

1 **UNCLAIMED PROPERTY AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Paul Ray**

5

LONG TITLE

6 **General Description:**

7 This bill clarifies the disposition of property that comes into the possession of peace
8 officers.
9

10 **Highlighted Provisions:**

11 This bill:
12 ▶ adds intangible property to the definition of property;
13 ▶ requires that the agency make a diligent effort to return property no longer needed to
14 its lawful owner as soon as possible;
15 ▶ allows a person whose property has been seized as evidence to petition the court for
16 its return; and
17 ▶ allows the court to determine disposition of property after giving notice to the
18 prosecutor.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **77-24-1**, as last amended by Chapter 104, Laws of Utah 1995

26 **77-24-1.5**, as last amended by Chapter 156, Laws of Utah 1998

27 **77-24-2**, as last amended by Chapter 118, Laws of Utah 2003



- 28 77-24-4, as last amended by Chapter 10, Laws of Utah 1992
- 29 77-24-5, as last amended by Chapter 10, Laws of Utah 1992
- 30 77-24a-1, as repealed and reenacted by Chapter 10, Laws of Utah 1992
- 31 77-24a-5, as last amended by Chapter 10, Laws of Utah 1992



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

34 Section 1. Section 77-24-1 is amended to read:

35 **77-24-1. Definitions.**

36 As used in this chapter:

37 ~~[(1) "Custodial property" means tangible property:]~~

38 ~~[(a) that comes into the possession of a peace officer through execution of a search~~
39 ~~warrant;]~~

40 ~~[(b) that comes into the possession of a peace officer pursuant to an arrest of a person,~~
41 ~~with or without a warrant;]~~

42 ~~[(c) that he received or took as evidence in connection with any public offense; or]~~

43 ~~[(d) that comes into the possession of a municipal or county animal control officer.]~~

44 ~~[(2)]~~ (1) "Intangible property" means:

- 45 (a) money, checks, drafts, deposits, interest, dividends, and income;
- 46 (b) credit balances, customer overpayments, gift certificates, security deposits, refunds,
- 47 credit memos, unpaid wages, unused airline tickets, and unidentified remittances;
- 48 (c) stocks and other intangible ownership interests in business associations;
- 49 (d) money deposited to redeem stocks, bonds, coupons, and other securities or to make
- 50 distributions;
- 51 (e) amounts due and payable under the terms of insurance policies; and
- 52 (f) amounts distributable from a trust or custodial fund established under a plan to
- 53 provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit
- 54 sharing, employee savings, supplemental unemployment insurance, or similar benefits.

55 (2) "Property" means any tangible or intangible property that is not seized for forfeiture
56 pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, that:

- 57 (a) comes into the possession of a peace officer through execution of a search warrant;
- 58 (b) comes into the possession of a peace officer pursuant to an arrest of a person, with

59 or without a warrant:

60 (c) is received or taken as evidence in connection with any public offense; or

61 (d) comes into the possession of a municipal or county animal control officer.

62 (3) "Tangible property" means all property that is not intangible property.

63 Section 2. Section **77-24-1.5** is amended to read:

64 **77-24-1.5. Safekeeping by officer pending disposition -- Records required -- Stray**
65 **animals.**

66 (1) Each peace officer shall:

67 (a) hold [~~custodial~~] all property in safe custody:

68 (i) until it is received into evidence; or

69 (ii) if it is not used as evidence, until it can be disposed of as provided in this chapter;

70 and

71 (b) maintain a proper record of the [~~custodial~~] property that identifies:

72 (i) the owner of the [~~custodial~~] property, if known; and

73 (ii) the case for which it was taken or received and is being held.

74 (2) (a) Each municipal or county animal control officer shall hold any unidentified or
75 unclaimed stray dog or stray cat in safe and humane custody for a minimum of three working
76 days after the time of impound prior to making any final disposition of the animal, including:

77 (i) placement in an adoptive home or other transfer of the animal, which shall be in
78 compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization Act, or Title
79 17, Chapter 42, County Animal Shelter Pet Sterilization Act; or

80 (ii) euthanasia.

81 (b) An unidentified or unclaimed stray dog or stray cat may be euthanized prior to the
82 completion of the three working day minimum holding period to prevent unnecessary suffering
83 due to serious injury or disease, if the euthanasia is in compliance with written established
84 agency or department policies and procedures, and with any local ordinances allowing the
85 destruction.

86 (c) An unidentified or unclaimed stray dog or stray cat shall be returned to its owner
87 upon:

88 (i) proof of ownership;

89 (ii) compliance with requirements of local animal control ordinances; and

90 (iii) compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization
91 Act, or Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act.

92 Section 3. Section **77-24-2** is amended to read:

93 **77-24-2. Property not needed as evidence -- Return procedure.**

94 (1) [~~Custodial property~~] Property which is not needed as evidence shall be returned to
95 the owner, if the owner may lawfully possess it, or disposed of in accordance with this chapter
96 [~~if the owner may lawfully possess it~~].

97 (2) (a) When the peace officer or the officer's employing agency becomes aware that
98 the property is not needed as evidence, the officer or the agency shall [~~advise~~] inform the
99 prosecuting attorney that the property is not needed and [~~shall~~] provide a description and details
100 of ownership.

101 (b) When the prosecuting attorney is [~~advised~~] informed or otherwise becomes aware
102 that the property is not needed as evidence, the prosecutor shall authorize release of the
103 property to the owner.

104 (c) When the peace officer or the officer's employing agency becomes aware that any
105 property is to be returned to its owner, the officer or employing agency shall exercise due
106 diligence in attempting to notify the rightful owner that the property is to be returned.

107 (d) If the property is a weapon, the peace officer shall dispose of it in accordance with
108 Section 76-10-525.

109 [~~(e)~~] (e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
110 evidence custodian, the custodian shall release the property to the owner.

111 (ii) If the evidence custodian is unable to locate an owner of the property or if the
112 owner is not entitled to lawfully possess the property, the agency having custody of the
113 property shall dispose of the property in accordance with Section 77-24-4.

114 (3) (a) When [~~custodial~~] property is received in evidence, the clerk of the court last
115 receiving it shall retain the property or the clerk shall return the property to the custody of the
116 peace officer. The property shall be retained by the clerk or the officer until all direct appeals
117 and retrials are final, at which time the property shall be returned to the owner in accordance
118 with this chapter. If the property was seized for forfeiture, it shall be held and disposed of as
119 provided in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

120 (b) If the prosecuting attorney considers it necessary to retain control over the

121 evidence, in anticipation of possible collateral attacks upon the judgment or for use in a
122 potential prosecution, he may decline to authorize return of the property to the owner.

123 Section 4. Section ~~77-24-4~~ is amended to read:

124 **77-24-4. Disposition of property.**

125 (1) As used in this section, "public interest use" includes:

126 (a) use by a government agency as determined by the legislative body of the agency's
127 jurisdiction; and

128 (b) donation to a bona fide charity.

129 (2) If the ~~[custodial]~~ property is not claimed by the owner ~~[before the expiration of~~
130 ~~three months from the receipt of notice]~~ following the notice or attempted notice required in
131 Section 77-24-2, or if the owner is unknown and no claim of ownership has been made, the
132 agency having possession of the ~~[custodial]~~ property may ~~[either]~~:

133 (a) ~~H→~~ ~~[f]~~ **appropriate** ~~[t]~~ **[retain]** ~~←H~~ the property ~~H→~~ ~~[for]~~ to ~~←H~~ public interest use
133a as provided in Subsection

134 (3); ~~[or]~~

135 (b) sell the property at public auction, as provided by law and ~~H→~~ ~~[f]~~ **appropriate** ~~[t]~~
135a **[retain]** ~~←H~~ the

136 proceeds of the sale ~~[to its own]~~ ~~H→~~ ~~[for]~~ to ~~←H~~ public interest use[-]; or

137 (c) destroy the property if unfit for sale.

138 (3) Before ~~[appropriating the custodial]~~ ~~H→~~ **[retaining]** **appropriating** ~~←H~~ the property
138a ~~H→~~ ~~[for]~~ to ~~←H~~ public interest use,

139 the agency having possession of the property shall obtain from the legislative body of its
140 jurisdiction:

141 (a) permission to ~~H→~~ ~~[f]~~ **appropriate** ~~[t]~~ **[retain]** ~~←H~~ the property ~~H→~~ to public interest
141a use ~~←H~~ ; and

142 (b) the designation and approval of the public interest use of the property.

143 (4) A person claiming ownership of property seized as evidence in a criminal matter
144 may petition the court for its return. After sufficient notice is given to the prosecutor, the court
145 may order that the property be:

146 (a) ~~H→~~ **[destroyed]** returned to the rightful owner as determined by the court ~~←H~~ ;

147 (b) applied toward restitution, fines, or fees in an amount set by the court;

148 (c) converted to public interest use; or

149 (d) ~~H→~~ **[returned to any rightful owner as determined by the court]** **destroyed** ~~←H~~ .

149a ~~H→~~ **(5) Property ordered returned to the rightful owner shall be returned as**
149b **expeditiously as possible.** ~~←H~~

150 Section 5. Section ~~77-24-5~~ is amended to read:

151 **77-24-5. Property seized from person -- Duplicate receipts.**

152 (1) When tangible or intangible property is seized with or without a warrant, the peace
153 officer seizing it shall at the time deliver a receipt to the person from whom it is taken and file
154 a duplicate in the office of the agency employing the officer.

155 (2) If the property is seized for forfeiture, a written notice pursuant to Section 24-1-4
156 may serve as the receipt, and a duplicate filed in the office of the agency employing the officer.

157 (3) If ~~the~~ custody of the property is transferred to another police agency or the
158 property is placed in evidence, a copy of the receipt shall accompany it until disposition of the
159 property is made in accordance with applicable law.

160 Section 6. Section **77-24a-1** is amended to read:

161 **77-24a-1. Definitions.**

162 As used in this chapter:

163 (1) "Intangible property" includes:

164 (a) money, checks, drafts, deposits, interest, dividends, and income;

165 (b) credit balances, customer overpayments, gift certificates, security deposits, refunds,
166 credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

167 (c) stocks and other intangible ownership interests in business associations;

168 (d) money deposited to redeem stocks, bonds, coupons, and other securities or to make
169 distributions;

170 (e) amounts due and payable under the terms of insurance policies; and

171 (f) amounts distributable from a trust or custodial fund established under a plan to
172 provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit
173 sharing, employee savings, supplemental unemployment insurance, or similar benefits.

174 (2) "Tangible property" means all property that is not intangible property.

175 (3) (a) "Unclaimed property" means ~~tangible~~ any property that comes into the
176 possession of a peace officer or law enforcement agency:

177 (i) that remains unclaimed by any person identifying himself as the owner of the
178 ~~tangible~~ property; or

179 (ii) for which no owner can be found after a reasonable and diligent search.

180 (b) "Unclaimed property" includes ~~tangible~~ any property coming into the possession
181 of the law enforcement agency ~~as evidence or~~ by delivery from persons claiming to have
182 found the property.

183 (c) "Unclaimed property" does not include [~~tangible~~] property governed by Title 77,
184 Chapter 24, Disposal of Property Received by Peace Officer.

185 Section 7. Section **77-24a-5** is amended to read:

186 **77-24a-5. Disposition of unclaimed property.**

187 (1) (a) If the owner of any unclaimed property cannot be determined or notified, or if
188 he is determined and notified, and fails to appear and claim the property after three months of
189 its receipt by the local law enforcement agency, the agency shall:

190 (i) publish at least one notice of the intent to dispose of the unclaimed property in a
191 newspaper of general circulation within the county; and

192 (ii) post a similar notice in a public place designated for notice within the law
193 enforcement agency.

194 (b) The notice shall:

195 (i) give a general description of the item; and

196 (ii) the date of intended disposition.

197 (c) The agency may not dispose of the unclaimed property until at least eight days after
198 the date of publication and posting.

199 (2) (a) If no claim is made for the unclaimed property within nine days of publication
200 and posting, the agency shall notify the person who turned the property over to the local law
201 enforcement agency, if it was turned over by a person under Section 77-24a-3.

202 (b) Except as provided in Subsection (4), if that person has complied with the
203 provisions of this chapter, he may take the unclaimed property if he:

204 (i) pays the costs incurred for advertising and storage; and

205 (ii) signs a receipt for the item.

206 (3) If the person who found the unclaimed property fails to take the property under the
207 provisions of this chapter, the agency shall dispose of that property and any other property that
208 is not claimed under this chapter as provided by Section 77-24-4.

209 (4) Any person employed by a law enforcement agency who finds [~~tangible~~] property
210 may not claim or receive property under this section.

Legislative Review Note

as of 1-17-05 6:31 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0208

Unclaimed Property Amendments

26-Jan-05

8:42 AM

State Impact

No fiscal impact.

Individual and Business Impact

Depending on the circumstances and determinations of the Courts, property seized as evidence may be returned to its rightful owner(s) in an expedited fashion.

Office of the Legislative Fiscal Analyst