

**ASSET FORFEITURE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: John Knotwell

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**LONG TITLE**

**General Description:**

This bill modifies the Forfeiture and Disposition of Property Act regarding forfeiture procedures.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of a claimant of property seized for forfeiture;
- ▶ reduces, and makes mandatory, the number of days within which a prosecutor must file a complaint for civil forfeiture;
- ▶ provides that the prosecutor is not required to serve notice on a claimant who has disclaimed ownership of the seized property;
- ▶ requires that service by publication must include a newspaper of general circulation;
- ▶ provides that if the prosecuting attorney does not ~~§→ [file a forfeiture complaint]~~ take a specified action regarding forfeiture of the property ~~←§~~ within ~~§→ [60]~~ 75 ~~←§~~ days after the seizure, the property shall be promptly returned and no further prosecutorial action may be taken;
- ▶ requires that a prevailing property owner shall be awarded reasonable legal and attorney costs;
- ▶ establishes limitations and procedural requirements regarding the transfer of seized property to the federal government; and
- ▶ limits the amount of forfeited property that may be applied to prosecutorial attorney fees to 20% of the value of the property ~~§→ [or the actual amount of attorney fees,~~ ~~←§~~

S.B. 256



28 ~~§~~→whichever is less] ←~~§~~ .

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **24-1-102**, as enacted by Laws of Utah 2013, Chapter 394

36 **24-4-104**, as enacted by Laws of Utah 2013, Chapter 394

37 **24-4-105**, as enacted by Laws of Utah 2013, Chapter 394

38 **24-4-110**, as enacted by Laws of Utah 2013, Chapter 394

39 **24-4-114**, as enacted by Laws of Utah 2013, Chapter 394

40 **24-4-115**, as enacted by Laws of Utah 2013, Chapter 394



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

43 Section 1. Section **24-1-102** is amended to read:

44 **24-1-102. Definitions.**

45 As used in this title:

46 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
47 **24-4-116**.

48 (2) (a) "Acquittal" means a finding by a jury or a judge at trial that a claimant is not  
49 guilty.

50 (b) An acquittal does not include:

51 (i) a verdict of guilty on a lesser or reduced charge;

52 (ii) a plea of guilty to a lesser or reduced charge; or

53 (iii) dismissal of a charge as a result of a negotiated plea agreement.

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

56 (4) ~~(a)~~ "Claimant" means any:

57 ~~(i)~~ (a) owner of property as defined in this section;

58 ~~(ii)~~ (b) interest holder as defined in this section; or

121 (b) "Proceeds" includes any property of any kind without reduction for expenses  
 122 incurred in the acquisition, maintenance, or production of that property, or any other purpose  
 123 regarding property under Subsection (16)(a)(i).

124 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that  
 125 gives rise to forfeiture.

126 (17) "Program" means the State Asset Forfeiture Grant Program established in Section  
 127 [24-4-117](#).

128 (18) "Property" means all property, whether real or personal, tangible or intangible, but  
 129 does not include contraband.

130 (19) "Prosecuting attorney" means:

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

132 (b) any district attorney or deputy district attorney;

133 (c) any county attorney or assistant county attorney; and

134 (d) any other attorney authorized to commence an action on behalf of the state under  
 135 this title.

136 (20) "Public interest use" means a:

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

139 (b) donation of the property to a nonprofit charity registered with the state.

140 (21) "Real property" means land and includes any building, fixture, improvement,  
 141 appurtenance, structure, or other development that is affixed permanently to land.

142 Section 2. Section **24-4-104** is amended to read:

143 **24-4-104. Civil forfeiture procedure.**

144 (1) (a) ~~§→ [Within 90] 60 days from the date the property is seized, the prosecuting~~  
 145 ~~attorney [may elect to] shall file a complaint for civil forfeiture in the appropriate district court.]~~  
 145a **The law enforcement agency shall promptly return seized property, and the prosecuting**  
 145b **attorney may take no further action to effect the forfeiture of the property, unless within 75**  
 145c **days after the property is seized the prosecuting attorney:**  
 145d **(i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);**  
 145e **(ii) obtains a restraining order under Subsection 24-4-105(3);**  
 145f **(iii) files a petition under Subsection 24-4-114(1); or**  
 145g **(iv) files a civil forfeiture complaint. ←§**

146 (b) ~~§→ [The] A ←§~~ complaint ~~§→ for civil forfeiture ←§~~ shall describe with reasonable  
 146a particularity the:

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

148 (ii) date and place of seizure; and

149 (iii) factual allegations that constitute a basis for forfeiture.

150 (2) (a) After ~~§~~ → [the] a ← ~~§~~ complaint is filed, the prosecuting attorney shall serve a copy

150a of the

151 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

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

185 ~~§→ [(8) If the prosecuting attorney does not file a civil complaint for forfeiture within 60~~  
186 ~~days of the seizure of the property, as required by Subsection 24-4-104(1):~~

187 ~~— (a) the seizing agency shall promptly return the property to the claimant; and~~

188 ~~— (b) the prosecuting attorney may take no further action to effect the forfeiture of the~~  
189 ~~property.] ←§~~

190 Section 3. Section 24-4-105 is amended to read:

191 **24-4-105. Criminal forfeiture procedure.**

192 (1) If a claimant is criminally prosecuted for conduct giving rise to the forfeiture, the  
193 prosecuting attorney may elect to seek forfeiture of the claimant's interest in the property  
194 through the criminal case.

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

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

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

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

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

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

400 destroyed and that is not harmful to the public.

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

403 (i) an alcoholic product shall be sold if the alcoholic product is:

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

406 (B) otherwise in saleable condition; or

407 (ii) an alcoholic product and its package shall be destroyed if the alcoholic product is  
408 impure, adulterated, or otherwise unfit for sale.

409 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section  
410 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other  
411 tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the  
412 cigarette or tobacco product brand shall be permitted to inspect the cigarette.

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

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

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

420 (b) pay the office of the prosecuting attorney the legal costs [and attorney fees]  
421 associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the  
422 ~~property in attorney fees~~ ~~or the actual amount of the attorney fees,~~  
422a ~~whichever is less~~ .

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

426 (5) The remaining currency and the proceeds or revenue from the sale of the property  
427 shall then be transferred to the commission and deposited into the account.