

1 **TRANSFER AND DISPOSITION OF**
2 **PROTECTED PROPERTY AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Darin G. Peterson**

6 House Sponsor: Richard W. Wheeler

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies statutory forfeiture procedures, including transfer of a forfeiture to a
11 federal agency.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides additional procedural requirements regarding transfer of a forfeiture
- 15 process to a federal agency, including protection of the rights of affected parties;
- 16 ▶ clarifies that forfeiture proceeds are allocated to the Criminal Forfeiture Restricted
- 17 Account;
- 18 ▶ corrects specified cross references; and
- 19 ▶ makes technical amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **24-1-8**, as last amended by Chapter 185, Laws of Utah 2002

27 **24-1-15**, as last amended by Chapter 296, Laws of Utah 2004



- 28 **32A-13-103**, as last amended by Chapter 185, Laws of Utah 2002
- 29 **53A-16-101**, as last amended by Chapter 166, Laws of Utah 2005
- 30 **76-10-1107**, as last amended by Chapter 185, Laws of Utah 2002
- 31 **76-10-1108**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 32 **76-10-1603.5**, as last amended by Chapter 185, Laws of Utah 2002



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

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

36 **24-1-8. Criminal procedures.**

37 (1) In cases where an owner is criminally prosecuted for conduct giving rise to
38 forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property
39 civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to
40 the property of a defendant who is acquitted of the offense on which the forfeiture claim is
41 based.

42 (2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the
43 property, the information or indictment must state that the owner's interest in the specifically
44 described property is subject to criminal forfeiture and the basis for the forfeiture.

45 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining
46 orders or injunctions, or take other reasonable action to preserve for forfeiture under this
47 section any forfeitable property if, after notice to persons known, or discoverable after due
48 diligence, to have an interest in the property and after affording them an opportunity for a
49 hearing, the court determines that:

50 (i) there is a substantial probability that the state will prevail on the issue of forfeiture
51 and that failure to enter the order will result in the property being sold, transferred, destroyed,
52 or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

53 (ii) the need to preserve the availability of the property or prevent its sale, transfer,
54 destruction, or removal through the entry of the requested order outweighs the hardship against
55 any party against whom the order is to be entered.

56 (b) A temporary restraining order may be entered ex parte upon application of the
57 prosecuting attorney before or after an information or indictment has been filed with respect to
58 the property, if the prosecuting attorney demonstrates that:

59 (i) there is probable cause to believe that the property with respect to which the order is
60 sought would, in the event of a conviction, be subject to forfeiture under this section; and

61 (ii) provision of notice would jeopardize the availability of the property for forfeiture
62 or would jeopardize an ongoing criminal investigation.

63 (c) The temporary order expires not more than ten days after entry unless extended for
64 good cause shown or unless the party against whom it is entered consents to an extension. An
65 adversarial hearing concerning an order entered under this ~~[paragraph]~~ section shall be held as
66 soon as practicable and prior to the expiration of the temporary order.

67 (d) The court is not bound by the Utah Rules of Evidence regarding evidence it may
68 receive and consider at any hearing under this ~~[paragraph]~~ section.

69 (4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal
70 forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of
71 the property identified in the information or indictment, if any, that is forfeitable.

72 (b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

73 (5) (a) Upon conviction of a person for violating any provision of state law subjecting
74 an owner's property to forfeiture and upon the jury's special verdict that the property is
75 forfeitable, the court shall enter a judgment and order the property forfeited to the state
76 treasurer upon the terms stated by the court in its order.

77 (b) Following the entry of an order declaring property forfeited, the court may, upon
78 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,
79 require the execution of satisfactory performance bonds, appoint receivers, conservators,
80 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in
81 property ordered forfeited.

82 (6) (a) After property is ordered forfeited under this section, the state treasurer shall
83 direct the disposition of the property under Section ~~[24-1-16]~~ 24-1-17. Any property right or
84 interest not exercisable by or transferable for value to the state expires and does not revert to
85 the defendant. The defendant or any person acting in concert with or on behalf of the
86 defendant is not eligible to purchase forfeited property at any sale held by the state treasurer
87 unless approved by the judge.

88 (b) The court may stay the sale or disposition of the property pending the conclusion of
89 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that

90 proceeding with the sale or disposition of the property may result in irreparable injury, harm or
91 loss to him.

92 (7) Except under [~~Subparagraphs~~] Subsection (3) or (10), a party claiming an interest in
93 property subject to criminal forfeiture under this section:

94 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
95 property under this section; and

96 (b) may not commence an action at law or equity against the state or the county
97 concerning the validity of his alleged interests in the property subsequent to the filing of an
98 indictment or an information alleging that the property is subject to forfeiture under this
99 section.

100 (8) The district court of the state which has jurisdiction of a case under this part may
101 enter orders under this section without regard to the location of any property which may be
102 subject to forfeiture under this section, or which has been ordered forfeited under this section.

103 (9) To facilitate the identification or location of property declared forfeited and to
104 facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of
105 an order declaring property forfeited to the state treasurer, the court[;] may upon application of
106 the prosecuting attorney[;] order that the testimony of any witness relating to the property
107 forfeited be taken by deposition, and that any book, paper, document, record, recording, or
108 other material not privileged shall be produced as provided for depositions and discovery under
109 the Utah Rules of Civil Procedure.

110 (10) (a) Following the entry of an order of forfeiture under this section, the prosecuting
111 attorney shall publish notice of the order's intent to dispose of the property as the court may
112 direct. The prosecuting attorney shall also provide direct written notice to any person known to
113 have an alleged interest in the property subject to the order of forfeiture.

114 (b) Any person, other than the defendant, asserting a legal interest in property which
115 has been ordered forfeited to the state treasurer under this section may, within 30 days of the
116 final publication of notice or his receipt of written notice under [~~Subparagraph (a)~~] Subsection
117 (10)(a), whichever is earlier, petition the court for a hearing to adjudicate the validity of his
118 alleged interest in the property. Any genuine issue of material fact, including issues of
119 standing, is triable to a jury upon demand of any party.

120 (c) The petition shall be in writing and signed by the petitioner under penalty of

121 perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the
122 property, the time and circumstances of the petitioner's acquisition of the right, title, or interest
123 in the property, and any additional facts supporting the petitioner's claim and the relief sought.

124 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The
125 court may consolidate a trial or hearing on the petition and any petition filed by any other
126 person under this section other than the defendant. The court shall permit the parties to
127 conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

128 (e) At the trial or hearing, the petitioner may testify and present evidence and witnesses
129 on his own behalf and cross-examine witnesses who appear at the hearing. The prosecuting
130 attorney may present evidence and witnesses in rebuttal and in defense of the claim to the
131 property and cross-examine witnesses who appear. In addition to testimony and evidence
132 presented at the trial or hearing, the court may consider the relevant portion of the record of the
133 criminal case which resulted in the order of forfeiture. Any trial or hearing shall be conducted
134 pursuant to the Utah Rules of Evidence.

135 (f) The court shall amend the order of forfeiture in accordance with its determination, if
136 after the trial or hearing, the court or jury determines that the petitioner has established by a
137 preponderance of the evidence that:

138 (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or
139 interest renders the order of forfeiture invalid in whole or in part because the right, title, or
140 interest was vested in the petitioner rather than the defendant or was superior to any right, title,
141 or interest of the defendant at the time of the commission of the acts or conduct which gave rise
142 to the forfeiture of the property under this section; or

143 (ii) the petitioner acquired the right, title or interest in the property in a bona fide
144 transaction for value and, at the time of such acquisition, the petitioner did not know that the
145 property was subject to forfeiture.

146 (g) Following the court's disposition of all petitions filed under this ~~[paragraph]~~
147 Subsection (10), or if no petitions are filed following the expiration of the period provided in
148 ~~[Subparagraph (b)]~~ Subsection (10)(b) for the filing of petitions, the state treasurer has clear
149 title to property subject to the order of forfeiture and may warrant good title to any subsequent
150 purchaser or transferee.

151 Section 2. Section **24-1-15** is amended to read:

152 **24-1-15. Transfer and sharing procedures.**

153 (1) For purposes of this section, property is considered to be "seized" whenever any
154 state, county, or municipal law enforcement agency takes possession of the property or
155 exercises any degree of control over the property.

156 (2) When property is seized pursuant to the order of a state district court or state
157 statute, the state has priority jurisdiction.

158 ~~[(2)(a)]~~ (3) Seizing agencies or prosecuting attorneys authorized to bring civil or
159 criminal forfeiture proceedings under this chapter may not directly or indirectly transfer seized
160 property not already named in a criminal indictment to any federal agency or any governmental
161 entity not created under and subject to state law unless the court enters an order, upon petition
162 of the prosecuting attorney, authorizing the property to be transferred. The court may not enter
163 an order authorizing a transfer unless:

164 ~~[(i)]~~ (a) the ~~[activity]~~ conduct giving rise to the investigation or seizure is interstate in
165 nature and sufficiently complex to justify the transfer;

166 ~~[(ii)]~~ (b) the seized property may only be forfeited under federal law; or

167 ~~[(iii)]~~ (c) pursuing forfeiture under state law would unreasonably burden prosecuting
168 attorneys or state law enforcement agencies.

169 (4) A petition to transfer property under this section to a federal agency shall include:

170 (a) a detailed description of the property seized;

171 (b) the location where the property was seized;

172 (c) the date the property was seized;

173 (d) case number assigned by the seizing law enforcement agency; and

174 (e) a sworn affidavit that:

175 (i) is signed by the prosecutor;

176 (ii) states the basis for relinquishing priority jurisdiction to a federal agency; and

177 (iii) contains the names and addresses of any potential owners then known.

178 ~~[(b)]~~ (5) Notwithstanding Subsection ~~[(2)(a)]~~ (3), the court may refuse to enter an order
179 authorizing a transfer to the federal government if the transfer would circumvent the
180 protections of the Utah Constitution or of this chapter that would otherwise be available to the
181 property owner.

182 ~~[(e)]~~ (6) (a) Prior to granting any order to transfer pursuant to Subsection ~~[(2)(a)]~~ (3),

183 the court [~~must~~] shall give any owner the right to be heard with regard to the transfer[-] by
184 sending notice to each address contained in the sworn affidavit.

185 (b) If no potential owner objects to the petition to transfer property within ten days of
186 the mailing of the notice, the court shall issue its order under this section.

187 (c) If the affidavit provides no address for a potential owner, the court shall delay its
188 order under this section for 20 days to allow time for the potential owner to appear and object.

189 (7) (a) If a potential owner contests a petition to transfer property to a federal agency,
190 the court shall promptly set the matter for hearing.

191 (b) The court shall determine whether the state may relinquish priority jurisdiction by a
192 preponderance of the evidence by considering hardship, complexity, judicial, and law
193 enforcement resources, and any other matter the court determines to be relevant.

194 [~~(3)~~] (8) (a) Subject to Subsection [~~(3)~~] (8)(b), all property, money, or other things of
195 value received by an agency pursuant to federal law which authorizes the sharing or transfer of
196 all or a portion of forfeited property or the proceeds of the sale of forfeited property to an
197 agency:

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

200 (ii) shall be used only for those law enforcement purposes specified in Subsection
201 24-1-19(8); and

202 (iii) may not be used for those law enforcement purposes prohibited in Subsection
203 24-1-19(9).

204 (b) If an agency receives forfeiture proceeds under Subsection [~~(3)~~] (8)(a) that equal an
205 amount that is more than 25% greater than the annual budget of the receiving agency, the
206 amount of the proceeds that is in excess of 125% of the agency's annual budget shall be passed
207 through by the agency to the Commission on Criminal and Juvenile Justice to be used for the
208 purposes under Section 24-1-19.

209 (c) Subject to Subsection [~~(3)~~] (8)(a), state agencies are encouraged to seek an
210 equitable share of property forfeited by the federal government and to cooperate with federal
211 law enforcement agencies in all cases in which cooperation is in the interest of this state.

212 (d) A law enforcement agency awarded any equitable share of property forfeited by the
213 federal government may only use the award monies after approval or appropriation by the

214 agency's legislative body.

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

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

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

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

224 (B) the amount of the award;

225 (C) the date of the award;

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

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

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

232 [~~(4)~~] (9) (a) Any agency that violates Subsection [~~(2)~~] (3) or [~~(3)~~] (8) is civilly liable to
233 the state for three times the amount of the forfeiture diverted and for costs of suit and
234 reasonable [~~attorneys'~~] attorney fees.

235 (b) Any damages awarded to the state shall be paid to the Criminal Forfeiture
236 Restricted Account created in Section 24-1-18.

237 (c) Any agent, including a state law enforcement officer, detached to, deputized or
238 commissioned by, or working in conjunction with a federal agency, who knowingly transfers or
239 otherwise trades seized property in violation of Subsection [~~(2)(a)~~] (3) or who receives
240 property, money, or other things of value under Subsection [~~(3)~~] (8)(a) and knowingly fails to
241 transfer the property in accordance with this section is guilty of a class B misdemeanor.

242 Section 3. Section **32A-13-103** is amended to read:

243 **32A-13-103. Searches, seizures, and forfeitures.**

244 (1) The following are subject to forfeiture pursuant to the procedures and substantive

245 protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

246 (a) all alcoholic products possessed, used, offered for sale, sold, given, furnished,
247 supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried,
248 transported, or distributed in violation of this title or commission rules;

249 (b) all packages or property used or intended for use as a container for an alcoholic
250 product in violation of this title or commission rules;

251 (c) all raw materials, products, and equipment used, or intended for use, in
252 manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic
253 product in violation of this title or commission rules;

254 (d) all implements, furniture, fixtures, or other personal property used or kept for any
255 violation of this title or commission rules;

256 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to
257 transport or in any manner facilitate the transportation, sale, receipt, possession, or
258 concealment of property described in Subsection (1)(a), (b), (c), or (d); and

259 (f) all books, records, receipts, ledgers, or other documents used or intended for use in
260 violation of this title or commission rules.

261 (2) Any of the property subject to forfeiture under this title may be seized by any peace
262 officer of this state or any other person authorized by law upon process issued by any court
263 having jurisdiction over the property in accordance with the procedures provided in Title 77,
264 Chapter 23, Part 2, Search Warrants. However, seizure without process may be made when:

265 (a) the seizure is incident to an arrest or search under a search warrant or an inspection
266 under an administrative inspection warrant;

267 (b) the property subject to seizure has been the subject of a prior judgment in favor of
268 the state in a criminal injunction or forfeiture proceeding under this title;

269 (c) the peace officer or other person authorized by law has probable cause to believe
270 that the property is directly or indirectly dangerous to health or safety; or

271 (d) the peace officer or other person authorized by law has probable cause to believe
272 that the property is being or has been used, intended to be used, held, or kept in violation of this
273 title or commission rules.

274 (3) If the property is seized pursuant to a search or administrative warrant, the peace
275 officer or other person authorized by law shall make a proper receipt, return, and inventory and

276 ensure the safekeeping of the property as required by Sections 77-23-206 through 77-23-208.
277 If the magistrate who issued the warrant is a justice court judge, upon the filing of the return
278 the jurisdiction of the justice court shall cease and the magistrate shall certify the record and all
279 files without delay to the district court of the county in which the property was located. From
280 the time of this filing, the district court has jurisdiction of the case.

281 (4) In the event of seizure of property without process, the peace officer or other person
282 authorized by law shall make a return of his acts without delay directly to the district court of
283 the county in which the property was located, and the district court shall have jurisdiction of
284 the case. The return shall describe all property seized, the place where it was seized, and any
285 persons in apparent possession of the property. The officer or other person shall also promptly
286 deliver a written inventory of anything seized to any person in apparent authority at the
287 premises where the seizure was made, or post it in a conspicuous place at the premises. The
288 inventory shall state the place where the property is being held.

289 (5) Property taken or detained under this section is not repleviable but is considered in
290 custody of the law enforcement agency making the seizure subject only to the orders of the
291 court or the official having jurisdiction. When property is seized under this title, the
292 appropriate person or agency may:

293 (a) place the property under seal;

294 (b) remove the property to a place designated by it or the warrant under which it was
295 seized; or

296 (c) take custody of the property and remove it to an appropriate location for disposition
297 in accordance with law.

298 (6) When any property is subject to forfeiture under this section, proceedings shall be
299 instituted in accordance with the procedures and substantive protections of Title 24, Chapter 1,
300 Utah Uniform Forfeiture Procedures Act.

301 (7) When any property is ordered forfeited under Title 24, Chapter 1, Utah Uniform
302 Forfeiture Procedures Act, by a finding of the court that no person is entitled to recover the
303 property, the property, if an alcoholic product or a package used as a container for an alcoholic
304 product, shall be disposed of as follows:

305 (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or
306 impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in

307 saleable condition, sold in accordance with Section ~~[24-1-16]~~ 24-1-17.

308 (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its
309 package or container shall be destroyed by the department under competent supervision.

310 Section 4. Section **53A-16-101** is amended to read:

311 **53A-16-101. Uniform School Fund -- Contents -- Interest and Dividends Account.**

312 (1) The Uniform School Fund established by Utah Constitution, Article X, Section 5,
313 consists of:

314 (a) interest and dividends derived from the investment of monies in the permanent
315 State School Fund established by Utah Constitution, Article X, Section 5;

316 (b) money transferred to the fund pursuant to Title 67, Chapter 4a, Unclaimed Property
317 Act; and

318 ~~[(c) revenue from the sale of forfeited property as provided by Title 24, Chapter 1,
319 Utah Uniform Forfeiture Procedures Act; and]~~

320 ~~[(d)]~~ (c) all other constitutional or legislative allocations to the fund, including
321 revenues received under Utah Constitution, Article XIII, Section 5, from taxes on income or
322 intangible property, except for those income tax revenues appropriated to the state's higher
323 education system.

324 (2) (a) There is created within the Uniform School Fund a restricted account known as
325 the Interest and Dividends Account.

326 (b) The Interest and Dividends Account consists of:

327 (i) interest and dividends derived from the investment of monies in the permanent State
328 School Fund referred to in Subsection (1)(a); and

329 (ii) interest on account monies.

330 (3) (a) Upon appropriation by the Legislature, monies from the Interest and Dividends
331 Account shall be used for the School LAND Trust Program as provided in Section
332 53A-16-101.5.

333 (b) The Legislature may appropriate any remaining balance for the support of the
334 public education system.

335 Section 5. Section **76-10-1107** is amended to read:

336 **76-10-1107. Seizure and sale of devices or equipment used for gambling.**

337 ~~[(1) Whenever]~~ When any magistrate ~~[shall determine]~~ determines that any devices or

338 equipment [is] are being used or kept for the purpose of being used for gambling, the
 339 magistrate may authorize the county commissioner of the county [~~wherein~~] where the seizure
 340 occurred, in conjunction with the sheriff, or if the seizure occurred within the limits of an
 341 incorporated city or town, may authorize its governing body, in conjunction with its chief law
 342 enforcement officer, to seize the devices or equipment and institute forfeiture proceedings in
 343 accordance with the procedures and substantive protections of Title 24, Chapter 1, Utah
 344 Uniform Forfeiture Procedures Act.

345 ~~[(2) The proceeds of any sale shall be paid to the Uniform School Fund, as provided in~~
 346 ~~Section 53A-16-101.]~~

347 Section 6. Section **76-10-1108** is amended to read:

348 **76-10-1108. Seizure and disposition of gambling debts or proceeds.**

349 ~~[(1)]~~ Any gambling bets or gambling proceeds which are reasonably identifiable as
 350 having been used or obtained in violation of this part may be seized and are subject to
 351 forfeiture proceedings in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture
 352 Procedures Act.

353 ~~[(2) All sums forfeited under this section shall be paid to the Uniform School Fund,~~
 354 ~~Title 53A, Chapter 16, Section 101 of the Utah Code.]~~

355 Section 7. Section **76-10-1603.5** is amended to read:

356 **76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture --**
 357 **Restrictions -- Dissolution or reorganization -- Prior restraint.**

358 (1) A person who violates any provision of Section 76-10-1603 is guilty of a second
 359 degree felony. In addition to penalties prescribed by law, the court may order the person found
 360 guilty of the felony to pay to the state, if the attorney general brought the action, or to the
 361 county, if the county attorney or district attorney brought the action, the costs of investigating
 362 and prosecuting the offense and the costs of securing the forfeitures provided for in this
 363 section. The person shall forfeit [~~to the Uniform School Fund, as provided in Section~~
 364 ~~53A-16-101~~]:

365 (a) any interest acquired or maintained in violation of any provision of Section
 366 76-10-1603;

367 (b) any interest in, security of, claim against, or property or contractual right of any
 368 kind affording a source of influence over any enterprise which the person has established,

369 operated, controlled, conducted, or participated in the conduct of in violation of Section
370 76-10-1603; and

371 (c) any property constituting or derived from the net proceeds which the person
372 obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or
373 from any act or conduct constituting the pattern of unlawful activity proven as part of the
374 violation of any provision of Section 76-10-1603.

375 (2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
376 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
377 76-10-1222, the property subject to forfeiture under this section is limited to property, the
378 seizure or forfeiture of which would not constitute a prior restraint on the exercise of an
379 affected party's rights under the First Amendment to the Constitution of the United States or
380 Utah Constitution Article I, [~~Sec.~~] Section 15 [~~of the Utah Constitution~~], or would not
381 otherwise unlawfully interfere with the exercise of those rights.

382 (3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603,
383 a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603 may be
384 fined not more than twice the amount of the net proceeds.

385 (4) Property subject to [~~criminal~~] forfeiture in [~~accord~~] accordance with the procedures
386 and substantive protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

387 (a) includes:

388 (i) real property, including things growing on, affixed to, and found in land; and
389 (ii) tangible and intangible personal property including money, rights, privileges,
390 interests, claims, and securities of any kind; but

391 (b) does not include property exchanged or to be exchanged for services rendered in
392 connection with the defense of the charges or any related criminal case.

393 (5) Upon conviction for violating any provision of Section 76-10-1603, and in addition
394 to any penalty prescribed by law and in addition to any forfeitures provided for in this section,
395 the court may do any or all of the following:

396 (a) order the person to divest himself of any interest in or any control, direct or indirect,
397 of any enterprise;

398 (b) impose reasonable restrictions on the future activities or investments of any person,
399 including prohibiting the person from engaging in the same type of endeavor as the enterprise

400 engaged in, to the extent the Utah Constitution and the Constitution of the United States
401 permit; or

402 (c) order the dissolution or reorganization of any enterprise.

403 (6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
404 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
405 76-10-1222, the court may not enter any order that would amount to a prior restraint on the
406 exercise of an affected party's rights under the First Amendment to the Constitution of the
407 United States or Utah Constitution Article I, Section 15[~~Utah Constitution~~].

408 (7) All rights, title, and interest in forfeitable property described in Subsections (1) and
409 (2) [~~vest in the state treasurer, on behalf of the Uniform School Fund, upon the commission of~~
410 ~~the act or conduct giving rise to the forfeiture under this section~~] are subject to forfeiture
411 proceedings in accordance with the procedures and substantive protections of Title 24, Chapter
412 1, Utah Uniform Forfeiture Procedures Act.

413 (8) For purposes of this section, the "net proceeds" of an offense means property
414 acquired as a result of the violation minus the direct costs of acquiring the property.

Legislative Review Note
as of 12-20-06 12:42 PM

Office of Legislative Research and General Counsel

S.B. 55 - Transfer and Disposition of Protected Property Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/22/2007, 12:19:56 PM, Lead Analyst: Ricks, G.

Office of the Legislative Fiscal Analyst