



UTAH STATE SENATE

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CORRECTED COMMITTEE REPORT

February 16, 2004

Mr. President:

The Judiciary, Law Enforcement, and Criminal Justice Committee reports a favorable recommendation on **S.B. 175**, PROTECTION OF PRIVATE LAWFULLY OBTAINED PROPERTY, by Senator D. C. Buttars, et al, with the following amendments:

1. *Page 1, Lines 23 through 24:*

- 23 ▶ creates ~~[[a special revenue fund known as the Crime Reduction Assistance Fund, to be managed by the]]~~ a restricted account for specified state forfeiture funds, and provides that funds in the account shall be appropriated to the
- 24 Commission on Criminal and Juvenile Justice;

2. *Page 3, Line 85:*

(1) "Account" means the Criminal Forfeiture Account created in Section 24-1-8.

=
Renumber following sections.

- 85 (1) "Agency" [~~shall mean~~] means any agency of municipal, county, or state

3. *Page 4, Line 97:*

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

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4. Page 12, Line 346:

346 Reduction Assistance Program under Section ~~[[24-1-18]]~~ 24-1-19 if the agency
has not established or

5. Page 13, Lines 374 through 380:

374 (10) the motion for hardship release shall also be served upon the prosecuting
attorney
375 ~~[[and]]~~ or 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]]~~ or 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.

6. Page 14, Lines 405 through 406:

405 (ii) second, for the satisfaction of ~~[[exempt]]~~ any interests , including
those of interest holders, in the order of their priority as
406 determined by Title 70A, Uniform Commercial Code; and

7. Page 14, Lines 418 through 425:

418 ~~[[+]]~~ 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

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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.]]~~

8. Page 15, Line 439:

439 ~~such]~~ if the forfeiture is ~~[[+]]~~ substantially ~~[[+]]~~ [proportional to both]
~~[[grossly]]~~ disproportional to the use

9. Page 15, Line 451:

451 (b) If the court finds that the forfeiture is ~~[[grossly]]~~ substantially
disproportional to the conduct for

10. Page 16, Lines 478 through 480:

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.]]~~

11. Page 16, Lines 488 through 491:

488 (ii) shall be used only for those law enforcement purposes specified in ~~[[Section~~
489 ~~24-1-18(8)]~~ Subsection 24-1-19(8) ; and

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490 (iii) may not be used for those law enforcement purposes prohibited in ~~[[Section~~
491 ~~24-1-18(9)]]~~ Subsection 24-1-19(9) .

12. Page 17, Lines 495 through 498:

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.]]~~ . the award monies after approval or appropriation by the agency's
legislative body. The award monies are
nonlapsing.

13. Page 17, Line 514:

514 or law enforcement purposes authorized under Section ~~[[24-1-18]]~~ 24-1-19 , and
only upon approval or

14. Page 18, Lines 552 through 555:

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.]]~~ deposited in the Criminal Forfeiture Account
created in section 24-1-18 .

15. Page 18, Lines 556 through 561:

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556 (6) ~~[(a)]~~ All property and proceeds awarded to the state through forfeiture
557 proceedings
558 under this chapter shall be **deposited in the Criminal Forfeiture Account created in**
559 **Section 24-1-18** ~~[[held by the state treasurer until the Utah Commission on~~
560 **Criminal**
561 **and Juvenile Justice approves awards and disbursements under the program]]** .
562 ~~[[(b) The property and proceeds held by the state treasurer shall be~~
563 **segregated from other**
564 **property, equipment, or assets of the state and from any department, office, or**
565 **agency of the**
566 **state until awarded through the program.]]**

16. Page 19, Lines 563 through 574:

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~~
566 ~~Assistance~~
567 ~~Program created by Section 24-1-19.~~
568 ~~— (b) Consistent with its duties and responsibilities under Section 63-25a-104, the~~
569 ~~Utah~~
570 ~~Commission on Criminal and Juvenile Justice shall expend monies from the fund~~
571 ~~for the~~
572 ~~purposes under Section 24-1-19.~~
573 ~~— (c) The Utah Commission on Criminal and Juvenile Justice may pay program~~
574 ~~administrative costs from the fund.~~
575 ~~— (2) The fund consists of all monies deposited to the fund under Section 24-1-17.~~
576 ~~— (3) (a) The fund shall earn interest.~~
577 ~~— (b) All interest earned on fund monies shall be deposited into the fund.]]~~
578 **24-1-18. Criminal Forfeiture Account.**
579 **(1) (a) There is created within the General Fund a restricted account known as the**
580 **"Criminal Forfeiture Account."**

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(2) Proceeds from forfeited property and forfeited monies shall be deposited in this account.

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

17. Page 21, Line 619:

619 (d) law enforcement training that includes:
(i) implementation of the Fourth Amendment of the federal constitution and Article 1, Section 7, of the Utah Constitutions, and addresses the protection of the individual's rights of due process;
(ii) protection of the rights of innocent property holders; and
(iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and the states' reserved rights ;

18. Page 21, Lines 626 through 628:

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;

19. Page 22, Lines 652 through 653:

652 (11) The Utah Commission on Criminal and Juvenile Justice shall report in writing
to
653 the [~~Legislature~~] legislative Law Enforcement and Criminal Justice Interim Committee annually regarding the forfeited property transferred to the fund, awards made

Respectfully,

Voting: 6-1-1

3 SB0175.SC1.WPD jmoberger/JM1 SCA/JM1 2/18/04 11:31 am

Gregory S. Bell
Committee Chair

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