

1 **CIVIL ASSET FORFEITURE - PROCEDURAL REFORMS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian M. Greene**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **Committee Note:**

9 The Judiciary Interim Committee recommended this bill.

10 **General Description:**

11 This bill modifies the Forfeiture and Disposition of Property Act regarding civil
12 forfeiture procedures.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ modifies the elements of qualifying as an innocent owner regarding property subject
16 to forfeiture;

17 ▶ requires a direct nexus of the property to a specific alleged criminal exchange or
18 transaction, in order for the property to be forfeited;

19 ▶ modifies the definition of proceeds that are from an offense giving rise to a
20 forfeiture;

21 ▶ requires the prosecutor to bring an action for civil forfeiture in a timely manner;

22 ▶ provides that any person may assert an interest in seized property or file an answer
23 to a forfeiture complaint without posting bond;

24 ▶ provides that the hardship provisions include use of funds to allow an individual to
25 obtain a legal defense in the forfeiture proceeding or the related criminal proceeding
26 and assets of a legitimate business;

27 ▶ provides that prejudgment interest shall be awarded, in addition to the current



28 postjudgment interest;

29 ▶ removes the cap of 20% of the value of the property subject to forfeiture when
30 awarding legal costs and attorney fees;

31 ▶ modifies the obligations of a claimant regarding illegal use of the property subject to
32 forfeiture;

33 ▶ provides that the proceeds from civil forfeiture actions shall be placed in the
34 Uniform School Fund, and that proceeds from criminal forfeiture actions shall
35 continue to be placed in the Criminal Forfeiture Restricted Account for use by the
36 State Asset Forfeiture Program;

37 ▶ modifies the allocation of the proceeds from asset forfeiture to provide for:

- 38 • victim restitution;
- 39 • reimbursement of direct costs by the prosecuting agency and the law
40 enforcement agencies involved in the case; and
- 41 • allocation of remaining proceeds to the Uniform School Fund; and

42 ▶ provides that if the defendant is acquitted of the criminal charge subsequent to the
43 civil forfeiture proceeding, the forfeited assets shall be returned and the defendant
44 shall be reimbursed for costs as listed.

45 **Money Appropriated in this Bill:**

46 None

47 **Other Special Clauses:**

48 None

49 **Utah Code Sections Affected:**

50 AMENDS:

51 24-1-102, as last amended by Laws of Utah 2014, Chapter 112

52 24-4-102, as enacted by Laws of Utah 2013, Chapter 394

53 24-4-103, as enacted by Laws of Utah 2013, Chapter 394

54 24-4-104, as last amended by Laws of Utah 2014, Chapter 112

55 24-4-107, as enacted by Laws of Utah 2013, Chapter 394

56 24-4-108, as enacted by Laws of Utah 2013, Chapter 394

57 24-4-109, as enacted by Laws of Utah 2013, Chapter 394

58 24-4-110, as last amended by Laws of Utah 2014, Chapter 112

59 [24-4-115](#), as last amended by Laws of Utah 2014, Chapter 112

60 [24-4-116](#), as enacted by Laws of Utah 2013, Chapter 394

61 [24-4-117](#), as last amended by Laws of Utah 2015, Chapter 134

62 ENACTS:

63 [24-4-104.5](#), Utah Code Annotated 1953



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

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

67 **24-1-102. Definitions.**

68 As used in this title:

69 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
70 [24-4-116](#).

71 (2) (a) "Acquittal" means a finding by a jury or a judge at trial that a claimant is not
72 guilty.

73 (b) An acquittal does not include:

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

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

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

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

79 (4) "Claimant" means any:

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

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

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

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

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

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

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

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

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

96 (a) (i) held an ownership interest in property at the time the conduct subjecting the
97 property to forfeiture occurred~~[, and:]~~;

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

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

102 (ii) did not give permission for the conduct or participate in the conduct;

103 (iii) did not directly commit the offense; and

104 (iv) did not solicit, request, command, encourage, or intentionally aid another person to
105 engage in the conduct; or

106 (b) (i) acquired an ownership interest in the property and who had no knowledge that
107 the illegal conduct subjecting the property to forfeiture had occurred or that the property had
108 been seized for forfeiture~~[:]~~; and~~[:]~~

109 ~~[(i)]~~ (ii) (A) acquired the property in a bona fide transaction for value;

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

112 ~~[(i)]~~ (C) was a spouse who acquired an interest in property through dissolution of
113 marriage or by operation of law.

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

118 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
119 an agent or nominee for another person, or who is not in substantial compliance with any
120 statute requiring an interest in property to be recorded or reflected in public records in order to

121 perfect the interest against a good faith purchaser for value.

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

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

127 (13) "Legislative body" means:

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

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

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

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

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

140 (16) ~~[(a)]~~ "Proceeds" means:

141 ~~[(i) property of any kind that is obtained directly or indirectly as a result of the
142 commission of an offense that gives rise to forfeiture; or]~~

143 ~~[(ii) any property acquired directly or indirectly from, produced through, realized
144 through, or caused by an act or omission regarding property under Subsection (16)(a)(i).]~~

145 ~~[(b) "Proceeds" includes any property of any kind without reduction for expenses
146 incurred in the acquisition, maintenance, or production of that property, or any other purpose
147 regarding property under Subsection (16)(a)(i).]~~

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

150 (a) property of any kind that is:

151 (i) obtained directly as a result of the commission of an offense that gives rise to

152 forfeiture; and

153 (ii) limited to only that portion of property that is obtained directly as a result of the
154 commission of the offense giving rise to the forfeiture; and

155 (b) cash received from the direct sale of, and property received from the direct transfer
156 of, property described in Subsection (16)(a).

157 (17) "Program" means the State Asset Forfeiture Grant Program established in Section
158 [24-4-117](#).

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

161 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

173 Section 2. Section **24-4-102** is amended to read:

174 **24-4-102. Property subject to forfeiture.**

175 (1) Except as provided in Subsection (3), all property that has been used to directly
176 facilitate the commission of a federal or state offense and any direct proceeds of criminal
177 activity may be forfeited under this chapter, including:

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

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

181 (2) If the property is used to facilitate a violation of Section [76-10-1204](#), [76-10-1205](#),
182 [76-10-1206](#), or [76-10-1222](#), the property subject to forfeiture under this section is limited to

183 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise
184 of an affected party's rights under the First Amendment to the Constitution of the United States
185 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the
186 exercise of those rights.

187 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local
188 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection
189 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

214 Section 3. Section **24-4-103** is amended to read:

215 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

216 (1) (a) Within 30 days from the date that property is seized, an agency seeking to forfeit
217 property shall serve a notice of intent to seek forfeiture upon any claimants known to the
218 agency.

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

220 (i) date of the seizure;

221 (ii) property seized;

222 (iii) alleged relationship of the seized property to the conduct giving rise to forfeiture;

223 ~~[(iii)]~~ (iv) claimant's rights and obligations under this chapter, including the availability
224 of hardship relief in appropriate circumstances; and

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

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

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

229 (ii) personal service.

230 (d) The court may void any forfeiture made without notice under Subsection (1)(a),
231 unless the agency demonstrates:

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

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

234 (2) (a) Once the agency has served each claimant with a notice of intent to seek
235 forfeiture, but no later than 60 days from the date that property is seized, the agency shall
236 present a written request for forfeiture to the prosecuting attorney.

237 (b) The written request shall:

238 (i) describe the property to be forfeited; and

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

241 Section 4. Section **24-4-104** is amended to read:

242 **24-4-104. Civil forfeiture procedure.**

243 (1) (a) ~~[The]~~ A law enforcement agency shall promptly return seized property, and the
244 prosecuting attorney may take no further action to effect the forfeiture of the property, unless

245 within ~~[75]~~ 60 days after the property is seized the prosecuting attorney:

246 (i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);

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

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

249 (iv) files a civil forfeiture complaint.

250 (b) The prosecutor shall take all reasonable steps to ensure a forfeiture proceeding
251 initiated under this section is concluded in a timely manner.

252 ~~[(b)-A]~~ (2) The complaint for civil forfeiture under Subsection (1)(a)(iv) shall describe
253 with reasonable particularity [the]:

254 ~~[(i)]~~ (a) the property that is the subject of the forfeiture proceeding;

255 (b) a direct nexus between the seized property and the conduct giving rise to the
256 forfeiture under Subsection 24-4-102(2);

257 ~~[(ii)]~~ (c) the date and place of seizure; and

258 ~~[(iii)]~~ (d) the factual allegations that constitute a basis for forfeiture.

259 ~~[(2)]~~ (3) (a) After a complaint for civil forfeiture is filed in compliance with the
260 requirements of Subsections (1) and (2), the prosecuting attorney shall serve a copy of the
261 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

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

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

266 (i) personal service;

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

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

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

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

273 and

274 (ii) on ~~[Utah's Public Legal Notice Website]~~ the public legal notice website established
275 in Subsection 45-1-101(2)(b).

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

277 (i) personal service;

278 (ii) mailing of a written notice; or

279 (iii) publication.

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

282 (g) An answer made by a claimant under this Subsection (3) shall be filed within 30
283 days after the complaint is served upon the claimant under this Subsection (3).

284 [~~(3)~~(a)] (4) In any case where the prosecuting attorney files a complaint for civil
285 forfeiture, [a claimant may file an answer to the complaint] any person may assert an interest in
286 seized property or file an answer to a complaint for civil forfeiture without posting bond with
287 respect to the property that is the subject of the seizure or forfeiture action.

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

290 [~~(4)~~] (5) Except as otherwise provided in this chapter, forfeiture proceedings are
291 governed by the Utah Rules of Civil Procedure.

292 [~~(5)~~] (6) The court shall take all reasonable steps to expedite civil forfeiture
293 proceedings and shall give these proceedings the same priority as is given to criminal cases.

294 [~~(6)~~] (7) In all suits or actions brought under this section for the civil forfeiture of any
295 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
296 evidence the extent to which, if any, the property is subject to forfeiture.

297 [~~(7)~~] (8) A claimant may file an answer to a complaint for civil forfeiture without
298 posting bond with respect to the property subject to forfeiture.

299 Section 5. Section **24-4-104.5** is enacted to read:

300 **24-4-104.5. Acquittal of criminal charge after civil proceeding.**

301 If in a subsequent criminal prosecution the defendant is acquitted of the criminal
302 conduct that provides the nexus for the civil forfeiture proceeding under Section [24-4-104](#), the
303 court shall:

304 (1) rescind the civil forfeiture order; and

305 (2) order full restitution to the defendant, including as applicable:

306 (a) the return of any forfeited property or proceeds in possession of the seizing agency;

307 (b) the payment of the fair market value, in accordance with Subsection 24-4-117(8), of
308 any forfeited property or proceeds;

309 (c) interest on the fair market value of all forfeited property or proceeds; and

310 (d) court costs and reasonable attorney fees incurred in defending against the civil
311 forfeiture action.

312 Section 6. Section 24-4-107 is amended to read:

313 **24-4-107. Innocent owners.**

314 (1) An innocent owner's interest in property may not be forfeited under any provision
315 of state law.

316 (2) In a forfeiture proceeding [~~under this chapter~~] regarding property belonging to a
317 claimant other than a person charged or convicted for a crime subjecting that property to
318 forfeiture, the prosecuting attorney has the burden of establishing by clear and convincing
319 evidence that [a] the claimant:

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

321 (b) knew of the conduct giving rise to the forfeiture, and allowed the property to be
322 used in furtherance of the conduct, subject to Subsection (4);

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

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

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

329 (3) [~~(a)~~] A claimant [~~under this chapter is not required to~~] does not have an obligation
330 under this section to take steps to prevent illegal use or criminal activity regarding the seized
331 property [that the claimant reasonably believes would be likely to result in physical harm or
332 danger to any person].

333 [~~(b)~~] (4) A claimant may demonstrate that the claimant was not responsible for the
334 conduct giving rise to forfeiture or did not allow the property to be used in the furtherance of
335 the conduct by providing evidence that the claimant took reasonable action to prohibit the
336 illegal use of the property by:

337 [~~(i)~~] (a) making a timely notification to a law enforcement agency of information that

338 led the claimant to know that conduct subjecting the property to seizure would occur, was
339 occurring, or has occurred;

340 [(ii)] (b) timely revoking or attempting to revoke permission to use the property
341 regarding those engaging in the illegal conduct; or

342 [(iii)] (c) taking reasonable actions to discourage or prevent the illegal use of the
343 property.

344 [(4)] (5) If the state relies on Subsection (2)(a) to establish that a claimant is not an
345 innocent owner, and if the claimant is criminally charged with the conduct giving rise to the
346 forfeiture and is acquitted of that charge on the merits:

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

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

352 [(5)] (6) A person may not assert under this chapter an ownership interest in
353 contraband.

354 [~~(6) Property is presumed to be subject to forfeiture under this chapter if the~~
355 ~~prosecuting attorney establishes that:]~~

356 [~~(a) the claimant has engaged in conduct giving cause for forfeiture;]~~

357 [~~(b) the property was acquired by the claimant during that period of the conduct giving~~
358 ~~cause for forfeiture or within a reasonable time after that period; and]~~

359 [~~(c) there was no likely source for the purchase or acquisition of the property other than~~
360 ~~the conduct giving cause for forfeiture.]~~

361 [~~(7) A finding that property is the proceeds of conduct giving cause for forfeiture does~~
362 ~~not require proof that the property was the proceeds of any particular exchange or transaction.]~~

363 Section 7. Section 24-4-108 is amended to read:

364 **24-4-108. Release of property held for forfeiture on certain grounds.**

365 (1) After the seizing agency gives notice that the property is to be held for forfeiture, a
366 person or entity may not alienate, convey, sequester, or attach that property until the court
367 issues a final order of dismissal or an order of forfeiture regarding the property.

368 (2) The seizing agency or the prosecuting attorney may authorize the release of

369 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

370 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
371 discontinue forfeiture proceedings and transfer the action to another state or federal agency that
372 has initiated forfeiture proceedings involving the same property.

373 (4) Property held for forfeiture is considered to be in the custody of the district court
374 and subject only to:

375 (a) the orders and decrees of the court having jurisdiction over the property or the
376 forfeiture proceedings; and

377 (b) the acts of the agency that possesses the property or the prosecuting attorney
378 pursuant to this chapter.

379 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
380 district court a surety bond or cash in an amount equal to the current fair market value of the
381 property as determined by the court or by the parties' stipulation.

382 (b) The district court may refuse to order the release of the property if:

383 (i) the bond tendered is inadequate;

384 (ii) the property is contraband or is retained as evidence; or

385 (iii) the property is particularly altered or designed for use in conduct giving cause for
386 forfeiture.

387 (c) If a surety bond or cash is posted and the court later determines that the property is
388 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
389 property.

390 (6) A claimant is entitled to the immediate release of property held for forfeiture
391 pending the final determination of forfeiture if:

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

393 (b) continued possession by the agency or the state pending the final disposition of the
394 forfeiture proceedings will cause substantial hardship to the claimant, such as:

395 (i) preventing the functioning of a legitimate business;

396 (ii) preventing any individual from working;

397 (iii) preventing any child from attending elementary or secondary school;

398 (iv) preventing or hindering any person from receiving necessary medical care;

399 (v) hindering the care of an elderly or disabled dependent child or adult;

400 (vi) leaving any individual homeless; [~~or~~]
401 (vii) preventing an owner from retaining counsel to provide a defense in the forfeiture
402 proceeding or related criminal proceeding; or
403 [~~vii~~] (viii) any other condition that the court determines causes a substantial hardship;
404 (c) the hardship from the continued possession of the property by the agency outweighs
405 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
406 returned to the claimant during the pendency of the proceeding; and
407 (d) determination of substantial hardship under this Subsection (6) is based upon the
408 property's use prior to the seizure.
409 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
410 claimant may file a motion for hardship release:
411 (a) in the court in which forfeiture proceedings have commenced; or
412 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
413 have not yet commenced.
414 (8) The motion for hardship release shall also be served upon the prosecuting attorney
415 or the seizing agency within 10 days after filing the motion.
416 (9) The court shall render a decision on a motion for hardship filed under this section
417 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
418 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement
419 of both parties or by the court for good cause shown.
420 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
421 court shall order the property immediately released to the claimant pending completion of
422 proceedings by the government to obtain forfeiture of the property.
423 (b) The court may place conditions on release of the property as it finds necessary and
424 appropriate to preserve the availability of the property or its equivalent for forfeiture.
425 (11) The hardship release under this section does not apply to:
426 (a) contraband;
427 (b) currency or other monetary instrument or electronic funds[~~;~~], unless any of these:
428 (i) are used to pay for the reasonable costs of defending against the forfeiture
429 proceedings or related criminal proceedings; or
430 (ii) constitute the assets of a legitimate business; or

431 (c) property that is likely to be used to commit additional illegal acts if returned to the
432 claimant.

433 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed
434 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
435 to preserve the interests of any party on motion of that party.

436 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
437 known to have an interest in the property, and after an opportunity for a hearing.

438 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to
439 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
440 property are disproportionate to its value.

441 (b) A third party designated by the court shall dispose of the property by commercially
442 reasonable public sale and distribute the proceeds in the following order of priority:

443 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

444 (ii) second, for the satisfaction of any interests, including those of interest holders, in
445 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

446 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
447 custody of the court, in an interest-bearing account, subject to further proceedings under this
448 chapter.

449 Section 8. Section **24-4-109** is amended to read:

450 **24-4-109. Prejudgment and postjudgment interest.**

451 In any proceeding to forfeit currency or other negotiable instruments under this chapter,
452 the court shall award a prevailing [party] claimant prejudgment and postjudgment interest on
453 the currency or negotiable instruments at the interest rate established under Section [15-1-4](#).

454 Section 9. Section **24-4-110** is amended to read:

455 **24-4-110. Attorney fees and costs.**

456 (1) In any forfeiture proceeding under [~~this chapter~~] Sections [24-4-104](#) and [24-4-107](#),
457 the court shall award a prevailing [~~property owner~~] claimant reasonable:

458 (a) legal costs; and

459 (b) attorney fees.

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

462 ~~[(3)]~~ (2) A ~~[property owner]~~ claimant that prevails only in part is entitled to recover
463 reasonable legal costs and attorney fees only on those issues on which the party prevailed, as
464 determined by the court.

465 Section 10. Section **24-4-115** is amended to read:

466 **24-4-115. Disposition and allocation of forfeiture property from civil and**
467 **criminal forfeiture actions.**

468 (1) Upon finding that property is subject to forfeiture under this chapter, the court shall
469 order the property forfeited to the state.

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

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

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

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

478 (B) otherwise in saleable condition; or

479 (ii) an alcoholic product and its package shall be destroyed if the alcoholic product is
480 impure, adulterated, or otherwise unfit for sale.

481 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section
482 **59-14-102**, it shall be destroyed, except that prior to the destruction of any cigarette or other
483 tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the
484 cigarette or tobacco product brand shall be permitted to inspect the cigarette.

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

488 (3) From the forfeited property, both currency and the proceeds or revenue from the
489 sale of the property, the seizing agency shall:

490 (a) deduct the seizing agency's direct costs and expenses of obtaining and maintaining
491 the property pending forfeiture; and

492 (b) pay the office of the prosecuting attorney the legal costs associated with the

493 litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in
494 attorney fees.

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

498 (5) The remaining currency and the proceeds or revenue from the sale of the property
499 shall then be transferred:

500 (a) to the Uniform School Fund if the proceeds are from a civil forfeiture proceeding
501 under this chapter; and

502 (b) to the commission and deposited into the [account] Criminal Forfeiture Restricted
503 Account, if the proceeds are from a criminal forfeiture proceeding under this chapter.

504 Section 11. Section **24-4-116** is amended to read:

505 **24-4-116. Criminal Forfeiture Restricted Account.**

506 (1) There is created within the General Fund a restricted account known as the
507 "Criminal Forfeiture Restricted Account."

508 (2) Proceeds from [~~forfeited~~] property and [~~forfeited~~] money forfeited through state
509 criminal forfeitures actions under Section [24-4-105](#) shall be deposited into the account.

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

512 Section 12. Section **24-4-117** is amended to read:

513 **24-4-117. State Asset Forfeiture Grant Program.**

514 (1) There is created the State Asset Forfeiture Grant Program.

515 (2) The program shall fund crime prevention, crime victim reparations, and law
516 enforcement activities that have the purpose of:

517 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
518 activities;

519 (b) weakening criminal enterprises by removing the instrumentalities of crime;

520 (c) reducing crimes involving substance abuse by supporting the creation,
521 administration, or operation of drug court programs throughout the state;

522 (d) encouraging cooperation between local, state, and multijurisdictional law
523 enforcement agencies;

524 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
525 proceeds of crime;

526 (f) increasing the equitability and accountability of the use of forfeited property used to
527 assist law enforcement in reducing and preventing crime; and

528 (g) providing aid to victims of criminally injurious conduct, as defined in Section
529 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
530 for Victims of Crime.

531 (3) ~~[(a)]~~ When property is forfeited under this chapter and transferred to the account,
532 upon appropriation the commission shall allocate and administer grants to state agencies, local
533 law enforcement agencies, multijurisdictional law enforcement agencies, or political
534 subdivisions of the state in compliance with this section and to further the program purposes
535 under Subsection (2).

536 ~~[(b)]~~ (4) The commission may retain up to 3% of the annual appropriation from the
537 account to pay for administrative costs incurred by the commission, including salary and
538 benefits, equipment, supplies, or travel costs that are directly related to the administration of
539 the program.

540 ~~[(4)]~~ (5) Agencies or political subdivisions shall apply for an award from the program
541 by completing and submitting forms specified by the commission.

542 ~~[(5)]~~ (6) In granting the awards, the commission shall ensure that the amount of each
543 award takes into consideration the:

544 (a) demonstrated needs of the agency;

545 (b) demonstrated ability of the agency to appropriately use the award;

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

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

549 (7) The program shall pay restitution and costs under Section [24-4-104.5](#) regarding
550 defendants who are acquitted of the nexus criminal charge.

551 ~~[(6)]~~ (8) Applying agencies or political subdivisions shall demonstrate compliance with
552 all reporting and policy requirements applicable under this chapter and under Title 63M,
553 Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award
554 recipient.

555 ~~[(7)]~~ (9) (a) Recipient law enforcement agencies may only use award money after
556 approval by the agency's legislative body.

557 (b) The award money is nonlapsing.

558 ~~[(8)]~~ (10) A recipient state agency, local law enforcement agency, multijurisdictional
559 law enforcement agency, or political subdivision shall use awards only for law enforcement
560 purposes as described in this section or for victim reparations as described in Subsection (2)(g),
561 and only as these purposes are specified by the agency or political subdivision in its application
562 for the award.

563 ~~[(9)]~~ (11) Permissible law enforcement purposes for which award money may be used
564 include:

565 (a) controlled substance interdiction and enforcement activities;

566 (b) drug court programs;

567 (c) activities calculated to enhance future law enforcement investigations;

568 (d) law enforcement training that includes:

569 (i) implementation of the Fourth Amendment to the United States Constitution and
570 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
571 right of due process;

572 (ii) protection of the rights of innocent property holders; and

573 (iii) the Tenth Amendment to the United States Constitution regarding states'
574 sovereignty and the states' reserved rights;

575 (e) law enforcement or detention facilities;

576 (f) law enforcement operations or equipment that are not routine costs or operational
577 expenses;

578 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
579 in part by the law enforcement agency or its legislative body;

580 (h) matching funds for other state or federal law enforcement grants; and

581 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
582 actions.

583 ~~[(10)]~~ (12) Law enforcement purposes for which award money may not be granted or
584 used include:

585 (a) payment of salaries, retirement benefits, or bonuses to any person;

- 586 (b) payment of expenses not related to law enforcement;
 - 587 (c) uses not specified in the agency's award application;
 - 588 (d) uses not approved by the agency's legislative body;
 - 589 (e) payments, transfers, or pass-through funding to entities other than law enforcement
 - 590 agencies; or
 - 591 (f) uses, payments, or expenses that are not within the scope of the agency's functions.
-
-

Legislative Review Note
Office of Legislative Research and General Counsel