

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



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

58

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 ~~[(2)]~~ (5) "Contraband" [shall mean] means any property, item, or substance which is
99 unlawful to produce or to possess under state or federal law.

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

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

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

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

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

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

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

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

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

121 perfect the interest against a good faith purchaser for value.

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

124 (9) "Legislative body" means:

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

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

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

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

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

138 (12) "Program means the Crime Reduction Assistance Program created in Section
139 24-1-19.

140 ~~[(5)]~~ (13) "Property" [shall mean] means all property, whether real or personal, tangible
141 or intangible.

142 ~~[(6)]~~ (14) "Prosecuting Attorney" [shall mean the public attorney authorized by a
143 specific provision of state law to initiate forfeiture proceedings under this chapter.] means:

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

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

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

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

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

150 (a) by a law enforcement officer or law enforcement agency, including a constructive
151 seizure; and

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

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

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

156 **24-1-3.5. Jurisdiction and venue.**

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

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

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

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

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

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

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

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

171 **24-1-4. Civil Procedures.**

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

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

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

182 (c) give written notice to all owners and interest holders known, or reasonably

183 discoverable after due diligence, of ~~[the following items]:~~

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

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

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

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

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

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

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

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

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

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

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

213 (ii) if the owner's or interest holder's name and address are required by law to be on

214 record with any state agency in order to perfect an interest in property and the owner's or
215 interest holder's current address is not known, by mailing a copy of the notice by certified mail,
216 return receipt requested, to the most recent address listed by any of those agencies; or

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

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

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

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

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

227 (iii) contain:

228 (A) a description of the property which is the subject matter of the forfeiture
229 proceeding;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

259 **24-1-6. Innocent owners.**

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

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

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

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

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

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

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

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

275 (d) acquired the property with reason to believe the property was subject to forfeiture

276 under this chapter; or

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

279 [~~(4)~~] (3) For purposes of [~~subparagraph (3)(b), no~~] this chapter, an owner [shall] or
280 interest holder may not be required to take steps that he reasonably believes would be likely to
281 [subject any person (other than the person whose conduct gave rise to the forfeiture) to] result
282 in physical harm or danger to any person. An owner or interest holder may demonstrate that he
283 took reasonable action to prohibit [~~such~~] the illegal use of the property by, for example:

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

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

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

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

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

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

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

299 [~~(6)~~] (4) No owner may assert, under this [~~paragraph~~] section, an ownership interest in
300 contraband.

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

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

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

306 (c) there was no likely source for the purchase or acquisition of the property other than

307 the conduct giving cause for forfeiture.

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

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

311 **24-1-7. Hardship release of seized property.**

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

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

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

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

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

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

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

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

330 (i) the bond tendered is inadequate;

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

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

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

337 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30

338 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the
339 property seized.

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

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

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

351 ~~[(1)]~~ (7) An owner is entitled to the immediate release of seized property from the
352 seizing agency pending the final determination of ~~[civil]~~ forfeiture if:

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

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

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

357 (ii) preventing any individual from working;

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

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

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

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

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

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

368 (d) determination of substantial hardship under this Subsection (7) is based upon the

369 property's use prior to the seizure.

370 [~~(2)~~] (8) The right to appointed counsel under Section 24-1-9 applies throughout civil
371 forfeiture proceedings, including an owner's motion for hardship release.

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

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

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

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

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

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

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

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

391 (a) contraband;

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

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

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

399 (b) The court may enter orders under Subsection (14)(a) after notice to persons known

400 to have an interest in the property, and after an opportunity for a hearing.

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

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

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

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

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

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

413 **24-1-10. Prejudgment and postjudgment interest.**

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

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

419 **24-1-11. Attorneys' fees and costs.**

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

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

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

429 **24-1-12. Compensation for damaged property.**

430 (1) [~~In any civil or criminal proceeding,] If property seized for forfeiture is returned by~~

431 operation of this chapter, an owner [~~shall have a private~~] has a civil right of action against a
432 seizing agency for any claim based upon the negligent destruction, loss, damage or other injury
433 to seized property while in the possession or custody of [~~a state~~] the agency[, ~~if the property~~
434 ~~was seized for the purpose of initiating forfeiture proceedings under this chapter~~].

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

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

438 **24-1-14. Proportionality.**

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

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

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

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

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

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

451 (iv) the value of the property.

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

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

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

459 **24-1-15. Transfer and sharing procedures.**

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

462 the property.

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

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

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

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

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

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

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

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

486 (ii) shall be used only for those law enforcement purposes specified in Section
487 24-1-19(8); and

488 (iii) may not be used for those law enforcement purposes prohibited in Section
489 24-1-19(9).

490 (b) If an agency receives forfeiture proceeds under Subsection (3)(a) that equal an
491 amount that is more than 25% greater than the annual budget of the receiving agency, the
492 amount of the proceeds that is in excess of 125% of the agency's annual budget shall be passed

493 through by the agency to the Commission on Criminal and Juvenile Justice to be used for the
494 purposes under Section 24-1-19.

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

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

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

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

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

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

511 (B) the amount of the award;

512 (C) the date of the award;

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

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

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

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

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

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

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

531 **24-1-17. Disposition and allocation of forfeiture property.**

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

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

535 (b) transfer possession, custody, and control of the net forfeiture property or proceeds
536 immediately to the Criminal Forfeiture Restricted Account created under Section 14-1-18.

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

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

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

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

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

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

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

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

555 (5) The remaining forfeited property shall then be deposited in the Criminal Forfeiture
556 Restricted Account created in Section 24-1-18.

557 (6) All property and proceeds awarded to the state through forfeiture proceedings under
558 this chapter shall be deposited in the Criminal Forfeiture Restricted Account created in Section
559 24-1-18.

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

561 **24-1-18. Criminal Forfeiture Restricted Account .**

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

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

566 (3) Money in the account shall be appropriated to the Commission on Criminal and
567 Juvenile Justice for implementing the Crime Reduction Assistance Program under Section
568 24-1-19.

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

570 **24-1-19. Crime Reduction Assistance Program.**

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

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

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

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

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

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

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

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

585 (3) (a) When property is forfeited under this chapter and transferred to the fund, the

586 Utah Commission on Criminal and Juvenile Justice shall make awards of monies from the fund
587 to state, local, or multi-jurisdictional law enforcement agencies or political subdivisions of the
588 state in compliance with this section and to further the program purposes under Subsection (2).

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

591 (i) the demonstrated needs of the agency;

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

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

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

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

598 (5) Applying agencies or political subdivisions shall demonstrate compliance with all
599 reporting and policy requirements applicable under this chapter and under Title 63, Chapter
600 25a, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

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

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

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

610 (a) controlled substance interdiction and enforcement activities;

611 (b) drug court programs;

612 (c) activities calculated to enhance future investigations;

613 (d) law enforcement training that includes:

614 (i) implementation of the Fourth Amendment of the federal constitution and Article 1,
615 Section 7, of the Utah Constitution, and addresses the protection of the individual's rights of
616 due process;

- 617 (ii) protection of the rights of innocent property holders; and
618 (iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and
619 the states' reserved rights;
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, retirement benefits, 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 legislative Law Enforcement and Criminal Justice Interim Committee annually regarding
654 the forfeited property transferred to the fund, awards made by the program, uses of program
655 awards, and any equitable share of property forfeited by the federal government as reported by
656 agencies pursuant to Subsection 24-1-15(3).

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

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

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

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

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

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

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

677 (4) Funds forfeited as a result of the Salt Lake Airport Drug Program operated by the
678 Department of Public Safety, not to exceed the Department of Public Safety's expenditure to

679 that program, are exempt from this section.

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

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

686 Section 16. **Repealer.**

687 This bill repeals:

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

689 Section 17. **Effective date.**

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