

## HB0019S02 compared with HB0019S01

~~deleted text~~ shows text that was in HB0019S01 but was deleted in HB0019S02.

Inserted text shows text that was not in HB0019S01 but was inserted into HB0019S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Brian M. Greene proposes the following substitute bill:

### CIVIL ASSET FORFEITURE REFORM AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: Howard A. Stephenson

---

#### LONG TITLE

##### 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,~~ conduct giving rise to forfeiture in order for the property to be forfeited;
- ▶ modifies the definition of proceeds that are from an offense giving rise to a forfeiture;

## **HB0019S02 compared with HB0019S01**

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

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a coordination clause.

### **Utah Code Sections Affected:**

AMENDS:

**24-1-102**, as last amended by Laws of Utah 2014, Chapter 112

**24-4-102**, as enacted by Laws of Utah 2013, Chapter 394

**24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

**24-4-104**, as last amended by Laws of Utah 2014, Chapter 112

**24-4-105**, as last amended by Laws of Utah 2014, Chapter 112

## HB0019S02 compared with HB0019S01

24-4-107, as enacted by Laws of Utah 2013, Chapter 394

24-4-108, as enacted by Laws of Utah 2013, Chapter 394

24-4-109, as enacted by Laws of Utah 2013, Chapter 394

24-4-110, as last amended by Laws of Utah 2014, Chapter 112

24-4-116, as enacted by Laws of Utah 2013, Chapter 394

24-4-117, as last amended by Laws of Utah 2015, Chapter 134

### Utah Code Sections Affected by Coordination Clause:

24-1-102, as last amended by Laws of Utah 2014, Chapter 112

24-4-102, as enacted by Laws of Utah 2013, Chapter 394

~~{24-4-103}~~ 24-4-104, as ~~{enacted}~~ last amended by Laws of Utah ~~{2013}~~ 2014, Chapter ~~{394}~~ 112

~~{24-4-104}~~ 24-4-107, as ~~{last amended}~~ enacted by Laws of Utah ~~{2014, Chapter 112}~~

~~24-4-105, as last amended by Laws of Utah 2014, Chapter 112~~

~~24-4-107, as enacted by Laws of Utah }2013, Chapter 394~~

~~{ 24-4-108, as enacted by Laws of Utah 2013, Chapter 394~~

~~24-4-109, as enacted by Laws of Utah 2013, Chapter 394~~

~~24-4-110, as last amended by Laws of Utah 2014, Chapter 112~~

~~24-4-116, as enacted by Laws of Utah 2013, Chapter 394~~

~~24-4-117, as last amended by Laws of Utah 2015, Chapter 134~~

---

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

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

#### **24-1-102. Definitions.**

As used in this title:

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

(2) (a) [~~"Acquittal"~~] "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.

(b) [~~An acquittal~~] "Acquitted" does not include:

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

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

## HB0019S02 compared with HB0019S01

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

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

(4) "Claimant" means any:

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

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

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

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

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

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

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

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

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

(a) (i) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred~~[-and:]~~;

~~[(i) did not have actual knowledge of the conduct subjecting the property to forfeiture; or]~~

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

(ii) did not give permission for the conduct or participate in the conduct; and

(iii) did not **knowingly** solicit, request, command, encourage, or intentionally aid another person to engage in the conduct; or

(b) (i) acquired an ownership interest in the property and [who] had no knowledge that the illegal conduct subjecting the property to forfeiture had occurred or that the property had

## HB0019S02 compared with HB0019S01

been seized for forfeiture<sup>[5]</sup>; and<sup>[7]</sup>

~~[(i)]~~ ~~(ii)~~ ~~(A)~~ acquired the property in a bona fide transaction for value;

~~[(ii)]~~ ~~(B)~~ was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

~~[(iii)]~~ ~~(C)~~ was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

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

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

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

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

(13) "Legislative body" means:

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

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

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

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

(15) "Owner" means any person or entity, other than an interest holder, that possesses a

## HB0019S02 compared with HB0019S01

bona fide legal or equitable interest in real or personal property.

(16) ~~[(a)]~~ "Proceeds" means:

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

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

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

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

(a) property of any kind that is:

(i) obtained ~~{directly as a result of;}~~ ~~through~~ the commission of an offense that gives rise to forfeiture; and

(ii) limited to that portion of property that is obtained ~~{directly as a result of;}~~ ~~through~~ the commission of the offense giving rise to the forfeiture; or

(b) cash received from the ~~{direct;}~~ sale of, and property received from the ~~{direct;}~~ transfer of, property described in Subsection (16)(a).

(17) "Program" means the State Asset Forfeiture Grant Program established in Section 24-4-117.

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

(19) "Prosecuting attorney" means:

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

(b) any district attorney or deputy district attorney;

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

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

(20) "Public interest use" means a:

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

## HB0019S02 compared with HB0019S01

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

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

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

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

(1) Except as provided in Subsection [~~(3)~~] (4), all property that has been used to ~~directly~~ facilitate the commission of a federal or state criminal offense and any ~~direct~~ 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) Property that is subject to forfeiture under this chapter may be forfeited if the prosecuting attorney establishes that:

(a) the claimant has engaged in conduct giving rise to forfeiture;

(b) the property was acquired by the claimant during that portion of the conduct that gives rise to forfeiture, or within a reasonable time after that conduct is committed; and

(c) there is no likely source for the purchase or acquisition of the property other than the conduct that gives rise to forfeiture.

~~(2)~~ (3) 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.

~~(3)~~ (4) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

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

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

## HB0019S02 compared with HB0019S01

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

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

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

(A) Section 41-6a-502;

(B) Section 41-6a-517;

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

(D) Section 41-6a-520;

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

(F) Section 76-5-207; or

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

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

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

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

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

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

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

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

(i) date of the seizure;

(ii) property seized;

(iii) alleged relationship of the seized property to the conduct giving rise to forfeiture;

~~[(iii)]~~ (iv) claimant's rights and obligations under this chapter, including the availability of hardship relief in appropriate circumstances; and



## HB0019S02 compared with HB0019S01

~~[(iv)]~~ (v) statutory basis for the forfeiture, including the judicial proceedings by which property may be forfeited under this chapter.

(c) The notice of intent to seek forfeiture shall be served by:

- (i) certified mail, return receipt requested, to the claimant's known address; or
- (ii) personal service.

(d) The court may void any forfeiture made without notice under Subsection (1)(a), unless the agency demonstrates:

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

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

(b) The written request shall:

- (i) describe the property to be forfeited; and
- (ii) include a copy of all reports, supporting documents, and other evidence necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.

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

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

- (a) files a criminal information or indictment under Subsection 24-4-105(2);
- (b) files a petition under Subsection 24-4-114(1) regarding transfer or sharing of

forfeiture proceeds; or

(c) files a civil forfeiture complaint under Section 24-4-104.

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

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

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

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

## HB0019S02 compared with HB0019S01

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

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

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

(1) (a) When a prosecuting attorney files a civil forfeiture complaint under this section, the prosecutor may not pursue any forfeiture proceeding regarding a claimant's interest in the seized property unless a criminal information or indictment is filed within 75 days of the seizure of the property that is subject to the forfeiture complaint and the property has a ~~direct~~ nexus to the offense charged in the information or indictment. The court may, upon motion of the prosecuting attorney and for good cause, extend the filing requirement for a criminal information or indictment for no longer than 60 days.

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

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

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

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

(iv) no owner or potential claimant has been found or, if an owner or potential claimant has been found, the claimant or claimants have, after an opportunity to consult with legal counsel, disclaimed, in writing, any ownership interest in the seized property.

(c) The law enforcement agency shall promptly return the seized property to the claimant and the prosecuting attorney shall move the court to dismiss the complaint for civil forfeiture if:

(i) a conviction is not obtained regarding the ~~direct~~ nexus offense charged under Subsection (1)(a);

(ii) all opportunities to prosecute have been exhausted or abandoned; or

(iii) the information or indictment for criminal conduct giving rise to the forfeiture was dismissed and the prosecuting attorney has not refiled the information or indictment within 10 business days of the dismissal.

(d) If civil forfeiture proceedings have been concluded, the property ordered forfeited, the property disposed of in accordance with the forfeiture order, and the claimant is

## HB0019S02 compared with HB0019S01

subsequently acquitted of the nexus charge, the claimant shall be paid the fair market value of the property, including any interest on the fair market value from the date of seizure.

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

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

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

(c) a ~~{direct}~~ nexus between the seized property and the conduct giving rise to the forfeiture under Subsection 24-4-102(2); and

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(iii) publication.]~~

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

## HB0019S02 compared with HB0019S01

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

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

(b) ~~[The]~~ An answer shall be filed within 30 days after the complaint is served upon the claimant as provided in Subsection ~~[(2)]~~ (3)(b).

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

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

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

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

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

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

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

(b) If, prior to trial, the prosecuting attorney is made aware of a claimant other than a defendant, the prosecuting attorney may not seek forfeiture of the property through the criminal case.

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

(3) (a) Upon application of the prosecuting attorney, the court may enter restraining orders or injunctions, or take other reasonable actions to preserve for forfeiture under this section, any property subject to forfeiture if, after notice to known claimants and claimants who

## **HB0019S02 compared with HB0019S01**

can be identified after due diligence and who are known to have an interest in the property, and after affording those persons an opportunity for a hearing, the court determines that:

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

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

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

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

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

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

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

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

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

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

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

## **HB0019S02 compared with HB0019S01**

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

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

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

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

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

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

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

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

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

(9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture after the entry of an order declaring property forfeited to the state, the court may, upon application of the prosecuting attorney, order that the testimony of any witness relating to the forfeited property be taken by deposition, and that any book, paper, document, record, recording, or other

## HB0019S02 compared with HB0019S01

material shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.

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

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

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

(ii) The prosecuting attorney shall also send written notice to any claimants, other than the defendant, known to the prosecuting attorney to have an interest in the property, at the claimant's known address.

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

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

(c) The petition shall:

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

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

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

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

(e) (i) At the trial or hearing, the claimant may testify and present evidence and witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.

## HB0019S02 compared with HB0019S01

The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear.

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

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

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

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

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

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

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

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

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

(2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the burden of [~~establishing evidence~~] proving by the applicable standard of proof that [a] the claimant[?] is not an innocent owner.

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

~~[(b) knew of the conduct giving rise to the forfeiture, and allowed the property to be~~



## HB0019S02 compared with HB0019S01

~~used in furtherance of the conduct;]~~

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

~~[(d) acquired the property knowing the property was subject to forfeiture under this chapter; or]~~

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

~~[(3) (a) A claimant under this chapter is not required to take steps to prevent illegal use or criminal activity regarding the property that the claimant reasonably believes would be likely to result in physical harm or danger to any person.]~~

~~[(b) A claimant may demonstrate that the claimant took reasonable action to prohibit the illegal use of the property by:]~~

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

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

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

~~[(4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent owner, and if the]~~

~~(3) If the claimant is criminally charged with the conduct giving rise to the forfeiture and is acquitted of that charge on the merits:~~

~~(a) the court shall rescind the civil forfeiture order if one has been obtained under Section 24-4-104;~~

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

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

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

## HB0019S02 compared with HB0019S01

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

~~[(5)]~~ (4) A person may not assert under this chapter an ownership interest in contraband.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) A claimant may obtain release of property held for forfeiture by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the

## HB0019S02 compared with HB0019S01

property as determined by the court or by the parties' stipulation.

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

(i) the bond tendered is inadequate;

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

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

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

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

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

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

(i) preventing the functioning of a legitimate business;

(ii) preventing any individual from working;

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

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

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

(vi) leaving any individual homeless; [or]

(vii) preventing a claimant from retaining counsel to provide a defense in the forfeiture proceeding or related criminal proceeding; or

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

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

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

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

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

## HB0019S02 compared with HB0019S01

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

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

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

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

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

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

(a) contraband;

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

(i) are used to pay for the reasonable costs of defending against the forfeiture proceedings or related criminal proceedings; or

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

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

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

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

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

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

## HB0019S02 compared with HB0019S01

- (i) first, for the payment of reasonable expenses incurred in connection with the sale;
- (ii) second, for the satisfaction of any interests, including those of interest holders, in the order of their priority as determined by Title 70A, Uniform Commercial Code; and
- (iii) third, any balance of the proceeds shall be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this chapter.

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

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

In any proceeding to forfeit currency or other negotiable instruments under this chapter, the court shall award a prevailing [party] claimant prejudgment and postjudgment interest on the currency or negotiable instruments at the interest rate established under Section 15-1-4.

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

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

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

- (a) legal costs; and
- (b) attorney fees.

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

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

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

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

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

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

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

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

## HB0019S02 compared with HB0019S01

### 24-4-117. State Asset Forfeiture Grant Program.

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

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

(a) deterring crime [~~by depriving criminals of the profits and proceeds of their illegal activities~~];

(b) weakening criminal enterprises [~~by removing the instrumentalities of crime~~];

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

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

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

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

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

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

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

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

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

## HB0019S02 compared with HB0019S01

- (a) demonstrated needs of the agency;
  - (b) demonstrated ability of the agency to appropriately use the award;
  - (c) degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and
  - (d) agency's cooperation with other state and local agencies and task forces.
- (7) The program shall pay restitution and costs awarded to a claimant or innocent owner under this chapter.

~~[(6)]~~ (8) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

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

(b) The award money is nonlapsing.

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

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

- (a) controlled substance interdiction and enforcement activities;
- (b) drug court programs;
- (c) activities calculated to enhance future law enforcement investigations;
- (d) law enforcement training that includes:
  - (i) implementation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's right of due process;
  - (ii) protection of the rights of innocent property holders; and
  - (iii) the Tenth Amendment to the United States Constitution regarding states' sovereignty and the states' reserved rights;

## HB0019S02 compared with HB0019S01

- (e) law enforcement or detention facilities;
- (f) law enforcement operations or equipment that are not routine costs or operational expenses;
- (g) drug, gang, or crime prevention education programs that are sponsored in whole or in part by the law enforcement agency or its legislative body;
- (h) matching funds for other state or federal law enforcement grants; and
- (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture actions.

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

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

### Section 12. **Coordinating H.B. 19 with S.B. 87 -- Superseding amendments.**

If this H.B. 19 and S.B. 87, Civil Asset Forfeiture Revisions, both pass and become law, it is the intent of the Legislature that the sections in this H.B. 19 supersede the sections in S.B. 87.