

1 **CRIMINAL FORFEITURE AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel R. Liljenquist**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill repeals and reenacts the Utah Code chapter regarding seizure and forfeiture of
10 property by a governmental entity and moves provisions located throughout the Utah
11 Code regarding forfeiture into this reenacted chapter.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals and reenacts the Utah forfeiture law;
- 15 ▶ moves forfeiture provisions in various parts of the Utah Code into the forfeiture
16 chapter;
- 17 ▶ provides definitions;
- 18 ▶ addresses jurisdiction and venue;
- 19 ▶ provides grounds for seizure of property;
- 20 ▶ provides procedures for seized property held as evidence and the return of property
21 no longer needed as evidence;
- 22 ▶ addresses disposition of property, including returning to the owner when
23 appropriate;
- 24 ▶ provides for disposition of seized weapons;
- 25 ▶ provides for a claimant to petition for the return of property;
- 26 ▶ provides for a criminal forfeiture process;
- 27 ▶ provides a civil forfeiture procedure;



- 28 ▶ allows a trial by jury;
- 29 ▶ addresses rights of innocent owners of forfeited property;
- 30 ▶ provides for release of forfeited property in certain circumstances, including cases
- 31 of hardship;
- 32 ▶ provides for attorney fees, compensation for damaged property, and expenses for
- 33 maintaining seized property;
- 34 ▶ provides for proportionality in the forfeiture of property;
- 35 ▶ provides for transfer and sharing procedures among agencies regarding cases of
- 36 seized and forfeited property;
- 37 ▶ reestablishes the Criminal Forfeiture Restricted Account; and
- 38 ▶ establishes the Crime Reduction Assistance Program for forfeited property and
- 39 provides for the Commission on Criminal and Juvenile Justice to allocate the funds
- 40 from the Criminal Forfeiture Restricted Account.

41 **Money Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill takes effect on July 1, 2011.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **23-20-1**, as last amended by Laws of Utah 2002, Chapter 185
- 48 **32B-4-206 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 49 **41-6a-527**, as last amended by Laws of Utah 2009, Chapter 268
- 50 **53-7-406**, as enacted by Laws of Utah 2007, Chapter 362
- 51 **63J-1-602.1**, as enacted by Laws of Utah 2010, Chapter 265
- 52 **76-6-903**, as last amended by Laws of Utah 1999, Chapter 51
- 53 **76-10-1603.5**, as last amended by Laws of Utah 2007, Chapters 129 and 180
- 54 **77-24-1**, as last amended by Laws of Utah 2005, Chapter 126
- 55 **77-24-1.5**, as last amended by Laws of Utah 2005, Chapter 126
- 56 **77-24a-2**, as enacted by Laws of Utah 1986, Chapter 131
- 57 **77-24a-3**, as enacted by Laws of Utah 1986, Chapter 131
- 58 **77-24a-4**, as enacted by Laws of Utah 1986, Chapter 131

59 **77-24a-5**, as last amended by Laws of Utah 2009, Chapter 388

60 ENACTS:

61 **24-1-101**, Utah Code Annotated 1953

62 **24-1-102**, Utah Code Annotated 1953

63 **24-1-103**, Utah Code Annotated 1953

64 **24-2-101**, Utah Code Annotated 1953

65 **24-2-102**, Utah Code Annotated 1953

66 **24-3-101**, Utah Code Annotated 1953

67 **24-3-102**, Utah Code Annotated 1953

68 **24-3-103**, Utah Code Annotated 1953

69 **24-3-104**, Utah Code Annotated 1953

70 **24-3-105**, Utah Code Annotated 1953

71 **24-3-106**, Utah Code Annotated 1953

72 **24-4-101**, Utah Code Annotated 1953

73 **24-4-102**, Utah Code Annotated 1953

74 **24-4-103**, Utah Code Annotated 1953

75 **24-4-104**, Utah Code Annotated 1953

76 **24-4-105**, Utah Code Annotated 1953

77 **24-4-106**, Utah Code Annotated 1953

78 **24-4-107**, Utah Code Annotated 1953

79 **24-4-108**, Utah Code Annotated 1953

80 **24-4-109**, Utah Code Annotated 1953

81 **24-4-110**, Utah Code Annotated 1953

82 **24-4-111**, Utah Code Annotated 1953

83 **24-4-112**, Utah Code Annotated 1953

84 **24-4-113**, Utah Code Annotated 1953

85 **24-4-114**, Utah Code Annotated 1953

86 **24-4-115**, Utah Code Annotated 1953

87 **24-4-116**, Utah Code Annotated 1953

88 REPEALS AND REENACTS:

89 **77-24a-1**, as last amended by Laws of Utah 2005, Chapter 126

90 REPEALS:

91 **24-1-1**, as last amended by Laws of Utah 2002, Chapter 185

92 **24-1-2**, as last amended by Laws of Utah 2004, Chapter 296

93 **24-1-3**, as last amended by Laws of Utah 2007, Chapter 272

94 **24-1-3.5**, as last amended by Laws of Utah 2008, Chapter 3

95 **24-1-4**, as last amended by Laws of Utah 2009, Chapter 388

96 **24-1-5**, as enacted by Statewide Initiative B, Nov. 7, 2000

97 **24-1-6**, as last amended by Laws of Utah 2004, Chapter 296

98 **24-1-7**, as last amended by Laws of Utah 2004, Chapter 296

99 **24-1-8**, as last amended by Laws of Utah 2007, Chapter 180

100 **24-1-9**, as enacted by Statewide Initiative B, Nov. 7, 2000

101 **24-1-10**, as last amended by Laws of Utah 2004, Chapter 296

102 **24-1-11**, as last amended by Laws of Utah 2004, Chapter 296

103 **24-1-12**, as last amended by Laws of Utah 2004, Chapter 296

104 **24-1-13**, as enacted by Statewide Initiative B, Nov. 7, 2000

105 **24-1-14**, as last amended by Laws of Utah 2004, Chapter 296

106 **24-1-15**, as last amended by Laws of Utah 2007, Chapter 180

107 **24-1-17**, as enacted by Laws of Utah 2004, Chapter 296

108 **24-1-18**, as enacted by Laws of Utah 2004, Chapter 296

109 **24-1-19**, as last amended by Laws of Utah 2008, Chapter 382

110 **24-1-20**, as enacted by Laws of Utah 2004, Chapter 296

111 **41-6a-211**, as renumbered and amended by Laws of Utah 2005, Chapter 2

112 **58-37-13**, as last amended by Laws of Utah 2002, Chapter 185

113 **76-3-501**, as last amended by Laws of Utah 2002, Chapter 185

114 **76-10-525**, as enacted by Laws of Utah 1973, Chapter 196

115 **76-10-1107**, as last amended by Laws of Utah 2007, Chapter 180

116 **76-10-1908**, as last amended by Laws of Utah 2002, Chapter 185

117 **77-24-2**, as last amended by Laws of Utah 2005, Chapter 126

118 **77-24-3**, as enacted by Laws of Utah 1980, Chapter 15

119 **77-24-4**, as last amended by Laws of Utah 2005, Chapter 126

120 **77-24-5**, as last amended by Laws of Utah 2005, Chapter 126

121

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

123 Section 1. Section **23-20-1** is amended to read:

124 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**
125 **of property.**

126 (1) Conservation officers of the division shall enforce the provisions of this title with
127 the same authority and following the same procedures as other law enforcement officers.

128 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

129 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife
130 shall be confiscated by the court and sold or otherwise disposed of by the division.

131 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

132 (iii) Migratory wildfowl may not be sold, but must be given to a charitable institution
133 or used for other charitable purposes.

134 ~~[(3) Materials and devices used for the unlawful taking or possessing of protected~~
135 ~~wildlife shall be seized, and upon a finding by the court that they were used in the unlawful~~
136 ~~taking or possessing of protected wildlife, the materials and devices shall be subject to criminal~~
137 ~~or civil forfeiture under the procedures and substantive protections established in Title 24,~~
138 ~~Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

139 ~~[(4)]~~ (3) (a) Conservation officers may seize and impound a vehicle used for the
140 unlawful taking or possessing of protected wildlife for any of the following purposes:

141 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

142 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search
143 warrant; or

144 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or
145 possessed.

146 (b) The division shall store any seized vehicle in a public or private garage, state
147 impound lot, or other secured storage facility.

148 ~~[(5)]~~ (4) A seized vehicle shall be released to the owner no later than 30 days after the
149 date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of
150 wildlife by a person who is charged with committing a felony under this title.

151 ~~[(6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful~~

152 ~~taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject~~
153 ~~to criminal or civil forfeiture under the procedures and substantive protections established in~~
154 ~~Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

155 ~~[(b)]~~ (5)(a) The owner of a seized vehicle is liable for the payment of any impound fee
156 if he used the vehicle for the unlawful taking or possessing of wildlife and is found by a court
157 to be guilty of a violation of this title.

158 ~~[(c)]~~ (b) The owner of a seized vehicle is not liable for the payment of any impound fee
159 or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

160 (i) no charges are filed or all charges are dropped which involve the use of the vehicle
161 for the unlawful taking or possessing of wildlife;

162 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
163 wildlife is found by a court to be not guilty; or

164 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

165 Section 2. Section **24-1-101** is enacted to read:

166 **CHAPTER 1. GENERAL PROVISIONS**

167 **Part 1. Utah Uniform Forfeiture Procedures Act**

168 **24-1-101. Title.**

169 This title is known as "Utah Uniform Forfeiture Procedures Act."

170 Section 3. Section **24-1-102** is enacted to read:

171 **24-1-102. Definitions.**

172 As used in this section:

173 (1) "Acquittal" means a finding by a jury or a court at trial that the claimant is not
174 guilty, but does not include a verdict or plea of guilty to a lesser charge.

175 (2) "Agency" means any agency of municipal, county, or state government, including
176 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

177 (3) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice.

178 (4) "CFRA" means the Criminal Forfeiture Restricted Account created in Section
179 24-4-115.

180 (5) "Claimant" means:

181 (a) any owner of property as defined in this section; and

182 (b) any interest holder as defined in this section.

183 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or
184 personal property under this chapter.

185 (7) "Constructive seizure" means a seizure of property where the property is left in the
186 control of the owner and the seizing agency attaches to the property a notice of intent to forfeit.

187 (8) (a) "Contraband" means any property, item, or substance that is unlawful to
188 produce or to possess under state or federal law.

189 (b) All controlled substances that are possessed, transferred, distributed, or offered for
190 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are
191 contraband.

192 (9) "Innocent owner" means a claimant who:

193 (a) held an ownership interest in property at the time the conduct subjecting the
194 property to forfeiture occurred, and:

195 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;
196 or

197 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable
198 steps to prohibit the illegal use of the property; or

199 (b) acquired an ownership interest in the property and who had no knowledge that the
200 illegal conduct subjecting the property to forfeiture had occurred or that the property had been
201 seized for forfeiture, and:

202 (i) acquired the property in a bona fide transaction for value;

203 (ii) was a person, including a minor child, who acquired an interest in the property
204 through probate or inheritance; or

205 (iii) was a spouse who acquired an interest in property through dissolution of marriage
206 or by operation of law.

207 (10) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a
208 mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to
209 an interest in property, whose interest would be perfected against a good faith purchaser for
210 value.

211 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
212 an agent or nominee for another person, or who is not in substantial compliance with any
213 statute requiring an interest in property to be recorded or reflected in public records in order to

214 perfect the interest against a good faith purchaser for value.

215 (11) "Known address" means a claimant's most recent address on record with a
216 governmental entity, including any address described by the claimant to the seizing agency at
217 the time property was seized.

218 (12) "Legal costs" means the costs of litigating a forfeiture action as specified in
219 Section 24-4-109.

220 (13) "Legislative body" means:

221 (a) (i) the Legislature, county commission, county council, city commission, city
222 council, or town council that has fiscal oversight and budgetary approval authority over a
223 seizing agency; or

224 (ii) the seizing agency's governing political subdivision; or

225 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
226 memorandum of understanding executed by the agencies participating in the task force.

227 (14) "Multijurisdictional task force" means a law enforcement task force or other
228 agency comprised of persons who are employed by or acting under the authority of different
229 governmental entities, including federal, state, county or municipal governments, or any
230 combination of these agencies.

231 (15) (a) "Owner" means any person or entity, other than an interest holder, that
232 possesses a bona fide legal or equitable interest in real or personal property.

233 (b) A person or entity who disclaims ownership of property is presumed to have
234 relinquished all legal or equitable interest in the property.

235 (16) (a) "Proceeds" means:

236 (i) property of any kind that is obtained directly or indirectly as a result of the
237 commission of an offense that gives rise to forfeiture; and

238 (ii) any property that can be traced to property under Subsection (16)(a)(i).

239 (b) "Proceeds" is not limited to the net gain or profit realized from the offense that
240 gives rise to forfeiture.

241 (17) "Property" means all property, whether real or personal, tangible or intangible, but
242 does not include contraband.

243 (18) "Prosecuting attorney" means:

244 (a) the attorney general and any assistant attorney general;

245 (b) any district attorney or deputy district attorney;
 246 (c) any county attorney or assistant county attorney; and
 247 (d) any other attorney authorized to commence an action on behalf of the state under
 248 this title.

249 (19) "Public interest use" means:
 250 (a) use by a government agency as determined by the legislative body of the agency's
 251 jurisdiction; or

252 (b) donation to a nonprofit charity registered with the state.
 253 (20) "Real property" means land and includes any building, fixture, improvement,
 254 appurtenance, structure, or other development that is affixed permanently to land.

255 Section 4. Section **24-1-103** is enacted to read:

256 **24-1-103. Jurisdiction and venue.**

257 (1) A state district court has jurisdiction over any action filed in accordance with this
 258 title regarding:

259 (a) all interests in property if the property is within this state at the time the action is
 260 filed; and

261 (b) a claimant's interests in the property, if the claimant is subject to the personal
 262 jurisdiction of the district court.

263 (2) (a) In addition to the venue provided for under Title 78B, Chapter 3, Part 3, Place
 264 of Trial - Venue, or any other provisions of law, a proceeding for forfeiture under this title may
 265 be maintained in the judicial district in which:

266 (i) any part of the property is found; or
 267 (ii) a civil or criminal action could be maintained against a claimant for the conduct
 268 alleged to constitute grounds for forfeiture.

269 (b) A claimant may obtain a change of venue under Section 78B-3-309.

270 Section 5. Section **24-2-101** is enacted to read:

271 **CHAPTER 2. SEIZURE OF PROPERTY**

272 **24-2-101. Grounds for seizing property.**

273 (1) Property may be seized by a peace officer or any other person authorized by law
 274 upon process issued by a court having jurisdiction over the property in accordance with the
 275 Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.

- 276 (2) Property may be seized under this title when:
- 277 (a) the seizure is incident to an arrest;
- 278 (b) the property seized has been the subject of a prior judgment in favor of the state in a
- 279 criminal injunction or forfeiture proceeding under this title; or
- 280 (c) the peace officer or other person authorized by law has probable cause to believe
- 281 that the property:
- 282 (i) is directly or indirectly dangerous to health or safety;
- 283 (ii) is evidence of a crime, subject to the requirements of the Utah and United States
- 284 constitutions;
- 285 (iii) has been used or was intended to be used to commit a crime and has probable
- 286 cause to believe the property will be damaged, intentionally diminished in value, destroyed,
- 287 concealed, or removed from the state; or
- 288 (iv) is proceeds of a crime.

289 Section 6. Section **24-2-102** is enacted to read:

290 **24-2-102. Property seized from a person.**

291 (1) (a) When property is seized by a peace officer, the peace officer seizing it shall

292 provide a receipt to the person from whom it was taken, which describes the property seized,

293 the date of seizure, and contact information for the agency making the seizure.

294 (b) A copy of the receipt shall be maintained by the seizing agency.

295 (c) If custody of the property is transferred to another police agency or the property is

296 placed in evidence, a copy of the receipt provided under Subsection (1)(a) shall accompany it

297 until disposition of the property is made in accordance with this title.

298 (2) When property is seized under this title, the peace officer may:

299 (a) place the property under seal;

300 (b) remove the property to a place designated by the warrant under which the property

301 is seized; or

302 (c) take custody of the property and remove the property to an appropriate location for

303 disposition in accordance with law.

304 (3) The seizing agency shall:

305 (a) hold all seized property in safe custody until it can be disposed of as provided in

306 this chapter; and

- 307 (b) maintain a record of the property that includes:
308 (i) a detailed inventory of all property seized;
309 (ii) the name of the person from whom it was seized; and
310 (iii) the case number assigned by the seizing agency.
311 (4) Property seized under this title is not repleviable but is considered in custody of the
312 seizing agency subject only to the orders of the court or the official having jurisdiction.
313 (5) All controlled substances or other contraband that is seized by a peace officer may
314 be retained for evidentiary or investigative purpose, including sampling or other preservation
315 prior to disposal or destruction.
316 (6) (a) The seizing agency shall deposit property that is in the form of cash or other
317 readily negotiable instruments into a separate restricted account maintained by the agency
318 solely for the purpose of managing and protecting the property from commingling, loss, or
319 devaluation.
320 (b) The seizing agency shall have written policies for the identification, tracking,
321 management, and safekeeping of seized property, which shall include a prohibition against the
322 transfer, sale, or auction of seized property to any employee of the seizing agency.

323 Section 7. Section **24-3-101** is enacted to read:

324 **CHAPTER 3. PROPERTY HELD AS EVIDENCE**

325 **24-3-101. Property received as evidence by the court.**

- 326 (1) When property is received in evidence by the court, the clerk of the court shall
327 retain the property or the clerk shall return the property to the custody of the peace officer.
328 (2) The property shall be retained by the clerk or the officer until all direct appeals and
329 retrials are final, at which time the property shall be returned to the owner in accordance with
330 this chapter.
331 (3) If the prosecuting attorney considers it necessary to retain control over the evidence
332 in anticipation of possible collateral attacks upon the judgment or for use in a potential
333 prosecution, the prosecutor may decline to authorize return of the property to the owner.

334 Section 8. Section **24-3-102** is enacted to read:

335 **24-3-102. Property no longer needed as evidence -- Return procedure.**

- 336 (1) When the prosecuting attorney determines that property no longer needs to be held
337 as evidence, the prosecuting attorney shall inform the seizing agency and shall authorize the

338 disposal of the property as provided in this chapter.

339 (2) (a) When the seizing agency is notified by the prosecuting attorney that property no
340 longer needs to be held as evidence, the property shall be returned to the rightful owner, if the
341 owner may lawfully possess it, or disposed of as authorized by this chapter.

342 (b) The seizing agency shall exercise due diligence in attempting to notify the rightful
343 owner that the property is to be returned.

344 (c) Before the seizing agency may release property to a person claiming ownership of
345 the property, the person shall establish that:

- 346 (i) the person is the rightful owner; and
- 347 (ii) the person may lawfully possess the property.

348 Section 9. Section **24-3-103** is enacted to read:

349 **24-3-103. Receipt from owner of returned property.**

350 (1) When property is returned to the rightful owner, a receipt listing in detail the
351 property returned shall be signed by the rightful owner.

352 (2) The receipt shall be retained as a permanent record in the files of the seizing agency
353 and a copy shall be provided to the rightful owner.

354 Section 10. Section **24-3-104** is enacted to read:

355 **24-3-104. Disposition of property.**

356 (1) If the seizing agency is unable to locate the rightful owner of the property or if the
357 rightful owner is not entitled to lawfully possess the property, the seizing agency may:

- 358 (a) apply the property to public interest use;
- 359 (b) sell the property at public auction and apply the proceeds of the sale to public
360 interest use; or
- 361 (c) destroy the property if unfit for sale.

362 (2) Before applying the property to public interest use, the seizing agency shall obtain
363 from the legislative body of its jurisdiction:

- 364 (a) permission to apply the property to public interest use; and
- 365 (b) the designation and approval of the public interest use of the property.

366 (3) The prosecuting attorney may petition the court to apply the property towards any
367 restitution, fines, fees, or monetary judgments.

368 Section 11. Section **24-3-105** is enacted to read:

369 **24-3-105. Disposition of weapons.**

370 If the property is a weapon and the rightful owner is the person who committed the
371 crime regarding which the weapon was seized or the rightful owner may not lawfully possess
372 the weapon, ownership of the weapon shall revert to the seizing agency for its use and disposal
373 as the seizing agency determines.

374 Section 12. Section **24-3-106** is enacted to read:

375 **24-3-106. Petition to return property held as evidence.**

376 (1) (a) A person claiming ownership of property held as evidence may file a petition
377 with the court for the return of the property.

378 (b) The petition may be filed in:

379 (i) the court in which criminal proceedings have commenced regarding the conduct for
380 which the property is held as evidence; or

381 (ii) the district court of the jurisdiction where the property was seized, if there are no
382 pending criminal proceedings.

383 (c) A copy of the petition shall be served on the prosecuting attorney and the seizing
384 agency.

385 (2) After an opportunity for an expedited hearing, the court may order that the property
386 be:

387 (a) returned to the rightful owner as determined by the court;

388 (b) applied toward restitution, fines, or fees owed by the claimant in an amount set by
389 the court;

390 (c) converted to public interest use;

391 (d) held for further legal action; or

392 (e) destroyed.

393 (3) Before the court can order property be returned to a person claiming ownership of
394 property, the person must establish by clear and convincing evidence that:

395 (a) the person is the rightful owner; and

396 (b) the person may lawfully possess the property.

397 (4) The agency in possession of the property shall return the property to the person
398 determined to be the rightful owner as expeditiously as possible.

399 Section 13. Section **24-4-101** is enacted to read:

CHAPTER 4. PROPERTY HELD FOR FORFEITURE

24-4-101. Property subject to forfeiture.

(1) All property that has been used to facilitate the commission of a state or federal crime, except for vehicles which are used to facilitate a misdemeanor or infraction, and property that is the proceeds of criminal activity may be forfeited under this chapter, including:

(a) real property, including things growing on, affixed to, and found in land; and

(b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.

(2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.

Section 14. Section **24-4-102** is enacted to read:

24-4-102. Initiating forfeiture proceedings.

(1) Within 60 days after the date that property is seized, a seizing agency requesting forfeiture must notify the prosecuting attorney of the items of property seized, the place of the seizure, and any persons arrested at the time of seizure.

(2) (a) The seizing agency shall serve a notice of intent to seek forfeiture upon any claimant of the property known to law enforcement to have an interest in the property.

(b) The notice of intent to seek forfeiture shall contain:

(i) a description of the property seized;

(ii) notice that the matter has been or will be referred to the prosecuting attorney;

(iii) the name, business address, and business telephone number of the prosecuting attorney; and

(iv) notice of the availability of a hardship or bond release of the property.

(c) The notice shall be served by:

(i) certified mail, return receipt requested, to the claimant's known address; or

(ii) personal service.

(3) (a) If the seizing agency fails to provide notice of intent to seek forfeiture as

431 required in Subsection (2), a claimant may file a motion to return the property or void the
432 forfeiture with respect to the claimant's interest in the property.

433 (b) The motion shall be filed with the district court having jurisdiction over the case
434 and served upon the seizing agency.

435 (c) The motion may be brought at any time prior to the final disposition of the property
436 under this chapter.

437 (d) The court shall void any forfeiture made without notice under Subsection (2) unless
438 the seizing agency demonstrates:

439 (i) good cause for the failure to give notice to the claimant; or

440 (ii) that the claimant had actual notice of the seizure.

441 Section 15. Section **24-4-103** is enacted to read:

442 **24-4-103. Civil forfeiture procedure.**

443 (1) (a) Within 60 days from the date the seizing agency provides notice to the
444 prosecuting attorney as provided in Subsection 24-4-101(1), the prosecuting attorney may file a
445 complaint for forfeiture in the district court having jurisdiction over the case.

446 (b) The complaint shall describe with reasonable particularity:

447 (i) the property that is the subject of the forfeiture proceeding;

448 (ii) the date and place of seizure; and

449 (iii) the allegations that constitute a basis for forfeiture.

450 (2) (a) The prosecuting attorney shall serve a copy of the complaint and summons upon
451 any claimant known to the prosecuting attorney to have an interest in the property.

452 (b) Service of the complaint and summons shall be by:

453 (i) certified mail, return receipt requested, to the claimant's known address;

454 (ii) electronic publication for two successive weeks on the Utah Public Notice Website

455 established in Section 63F-1-701 only if there is no known address; or

456 (iii) personal service.

457 (c) Service is effective upon the earlier of the date of:

458 (i) mailing of a written notice;

459 (ii) electronic publication; or

460 (iii) personal service.

461 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a

462 claimant may file an answer to the complaint.

463 (b) The answer shall be filed within 30 days after the complaint is served upon the
464 claimant as provided in Subsection (2)(b).

465 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed
466 by the Utah Rules of Civil Procedure.

467 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and
468 shall give these proceedings the same priority as is given to criminal cases.

469 (6) In all suits or actions brought under this section for the civil forfeiture of any
470 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
471 evidence the extent to which, if any, the property is subject to forfeiture.

472 (7) A claimant may file an answer to a complaint for civil forfeiture without posting
473 bond with respect to the property subject to forfeiture.

474 Section 16. Section **24-4-104** is enacted to read:

475 **24-4-104. Criminal procedures.**

476 (1) In cases where a claimant is criminally prosecuted for conduct giving rise to the
477 forfeiture, the prosecuting attorney may elect to seek forfeiture of the claimant's interest in the
478 property through the criminal case.

479 (2) If the prosecuting attorney elects to seek forfeiture of the claimant's interest in the
480 property through the criminal case, the information or indictment shall state that the claimant's
481 interest in the property is subject to forfeiture and the basis for the forfeiture.

482 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining
483 orders or injunctions, or take other reasonable actions to preserve for forfeiture under this
484 section any property subject to forfeiture if, after notice to known claimants and claimants who
485 can be identified after due diligence and who are known to have an interest in the property, and
486 after affording those persons an opportunity for a hearing, the court determines that:

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

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

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

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

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

500 (c) The temporary order expires not more than 10 days after entry unless extended for
501 good cause shown or unless the party against whom it is entered consents to an extension.

502 (d) After service of the temporary order upon any claimants known to the prosecuting
503 attorney, a hearing concerning the order entered under this section shall be held as soon as
504 practicable and prior to the expiration of the temporary order.

505 (e) The court is not bound by the Utah Rules of Evidence regarding evidence it may
506 receive and consider at any hearing under this section.

507 (4) (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the
508 prosecutor shall ask the finder of fact to make a specific finding as to whether the property or
509 any part of it is subject to forfeiture.

510 (b) Whether property is subject to forfeiture shall be proven beyond a reasonable
511 doubt.

512 (5) (a) Upon conviction of a claimant for violating any provision of state law
513 subjecting a claimant's property to forfeiture and a finding by the trier of fact that the property
514 is subject to forfeiture, the court shall enter a judgment and order the property forfeited to the
515 state upon the terms stated by the court in its order.

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

521 (6) (a) (i) After property is ordered forfeited under this section, the seizing agency shall
522 direct the disposition of the property under Section 24-4-114.

523 (ii) Any property right or interest not exercisable by or transferable for value to the

524 state expires and does not revert to the defendant.

525 (iii) The defendant or any person acting in concert with or on behalf of the defendant is
526 not eligible to purchase forfeited property at any sale held by the seizing agency unless
527 approved by the judge.

528 (b) The court may stay the sale or disposition of the property pending the conclusion of
529 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that
530 proceeding with the sale or disposition of the property may result in irreparable injury, harm, or
531 loss.

532 (7) Except under Subsection (3) or (10), a party claiming an interest in property subject
533 to forfeiture under this section:

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

536 (b) may not commence an action at law or equity concerning the validity of the party's
537 alleged interests in the property subsequent to the filing of an indictment or an information
538 alleging that the property is subject to forfeiture under this section.

539 (8) The district court that has jurisdiction of a case under this part may enter orders
540 under this section without regard to the location of any property that may be subject to
541 forfeiture under this section or that has been ordered forfeited under this section.

542 (9) To facilitate the identification or location of property declared forfeited and to
543 facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of
544 an order declaring property forfeited to the state, the court may upon application of the
545 prosecuting attorney order that the testimony of any witness relating to the forfeited property be
546 taken by deposition, and that any book, paper, document, record, recording, or other material
547 shall be produced as provided for depositions and discovery under the Utah Rules of Civil
548 Procedure.

549 (10) (a) (i) Following the entry of an order of forfeiture under this section, the
550 prosecuting attorney shall publish notice of the order's intent to dispose of the property by
551 electronic publication for two successive weeks on the Utah Public Notice Website established
552 in Section 63F-1-701.

553 (ii) The prosecuting attorney shall also send written notice to any claimants, other than
554 the defendant, known to the prosecuting attorney to have an interest in the property, at the

555 claimant's last known address.

556 (b) Any claimant, other than the defendant, asserting a legal interest in property that
557 has been ordered forfeited to the state under this section may, within 30 days after the notice
558 has been published or the claimant receives the written notice under Subsection (10)(a),
559 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's
560 alleged interest in the property. Any genuine issue of material fact, including issues of
561 standing, may be tried to a jury upon demand of any party.

562 (c) The petition shall:

563 (i) be in writing and signed by the claimant under penalty of perjury;

564 (ii) set forth the nature and extent of the claimant's right, title, or interest in the
565 property, the time and circumstances of the claimant's acquisition of the right, title, or interest
566 in the property; and

567 (iii) set forth any additional facts supporting the claimant's claim and the relief sought.

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

572 (e) At the trial or hearing, the claimant may testify and present evidence and witnesses
573 on the claimant's own behalf and cross-examine witnesses who appear at the hearing. The
574 prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim
575 to the property and cross-examine witnesses who appear. In addition to testimony and
576 evidence presented at the trial or hearing, the court may consider the relevant portion of the
577 record of the criminal case, which resulted in the order of forfeiture. Any trial or hearing shall
578 be conducted pursuant to the Utah Rules of Evidence.

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

582 (i) the claimant has a legal right, title, or interest in the property, and the right, title, or
583 interest renders the order of forfeiture invalid in whole or in part because the right, title, or
584 interest was vested in the claimant rather than the defendant or was superior to any right, title,
585 or interest of the defendant at the time of the commission of the acts or conduct that gave rise

586 to the forfeiture of the property under this section; or

587 (ii) the claimant acquired the right, title, or interest in the property in a bona fide
588 transaction for value and, at the time of acquisition, the claimant did not know that the property
589 was subject to forfeiture.

590 (g) Following the court's disposition of all petitions filed under this Subsection (10), or
591 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)
592 for the filing of petitions, the state has clear title to property subject to the order of forfeiture
593 and may warrant good title to any subsequent purchaser or transferee.

594 Section 17. Section **24-4-105** is enacted to read:

595 **24-4-105. Trial by jury.**

596 The right to trial by jury applies to forfeiture proceedings under this chapter.

597 Section 18. Section **24-4-106** is enacted to read:

598 **24-4-106. Innocent owners.**

599 (1) An innocent owner's interest in property may not be forfeited.

600 (2) The prosecuting attorney has the burden of establishing by clear and convincing
601 evidence that a claimant:

602 (a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection (4);

603 (b) knew of the conduct giving rise to the forfeiture, and allowed the property to be
604 used in furtherance of the conduct;

605 (c) acquired the property with notice of its actual or constructive seizure for forfeiture
606 under this chapter;

607 (d) acquired the property knowing the property was subject to forfeiture under this
608 chapter; or

609 (e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful
610 seizure or forfeiture under any provision of state law.

611 (3) A claimant under this chapter is not required to take steps to prevent illegal use or
612 criminal activity regarding the property that the claimant reasonably believes would be likely to
613 result in physical harm or danger to any person. A claimant may demonstrate that the claimant
614 took reasonable action to prohibit the illegal use of the property by:

615 (a) making a timely notification to a law enforcement agency of information that led
616 the claimant to know that conduct subjecting the property to seizure would occur, was

617 occurring, or has occurred;

618 (b) timely revoking or attempting to revoke permission to use the property regarding
619 those engaging in the illegal conduct; or

620 (c) taking reasonable actions to discourage or prevent the illegal use of the property.

621 (4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent
622 owner, and if the claimant is criminally charged with the conduct giving rise to the forfeiture
623 and is acquitted of that charge on the merits:

624 (a) the property subject to the forfeiture or the open market value of the property, if the
625 property has been disposed of under Subsection 24-4-106(13), shall be returned to the
626 claimant; and

627 (b) any payments required under this chapter regarding holding the property shall be
628 paid to the claimant.

629 (5) A person may not assert under this title an ownership interest in contraband.

630 (6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting
631 attorney establishes by clear and convincing evidence that:

632 (a) the claimant has engaged in conduct giving cause for forfeiture;

633 (b) the property was acquired by the claimant during that period of the conduct giving
634 cause for forfeiture or within a reasonable time after that period; and

635 (c) there was no likely source for the purchase or acquisition of the property other than
636 the conduct giving cause for forfeiture.

637 (7) A finding that property is the proceeds of conduct giving cause for forfeiture does
638 not require proof that the property was the proceeds of any particular exchange or transaction.

639 (8) A claimant is not acquitted on the merits based upon a guilty plea to a lesser or
640 included offense.

641 Section 19. Section **24-4-107** is enacted to read:

642 **24-4-107. Release of property held for forfeiture on certain grounds.**

643 (1) After the seizing agency gives notice that the property is to be held for forfeiture, a
644 person or entity may not alienate, convey, sequester, or attach that property until the court
645 issues a final order of dismissal or an order of forfeiture regarding the property.

646 (2) The seizing agency or the prosecuting attorney may authorize the release of
647 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

648 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
649 discontinue forfeiture proceedings and transfer the action to another state or federal agency that
650 has initiated forfeiture proceedings involving the same property.

651 (4) Property held for forfeiture is considered to be in the custody of the district court
652 and subject only to:

653 (a) the orders and decrees of the court having jurisdiction over the property or the
654 forfeiture proceedings; and

655 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

656 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
657 district court a surety bond or cash in an amount equal to the current fair market value of the
658 property as determined by the court or by the parties' stipulation.

659 (b) The district court may refuse to order the release of the property if:

660 (i) the bond tendered is inadequate;

661 (ii) the property is contraband or is retained as evidence; or

662 (iii) the property is particularly altered or designed for use in conduct giving cause for
663 forfeiture.

664 (c) If a surety bond or cash is posted and the court later determines that the property is
665 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
666 property.

667 (6) A claimant is entitled to the immediate release of property held for forfeiture
668 pending the final determination of forfeiture if:

669 (a) the claimant had a possessory interest in the property at the time of seizure;

670 (b) continued possession by the agency or the state pending the final disposition of the
671 forfeiture proceedings will cause substantial hardship to the claimant, such as:

672 (i) preventing the functioning of a legitimate business;

673 (ii) preventing any individual from working;

674 (iii) preventing any child from attending elementary or secondary school;

675 (iv) preventing or hindering any person from receiving necessary medical care;

676 (v) hindering the care of an elderly or disabled dependent child or adult; or

677 (vi) leaving any individual homeless, or any other condition that the court determines
678 causes a substantial hardship;

679 (c) the hardship from the continued possession by the agency of the property outweighs
680 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
681 returned to the claimant during the pendency of the proceeding; and

682 (d) determination of substantial hardship under this Subsection (6) is based upon the
683 property's use prior to the seizure.

684 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
685 claimant may file a motion for hardship release:

686 (a) in the court in which forfeiture proceedings have commenced; or

687 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
688 have not yet commenced.

689 (8) The motion for hardship release shall also be served upon the prosecuting attorney
690 or the seizing agency within 10 days after filing the motion.

691 (9) The court shall render a decision on a motion for hardship filed under this section
692 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
693 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement
694 of both parties or by the court for good cause shown.

695 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
696 court shall order the property immediately released to the claimant pending completion of
697 proceedings by the government to obtain forfeiture of the property.

698 (b) The court may place conditions on release of the property as it finds necessary and
699 appropriate to preserve the availability of the property or its equivalent for forfeiture.

700 (11) The hardship release under this section does not apply if the property is:

701 (a) contraband;

702 (b) currency or other monetary instrument or electronic funds; or

703 (c) likely to be used to commit additional illegal acts if returned to the claimant.

704 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed
705 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
706 to preserve the interests of any party on motion of that party.

707 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
708 known to have an interest in the property, and after an opportunity for a hearing.

709 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to

710 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
711 property are disproportionate to its value.

712 (b) A third party designated by the court shall dispose of the property by commercially
713 reasonable public sale and distribute the proceeds in the following order of priority:

714 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

715 (ii) second, for the satisfaction of any interests, including those of interest holders, in
716 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

717 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
718 custody of the court, in an interest-bearing account, subject to further proceedings under this
719 chapter.

720 Section 20. Section **24-4-108** is enacted to read:

721 **24-4-108. Prejudgment and postjudgment interest.**

722 In any proceeding to forfeit currency or other negotiable instruments under this chapter,
723 the court shall award a prevailing party prejudgment and postjudgment interest on the currency
724 or negotiable instruments at the interest rate established under Section 15-1-1.

725 Section 21. Section **24-4-109** is enacted to read:

726 **24-4-109. Attorney fees and costs.**

727 (1) In any forfeiture proceeding under this chapter, the prevailing party may receive
728 reasonable:

729 (a) legal costs; and

730 (b) attorney fees, but not to exceed 20% of the value of the forfeited property.

731 (2) A party that prevails only in part is entitled to recover reasonable costs and attorney
732 fees only on those issues on which the party prevailed.

733 (3) An award of attorney fees against the state shall be paid from the CFRA.

734 Section 22. Section **24-4-110** is enacted to read:

735 **24-4-110. Compensation for damaged property.**

736 (1) If property seized for forfeiture is returned by operation of this chapter, a claimant
737 has a civil right of action against a seizing agency for any claim based upon the negligent
738 destruction, loss, damage, or other injury to seized property while in the possession or custody
739 of the agency.

740 (2) As used in this section, "damage or other injury" does not include normal

741 depreciation, deterioration, or ordinary wear and tear.

742 Section 23. Section **24-4-111** is enacted to read:

743 **24-4-111. Limitation on fees for holding seized property.**

744 In any civil or criminal proceeding under this chapter in which a judgment is entered in
745 favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed
746 by the prosecuting attorney, the seizing agency may not charge that claimant any fee or cost for
747 holding seized property.

748 Section 24. Section **24-4-112** is enacted to read:

749 **24-4-112. Proportionality.**

750 (1) (a) A claimant's interest in property that is used to facilitate a crime, excluding
751 contraband, is not subject to forfeiture under any provision of state law if the forfeiture is
752 substantially disproportional to the use of the property in committing or facilitating a violation
753 of state law and the value of the property.

754 (b) Forfeiture of property used solely in a manner that is merely incidental and not
755 instrumental to the commission or facilitation of a violation of law is not proportional.

756 (2) (a) In determining proportionality, the court shall consider:

757 (i) the conduct giving cause for the forfeiture;

758 (ii) what portion of the forfeiture, if any, is remedial in nature;

759 (iii) the gravity of the conduct for which the claimant is responsible in light of the
760 offense; and

761 (iv) the value of the property.

762 (b) If the court finds that the forfeiture is substantially disproportional to the conduct
763 for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds
764 appropriate.

765 (3) The prosecuting attorney has the burden to demonstrate that any forfeiture is
766 proportional to the conduct giving rise to the forfeiture.

767 (4) In all cases the court shall decide questions of proportionality.

768 (5) Forfeiture of proceeds is not subject to proportionality review.

769 Section 25. Section **24-4-113** is enacted to read:

770 **24-4-113. Transfer and sharing procedures.**

771 (1) Seizing agencies or prosecuting attorneys authorized to bring forfeiture proceedings

772 under this chapter may not directly or indirectly transfer property held for forfeiture and not
773 already named in a criminal indictment to any federal agency or any governmental entity not
774 created under and subject to state law unless:

775 (a) the conduct giving rise to the investigation or seizure is interstate in nature and
776 sufficiently complex to justify the transfer;

777 (b) the property may only be forfeited under federal law; or

778 (c) pursuing forfeiture under state law would unreasonably burden prosecuting
779 attorneys or state law enforcement agencies.

780 (2) All property, money, or other things of value received by an agency pursuant to
781 federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or
782 the proceeds of the sale of forfeited property to an agency:

783 (a) shall be used in compliance with federal laws and regulations relating to equitable
784 sharing;

785 (b) may be used for those law enforcement purposes specified in Subsection
786 24-4-116(8); and

787 (c) may not be used for those law enforcement purposes prohibited in Subsection
788 24-4-116(9).

789 (3) A state or local law enforcement agency awarded any equitable share of property
790 forfeited by the federal government may only use the award money after approval of the use by
791 the agency's legislative body.

792 (4) (a) Each agency awarded any equitable share of property forfeited by the federal
793 government shall file copies of all federal equitable sharing certifications, applications, and
794 reports with the state auditor and CCJJ annually.

795 (b) Information under Subsection (4)(a) shall provide details of all awards received
796 from the federal government during the preceding reporting period, including for each award:

797 (i) the agency's case number or other identification;

798 (ii) the amount of the award;

799 (iii) the date of the award;

800 (iv) the identity of the federal agency involved in the forfeiture;

801 (v) how the awarded property has been used; and

802 (vi) a statement signed by both the agency's executive officer or designee and by the

803 agency's legal counsel that the agency has only used the awarded property for crime reduction
804 or law enforcement purposes authorized under Section 24-4-116, and only upon approval by
805 the agency's legislative body.

806 Section 26. Section **24-4-114** is enacted to read:

807 **24-4-114. Disposition and allocation of forfeiture property.**

808 (1) Upon finding that property is subject to forfeiture under this chapter, the court shall
809 order the property forfeited to the state.

810 (2) (a) If the property is not currency, the seizing agency shall authorize a public or
811 otherwise commercially reasonable sale of that property that is not required by law to be
812 destroyed and that is not harmful to the public.

813 (b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, it
814 shall be disposed of as follows:

815 (i) An alcoholic product shall be sold if the alcoholic product is:

816 (A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic
817 alcohol, or any other deleterious substance or liquid; and

818 (B) otherwise in saleable condition.

819 (ii) An alcoholic product and its package shall be destroyed, if the alcoholic product is
820 impure, adulterated, or otherwise unfit for sale.

821 (c) If the property forfeited is a cigarette product as defined in Section 59-22-202, it
822 shall be destroyed, except that prior to the destruction of any cigarette seized pursuant to this
823 part, the lawful holder of the trademark rights in the cigarette brand shall be permitted to
824 inspect the cigarette.

825 (d) The proceeds of the sale of forfeited property shall remain segregated from other
826 property, equipment, or assets of the seizing agency until transferred to the state in accordance
827 with this chapter.

828 (3) From the forfeited property, both currency and the proceeds or revenue from the
829 sale of the property, the seizing agency shall:

830 (a) deduct the seizing agency's direct costs and expenses of obtaining and maintaining
831 the property pending forfeiture; and

832 (b) pay the legal costs and attorney fees to the prosecuting agency for the prosecution
833 of the forfeiture proceeding.

834 (4) If the forfeiture arises from any violation relating to wildlife resources, the
835 remaining currency and the proceeds or revenue from the sale of the property shall be deposited
836 in the Wildlife Resources Account created in Section 23-14-13.

837 (5) The remaining currency and the proceeds or revenue from the sale of the property
838 shall then be transferred to CCJJ and deposited in the CFRA.

839 Section 27. Section **24-4-115** is enacted to read:

840 **24-4-115. Criminal Forfeiture Restricted Account.**

841 (1) There is created within the General Fund a restricted account known as the
842 "Criminal Forfeiture Restricted Account."

843 (2) Proceeds from forfeited property and forfeited money through state forfeitures shall
844 be deposited in the CFRA.

845 (3) Money in the CFRA shall be appropriated to CCJJ for implementing the Crime
846 Reduction Assistance Program under Section 24-4-116.

847 Section 28. Section **24-4-116** is enacted to read:

848 **24-4-116. Crime Reduction Assistance Program.**

849 (1) There is created the Crime Reduction Assistance Program.

850 (2) The program shall fund crime prevention and law enforcement activities that have
851 the purpose of:

852 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
853 activities;

854 (b) weakening criminal enterprises by removing the instrumentalities of crime;

855 (c) reducing crimes involving substance abuse by supporting the creation,
856 administration, or operation of drug court programs throughout the state;

857 (d) encouraging cooperation between local, state, and multijurisdictional law
858 enforcement agencies;

859 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
860 proceeds of crime; and

861 (f) increasing the equitability and accountability of the use of forfeited property used to
862 assist law enforcement in reducing and preventing crime.

863 (3) When property is forfeited under this chapter and transferred to CFRA and is then
864 appropriated to CCJJ, CCJJ shall make awards of money to state, local, or multijurisdictional

865 law enforcement agencies or political subdivisions of the state in compliance with this section
866 and to further the program purposes under Subsection (2).

867 (4) Agencies or political subdivisions shall apply for program awards by completing
868 and submitting forms specified by CCJJ.

869 (5) In granting the awards, CCJJ shall ensure that the amount of each award takes into
870 consideration:

871 (a) the demonstrated needs of the agency;

872 (b) the demonstrated ability of the agency to appropriately use the award;

873 (c) the degree to which the agency's need is offset through the agency's participation in
874 federal equitable sharing or through other federal and state grant programs; and

875 (d) the agency's cooperation with other state and local agencies and task forces.

876 (6) Applying agencies or political subdivisions shall demonstrate compliance with all
877 reporting and policy requirements applicable under this chapter and under Title 63M, Chapter
878 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

879 (7) Recipient law enforcement agencies may only use program award money after
880 approval by the agency's legislative body. The award money is nonlapsing.

881 (8) A recipient law enforcement agency or political subdivision shall use program
882 awards only for law enforcement or controlled substance law enforcement purposes as
883 described in this section, and only as these purposes are specified by the agency or political
884 subdivision in its application for the award.

885 (9) Permissible law enforcement purposes for which award money may be used
886 include:

887 (a) controlled substance interdiction and enforcement activities;

888 (b) drug court programs;

889 (c) activities calculated to enhance future investigations;

890 (d) law enforcement training that includes:

891 (i) implementation of the Fourth Amendment of the United States Constitution and
892 Utah Constitution Article I, Section 7, and addresses the protection of the individual's rights of
893 due process;

894 (ii) protection of the rights of innocent property holders; and

895 (iii) the Tenth Amendment to the United States Constitution regarding states'

896 sovereignty and the states' reserved rights;
897 (e) law enforcement or detention facilities;
898 (f) law enforcement operations or equipment that are not routine costs or operational
899 expenses;
900 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
901 in part by the law enforcement agency or its legislative body; and
902 (h) matching funds for other state or federal law enforcement grants.
903 (10) Law enforcement purposes for which award money may not be granted or used
904 include:
905 (a) payment of salaries, retirement benefits, or bonuses to any person;
906 (b) payment of enforcement expenses not related to law enforcement;
907 (c) uses not specified in the agency's award application;
908 (d) uses not approved by the agency's legislative body;
909 (e) payments, transfers, or pass-through funding to entities other than law enforcement
910 agencies; or
911 (f) uses, payments, or expenses that are not within the scope of the agency's functions.
912 (11) (a) For each fiscal year, any state, local, or multijurisdictional agency or political
913 subdivision that received a program award shall prepare, and file with CCJJ and the state
914 auditor, a report in a form specified by CCJJ.
915 (b) The report shall include the following regarding each award:
916 (i) the agency's name;
917 (ii) the amount of the award;
918 (iii) the date of the award;
919 (iv) how the award has been used; and
920 (v) a statement signed by both the agency's or political subdivision's executive officer
921 or designee and by the agency's legal counsel, that:
922 (A) the agency or political subdivision has complied with all inventory, policy, and
923 reporting requirements of this chapter; and
924 (B) all program awards were used for crime reduction or law enforcement purposes as
925 specified in the application only upon approval by the agency's or political subdivision's
926 legislative body.

927 (12) (a) CCJJ shall report in writing to the legislative Law Enforcement and Criminal
928 Justice Interim Committee annually regarding the forfeited property transferred to the CFRA,
929 awards made by the program, uses of program awards, and any equitable share of property
930 forfeited by the federal government as reported by agencies pursuant to Subsection
931 24-4-113(4).

932 (b) The report shall be submitted annually on or before November 1.
933 Section 29. Section **32B-4-206 (Effective 07/01/11)** is amended to read:
934 **32B-4-206 (Effective 07/01/11). Payment of fine or forfeiture.**

935 ~~[(1) The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah~~
936 ~~Uniform Forfeiture Procedures Act:]~~

937 ~~[(a) an alcoholic product possessed, purchased, used, stored, sold, offered for sale,~~
938 ~~furnished, given, received, warehoused, manufactured, distributed, shipped, carried,~~
939 ~~transported, or adulterated in violation of this title or commission rules;]~~

940 ~~[(b) a package or property used or intended for use as a package for an alcoholic~~
941 ~~product in violation of this title or commission rules;]~~

942 ~~[(c) raw materials, products, and equipment used, or intended for use, in~~
943 ~~manufacturing, processing, delivering, importing, exporting, or adulterating an alcoholic~~
944 ~~product in violation of this title or commission rules;]~~

945 ~~[(d) implements, furniture, fixtures, or other personal property used or kept for a~~
946 ~~violation of this title or commission rules;]~~

947 ~~[(e) conveyances including an aircraft, vehicle, or vessel used or intended for use, to~~
948 ~~transport or in any manner facilitate the transportation, sale, receipt, possession, or~~
949 ~~concealment of property described in Subsection (1)(a), (b), (c), or (d); and]~~

950 ~~[(f) a record used or intended for use in violation of this title or commission rules.]~~

951 ~~[(2) (a) Property subject to forfeiture under this title may be seized by a peace officer of~~
952 ~~this state or any other person authorized by law upon process issued by a court having~~
953 ~~jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating~~
954 ~~to search warrants or administrative warrants.]~~

955 ~~[(b) Notwithstanding Subsection (2)(a), seizure without process may be made when:]~~

956 ~~[(i) the seizure is incident to an arrest or search under a search warrant or an inspection~~
957 ~~under an administrative inspection warrant;]~~

958 ~~[(ii) the property subject to seizure has been the subject of a prior judgment in favor of~~
959 ~~the state in a criminal injunction or forfeiture proceeding under this title;]~~

960 ~~[(iii) the peace officer or other person authorized by law has probable cause to believe~~
961 ~~that the property is directly or indirectly dangerous to health or safety; or]~~

962 ~~[(iv) the peace officer or other person authorized by law has probable cause to believe~~
963 ~~that the property is being or has been used, intended to be used, held, or kept in violation of this~~
964 ~~title or commission rules.]~~

965 ~~[(3) If property is seized pursuant to a search or administrative warrant, a peace officer~~
966 ~~or other person authorized by law shall comply with the requirements of the Utah Rules of~~
967 ~~Criminal Procedure.]~~

968 ~~[(4) (a) If property is seized without process:]~~

969 ~~[(i) the peace officer or other person authorized by law shall make a return of the peace~~
970 ~~officer's or person's acts without delay directly to the district court of the county in which the~~
971 ~~property was located; and]~~

972 ~~[(ii) the district court shall have jurisdiction of the case.]~~

973 ~~[(b) A return shall describe:]~~

974 ~~[(i) the property seized;]~~

975 ~~[(ii) the place where the property is seized; and]~~

976 ~~[(iii) any person in apparent possession of the property.]~~

977 ~~[(c) A peace officer or other person described in Subsection (4)(a) shall promptly:]~~

978 ~~[(i) deliver a written inventory of anything seized to any person in apparent authority at~~
979 ~~the premises where the seizure is made; or]~~

980 ~~[(ii) post a written inventory of anything seized in a conspicuous place at the premises.]~~

981 ~~[(d) A written inventory under this Subsection (4) shall state the place where the~~
982 ~~property is being held.]~~

983 ~~[(5) Property taken or detained under this section is not repleviable but is considered in~~
984 ~~custody of the law enforcement agency making the seizure subject only to the orders of the~~
985 ~~court or the official having jurisdiction. When property is seized under this title, the~~
986 ~~appropriate person or agency may:]~~

987 ~~[(a) place the property under seal;]~~

988 ~~[(b) remove the property to a place designated by:]~~

989 ~~[(i) the person or agency; or]~~

990 ~~[(ii) the warrant under which the property is seized; or]~~

991 ~~[(c) take custody of the property and remove the property to an appropriate location for~~
992 ~~disposition in accordance with law.]~~

993 ~~[(6) When property is subject to forfeiture under this section, a proceeding shall be~~
994 ~~instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

995 ~~[(7) When property is ordered forfeited under Title 24, Chapter 1, Utah Uniform~~
996 ~~Forfeiture Procedures Act, by a finding of a court that no person is entitled to recover the~~
997 ~~property, the property, if an alcohol package or product used as a package for an alcoholic~~
998 ~~product, shall be disposed of as follows:]~~

999 ~~[(a) An alcoholic product shall be sold in accordance with Section 24-1-17 if the~~
1000 ~~alcoholic product is:]~~

1001 ~~[(i) unadulterated, pure, and free from crude, unrectified, or impure form of ethylic~~
1002 ~~alcohol, or any other deleterious substance or liquid; and]~~

1003 ~~[(ii) otherwise in saleable condition.]~~

1004 ~~[(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the~~
1005 ~~department shall destroy the alcoholic product and its package under competent supervision.]~~

1006 ~~[(8)]~~ Except when otherwise provided, a fine or forfeiture levied under this title shall
1007 be paid to the county treasurer of the county in which the prosecution occurred.

1008 Section 30. Section ~~41-6a-527~~ is amended to read:

1009 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
1010 **requirements -- Removal of vehicle by owner -- Forfeiture.**

1011 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a
1012 vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530,
1013 41-6a-606, 53-3-231, 53-3-232, or a local ordinance similar to Section 41-6a-502 which
1014 complies with Subsection 41-6a-510(1), the peace officer shall seize and impound the vehicle
1015 in accordance with Section 41-6a-1406, except as provided under Subsection (2).

1016 (2) If a registered owner of the vehicle, other than the operator, is present at the time of
1017 arrest, the peace officer may release the vehicle to that registered owner, but only if:

1018 (a) the registered owner:

1019 (i) requests to remove the vehicle from the scene; and

1020 (ii) presents to the peace officer sufficient identification to prove ownership of the
1021 vehicle or motorboat;

1022 (b) the registered owner identifies a driver with a valid operator's license who:

1023 (i) complies with all restrictions of his operator's license; and

1024 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,
1025 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231, 53-3-232, or a local ordinance
1026 similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if permitted to
1027 operate the vehicle; and

1028 (c) the vehicle itself is legally operable.

1029 (3) If necessary for transportation of a motorboat for impoundment under this section,
1030 the motorboat's trailer may be used to transport the motorboat.

1031 ~~[(4) A motor vehicle is subject to criminal or civil forfeiture under the procedures and~~
1032 ~~substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures~~
1033 ~~Act, upon a finding by the court that:]~~

1034 ~~[(a) the motor vehicle was used in a violation of Section 41-6a-502, 41-6a-517, a local~~
1035 ~~ordinance which complies with the requirements of Subsection 41-6a-510(1), Subsection~~
1036 ~~58-37-8(2)(g), or Section 76-5-207;]~~

1037 ~~[(b) the operator of the vehicle has previously been convicted of a violation committed~~
1038 ~~after May 12, 2009, of:]~~

1039 ~~[(i) a felony driving under the influence violation under Section 41-6a-502;]~~

1040 ~~[(ii) a felony violation of Subsection 58-37-8(2)(g); or]~~

1041 ~~[(iii) automobile homicide under Section 76-5-207;]~~

1042 ~~[(c) the operator of the vehicle was driving on a denied, suspended, revoked, or~~
1043 ~~disqualified license; and]~~

1044 ~~[(d) (i) the denial, suspension, revocation, or disqualification under Subsection (4)(c)~~
1045 ~~was imposed because of a violation of:]~~

1046 ~~[(A) Section 41-6a-502;]~~

1047 ~~[(B) Section 41-6a-517;]~~

1048 ~~[(C) a local ordinance which complies with the requirements of Subsection~~
1049 ~~41-6a-510(1);]~~

1050 ~~[(D) Section 41-6a-520;]~~

1051 ~~[(E) Subsection 58-37-8(2)(g);]~~
1052 ~~[(F) Section 76-5-207; or]~~
1053 ~~[(G) a criminal prohibition that the person was charged with violating as a result of a~~
1054 ~~plea bargain after having been originally charged with violating one or more of the sections or~~
1055 ~~ordinances described in Subsections (4)(d)(i)(A) through (F); or]~~
1056 ~~[(ii) (A) the denial, suspension, revocation, or disqualification described in Subsection~~
1057 ~~(4)(c) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,~~
1058 ~~revocation, or disqualification; and]~~
1059 ~~[(B) the original denial, suspension, revocation, or disqualification was imposed~~
1060 ~~because of a violation described in Subsection (4)(d)(i)(A) through (G).]~~
1061 Section 31. Section **53-7-406** is amended to read:
1062 **53-7-406. Penalties.**
1063 (1) (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer,
1064 agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than
1065 through retail sale, in violation of Section 53-7-403:
1066 (i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each
1067 sale of cigarettes; and
1068 (ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per
1069 each sale of such cigarettes.
1070 (b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any
1071 30-day period against any one entity described in Subsection (1).
1072 (2) (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells
1073 cigarettes in violation of Section 53-7-403 shall:
1074 (i) for a first offense for each sale or offer for sale of cigarettes, if the total number of
1075 cigarettes sold or offered for sale:
1076 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500
1077 for each sale or offer of sale; and
1078 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for
1079 each sale or offer of sale; and
1080 (ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:
1081 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000

1082 for each sale or offer of sale; and

1083 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for
1084 each sale or offer of sale.

1085 (b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not
1086 exceed \$25,000 during a 30-day period.

1087 (3) In addition to any penalty prescribed by law, any corporation, partnership, sole
1088 proprietor, limited partnership, or association engaged in the manufacture of cigarettes that
1089 knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false
1090 certification:

1091 (a) for a first offense, be liable for a civil penalty of at least \$75,000; and

1092 (b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.

1093 (4) Any person violating any other provision in this part shall be liable for a civil
1094 penalty for each violation:

1095 (a) for a first offense, not to exceed \$1,000; and

1096 (b) for a subsequent offense, not to exceed \$5,000.

1097 [~~(5) Any cigarettes that have been sold or offered for sale that do not comply with the
1098 performance standard required by Section 53-7-403 shall be subject to forfeiture under Title 24,
1099 Chapter 1, Utah Uniform Forfeiture Procedures Act, and, upon being forfeited, shall be
1100 destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to
1101 this part, the true holder of the trademark rights in the cigarette brand shall be permitted to
1102 inspect the cigarette.]~~

1103 [(6)] (5) In addition to any other remedy provided by law, the state fire marshal or
1104 attorney general may file an action in district court for a violation of this part, including
1105 petitioning for injunctive relief or to recover any costs or damages suffered by the state because
1106 of a violation of this part, including enforcement costs relating to the specific violation and
1107 attorney fees. Each violation of this part or of rules or regulations adopted under this part
1108 constitutes a separate civil violation for which the state fire marshal or attorney general may
1109 obtain relief.

1110 Section 32. Section **63J-1-602.1** is amended to read:

1111 **63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title**
1112 **1 through Title 30.**

- 1113 (1) Appropriations made to the Legislature and its committees.
- 1114 (2) The Salinity Offset Fund created in Section 4-2-8.5.
- 1115 (3) The Invasive Species Mitigation Account created in Section 4-2-8.7.
- 1116 (4) The Rangeland Improvement Account created in Section 4-20-2.
- 1117 (5) The Percent-for-Art Program created in Section 9-6-404.
- 1118 (6) The Centennial History Fund created in Section 9-8-604.
- 1119 (7) The Uintah Basin Revitalization Fund, as provided in Section 9-10-108.
- 1120 (8) The Navajo Revitalization Fund created in Section 9-11-104.
- 1121 (9) The LeRay McAllister Critical Land Conservation Program created in Section
- 1122 11-38-301.
- 1123 (10) The Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.
- 1124 (11) An appropriation made to the Division of Wildlife Resources for the appraisal and
- 1125 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.
- 1126 (12) Award money under the Crime Reduction Assistance Program, as provided under
- 1127 Section [~~24-1-19~~] 24-4-116.
- 1128 (13) Funds collected from the emergency medical services grant program, as provided
- 1129 in Section 26-8a-207.
- 1130 (14) The Utah Health Care Workforce Financial Assistance Program created in Section
- 1131 26-46-102.
- 1132 Section 33. Section **76-6-903** is amended to read:
- 1133 **76-6-903. Penalties.**
- 1134 (1) A person is guilty of a class B misdemeanor if that person:
- 1135 (a) violates this part; or
- 1136 (b) counsels, procures, solicits, or employs any other person to violate this part.
- 1137 (2) A person is guilty of a third degree felony if:
- 1138 (a) that person commits a second or subsequent violation described in Subsection (1);
- 1139 or
- 1140 (b) the amount calculated under Subsection (3) for a violation described in Subsection
- 1141 (1) exceeds \$500.
- 1142 (3) The amount described in Subsection (2)(b) is calculated by adding the:
- 1143 (a) commercial or archaeological value of the antiquities involved in the violation; and

1144 (b) cost of the restoration and repair of the antiquities involved in the violation.

1145 [~~(4) (a) All property used in conjunction with the criminal activity, together with all~~
1146 ~~photographs and records, shall be forfeited to the state.]~~

1147 [~~(b)~~] (4) All articles and material discovered, collected, excavated, or offered for sale
1148 or exchange shall be surrendered to the landowner.

1149 Section 34. Section **76-10-1603.5** is amended to read:

1150 **76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture --**
1151 **Restrictions -- Dissolution or reorganization -- Prior restraint.**

1152 (1) A person who violates any provision of Section 76-10-1603 is guilty of a second
1153 degree felony. In addition to penalties prescribed by law, the court may order the person found
1154 guilty of the felony to pay to the state, if the attorney general brought the action, or to the
1155 county, if the county attorney or district attorney brought the action, the costs of investigating
1156 and prosecuting the offense and the costs of securing the forfeitures provided for in this
1157 section. [~~The person shall forfeit:]~~

1158 [~~(a) any interest acquired or maintained in violation of any provision of Section~~
1159 ~~76-10-1603;]~~

1160 [~~(b) any interest in, security of, claim against, or property or contractual right of any~~
1161 ~~kind affording a source of influence over any enterprise which the person has established,~~
1162 ~~operated, controlled, conducted, or participated in the conduct of in violation of Section~~
1163 ~~76-10-1603; and]~~

1164 [~~(c) any property constituting or derived from the net proceeds which the person~~
1165 ~~obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or~~
1166 ~~from any act or conduct constituting the pattern of unlawful activity proven as part of the~~
1167 ~~violation of any provision of Section 76-10-1603.]~~

1168 [(2) ~~If a violation of Section 76-10-1603 is based on a pattern of unlawful activity~~
1169 ~~consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or~~
1170 ~~76-10-1222, the property subject to forfeiture under this section is limited to property, the~~
1171 ~~seizure or forfeiture of which would not constitute a prior restraint on the exercise of an~~
1172 ~~affected party's rights under the First Amendment to the Constitution of the United States or~~
1173 ~~Utah Constitution Article I, Section 15, or would not otherwise unlawfully interfere with the~~
1174 ~~exercise of those rights.]~~

1175 ~~[(3)]~~ (2) In lieu of a fine otherwise authorized by law for a violation of Section
1176 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section
1177 76-10-1603 may be fined not more than twice the amount of the net proceeds.

1178 ~~[(4) Property subject to forfeiture in accordance with the procedures and substantive~~
1179 ~~protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:]~~

1180 ~~[(a) includes:]~~

1181 ~~[(i) real property, including things growing on, affixed to, and found in land; and]~~

1182 ~~[(ii) tangible and intangible personal property including money, rights, privileges,~~
1183 ~~interests, claims, and securities of any kind; but]~~

1184 ~~[(b) does not include property exchanged or to be exchanged for services rendered in~~
1185 ~~connection with the defense of the charges or any related criminal case.]~~

1186 ~~[(5)]~~ (3) Upon conviction for violating any provision of Section 76-10-1603, and in
1187 addition to any penalty prescribed by law ~~[and in addition to any forfeitures provided for in this~~
1188 ~~section]~~, the court may do any or all of the following:

1189 (a) order restitution to any victim or rightful owner of property obtained, directly or
1190 indirectly, from:

1191 (i) the conduct constituting the pattern of unlawful activity; or

1192 (ii) any act or conduct constituting the pattern of unlawful activity that is proven as part
1193 of the violation of any provision of Section 76-10-1603;

1194 (b) order the person to divest himself of any interest in or any control, direct or
1195 indirect, of any enterprise;

1196 (c) impose reasonable restrictions on the future activities or investments of any person,
1197 including prohibiting the person from engaging in the same type of endeavor as the enterprise
1198 engaged in, to the extent the Utah Constitution and the Constitution of the United States
1199 permit; or

1200 (d) order the dissolution or reorganization of any enterprise.

1201 ~~[(6)]~~ (4) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
1202 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
1203 76-10-1222, the court may not enter any order that would amount to a prior restraint on the
1204 exercise of an affected party's rights under the First Amendment to the Constitution of the
1205 United States or Utah Constitution Article I, Section 15.

1206 ~~[(7) All rights, title, and interest in forfeitable property described in Subsections (1)~~
1207 ~~and (2) are subject to forfeiture proceedings in accordance with the procedures and substantive~~
1208 ~~protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

1209 ~~[(8)]~~ (5) For purposes of this section, the "net proceeds" of an offense means property
1210 acquired as a result of the violation minus the direct costs of acquiring the property.

1211 Section 35. Section **77-24-1** is amended to read:

1212 **77-24-1. Definition.**

1213 ~~[As used in this chapter:]~~

1214 ~~[(1) "Intangible property" means:]~~

1215 ~~[(a) money, checks, drafts, deposits, interest, dividends, and income;]~~

1216 ~~[(b) credit balances, customer overpayments, gift certificates, security deposits,~~
1217 ~~refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;]~~

1218 ~~[(c) stocks and other intangible ownership interests in business associations;]~~

1219 ~~[(d) money deposited to redeem stocks, bonds, coupons, and other securities or to~~
1220 ~~make distributions;]~~

1221 ~~[(e) amounts due and payable under the terms of insurance policies; and]~~

1222 ~~[(f) amounts distributable from a trust or custodial fund established under a plan to~~
1223 ~~provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit~~
1224 ~~sharing, employee savings, supplemental unemployment insurance, or similar benefits;]~~

1225 ~~[(2) "Property" means any tangible or intangible property that is not seized for~~
1226 ~~forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, that:]~~

1227 ~~[(a) comes into the possession of a peace officer through execution of a search~~
1228 ~~warrant;]~~

1229 ~~[(b) comes into the possession of a peace officer pursuant to an arrest of a person, with~~
1230 ~~or without a warrant;]~~

1231 ~~[(c) is received or taken as evidence in connection with any public offense; or]~~

1232 ~~[(d)]~~ As used in this chapter, "property" means any property that comes into the
1233 possession of a municipal or county animal control officer.

1234 ~~[(3) "Tangible property" means all property that is not intangible property.]~~

1235 Section 36. Section **77-24-1.5** is amended to read:

1236 **77-24-1.5. Stray animals.**

- 1237 ~~[(1) Each peace officer shall:]~~
 1238 ~~[(a) hold all property in safe custody:]~~
 1239 ~~[(i) until it is received into evidence; or]~~
 1240 ~~[(ii) if it is not used as evidence, until it can be disposed of as provided in this chapter;~~
 1241 ~~and]~~
 1242 ~~[(b) maintain a proper record of the property that identifies:]~~
 1243 ~~[(i) the owner of the property, if known; and]~~
 1244 ~~[(ii) the case for which it was taken or received and is being held.]~~
 1245 ~~[(2)(a)]~~ (1) Each municipal or county animal control officer shall hold any unidentified
 1246 or unclaimed stray dog or stray cat in safe and humane custody for a minimum of three
 1247 working days after the time of impound prior to making any final disposition of the animal,
 1248 including:
 1249 ~~[(i)]~~ (a) placement in an adoptive home or other transfer of the animal, which shall be
 1250 in compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization Act, or
 1251 Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act; or
 1252 ~~[(ii)]~~ (b) euthanasia.
 1253 ~~[(b)]~~ (2) An unidentified or unclaimed stray dog or stray cat may be euthanized prior to
 1254 the completion of the three working day minimum holding period to prevent unnecessary
 1255 suffering due to serious injury or disease, if the euthanasia is in compliance with written
 1256 established agency or department policies and procedures, and with any local ordinances
 1257 allowing the destruction.
 1258 ~~[(c)]~~ (3) An unidentified or unclaimed stray dog or stray cat shall be returned to its
 1259 owner upon:
 1260 ~~[(i)]~~ (a) proof of ownership;
 1261 ~~[(ii)]~~ (b) compliance with requirements of local animal control ordinances; and
 1262 ~~[(iii)]~~ (c) compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet
 1263 Sterilization Act, or Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act.
 1264 Section 37. Section **77-24a-1** is repealed and reenacted to read:
 1265 **CHAPTER 24a. LOST OR MISLAID PERSONAL PROPERTY**
 1266 **77-24a-1. Definition.**
 1267 (1) "Lost or mislaid property":

1268 (a) means any property that comes into the possession of a peace officer or law
 1269 enforcement agency:

1270 (i) that is not claimed by anyone who is identified as the owner of the property; or

1271 (ii) for which no owner or interest holder can be found after a reasonable and diligent
 1272 search;

1273 (b) includes any property received by a peace officer or law enforcement agency from a
 1274 person claiming to have found the property; and

1275 (c) does not include property seized by a peace officer pursuant to Title 24, Forfeiture
 1276 Procedures.

1277 (2) "Public interest use" means:

1278 (a) use by a governmental agency as determined by the agency's legislative body; or

1279 (b) donation to a nonprofit charity registered with the state.

1280 Section 38. Section **77-24a-2** is amended to read:

1281 **77-24a-2. Disposition by law enforcement agency.**

1282 All [~~unclaimed~~] lost or mislaid property coming into the possession of a peace officer
 1283 or law enforcement agency shall be turned over to, held, and disposed of only by the local law
 1284 enforcement agency whose authority extends to the area where the item was found.

1285 Section 39. Section **77-24a-3** is amended to read:

1286 **77-24a-3. Statement of finder.**

1287 (1) A person [~~finding unclaimed~~] who finds lost or mislaid property and [~~delivering~~]
 1288 delivers it to a local law enforcement agency shall sign a statement included in a form provided
 1289 by the agency, stating [~~how~~]:

1290 (a) the manner in which the property came into [~~his~~] the person's possession, including
 1291 the time, date, and place[~~, and stating~~];

1292 (b) that [~~he~~] the person does not know who [~~the owner of~~] owns the property [~~is~~];

1293 (c) that to the person's knowledge the property was not [~~to his knowledge~~] stolen[~~;~~];

1294 (d) that [~~his~~] the person's possession of [~~it~~] the property is not unlawful[~~;~~]; and
 1295 [~~providing~~]

1296 (e) any information [~~he~~] the person is aware of which could lead to a determination of
 1297 the owner. [~~Other information~~]

1298 (2) Additional information may be requested by the agency receiving the [~~item~~]

1299 property, as necessary.

1300 Section 40. Section **77-24a-4** is amended to read:

1301 **77-24a-4. Locating owner.**

1302 (1) The local law enforcement agency shall take reasonable steps to determine the
1303 identity and location of the owner, and notify ~~[him]~~ the owner that the property is in custody.

1304 (2) The owner may obtain the property only by ~~[making identification of himself and~~
1305 ~~of]~~ providing personal identification, identifying the property, and paying any costs incurred by
1306 the agency, including costs for advertising or storage.

1307 Section 41. Section **77-24a-5** is amended to read:

1308 **77-24a-5. Disposition of lost or mislaid property.**

1309 (1) (a) If the owner of any ~~[unclaimed]~~ lost or mislaid property cannot be determined or
1310 notified, or if ~~[he]~~ the owner of the property is determined and notified, and fails to appear and
1311 claim the property after three months of its receipt by the local law enforcement agency, the
1312 agency shall:

1313 (i) publish at least one notice of the intent to dispose of the ~~[unclaimed]~~ lost or mislaid
1314 property:

1315 (A) in a newspaper of general circulation within the county; and

1316 (B) as required in Section 45-1-101; ~~[and]~~

1317 (ii) post a similar notice in a public place designated for notice within the law
1318 enforcement agency~~[-]; and~~

1319 (iii) publish an electronic notice for two successive weeks on the Utah Public Notice
1320 Website established in Section 63F-1-701 only if there is no known address.

1321 (b) The notice shall:

1322 (i) give a general description of the item; and

1323 (ii) the date of intended disposition.

1324 (c) The agency may not dispose of the ~~[unclaimed]~~ lost or mislaid property until at
1325 least eight days after the date of publication and posting.

1326 (2) (a) If no claim is made for the ~~[unclaimed]~~ lost or mislaid property within nine days
1327 of publication and posting, the agency shall notify the person who turned the property over to
1328 the local law enforcement agency, if it was turned over by a person under Section 77-24a-3.

1329 (b) Except as provided in Subsection (4), if that person has complied with the

1330 provisions of this chapter, the person may take the ~~[unclaimed]~~ lost or mislaid property if the
1331 person:

1332 (i) pays the costs incurred for advertising and storage; and

1333 (ii) signs a receipt for the item.

1334 (3) If the person who found the ~~[unclaimed]~~ lost or mislaid property fails to take the
1335 property under the provisions of this chapter, the agency ~~[shall dispose of that property and any~~
1336 ~~other property that is not claimed under this chapter as provided by Section 77-24-4.]~~ may:

1337 (a) apply the property to public interest use as provided in Subsection (4);

1338 (b) sell the property at public auction and apply the proceeds of the sale to public
1339 interest use; or

1340 (c) destroy the property if unfit for sale.

1341 (4) Before applying the lost or mislaid property to public interest use, the agency
1342 having possession of the property shall obtain from the agency's legislative body:

1343 (a) permission to apply the property to public interest use; and

1344 (b) the designation and approval of the public interest use of the property.

1345 ~~[(4)]~~ (5) Any person employed by a law enforcement agency who finds property may
1346 not claim or receive property under this section.

1347 Section 42. **Repealer.**

1348 This bill repeals:

1349 Section 24-1-1, **Title.**

1350 Section 24-1-2, **Purpose.**

1351 Section 24-1-3, **Definitions.**

1352 Section 24-1-3.5, **Jurisdiction and venue.**

1353 Section 24-1-4, **Civil Procedures.**

1354 Section 24-1-5, **No bond required in civil cases.**

1355 Section 24-1-6, **Innocent owners.**

1356 Section 24-1-7, **Hardship release of seized property.**

1357 Section 24-1-8, **Criminal procedures.**

1358 Section 24-1-9, **Appointment of counsel for indigent claimants in civil and criminal**
1359 **forfeiture proceedings.**

1360 Section 24-1-10, **Prejudgment and postjudgment interest.**

- 1361 Section 24-1-11, Attorneys' fees and costs.
- 1362 Section 24-1-12, Compensation for damaged property.
- 1363 Section 24-1-13, Limitation on fees for holding seized property.
- 1364 Section 24-1-14, Proportionality.
- 1365 Section 24-1-15, Transfer and sharing procedures.
- 1366 Section 24-1-17, Disposition and allocation of forfeiture property.
- 1367 Section 24-1-18, Criminal Forfeiture Restricted Account.
- 1368 Section 24-1-19, Crime Reduction Assistance Program.
- 1369 Section 24-1-20, State Law Enforcement Forfeiture Account created -- Revenue
- 1370 sources -- Use of account designated.
- 1371 Section 41-6a-211, Vehicle subject to forfeiture -- Seizure -- Procedure.
- 1372 Section 58-37-13, Property subject to forfeiture -- Seizure -- Procedure.
- 1373 Section 76-3-501, Vehicle subject to forfeiture -- Seizure -- Procedure.
- 1374 Section 76-10-525, Disposition of weapons after use for court purposes.
- 1375 Section 76-10-1107, Seizure and sale of devices or equipment used for gambling.
- 1376 Section 76-10-1908, Forfeiture -- Grounds -- Procedure -- Disposition of property
- 1377 seized.
- 1378 Section 77-24-2, Property not needed as evidence -- Return procedure.
- 1379 Section 77-24-3, Receipt from owner of returned property.
- 1380 Section 77-24-4, Disposition of property.
- 1381 Section 77-24-5, Property seized from person -- Duplicate receipts.
- 1382 Section 43. Effective date.
- 1383 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 3-1-11 11:37 AM

Office of Legislative Research and General Counsel