

1 **ASSET FORFEITURE TRANSPARENCY AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: John Knotwell

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Forfeiture and Disposition of Property Act regarding reporting
10 requirements.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ in addition to current reporting requirements, requires that law enforcement
14 agencies reporting on a forfeiture action shall include:

- 15 • information on related criminal charges;
- 16 • the value of seized property;
- 17 • the agency's share of property received from a federal forfeiture case;
- 17a **↳** • the agency's costs incurred in making the required reports; **←**
- 18 • the agency's costs incurred for storage of storing seized property; and
- 19 • the legal costs incurred by the prosecuting attorney; and

20 ▶ amends the list of information to be provided regarding a forfeiture, and requires
21 that the information be reported by a law enforcement agency, when:

- 22 • transferring disposition of property resulting from a forfeiture matter to the
23 Commission on Criminal and Juvenile Justice; and
- 24 • the law enforcement agency has been awarded any share of property forfeited by
25 the federal government.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

31a **Ŝ→ 24-4-115, as last amended by Laws of Utah 2014, Chapter 112 ←Ŝ**32 **24-4-118**, as enacted by Laws of Utah 2015, Chapter 134

33

34 *Be it enacted by the Legislature of the state of Utah:*34a **Ŝ→ Section 1. Section 24-4-115 is amended to read:**34b **24-4-115. Disposition and allocation of forfeiture property.**34c **(1) Upon finding that property is subject to forfeiture under this chapter, the court shall order**
34d **the property forfeited to the state.**34e **(2) (a) If the property is not currency, the seizing agency shall authorize a public or otherwise**
34f **commercially reasonable sale of that property that is not required by law to be destroyed and that is**
34g **not harmful to the public.**34h **(b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, it shall be**
34i **disposed of as follows:**34j **(i) an alcoholic product shall be sold if the alcoholic product is:**34k **(A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic**
34l **alcohol, or any other deleterious substance or liquid; and**34m **(B) otherwise in saleable condition; or**34n **(ii) an alcoholic product and its package shall be destroyed if the alcoholic product is impure,**
34o **adulterated, or otherwise unfit for sale.**34p **(c) If the property forfeited is a cigarette or other tobacco product as defined in Section**
34q **59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other tobacco**
34r **product seized pursuant to this part, the lawful holder of the trademark rights in the cigarette or**
34s **tobacco product brand shall be permitted to inspect the cigarette.**34t **(d) The proceeds of the sale of forfeited property shall remain segregated from other property,**
34u **equipment, or assets of the seizing agency until transferred to the state in accordance with this**
34v **chapter.**34w **(3) From the forfeited property, both currency and the proceeds or revenue from the sale of**
34x **the property, the seizing agency shall:**34y **(a) deduct the seizing agency's direct costs, expense of reporting under Section 24-4-118, and**
34z **expenses of obtaining and maintaining the property pending forfeiture; and**34aa **(b) pay the office of the prosecuting attorney the legal costs associated with the litigation of the**
34ab **forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.⊕**

34ac Ⓢ(4) If the forfeiture arises from any violation relating to wildlife resources, the remaining
 34ad currency and the proceeds or revenue from the sale of the property shall be deposited in the Wildlife
 34ae Resources Account created in Section 23-14-13.

34af (5) The remaining currency and the proceeds or revenue from the sale of the property shall
 34ag then be transferred to the commission and deposited into the account. ←Ŧ

35 Section Ŧ→ [H] 2 ←Ŧ . Section 24-4-118 is amended to read:

36 **24-4-118. Forfeiture reporting requirements.**

37 (1) On and after January 1, 2016, every state, county, municipal, or other law
 38 enforcement agency shall[, when transferring the final disposition of any civil or criminal
 39 forfeiture matter to the Commission on Criminal and Juvenile Justice as required under this
 40 chapter,] provide all Ŧ→ reasonably ←Ŧ available data described in Subsection (5), along with the
 40a transfer of any
 41 applicable forfeited property[-]:

42 (a) when transferring the forfeited property resulting from the final disposition of any
 43 civil or criminal forfeiture matter to the Commission on Criminal and Juvenile Justice as
 44 required under Subsection 24-4-115(5); or

45 (b) when the agency has been awarded any equitable share of property forfeited by the
 46 federal government.

47 (2) The Commission on Criminal and Juvenile Justice shall develop a standardized
 48 report format that each agency shall use in reporting the data required under this section.

49 (3) The Commission on Criminal and Juvenile Justice shall annually, on or before
 50 April 30, prepare a summary report of the case data submitted by each agency under Subsection
 51 (1) during the prior calendar year.

52 (4) (a) If an agency does not comply with the reporting requirements under this section,
 53 the Commission on Criminal and Juvenile Justice shall contact the agency and request that the
 54 agency comply with the required reporting provisions.

55 (b) If an agency fails to comply with the reporting requirements under this section
 56 within 30 days after receiving the request to comply, the Commission on Criminal and Juvenile
 57 Justice shall report the noncompliance to the Utah attorney general, the speaker of the House of
 58 Representatives, and the president of the Senate.

59 (5) The data for any civil or criminal forfeiture matter for which final disposition has
60 been made under Subsection (1) shall include:

61 (a) the agency that conducted the seizure;

62 (b) the case number or other identification;

63 (c) the date or dates on which the seizure was conducted;

64 (d) the number of individuals having a known property interest in each seizure of
65 property;

66 (e) the type of property seized;

67 (f) the alleged offense that was the cause for seizure of the property;

68 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
69 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
70 action on a charge is pending;

71 [~~g~~] (h) the type of enforcement action that resulted in the seizure, including an
72 enforcement stop, a search warrant, or an arrest warrant;

73 [~~h~~] (i) whether the forfeiture procedure was civil or criminal;

74 (j) the value of the property seized, including currency and the estimated market value
75 of any tangible property;

76 [~~i~~] (k) the final disposition of the matter, including whether final disposition was
77 entered by stipulation of the parties, including the amount of property returned to any claimant,
78 by default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
79 forfeiture; [~~and~~]

80 (l) if the property was forfeited by the federal government, the amount of forfeited
81 money awarded to the agency;

82 (m) the agency's direct costs ~~Š→~~ , **expense of reporting under this section**, ~~←Š~~ and
82a expenses for obtaining and maintaining the seized
83 property, as described in Subsection 24-4-115(3)(a);

84 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
85 Subsection 24-4-115(3)(b); and

86 [~~j~~] (o) if the property was transferred to a federal agency or any governmental entity
87 not created under and subject to state law:

88 (i) the date of the transfer;

89 (ii) the name of the federal agency or entity to which the property was transferred;

90 (iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;

91 (iv) the court or agency where the forfeiture case was heard;

92 (v) the date of the order of transfer of the property; and

93 (vi) the value of the property transferred to the federal agency, including currency and

94 the estimated market value of any tangible property.

95 (6) On and after January 1, 2016, every state, county, municipal, or other law
96 enforcement agency shall annually on or before April 30 submit a report for the prior calendar
97 year to the Commission on Criminal and Juvenile Justice which states:

98 (a) whether the agency received an award from the State Asset Forfeiture Grant
99 Program under Section 24-4-117 and, if so, the following information for each award:

100 (i) the amount of the award;

101 (ii) the date of the award;

102 (iii) how the award was used or is planned to be used; and

103 (iv) a statement signed by both the agency's executive officer or designee and by the
104 agency's legal counsel, that:

105 (A) the agency has complied with all inventory, policy, and reporting requirements
106 under Section 24-4-117; and

107 (B) all awards were used for crime reduction or law enforcement purposes as specified
108 in the application and that the awards were used only upon approval by the agency's legislative
109 body; and

110 (b) whether the agency received any property, money, or other things of value pursuant
111 to federal law as described in Subsection 24-4-114(2) and, if so, the following information for
112 each piece of property, money, or other thing of value:

113 (i) the case number or other case identification;

114 (ii) the value of the award and the property, money, or other things of value received by
115 the agency;

116 (iii) the date of the award;

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

118 (v) how the awarded property has been used or is planned to be used; and

119 (vi) a statement signed by both the agency's executive officer or designee and by the
120 agency's legal counsel, that the agency has only used the award for crime reduction or law

121 enforcement purposes authorized under Section 24-4-117, and that the award was used only
122 upon approval by the agency's legislative body.

123 (7) (a) On or before July 1 of each year, the Commission on Criminal and Juvenile
124 Justice shall submit notice of the annual reports in Subsection (3) and Subsection (6), in
125 electronic format, to:

126 (i) the Utah attorney general;

127 (ii) the speaker of the House of Representatives, for referral to any House standing or
128 interim committees with oversight over law enforcement and criminal justice;

129 (iii) the president of the Senate, for referral to any Senate standing or interim
130 committees with oversight over law enforcement and criminal justice; and

131 (iv) each law enforcement agency.

132 (b) The reports described in Subsection (3) and Subsection (6), as well as the
133 individual case data described in Subsection (1) for the previous calendar year, shall be
134 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
135 year.

Legislative Review Note
Office of Legislative Research and General Counsel