

## SB0065S02 compared with SB0065S01

~~text~~ shows text that was in SB0065S01 but was deleted in SB0065S02.

text shows text that was not in SB0065S01 but was inserted into SB0065S02.

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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: \_\_\_\_\_

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#### 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:

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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

**24-4-103**, as last amended by Laws of Utah 2021, Chapter 230

**24-4-105**, as last amended by Laws of Utah 2021, Chapter 230

**24-4-115**, as last amended by Laws of Utah 2021, Chapter 230

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

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

(4) "Claimant" means:

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

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

(c) an individual or entity who asserts a claim to any property seized for forfeiture under

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this title.

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

(6) "Complaint" means a civil 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.

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

(c) "Computer" does not mean a computer server of an Internet or electronic service provider, or the service provider's employee, if used 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 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) "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; or

(ii) a computer that:

(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

(B) contains the personal identifying information of another individual, as defined in Subsection 76-6-1102(1), whether that 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.

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

(a) held an ownership interest in property at the time of the commission of an offense

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subjecting the property to forfeiture under this title, and:

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

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the 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 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 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.

(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:

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

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

(13) "Known address" means any address provided by a claimant to the peace officer or agency at the time the property 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.

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

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(15) "Legislative body" means:

(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.

(16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of 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 federal, state, county, or municipal agencies.

(17) "Owner" means 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.

(19) (a) "Proceeds" means:

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

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

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

(20) "Program" means the State Asset Forfeiture Grant Program created in Section 24-4-117.

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

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(b) "Property" does not include contraband.

(22) "Prosecuting attorney" means:

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

(b) a district attorney or deputy district attorney;

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

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

(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.

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

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

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

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

(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 seized property to a federal 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 that is filed 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, a federal criminal information, or a federal criminal complaint that is filed 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;

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

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

(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.

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

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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; 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.

(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 the court's order in accordance with this section.

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

(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.

(ii) In making 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.

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

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

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

(8) An agency awarded an equitable share of property forfeited by the federal



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government may use the award money only after approval of the use by the agency's legislative body.

(9) If a district court exercises exclusive [~~control~~] jurisdiction over seized property, the district court's exclusive [~~control~~] jurisdiction 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 or an interest holder under Section 24-2-108.

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

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

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

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

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

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

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

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

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

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

(2) (a) Except as provided in Subsection (2)(b), 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:

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(i) the property if:

(A) the bond tendered is inadequate;

(B) the property is 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 or petition for hardship release under Subsection (3):

(a) in the court in which forfeiture proceedings have commenced; or

(b) in a district court 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 within five days after the day on which the motion or petition is filed.

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(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 as the court finds necessary and appropriate to preserve the availability of the property or the 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 4. Section **24-2-108** is amended to read:

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

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

(i) submitting a written request with the seizing agency 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; and

(ii) providing the seizing 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 or an interest holder.

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

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(c) A response under Subsection (1)(b) from the seizing agency 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 seizing agency denies a claim 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 seizing agency has denied a claim for failure to provide the information required by Subsection (1)(a)(ii), the prosecuting attorney may not commence a civil action until:

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

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

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

(2) If a claim under Subsection (1)(a) is granted, or the property is returned because the seizing agency 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) the seizing agency denies the claim on the merits; and

(c) a court determines that the claimant is an innocent owner or an interest holder 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 seizing agency denied the claim.

(5) If the court grants reasonable attorney fees and court costs under Subsection (3), the attorney fees and court costs are not subject to the 50% cap under Subsection 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 and the prosecuting attorney may not forfeit the seized property of an innocent owner or an interest holder.

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

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

(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:

(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 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) A court may void 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) Before an agency serves a notice of intent to forfeit seized property under Subsection (1)(a), the agency shall conduct a search of public records [applicable to the seized property](#), including county records or records of the Division of Corporations and Commercial Code, the Division of Motor Vehicles, or other state or federal licensing agencies, in order to obtain the name and address of each interest holder of the property.

~~[(2)]~~ (3) If an agency ~~[sends]~~ serves a notice of intent to forfeit seized property under Subsection ~~[24-4-103(1)]~~ (1)(a), an individual or entity may not alienate, convey, sequester, or attach the property until a court:

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

(b) orders the forfeiture of the property.

~~[(3)]~~ (4) (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

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the municipality or county where the property is seized.

(ii) The agency shall provide the request under Subsection [~~(3)~~] (4)(a)(i) no later than 45 days after the day on which the property is seized.

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

(i) describe the property 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 [~~(3)~~] (4)(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 6. 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).

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

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

(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:

(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,

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or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

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

(b) A 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 forfeited under this section; and

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

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

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

(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] state if the prosecuting attorney establishes, beyond a reasonable doubt, that:

(a) the defendant:

(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

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the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

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

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

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

(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.

(iii) 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 agency unless approved by the judge.

(b) A court may stay the sale or disposition of the property pending the conclusion of any appeal of the offense subjecting the property to forfeiture if the 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



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

(9) Except as provided under Subsection (4) or (12), a claimant claiming an interest in property 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; and

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

(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 is or has been ordered forfeited under this section.

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

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

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

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

(b) 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 of the property occurred; and

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

(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.

(13) (a) A claimant, other than the defendant, may petition the court for a hearing to

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adjudicate the validity of the claimant's alleged interest in property forfeited under this section.

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

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

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

(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

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

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

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

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

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

(e) (i) 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.

(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.

(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.

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

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

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

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

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

or

(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 could be forfeited under this chapter.

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

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

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

(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 civil or criminal proceeding involving the same property, the prosecuting attorney shall file a petition to transfer the property in accordance with Section 24-2-105.

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

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

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

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

(b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, 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 the alcoholic product's package shall be destroyed if the alcoholic product is impure, adulterated, or otherwise unfit for sale.

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(c) If the property forfeited is a cigarette or other tobacco product as defined in Section 59-14-102, the property shall be destroyed, except that the lawful holder of the trademark rights in the cigarette or tobacco product brand is permitted to inspect the 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 agency until transferred in accordance with this chapter.

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

(a) deduct the agency's direct costs, expense of reporting under Section 24-4-118, and 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 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 a violation relating to wildlife resources, the agency shall deposit any remaining currency and the proceeds or revenue from the sale of the property into the Wildlife Resources Account created in Section 23-14-13.

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