

Senator Todd D. Weiler proposes the following substitute bill:

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;
- ▶ clarifies that property is forfeited to the state not the agency; 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



- 26 [24-2-105](#), as renumbered and amended by Laws of Utah 2021, Chapter 230
 - 27 [24-2-107](#), as enacted by Laws of Utah 2021, Chapter 230
 - 28 [24-2-108](#), as enacted by Laws of Utah 2021, Chapter 230
 - 29 [24-4-103](#), as last amended by Laws of Utah 2021, Chapter 230
 - 30 [24-4-105](#), as last amended by Laws of Utah 2021, Chapter 230
 - 31 [24-4-115](#), as last amended by Laws of Utah 2021, Chapter 230
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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section [24-1-102](#) is amended to read:

35 **[24-1-102. Definitions.](#)**

36 As used in this title:

37 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
38 [24-4-116](#).

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

41 (b) "Acquitted" does not include:

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

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

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

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

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

47 (4) "Claimant" means:

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

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

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

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

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

56 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other

57 high-speed data processing device that performs logical, arithmetic, and storage functions.

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

60 (c) "Computer" does not mean a computer server of an Internet or electronic service
61 provider, or the service provider's employee, if used to comply with the requirements under 18
62 U.S.C. Sec. 2258A.

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

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

67 (b) "Contraband" includes:

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

70 (ii) a computer that:

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

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

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

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

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

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

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

86 (b) acquired an ownership interest in the property and had no knowledge that the
87 commission of the offense subjecting the property to forfeiture under this title had occurred or

88 that the property had been seized for forfeiture, and:

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

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

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

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

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

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

100 or

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

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

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

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

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

113 (15) "Legislative body" means:

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

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

118 (b) the lead governmental entity of a multijurisdictional task force, as designated in a

119 memorandum of understanding executed by the agencies participating in the task force.

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

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

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

127 (a) of an agency;

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

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

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

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

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

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

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

141 (20) "Program" means the State Asset Forfeiture Grant Program created in Section
142 [24-4-117](#).

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

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

145 (22) "Prosecuting attorney" means:

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

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

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

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

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

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

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

154 (24) "Real property" means land, including any building, fixture, improvement,
155 appurtenance, structure, or other development that is affixed permanently to land.

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

157 **24-2-105. Transfer and sharing procedures.**

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

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

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

166 (a) (i) the property is 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 property is seized;

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

170 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
171 criminal information, or a federal criminal complaint that is filed before the day on which the

172 agency with custody of the property is required to return the property if no criminal or civil
173 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section

174 [24-4-103.5](#);

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

176 (ii) an agency of that state requests the transfer of the property before the day on which
177 the agency with custody of the property is required to return the property if no criminal or civil

178 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
179 [24-4-103.5](#); or

180 (d) a district court authorizes, in accordance with Subsection (5), the transfer or release

181 of the property to an agency of another state or a federal agency upon a petition by a
182 prosecuting attorney or a federal prosecutor.

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

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

- 187 (i) a detailed description of the property seized;
- 188 (ii) the location where the property was seized;
- 189 (iii) the date the property was seized;
- 190 (iv) the case number assigned by the agency; and
- 191 (v) a declaration that:

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

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

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

196 (5) A district court may not authorize the transfer or release of seized property under
197 Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:

198 (a) the property is evidence in, or subject to, a federal criminal indictment, a federal
199 criminal information, or a federal criminal complaint after the property is seized;

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

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

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

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

208 (i) each address contained in the declaration under Subsection (4)(b)(v) to give a
209 claimant the right to be heard with regard to the transfer; and

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

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

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

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

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

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

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

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

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

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

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

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

242 (a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section

243 24-4-103.5;

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

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

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

247 **24-2-107. Release of seized property to a claimant -- Release by surety bond or**
248 **cash - Release for hardship.**

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

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

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

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

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

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

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

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

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

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

268 (i) the property if:

269 (A) the bond tendered is inadequate;

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

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

273 (ii) contraband.

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

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

278 (a) the claimant had a possessory interest in the property at the time of seizure;
279 (b) continued possession by the agency pending a forfeiture proceeding will cause
280 substantial hardship to the claimant, including:

- 281 (i) preventing the functioning of a legitimate business;
 - 282 (ii) preventing any individual from working;
 - 283 (iii) preventing any child from attending elementary or secondary school;
 - 284 (iv) preventing or hindering an individual from receiving necessary medical care;
 - 285 (v) preventing the care of a dependent child or adult who is elderly or disabled;
 - 286 (vi) leaving an individual homeless; or
 - 287 (vii) any other condition that the court determines causes a substantial hardship;
- 288 (c) the hardship from the continued possession of the property by the agency outweighs
289 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the
290 property is returned to the claimant during the pendency of the proceeding; and

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

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

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

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

299 (6) The court shall:

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

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

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

308 (b) The court may place conditions on release of the property as the court finds
309 necessary and appropriate to preserve the availability of the property or the property's
310 equivalent for forfeiture.

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

312 (a) contraband; or

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

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

316 **24-2-108. Recovery of seized property by innocent owner or interest holder.**

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

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

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

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

322 (ii) providing the seizing agency with:

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

324 (B) a brief description of the date, time, and place that the claimant mislaid or

325 relinquished possession of the seized property, or any evidence that the claimant is an innocent
326 owner or an interest holder.

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

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

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

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

339 (A) the claimant has submitted information under Subsection (1)(d)(i); or
340 (B) the deadline for the claimant to submit information under Subsection (1)(d)(i) has
341 passed.

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

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

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

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

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

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

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

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

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

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

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

362 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

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

- 367 (i) the date of the seizure;
- 368 (ii) the property seized;
- 369 (iii) the claimant's rights and obligations under this chapter, including the availability
- 370 of hardship relief in appropriate circumstances; and
- 371 (iv) the statutory basis for the forfeiture, including the judicial proceedings by which
- 372 the property may be forfeited under this chapter.

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

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

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

377 the agency demonstrates:

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

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

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

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

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

384 each interest holder of the property.

385 [~~2~~] (3) If an agency [~~sends~~] serves a notice of intent to forfeit seized property under

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

387 attach the property until a court:

- 388 (a) issues a final order to dismiss an action under this title; or
- 389 (b) orders the forfeiture of the property.

390 [~~3~~] (4) (a) (i) If an agency has served each claimant with a notice of intent to seek

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

392 the municipality or county where the property is seized.

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

394 45 days after the day on which the property is seized.

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

- 396 (i) describe the property that the agency is seeking to forfeit; and
- 397 (ii) include a copy of all reports, supporting documents, and other evidence that is

398 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
399 action.

400 (c) The prosecuting attorney shall:

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

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

405 Section 6. Section **24-4-105** is amended to read:

406 **24-4-105. Criminal forfeiture procedure.**

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

409 (2) A prosecuting attorney may seek forfeiture of the defendant's interest in seized
410 property through the criminal case.

411 (3) If the prosecuting attorney seeks forfeiture of a defendant's interest in seized
412 property through the criminal case, the prosecuting attorney shall state in the information or
413 indictment the grounds for which the agency seeks to forfeit the property.

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

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

418 (A) provided notice; and

419 (B) given an opportunity for a hearing.

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

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

424 (B) the need to preserve the availability of the property or prevent the property's sale,
425 transfer, destruction, or removal through the entry of the requested order outweighs the
426 hardship against a claimant against which the order is to be entered.

427 (b) A court may enter a temporary restraining order ex parte upon application of the
428 prosecuting attorney or a federal prosecutor before or after an information or indictment has

429 been filed, with respect to the property, if the prosecuting attorney or federal prosecutor
430 demonstrates that:

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

433 (ii) providing notice to a claimant would jeopardize the availability of the property for
434 forfeiture or would jeopardize an ongoing criminal investigation.

435 (c) The temporary order expires no more than 10 days after the day on which the order
436 is entered unless extended for good cause shown or unless the claimant against whom the
437 temporary order is entered consents to an extension.

438 (d) After service of the temporary order upon a claimant known to the prosecuting
439 attorney or federal prosecutor, the court shall hold a hearing on the order as soon as practicable
440 and before the expiration of the temporary order.

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

443 (5) Upon conviction of a defendant for the offense subjecting the property to forfeiture,
444 a court or jury shall find property forfeited to the [agency] state if the prosecuting attorney
445 establishes, beyond a reasonable doubt, that:

446 (a) the defendant:

447 (i) committed the offense subjecting the property to forfeiture under Subsection
448 24-4-102(1);

449 (ii) knew of the offense subjecting the property to forfeiture under Subsection
450 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

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

453 (b) there is no likely source for the purchase or acquisition of the property other than
454 the commission of the offense subjecting the property to forfeiture under Subsection
455 24-4-102(1).

456 (6) (a) Upon conviction of a defendant for the offense subjecting the property to
457 forfeiture and a finding by a court or jury that the property is forfeited, the court shall enter a
458 judgment and order the property forfeited to the [agency] state upon the terms stated by the
459 court in the court's order.

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

- 462 (i) enter a restraining order or injunction;
- 463 (ii) require the execution of satisfactory performance bonds;
- 464 (iii) appoint a receiver, conservator, appraiser, accountant, or trustee; or
- 465 (iv) take any other action to protect the ~~[the agency's]~~ state's interest in property
466 ordered forfeited.

467 (7) (a) (i) After property is ordered forfeited under this section, the agency shall direct
468 the disposition of the property under Section [24-4-115](#).

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

472 (iii) A defendant, or a person acting in concert with or on behalf of the defendant, is not
473 eligible to purchase forfeited property at any sale held by the agency unless approved by the
474 judge.

475 (b) A court may stay the sale or disposition of the property pending the conclusion of
476 any appeal of the offense subjecting the property to forfeiture if the claimant demonstrates that
477 proceeding with the sale or disposition of the property may result in irreparable injury, harm, or
478 loss.

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

- 481 (a) (i) the property for which forfeiture is sought shall be returned to the claimant; or
- 482 (ii) the open market value of the property for the property for which forfeiture is sought
483 shall be awarded to the claimant if the property has been disposed of under Section [24-4-103.3](#);
484 and

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

487 (9) Except as provided under Subsection (4) or (12), a claimant claiming an interest in
488 property that is being forfeited under this section:

- 489 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
490 the property; and

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

494 (10) A court that has jurisdiction of a case under this part may enter orders under this
495 section without regard to the location of any property that is or has been ordered forfeited under
496 this section.

497 (11) To facilitate the identification or location of property forfeited under this section,
498 and to facilitate the disposition of a petition for remission or mitigation of forfeiture after the
499 entry of an order declaring property forfeited to the agency, the court may, upon application of
500 the prosecuting attorney, order:

501 (a) the testimony of any witness relating to the forfeited property be taken by
502 deposition; and

503 (b) any book, paper, document, record, recording, or other material is produced in
504 accordance with the Utah Rules of Civil Procedure.

505 (12) (a) If a court orders property forfeited under this section, the prosecuting attorney
506 shall publish notice of the intent to dispose of the property.

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

509 (i) in a newspaper of general circulation in the county in which the seizure of the
510 property occurred; and

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

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

515 (13) (a) A claimant, other than the defendant, may petition the court for a hearing to
516 adjudicate the validity of the claimant's alleged interest in property forfeited under this section.

517 (b) A claimant shall file a petition within 30 days after the earlier of the day on which a
518 notice is published or the day on which the claimant receives written notice under Subsection
519 (12)(a).

520 (14) The petition under Subsection (13) shall:

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

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

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

526 (15) (a) The court shall expedite the trial or hearing under this Subsection (15) to the
527 extent practicable.

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

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

531 (d) For a petition under this section, the court shall permit the parties to conduct pretrial
532 discovery in accordance with the Utah Rules of Civil Procedure.

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

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

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

540 (g) A trial or hearing shall be conducted in accordance with the Utah Rules of
541 Evidence.

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

545 (a) (i) the claimant has a legal right, title, or interest in the property; and

546 (ii) the claimant's right, title, or interest renders the order of forfeiture invalid in whole
547 or in part because the right, title, or interest was vested in the claimant rather than the
548 defendant, or was superior to any right, title, or interest of the defendant at the time of the
549 commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1);
550 or

551 (b) the claimant acquired the right, title, or interest in the property in a bona fide
552 transaction for value, and, at the time of acquisition, the claimant did not know that the

553 property could be forfeited under this chapter.

554 (17) An agency has clear title to the property and may transfer title to a purchaser or
555 transferee if:

556 (a) the court issued a disposition on all petitions under Subsection (13) denying any
557 claimant's right, title, or interest to the property; or

558 (b) a petition was not filed under the timelines provided in Subsection (13)(b).

559 (18) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this
560 section and transfer the action to another state or federal agency that has initiated a civil or
561 criminal proceeding involving the same property, the prosecuting attorney shall file a petition
562 to transfer the property in accordance with Section [24-2-105](#).

563 Section 7. Section **24-4-115** is amended to read:

564 **24-4-115. Disposition and allocation of forfeiture property.**

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

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

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

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

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

575 (B) otherwise in saleable condition; or

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

578 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section
579 [59-14-102](#), the property shall be destroyed, except that the lawful holder of the trademark rights
580 in the cigarette or tobacco product brand is permitted to inspect the cigarette before the
581 destruction of the cigarette or tobacco product.

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

584 (3) Before transferring currency and the proceeds or revenue from the sale of the
585 property in accordance with this chapter, the agency shall:

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

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

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

595 (5) The agency shall transfer any remaining currency, the proceeds, or revenue from the
596 sale of the property to the commission and deposited into the account.