

**CIVIL ASSET FORFEITURE REFORM AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**Committee Note:**

The Judiciary Interim Committee recommended this bill.

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ modifies the elements of qualifying as an innocent owner regarding property subject to forfeiture;
- ▶ requires a direct nexus of the property to a specific alleged criminal exchange or transaction, in order for the property to be forfeited;
- ▶ modifies the definition of proceeds that are from an offense giving rise to a forfeiture;
- ▶ requires the prosecutor to bring an action for civil forfeiture in a timely manner;
- ▶ modifies the process for a claimant to bring an action to claim forfeited property;
- ▶ provides that any person may assert an interest in seized property or file an answer to a forfeiture complaint without posting bond;
- ▶ provides that the hardship provisions include use of funds to allow an individual to obtain a legal defense in the forfeiture proceeding or the related criminal proceeding and assets of a legitimate business;



- 28           ▶ provides that prejudgment interest shall be awarded, in addition to the current
- 29 postjudgment interest;
- 30           ▶ removes the cap of 20% of the value of the property subject to forfeiture when
- 31 awarding legal costs and attorney fees;
- 32           ▶ modifies the obligations of a claimant regarding illegal use of the property subject to
- 33 forfeiture;
- 34           ▶ modifies the allocation of the proceeds from asset forfeiture to provide for:
- 35           • victim restitution; and
- 36           • reimbursement of direct costs by the prosecuting agency and the law
- 37 enforcement agencies involved in the case; and
- 38           ▶ provides that if the defendant is acquitted of the criminal charge subsequent to the
- 39 civil forfeiture proceeding, the forfeited assets shall be returned and the defendant
- 40 shall be reimbursed for interest and costs as listed.

41 **Money Appropriated in this Bill:**

42           None

43 **Other Special Clauses:**

44           None

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47           24-1-102, as last amended by Laws of Utah 2014, Chapter 112
- 48           24-4-102, as enacted by Laws of Utah 2013, Chapter 394
- 49           24-4-103, as enacted by Laws of Utah 2013, Chapter 394
- 50           24-4-104, as last amended by Laws of Utah 2014, Chapter 112
- 51           24-4-105, as last amended by Laws of Utah 2014, Chapter 112
- 52           24-4-107, as enacted by Laws of Utah 2013, Chapter 394
- 53           24-4-108, as enacted by Laws of Utah 2013, Chapter 394
- 54           24-4-109, as enacted by Laws of Utah 2013, Chapter 394
- 55           24-4-110, as last amended by Laws of Utah 2014, Chapter 112
- 56           24-4-116, as enacted by Laws of Utah 2013, Chapter 394
- 57           24-4-117, as last amended by Laws of Utah 2015, Chapter 134

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

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

61 **24-1-102. Definitions.**

62 As used in this title:

63 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
64 [24-4-116](#).

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

67 (b) An acquittal does not include:

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

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

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

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

73 (4) "Claimant" means any:

74 (a) owner of property as defined in this section;

75 (b) interest holder as defined in this section; or

76 (c) person or entity who asserts a claim to any property seized for forfeiture under this  
77 title.

78 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

79 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or  
80 personal property under this title.

81 (7) "Constructive seizure" means a seizure of property where the property is left in the  
82 control of the owner and the seizing agency posts the property with a notice of intent to seek  
83 forfeiture.

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

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

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

90 (a) (i) held an ownership interest in property at the time the conduct subjecting the  
 91 property to forfeiture occurred~~[-and:];~~  
 92 ~~[(i) did not have actual knowledge of the conduct subjecting the property to forfeiture;~~  
 93 ~~or]~~  
 94 ~~[(ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable~~  
 95 ~~steps to prohibit the illegal use of the property; or]~~  
 96 (ii) did not give permission for the conduct or participate in the conduct;  
 97 (iii) did not directly commit the offense; and  
 98 (iv) did not solicit, request, command, encourage, or intentionally aid another person to  
 99 engage in the conduct; or

100 (b) (i) acquired an ownership interest in the property and who had no knowledge that  
 101 the illegal conduct subjecting the property to forfeiture had occurred or that the property had  
 102 been seized for forfeiture~~[-]; and[:]~~  
 103 ~~[(i)]~~ (ii) (A) acquired the property in a bona fide transaction for value;  
 104 ~~[(i)]~~ (B) was a person, including a minor child, who acquired an interest in the  
 105 property through probate or inheritance; or  
 106 ~~[(iii)]~~ (C) was a spouse who acquired an interest in property through dissolution of  
 107 marriage or by operation of law.

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

112 (b) "Interest holder" does not mean a person who holds property for the benefit of or as  
 113 an agent or nominee for another person, or who is not in substantial compliance with any  
 114 statute requiring an interest in property to be recorded or reflected in public records in order to  
 115 perfect the interest against a good faith purchaser for value.

116 (11) "Known address" means any address provided by a claimant to the agency at the  
 117 time the property was seized, or the claimant's most recent address on record with a  
 118 governmental entity if no address was provided at the time of the seizure.

119 (12) "Legal costs" means the costs and expenses incurred by a party in a forfeiture  
 120 action.

121 (13) "Legislative body" means:

122 (a) (i) the Legislature, county commission, county council, city commission, city  
123 council, or town council that has fiscal oversight and budgetary approval authority over an  
124 agency; or

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

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

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

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

134 (16) ~~(a)~~ "Proceeds" means:

135 ~~[(i) property of any kind that is obtained directly or indirectly as a result of the  
136 commission of an offense that gives rise to forfeiture; or]~~

137 ~~[(ii) any property acquired directly or indirectly from, produced through, realized  
138 through, or caused by an act or omission regarding property under Subsection (16)(a)(i).]~~

139 ~~[(b) "Proceeds" includes any property of any kind without reduction for expenses  
140 incurred in the acquisition, maintenance, or production of that property, or any other purpose  
141 regarding property under Subsection (16)(a)(i).]~~

142 ~~[(c) "Proceeds" is not limited to the net gain or profit realized from the offense that  
143 gives rise to forfeiture.]~~

144 (a) property of any kind that is:

145 (i) obtained directly as a result of the commission of an offense that gives rise to  
146 forfeiture; and

147 (ii) limited to only that portion of property that is obtained directly as a result of the  
148 commission of the offense giving rise to the forfeiture; and

149 (b) cash received from the direct sale of, and property received from the direct transfer  
150 of, property described in Subsection (16)(a).

151 (17) "Program" means the State Asset Forfeiture Grant Program established in Section

152 24-4-117.

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

155 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

167 Section 2. Section 24-4-102 is amended to read:

168 **24-4-102. Property subject to forfeiture.**

169 (1) Except as provided in Subsection (3), all property that has been used to directly  
170 facilitate the commission of a federal or state criminal offense and any direct proceeds of  
171 criminal activity may be forfeited under this chapter, including:

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

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

175 (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205,  
176 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to  
177 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise  
178 of an affected party's rights under the First Amendment to the Constitution of the United States  
179 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the  
180 exercise of those rights.

181 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local  
182 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection

183 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

184 (a) the operator of the vehicle has previously been convicted of a violation, committed  
185 after May 12, 2009, of:

186 (i) a felony driving under the influence violation under Section 41-6a-502;

187 (ii) a felony violation under Subsection 58-37-8(2)(g); or

188 (iii) automobile homicide under Section 76-5-207; or

189 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or  
190 disqualified license; and

191 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)  
192 was imposed because of a violation under:

193 (A) Section 41-6a-502;

194 (B) Section 41-6a-517;

195 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

196 (D) Section 41-6a-520;

197 (E) Subsection 58-37-8(2)(g);

198 (F) Section 76-5-207; or

199 (G) a criminal prohibition that the person was charged with violating as a result of a  
200 plea bargain after having been originally charged with violating one or more of the sections or  
201 ordinances described in Subsections (3)(b)(i)(A) through (F); or

202 (ii) the denial, suspension, revocation, or disqualification described in Subsections  
203 (3)(b)(i)(A) through (G):

204 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,  
205 revocation, or disqualification; and

206 (B) the original denial, suspension, revocation, or disqualification was imposed  
207 because of a violation described in Subsections (3)(b)(i)(A) through (G).

208 Section 3. Section 24-4-103 is amended to read:

209 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

210 (1) (a) Within 30 days from the date that property is seized, an agency seeking to forfeit  
211 property shall serve a notice of intent to seek forfeiture upon any claimants known to the  
212 agency.

213 (b) The notice of intent to seek forfeiture shall describe with particularity the:

214 (i) date of the seizure;  
215 (ii) property seized;  
216 (iii) alleged relationship of the seized property to the conduct giving rise to forfeiture;  
217 ~~[(iii)]~~ (iv) claimant's rights and obligations under this chapter, including the availability  
218 of hardship relief in appropriate circumstances; and  
219 ~~[(iv)]~~ (v) statutory basis for the forfeiture, including the judicial proceedings by which  
220 property may be forfeited under this chapter.

221 (c) The notice of intent to seek forfeiture shall be served by:  
222 (i) certified mail, return receipt requested, to the claimant's known address; or  
223 (ii) personal service.  
224 (d) The court may void any forfeiture made without notice under Subsection (1)(a),  
225 unless the agency demonstrates:

226 (i) good cause for the failure to give notice to the claimant; or  
227 (ii) that the claimant had actual notice of the seizure.

228 (2) (a) ~~[Once]~~ After the agency has served each claimant with a notice of intent to seek  
229 forfeiture, but no later than 60 days from the date that property is seized, the agency shall  
230 present a written request for forfeiture to the prosecuting attorney.

231 (b) The written request shall:  
232 (i) describe the property to be forfeited; and  
233 (ii) include a copy of all reports, supporting documents, and other evidence necessary  
234 for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.

235 (3) If a law enforcement agency does not notify claimants and present a request for  
236 forfeiture in compliance with Subsections (1) and (2), the law enforcement agency shall  
237 promptly return the seized property to the claimant or claimants.

238 (4) A prosecuting attorney may take no further action to effect the forfeiture of the  
239 seized property, unless within 75 days after the property is seized the prosecuting attorney:

240 (a) files a criminal information or indictment under Subsection 24-4-105(2);  
241 (b) files a petition under Subsection 24-4-114(1) regarding transfer or sharing of  
242 forfeiture proceeds; or  
243 (c) files a civil forfeiture complaint under Section 24-4-104.

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



245 **24-4-104. Civil forfeiture procedure.**

246 [~~(1) (a) The law enforcement agency shall promptly return seized property, and the~~  
 247 ~~prosecuting attorney may take no further action to effect the forfeiture of the property, unless~~  
 248 ~~within 75 days after the property is seized the prosecuting attorney.]~~

249 [~~(i) files a criminal forfeiture indictment or information under Subsection [24-4-105\(2\)](#);~~

250 [~~(ii) obtains a restraining order under Subsection [24-4-105\(3\)](#);~~

251 [~~(iii) files a petition under Subsection [24-4-114\(1\)](#); or]~~

252 [~~(iv) files a civil forfeiture complaint.]~~

253 (1) (a) When a prosecuting attorney files a civil forfeiture complaint under this section,  
 254 the prosecutor may not pursue any forfeiture proceeding regarding a claimant's interest in the  
 255 seized property until after the claimant is convicted of a criminal offense that has a direct nexus  
 256 to the property that is subject to the forfeiture complaint.

257 (b) If a conviction is not obtained regarding the direct nexus offense charged under  
 258 Subsection (1)(a) and all opportunities to prosecute have been exhausted or abandoned, the law  
 259 enforcement agency shall promptly return the seized property to the claimant and the  
 260 prosecuting attorney shall move the court to dismiss the complaint for civil forfeiture.

261 (c) Notwithstanding Subsections (1)(a) and (b), a prosecuting attorney may pursue a  
 262 complaint for civil forfeiture in compliance with this section if:

263 (i) the seized property has been in the custody of the law enforcement agency for 180  
 264 days;

265 (ii) the law enforcement agency has made a concerted and reasonable effort to locate  
 266 and identify the owner of the property;

267 (iii) the seized property is believed to have a direct nexus to criminal activity; and

268 (iv) no owner or potential claimant has been found or, if an owner or potential claimant  
 269 has been found, the claimant or claimants have disclaimed, in writing, any ownership interest  
 270 in the seized property.

271 [~~(b)~~] (2) A complaint for civil forfeiture shall describe with reasonable particularity  
 272 [the]:

273 [(i)] (a) the property that is the subject of the forfeiture proceeding;

274 [(ii)] (b) the date and place of seizure; [and]

275 (c) a direct nexus between the seized property and the conduct giving rise to the

276 forfeiture under Subsection [24-4-102\(2\)](#); and

277 ~~[(iii)]~~ (d) specific factual allegations that constitute a basis for forfeiture.

278 ~~[(2)]~~ (3) (a) After a complaint that meets the requirements of Subsections (1) and (2) is  
279 filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each  
280 claimant known to the prosecuting attorney within 30 days.

281 (b) The prosecuting attorney is not required to serve a copy of the complaint or the  
282 summons upon any claimant who has disclaimed, in writing, an ownership interest in the  
283 seized property.

284 ~~[(c) Service of the complaint and summons shall be by:]~~

285 ~~[(i) personal service;]~~

286 ~~[(ii) certified mail, return receipt requested, to the claimant's known address; or]~~

287 ~~[(iii) service by publication, if the prosecuting attorney demonstrates to the court that  
288 service cannot reasonably be made by personal service or certified mail.]~~

289 ~~[(d) Service by publication shall be by publication of two notices, in two successive  
290 weeks, of the forfeiture proceeding:]~~

291 ~~[(i) in a newspaper of general circulation in the county in which the seizure occurred;  
292 and]~~

293 ~~[(ii) on Utah's Public Legal Notice Website established in Subsection [45-1-101\(2\)\(b\)](#).]~~

294 ~~[(e) Service is effective upon the earlier of:]~~

295 ~~[(i) personal service;]~~

296 ~~[(ii) mailing of a written notice; or]~~

297 ~~[(iii) publication.]~~

298 ~~[(f) Upon motion of the prosecuting attorney and a showing of good cause, the court  
299 may extend the period to complete service under this section for an additional 60 days.]~~

300 (4) The prosecutor shall take all reasonable steps to ensure a forfeiture proceeding  
301 initiated under this section is concluded in a timely manner.

302 ~~[(3)(a)]~~ (5) In any case where the prosecuting attorney files a complaint for civil  
303 forfeiture, [a claimant may file an answer to the complaint] any person may assert an interest in  
304 seized property or file an answer to a complaint for civil forfeiture without posting bond with  
305 respect to the property that is the subject of the seizure or forfeiture action.

306 ~~[(b) The answer shall be filed within 30 days after the complaint is served upon the~~

307 claimant as provided in Subsection (2)(b).]

308 [~~(4)~~] (6) Except as otherwise provided in this chapter, forfeiture proceedings are  
309 governed by the Utah Rules of Civil Procedure.

310 [~~(5)~~] (7) The court shall take all reasonable steps to expedite civil forfeiture  
311 proceedings and shall give these proceedings the same priority as is given to criminal cases.

312 [~~(6)~~] (8) In all suits or actions brought under this section for the civil forfeiture of any  
313 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing  
314 evidence the extent to which, if any, the property is subject to forfeiture.

315 [~~(7) A claimant may file an answer to a complaint for civil forfeiture without posting  
316 bond with respect to the property subject to forfeiture.~~]

317 Section 5. Section **24-4-105** is amended to read:

318 **24-4-105. Criminal forfeiture procedure.**

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

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

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

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

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

336 (b) A temporary restraining order may be entered ex parte upon application of the  
337 prosecuting attorney before or after an information or indictment has been filed with respect to

338 the property, if the prosecuting attorney demonstrates that:

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

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

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

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

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

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

353 (b) A determination of whether property is subject to forfeiture under this section shall  
354 be proven beyond a reasonable doubt.

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

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

364 (6) (a) (i) After property is ordered forfeited under this section, the seizing agency shall  
365 direct the disposition of the property under Section [24-4-115](#).

366 (ii) Any property right or interest under this Subsection (6)(a) not exercisable by or  
367 transferable for value to the state expires and does not revert to the defendant.

368 (iii) The defendant or any person acting in concert with or on behalf of the defendant is

369 not eligible to purchase forfeited property at any sale held by the seizing agency unless  
370 approved by the judge.

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

375 (7) [~~Except as provided under Subsection (3) or (10), a party claiming~~] A claimant  
376 asserting an interest in property subject to forfeiture under this section:

377 (a) may [~~not~~] intervene in a trial or appeal of a criminal case involving the forfeiture of  
378 property under this section; and

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

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

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

392 (10) (a) (i) Following the entry of an order of forfeiture under this section, the  
393 prosecuting attorney shall publish notice of the order's intent to dispose of the property by  
394 publication. Service by publication shall be by publication of two notices, in two successive  
395 weeks, of the forfeiture proceeding:

396 (A) in a newspaper of general circulation in the county in which the seizure occurred;  
397 and

398 (B) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

399 (ii) The prosecuting attorney shall also send written notice to any claimants, other than

400 the defendant, known to the prosecuting attorney to have an interest in the property, at the  
401 claimant's known address.

402 (b) (i) Any claimant, other than the defendant, asserting a legal interest in property that  
403 has been ordered forfeited to the state under this section may, within 30 days after the notice  
404 has been published or the claimant receives the written notice under Subsection (10)(a),  
405 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's  
406 alleged interest in the property.

407 (ii) Any genuine issue of material fact, including issues of standing, may be tried to a  
408 jury upon demand of any party.

409 (c) The petition shall:

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

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

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

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

419 (e) (i) At the trial or hearing, the claimant may testify and present evidence and  
420 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.  
421 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the  
422 claim to the property and cross-examine witnesses who appear.

423 (ii) In addition to testimony and evidence presented at the trial or hearing, the court  
424 may consider the relevant portion of the record of the criminal case that resulted in the order of  
425 forfeiture.

426 (iii) Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

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

430 (i) the claimant has a legal right, title, or interest in the property, and the right, title, or

431 interest renders the order of forfeiture invalid in whole or in part because the right, title, or  
432 interest was vested in the claimant rather than the defendant or was superior to any right, title,  
433 or interest of the defendant at the time of the commission of the acts or conduct that gave rise  
434 to the forfeiture of the property under this section; or

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

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

442 Section 6. Section **24-4-107** is amended to read:

443 **24-4-107. Innocent owners.**

444 (1) An innocent owner's interest in property may not be forfeited under any provision  
445 of state law.

446 (2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the  
447 burden of [~~establishing evidence~~] proving by the applicable standard of proof that [a] the  
448 claimant:

449 (a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection  
450 [~~(4)~~] (5);

451 (b) knew of the conduct giving rise to the forfeiture, and allowed the property to be  
452 used in furtherance of the conduct, subject to Subsection (4);

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

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

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

459 (3) [~~(a)~~] A claimant [~~under this chapter is not required to~~] does not have an obligation  
460 under this section to take steps to prevent illegal use or criminal activity regarding the seized  
461 property [~~that the claimant reasonably believes would be likely to result in physical harm or~~

462 danger to any person].

463 ~~[(b)]~~ (4) A claimant may demonstrate that the claimant was not responsible for the  
464 conduct giving rise to forfeiture or did not allow the property to be used in the furtherance of  
465 the conduct by providing evidence that the claimant took reasonable action to prohibit the  
466 illegal use of the property by:

467 ~~[(i)]~~ (a) making a timely notification to a law enforcement agency of information that  
468 led the claimant to know that conduct subjecting the property to seizure would occur, was  
469 occurring, or has occurred;

470 ~~[(ii)]~~ (b) timely revoking or attempting to revoke permission to use the property  
471 regarding those engaging in the illegal conduct; or

472 ~~[(iii)]~~ (c) taking reasonable actions to discourage or prevent the illegal use of the  
473 property.

474 ~~[(4)]~~ (5) If the state relies on Subsection (2)~~[(a)]~~ to establish that a claimant is not an  
475 innocent owner, and if the claimant is criminally charged with the conduct giving rise to the  
476 forfeiture and is acquitted of that charge on the merits:

477 (a) the property subject to the forfeiture or the open market value of the property, if the  
478 property has been disposed of under Subsection 24-4-108(13), shall be returned to the  
479 claimant; ~~and]~~

480 (b) any payments required under this chapter regarding holding the property shall be  
481 paid to the claimant~~[-];~~

482 (c) interest on the fair market value of all forfeited property or proceeds shall be paid to  
483 the claimant; and

484 (d) court costs and reasonable attorney fees incurred in defending against the civil  
485 forfeiture action shall be paid to the claimant.

486 ~~[(5)]~~ (6) A person may not assert under this chapter an ownership interest in  
487 contraband.

488 ~~[(6) Property is presumed to be subject to forfeiture under this chapter if the~~  
489 ~~prosecuting attorney establishes that:]~~

490 ~~[(a) the claimant has engaged in conduct giving cause for forfeiture;]~~

491 ~~[(b) the property was acquired by the claimant during that period of the conduct giving~~  
492 ~~cause for forfeiture or within a reasonable time after that period; and]~~



493 ~~[(c) there was no likely source for the purchase or acquisition of the property other than~~  
494 ~~the conduct giving cause for forfeiture.]~~

495 ~~[(7) A finding that property is the proceeds of conduct giving cause for forfeiture does~~  
496 ~~not require proof that the property was the proceeds of any particular exchange or transaction.]~~

497 Section 7. Section **24-4-108** is amended to read:

498 **24-4-108. Release of property held for forfeiture on certain grounds.**

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

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

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

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

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

511 (b) the acts of the agency that possesses the property or the prosecuting attorney  
512 pursuant to this chapter.

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

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

517 (i) the bond tendered is inadequate;

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

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

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

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

526 (a) the claimant had a possessory interest in the property at the time of seizure;  
527 (b) continued possession by the agency or the state pending the final disposition of the  
528 forfeiture proceedings will cause substantial hardship to the claimant, such as:

- 529 (i) preventing the functioning of a legitimate business;
- 530 (ii) preventing any individual from working;
- 531 (iii) preventing any child from attending elementary or secondary school;
- 532 (iv) preventing or hindering any person from receiving necessary medical care;
- 533 (v) hindering the care of an elderly or disabled dependent child or adult;
- 534 (vi) leaving any individual homeless; [~~or~~]
- 535 (vii) preventing a claimant from retaining counsel to provide a defense in the forfeiture

536 proceeding or related criminal proceeding; or

537 [~~(vii)~~] (viii) any other condition that the court determines causes a substantial hardship;

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

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

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

- 545 (a) in the court in which forfeiture proceedings have commenced; or
- 546 (b) in any district court having jurisdiction over the property, if forfeiture proceedings  
547 have not yet commenced.

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

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

554 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the

555 court shall order the property immediately released to the claimant pending completion of  
556 proceedings by the government to obtain forfeiture of the property.

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

559 (11) The hardship release under this section does not apply to:

560 (a) contraband;

561 (b) currency or other monetary instrument or electronic funds~~[, or]~~, unless any of these:

562 (i) are used to pay for the reasonable costs of defending against the forfeiture

563 proceedings or related criminal proceedings; or

564 (ii) constitute the assets of a legitimate business; or

565 (c) property that is likely to be used to commit additional illegal acts if returned to the  
566 claimant.

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

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

572 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to  
573 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the  
574 property are disproportionate to its value.

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

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

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

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

583 Section 8. Section **24-4-109** is amended to read:

584 **24-4-109. Prejudgment and postjudgment interest.**

585 In any proceeding to forfeit currency or other negotiable instruments under this chapter,

586 the court shall award a prevailing [party] claimant prejudgment and postjudgment interest on  
587 the currency or negotiable instruments at the interest rate established under Section 15-1-4.

588 Section 9. Section 24-4-110 is amended to read:

589 **24-4-110. Attorney fees and costs.**

590 (1) In any forfeiture proceeding under this chapter, the court shall award a prevailing  
591 [property owner] claimant reasonable:

592 (a) legal costs; and

593 (b) attorney fees.

594 [~~(2) The legal costs and attorney fees awarded by the court to the prevailing party may~~  
595 ~~not exceed 20% of the value of the property.~~]

596 [(~~3~~)] (2) A [property owner] claimant that prevails only in part is entitled to recover  
597 reasonable legal costs and attorney fees only on those issues on which the party prevailed, as  
598 determined by the court.

599 Section 10. Section 24-4-116 is amended to read:

600 **24-4-116. Criminal Forfeiture Restricted Account.**

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

603 (2) Proceeds from [forfeited] property and [forfeited] money forfeited through state  
604 forfeitures shall be deposited into the account.

605 (3) Money in the account shall be appropriated to the commission for implementing the  
606 program under Section 24-4-117.

607 Section 11. Section 24-4-117 is amended to read:

608 **24-4-117. State Asset Forfeiture Grant Program.**

609 (1) There is created the State Asset Forfeiture Grant Program.

610 (2) The program shall fund crime prevention, crime victim reparations, and law  
611 enforcement activities that have the purpose of:

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

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

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

617 (d) encouraging cooperation between local, state, and multijurisdictional law  
618 enforcement agencies;

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

621 (f) increasing the equitability and accountability of the use of forfeited property used to  
622 assist law enforcement in reducing and preventing crime; and

623 (g) providing aid to victims of criminally injurious conduct, as defined in Section  
624 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office  
625 for Victims of Crime.

626 (3) ~~[(a)]~~ When property is forfeited under this chapter and transferred to the account,  
627 upon appropriation the commission shall allocate and administer grants to state agencies, local  
628 law enforcement agencies, multijurisdictional law enforcement agencies, or political  
629 subdivisions of the state in compliance with this section and to further the program purposes  
630 under Subsection (2).

631 ~~[(b)]~~ (4) The commission may retain up to 3% of the annual appropriation from the  
632 account to pay for administrative costs incurred by the commission, including salary and  
633 benefits, equipment, supplies, or travel costs that are directly related to the administration of  
634 the program.

635 ~~[(4)]~~ (5) Agencies or political subdivisions shall apply for an award from the program  
636 by completing and submitting forms specified by the commission.

637 ~~[(5)]~~ (6) In granting the awards, the commission shall ensure that the amount of each  
638 award takes into consideration the:

639 (a) demonstrated needs of the agency;

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

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

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

644 (7) The program shall pay restitution and costs under Section [24-4-107](#) regarding  
645 defendants who are acquitted of the nexus criminal charge.

646 ~~[(6)]~~ (8) Applying agencies or political subdivisions shall demonstrate compliance with  
647 all reporting and policy requirements applicable under this chapter and under Title 63M,

648 Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award  
649 recipient.

650 ~~[(7)]~~ (9) (a) Recipient law enforcement agencies may only use award money after  
651 approval by the agency's legislative body.

652 (b) The award money is nonlapsing.

653 ~~[(8)]~~ (10) A recipient state agency, local law enforcement agency, multijurisdictional  
654 law enforcement agency, or political subdivision shall use awards only for law enforcement  
655 purposes as described in this section or for victim reparations as described in Subsection (2)(g),  
656 and only as these purposes are specified by the agency or political subdivision in its application  
657 for the award.

658 ~~[(9)]~~ (11) Permissible law enforcement purposes for which award money may be used  
659 include:

660 (a) controlled substance interdiction and enforcement activities;

661 (b) drug court programs;

662 (c) activities calculated to enhance future law enforcement investigations;

663 (d) law enforcement training that includes:

664 (i) implementation of the Fourth Amendment to the United States Constitution and  
665 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's  
666 right of due process;

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

668 (iii) the Tenth Amendment to the United States Constitution regarding states'  
669 sovereignty and the states' reserved rights;

670 (e) law enforcement or detention facilities;

671 (f) law enforcement operations or equipment that are not routine costs or operational  
672 expenses;

673 (g) drug, gang, or crime prevention education programs that are sponsored in whole or  
674 in part by the law enforcement agency or its legislative body;

675 (h) matching funds for other state or federal law enforcement grants; and

676 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture  
677 actions.

678 ~~[(10)]~~ (12) Law enforcement purposes for which award money may not be granted or

- 679 used include:
- 680 (a) payment of salaries, retirement benefits, or bonuses to any person;
  - 681 (b) payment of expenses not related to law enforcement;
  - 682 (c) uses not specified in the agency's award application;
  - 683 (d) uses not approved by the agency's legislative body;
  - 684 (e) payments, transfers, or pass-through funding to entities other than law enforcement
  - 685 agencies; or
  - 686 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**