

CIVIL ASSET FORFEITURE REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Brian M. Greene

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends specified definitions;
- ▶ amends provisions regarding the determination that property is subject to forfeiture;
- ▶ amends civil forfeiture procedures to provide for seized currency to be returned to the claimant in specified circumstances;
- ▶ provides that when property valued at less than \$10,000 is seized, the property shall be returned to the claimant;
- ▶ provides that when property is determined to be subject to forfeiture, and the claimant is then acquitted of the offense giving rise to the forfeiture, the property shall be returned; and
- ▶ facilitates the return of seized property to an innocent owner.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

- 30 24-2-103, as enacted by Laws of Utah 2013, Chapter 394
- 31 24-4-102, as enacted by Laws of Utah 2013, Chapter 394
- 32 24-4-104, as last amended by Laws of Utah 2014, Chapter 112
- 33 24-4-107, as enacted by Laws of Utah 2013, Chapter 394
- 34 24-4-110, as last amended by Laws of Utah 2014, Chapter 112

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

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

38 **24-1-102. Definitions.**

39 As used in this title:

40 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
41 24-4-116.

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

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

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

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

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

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

50 (4) "Claimant" means any:

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

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

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

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

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

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

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

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

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

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

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

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

73 (b) acquired an ownership interest in the property and [~~who~~] had no knowledge that the
74 illegal conduct subjecting the property to forfeiture had occurred or that the property had been
75 seized for forfeiture, and:

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

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

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

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

85 (b) "Interest holder" does not mean a person who holds property for the benefit of or as

86 an agent or nominee for another person, or who is not in substantial compliance with any
87 statute requiring an interest in property to be recorded or reflected in public records in order to
88 perfect the interest against a good faith purchaser for value.

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

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

94 (13) "Legislative body" means:

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

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

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

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

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

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

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

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

112 (b) "Proceeds" includes any property of any kind without reduction for expenses
113 incurred in the acquisition, maintenance, or production of that property, or any other purpose

114 regarding property under Subsection (16)(a)(i).

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

117 (17) "Program" means the State Asset Forfeiture Grant Program established in Section
118 [24-4-117](#).

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

121 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

133 Section 2. Section **24-2-103** is amended to read:

134 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

135 (1) (a) When property is seized by a peace officer, the peace officer or the officer's
136 employing agency shall provide a receipt to the person from whom the property was seized.

137 (b) The receipt shall describe the:

138 (i) property seized;

139 (ii) date of seizure; and

140 (iii) name and contact information of the officer's employing agency.

141 (c) In addition to the receipt, the person from whom the property was seized shall be

142 provided with information regarding the forfeiture process, including:

143 (i) important time periods in the forfeiture process;

144 (ii) what happens to the property upon conviction or acquittal; and

145 (iii) how to make a claim for the return of the property.

146 [~~(c)~~] (d) A copy of the receipt shall be maintained by the agency.

147 [~~(d)~~] (e) If custody of the property is transferred to another agency, a copy of the receipt
148 under Subsection (1)(a) shall be provided with the property.

149 (2) The agency responsible for maintaining the property shall:

150 (a) hold all seized property in safe custody until it can be disposed of as provided in
151 this title; and

152 (b) maintain a record of the property that includes:

153 (i) a detailed inventory of all property seized;

154 (ii) the name of the person from whom it was seized; and

155 (iii) the agency's case number.

156 (3) Property seized under this title is not recoverable by replevin, but is considered in
157 the agency's custody subject only to the orders of the court or the official having jurisdiction.

158 (4) All controlled substances or other contraband that is seized by a peace officer may
159 be processed for evidentiary or investigative purposes, including sampling or other preservation
160 procedure prior to disposal or destruction.

161 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable
162 instruments into a separate, restricted, interest-bearing account maintained by the agency solely
163 for the purpose of managing and protecting the property from commingling, loss, or
164 devaluation.

165 (b) Each agency shall have written policies for the identification, tracking,
166 management, and safekeeping of seized property, which shall include a prohibition against the
167 transfer, sale, or auction of seized property to any employee of the agency.

168 (6) If a peace officer or the officer's employing agency records an interview of a minor
169 child during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or

170 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of
171 the last recording unless the prosecuting attorney requests in writing that the recording be
172 retained for an additional period of time.

173 (7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
174 Information Act, governs the disposition of property held by a pawn or secondhand business in
175 the course of its business.

176 Section 3. Section 24-4-102 is amended to read:

177 **24-4-102. Property subject to forfeiture.**

178 (1) Except as provided in Subsection (3), [aH] property that has been used to facilitate
179 the commission of a federal or state criminal offense and any proceeds of criminal activity may
180 be forfeited under this chapter, including:

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

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

184 (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205,
185 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to
186 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise
187 of an affected party's rights under the First Amendment to the Constitution of the United States
188 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the
189 exercise of those rights.

190 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local
191 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection
192 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

218 **24-4-104. Civil forfeiture procedure.**

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

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

223 (ii) obtains a restraining order under Subsection 24-4-105(3);

224 (iii) files a petition under Subsection 24-4-114(1); or

225 (iv) files a civil forfeiture complaint.

226 (b) A complaint for civil forfeiture shall describe with reasonable particularity the:

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

228 (ii) date and place of seizure; and

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

230 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
231 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

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

235 (c) Service of the complaint and summons shall be by:

236 (i) personal service;

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

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

240 (d) Service by publication shall be by publication of two notices, in two successive
241 weeks, of the forfeiture proceeding:

242 (i) in a newspaper of general circulation in the county in which the seizure occurred;

243 and

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

245 (e) Service is effective upon the earlier of:

246 (i) personal service;

247 (ii) mailing of a written notice; or

248 (iii) publication.

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

251 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a
252 claimant may file an answer to the complaint.

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

254 claimant as provided in Subsection (2)(b).

255 (c) When the property subject to forfeiture is valued at less than \$10,000, the agency
256 that has custody of the property shall return the property to the claimant if:

257 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
258 filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
259 and

260 (B) the prosecuting attorney has not filed an information or indictment for criminal
261 conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture
262 complaint on the claimant was completed, or has not timely moved a court of competent
263 jurisdiction and demonstrated reasonable cause for an extension of time to file such an
264 information or indictment; or

265 (ii) the information or indictment for criminal conduct giving rise to the forfeiture was
266 dismissed and the prosecuting attorney has not refiled the information or indictment within
267 seven days of the dismissal.

268 (d) The return of property to the claimant under Subsection (3)(c) does not include any
269 expenses, costs, or attorney fees.

270 (e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a
271 claimant timely seeks to recover possession of seized property pursuant to Subsection
272 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's
273 timely denial of the claim on the merits.

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

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

278 (6) In all suits or actions brought under this section for the civil forfeiture of any
279 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
280 evidence [~~the extent to which, if any, the property is subject to forfeiture~~] that the claimant
281 engaged in conduct giving rise to the forfeiture.

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

284 (8) Property is subject to forfeiture under this chapter if the prosecuting attorney
285 establishes that:

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

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

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

291 (9) A finding by the court that property is the proceeds of conduct giving rise to
292 forfeiture does not require proof that the property was the proceeds of any particular exchange
293 or transaction.

294 (10) If the prosecutor establishes that the property is subject to forfeiture, but the
295 claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is
296 acquitted of that charge on the merits:

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

300 (b) any payments required under this chapter regarding the costs of holding the
301 property shall be paid to the claimant.

302 Section 5. Section **24-4-107** is amended to read:

303 **24-4-107. Innocent owners.**

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

305 (2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the
306 burden of establishing evidence that a claimant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 338 (a) the claimant has engaged in conduct giving cause for forfeiture;
- 339 (b) the property was acquired by the claimant during that period of the conduct giving
- 340 cause for forfeiture or within a reasonable time after that period; and
- 341 (c) there was no likely source for the purchase or acquisition of the property other than
- 342 the conduct giving cause for forfeiture.

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

345 (8) (a) A claimant may recover possession of seized property that is subject to
346 forfeiture by contacting the seizing agency or prosecuting attorney prior to the commencement
347 of a civil asset forfeiture proceeding, or within 30 days of the seizure, whichever is longer, and
348 providing to the seizing agency or prosecuting attorney:

- 349 (i) evidence that establishes proof of ownership; and
- 350 (ii) a brief description of the date, time, and place that the claimant mislaid or
- 351 relinquished possession of the seized property.

352 (b) A seizing agency or prosecuting attorney who receives a claim from a claimant
353 utilizing the procedure in Subsection (8)(a) shall issue a written response to that claim within
354 30 days of receipt, indicating whether the claim has been granted, denied on the merits, or
355 denied for failure to provide the information required by statute subject to the following:

- 356 (i) if the claim is denied for failure to provide the information required by statute, the
357 claimant has 15 days from the date of denial to submit additional information before the
358 prosecuting attorney may commence a civil action seeking to forfeit the property; and
- 359 (ii) if the seizing agency or prosecuting attorney fails to issue a written response within
360 30 days the property shall be returned.

361 (c) Any property returned under Subsection (8)(b), either because the claim was
362 granted or because the seizing agency or prosecuting attorney failed to respond within 30 days
363 may not include any expenses, costs, or attorney fees.

364 (d) A claimant who utilizes the procedures in Subsection (8)(a) and whose claim is
365 denied on the merits by the seizing agency or prosecuting attorney, but who is later determined

366 by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within
367 the meaning of Section 24-4-107, may collect reasonable attorney fees and court costs from the
368 date on which the seizing agency or prosecuting attorney denied the claim. Legal costs and
369 attorney fees collected pursuant to this Subsection are not subject to the 50% cap set forth in
370 Subsection 24-4-110(2).

371 (e) All communications between or evidence provided to the parties in connection with
372 a claim submitted pursuant to Subsection (8) are subject to the Utah Rules of Evidence, Rules
373 408 and 410.

374 Section 6. Section **24-4-110** is amended to read:

375 **24-4-110. Attorney fees and costs.**

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

378 (a) legal costs; and

379 (b) attorney fees.

380 (2) The legal costs and attorney fees awarded by the court to the prevailing party may
381 not exceed ~~[20%]~~ 50% of the value of the seized property.

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