

49 ENACTS:

50 **24-1-3.5**, Utah Code Annotated 1953

51 **24-1-17**, Utah Code Annotated 1953

52 **24-1-18**, Utah Code Annotated 1953

53 **24-1-19**, Utah Code Annotated 1953

54 **24-1-20**, Utah Code Annotated 1953

55 REPEALS:

56 **24-1-16**, as last amended by Chapter 185, Laws of Utah 2002



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

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

60 **24-1-2. Purpose.**

61 It is the intent of this chapter to:

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

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

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

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

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

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

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

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

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

78 ~~[(6)]~~ (8) direct that any and all revenues resulting from the sale of forfeited property be
79 [contributed to the Uniform School Fund] allocated to the Utah Commission on Criminal and
80 Juvenile Justice for grants to state and local law enforcement agencies according to specified
81 guidelines.

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

83 **24-1-3. Definitions.**

84 As used in this section:

85 (1) "Agency" ~~[shall mean]~~ means any agency of municipal, county, or state
86 government, including law enforcement agencies, law enforcement personnel, and
87 multi-jurisdictional task forces.

88 (2) "Claimant" means:

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

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

91 (c) any other person or entity who asserts a claim to any property seized for forfeiture

92 under this section.

93 (3) "Complaint" means a civil complaint seeking the forfeiture of any real or personal
94 property pursuant to this chapter.

95 ~~[(2)]~~ (4) "Contraband" [shall mean] means any property, item, or substance which is
96 unlawful to produce or to possess under state or federal law.

97 (5) "Fund" means the Crime Reduction Assistance Fund created in Section 24-1-17.

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

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

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

103 (b) "Innocent owner" means an owner or interest holder who acquired an ownership
104 interest in the property after the conduct subjecting the property to seizure has occurred, and
105 who had no knowledge that the illegal conduct subjecting the property to seizure had occurred
106 or that the property had been seized for forfeiture, and:

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

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

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

112 (7) (a) "Interest holder" means a secured party as defined in Subsection
113 70A-9a-102(72), a mortgagee, lien creditor, or the beneficiary of a security interest or
114 encumbrance pertaining to an interest in property, whose interest would be perfected against a
115 good faith purchaser for value.

116 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
117 an agent or nominee for another person, or who is not in substantial compliance with any
118 statute requiring an interest in property to be recorded or reflected in public records in order to
119 perfect the interest against a good faith purchaser for value.

120 (8) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not
121 to exceed twenty percent of the net value of the forfeited property.

122 (9) "Legislative body" means:

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

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

127 (b) the lead governmental entity of a multi-jurisdictional task force, as designated in a
 128 memorandum of understanding executed by the agencies participating in the task force.

129 ~~[(3)]~~ (10) "Multi-jurisdictional task force" [shall mean] means a law enforcement task
 130 force or other agency comprised of persons who are employed by or acting under the authority
 131 of different governmental authorities, including federal, state, county or municipal
 132 governments, or any combination [thereof] of these agencies.

133 ~~[(4)]~~ (11) "Owner" [shall mean] means any person or entity, other than an interest
 134 holder as defined in this section, that possesses a bona fide legal or equitable interest in real or
 135 personal property[, including a security interest].

136 (12) "Program means the Crime Redaction Assistance Program created in Section
 137 24-1-19.

138 ~~[(5)]~~ (13) "Property" [shall mean] means all property, whether real or personal, tangible
 139 or intangible.

140 ~~[(6)]~~ (14) "Prosecuting Attorney" [shall mean the public attorney authorized by a
 141 specific provision of state law to initiate forfeiture proceedings under this chapter.] means:

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

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

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

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

147 (15) "Seize for forfeiture" means seizure of property:

148 (a) by a law enforcement officer or law enforcement agency, including a constructive
 149 seizure; and

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

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

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

154 **24-1-3.5. Jurisdiction and venue.**

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

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

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

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

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

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

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

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

169 **24-1-4. Civil Procedures.**

170 (1) An agency which seizes property under any provision of state law subjecting [~~an~~
171 ~~owner's~~] the property to [~~civil~~] forfeiture shall, as soon as practicable, but in no case more than
172 30 days after seizure:

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

177 (b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible
178 for initiating [~~civil~~] forfeiture proceedings under this chapter of the items of property seized,
179 the place of the seizure and any persons arrested at the time of seizure; and

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

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

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

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

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

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

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

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

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

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

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

208 (i) if the owner's or interest holder's name and current address are known, either by
209 personal service by any person qualified to serve process, by a law enforcement officer, or by
210 certified mail, return receipt requested, to that address;

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

215 (iii) if the owner's or interest holder's address is not known and is not on record as

216 provided in Subsections (3)(a)(i) or (ii), by publication for two successive weeks in a
217 newspaper of general circulation in the county in which the seizure occurred.

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

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

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

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

225 (iii) contain:

226 (A) a description of the property which is the subject matter of the forfeiture
227 proceeding;

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

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

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

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

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

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

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

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

237 (4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the
238 property in accordance with ~~subparagraph~~ Subsection (3), the agency shall promptly return
239 the property to its owner and the prosecuting attorney ~~shall~~ may take no further action to
240 effect the forfeiture of ~~such~~ the property.

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

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

245 (b) The claim and answer shall be filed within 30 days after the complaint is served in
246 person or by mail, or where applicable, within 30 days after publication under ~~subparagraph~~

247 Subsection (3)~~[(a)(ii)]~~.

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

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

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

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

257 **24-1-6. Innocent owners.**

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

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

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

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

266 ~~[(b) upon learning of the conduct subjecting the property to seizure, took reasonable~~
267 ~~steps to prohibit such use of the property:]~~

268 (a) is criminally responsible for the conduct giving rise to the forfeiture;

269 (b) knew of or could reasonably have been expected to know of the conduct giving rise
270 to the forfeiture, and allowed the property to be used in furtherance of the conduct;

271 (c) acquired the property with notice of its actual or constructive seizure for forfeiture
272 under this chapter;

273 (d) acquired the property with reason to believe the property was subject to forfeiture
274 under this chapter; or

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

277 ~~[(4)]~~ (3) For purposes of ~~[subparagraph (3)(b), no]~~ this chapter, an owner ~~[shall]~~ or

278 interest holder may not be required to take steps that he reasonably believes would be likely to
279 [~~subject any person (other than the person whose conduct gave rise to the forfeiture) to~~] result
280 in physical harm or danger to any person. An owner or interest holder may demonstrate that he
281 took reasonable action to prohibit [~~such~~] the illegal use of the property by, for example:

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

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

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

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

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

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

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

297 [~~(6)~~] (4) No owner may assert, under this [~~paragraph~~] section, an ownership interest in
298 contraband.

299 (5) Property is presumed to be subject to forfeiture under this chapter if the prosecuting
300 attorney establishes, by clear and convincing evidence, that:

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

302 (b) the property was acquired by the owner or interest holder during that period of the
303 conduct giving cause for forfeiture or within a reasonable time after that period; and

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

306 (6) A finding that property is the proceeds of conduct giving cause for forfeiture does
307 not require proof that the property was the proceeds of any particular exchange or transaction.

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

309 **24-1-7. Hardship release of seized property.**

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

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

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

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

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

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

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

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

328 (i) the bond tendered is inadequate;

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

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

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

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

338 (b) The seizing agency shall deposit property that is in the form of cash or other readily
339 negotiable instruments into a restricted account maintained by the agency solely for the purpose

340 of managing and protecting the property from commingling, loss, or devaluation during the
341 pendency of the forfeiture proceedings.

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

345 (d) An agency may not be awarded any funds from forfeiture through the Crime
346 Reduction Assistance Program under Section 24-1-18 if the agency has not established or
347 maintained the inventory policy, restricted account, and written policies required by this
348 Subsection (6).

349 ~~[(1)]~~ (7) An owner is entitled to the immediate release of seized property from the
350 seizing agency pending the final determination of ~~[civil]~~ forfeiture if:

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

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

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

355 (ii) preventing any individual from working;

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

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

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

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

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

363 (c) the hardship from the continued possession by the agency of the seized property
364 outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred
365 if it is returned to the owner during the pendency of the proceeding~~[-]; and~~

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

368 ~~[(2)]~~ (8) The right to appointed counsel under Section 24-1-9 applies throughout civil
369 forfeiture proceedings, including an owner's motion for hardship release.

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

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

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

374 (10) the motion for hardship release shall also be served upon the prosecuting attorney
375 and the seizing agency within ten days after filing the motion.

376 [~~(3)~~] (11) The court shall render a decision on a motion [~~or complaint~~] for hardship
377 filed under [~~Subsection (2)~~] this section not later than [~~ten~~] 20 days after the date of filing, or
378 ten days after service upon the prosecuting attorney and seizing agency, whichever is earlier,
379 unless [~~the ten-day~~] this period is extended by the [~~consent of the~~] parties or by the court for
380 good cause shown.

381 [~~(4)~~] (12) (a) If the owner demonstrates substantial hardship pursuant to [~~subparagraph~~
382 (~~4~~)] this section, the court shall order the property immediately released to the owner pending
383 completion of proceedings by the government to obtain forfeiture of the property.

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

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

389 (a) contraband;

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

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

394 (14) (a) The court may order property which has been seized for forfeiture to be sold as
395 allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any
396 owner or interest holder, or to preserve the interests of any party on motion of that party.

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

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

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

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

405 (ii) second, for the satisfaction of exempt interests in the order of their priority as

406 determined by Title 70A, Uniform Commercial Code; and

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

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

411 **24-1-10. Prejudgment and postjudgment interest.**

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

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

417 **24-1-11. Attorneys' fees and costs.**

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

423 (2) In determining whether to award attorneys' fees and costs, the court shall consider
424 the merit of each parties' allegations and pleadings, and whether a seizure, complaint, claim, or
425 answer was reasonable and based upon good faith, or was made for any improper purpose.

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

427 **24-1-12. Compensation for damaged property.**

428 (1) [~~In any civil or criminal proceeding,] If property seized for forfeiture is returned by~~
429 operation of this chapter, an owner [~~shall have a private~~] has a civil right of action against a
430 seizing agency for any claim based upon the negligent destruction, loss, damage or other injury
431 to seized property while in the possession or custody of [~~a state~~] the agency[, if the property
432 was seized for the purpose of initiating forfeiture proceedings under this chapter].

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

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

436 **24-1-14. Proportionality.**

437 (1) (a) An owner's interest in property, excluding contraband, ~~[shall not be civilly or~~
438 ~~criminally forfeited under a]~~ is not subject to forfeiture under any provision of state law [unless
439 such] if the forfeiture is [substantially proportional to both] grossly disproportional to the use
440 of the property in committing or facilitating a violation of state law and the value of the
441 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 grossly disproportional to the conduct for
452 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 (d) A court order to transfer the property is not required if a federal agency seeking
479 jurisdiction over the property obtains a seizure warrant, search warrant, arrest warrant in rem,
480 or other federal process mandating the transfer.

481 (3) (a) All property, money or other things of value received by an agency pursuant to
482 federal law which authorizes the sharing or transfer of all or a portion of forfeited property or
483 the proceeds of the sale of forfeited property to an agency ~~shall be promptly transferred to the~~
484 ~~state treasurer and sold and deposited in the Uniform School Fund as provided under Section~~
485 ~~24-1-16.];~~

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

488 (ii) shall be used only for those law enforcement purposes specified in Section
489 24-1-18(8); and

490 (iii) may not be used for those law enforcement purposes prohibited in Section
491 24-1-18(9).

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

495 (c) Law enforcement agencies awarded any equitable share of property forfeited by the
496 federal government may only use that equitable share subject to the laws, rules, regulations,
497 and orders of the state or local jurisdiction or political subdivision governing the use of public
498 funds available for law enforcement purposes. The use of the property shall be nonlapsing.

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

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

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

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

508 (B) the amount of the award;

509 (C) the date of the award;

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

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

512 (F) a statement signed by both the agency's executive officer or designee and by the
513 agency's legal counsel, that the agency has only used the awarded property for crime reduction
514 or law enforcement purposes authorized under Section 24-1-18, and only upon approval or
515 appropriation by the agency's legislative body.

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

519 (b) Any damages awarded to the state shall be paid to the [Uniform School Fund]
520 Crime Reduction Fund created in Section 24-1017.

521 (c) Any agent, including a state law enforcement [officers who are] detached to,
522 deputized or commissioned by, or working in conjunction with a federal agency, who
523 knowingly transfers or otherwise [trades] trades seized property in violation of [Subparagraph]
524 Subsection (2)(a) or who receives property, money, or other things of value under
525 [Subparagraph] Subsection (3)(a) and knowingly fails to transfer [such] the property to the

526 state treasurer is guilty of a class B misdemeanor.

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

528 **24-1-17. Disposition and allocation of forfeiture property.**

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

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

532 (b) transfer possession, custody, and control of the net forfeiture property or proceeds
533 immediately to the state treasurer's office.

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

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

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

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

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

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

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

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

552 (5) The remaining forfeited property shall then be transferred by the seizing agency to
553 the state treasurer, to be deposited in the Crime Reduction Assistance Fund created in Section
554 24-1-18 for award and distribution pursuant to the Crime Reduction Assistance Program
555 created in Section 24-1-19.

556 (6) (a) All property and proceeds awarded to the state through forfeiture proceedings

557 under this chapter shall be held by the state treasurer until the Utah Commission on Criminal
558 and Juvenile Justice approves awards and disbursements under the program.

559 (b) The property and proceeds held by the state treasurer shall be segregated from other
560 property, equipment, or assets of the state and from any department, office, or agency of the
561 state until awarded through the program.

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

563 **24-1-18. Crime Reduction Assistance Fund.**

564 (1) (a) There is created a special revenue fund known as the Crime Reduction
565 Assistance Fund for the purpose of providing funding for the Crime Reduction Assistance
566 Program created by Section 24-1-19.

567 (b) Consistent with its duties and responsibilities under Section 63-25a-104, the Utah
568 Commission on Criminal and Juvenile Justice shall expend monies from the fund for the
569 purposes under Section 24-1-19.

570 (c) The Utah Commission on Criminal and Juvenile Justice may pay program
571 administrative costs from the fund.

572 (2) The fund consists of all monies deposited to the fund under Section 24-1-17.

573 (3) (a) The fund shall earn interest.

574 (b) All interest earned on fund monies shall be deposited into the fund.

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

576 **24-1-19. Crime Reduction Assistance Program.**

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

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

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

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

583 (c) reducing crimes involving substance abuse by supporting the creation,

584 administration, or operation of drug court programs throughout the state;

585 (d) encouraging cooperation between local, state, and multi-jurisdictional law
586 enforcement agencies;

587 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited

588 proceeds of crime; and

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

591 (3) (a) When property is forfeited under this chapter and transferred to the fund, the
592 Utah Commission on Criminal and Juvenile Justice shall make awards of monies from the fund
593 to state, local, or multi-jurisdictional law enforcement agencies or political subdivisions of the
594 state in compliance with this section and to further the program purposes under Subsection (2).

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

597 (i) the demonstrated needs of the agency;

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

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

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

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

604 (5) Applying agencies or political subdivisions shall demonstrate compliance with all
605 reporting and policy requirements applicable under this chapter and under Title 63, Chapter
606 25a, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

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

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

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

616 (a) controlled substance interdiction and enforcement activities;

617 (b) drug court programs;

618 (c) activities calculated to enhance future investigations;

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

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

652 (11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to
653 the Legislature annually regarding the forfeited property transferred to the fund, awards made
654 by the program, uses of program awards, and any equitable share of property forfeited by the
655 federal government as reported by 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 Subsection 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 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.

Legislative Review Note
as of 2-3-04 8:13 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0175

Protection of Private Lawfully Obtained Property

20-Feb-04

3:14 PM

State Impact

This legislation could enhance the State and local governments' ability to obtain forfeiture assets, however, the amount is undeterminable. Provisions of the bill can be implemented within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst