

ASSET FORFEITURE REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires that a criminal charge be brought regarding conduct that has a direct nexus to the seized property in order to hold the property, and that a conviction be obtained for the conduct for a civil forfeiture procedure;
- ▶ modifies the elements of qualifying as an innocent owner regarding property subject to forfeiture;
- ▶ requires a direct nexus of the property to a specific criminal exchange or transaction, in order for the property to be forfeited;
- ▶ provides the procedure for a person who claims ownership of property to petition for return of the property;
- ▶ requires the prosecutor to bring an action for civil forfeiture within 30 days after the conviction for the offense, or the property shall be released to the claimant; and
- ▶ modifies the obligations of a claimant regarding illegal use of the property subject to forfeiture.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **24-1-102**, as last amended by Laws of Utah 2014, Chapter 112

33 **24-4-102**, as enacted by Laws of Utah 2013, Chapter 394

34 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

35 **24-4-104**, as last amended by Laws of Utah 2014, Chapter 112

36 **24-4-107**, as enacted by Laws of Utah 2013, Chapter 394

37 ENACTS:

38 **24-4-103.5**, Utah Code Annotated 1953



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

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

42 **24-1-102. Definitions.**

43 As used in this title:

44 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
45 **24-4-116**.

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

48 (b) An acquittal does not include:

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

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

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

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

54 (4) "Claimant" means any:

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

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

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

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

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

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

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

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

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

71 (a) held an ownership interest in property at the time the conduct subjecting the
72 property to forfeiture occurred, and:

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

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

77 (i) did not give permission for the conduct or participate in the conduct;

78 (ii) did not directly commit the offense; and

79 (iii) did not solicit, request, command, encourage, or intentionally aid another person to
80 engage in the conduct; or

81 (b) acquired an ownership interest in the property and who had no knowledge that the
82 illegal conduct subjecting the property to forfeiture had occurred or that the property had been
83 seized for forfeiture, and:

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

85 (ii) was a person, including a minor child, who acquired an interest in the property
86 through probate or inheritance; or

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

89 (10) (a) "Interest holder" means a secured party as defined in Section [70A-9a-102](#), a

90 mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to
91 an interest in property, whose interest would be perfected against a good faith purchaser for
92 value.

93 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
94 an agent or nominee for another person, or who is not in substantial compliance with any
95 statute requiring an interest in property to be recorded or reflected in public records in order to
96 perfect the interest against a good faith purchaser for value.

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

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

102 (13) "Legislative body" means:

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

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

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

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

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

115 (16) (a) "Proceeds" means:

116 (i) property of any kind that is obtained directly or indirectly as a result of the
117 commission of an offense that gives rise to forfeiture; or

118 (ii) any property acquired directly or indirectly from, produced through, realized
119 through, or caused by an act or omission regarding property under Subsection (16)(a)(i).

120 (b) "Proceeds" includes any property of any kind without reduction for expenses

121 incurred in the acquisition, maintenance, or production of that property, or any other purpose
122 regarding property under Subsection (16)(a)(i).

123 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
124 gives rise to forfeiture.

125 (17) "Program" means the State Asset Forfeiture Grant Program established in Section
126 [24-4-117](#).

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

129 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

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

142 **24-4-102. Property subject to forfeiture.**

143 (1) Except as provided in Subsection [~~(3)~~] (4), all property that has been used to
144 directly facilitate the commission of a federal or state offense and any direct proceeds of
145 criminal activity may be forfeited under this chapter, including:

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

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

149 (2) A finding that property has been used in the commission of criminal activity or is
150 the proceeds of criminal activity requires a criminal conviction regarding the conduct giving
151 rise to forfeiture of the property.

152 ~~[(2)]~~ (3) If the property is used to facilitate a violation of Section 76-10-1204,
 153 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is
 154 limited to property, the seizure or forfeiture of which would not constitute a prior restraint on
 155 the exercise of an affected party's rights under the First Amendment to the Constitution of the
 156 United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully
 157 interfere with the exercise of those rights.

158 ~~[(3)]~~ (4) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local
 159 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection
 160 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

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

- 163 (i) a felony driving under the influence violation under Section 41-6a-502;
- 164 (ii) a felony violation under Subsection 58-37-8(2)(g); or
- 165 (iii) automobile homicide under Section 76-5-207; or

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

168 (i) the denial, suspension, revocation, or disqualification under ~~[Subsection (3)(c)]~~
 169 Subsections (4)(b)(i)(A) through (G) was imposed because of a violation under:

- 170 (A) Section 41-6a-502;
- 171 (B) Section 41-6a-517;
- 172 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
- 173 (D) Section 41-6a-520;
- 174 (E) Subsection 58-37-8(2)(g);
- 175 (F) Section 76-5-207; or

176 (G) a criminal prohibition that the person was charged with violating as a result of a
 177 plea bargain after having been originally charged with violating one or more of the sections or
 178 ordinances described in Subsections ~~[(3)]~~ (4)(b)(i)(A) through (F); or

179 (ii) the denial, suspension, revocation, or disqualification described in Subsections
 180 ~~[(3)]~~ (4)(b)(i)(A) through (G):

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

183 (B) the original denial, suspension, revocation, or disqualification was imposed
184 because of a violation described in Subsections [~~(3)~~] (4)(b)(i)(A) through (G).

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

186 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

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

191 (i) date of the seizure;

192 (ii) property seized;

193 (iii) alleged relationship of the property to the charged offense;

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

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

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

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

200 (ii) personal service.

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

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

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

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

208 (b) The written request shall:

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

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

212 Section 4. Section **24-4-103.5** is enacted to read:

213 **24-4-103.5. Petition to return property held for forfeiture.**

214 (1) (a) A person claiming ownership of property identified in a notice of intent to seek
215 forfeiture under Subsection 24-4-103(1), may file a petition with the court for the return of the
216 property.

217 (b) The petition may be filed in:

218 (i) the court in which criminal proceedings have commenced or have been completed
219 regarding the conduct giving rise to the forfeiture of the seized property; or

220 (ii) the district court of the jurisdiction where the property was seized, if there are no
221 pending criminal proceedings.

222 (c) A copy of the petition shall be served on the prosecuting attorney and the agency
223 which has possession of the property.

224 (2) The court shall provide an opportunity for an expedited hearing to consider:

225 (a) the validity of the claim of ownership;

226 (b) if the property is the only reasonable means for the claimant to pay for legal
227 representation in the forfeiture proceeding or the related criminal proceeding; and

228 (c) if there is a substantial probability that the state will prevail on the issue of
229 forfeiture.

230 (3) After the opportunity for an expedited hearing under Subsection (2), the court may
231 order that the property, or any portion of the property, be:

232 (a) returned to the rightful owner as determined by the court; or

233 (b) held for further legal action.

234 (4) Before the court can order property to be returned to a person claiming ownership
235 of property, the person shall establish by clear and convincing evidence that the person:

236 (a) is the rightful owner; and

237 (b) may lawfully possess the property.

238 (5) If the court orders the property to be returned, the agency that possesses the
239 property shall return the property to the claimant as expeditiously as possible.

240 Section 5. Section **24-4-104** is amended to read:

241 **24-4-104. Civil forfeiture procedure.**

242 (1) (a) ~~[The] A~~ A law enforcement agency ~~[shall promptly return seized property, and the~~
243 ~~prosecuting attorney may take no further action to effect the forfeiture of the property, unless~~
244 ~~within 75 days after the property is seized the prosecuting attorney:]~~ may hold seized property,

245 subject to provisions under Sections 24-4-103 and 24-4-108, pending a final determination in
 246 the criminal prosecution of the conduct giving rise to the forfeiture of the seized property.

247 ~~[(i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);]~~

248 ~~[(ii) obtains a restraining order under Subsection 24-4-105(3);]~~

249 ~~[(iii) files a petition under Subsection 24-4-114(1); or]~~

250 ~~[(iv) files a civil forfeiture complaint.]~~

251 (b) If the prosecuting attorney does not proceed under Section 24-4-105 regarding
 252 criminal forfeiture, the prosecuting attorney may proceed with a civil forfeiture of the seized
 253 property under Subsection (1)(c).

254 (c) Within 30 days after a conviction is obtained for a crime giving rise to forfeiture of
 255 the seized property, the prosecuting attorney may:

256 (i) file a civil forfeiture complaint; or

257 (ii) file a petition for a federal transfer under Subsection 24-4-114(1).

258 (d) If the prosecuting attorney does not elect to proceed under Subsection (1)(c)
 259 regarding civil forfeiture, and the property has not been forfeited pursuant to Section 24-4-105,
 260 the prosecuting attorney shall promptly release the property to the claimant or claimants.

261 (e) The prosecutor shall take all reasonable steps to ensure a forfeiture proceeding
 262 initiated under this section is addressed in a timely manner.

263 ~~[(b) A] (2) The complaint for civil forfeiture under Subsection (1)(c) shall describe~~
 264 ~~with reasonable particularity [the]:~~

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

266 ~~(b) a direct nexus between the seized property and the criminal conviction under~~
 267 ~~Subsection 24-4-102(2);~~

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

269 ~~[(iii)] factual allegations that constitute a basis for forfeiture.]~~

270 (d) a record of the conviction that constitutes a basis for forfeiture.

271 ~~[(2)] (3) (a) After a complaint for civil forfeiture is filed in compliance with the~~
 272 ~~requirements of Subsections (1) and (2), the prosecuting attorney shall serve a copy of the~~
 273 ~~complaint and summons upon each claimant known to the prosecuting attorney within 30 days.~~

274 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
 275 summons upon any claimant who has disclaimed, in writing, an ownership interest in the

276 seized property.

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

278 (i) personal service;

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

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

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

284 (i) in a newspaper of general circulation in the county in which the seizure occurred;
285 and

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

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

289 (i) personal service;

290 (ii) mailing of a written notice; or

291 (iii) publication.

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

294 [~~(3)~~] (4) (a) In any case where the prosecuting attorney files a complaint for civil
295 forfeiture, a claimant may file an answer to the complaint.

296 (b) The answer shall be filed within 30 days after the complaint is served upon the
297 claimant as provided in Subsection [~~(2)(b)~~] (3).

298 [~~(4)~~] (5) Except as otherwise provided in this chapter, forfeiture proceedings are
299 governed by the Utah Rules of Civil Procedure.

300 [~~(5)~~] (6) The court shall take all reasonable steps to expedite civil forfeiture
301 proceedings and shall give these proceedings the same priority as is given to criminal cases.

302 [~~(6)~~] (7) In all suits or actions brought under this section for the civil forfeiture of any
303 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing
304 evidence the extent to which, if any, the property is subject to forfeiture.

305 [~~(7)~~] (8) A claimant may file an answer to a complaint for civil forfeiture without
306 posting bond with respect to the property subject to forfeiture.

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

308 **24-4-107. Innocent owners.**

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

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

314 (a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection
315 [~~(4)~~] (5);

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

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

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

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

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

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

332 [(i)] (a) making a timely notification to a law enforcement agency of information that
333 led the claimant to know that conduct subjecting the property to seizure would occur, was
334 occurring, or has occurred;

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

337 [(iii)] (c) taking reasonable actions to discourage or prevent the illegal use of the

338 property.

339 ~~[(4)]~~ (5) If the state relies on Subsection (2)(a) to establish that a claimant is not an
340 innocent owner, and if the claimant is criminally charged with the conduct giving rise to the
341 forfeiture and is acquitted of that charge on the merits:

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

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

347 ~~[(5)]~~ (6) A person may not assert under this chapter an ownership interest in
348 contraband.

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

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

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

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

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

Legislative Review Note

as of 1-16-15 11:40 AM

Office of Legislative Research and General Counsel