

28 Section 1. Section **77-38a-601** is amended to read:

29 **77-38a-601. Preservation of assets.**

30 (1) ~~[At] Prior to or at~~ the time a criminal information, indictment charging a violation,
31 or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a
32 prosecutor may, if in the prosecutor's best judgment there is a substantial likelihood that a
33 conviction will be obtained and restitution will be ordered in the case, petition the court to:

34 (a) enter a temporary restraining order ~~[or],~~ an injunction, or both;

35 (b) require the execution of a satisfactory performance bond~~[-];~~ or

36 (c) take any other action to preserve the availability of property which may be
37 necessary to satisfy an anticipated restitution order ~~[if, in the prosecutor's best judgement, there~~
38 ~~is a substantial likelihood that a conviction will be obtained and restitution will be ordered].~~

39 ~~[(a) Upon receiving a petition from a prosecutor under this Subsection (1), and after~~
40 ~~notice and a hearing, the court may enter a restraining order or injunction, require the execution~~
41 ~~of a satisfactory performance bond, or take any action necessary to preserve the availability of~~
42 ~~property which may be necessary to satisfy an anticipated restitution order.]~~

43 ~~[(b) An order entered under this Subsection (1) is effective for up to 90 days, unless~~
44 ~~extended by the court for good cause shown.]~~

45 ~~[(2) Prior to the filing of a criminal information, indictment charging a violation, or a~~
46 ~~petition alleging delinquency, a prosecutor may petition the court to enter a restraining order or~~
47 ~~injunction, require the execution of a satisfactory performance bond, or take any other action to~~
48 ~~preserve the availability of property which may be necessary to satisfy an anticipated restitution~~
49 ~~order if, in the prosecutor's best judgement, there is a substantial likelihood that a conviction~~
50 ~~will be obtained and restitution will be ordered.]~~

51 (2) (a) Upon receiving a request from a prosecutor under ~~[this] Subsection [(2);] (1),~~
52 and after notice to persons appearing to have an interest in the property and affording them an
53 opportunity to be heard, the court may ~~[enter a restraining order or injunction, require the~~
54 ~~execution of a satisfactory performance bond, or take any action necessary to preserve the~~
55 ~~availability of property which may be necessary to satisfy an anticipated restitution order after~~
56 ~~notice to persons appearing to have an interest in the property and affording them an~~
57 ~~opportunity to be heard;]~~ take action as requested by the prosecutor if the court determines
58 [that]:

59 (i) there is probable cause to believe that a crime has been committed and that the
60 defendant committed it, and that failure to enter the order will likely result in the property
61 being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or
62 otherwise be made unavailable for restitution; and

63 (ii) the need to preserve the availability of the property or prevent its sale, distribution,
64 exhibition, destruction, or removal through the entry of the requested order outweighs the
65 hardship on any party against whom the order is to be entered.

66 (b) In a hearing conducted pursuant to this section, a court may consider reliable
67 hearsay as defined in Utah Rules of Evidence, Rule 1102.

68 ~~[(b)]~~ (c) An order for an injunction entered under this ~~[Subsection (2)]~~ section is
69 effective for the period of time given in the order.

70 (3) (a) Upon receiving a request for a temporary restraining order from a prosecutor
71 under ~~[Subsection (2), and notwithstanding Subsection (2)(a)(i)]~~ this section, a court may enter
72 a temporary restraining order against an owner with respect to specific property without notice
73 or opportunity for a hearing if:

74 (i) the prosecutor demonstrates that there is a substantial likelihood that the property
75 with respect to which the order is sought appears to be necessary to satisfy an anticipated
76 restitution order under this chapter; and

77 (ii) ~~[that]~~ provision of notice would jeopardize the availability of the property to satisfy
78 any restitution order or judgment.

79 (b) The temporary order in this Subsection (3) expires not more than ten days after it is
80 entered unless extended for good cause shown or the party against whom it is entered consents
81 to an extension.

82 (4) A hearing concerning an order entered under this section shall be held as soon as
83 possible, and prior to the expiration of the temporary order.

Legislative Review Note
as of 12-23-08 6:59 AM

Office of Legislative Research and General Counsel

H.B. 130 - Asset Preservation Amendments

Fiscal Note

2009 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.
