

HB0390S01 compared with HB0390

~~deleted text~~ shows text that was in HB0390 but was deleted in HB0390S01.

inserted text shows text that was not in HB0390 but was inserted into HB0390S01.

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Representative Lee B. Perry proposes the following substitute bill:

AMENDMENTS TO ASSET FORFEITURE

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to asset forfeiture.

Highlighted Provisions:

This bill:

- ▶ adds and modifies definitions;
- ▶ clarifies provisions related to the seizure and forfeiture of property and contraband;
- ▶ provides, with certain exceptions, that seized property may not be transferred or shared with a federal agency or an agency of another state;
- ▶ requires that a disclaimer of seized property by an individual be knowing and voluntary;
- ▶ provides that law enforcement agencies have 30 days to process seized cash or negotiable instruments;

HB0390S01 compared with HB0390

- ▶ requires the cash or negotiable instrument be deposited into an interest-bearing account;
- ▶ amends provisions related to the retention of property for court proceedings;
- ▶ reduces the length of time for an agency to present a written request for forfeiture to a prosecutor;
- ▶ ~~requires the attorney general's office to review written requests for forfeiture from certain counties;~~
- ▶ ~~provides the attorney general's office with discretion to review any seizure of \$10,000 or more;~~ allows an agency or prosecuting attorney to release property to an innocent owner;
- ▶ prohibits the forfeiture of property seized upon the sole offense of possession of a controlled substance;
- ▶ permits grants to any agency involved in forfeiture activities regardless of whether the agency contributed to the State Asset Forfeiture Fund;
- ▶ requires certification of asset forfeiture specialists by Peace Officers Standards and Training or Utah Prosecution Council; and
- ▶ makes technical and conforming changes.

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 2017, Chapters 285 and 362

24-1-103, as enacted by Laws of Utah 2013, Chapter 394

24-2-102, as enacted by Laws of Utah 2013, Chapter 394

24-2-103, as last amended by Laws of Utah 2017, Chapter 362

24-3-101, as enacted by Laws of Utah 2013, Chapter 394

24-3-103, as last amended by Laws of Utah 2017, Chapters 285 and 334

24-3-104, as enacted by Laws of Utah 2013, Chapter 394

24-4-101, as enacted by Laws of Utah 2013, Chapter 394

HB0390S01 compared with HB0390

24-4-102, as last amended by Laws of Utah 2017, Chapter 362

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

24-4-104, as last amended by Laws of Utah 2017, Chapter 362

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

~~24-4-107, as last amended by Laws of Utah 2017, Chapter 362~~

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

24-4-110, as last amended by Laws of Utah 2017, Chapter 362

24-4-111, as enacted by Laws of Utah 2013, Chapter 394

24-4-112, as enacted by Laws of Utah 2013, Chapter 394

24-4-113, as enacted by Laws of Utah 2013, Chapter 394

24-4-115, as last amended by Laws of Utah 2017, Chapter 303

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

24-4-118, as last amended by Laws of Utah 2017, Chapter 303

ENACTS:

24-2-102.5, Utah Code Annotated 1953

24-2-104, Utah Code Annotated 1953

24-2-107, Utah Code Annotated 1953

24-2-108, Utah Code Annotated 1953

24-3-101.5, Utah Code Annotated 1953

24-4-103.3, Utah Code Annotated 1953

24-4-103.5, Utah Code Annotated 1953

24-4-119, Utah Code Annotated 1953

53-13-110.5, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

24-2-105, (Renumbered from ~~24-3-102, as enacted by Laws of Utah 2013, Chapter 394~~)

~~24-2-106, (Renumbered from 24-4-114, as last amended by Laws of Utah 2015, Chapter 134)~~

~~24-2-107~~ 24-2-106, (Renumbered from ~~24-4-108~~ 24-3-102, as enacted by Laws of Utah 2013, Chapter 394)

HB0390S01 compared with HB0390

REPEALS:

24-4-107, as last amended by Laws of Utah 2017, Chapter 362

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

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) "Acquitted" means a finding-by a jury or a judge at trial that a claimant is not guilty.

(b) "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

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

(3) "Agency" means ~~[any] an agency of [municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multijurisdictional task forces]~~ this state or a political subdivision of this state, including a law enforcement agency or a multijurisdictional task force.

(4) "Claimant" means ~~[any]~~:

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

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

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

(5) "Commission" means the ~~[Utah]~~ State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

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

(7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions[;

HB0390S01 compared with HB0390

and].

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

~~[(b)]~~ (c) "Computer" does not mean a computer server of an Internet or ~~[an]~~ electronic service provider, or the service provider's employee, if used ~~[for the purpose of compliance with obligations pursuant to]~~ to comply with the requirements under 18 U.S.C. Sec. 2258A.

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

(9) (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]~~

(b) "Contraband" includes:

(i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act~~[-are~~ contraband.]; or

~~[(c) A computer is contraband if it:]~~

(ii) a computer that:

~~[(i)]~~ (A) contains or houses child pornography, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child pornography; or

~~[(ii)]~~ (B) contains the personal identifying information of another ~~[person]~~ individual, as defined in Subsection 76-6-1102(1), whether that ~~[person]~~ individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

(10) "Forfeit" means to divest a claimant of an ownership interest in property seized under this title.

~~[(10)]~~ (11) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time ~~[the conduct subjecting the property to forfeiture occurred]~~ of the commission of an offense subjecting the property to

HB0390S01 compared with HB0390

forfeiture under this title, and:

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

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

(b) acquired an ownership interest in the property and had no knowledge that the [~~illegal conduct subjecting the property to forfeiture~~] commission of the offense subjecting the property to forfeiture under this title had occurred or that the property had been seized for forfeiture, and:

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

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

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

~~[(11)]~~ (12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, 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:

(i) who holds property for the benefit of or as an agent or nominee for another person~~];~~; or

(ii) 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.

~~[(12)]~~ (13) "Known address" means any address provided by a claimant to the peace officer or agency at the time the property [~~was~~] is 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.

~~[(13)]~~ (14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

~~[(14)]~~ (15) "Legislative body" means:

HB0390S01 compared with HB0390

(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.

~~[(15)]~~ (16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of ~~[persons]~~ individuals 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]~~ federal, state, county, or municipal agencies.

~~[(16)]~~ (17) "Owner" means ~~[any person]~~ an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

(18) "Peace officer" means an employee:

(a) of an agency;

(b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and

(c) who is authorized by the agency to seize property under this title.

~~[(17)]~~ (19) (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 ~~[(17)]~~ (19)(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 ~~[(17)]~~ (19)(a)(i).

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

~~[(18)]~~ (20) "Program" means the State Asset Forfeiture Grant Program ~~[established]~~ created in Section 24-4-117.

~~[(19)]~~ (21) (a) "Property" means all property, whether real or personal, tangible or intangible~~[-but]~~.

HB0390S01 compared with HB0390

(b) "Property" does not include contraband.

~~[(20) "Prosecuting attorney" means:]~~

(22) ~~{Except as provided in Subsection 24-4-103(3), }~~ ~~{prosecuting}~~ Prosecuting attorney means:

(a) the attorney general and ~~[any]~~ an assistant attorney general;

(b) ~~[any]~~ a district attorney or deputy district attorney;

(c) ~~[any]~~ a county attorney or assistant county attorney; and

(d) ~~[any other]~~ an attorney authorized to commence an action on behalf of the state

under this title.

~~[(21)]~~ (23) "Public interest use" means a:

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

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

~~[(22)]~~ (24) "Real property" means land ~~[and includes]~~, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 2. Section **24-1-103** is amended to read:

24-1-103. Venue.

~~[(1) A state district court has jurisdiction over any action filed in accordance with this title regarding:]~~

~~[(a) all interests in property if the property is within this state at the time the action is filed; and]~~

~~[(b) a claimant's interests in the property, if the claimant is subject to the personal jurisdiction of the district court.]~~

~~[(2)-(a)]~~ (1) In addition to the venue provided for under Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, or any other provisions of law, a proceeding [for forfeiture] under this title may be maintained in the judicial district in which:

(a) the property is seized;

~~[(i)]~~ ~~(a)~~ (b) any part of the property is found; or

~~[(ii)]~~ ~~(b)~~ (c) a civil or criminal action could be maintained against a claimant for the [conduct alleged to constitute grounds for forfeiture] offense subjecting the property to

HB0390S01 compared with HB0390

forfeiture under this title.

~~[(b)]~~ (2) A claimant may obtain a change of venue under Section 78B-3-309.

Section 3. Section **24-2-102** is amended to read:

24-2-102. Grounds for seizing property.

~~[(1) Property may be seized by a peace officer or any other person authorized by law upon process issued by a court having jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.]~~

(1) A peace officer may seize property and contraband upon a search warrant or administrative warrant that is issued in accordance with the Utah Rules of Criminal Procedure.

(2) ~~[Property may be seized]~~ A peace officer may seize property and contraband under this chapter when:

(a) the seizure is incident to an arrest;

(b) the property seized is the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title; or

(c) the peace officer ~~[or other person authorized by law]~~ has probable cause to believe that the property:

(i) is directly or indirectly dangerous to health or safety;

(ii) is evidence of ~~[a crime]~~ an offense;

(iii) has been used or was intended to be used to commit ~~[a crime]~~ an offense; or

(iv) is proceeds of ~~[a crime]~~ an offense.

Section 4. Section **24-2-102.5** is enacted to read:

24-2-102.5. Seizure of contraband.

If a peace officer seizes contraband, a person may not assert an ownership interest in the contraband under this title.

Section 5. Section **24-2-103** is amended to read:

24-2-103. Property seized by a peace officer.

(1) To disclaim an ownership interest in property at the time of seizure, an individual's disclaimer of the property shall be knowing, voluntary, and in writing.

~~[(1)(a) When]~~ (2) If property is seized [by a peace officer], the peace officer or the peace officer's employing agency shall provide a receipt to the person from [whom] which the property [was] is seized.

HB0390S01 compared with HB0390

~~[(b)]~~ (3) The receipt shall describe the:

~~[(i)]~~ (a) property seized;

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

~~[(iii)]~~ (c) name and contact information of the peace officer's employing agency.

~~[(e)]~~ (4) ~~[(a)]~~ In addition to the receipt, ~~[the person from whom the property was seized shall be provided with information regarding the forfeiture process, including:]~~ the peace officer or agency shall provide the person with ~~{ information on how the person may request}~~:

(a) information on:

(i) the time periods for the forfeiture of property; and

(ii) what happens to property upon a conviction or acquittal of the offense subjecting the property to seizure; and

(b) a web link or referral to the self-help web page of the Utah State Law Library's website for resources that may assist the person in making a claim for the return of seized property ~~{ and the district court that has jurisdiction over the property.~~

~~—— (b) The information described in Subsection (4)(a) shall include contact information for the Utah State Law Library's self-help center}~~.

~~[(i) important time periods in the forfeiture process;]~~

~~[(ii) what happens to the property upon conviction or acquittal; and]~~

~~[(iii) how to make a claim for the return of the property.]~~

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

(5) The agency shall maintain a copy of the receipt provided in accordance with Subsection (2).

~~[(e)]~~ (6) If custody of the property is transferred to another agency, ~~[a copy of the receipt under Subsection (1)(a) shall be provided with the property]~~ the transferring agency shall provide the other agency a copy of the receipt under Subsection (2) and the name of the person from which the property was seized.

~~[(2) The agency responsible for maintaining the property shall:]~~

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

~~[(b) maintain a record of the property that includes:]~~

HB0390S01 compared with HB0390

~~[(i) a detailed inventory of all property seized;]~~

~~[(ii) the name of the person from whom it was seized; and]~~

~~[(iii) the agency's case number.]~~

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

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

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

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

~~[(6) If a peace officer or the officer's employing agency records an interview of a minor child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of the last recording unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.]~~

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

Section 6. Section **24-2-104** is enacted to read:

24-2-104. Custody of seized property and contraband.

(1) If a peace officer seizes property or contraband under Section 24-2-102, the property and contraband:

(a) is not recoverable by replevin; and

(b) is considered in the custody of the agency that employed the peace officer.

(2) An agency with custody of seized property shall:

(a) hold the property in safe custody until the property is disposed of in accordance

HB0390S01 compared with HB0390

with this title; and

(b) maintain a record of the property, including:

(i) a detailed inventory of all property seized;

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

(iii) the agency's case number.

(3) An agency may process ~~{, for evidentiary or investigative purposes,}~~ property or contraband that is seized by a peace officer for evidentiary or investigative purposes, including sampling or other preservation procedure, before disposal or destruction.

(4) (a) Except as provided in Subsection (4)(b), no later than 30 days after the day on which a peace officer seizes property in the form of cash or other readily negotiable instruments under Section 24-2-102, an agency shall deposit the property into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation.

(b) A prosecuting attorney may authorize one or more written extensions of the 30-day period under Subsection (4)(a) if the property needs to maintain the form in which the property was seized for evidentiary purposes or other good cause.

(c) An agency shall:

(i) have written policies for the identification, tracking, management, and safekeeping of seized property; and

(ii) shall have a written policy that prohibits the transfer, sale, or auction of seized property to an employee of the agency.

Section 7. Section **24-2-105**, which is renumbered from Section ~~{24-3-102}~~24-4-114 is renumbered and amended to read:

[24-4-114]. 24-2-105. Transfer and sharing procedures.

[(1)(a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture proceedings under this chapter may not directly or indirectly transfer property held for forfeiture and not already named in a criminal indictment to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred.]

[(b) The court may not enter an order authorizing a transfer under Subsection (1)(a) unless:]

HB0390S01 compared with HB0390

~~[(i) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;]~~

~~[(ii) the property may only be forfeited under federal law; or]~~

~~[(iii) pursuing forfeiture under state law would unreasonably burden prosecuting attorneys or state law enforcement agencies;]~~

~~[(c) A petition to transfer property to a federal agency under this section shall include:]~~

~~[(i) a detailed description of the property seized;]~~

~~[(ii) the location where the property was seized;]~~

~~[(iii) the date the property was seized;]~~

~~[(iv) the case number assigned by the seizing law enforcement agency; and]~~

~~[(v) a declaration that:]~~

~~[(A) states the basis for relinquishing jurisdiction to a federal agency;]~~

~~[(B) contains the names and addresses of any claimants then known; and]~~

~~[(C) is signed by the prosecutor;]~~

~~[(d) The court may not authorize the transfer of property to the federal government if the transfer would circumvent the protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.]~~

~~(1) (a) Except as provided in Subsection (1)(b), upon the seizure of property by a peace officer under this title, the property is subject to:~~

~~(i) the exclusive control of a district court of this state; and~~

~~(ii) the acts of the agency with custody of the property and the prosecuting attorney.~~

~~(b) (i) A district court's exclusive control over property is limited by an agency with custody of the property or the prosecuting attorney taking action under Subsections (3)(a) and (3)(b).~~

~~(ii) An act by the agency with custody of the property and the prosecuting attorney is limited by a district court exercising exclusive control over the property under Subsection (3)(c).~~

~~(2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting attorney may not directly or indirectly transfer or release property seized under this title to a federal agency or to a governmental entity not created or subject to the laws of this state.~~

~~(3) An agency or prosecuting attorney may transfer or release property to a federal~~

HB0390S01 compared with HB0390

agency or to a governmental entity not created or subject to the laws of this state if:

(a) (i) the property is cash or another readily negotiable instrument; and

(ii) the property is evidence in or subject to a federal criminal indictment, a federal criminal information, or a federal criminal complaint before the property is seized;

(b) (i) the property is not cash or another readily negotiable instrument; and

(ii) the property is evidence in or subject to a federal criminal indictment, federal criminal information, or federal criminal complaint before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section 24-4-103.5;

(c) (i) the property was used in the commission of an offense in another state; and

(ii) an agency of that state requests the transfer of the property before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section 24-4-103.5; or

(d) a district court authorizes in accordance with Subsection (5) the transfer or release of the property to an agency of another state or a federal agency upon a petition by a prosecuting attorney or a federal prosecutor.

(4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district court for the transfer or release of property.

(b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection (4)(a), the petition shall include:

(i) a detailed description of the property seized;

(ii) the location where the property was seized;

(iii) the date the property was seized;

(iv) the case number assigned by the agency; and

(v) a declaration that:

(A) states the basis for relinquishing jurisdiction to a federal agency or an agency of another state;

(B) contains the names and addresses of any known claimant; and

(C) is signed by the prosecuting attorney or federal prosecutor.

(5) A district court may not authorize the transfer or release of property under

HB0390S01 compared with HB0390

Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:

(a) the offense giving rise to the investigation or seizure of the property is based on criminal activity, or evidence related to criminal activity, in more than one state and constitutes a violation of federal law;

(b) the property may only be forfeited under federal law;

(c) forfeiting the property under state law would unreasonably burden the prosecuting attorney or agency; or

(d) the property was subject to a federal criminal investigation before the property was seized.

[(e) (i) Prior to granting any order to transfer pursuant to this section, the court shall give any]

(6) (a) Before a district court may order the transfer of property in accordance with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a notice to:

(i) each address contained in the declaration under Subsection (4)(b)(v) to give a claimant the right to be heard with regard to the transfer [by the mailing of a notice to each address contained in the declaration.]; and

(ii)(A) if a federal prosecutor files the petition under Subsection (4), the prosecuting attorney that is representing the agency with custody of the property; or

(B) if a prosecuting attorney files the petition under Subsection (4), the federal prosecutor who will receive the property upon the transfer or release of the property.

[(ii) If no claimant objects to the petition to transfer property within 10 days of the mailing of the notice,]

(b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition to transfer the property within 10 days after the day on which the notice is mailed, the court shall issue [its] the court's order [under] in accordance with this section.

[(iii)] (c) If the declaration does not include an address for a claimant, the court shall delay [its] the court's order under this section for 20 days to allow time for the claimant to appear and make an objection.

[(f)] (d) (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to transfer the property to a federal agency or to another governmental entity not created or subject to the laws of this state, the district court shall promptly set the matter for hearing.

HB0390S01 compared with HB0390

~~[(ii) (A) The court shall determine whether the state may relinquish jurisdiction by a standard of preponderance of the evidence.]~~

~~[(B)] (ii) In making [the] a determination under Subsection (5), the district court shall consider evidence regarding hardship, complexity, judicial and law enforcement resources, protections afforded under state and federal law, pending state or federal investigations, and any other relevant matter [the court determines to be relevant].~~

~~[(2) All property, money, or other things of value received by an agency pursuant to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency:]~~

~~(7) If an agency receives property, money, or other things of value under a federal law that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds from the sale of forfeited property, the agency:~~

~~(a) shall [be used] use the property, money, or other things of value in compliance with federal laws and regulations relating to equitable sharing;~~

~~(b) may [be used for those law enforcement purposes specified] use the property, money, or other things of value for a law enforcement purpose described in Subsection 24-4-117[(9)](10); and~~

~~(c) may not [be used for those law enforcement purposes] use the property, money, or other thing of value for a law enforcement purpose prohibited in Subsection 24-4-117[(10)](11).~~

~~[(3)] (8) [A state or local law enforcement] An agency awarded [any] an equitable share of property forfeited by the federal government may [only] use the award money only after approval of the use by the agency's legislative body.~~

~~(9) If a district court exercises exclusive control over seized property, the district court's exclusive control is terminated if the property is released by the agency with custody of the property to:~~

~~(a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section 24-4-103.5;~~

~~(b) a rightful owner under Section 24-3-103; or~~

~~(c) an innocent owner under Section 24-2-108.~~

~~Section 8. Section 24-2-106, which is renumbered from Section 24-3-102 is~~

HB0390S01 compared with HB0390

renumbered and amended to read:

~~[24-3-102].~~ ~~{24-2-105}~~24-2-106. **Retention of property.**

(1) ~~[When property is received in evidence by the court]~~ If seized property is admitted into evidence during a court proceeding, the clerk of the court shall:

(a) retain the property; or ~~[the clerk shall]~~

(b) return the property to the custody ~~[of the peace officer or the agency employing the peace officer]~~ of the agency.

~~[(2) The property shall be retained by the clerk or the officer or the officer's agency]~~

(2) (a) The agency shall retain seized or forfeited property:

(i) at the discretion of the prosecuting attorney; or

(ii) until all direct appeals and retrials are final~~[, at which time the property shall be disposed of in accordance with this title].~~

(3) If the prosecuting attorney ~~[considers it necessary]~~ decides to retain control over the ~~[evidence]~~ seized or forfeited property under Subsection (2)(a) in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, the ~~[prosecutor]~~ prosecuting attorney may decline to authorize the disposal of the property ~~[under this chapter].~~

Section ~~{8}~~9. Section ~~{24-2-106}~~24-2-107~~{, which is renumbered from Section 24-4-114 is renumbered and amended to read:~~

~~———— [24-4-114].~~ ~~24-2-106.~~ **Transfer and sharing procedures.**

~~———— [(1) (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture proceedings under this chapter may not directly or indirectly transfer property held for forfeiture and not already named in a criminal indictment to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of]~~ is enacted to read:

24-2-107. Release of seized property to a claimant.

(1) An agency with custody of seized property or the prosecuting attorney~~{,~~ authorizing~~}~~ may release the property to ~~{be transferred.}~~

~~———— [(b) The court may not enter an order authorizing a transfer under Subsection (1)(a) unless.]~~

~~———— [(i) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;]~~

HB0390S01 compared with HB0390

- ~~— [(ii) the property may only be forfeited under federal law; or]~~
- ~~— [(iii) pursuing forfeiture under state law would unreasonably burden;]~~ a claimant if:
 - (a) the agency or the prosecuting {attorneys or state law enforcement agencies.}
- ~~— [(c) A petition to transfer property to a federal agency under this section shall include:]~~
- ~~— [(i) a detailed description;]~~ attorney:
 - (i) determines that retention of the property ~~{seized;}~~
 - ~~[(ii) the location where the property was seized;]~~
 - ~~[(iii) the date the property was seized;]~~
 - ~~[(iv) the case number assigned by the seizing law enforcement agency; and]~~
 - ~~[(v) a declaration that:]~~
 - ~~[(A) states the basis for relinquishing jurisdiction to a federal agency;]~~
 - ~~[(B) contains the names and addresses of any claimants then known; and]~~
 - ~~[(C) is signed by the prosecutor.]~~
- ~~— [(d) The court may not authorize the transfer of property to the federal government if the transfer would circumvent the protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.]~~
- ~~— [(1) If a peace officer seizes property under this title,]~~ is unnecessary; or
 - (ii) seeks to return the property to an innocent owner;
 - (b) the claimant posts a bond with the court in accordance with Subsection (2);
 - (c) the court orders the release of property for hardship purposes under Subsection (3);
 - (d) a claimant establishes that the claimant is an innocent owner under Section
24-2-107; or
 - (e) the court orders property retained as evidence to be released to a rightful owner
under Section 24-3-104.
- (2) (a) A claimant may obtain release of seized property by posting a surety bond or
cash with the court that is in an amount equal to the current fair market value of the property as
determined by the court or a stipulation by the parties.
 - (b) A court may refuse to order the release under Subsection (2)(a) of:
 - (i) the property if:
 - (A) the bond tendered is inadequate;
 - (B) the property is {subject to:

HB0390S01 compared with HB0390

- ~~(a) the orders and decrees of the~~ retained as evidence; or
- (C) the property is particularly altered or designed for use in the commission of the offense subjecting the property to forfeiture; or
- (ii) contraband.
- (c) If a surety bond or cash is posted and the court later determines that the property is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.
- (3) A claimant is entitled to the immediate release of seized property for which the agency has filed a notice of intent to forfeit under Section 24-4-103 if:
- (a) the claimant had a possessory interest in the property at the time of seizure;
- (b) continued possession by the agency pending a forfeiture proceeding will cause substantial hardship to the claimant, including:
- (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 an individual from receiving necessary medical care;
- (v) preventing the care of a dependent child or adult who is elderly or disabled;
- (vi) leaving an individual homeless; or
- (vii) 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 the property is returned to the claimant during the pendency of the proceeding; and
- (d) the determination of substantial hardship under this Subsection (3) is based upon the property's use before the seizure.
- (4) A claimant may file a motion for hardship release under Subsection (3):
- (a) by motion in the court in which forfeiture proceedings have commenced; or
- (b) by motion in a district court ~~with jurisdiction over the property; and~~
- ~~(b) the acts of;~~ where there is venue if a forfeiture proceeding has not yet commenced.
- (5) The motion or petition for hardship release shall be served upon the agency with custody of the property ~~and the prosecuting attorney in accordance with this title.~~
- ~~(2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting attorney may not directly or indirectly transfer or release property seized under this title to a~~

HB0390S01 compared with HB0390

~~federal agency or to a governmental entity not created or subject to the laws of this state:~~

~~—— (3) An agency or prosecuting attorney may transfer or release property to a federal agency or to a governmental entity not created or subject to the laws of this state if:~~

~~—— (a) the property is named in a federal criminal indictment, criminal information, or criminal complaint before} within five days after the day on which the {agency files a notice of intent to seek forfeiture in accordance with Section 24-4-103;~~

~~—— (b) an agency of another state requests the transfer of the property to the agency of that state because the property was used in the commission of an offense in that state; or~~

~~—— (c) a district court authorizes in accordance with Subsection (5) the transfer or} motion or petition is filed.~~

(6) The court shall:

(a) schedule a hearing on the motion or petition within 14 days after the day on which the motion or petition is filed; and

(b) render a decision on a motion or petition for hardship filed under this section no later than 20 days after the day of the hearing, unless this period is extended by the agreement of both parties or by the court for good cause shown.

(7) (a) If the claimant demonstrates substantial hardship under Subsection (3), the court shall order the property immediately released to the claimant pending completion of any forfeiture proceeding.

(b) The court may place conditions on release of the property ~~{to an agency of another state or a federal agency upon a petition by a prosecuting attorney or federal prosecutor:~~

~~—— (4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district court for the transfer or release of property.~~

~~—— (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection (4)(a), the petition shall include:~~

~~—— (i) a detailed description} as the court finds necessary and appropriate to preserve the availability of the property ~~{seized;~~~~

~~—— (ii) the location where} or the {property was seized;~~

~~—— (iii) the date the property was seized;~~

~~—— (iv) the case number assigned by the agency; and~~

~~—— (v) a declaration that:~~

HB0390S01 compared with HB0390

~~(A) states the basis for relinquishing jurisdiction to a federal agency;~~

~~(B) contains the names and addresses of any known claimant; and~~

~~(C) is signed by the prosecuting attorney or federal prosecutor.~~

~~(5) (a) A district court may not authorize the transfer or release of property under Subsection (3)(c), unless by a preponderance of the evidence:~~

~~(i) the offense giving rise to the investigation or seizure; property's equivalent for forfeiture.~~

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

(a) contraband; or

(b) property that is likely to be used to commit additional offenses if returned to the claimant.

Section 10. Section 24-2-108 is enacted to read:

24-2-108. Innocent owners.

(1) (a) A claimant alleged to be an innocent owner may recover possession of seized property by:

(i) contacting the agency with custody of the property ~~is interstate in nature and constitutes a felony violation of federal law;~~

~~(ii) the property may only be forfeited under federal law; or~~

~~(iii) forfeiting the property under state law would unreasonably burden and the prosecuting attorney ~~for agency.~~~~

~~[(c) (i) Prior to granting any order to transfer pursuant to this section, the court shall give any]~~

~~(b) (i) Before a district court may order the transfer of property in accordance with this section, the court; before the later of:~~

(A) the commencement of a civil asset forfeiture proceeding; or

(B) 30 days after the day on which the property was seized;

(ii) providing the agency with:

(A) evidence that establishes proof of ownership; and

(B) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property, or any evidence that the claimant is an innocent owner.

HB0390S01 compared with HB0390

(b) If an agency receives a claim under Subsection (1)(a), the agency or the prosecuting attorney shall issue a written response to the claimant within 30 days after the day on which the agency receives the claim.

(c) A response under Subsection (1)(b) from the agency or prosecuting attorney shall indicate whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by Subsection (1)(a)(ii).

(d) (i) If a claim is denied for failure to provide the information required by Subsection (1)(a)(ii), the claimant has 15 days after the day on which the claim is denied to submit additional information.

(ii) If a prosecuting attorney has not filed a civil action seeking to forfeit the property and a claim is denied for failure to provide the information required by Subsection (1)(a)(ii), the prosecuting attorney, or federal prosecutor shall mail a notice to each address contained in the declaration; may not commence a civil action until:

(A) the claimant has submitted information under Subsection (4)(1)(b)(d)(v)(i) in order to give a claimant the right to be heard with regard to the transfer [by the mailing of a notice to each address contained in the declaration].

(ii) If no claimant objects to the petition to transfer the property within 10 days of the mailing of the notice, the court shall issue [its] the court's order [under] in accordance with this section.

(iii) If the declaration does not include an address for a claimant, the court shall delay [its] the court's order under this section for 20 days to allow time; or

(B) the deadline for the claimant to appear and make an objection.

(f) (c) (i) If a claimant contests a petition to transfer the property to a federal agency or to another governmental entity not created or subject to the laws of this state, the district court shall promptly set the matter for hearing.

(ii) (A) The court shall determine whether the state may relinquish jurisdiction by a standard of preponderance of the evidence.]

[(B)] (ii) In making [the] a determination } submit information under Subsection (5)(a), the district court shall consider evidence regarding hardship, complexity, judicial and law enforcement resources, protections afforded under state and federal law, pending state or federal investigations, and any other relevant matter [the] 1)(d)(i) has passed.

HB0390S01 compared with HB0390

(e) If the agency or prosecuting attorney fails to issue a written response within 30 days after the day on which the agency and prosecuting attorney receives the response, the agency shall return the property.

(2) If a claim under Subsection (1)(a) is granted, or the property is returned because the agency or prosecuting attorney fails to respond within 30 days, a claimant may not receive any expenses, costs, or attorney fees for the returned property.

(3) A claimant may collect reasonable attorney fees and court costs if:

(a) a claimant filed a claim under Subsection (1)(a);

(b) an agency or a prosecuting attorney denies the claim on the merits; and

(c) a court determines ~~{to be relevant}~~.

~~—— [(2) All property, money, or other things of value received by an agency pursuant to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency.]~~

~~—— (6) If an agency receives property, money, or other things of value under a federal law that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds from the sale of forfeited property, the agency:~~

~~—— (a) shall [be used] use the property, money, or other things of value in compliance with federal laws and regulations relating to equitable sharing;~~

~~—— (b) may [be used for those law enforcement purposes specified] use the property, money, or other things of value for a law enforcement purpose described in} that the claimant is an innocent owner in a civil asset forfeiture proceeding.~~

(4) If a court grants reasonable attorney fees and court costs, the amount of the attorney fees begins to accrue from the day on which the agency or the prosecuting attorney denied the claim.

(5) If the court grants reasonable attorney fees and court costs under Subsection (3), the attorney fees and costs are not subject to the 50% cap under Subsection ~~{24-4-117(9)}~~(10); and

~~—— (c) may not [be used for those law enforcement purposes] use the property, money, or other thing of value for a law enforcement purpose prohibited in Subsection 24-4-117(10)(11):~~

~~—— [(3)] (7) [A state or local law enforcement] An agency awarded [any] an equitable~~

HB0390S01 compared with HB0390

~~share of property forfeited by the federal government may [only] use the award money only after approval of the use by the agency's legislative body.~~

~~Section 9. Section 24-2-107, which is renumbered from Section 24-4-108 is renumbered and}24-4-110(2).~~

(6) A communication between parties regarding a claim submitted under Subsection (3) and any evidence provided to the parties in connection with a claim is subject to the Utah Rules of Evidence, Rules 408 and 410.

(7) An agency with custody of the property and the prosecuting attorney may not forfeit the seized property of an innocent owner.

Section 11. Section 24-3-101 is amended to read:

CHAPTER 3. DISPOSAL OF PROPERTY

~~{24-4-108}. 24-2-107. Release of property on certain grounds.~~

~~(1) [After the seizing agency gives notice that the property is to be held for forfeiture, a person] If an agency sends}24-3-101. Title.~~

This chapter is known as ["Property Held as Evidence."] "Disposal of Property."

Section 12. Section 24-3-101.5 is enacted to read:

24-3-101.5. Application of this chapter.

The provisions of this chapter do not apply to property for which an agency has filed a notice of intent to {forfeit seized property} seek forfeiture under Section 23-4-103.

Section 13. Section 24-3-103 is amended to read:

24-3-103. Disposition of property.

(1) [When the] If a prosecuting attorney determines that seized property no longer needs to be [held as evidence] retained for court proceedings, the prosecuting attorney may:

(a) petition the court to apply [any] the property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;

(b) petition the court for an order transferring ownership of any weapons to the [seizing] agency with custody for the agency's use and disposal in accordance with [applicable law] Section 24-3-103.5, if the owner:

(i) is the [person] individual who committed the [crime] offense for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

HB0390S01 compared with HB0390

(c) notify the agency [that has possession] with custody of the property [that the property may be:] or contraband that:

(i) the property may be returned to the rightful owner[-] if the rightful owner may lawfully possess [it] the property; or

(ii) the contraband may be disposed of or destroyed[-, if the property is contraband].

(2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.

(3) (a) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner.

(b) The law enforcement agency shall determine a reasonable cost to [provide] extract the data[-, which shall be paid by the owner at the time of the request to extract the data].

(c) At the time of the request to extract the data, the owner of the computer shall pay the agency the cost to extract the data.

(4) (a) Before [the] an agency may release seized property to a person claiming ownership of the property, the person shall establish in accordance with Subsection (4)(b) that the person:

(i) is the rightful owner; and

(ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection (4)(a) by providing to the agency:

(i) identifying proof or documentation of ownership of the property; or

(ii) a notarized statement[-] if proof or documentation is not available.

(5) (a) When seized property is returned to the owner, the owner shall sign a receipt listing in detail the property that is returned [shall be signed by the owner].

[(b) The receipt shall be retained by the agency and a copy shall be provided to the owner.]

(b) The agency shall:

(i) retain a copy of the receipt; and

(ii) provide a copy of the receipt to the owner.

(6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the rightful owner of the property or [if] the rightful owner is not entitled to lawfully possess the

HB0390S01 compared with HB0390

property, the agency may:

(i) apply the property to a public interest use;

(ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or

(iii) destroy the property if the property is unfit for a public interest use or for sale.

(b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.

(7) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of [its] the agency's jurisdiction:

(a) permission to apply the property or the proceeds to public interest use; and

(b) the designation and approval of the public interest use of the property or the proceeds.

(8) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-116 shall apply to the disposition of the property.

Section 14. Section 24-3-104 is amended to read:

24-3-104. Petition to return property.

(1) (a) A [person claiming ownership of property held as evidence] claimant may file a petition with the court for the return of the property that is being retained as evidence.

[~~(b) The petition may be filed in:~~

(b) The claimant may file the petition in:

(i) the court in which criminal proceedings have commenced regarding the [conduct] offense for which the property is [held as] being retained as evidence; or

(ii) the district court [~~of the jurisdiction where the property was seized,~~] with venue under Section 24-1-103 if there are no pending criminal proceedings.

(c) [~~A copy of the petition shall be served]~~ A claimant shall serve a copy of the petition on the prosecuting attorney and the agency [~~which has possession]~~ with custody of the property.

(2) (a) The court shall provide an opportunity for an expedited hearing.

(b) After the opportunity for an expedited hearing, the court may order that the property

HB0390S01 compared with HB0390

[be] is:

[(a)] (i) returned to the rightful owner as determined by the court;

[(b)] (ii) if the offense subjecting the property to seizure results in a conviction, applied directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the rightful owner in an amount set by the court;

[(c)] (iii) converted to a public interest use;

[(d)] (iv) held for further legal action;

[(e)] (v) sold at public auction and the proceeds of the sale applied to a public interest use; or

[(f)] (vi) destroyed.

(3) Before the court can order property be returned to a [person claiming ownership of property, the person] claimant, the claimant shall establish, by clear and convincing evidence, that the [person] claimant:

(a) is the rightful owner; and

(b) may lawfully possess the property.

(4) If the court orders the property to be returned to the claimant, the agency [that possesses] with custody of the property shall return the property to the claimant as expeditiously as possible.

Section 15. Section 24-4-101 is amended to read:

CHAPTER 4. FORFEITURE OF SEIZED PROPERTY

24-4-101. Title.

This chapter is known as ["Property Held for Forfeiture."] "Forfeiture of Seized Property."

Section 16. Section 24-4-102 is amended to read:

24-4-102. Property subject to forfeiture.

[(1) Except as provided in Subsection (3), property that has been used to facilitate the commission of a federal or state criminal offense and any 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.]

HB0390S01 compared with HB0390

(1) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:

(a) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; and

(b) seized proceeds.

(2) If [the] seized property is used to facilitate [a] an offense that is 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] an agency may not forfeit the property if the forfeiture would 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] the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.

(3) [A] If a motor vehicle is used in [a] an offense that is 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], an agency may not seek forfeiture of the motor vehicle, unless:

(a) the operator of the vehicle has previously been convicted of [a violation,] an offense committed after May 12, 2009, [of] that is:

(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

(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

HB0390S01 compared with HB0390

(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).

(4) If a peace officer seizes property incident to an arrest solely for possession of a controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 53-37-8(2)(b)(i), an agency may not seek to forfeit the property that was seized in accordance with the arrest.

Section 17. 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.]

(1) (a) If an agency seeks to forfeit property seized under this title, the agency shall serve a notice of intent to seek forfeiture to any known claimant within 30 days after the day on which the property is seized.

(b) The notice of intent to seek forfeiture shall describe [the]:

(i) the date of the seizure;

(ii) the property seized;

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

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

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

(c) The agency shall serve the notice of intent to seek forfeiture by:

(i) certified mail, with a return receipt requested, to the claimant's known address; or

(ii) personal service.

HB0390S01 compared with HB0390

(d) [The] A court may void [any] a 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 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.]

(2) If an agency sends a notice of intent to forfeit seized property under Section 24-4-103, an individual or entity may not alienate, convey, sequester, or attach ~~[[that]]~~ the property until ~~[[the court issues]]~~ a court:

(a) issues ~~[[a final order [of dismissal or an order of forfeiture regarding the property.]]~~ a final order to dismiss an action under this title; or

(b) orders the forfeiture of the property.

~~[(2) The [seizing] agency or the prosecuting attorney may authorize the release of seized 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)] (3) (a) A claimant may obtain release of seized property [held for forfeiture] by posting [with the district court] a surety bond or cash with the court that is in an amount equal to the current fair market value of the property as determined by the court or by the parties' stipulation:~~

~~[(b) [The district] A court may refuse to order the release of:~~

~~[(i) the property if:~~

~~[(i)] (A) the bond tendered is inadequate;~~

HB0390S01 compared with HB0390

- ~~—— [(ii)] (B) the property [is contraband or] is retained as evidence; or~~
- ~~—— [(iii)] (C) the property is particularly altered or designed for use in [conduct giving cause for forfeiture.] the commission of the offense subjecting the property to forfeiture; or~~
- ~~—— (ii) contraband;~~
- ~~—— (c) If a surety bond or cash is posted and the court later determines that the property [is subject to forfeiture] is fortified, the court shall order the forfeiture of the surety bond or cash in lieu of the property.~~
- ~~—— [(6)] (4) A claimant is entitled to the immediate release of [property held for forfeiture] seized property, at any time, 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] an individual from receiving necessary medical care;~~
 - ~~—— (v) hindering the care of [an] a dependent child or adult who is elderly or disabled [dependent child or adult];~~
 - ~~—— (vi) leaving [any] an individual homeless; or~~
 - ~~—— (vii) 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] the property is returned to the claimant during the pendency of the proceeding; and~~
 - ~~—— (d) the determination of substantial hardship under this Subsection [(6)] (4) 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:]~~
- ~~—— (5) A claimant may request a hardship release:~~
 - ~~—— (a) by motion in the court in which forfeiture proceedings have commenced; or~~
 - ~~—— (b) by motion in [any] a district court [having jurisdiction over the property,] where~~

HB0390S01 compared with HB0390

~~there is venue if forfeiture proceedings have not yet commenced.~~

~~—— [(8)] (6) The motion or petition for hardship release shall also be served upon the prosecuting attorney or the [seizing] agency within [10 days after filing the motion] five days after the day on which the motion or petition is filed.~~

~~—— [(9)] (7) The court shall:~~

~~—— (a) schedule a hearing on the motion or petition within 14 days after the day on which the motion or petition is filed; and~~

~~—— (b) render a decision on a motion or petition for hardship filed under this section [not] no later than 20 days after the date of [filing, or 10 days after service upon the prosecuting attorney or seizing agency, whichever is earlier] the hearing, unless this period is extended by the agreement of both parties or by the court for good cause shown:~~

~~—— [(10)] (8) (a) If the claimant demonstrates substantial hardship [pursuant to] in accordance with 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] forfeiture proceedings.~~

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

~~—— [(11)] (9) The hardship release under this section does not apply to:~~

~~—— (a) contraband; or~~

~~—— [(b)] currency or other monetary instrument or electronic funds; or~~

~~—— [(c)] (b) property that is likely to be used to commit additional illegal acts if returned to the claimant.~~

~~—— [(12)] (10) (a) [The] Subject to Subsection (11), the court may order seized property [that is held for forfeiture], for which a forfeiture proceeding is pending, 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)] (10)(a) after:~~

~~—— (i) written notice to [persons] any person known to have an interest in the property [,]; and [after]~~

~~—— (ii) an opportunity for a hearing.~~

HB0390S01 compared with HB0390

~~_____ [(13)] (11) (a) [A sale may be ordered] A court may order a sale of property under Subsection [(12)] (10) when:~~

~~_____ (i) the property is liable to perish, waste, or be significantly reduced in value[, or when]; or~~

~~_____ (ii) the expenses of maintaining the property are disproportionate to [its] the property's value.~~

~~_____ (b) A third party designated by the court shall:~~

~~_____ (i) dispose of the property by a commercially reasonable public sale; and~~

~~_____ (ii) distribute the proceeds in the following order of priority:~~

~~_____ [(i)] (A) first, for the payment of reasonable expenses incurred in connection with the sale;~~

~~_____ [(ii)] (B) second, for the satisfaction of [any interests, including those of interest holders,] an interest, including an interest of an interest holder, in the order of [their] an interest holder's priority as determined by Title 70A, Uniform Commercial Code; and~~

~~_____ [(iii)] (C) 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 10. Section 24-3-101 is amended to read:~~

~~CHAPTER 3. DISPOSAL OF PROPERTY~~

~~_____ 24-3-101. Title:~~

~~_____ This chapter is known as ["Property Held as Evidence."] "Disposal of Property."~~

~~_____ Section 11. Section 24-3-101.5 is enacted to read:~~

~~_____ 24-3-101.5. Application of this chapter:~~

~~_____ The provisions of this chapter do not apply to property for which an agency has filed a notice of intent to seek forfeiture under Section 23-4-103.~~

~~_____ Section 12. Section 24-3-103 is amended to read:~~

~~_____ 24-3-103. Disposition of property:~~

~~_____ (1) [When the] If a prosecuting attorney determines that seized property no longer needs to be [held as evidence] retained for court proceedings, the prosecuting attorney may:~~

~~_____ (a) petition the court to apply [any] the property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;~~

HB0390S01 compared with HB0390

~~_____ (b) petition the court for an order transferring ownership of any weapons to the [seizing] agency with custody for the agency's use and disposal in accordance with [applicable law] Section 24-3-103.5, if the owner:~~

~~_____ (i) is the [person] individual who committed the [crime] offense for which the weapon was seized; or~~

~~_____ (ii) may not lawfully possess the weapon; or~~

~~_____ (c) notify the agency [that has possession] with custody of the property [that the property may be:] or contraband that:~~

~~_____ (i) the property may be returned to the rightful owner, if the rightful owner may lawfully possess [it] the property; or~~

~~_____ (ii) the contraband may be disposed of or destroyed[, if the property is contraband].~~

~~_____ (2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned:~~

~~_____ (3) (a) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner:~~

~~_____ (b) The law enforcement agency shall determine a reasonable cost to [provide] extract the data[, which shall be paid by the owner at the time of the request to extract the data].~~

~~_____ (c) At the time of the request to extract the data, the owner of the computer shall pay the agency the cost to extract the data.~~

~~_____ (4) (a) Before [the] an agency may release seized property to a person claiming ownership of the property, the person shall establish in accordance with Subsection (4)(b) that the person:~~

~~_____ (i) is the rightful owner; and~~

~~_____ (ii) may lawfully possess the property:~~

~~_____ (b) The person shall establish ownership under Subsection (4)(a) by providing to the agency:~~

~~_____ (i) identifying proof or documentation of ownership of the property; or~~

~~_____ (ii) a notarized statement[, if proof or documentation is not available.~~

~~_____ (5) (a) When seized property is returned to the owner, the owner shall sign a receipt listing in detail the property that is returned [shall be signed by the owner].~~

~~_____ [(b) The receipt shall be retained by the agency and a copy shall be provided to the~~

HB0390S01 compared with HB0390

owner.]

~~_____ (b) The agency shall:~~

~~_____ (i) retain a copy of the receipt, and~~

~~_____ (ii) provide a copy of the receipt to the owner.~~

~~_____ (6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the rightful owner of the property or [if] the rightful owner is not entitled to lawfully possess the property, the agency may:~~

~~_____ (i) apply the property to a public interest use;~~

~~_____ (ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or~~

~~_____ (iii) destroy the property if the property is unfit for a public interest use or for sale.~~

~~_____ (b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.~~

~~_____ (7) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of [its] the agency's jurisdiction:~~

~~_____ (a) permission to apply the property or the proceeds to public interest use; and~~

~~_____ (b) the designation and approval of the public interest use of the property or the proceeds.~~

~~_____ (8) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-116 shall apply to the disposition of the property.~~

~~_____ Section 13. Section **24-3-104** is amended to read:~~

~~_____ **24-3-104. Petition to return property.**~~

~~_____ (1) (a) A person claiming ownership of property [held as evidence] that is being retained as evidence may file a petition with the court for the return of the property.~~

~~_____ [(b) The petition may be filed in:]~~

~~_____ (b) A claimant may file the petition in:~~

~~_____ (i) the court in which criminal proceedings have commenced regarding the [conduct] offense for which the property is [held as] being retained as evidence; or~~

~~_____ (ii) the district court of the jurisdiction where [the property was seized,] there is venue~~

HB0390S01 compared with HB0390

if there are no pending criminal proceedings:

——— (c) ~~[A copy of the petition shall be served]~~ A claimant shall serve a copy of the petition on the prosecuting attorney and the agency [which has possession] with custody of the property:

——— (2) (a) ~~The court shall provide an opportunity for an expedited hearing:~~

——— (b) ~~After the opportunity for an expedited hearing, the court may order that the property [be] is:~~

——— [(a)] (i) ~~returned to the rightful owner as determined by the court;~~

——— [(b)] (ii) ~~if the offense subjecting the property to seizure results in a conviction, applied directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the rightful owner in an amount set by the court;~~

——— [(c)] (iii) ~~converted to a public interest use;~~

——— [(d)] (iv) ~~held for further legal action;~~

——— [(e)] (v) ~~sold at public auction and the proceeds of the sale applied to a public interest use; or~~

——— [(f)] (vi) ~~destroyed.~~

——— (3) ~~Before the court can order property be returned to a [person claiming ownership of property, the person] claimant, the claimant shall establish, by clear and convincing evidence, that the [person] claimant:~~

——— (a) ~~is the rightful owner; and~~

——— (b) ~~may lawfully possess the property.~~

——— (4) ~~If the court orders the property to be returned to the claimant, the agency [that possesses] with custody of the property shall return the property to the claimant as expeditiously as possible:~~

——— Section 14. Section ~~24-4-101~~ is amended to read:

~~CHAPTER 4. FORFEITURE OF SEIZED PROPERTY~~

——— ~~24-4-101. Title:~~

——— ~~This chapter is known as ["Property Held for Forfeiture."] "Forfeiture of Seized Property."~~

——— Section 15. Section ~~24-4-102~~ is amended to read:

——— ~~24-4-102. Property subject to forfeiture:~~

HB0390S01 compared with HB0390

~~— (1) Except as provided in Subsection (3), property that has been used to facilitate the commission of a federal or state criminal offense and any 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.~~

~~— (1) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:~~

~~— (a) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; and~~

~~— (b) seized proceeds.~~

~~— (2) If [the] seized property is used to facilitate [a] an offense that is 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 an agency may not forfeit the property if the forfeiture would 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] the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.~~

~~— (3) [A] If a motor vehicle is used in [a] an offense that is 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], an agency may not seek forfeiture of the motor vehicle, unless:~~

~~— (a) the operator of the vehicle has previously been convicted of [a violation,] an offense committed after May 12, 2009, [of] that is:~~

~~— (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~~

~~— (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:~~

HB0390S01 compared with HB0390

- ~~—— (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):~~
- ~~—— (4) If a peace officer seizes property incident to an arrest solely for possession of a controlled substance, an agency may not seek to forfeit the property that was seized in accordance with the arrest.~~
- ~~—— Section 16. 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.]~~
 - ~~—— (1) (a) If an agency seeks to forfeit property seized under this title, the agency shall serve a notice of intent to seek forfeiture to any known claimant within 30 days after the day on which the property is seized.~~
 - ~~—— (b) The notice of intent to seek forfeiture shall describe [the]:~~
 - ~~—— (i) the date of the seizure;~~
 - ~~—— (ii) the property seized;~~
 - ~~—— (iii) the claimant's rights and obligations under this chapter, including the availability of hardship relief in appropriate circumstances; and~~

HB0390S01 compared with HB0390

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

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

~~(c) The agency shall serve the notice of intent to seek forfeiture by:~~

~~(i) certified mail, with a return receipt requested, to the claimant's known address; or~~

~~(ii) personal service.~~

~~(d) [The] A court may void [any] a 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 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.]~~

~~(2)(3) (a) (i) If an agency has served each claimant with a notice of intent to seek forfeiture, the agency shall present a written request for forfeiture to the prosecuting attorney of the municipality or county where the property is seized.~~

~~(ii) The agency shall provide the request under Subsection (2)(3)(a)(i) no later than 45 days after the day on which the property is seized.~~

~~(b) The written request described in Subsection (2)(3)(a) shall:~~

~~(i) describe the property [to be forfeited] that the agency is seeking to forfeit; and~~

~~(ii) include a copy of all reports, supporting documents, and other evidence that is necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.~~

~~(c) The prosecuting attorney shall:~~

~~(i) review the written request described in Subsection (2)(3)(a)(i); and~~

~~(ii) within 75 days after the day on which the property is seized, decline or accept, in writing, the agency's written request for the prosecuting attorney to initiate a proceeding to forfeit the property.~~

Section 18. Section 24-4-103.3 is enacted to read:

24-4-103.3. Sale of seized property.

~~(3)(1) (a) As used in this Subsection (3), "prosecuting attorney" means a district~~

HB0390S01 compared with HB0390

~~attorney, a deputy district attorney, a county attorney, or an assistant county attorney.~~

~~_____ (b) If a prosecuting attorney from a county of the third, fourth, fifth, or sixth class requests the attorney general's office to review a written request;~~ Subject to Subsection (2), the court may order seized property, for which a forfeiture proceeding is pending, to:

- (i) be sold, leased, rented, or operated to satisfy a specified interest of any claimant; or
- (ii) preserve the interests of any party on motion of that party.

~~(b) The court may enter an order under Subsection (1)(a); the attorney general's office may review the written request.~~

~~_____ (c) If an agency presents a written request;~~ after:

- (i) written notice to any person known to have an interest in the property; and
- (ii) an opportunity for a hearing for any person known to have an interest in the property.

~~(2) (a) A court may order a sale of property under Subsection (b) for a seizure of \$10,000 or more and the request is declined by a prosecuting attorney, the attorney general's office may review the request de novo within the time periods established in this section and Section 24-4-103.5.~~

~~_____ Section 17(1) when:~~

- (i) the property is liable to perish, waste, or be significantly reduced in value; or
- (ii) the expenses of maintaining the property are disproportionate to the property's value.

(b) A third party designated by the court shall:

- (i) dispose of the property by a commercially reasonable public sale; and
- (ii) distribute the proceeds in the following order of priority:
 - (A) first, for the payment of reasonable expenses incurred in connection with the sale;
 - (B) second, for the satisfaction of an interest, including an interest of an interest holder, in the order of an interest holder's priority as determined by Title 70A, Uniform Commercial Code; and
 - (C) 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 19. Section **24-4-103.5** is enacted to read:

HB0390S01 compared with HB0390

24-4-103.5. Mandatory return of seized property.

(1) An agency shall promptly return property seized under this title, and the prosecuting attorney may take no further action to forfeit the property, unless ~~f.i~~ within 75 days after the day on which the property is seized:

(a) the prosecuting attorney:

(i) files a criminal indictment or information under Subsection 24-4-105(3);

(ii) files a petition to transfer the property to another agency under Section ~~24-2-106~~24-2-105;

(iii) files a civil forfeiture complaint under Section 24-4-104; or

(b) the prosecuting attorney or a federal prosecutor obtains a restraining order under Subsection 24-4-105(4).

(2) (a) The prosecuting attorney may file a petition to extend the deadline under Subsection (1) by 21 days.

(b) If a prosecuting attorney files a petition under Subsection (2)(a), and the prosecuting attorney provides good cause for extending the deadline, a court shall grant the petition.

(c) The prosecuting attorney may not file more than one petition under this Subsection (2).

(3) If a prosecuting attorney is unable to file a civil forfeiture complaint under Subsection (1)(a)(iii) because a claimant has filed a claim under Section 24-2-108 and the claimant has an extension to provide additional information on the claim under Subsection 24-2-108(1)(d), the deadline under Subsection (1) may be extended by 15 days.

Section ~~{18}~~20. 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 indictment or information under Subsection 24-4-105(2);]~~

~~[(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.]~~

HB0390S01 compared with HB0390

(1) (a) A prosecuting attorney may commence a civil action to forfeit seized property by filing a complaint.

(b) [~~A complaint for civil forfeiture~~] The complaint under Subsection (1)(a) shall describe with reasonable particularity:

(i) the property that [~~is the subject of the forfeiture proceeding~~] the agency is seeking to forfeit;

(ii) the date and place of seizure; and

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

(2) (a) After a complaint 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 after the day on which the complaint is filed.

(b) The prosecuting attorney is not required to serve a copy of the complaint or the summons upon [~~any~~] a claimant [~~who~~] which 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, with a 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]~~

(ii) certified mail; or

(iii) publication in accordance with Subsection (2)(d).

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

HB0390S01 compared with HB0390

if the prosecuting attorney:

(i) moves the court to extend the period to complete service; and

(ii) has shown good cause for extending service.

(3) (a) [~~In any case where the~~] If a prosecuting attorney files a complaint for forfeiture as described in Subsection (1), a claimant may file an answer to the complaint.

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

(b) If a claimant files an answer in accordance with Subsection (3)(a), the claimant shall file the answer within 30 days after the day on which the complaint is served upon the claimant.

(c) [~~When the property subject to forfeiture~~] If an agency is seeking to forfeit property under Section 24-4-103 and the property is valued at less than \$10,000, the agency [that has custody of the property] shall return the property to the claimant if:

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

(B) the prosecuting attorney has not filed an information or indictment for [~~criminal conduct giving rise to the forfeiture~~] the offense for which the property is seized within 60 days after the [~~date that service of the forfeiture complaint on the claimant was completed~~] day on which the prosecuting attorney served the claimant with the complaint, or the prosecuting attorney has not timely moved a court [of competent jurisdiction] and demonstrated reasonable cause for [an extension of time to file such an] extending the time to file the information or indictment; or

(ii) the information or indictment for [~~criminal conduct giving rise to the forfeiture~~] the offense for which the property was seized was dismissed and the prosecuting attorney has not refiled the information or indictment within seven days [~~of the dismissal~~] after the day on which the information or indictment was dismissed.

(d) [~~The~~] ~~{An agency may}~~ A claimant is not {pay} entitled to any expenses, costs, or attorney fees for the return of property to the claimant under Subsection (3)(c) [~~does not include any expenses, costs, or attorney fees~~].

(e) (i) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if

HB0390S01 compared with HB0390

a claimant timely seeks to recover possession of seized property [~~pursuant to Subsection 24-4-107(8), but~~] in accordance with ~~{ Subsection 24-4-107(8), but }~~ Section 24-2-108.

(ii) If the time limitations are extended under Subsection (3)(c)(i), the time limitations in Subsection (3)(c)(i) shall resume immediately upon the [seizing] agency's or prosecuting attorney's timely denial of [the] a claim under ~~{ Subsection 24-4-107(7) }~~ Section 24-2-108 on the merits.

(4) Except as otherwise provided in this chapter, [~~forfeiture proceedings are~~] a civil action for a forfeiture proceeding is governed by the Utah Rules of Civil Procedure.

(5) The court shall:

(a) take all reasonable steps to expedite [civil forfeiture proceedings and shall] a civil forfeiture proceeding; and

(b) give [these proceedings] a civil forfeiture proceeding the same priority as [is given to criminal cases] a criminal case.

~~[(6) 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 that the claimant engaged in conduct giving rise to the forfeiture.]~~

~~[(7) (6) A claimant may file an answer to a complaint for civil forfeiture without posting bond with respect to the property [subject to forfeiture] that the agency seeks to forfeit.~~

~~[(8) (7) [Property is subject to forfeiture under this chapter] A court shall grant an agency's request to forfeit property if the prosecuting attorney establishes, by clear and convincing evidence, 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]~~

~~(i) committed the offense subjecting the property to forfeiture under Subsection 24-4-102(1);~~

~~(ii) knew of the offense subjecting the property to forfeiture under Subsection 24-4-102(1) and allowed the property to be used in furtherance of the offense; or~~

~~(iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or~~

~~[(c) (b) there is no likely source for the purchase or acquisition of the property other~~

HB0390S01 compared with HB0390

than ~~[the conduct that gives rise to forfeiture]~~ the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

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

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

~~[(a) 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) any payments required under this chapter regarding the costs of holding the property shall be paid to the claimant.]~~

(8) If a court finds that the property is the proceeds of an offense that subjects the proceeds to forfeiture under Subsection 24-4-102(1), the prosecuting attorney does not need to prove that the property was the proceeds of a particular exchange or transaction.

(9) If a ~~{court has ordered property to be forfeited under this section, and a }~~claimant is acquitted of~~{ a charge for }~~ the offense subjecting the property to forfeiture under this section:

(a) (i) the property ~~{subject to the forfeiture} or }~~for which forfeiture is sought shall be returned to the claimant; or

(ii) the open market value of the property~~{, }~~ for the property for which forfeiture is sought shall be awarded to the claimant if the property has been disposed of under ~~{Subsection [24-4-108(13)] 24-2-107(11), shall be returned to the claimant}~~Section 24-4-103.3; and

(b) any ~~{payments required}~~ payment requirement under this chapter ~~{regarding}~~related to the ~~{ costs of }~~ holding ~~{the}~~of property shall be paid to the claimant.

(10) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this section and transfer the action to another state or federal agency that has initiated a ~~{forfeiture}~~civil or criminal proceeding involving the same property, the prosecuting attorney shall ~~{seek}~~file a petition to transfer~~{ of }~~ the property in accordance with Section ~~{24-2-106}~~24-2-105.

(11) A civil forfeiture action under this section may be converted to a criminal

HB0390S01 compared with HB0390

forfeiture action at any time after a prosecuting attorney files a criminal complaint, information, or indictment for the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

Section ~~(19)~~21. Section **24-4-105** is amended to read:

24-4-105. Criminal forfeiture procedure.

(1) As used in this section, "defendant" means a claimant who is criminally prosecuted for the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

~~(1)~~ (2) [If a claimant is criminally prosecuted for conduct giving rise to the forfeiture, the] A prosecuting attorney may [elect to] seek forfeiture of [the claimant's] the defendant's interest in [the property] seized property through the criminal case.

~~(2)~~ (3) If the prosecuting attorney [elects to seek] seeks forfeiture of [the claimant's] a defendant's interest in [the property] seized 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] the prosecuting attorney shall state in the information or indictment the grounds for which the agency seeks to forfeit the property.

~~(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 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:]~~

(4) (a) (i) A court may enter a restraining order or injunction or take any other reasonable action to preserve property being forfeited under this section.

(ii) Before a court's decision under Subsection (4)(a)(i), a known claimant, who can be identified after due diligence, shall be:

(A) provided notice; and

(B) given an opportunity for a hearing.

(iii) A court shall grant an order under Subsection (4)(a)(i) if:

~~(i)~~ (A) 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

HB0390S01 compared with HB0390

~~[(ii)]~~ (B) the need to preserve the availability of the property or prevent ~~[its]~~ the property's sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against ~~[any party]~~ a claimant against ~~[whom]~~ which the order is to be entered.

(b) A ~~[temporary restraining order may be entered]~~ court may enter a temporary restraining order ex parte upon application of the prosecuting attorney or a federal prosecutor before or after an information or indictment has been filed, with respect to the property, if the prosecuting attorney or federal prosecutor 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]~~ forfeited under this section; and

(ii) ~~[provision of notice]~~ providing notice to a claimant would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

(c) The temporary order expires ~~[not]~~ no more than 10 days after ~~[entry]~~ the day on which the order is entered unless extended for good cause shown or unless the ~~[party]~~ claimant against whom ~~[it]~~ the temporary order is entered consents to an extension.

(d) After service of the temporary order upon ~~[any claimants]~~ a claimant known to the prosecuting attorney~~[-, a hearing concerning the order entered under this section shall be held]~~ or federal prosecutor, the court shall hold a hearing on the order as soon as practicable and ~~[prior to]~~ before the expiration of the temporary order.

(e) The court is not bound by the Utah Rules of Evidence regarding evidence ~~[it]~~ the court may receive and consider at ~~[any]~~ a 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) Upon conviction of a defendant for the offense subjecting the property to forfeiture, a court or jury shall find property forfeited to the agency if the prosecuting attorney establishes, beyond a reasonable doubt, that:

(a) the defendant:

HB0390S01 compared with HB0390

(i) committed the offense subjecting the property to forfeiture under Subsection 24-4-102(1);

(ii) knew of the offense subjecting the property to forfeiture under Subsection 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

(iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or

(b) there is no likely source for the purchase or acquisition of the property other than the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

~~[(5)]~~ (6) (a) Upon conviction of a [claimant for violating any provision of state law subjecting a claimant's property to forfeiture] defendant for the offense subjecting the property to forfeiture and a finding by [the trier of fact] a court or jury that the property [is subject to forfeiture] is forfeited, the court shall enter a judgment and order the property forfeited to the [state] agency upon the terms stated by the court in [its] the court's order.

(b) Following the entry of an order declaring the property forfeited under Subsection (6)(a), and upon application by the prosecuting attorney, the court may[; upon application of the prosecuting attorney,]:

(i) enter [~~appropriate restraining orders or injunctions;~~] a restraining order or injunction;

(ii) require the execution of satisfactory performance bonds[;];

(iii) appoint [~~receivers, conservators, appraisers, accountants, or trustees;~~] a receiver, conservator, appraiser, accountant, or trustee; or

(iv) take any other action to protect the [~~interest of the state] the agency's interest in property ordered forfeited.~~

~~[(6)]~~ (7) (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.]~~

(ii) If property under Subsection (7)(a)(i) is not transferrable for value to the agency, or the agency is not able to exercise an ownership interest in the property, the property may not revert to the defendant.

HB0390S01 compared with HB0390

(iii) ~~[The defendant or any person]~~ A defendant, or a 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]~~ A 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]~~ the offense subjecting the property to forfeiture if the ~~[defendant]~~ claimant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm, or loss.

(8) If a defendant is acquitted of the offense subjecting the property to forfeiture under this section on the merits:

(a) (i) the property for which forfeiture is sought shall be returned to the claimant; or

(ii) the open market value of the property for the property for which forfeiture is sought shall be awarded to the claimant if the property has been disposed of under Section 24-4-103.3; and

(b) any payment requirement under this chapter related to the holding of property shall be paid to the claimant.

~~[(7)]~~ ~~(8)~~ (9) Except as provided under Subsection ~~[(3) or (10)]~~ (4) or (~~(11)~~ 12), a ~~[party]~~ claimant claiming an interest in property ~~[subject to forfeiture]~~ that is being forfeited under this section:

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

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

~~[(8) The district]~~ ~~(9)~~ (10) A 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]~~ is or has been ordered forfeited under this section ~~[or that has been ordered forfeited under this section]~~.

~~[(9)]~~ ~~(10)~~ (11) To facilitate the identification or location of property ~~[declared forfeited]~~ forfeited under this section, and to facilitate the disposition of ~~[petitions]~~ a petition for remission or mitigation of forfeiture after the entry of an order declaring property forfeited

HB0390S01 compared with HB0390

to the [state] agency, the court may, upon application of the prosecuting attorney, order [that]:

(a) the testimony of any witness relating to the forfeited property be taken by deposition[;]; and [that]

(b) any book, paper, document, record, recording, or other material [shall be] is produced [as provided for depositions and discovery under] in accordance with the Utah Rules of Civil Procedure.

~~[(10)]~~ ~~(~~(11)~~12)~~ (a) ~~[(i) ~~(f)~~]~~ Following the entry of an order of forfeiture under this section] If a court orders property forfeited under this section, the prosecuting attorney shall publish notice of the [order's] intent to dispose of the property [by publication].

~~(~~(ii)~~b)~~ Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:

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

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

~~[(ii)]~~ ~~(~~(iii)~~c)~~ 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) ~~(A)~~ ~~(f)~~ Any]~~ (13) (a) A 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,] may petition the court for a hearing to adjudicate the validity of the claimant's alleged interest in [the] property forfeited under this section.

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

~~(~~(B)~~b)~~ A claimant shall file a petition within 30 days after the earlier of the day on which a notice is published~~(f)~~ or the day on which the claimant receives written notice under Subsection (~~(11)~~a).

~~———— (ii) Any party may request a jury to decide any genuine issue of material fact, including an issue of standing.~~

~~———— (c) 12(a).~~

HB0390S01 compared with HB0390

~~[(c)]~~ (14) The petition under Subsection (~~(11)(b)~~ 13) shall:

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

~~[(ii)]~~ (b) 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)]~~ (c) 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.]~~

~~(~~(d)~~ 15) (~~(i)~~ a)~~ The court shall expedite the trial or hearing under this Subsection (11) to the extent practicable.

(b) Any party may request a jury to decide any genuine issue of material fact.

~~[(iii)]~~ (c) The court may consolidate a trial or hearing on the petition under Subsection (11)(b) and any other petition filed by [~~any~~] a claimant, other than the defendant, under this section.

~~[(iii)]~~ (d) [~~The~~] For a petition under this section, the court shall permit the parties to conduct pretrial discovery [~~pursuant to~~] in accordance with the Utah Rules of Civil Procedure.

(e) (i) ~~(A)~~ 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.

~~(B)~~ (ii) 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)]~~ (f) 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)]~~ (g) [~~Any~~] A trial or hearing shall be conducted [~~pursuant to~~] in accordance with the Utah Rules of Evidence.

~~[(f)]~~ (16) The court shall amend the order of forfeiture in accordance with [~~its~~] the court's determination, if after the trial or hearing under Subsection (15), the court or jury determines that the [~~petitioner~~] claimant has established, by a preponderance of the evidence, that:

(a) (i) ~~(A)~~ the claimant has a legal right, title, or interest in the property[;]; and

~~(B)~~ (ii) the claimant's right, title, or interest renders the order of forfeiture invalid in

HB0390S01 compared with HB0390

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]~~ of the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1); or

~~[(ii)]~~ (b) 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]~~ could be forfeited under this chapter.

~~[(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.]

~~[(g)]~~ 17. An agency has clear title to the property and may transfer title to a purchaser or transferee if:

~~[(ii)]~~ a the court issued a disposition on all petitions under ~~{this}~~ Subsection (11) denying any claimant's right, title, or interest to the property; or

~~[(ii)]~~ b a petition was not filed under the timelines provided in Subsection (11)(b).

~~[(12)]~~ 18. If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this section and transfer the action to another state or federal agency that has initiated a ~~{forfeiture}~~ civil or criminal proceeding involving the same property, the prosecuting attorney shall ~~{seek}~~ file a petition to transfer ~~{of}~~ the property in accordance with Section ~~{24-2-106}~~ 24-2-105.

Section ~~{20}~~ 22. Section ~~{24-4-107}~~ 24-4-109 is amended to read:

~~{~~ 24-4-107. Innocent owners:

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

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

~~————~~ (a) [is responsible for the conduct giving rise to the forfeiture,] subject to Subsection (4), committed the offense subjecting the property to forfeiture under Subsection 24-4-102(1);

~~————~~ (b) knew of the [conduct giving rise to the forfeiture] offense subjecting the property to forfeiture under Subsection 24-4-102(1), and allowed the property to be used in [furtherance of

HB0390S01 compared with HB0390

~~the conduct] the commission of the offense;~~

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

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

~~—— (e) acquired the property in an effort to conceal, prevent, hinder, or delay [its] the property's 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] an individual.~~

~~—— (b) A claimant may demonstrate that the claimant took reasonable action to prohibit the [illegal use of the property] use of the property in the commission of an offense that is a violation of state or federal law 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] the commission of the offense 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] by an individual engaging in an offense that is a violation of state or federal law; or~~

~~—— (iii) taking reasonable actions to discourage or prevent the [illegal use of the property] use of the property in the commission of an offense that is a violation of state or federal law.~~

~~—— (4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent owner, and if the claimant is criminally charged with the [conduct giving rise to the forfeiture] the offense subjecting the property to forfeiture under Subsection 24-4-102(1) and is acquitted of that charge on the merits:~~

~~—— (a) the property [subject to the forfeiture] for which forfeiture is sought, or the open market value of the property[,], if the property has been disposed of under Subsection [24-4-108(13)] 24-2-107(11), shall be returned to the claimant; and~~

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

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

HB0390S01 compared with HB0390

~~—— [(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.]~~

~~—— (5) A court shall presume that property may be forfeited under this chapter if the prosecuting attorney establishes that:~~

~~—— (a) the claimant:~~

~~—— (i) committed the offense subjecting the property to forfeiture under Subsection 24-4-102(1);~~

~~—— (ii) knew of the offense subjecting the property to forfeiture under Subsection 24-4-102(1) and allowed the property to be used in furtherance of the offense; or~~

~~—— (iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or~~

~~—— (b) there is no likely source for the purchase or acquisition of the property other than the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1);~~

~~—— (6) If a court finds that the property is the proceeds of an offense that subjects the proceeds to forfeiture under Subsection 24-4-102(1), the prosecuting attorney does not need to prove that the property was the proceeds of a particular exchange or transaction:~~

~~—— [(8)] (7) (a) A claimant may recover possession of seized property [that is subject to forfeiture] by:~~

~~—— (i) contacting the [seizing] agency or prosecuting attorney [prior to] before the commencement of a civil asset forfeiture proceeding, or within 30 days of the seizure, whichever is longer[.]; and~~

~~—— (ii) providing to the [seizing] agency or prosecuting attorney:~~

~~—— [(i)] (A) evidence that establishes proof of ownership; and~~

HB0390S01 compared with HB0390

~~—— [(ii)] (B) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property:~~

~~—— (b) (i) [A seizing] An agency or prosecuting attorney [who] that receives a claim from a claimant utilizing the procedure in Subsection [(8)] (7)(a) shall issue a written response to that claim within 30 days [of receipt, indicating] after the day on which the agency or prosecuting attorney receives the claim.~~

~~—— (ii) The response under Subsection (7)(b) shall indicate whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by statute [subject to the following:]~~

~~—— [(i)] (iii) [if] If the claim is denied for failure to provide the information required by statute, the claimant has 15 days [from the date of denial] after the day on which the claim is denied to submit additional information before the prosecuting attorney may commence a civil action seeking to forfeit the property[; and];~~

~~—— [(ii)] (iv) [if] If the [seizing] agency or prosecuting attorney fails to issue a written response within 30 days after the day on which the agency or prosecuting attorney receives the response, the property shall be returned.~~

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

~~—— [(d) A claimant who utilizes the procedures in Subsection (8)(a) and whose claim is denied on the merits by the seizing agency or prosecuting attorney, but who is later determined by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within the meaning of Section 24-4-107, may collect reasonable attorney fees and court costs from the date on which the seizing agency or prosecuting attorney denied the claim. Legal costs and attorney fees collected pursuant to this Subsection are not subject to the 50% cap set forth in Subsection 24-4-110(2).]~~

~~—— (c) If a claim under Subsection (7)(b) was granted, or the agency or prosecuting attorney fails to respond within 30 days, a claimant may not receive any expenses, costs, or attorney fees for the returned property.~~

~~—— (d) A claimant may collect reasonable attorney fees and court costs if:~~

~~—— (i) a claimant filed a claim under Subsection (7)(a);~~

HB0390S01 compared with HB0390

~~_____ (ii) an agency or prosecuting attorney denied the claim on the merits; and~~

~~_____ (iii) a court determines that the claimant is an innocent owner under this section in a civil forfeiture action.~~

~~_____ (c) If a court grants reasonable attorney fees and court costs, the amount of the attorney fees begins to accrue from the day on which the agency or prosecuting attorney denied the claim.~~

~~_____ (f) If the court grants reasonable attorney fees and court costs under this Subsection (7), the attorney fees and costs are not subject to the 50% cap under Subsection 24-4-110(2).~~

~~_____ [(c)] (g) [All communications] A communication between [or] parties regarding a claim submitted under this Subsection (7) and any evidence provided to the parties in connection with [a claim submitted pursuant to Subsection (8) are] a claim is subject to the Utah Rules of Evidence, Rules 408 and 410.~~

~~_____ Section 21. Section 24-4-109 is amended to read:~~

‡ **24-4-109. Postjudgment interest.**

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

Section ~~{22}~~23. Section 24-4-110 is amended to read:

24-4-110. Attorney fees and costs.

(1) In [any] a forfeiture proceeding under this chapter, [~~the~~] a court shall award [a ~~prevailing claimant reasonable~~:] reasonable legal costs and attorney fees to a prevailing claimant.

~~[(a) legal costs; and]~~

~~[(b) attorney fees:]~~

(2) [~~The legal costs and attorney fees awarded by the court to the prevailing party~~] If a court awards legal costs and attorney fees to a prevailing claimant under Subsection (1), the award may not exceed 50% of the value of the seized property.

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

HB0390S01 compared with HB0390

Section ~~{23}~~24. Section 24-4-111 is amended to read:

24-4-111. Compensation for damaged property.

(1) As used in this section, "damage or other injury" does not mean normal depreciation, deterioration, or ordinary wear and tear of the property.

~~[(1)]~~ (2) If ~~[property seized for forfeiture]~~ seized property is returned ~~[by operation of]~~ under this chapter, a claimant has a civil right of action against ~~[a seizing]~~ an agency for ~~[any]~~ a claim based upon the negligent destruction, loss, or damage~~;~~ or other injury to seized property while in the possession or custody of the agency.

~~[(2) As used in this section, "damage or other injury" does not include normal depreciation, deterioration, or ordinary wear and tear.]~~

Section ~~{24}~~25. Section 24-4-112 is amended to read:

24-4-112. Limitation on fees for holding seized property.

In any civil or criminal proceeding under this chapter in which a judgment is entered in favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed by the prosecuting attorney, ~~[the seizing]~~ an agency may not charge ~~[that]~~ a claimant any fee or cost for holding seized property.

Section ~~{25}~~26. Section 24-4-113 is amended to read:

24-4-113. Proportionality.

(1) (a) A claimant's interest in property that is used to facilitate ~~[a crime, excluding contraband, is not subject to forfeiture]~~ an offense may not be forfeited under any provision of state law if the forfeiture is substantially disproportionate to the use of the property in committing or facilitating ~~[a]~~ an offense that is a violation of state law and the value of the property.

(b) ~~[Forfeiture of property]~~ If property is used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of ~~[a violation of law]~~ an offense, a forfeiture of the property is not proportional.

(2) (a) In determining proportionality, the court shall consider:

(i) the ~~[conduct giving cause for the forfeiture]~~ offense subjecting the property to forfeiture under Subsection 24-4-102(1);

(ii) what portion of the forfeiture, if any, is remedial in nature;

(iii) the gravity of the conduct for which the claimant is responsible in light of the

HB0390S01 compared with HB0390

offense; and

(iv) the value of the property.

(b) If the court finds that the forfeiture is substantially disproportional to ~~[the conduct]~~ an offense for which the claimant is responsible, ~~[it]~~ the court shall reduce or eliminate the forfeiture~~;~~ as ~~[it]~~ the court finds appropriate.

(3) ~~[The]~~ A prosecuting attorney has the burden ~~[to demonstrate]~~ of demonstrating that ~~[any]~~ a forfeiture is proportional to the ~~[conduct giving rise to the forfeiture]~~ offense subjecting the property to forfeiture under Subsection 24-4-102(1).

(4) In all cases, the court shall decide questions of proportionality.

(5) ~~[Forfeiture]~~ A forfeiture of any proceeds used to facilitate the commission of an offense that is a violation of federal or state law is proportional.

Section ~~{26}~~27. Section **24-4-115** is amended to read:

24-4-115. Disposition and allocation of forfeiture property.

(1) ~~[Upon finding that property is subject to forfeiture under this chapter]~~ If a court finds that property is forfeited under this chapter, the court shall order the property forfeited to the ~~[state]~~ agency.

(2) (a) If the property is not currency, the ~~[seizing]~~ agency shall authorize a public or otherwise commercially reasonable sale of that property ~~[that]~~ if the property is not required by law to be destroyed and ~~[that]~~ is not harmful to the public.

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

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

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

(B) otherwise in saleable condition; or

(ii) an alcoholic product and ~~[its]~~ the alcoholic product's package shall be destroyed if the alcoholic product is impure, adulterated, or otherwise unfit for sale.

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

HB0390S01 compared with HB0390

cigarette before the destruction of the cigarette or tobacco product.

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

(3) [~~From the forfeited property, both~~] Before transferring currency and the proceeds or revenue from the sale of the property in accordance with this chapter, the [seizing] agency shall:

(a) deduct the [seizing] agency's direct costs, expense of reporting under Section 24-4-118, and [expenses] expense of obtaining and maintaining the property pending a forfeiture proceeding; and

(b) if the prosecuting agency that employed the prosecuting attorney has met the requirements of Subsection 24-4-119(3), pay the [office of the] prosecuting attorney the legal costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.

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

(5) The agency shall transfer any remaining currency, [~~and~~] the proceeds, or revenue from the sale of the property [~~shall then be transferred~~] to the commission and deposited into the account.

Section ~~{27}~~28. 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] Except as provided in Section 24-4-115, the commission shall deposit any proceeds from forfeited property and forfeited money through [~~state forfeitures shall be deposited into the account~~] a forfeiture proceeding under this chapter into the account.

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

Section ~~{28}~~29. Section 24-4-117 is amended to read:

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

HB0390S01 compared with HB0390

- (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 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~~] agencies 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~~] Upon appropriation of funds from the account, the commission shall allocate and administer grants to [~~state agencies, local law enforcement agencies, multijurisdictional law enforcement agencies, or political subdivisions~~] an agency or political subdivision of the state in compliance with this section and Subsection 24-4-119(2) and to further the program purposes under Subsection (2).
 - (b) 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) [~~Agencies or political subdivisions~~] An agency or political subdivision shall apply for an award from the program by completing and submitting forms specified by the commission.
- (5) In granting the awards, the commission shall ensure that the amount of each award

HB0390S01 compared with HB0390

takes into consideration the:

(a) demonstrated needs of the agency or political subdivision;

(b) demonstrated ability of the agency or political subdivision to appropriately use the award;

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

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

(6) The commission may award a grant to any agency or political subdivision engaged in activities associated with Subsection (2) even if the agency has not contributed to the fund.

~~[(6)]~~ (7) ~~[Applying agencies or political subdivisions]~~ An applying agency or political subdivision 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)]~~ (8) (a) ~~[Recipient law enforcement agencies]~~ A recipient agency may only use award money after approval by the agency's legislative body.

(b) The award money is nonlapsing.

~~[(8)]~~ (9) A recipient ~~[state agency, local law enforcement agency, multijurisdictional law enforcement]~~ agency~~;~~ or political subdivision shall use ~~[awards]~~ an award:

(a) only for law enforcement purposes ~~[as]~~ described in this section, or for victim reparations as described in Subsection (2)(g)~~;~~ and only as these; and

(b) for the purposes ~~[are]~~ specified by the agency or political subdivision in ~~[its]~~ the agency's or political subdivision's application for the award.

~~[(9)]~~ (10) ~~[Permissible law enforcement purposes]~~ A permissible law enforcement purpose for which award money may be used ~~[include]~~ includes:

(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

HB0390S01 compared with HB0390

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;

(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)]~~ (11) ~~[Law enforcement purposes]~~ A law enforcement purpose for which award money may not be granted or used ~~[include]~~ includes:

(a) payment of salaries, retirement benefits, or bonuses to any ~~[person]~~ individual;

(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]~~ an entity other than an agency; or

(f) uses, payments, or expenses that are not within the scope of the agency's functions.

Section ~~{29}~~ 30. Section **24-4-118** is amended to read:

24-4-118. Forfeiture reporting requirements.

(1) ~~[On and after January 1, 2016, every state, county, municipal, or other law enforcement]~~ An agency shall provide all reasonably available data described in Subsection (5) ~~[, along with the transfer of any applicable forfeited property]~~:

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

(b) ~~[when]~~ if the agency has been awarded ~~[any]~~ an equitable share of property

HB0390S01 compared with HB0390

forfeited by the federal government.

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

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

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

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

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

- (a) the agency that conducted the seizure;
- (b) the case number or other identification;
- (c) the date or dates on which the seizure was conducted;
- (d) the number of individuals having a known property interest in each seizure of property;
- (e) the type of property seized;
- (f) the alleged offense that was the cause for seizure of the property;
- (g) whether any criminal charges were filed regarding the alleged offense, and if so, the final disposition of each charge, including the conviction, acquittal, or dismissal, or whether action on a charge is pending;
- (h) the type of enforcement action that resulted in the seizure, including an enforcement stop, a search warrant, or an arrest warrant;
- (i) whether the forfeiture procedure was civil or criminal;
- (j) the value of the property seized, including currency and the estimated market value of any tangible property;

HB0390S01 compared with HB0390

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

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

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

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

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

(i) the date of the transfer;

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

(iii) a reference to which reason under Subsection [~~24-4-114(1)(a)~~] 24-2-106(3) justified the transfer;

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

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

(vi) the value of the property transferred to the federal agency, including currency and the estimated market value of any tangible property.

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

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

(i) the amount of the award;

(ii) the date of the award;

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

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

HB0390S01 compared with HB0390

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

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

(b) whether the agency received any property, money, or other things of value [~~pursuant to~~] in accordance with federal law as described in Subsection [~~24-4-114(2)~~] 24-2-106(6) and, if so, the following information for each piece of property, money, or other thing of value:

(i) the case number or other case identification;

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

(iii) the date of the award;

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

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

(vi) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the award for crime reduction or law enforcement purposes authorized under Section 24-4-117, and that the award was used only upon approval by the agency's legislative body.

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

(i) the [~~Utah~~] attorney general;

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

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

(iv) each law enforcement agency.

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

HB0390S01 compared with HB0390

year.

Section ~~30~~31. Section **24-4-119** is enacted to read:

24-4-119. Training requirements.

(1) As used in this section:

(a) "Council" means the Utah Prosecution Council created in Section 67-5a-1.

(b) "Division" means the Peace Officers Standards and Training Division created in Section 53-6-103.

(2) To participate in the program, an agency shall have at least one employee who is certified by the division as an asset forfeiture specialist through the completion of an online asset forfeiture course by the division.

(3) The division shall:

(a) develop an online asset forfeiture specialist course that is available to an agency for certification purposes;

(b) certify an employee of an agency who meets the course requirements to be an asset forfeiture specialist;

(c) recertify, every 36 months, an employee who is designated as an asset forfeiture specialist by an agency;

(d) submit annually a report to the commission no later than April 30 that contains a list of the names of the employees and agencies participating in the certification courses;

(e) review and update the asset forfeiture specialist course each year to comply with state and federal law; and

(f) provide asset forfeiture training to all peace officers in basic training programs.

(4) To be reimbursed for costs under Subsection 24-4-115(3)(b), a prosecuting agency shall have at least one employee who is certified by the council as an asset forfeiture specialist through the completion of an online asset forfeiture course.

(5) The council shall:

(a) develop an online asset forfeiture specialist course that is available to a prosecuting agency for certification purposes;

(b) certify an employee of a prosecuting agency who meets the course requirements to be an asset forfeiture specialist;

(c) submit annually a report to the commission no later than April 30 that contains a

HB0390S01 compared with HB0390

list of the names of the employees and prosecuting agencies participating in certification courses by the council; and

(d) review and update the asset forfeiture specialist course each year to comply with state and federal law.

Section ~~31~~32. Section **53-13-110.5** is enacted to read:

53-13-110.5. Retention of records of interviews of minors.

If a peace officer, or the officer's employing agency, records an interview of a minor during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years after the day on which the last recording of the interview is made, unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.

Section 33. Repealer.

This bill repeals:

Section 24-4-107, Innocent owners.

Section 24-4-108, Release of property held for forfeiture on certain grounds.