

ASSET FORFEITURE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provision regarding the forfeiture and disposition of property.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "interest holder";
- ▶ addresses the recovery of property by an interest holder from the seizing agency;
- ▶ provides that property of an interest holder cannot be forfeited;
- ▶ requires an agency to conduct a search of public records to obtain the name and address of each interest holder of property that the agency seeks to forfeit; 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 2021, Chapter 230

24-2-105, as renumbered and amended by Laws of Utah 2021, Chapter 230

24-2-107, as enacted by Laws of Utah 2021, Chapter 230

24-2-108, as enacted by Laws of Utah 2021, Chapter 230



28 [24-4-103](#), as last amended by Laws of Utah 2021, Chapter 230



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

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

32 **24-1-102. Definitions.**

33 As used in this title:

34 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
35 [24-4-116](#).

36 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
37 guilty.

38 (b) "Acquitted" does not include:

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

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

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

42 (3) (a) "Agency" means an agency of this state or a political subdivision of this state.

43 (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

44 (4) "Claimant" means:

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

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

47 (c) an individual or entity who asserts a claim to any property seized for forfeiture under
48 this title.

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

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

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

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

57 (c) "Computer" does not mean a computer server of an Internet or electronic service
58 provider, or the service provider's employee, if used to comply with the requirements under 18

59 U.S.C. Sec. 2258A.

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

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

64 (b) "Contraband" includes:

65 (i) a controlled substance that is possessed, transferred, distributed, or offered for
66 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

67 (ii) a computer that:

68 (A) contains or houses child pornography, or is used to create, download, transfer,
69 upload to a storage account, or store any electronic or digital files containing child
70 pornography; or

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

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

77 (11) "Innocent owner" means a claimant who:

78 (a) held an ownership interest in property at the time of the commission of an offense
79 subjecting the property to forfeiture under this title, and:

80 (i) did not have actual knowledge of the offense subjecting the property to forfeiture; or

81 (ii) upon learning of the commission of the offense, took reasonable steps to prohibit
82 the use of the property in the commission of the offense; or

83 (b) acquired an ownership interest in the property and had no knowledge that the
84 commission of the offense subjecting the property to forfeiture under this title had occurred or
85 that the property had been seized for forfeiture, and:

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

87 (ii) was an individual, including a minor child, who acquired an interest in the property
88 through probate or inheritance; or

89 (iii) was a spouse who acquired an interest in property through dissolution of marriage

90 or by operation of law.

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

95 (b) "Interest holder" does not mean a person:

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

97 or

98 (ii) who is not in substantial compliance with any statute requiring an interest in
99 property to be:

100 (A) recorded or reflected in public records in order to perfect the interest against a good
101 faith purchase for value; or

102 (B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance
103 with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for
104 value.

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

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

110 (15) "Legislative body" means:

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

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

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

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

121 (17) "Owner" means an individual or entity, other than an interest holder, that
122 possesses a bona fide legal or equitable interest in real or personal property.

123 (18) "Peace officer" means an employee:

124 (a) of an agency;

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

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

128 (19) (a) "Proceeds" means:

129 (i) property of any kind that is obtained directly or indirectly as a result of the
130 commission of an offense; or

131 (ii) any property acquired directly or indirectly from, produced through, realized
132 through, or caused by an act or omission regarding property under Subsection (19)(a)(i).

133 (b) "Proceeds" includes any property of any kind without reduction for expenses
134 incurred in the acquisition, maintenance, or production of that property, or any other purpose
135 regarding property under Subsection (19)(a)(i).

136 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
137 subjects the property to forfeiture.

138 (20) "Program" means the State Asset Forfeiture Grant Program created in Section
139 [24-4-117](#).

140 (21) (a) "Property" means all property, whether real or personal, tangible or intangible.

141 (b) "Property" does not include contraband.

142 (22) "Prosecuting attorney" means:

143 (a) the attorney general and an assistant attorney general;

144 (b) a district attorney or deputy district attorney;

145 (c) a county attorney or assistant county attorney; and

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

147 (23) "Public interest use" means a:

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

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

151 (24) "Real property" means land, including any building, fixture, improvement,

152 appurtenance, structure, or other development that is affixed permanently to land.

153 Section 2. Section **24-2-105** is amended to read:

154 **24-2-105. Transfer and sharing procedures.**

155 (1) Except as provided in Subsections (3)(a), (b), and (c), upon the seizure of property
156 by a peace officer under this title, the property is subject to the exclusive jurisdiction of a
157 district court of this state.

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

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

163 (a) (i) the property is cash or another readily negotiable instrument; and
164 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
165 criminal information, or a federal criminal complaint that is filed before the property is seized;

166 (b) (i) the property is not cash or another readily negotiable instrument; and
167 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
168 criminal information, or a federal criminal complaint that is filed before the day on which the
169 agency with custody of the property is required to return the property if no criminal or civil
170 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
171 [24-4-103.5](#);

172 (c) (i) the property was used in the commission of an offense in another state; and
173 (ii) an agency of that state requests the transfer of the property before the day on which
174 the agency with custody of the property is required to return the property if no criminal or civil
175 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
176 [24-4-103.5](#); or

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

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

182 (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection

183 (4)(a), the petition shall include:

184 (i) a detailed description of the property seized;

185 (ii) the location where the property was seized;

186 (iii) the date the property was seized;

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

188 (v) a declaration that:

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

190 another state;

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

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

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

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

195 (a) the property is evidence in, or subject to, a federal criminal indictment, a federal

196 criminal information, or a federal criminal complaint after the property is seized;

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

198 (c) forfeiting the property under state law would unreasonably burden the prosecuting

199 attorney or agency; or

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

201 seized.

202 (6) (a) Before a district court may order the transfer of seized property in accordance

203 with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a

204 notice to:

205 (i) each address contained in the declaration under Subsection (4)(b)(v) to give a

206 claimant the right to be heard with regard to the transfer; and

207 (ii)(A) if a federal prosecutor files the petition under Subsection (4), the prosecuting

208 attorney that is representing the agency with custody of the property; or

209 (B) if a prosecuting attorney files the petition under Subsection (4), the federal

210 prosecutor who will receive the property upon the transfer or release of the property.

211 (b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition

212 to transfer the property within 10 days after the day on which the notice is mailed, the court

213 shall issue the court's order in accordance with this section.

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

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

220 (ii) In making a determination under Subsection (5), the district court shall consider
221 evidence regarding hardship, complexity, judicial and law enforcement resources, protections
222 afforded under state and federal law, pending state or federal investigations, and any other
223 relevant matter.

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

227 (a) shall use the property, money, or other things of value in compliance with federal
228 laws and regulations relating to equitable sharing;

229 (b) may use the property, money, or other things of value for a law enforcement
230 purpose described in Subsection 24-4-117(10); and

231 (c) may not use the property, money, or other thing of value for a law enforcement
232 purpose prohibited in Subsection 24-4-117(11).

233 (8) An agency awarded an equitable share of property forfeited by the federal
234 government may use the award money only after approval of the use by the agency's legislative
235 body.

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

239 (a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section
240 24-4-103.5;

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

242 (c) an innocent owner or an interest holder under Section 24-2-108.

243 Section 3. Section 24-2-107 is amended to read:

244 **24-2-107. Release of seized property to a claimant -- Release by surety bond or**

245 **cash - Release for hardship.**

246 (1) (a) An agency with custody of seized property or the prosecuting attorney may
247 release the property to a claimant if the agency or the prosecuting attorney:

248 (i) determines that retention of the property is unnecessary; or

249 (ii) seeks to return the property to the claimant because the agency or prosecuting
250 attorney determines that the claimant is an innocent owner or an interest holder.

251 (b) An agency with custody of the seized property, or the prosecuting attorney, shall
252 release the property to a claimant if:

253 (i) the claimant posts a surety bond or cash with the court in accordance with
254 Subsection (2);

255 (ii) the court orders the release of property for hardship purposes under Subsection (3);

256 (iii) a claimant establishes that the claimant is an innocent owner or an interest holder
257 under Section [~~24-2-107~~] 24-2-108; or

258 (iv) the court orders property retained as evidence to be released to a rightful owner
259 under Section 24-3-104.

260 (2) (a) Except as provided in Subsection (2)(b), a claimant may obtain release of seized
261 property by posting a surety bond or cash with the court that is in an amount equal to the
262 current fair market value of the property as determined by the court or a stipulation by the
263 parties.

264 (b) A court may refuse to order the release under Subsection (2)(a) of:

265 (i) the property if:

266 (A) the bond tendered is inadequate;

267 (B) the property is retained as evidence; or

268 (C) the property is particularly altered or designed for use in the commission of the
269 offense subjecting the property to forfeiture; or

270 (ii) contraband.

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

273 (3) A claimant is entitled to the immediate release of seized property for which the
274 agency has filed a notice of intent to forfeit under Section 24-4-103 if:

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

276 (b) continued possession by the agency pending a forfeiture proceeding will cause
277 substantial hardship to the claimant, including:

- 278 (i) preventing the functioning of a legitimate business;
- 279 (ii) preventing any individual from working;
- 280 (iii) preventing any child from attending elementary or secondary school;
- 281 (iv) preventing or hindering an individual from receiving necessary medical care;
- 282 (v) preventing the care of a dependent child or adult who is elderly or disabled;
- 283 (vi) leaving an individual homeless; or
- 284 (vii) any other condition that the court determines causes a substantial hardship;

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

288 (d) the determination of substantial hardship under this Subsection (3) is based upon
289 the property's use before the seizure.

290 (4) A claimant may file a motion or petition for hardship release under Subsection (3):

- 291 (a) in the court in which forfeiture proceedings have commenced; or
- 292 (b) in a district court where there is venue if a forfeiture proceeding has not yet
293 commenced.

294 (5) The motion or petition for hardship release shall be served upon the agency with
295 custody of the property within five days after the day on which the motion or petition is filed.

296 (6) The court shall:

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

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

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

305 (b) The court may place conditions on release of the property as the court finds
306 necessary and appropriate to preserve the availability of the property or the property's

307 equivalent for forfeiture.

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

309 (a) contraband; or

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

312 Section 4. Section **24-2-108** is amended to read:

313 **24-2-108. Recovery of seized property by innocent owner or interest holder.**

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

316 (i) submitting a written request with the seizing agency before the later of:

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

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

319 (ii) providing the seizing agency with:

320 (A) evidence that establishes proof of ownership; and

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

324 (b) If a seizing agency receives a claim under Subsection (1)(a), the seizing agency
325 shall issue a written response to the claimant within 30 days after the day on which the seizing
326 agency receives the claim.

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

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

333 (ii) If a prosecuting attorney has not filed a civil action seeking to forfeit the property
334 and a seizing agency has denied a claim for failure to provide the information required by
335 Subsection (1)(a)(ii), the prosecuting attorney may not commence a civil action until:

336 (A) the claimant has submitted information under Subsection (1)(d)(i); or

337 (B) the deadline for the claimant to submit information under Subsection (1)(d)(i) has

338 passed.

339 (e) If a seizing agency fails to issue a written response within 30 days after the day on
340 which the seizing agency receives the response, the seizing agency shall return the property.

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

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

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

346 (b) the seizing agency denies the claim on the merits; and

347 (c) a court determines that the claimant is an innocent owner or an interest holder in a
348 civil asset forfeiture proceeding.

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

351 (5) If the court grants reasonable attorney fees and court costs under Subsection (3), the
352 attorney fees and court costs are not subject to the 50% cap under Subsection 24-4-110(2).

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

356 (7) An agency and the prosecuting attorney may not forfeit the seized property of an
357 innocent owner or an interest holder.

358 Section 5. Section **24-4-103** is amended to read:

359 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

363 (b) The notice of intent to seek forfeiture shall describe:

364 (i) the date of the seizure;

365 (ii) the property seized;

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

368 (iv) the statutory basis for the forfeiture, including the judicial proceedings by which

369 the property may be forfeited under this chapter.

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

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

372 (ii) personal service.

373 (d) A court may void a forfeiture made without notice under Subsection (1)(a), unless

374 the agency demonstrates:

375 (i) good cause for the failure to give notice to the claimant; or

376 (ii) that the claimant had actual notice of the seizure.

377 (2) Before an agency serves a notice of intent to forfeit seized property under

378 Subsection (1)(a), the agency shall conduct a search of public records, including county records

379 or records of the Division of Corporations and Commercial Code, the Division of Motor

380 Vehicles, or other state or federal licensing agencies, in order to obtain the name and address of

381 each interest holder of the property.

382 [~~2~~] (3) If an agency [~~sends~~] serves a notice of intent to forfeit seized property under

383 Subsection [~~24-4-103(1)~~] (1)(a), an individual or entity may not alienate, convey, sequester, or

384 attach the property until a court:

385 (a) issues a final order to dismiss an action under this title; or

386 (b) orders the forfeiture of the property.

387 [~~3~~] (4) (a) (i) If an agency has served each claimant with a notice of intent to seek

388 forfeiture, the agency shall present a written request for forfeiture to the prosecuting attorney of

389 the municipality or county where the property is seized.

390 (ii) The agency shall provide the request under Subsection [~~3~~] (4)(a)(i) no later than

391 45 days after the day on which the property is seized.

392 (b) The written request described in Subsection [~~3~~] (4)(a) shall:

393 (i) describe the property that the agency is seeking to forfeit; and

394 (ii) include a copy of all reports, supporting documents, and other evidence that is

395 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture

396 action.

397 (c) The prosecuting attorney shall:

398 (i) review the written request described in Subsection [~~3~~] (4)(a)(i); and

399 (ii) within 75 days after the day on which the property is seized, decline or accept, in

400 writing, the agency's written request for the prosecuting attorney to initiate a proceeding to
401 forfeit the property.