

UNCLAIMED PROPERTY AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: David L. Thomas

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ adds intangible property to the definition of property;
- ▶ requires that the agency make a diligent effort to return property no longer needed to its lawful owner as soon as possible;
- ▶ allows a person whose property has been seized as evidence to petition the court for its return; and
- ▶ allows the court to determine disposition of property after giving notice to the prosecutor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 77-24-1**, as last amended by Chapter 104, Laws of Utah 1995
- 77-24-1.5**, as last amended by Chapter 156, Laws of Utah 1998
- 77-24-2**, as last amended by Chapter 118, Laws of Utah 2003
- 77-24-4**, as last amended by Chapter 10, Laws of Utah 1992

77-24-5, as last amended by Chapter 10, Laws of Utah 1992

77-24a-1, as repealed and reenacted by Chapter 10, Laws of Utah 1992

77-24a-5, as last amended by Chapter 10, Laws of Utah 1992

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

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

77-24-1. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) comes into the possession of a peace officer through execution of a search warrant;

(b) comes into the possession of a peace officer pursuant to an arrest of a person, with or without a warrant;

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

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

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

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

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

(1) Each peace officer shall:

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

(i) until it is received into evidence; or

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

and

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

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

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

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

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

(ii) euthanasia.

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

destruction.

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

- (i) proof of ownership;
- (ii) compliance with requirements of local animal control ordinances; and
- (iii) compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization Act, or Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act.

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

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

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

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

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

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

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

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

(ii) If the evidence custodian is unable to locate an owner of the property or if the owner is not entitled to lawfully possess the property, the agency having custody of the property shall

dispose of the property in accordance with Section 77-24-4.

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

(b) If the prosecuting attorney considers it necessary to retain control over the evidence, in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, he may decline to authorize return of the property to the owner.

Section 4. Section **77-24-4** is amended to read:

77-24-4. Disposition of property.

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

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

(b) donation to a bona fide charity.

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

(a) appropriate the property [for] to public interest use as provided in Subsection (3); [or]

(b) sell the property at public auction, as provided by law and appropriate the proceeds of the sale to [its own] public interest use[-]; or

(c) destroy the property if unfit for sale.

(3) Before appropriating the [custodial] property [for] to public interest use, the agency having possession of the property shall obtain from the legislative body of its jurisdiction:

(a) permission to appropriate the property to public interest use; and

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

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

- (a) returned to the rightful owner as determined by the court;
- (b) applied toward restitution, fines, or fees in an amount set by the court;
- (c) converted to public interest use; or
- (d) destroyed.

(5) Property ordered returned to the rightful owner shall be returned as expeditiously as possible.

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

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

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

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

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

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

77-24a-1. Definitions.

As used in this chapter:

- (1) "Intangible property" includes:
 - (a) money, checks, drafts, deposits, interest, dividends, and income;
 - (b) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;
 - (c) stocks and other intangible ownership interests in business associations;
 - (d) money deposited to redeem stocks, bonds, coupons, and other securities or to make

distributions;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The notice shall:

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

(ii) the date of intended disposition.

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

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

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

- (i) pays the costs incurred for advertising and storage; and
- (ii) signs a receipt for the item.

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

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