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**PROPERTY DISPOSITION AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad L. Dee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Code regarding forfeiture provisions and consolidates provisions regarding forfeiture and disposition of property, including mislaid property.

**Highlighted Provisions:**

This bill:

- ▶ repeals the current Title 24, Forfeiture Procedures, and enacts a new Title 24, Forfeiture of Property Act, which reinstates forfeiture provisions and also includes various forfeiture provisions previously located in other sections of the Utah Code;
- ▶ provides that the provisions regarding attorney fees and costs are modified to establish that the prevailing party in a forfeiture action may not claim fees and costs in excess of 20% of the value of the property;
- ▶ renames the Crime Reduction Assistance Program to the State Asset Forfeiture Grant Program;
- ▶ amends sections of the code that include various forfeiture provisions by moving those sections into Title 24, Forfeiture of Property Act;
- ▶ includes tobacco products, in addition to cigarettes, in the tobacco forfeiture provisions;
- ▶ amends Title 77, Chapter 24a, regarding unclaimed personal property, to address lost or mislaid personal property and procedures regarding turning found property to law enforcement, the claiming of the property by a rightful owner, and disposition

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28 of unclaimed property;  
29       ▶ provides that all property that has been used to facilitate the commission of a crime  
30 and any proceeds of criminal activity are subject to forfeiture unless a specific law  
31 addresses forfeiture, such as DUI and wildlife offense issues; and  
32       ▶ amends affected references in other sections.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       This bill takes effect on July 1, 2013.

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39       **23-20-1**, as last amended by Laws of Utah 2011, Chapter 297
- 40       **32B-4-206**, as last amended by Laws of Utah 2011, Chapters 307 and 334
- 41       **41-6a-527**, as last amended by Laws of Utah 2012, Chapter 81
- 42       **53-7-406**, as enacted by Laws of Utah 2007, Chapter 362
- 43       **63J-1-602.1**, as last amended by Laws of Utah 2012, Chapter 332
- 44       **76-6-903**, as last amended by Laws of Utah 1999, Chapter 51
- 45       **76-10-1603.5**, as last amended by Laws of Utah 2007, Chapters 129 and 180
- 46       **77-24a-2**, as enacted by Laws of Utah 1986, Chapter 131
- 47       **77-24a-3**, as enacted by Laws of Utah 1986, Chapter 131
- 48       **77-24a-4**, as enacted by Laws of Utah 1986, Chapter 131
- 49       **77-24a-5**, as last amended by Laws of Utah 2009, Chapter 388

50 ENACTS:

- 51       **24-1-101**, Utah Code Annotated 1953
- 52       **24-1-102**, Utah Code Annotated 1953
- 53       **24-1-103**, Utah Code Annotated 1953
- 54       **24-2-101**, Utah Code Annotated 1953
- 55       **24-2-102**, Utah Code Annotated 1953
- 56       **24-2-103**, Utah Code Annotated 1953
- 57       **24-3-101**, Utah Code Annotated 1953
- 58       **24-3-102**, Utah Code Annotated 1953

- 59            **24-3-103**, Utah Code Annotated 1953
- 60            **24-3-104**, Utah Code Annotated 1953
- 61            **24-4-101**, Utah Code Annotated 1953
- 62            **24-4-102**, Utah Code Annotated 1953
- 63            **24-4-103**, Utah Code Annotated 1953
- 64            **24-4-104**, Utah Code Annotated 1953
- 65            **24-4-105**, Utah Code Annotated 1953
- 66            **24-4-106**, Utah Code Annotated 1953
- 67            **24-4-107**, Utah Code Annotated 1953
- 68            **24-4-108**, Utah Code Annotated 1953
- 69            **24-4-109**, Utah Code Annotated 1953
- 70            **24-4-110**, Utah Code Annotated 1953
- 71            **24-4-111**, Utah Code Annotated 1953
- 72            **24-4-112**, Utah Code Annotated 1953
- 73            **24-4-113**, Utah Code Annotated 1953
- 74            **24-4-114**, Utah Code Annotated 1953
- 75            **24-4-115**, Utah Code Annotated 1953
- 76            **24-4-116**, Utah Code Annotated 1953
- 77            **24-4-117**, Utah Code Annotated 1953

78 REPEALS AND REENACTS:

- 79            **77-24a-1**, as last amended by Laws of Utah 2005, Chapter 126

80 REPEALS:

- 81            **24-1-1**, as last amended by Laws of Utah 2002, Chapter 185
- 82            **24-1-2**, as last amended by Laws of Utah 2004, Chapter 296
- 83            **24-1-3**, as last amended by Laws of Utah 2007, Chapter 272
- 84            **24-1-3.5**, as last amended by Laws of Utah 2008, Chapter 3
- 85            **24-1-4**, as last amended by Laws of Utah 2009, Chapter 388
- 86            **24-1-5**, as enacted by Statewide Initiative B, Nov. 7, 2000
- 87            **24-1-6**, as last amended by Laws of Utah 2004, Chapter 296
- 88            **24-1-7**, as last amended by Laws of Utah 2011, Chapter 366
- 89            **24-1-8**, as last amended by Laws of Utah 2011, Chapter 297

- 90            **24-1-9**, as enacted by Statewide Initiative B, Nov. 7, 2000
- 91            **24-1-10**, as last amended by Laws of Utah 2004, Chapter 296
- 92            **24-1-11**, as last amended by Laws of Utah 2004, Chapter 296
- 93            **24-1-12**, as last amended by Laws of Utah 2004, Chapter 296
- 94            **24-1-13**, as enacted by Statewide Initiative B, Nov. 7, 2000
- 95            **24-1-14**, as last amended by Laws of Utah 2004, Chapter 296
- 96            **24-1-15**, as last amended by Laws of Utah 2007, Chapter 180
- 97            **24-1-17**, as enacted by Laws of Utah 2004, Chapter 296
- 98            **24-1-18**, as enacted by Laws of Utah 2004, Chapter 296
- 99            **24-1-19**, as last amended by Laws of Utah 2011, Chapter 342
- 100          **24-1-20**, as last amended by Laws of Utah 2011, Chapter 342
- 101          **41-6a-211**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 102          **58-37-13**, as last amended by Laws of Utah 2002, Chapter 185
- 103          **76-3-501**, as last amended by Laws of Utah 2002, Chapter 185
- 104          **76-10-525**, as enacted by Laws of Utah 1973, Chapter 196
- 105          **76-10-1107**, as last amended by Laws of Utah 2007, Chapter 180
- 106          **76-10-1908**, as last amended by Laws of Utah 2002, Chapter 185
- 107          **77-24-1**, as last amended by Laws of Utah 2005, Chapter 126
- 108          **77-24-1.5**, as last amended by Laws of Utah 2011, Chapter 130
- 109          **77-24-2**, as last amended by Laws of Utah 2012, Chapters 47 and 284
- 110          **77-24-3**, as enacted by Laws of Utah 1980, Chapter 15
- 111          **77-24-4**, as last amended by Laws of Utah 2005, Chapter 126
- 112          **77-24-5**, as last amended by Laws of Utah 2005, Chapter 126

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

115            Section 1. Section **23-20-1** is amended to read:

116            **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**  
 117 **of property.**

118            (1) Conservation officers of the division shall enforce the provisions of this title with  
 119 the same authority and following the same procedures as other law enforcement officers.

120            (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

121 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife  
122 shall be confiscated by the court and sold or otherwise disposed of by the division.

123 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

124 (iii) Migratory wildfowl may not be sold, but shall be given to a charitable institution  
125 or used for other charitable purposes.

126 ~~[(3) Materials and devices used for the unlawful taking or possessing of protected  
127 wildlife shall be seized, and upon a finding by the court that they were used in the unlawful  
128 taking or possessing of protected wildlife, the materials and devices shall be subject to criminal  
129 or civil forfeiture under the procedures and substantive protections established in Title 24,  
130 Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

131 ~~[(4)]~~ (3) (a) Conservation officers may seize and impound a vehicle used for the  
132 unlawful taking or possessing of protected wildlife for any of the following purposes:

133 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

134 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search  
135 warrant; or

136 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or  
137 possessed.

138 (b) The division shall store any seized vehicle in a public or private garage, state  
139 impound lot, or other secured storage facility.

140 ~~[(5)]~~ (4) A seized vehicle shall be released to the owner no later than 30 days after the  
141 date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of  
142 wildlife by a person who is charged with committing a felony under this title.

143 ~~[(6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful  
144 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject  
145 to criminal or civil forfeiture under the procedures and substantive protections established in  
146 Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

147 ~~[(b)]~~ (5) (a) The owner of a seized vehicle is liable for the payment of any impound fee  
148 if the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a  
149 court to be guilty of a violation of this title.

150 ~~[(c)]~~ (b) The owner of a seized vehicle is not liable for the payment of any impound fee  
151 or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

152 (i) no charges are filed or all charges are dropped which involve the use of the vehicle  
153 for the unlawful taking or possessing of wildlife;

154 (ii) the person charged with using the vehicle for the unlawful taking or possessing of  
155 wildlife is found by a court to be not guilty; or

156 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

157 Section 2. Section 24-1-101 is enacted to read:

158 **TITLE 24. FORFEITURE OF PROPERTY ACT**

159 **CHAPTER 1. GENERAL PROVISIONS**

160 **24-1-101. Title.**

161 (1) This title is known as the "Forfeiture of Property Act."

162 (2) This chapter is known as "General Provisions."

163 Section 3. Section 24-1-102 is enacted to read:

164 **24-1-102. Definitions.**

165 As used in this title:

166 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
167 24-4-115.

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

170 (b) An acquittal does not include:

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

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

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

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

176 (4) (a) "Claimant" means any:

177 (i) owner of property as defined in this section;

178 (ii) interest holder as defined in this section; or

179 (iii) person from whom property is seized for forfeiture.

180 (b) A claimant does not include a person or entity who disclaims in writing ownership  
181 of or interest in property.

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

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

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

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

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

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

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

196 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;

197 or

198 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable  
199 steps to prohibit the illegal use of the property; or

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

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

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

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

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

212 (b) "Interest holder" does not mean a person who holds property for the benefit of or as  
213 an agent or nominee for another person, or who is not in substantial compliance with any

214 statute requiring an interest in property to be recorded or reflected in public records in order to  
215 perfect the interest against a good faith purchaser for value.

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

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

221 (13) "Legislative body" means:

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

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

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

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

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

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

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

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

239 (b) "Proceeds" includes any property of any kind without reduction for expenses  
240 incurred in the acquisition, maintenance, or production of that property, or any other purpose  
241 regarding property under Subsection (16)(a)(i).

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

244 (17) "Program" means the State Asset Forfeiture Grant Program established in Section



245 24-4-117.

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

248 (19) "Prosecuting attorney" means:

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

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

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

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

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

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

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

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

260 Section 4. Section **24-1-103** is enacted to read:

261 **24-1-103. Jurisdiction and venue.**

262 (1) A state district court has jurisdiction over any action filed in accordance with this  
263 title regarding:

264 (a) all interests in property if the property is within this state at the time the action is  
265 filed; and

266 (b) a claimant's interests in the property, if the claimant is subject to the personal  
267 jurisdiction of the district court.

268 (2) (a) In addition to the venue provided for under Title 78B, Chapter 3, Part 3, Place  
269 of Trial - Venue, or any other provisions of law, a proceeding for forfeiture under this title may  
270 be maintained in the judicial district in which:

271 (i) any part of the property is found; or

272 (ii) a civil or criminal action could be maintained against a claimant for the conduct  
273 alleged to constitute grounds for forfeiture.

274 (b) A claimant may obtain a change of venue under Section 78B-3-309.

275 Section 5. Section **24-2-101** is enacted to read:

## 276 CHAPTER 2. SEIZURE OF PROPERTY

277 **24-2-101. Title.**278 This chapter is known as "Seizure of Property."279 Section 6. Section **24-2-102** is enacted to read:280 **24-2-102. Grounds for seizing property.**281 (1) Property may be seized by a peace officer or any other person authorized by law  
282 upon process issued by a court having jurisdiction over the property in accordance with the  
283 Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.284 (2) Property may be seized under this chapter when:285 (a) the seizure is incident to an arrest;286 (b) the property seized is the subject of a prior judgment in favor of the state in a  
287 criminal injunction or forfeiture proceeding under this title; or288 (c) the peace officer or other person authorized by law has probable cause to believe  
289 that the property:290 (i) is directly or indirectly dangerous to health or safety;291 (ii) is evidence of a crime;292 (iii) has been used or was intended to be used to commit a crime; or293 (iv) is proceeds of a crime.294 Section 7. Section **24-2-103** is enacted to read:295 **24-2-103. Property seized by a peace officer -- Custody and control of property.**296 (1) (a) When property is seized by a peace officer, the peace officer or the officer's  
297 employing agency shall provide a receipt to the person from whom the property was seized.298 (b) The receipt shall describe the:299 (i) property seized;300 (ii) date of seizure; and301 (iii) name and contact information of the officer's employing agency.302 (c) A copy of the receipt shall be maintained by the agency.303 (d) If custody of the property is transferred to another agency, a copy of the receipt  
304 under Subsection (1)(a) shall be provided with the property.305 (2) The agency responsible for maintaining the property shall:306 (a) hold all seized property in safe custody until it can be disposed of as provided in

307 this title; and

308 (b) maintain a record of the property that includes:

309 (i) a detailed inventory of all property seized;

310 (ii) the name of the person from whom it was seized; and

311 (iii) the agency's case number.

312 (3) Property seized under this title is not recoverable by replevin, but is considered in  
313 the agency's custody subject only to the orders of the court or the official having jurisdiction.

314 (4) All controlled substances or other contraband that is seized by a peace officer may  
315 be processed for evidentiary or investigative purposes, including sampling or other preservation  
316 procedure prior to disposal or destruction.

317 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable  
318 instruments into a separate, restricted, interest-bearing account maintained by the agency solely  
319 for the purpose of managing and protecting the property from commingling, loss, or  
320 devaluation.

321 (b) Each agency shall have written policies for the identification, tracking,  
322 management, and safekeeping of seized property, which shall include a prohibition against the  
323 transfer, sale, or auction of seized property to any employee of the agency.

324 (6) If a peace officer or the officer's employing agency records an interview of a minor  
325 child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or  
326 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of  
327 the last recording unless the prosecuting attorney requests in writing that the recording be  
328 retained for an additional period of time.

329 (7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction  
330 Information Act, governs the disposition of property held by a pawn or secondhand business in  
331 the course of its business.

332 Section 8. Section **24-3-101** is enacted to read:

**CHAPTER 3. PROPERTY HELD AS EVIDENCE**

**24-3-101. Title.**

335 This chapter is known as "Property Held as Evidence."

336 Section 9. Section **24-3-102** is enacted to read:

**24-3-102. Property received in evidence.**

338 (1) When property is received in evidence by the court, the clerk of the court shall  
339 retain the property or the clerk shall return the property to the custody of the peace officer or  
340 the agency employing the peace officer.

341 (2) The property shall be retained by the clerk or the officer or the officer's agency until  
342 all direct appeals and retrials are final, at which time the property shall be disposed of in  
343 accordance with this title.

344 (3) If the prosecuting attorney considers it necessary to retain control over the evidence  
345 in anticipation of possible collateral attacks upon the judgment or for use in a potential  
346 prosecution, the prosecutor may decline to authorize the disposal of the property under this  
347 chapter.

348 Section 10. Section **24-3-103** is enacted to read:

349 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

350 (1) When the prosecuting attorney determines that property no longer needs to be held  
351 as evidence, the prosecuting attorney may:

352 (a) petition the court to apply any property that is money towards restitution, fines,  
353 fees, or monetary judgments owed by the owner of the property;

354 (b) petition the court for an order transferring ownership of any weapons to the seizing  
355 agency for its use and disposal as the seizing agency determines, if the owner:

356 (i) is the person who committed the crime for which the weapon was seized; or

357 (ii) may not lawfully possess the weapon; or

358 (c) notify the agency that has possession of the property that the property may be:

359 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

360 (ii) disposed of, if the property is contraband.

361 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of  
362 the property to advise the owner that the property is to be returned.

363 (3) Before the agency may release property to a person claiming ownership of the  
364 property, the person shall establish to the agency that the person:

365 (a) is the rightful owner; and

366 (b) may lawfully possess the property.

367 (4) (a) When property is returned to the owner, a receipt listing in detail the property  
368 returned shall be signed by the owner.

369 (b) The receipt shall be retained by the agency and a copy shall be provided to the  
370 owner.

371 (5) If the agency is unable to locate the rightful owner of the property or if the rightful  
372 owner is not entitled to lawfully possess the property, the agency may:

373 (a) apply the property to a public interest use;

374 (b) sell the property at public auction and apply the proceeds of the sale to a public  
375 interest use; or

376 (c) destroy the property if it is unfit for a public interest use or for sale.

377 (6) Before applying the property or the proceeds from the sale of the property to a  
378 public interest use, the agency shall obtain from the legislative body of its jurisdiction:

379 (a) permission to apply the property or the proceeds to public interest use; and

380 (b) the designation and approval of the public interest use of the property or the  
381 proceeds.

382 Section 11. Section **24-3-104** is enacted to read:

383 **24-3-104. Petition to return property held as evidence.**

384 (1) (a) A person claiming ownership of property held as evidence may file a petition  
385 with the court for the return of the property.

386 (b) The petition may be filed in:

387 (i) the court in which criminal proceedings have commenced regarding the conduct for  
388 which the property is held as evidence; or

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

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

393 (2) The court shall provide an opportunity for an expedited hearing. After the  
394 opportunity for an expedited hearing, the court may order that the property be:

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

396 (b) applied directly or by proceeds of the sale of the property toward restitution, fines,  
397 or fees owed by the rightful owner in an amount set by the court;

398 (c) converted to a public interest use;

399 (d) held for further legal action;

400 (e) sold at public auction and the proceeds of the sale applied to a public interest use;

401 or

402 (f) destroyed.

403 (3) Before the court can order property be returned to a person claiming ownership of

404 property, the person shall establish by clear and convincing evidence that the person:

405 (a) is the rightful owner; and

406 (b) may lawfully possess the property.

407 (4) If the court orders the property to be returned, the agency that possesses the

408 property shall return the property to the claimant as expeditiously as possible.

409 Section 12. Section **24-4-101** is enacted to read:

410 **CHAPTER 4. PROPERTY HELD FOR FORFEITURE**

411 **24-4-101. Title.**

412 This chapter is known as "Property Held for Forfeiture."

413 Section 13. Section **24-4-102** is enacted to read:

414 **24-4-102. Property subject to forfeiture.**

415 (1) Except as provided in Subsection (3), all property that has been used to facilitate

416 the commission of a federal or state offense and any proceeds of criminal activity may be

417 forfeited under this chapter, including:

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

419 (b) tangible and intangible personal property, including money, rights, privileges,

420 interests, claims, and securities of any kind.

421 (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205,

422 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to

423 property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise

424 of an affected party's rights under the First Amendment to the Constitution of the United States

425 or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the

426 exercise of those rights.

427 (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local

428 ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection

429 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

430 (a) the operator of the vehicle has previously been convicted of a violation, committed

431 after May 12, 2009, of:

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

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

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

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

437 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(c) was  
438 imposed because of a violation under:

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

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

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

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

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

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

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

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

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

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

454 Section 14. Section **24-4-103** is enacted to read:

455 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

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

460 (i) date of the seizure;

461 (ii) property seized;

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

464 (iv) statutory basis for the forfeiture, including the judicial proceedings by which  
465 property may be forfeited under this chapter.

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

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

468 (ii) personal service.

469 (d) The court may void any forfeiture made without notice under Subsection (1)(a),

470 unless the agency demonstrates:

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

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

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

476 (b) The written request shall:

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

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

480 Section 15. Section **24-4-104** is enacted to read:

481 **24-4-104. Civil forfeiture procedure.**

482 (1) (a) Within 90 days from the date the property is seized, the prosecuting attorney  
483 may elect to file a complaint for civil forfeiture in the appropriate district court.

484 (b) The complaint shall describe with reasonable particularity the:

485 (i) property that is the subject of the forfeiture proceeding;

486 (ii) date and place of seizure; and

487 (iii) factual allegations that constitute a basis for forfeiture.

488 (2) (a) After the complaint is filed, the prosecuting attorney shall serve a copy of the  
489 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

490 (b) Service of the complaint and summons shall be by:

491 (i) personal service;

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



493 (iii) if the prosecuting attorney demonstrates to the court that service cannot reasonably  
494 be made by personal service or certified mail, the court may then allow service by electronic  
495 publication on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

496 (c) Service is effective upon the earlier of:

497 (i) personal service;

498 (ii) mailing of a written notice; or

499 (iii) electronic publication.

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

502 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a  
503 claimant may file an answer to the complaint.

504 (b) The answer shall be filed within 30 days after the complaint is served upon the  
505 claimant as provided in Subsection (2)(b).

506 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed  
507 by the Utah Rules of Civil Procedure.

508 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and  
509 shall give these proceedings the same priority as is given to criminal cases.

510 (6) In all suits or actions brought under this section for the civil forfeiture of any  
511 property, the burden of proof is on the prosecuting attorney to establish by clear and convincing  
512 evidence the extent to which, if any, the property is subject to forfeiture.

513 (7) A claimant may file an answer to a complaint for civil forfeiture without posting  
514 bond with respect to the property subject to forfeiture.

515 Section 16. Section **24-4-105** is enacted to read:

516 **24-4-105. Criminal forfeiture procedure.**

517 (1) If a claimant is criminally prosecuted for conduct giving rise to the forfeiture, the  
518 prosecuting attorney may elect to seek forfeiture of the claimant's interest in the property  
519 through the criminal case.

520 (2) If the prosecuting attorney elects to seek forfeiture of the claimant's interest in the  
521 property through the criminal case, the information or indictment shall state that the claimant's  
522 interest in the property is subject to forfeiture and the basis for the forfeiture.

523 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining

524 orders or injunctions, or take other reasonable actions to preserve for forfeiture under this  
525 section, any property subject to forfeiture if, after notice to known claimants and claimants who  
526 can be identified after due diligence and who are known to have an interest in the property, and  
527 after affording those persons an opportunity for a hearing, the court determines that:

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

531 (ii) the need to preserve the availability of the property or prevent its sale, transfer,  
532 destruction, or removal through the entry of the requested order outweighs the hardship against  
533 any party against whom the order is to be entered.

534 (b) A temporary restraining order may be entered ex parte upon application of the  
535 prosecuting attorney before or after an information or indictment has been filed with respect to  
536 the property, if the prosecuting attorney demonstrates that:

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

539 (ii) provision of notice would jeopardize the availability of the property for forfeiture  
540 or would jeopardize an ongoing criminal investigation.

541 (c) The temporary order expires not more than 10 days after entry unless extended for  
542 good cause shown or unless the party against whom it is entered consents to an extension.

543 (d) After service of the temporary order upon any claimants known to the prosecuting  
544 attorney, a hearing concerning the order entered under this section shall be held as soon as  
545 practicable and prior to the expiration of the temporary order.

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

548 (4) (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the  
549 prosecutor shall ask the finder of fact to make a specific finding as to whether the property or  
550 any part of it is subject to forfeiture.

551 (b) A determination of whether property is subject to forfeiture under this section shall  
552 be proven beyond a reasonable doubt.

553 (5) (a) Upon conviction of a claimant for violating any provision of state law  
554 subjecting a claimant's property to forfeiture and a finding by the trier of fact that the property

555 is subject to forfeiture, the court shall enter a judgment and order the property forfeited to the  
556 state upon the terms stated by the court in its order.

557 (b) Following the entry of an order declaring property forfeited, the court may, upon  
558 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,  
559 require the execution of satisfactory performance bonds, appoint receivers, conservators,  
560 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in  
561 property ordered forfeited.

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

564 (ii) Any property right or interest under this Subsection (6)(a) not exercisable by or  
565 transferable for value to the state expires and does not revert to the defendant.

566 (iii) The defendant or any person acting in concert with or on behalf of the defendant is  
567 not eligible to purchase forfeited property at any sale held by the seizing agency unless  
568 approved by the judge.

569 (b) The court may stay the sale or disposition of the property pending the conclusion of  
570 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that  
571 proceeding with the sale or disposition of the property may result in irreparable injury, harm, or  
572 loss.

573 (7) Except as provided under Subsection (3) or (10), a party claiming an interest in  
574 property subject to forfeiture under this section:

575 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of  
576 property under this section; and

577 (b) may not commence an action at law or equity concerning the validity of the party's  
578 alleged interests in the property subsequent to the filing of an indictment or an information  
579 alleging that the property is subject to forfeiture under this section.

580 (8) The district court that has jurisdiction of a case under this part may enter orders  
581 under this section without regard to the location of any property that may be subject to  
582 forfeiture under this section or that has been ordered forfeited under this section.

583 (9) To facilitate the identification or location of property declared forfeited and to  
584 facilitate the disposition of petitions for remission or mitigation of forfeiture after the entry of  
585 an order declaring property forfeited to the state, the court may, upon application of the

586 prosecuting attorney, order that the testimony of any witness relating to the forfeited property  
587 be taken by deposition, and that any book, paper, document, record, recording, or other  
588 material shall be produced as provided for depositions and discovery under the Utah Rules of  
589 Civil Procedure.

590 (10) (a) (i) Following the entry of an order of forfeiture under this section, the  
591 prosecuting attorney shall publish notice of the order's intent to dispose of the property by  
592 electronic publication on Utah's Public Legal Notice Website established in Subsection  
593 45-1-101(2)(b).

594 (ii) The prosecuting attorney shall also send written notice to any claimants, other than  
595 the defendant, known to the prosecuting attorney to have an interest in the property, at the  
596 claimant's last known address.

597 (b) (i) Any claimant, other than the defendant, asserting a legal interest in property that  
598 has been ordered forfeited to the state under this section may, within 30 days after the notice  
599 has been published or the claimant receives the written notice under Subsection (10)(a),  
600 whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's  
601 alleged interest in the property.

602 (ii) Any genuine issue of material fact, including issues of standing, may be tried to a  
603 jury upon demand of any party.

604 (c) The petition shall:

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

606 (ii) set forth the nature and extent of the claimant's right, title, or interest in the  
607 property, the time and circumstances of the claimant's acquisition of the right, title, or interest  
608 in the property; and

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

610 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The  
611 court may consolidate a trial or hearing on the petition and any petition filed by any claimant  
612 other than the defendant under this section. The court shall permit the parties to conduct  
613 pretrial discovery pursuant to the Utah Rules of Civil Procedure.

614 (e) (i) At the trial or hearing, the claimant may testify and present evidence and  
615 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.  
616 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the

617 claim to the property and cross-examine witnesses who appear.

618 (ii) In addition to testimony and evidence presented at the trial or hearing, the court  
619 may consider the relevant portion of the record of the criminal case that resulted in the order of  
620 forfeiture.

621 (iii) Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

622 (f) The court shall amend the order of forfeiture in accordance with its determination, if  
623 after the trial or hearing, the court or jury determines that the petitioner has established by a  
624 preponderance of the evidence that:

625 (i) the claimant has a legal right, title, or interest in the property, and the right, title, or  
626 interest renders the order of forfeiture invalid in whole or in part because the right, title, or  
627 interest was vested in the claimant rather than the defendant or was superior to any right, title,  
628 or interest of the defendant at the time of the commission of the acts or conduct that gave rise  
629 to the forfeiture of the property under this section; or

630 (ii) the claimant acquired the right, title, or interest in the property in a bona fide  
631 transaction for value, and, at the time of acquisition, the claimant did not know that the  
632 property was subject to forfeiture.

633 (g) Following the court's disposition of all petitions filed under this Subsection (10), or  
634 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)  
635 for the filing of petitions, the state has clear title to property subject to the order of forfeiture  
636 and may warrant good title to any subsequent purchaser or transferee.

637 Section 17. Section **24-4-106** is enacted to read:

638 **24-4-106. Trial by jury.**

639 The right to trial by jury applies to forfeiture proceedings under this chapter.

640 Section 18. Section **24-4-107** is enacted to read:

641 **24-4-107. Innocent owners.**

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

643 (2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the  
644 burden of establishing evidence that a claimant:

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

646 (b) knew of the conduct giving rise to the forfeiture, and allowed the property to be  
647 used in furtherance of the conduct;

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

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

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

654 (3) (a) A claimant under this chapter is not required to take steps to prevent illegal use  
655 or criminal activity regarding the property that the claimant reasonably believes would be likely  
656 to result in physical harm or danger to any person.

657 (b) A claimant may demonstrate that the claimant took reasonable action to prohibit the  
658 illegal use of the property by:

659 (i) making a timely notification to a law enforcement agency of information that led the  
660 claimant to know that conduct subjecting the property to seizure would occur, was occurring,  
661 or has occurred;

662 (ii) timely revoking or attempting to revoke permission to use the property regarding  
663 those engaging in the illegal conduct; or

664 (iii) taking reasonable actions to discourage or prevent the illegal use of the property.

665 (4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent  
666 owner, and if the claimant is criminally charged with the conduct giving rise to the forfeiture  
667 and is acquitted of that charge on the merits:

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

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

673 (5) A person may not assert under this chapter an ownership interest in contraband.

674 (6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting  
675 attorney establishes that:

676 (a) the claimant has engaged in conduct giving cause for forfeiture;

677 (b) the property was acquired by the claimant during that period of the conduct giving  
678 cause for forfeiture or within a reasonable time after that period; and

679 (c) there was no likely source for the purchase or acquisition of the property other than  
680 the conduct giving cause for forfeiture.

681 (7) A finding that property is the proceeds of conduct giving cause for forfeiture does  
682 not require proof that the property was the proceeds of any particular exchange or transaction.

683 Section 19. Section **24-4-108** is enacted to read:

684 **24-4-108. Release of property held for forfeiture on certain grounds.**

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

688 (2) The seizing agency or the prosecuting attorney may authorize the release of  
689 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

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

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

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

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

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

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

703 (i) the bond tendered is inadequate;

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

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

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

710 (6) A claimant is entitled to the immediate release of property held for forfeiture  
711 pending the final determination of forfeiture if:  
712 (a) the claimant had a possessory interest in the property at the time of seizure;  
713 (b) continued possession by the agency or the state pending the final disposition of the  
714 forfeiture proceedings will cause substantial hardship to the claimant, such as:  
715 (i) preventing the functioning of a legitimate business;  
716 (ii) preventing any individual from working;  
717 (iii) preventing any child from attending elementary or secondary school;  
718 (iv) preventing or hindering any person from receiving necessary medical care;  
719 (v) hindering the care of an elderly or disabled dependent child or adult;  
720 (vi) leaving any individual homeless; or  
721 (vii) any other condition that the court determines causes a substantial hardship;  
722 (c) the hardship from the continued possession of the property by the agency outweighs  
723 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is  
724 returned to the claimant during the pendency of the proceeding; and  
725 (d) determination of substantial hardship under this Subsection (6) is based upon the  
726 property's use prior to the seizure.  
727 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a  
728 claimant may file a motion for hardship release:  
729 (a) in the court in which forfeiture proceedings have commenced; or  
730 (b) in any district court having jurisdiction over the property, if forfeiture proceedings  
731 have not yet commenced.  
732 (8) The motion for hardship release shall also be served upon the prosecuting attorney  
733 or the seizing agency within 10 days after filing the motion.  
734 (9) The court shall render a decision on a motion for hardship filed under this section  
735 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting  
736 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement  
737 of both parties or by the court for good cause shown.  
738 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the  
739 court shall order the property immediately released to the claimant pending completion of  
740 proceedings by the government to obtain forfeiture of the property.



741 (b) The court may place conditions on release of the property as it finds necessary and  
742 appropriate to preserve the availability of the property or its equivalent for forfeiture.

743 (11) The hardship release under this section does not apply to:

744 (a) contraband;

745 (b) currency or other monetary instrument or electronic funds; or

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

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

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

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

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

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

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

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

764 Section 20. Section **24-4-109** is enacted to read:

765 **24-4-109. Postjudgment interest.**

766 In any proceeding to forfeit currency or other negotiable instruments under this chapter,  
767 the court shall award a prevailing party postjudgment interest on the currency or negotiable  
768 instruments at the interest rate established under Section 15-1-4.

769 Section 21. Section **24-4-110** is enacted to read:

770 **24-4-110. Attorney fees and costs.**

771 (1) In any forfeiture proceeding under this chapter, the court may award a prevailing

772 party reasonable:

773 (a) legal costs; and

774 (b) attorney fees.

775 (2) The legal costs and attorney fees awarded by the court to the prevailing party may

776 not exceed 20% of the value of the property.

777 (3) A party that prevails only in part is entitled to recover reasonable legal costs and

778 attorney fees only on those issues on which the party prevailed.

779 Section 22. Section **24-4-111** is enacted to read:

780 **24-4-111. Compensation for damaged property.**

781 (1) If property seized for forfeiture is returned by operation of this chapter, a claimant

782 has a civil right of action against a seizing agency for any claim based upon the negligent

783 destruction, loss, damage, or other injury to seized property while in the possession or custody

784 of the agency.

785 (2) As used in this section, "damage or other injury" does not include normal

786 depreciation, deterioration, or ordinary wear and tear.

787 Section 23. Section **24-4-112** is enacted to read:

788 **24-4-112. Limitation on fees for holding seized property.**

789 In any civil or criminal proceeding under this chapter in which a judgment is entered in

790 favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed

791 by the prosecuting attorney, the seizing agency may not charge that claimant any fee or cost for

792 holding seized property.

793 Section 24. Section **24-4-113** is enacted to read:

794 **24-4-113. Proportionality.**

795 (1) (a) A claimant's interest in property that is used to facilitate a crime, excluding

796 contraband, is not subject to forfeiture under any provision of state law if the forfeiture is

797 substantially disproportionate to the use of the property in committing or facilitating a violation

798 of state law and the value of the property.

799 (b) Forfeiture of property used solely in a manner that is merely incidental and not

800 instrumental to the commission or facilitation of a violation of law is not proportional.

801 (2) (a) In determining proportionality, the court shall consider:

802 (i) the conduct giving cause for the forfeiture;

803 (ii) what portion of the forfeiture, if any, is remedial in nature;  
804 (iii) the gravity of the conduct for which the claimant is responsible in light of the  
805 offense; and  
806 (iv) the value of the property.  
807 (b) If the court finds that the forfeiture is substantially disproportional to the conduct  
808 for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds  
809 appropriate.  
810 (3) The prosecuting attorney has the burden to demonstrate that any forfeiture is  
811 proportional to the conduct giving rise to the forfeiture.  
812 (4) In all cases the court shall decide questions of proportionality.  
813 (5) Forfeiture of any proceeds is proportional.  
814 Section 25. Section **24-4-114** is enacted to read:  
815 **24-4-114. Transfer and sharing procedures.**  
816 (1) (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture  
817 proceedings under this chapter may not directly or indirectly transfer property held for  
818 forfeiture and not already named in a criminal indictment to any federal agency or any  
819 governmental entity not created under and subject to state law unless:  
820 (i) the conduct giving rise to the investigation or seizure is interstate in nature and  
821 sufficiently complex to justify the transfer;  
822 (ii) the property may only be forfeited under federal law; or  
823 (iii) pursuing forfeiture under state law would unreasonably burden prosecuting  
824 attorneys or state law enforcement agencies.  
825 (b) In making a determination under this section, a court may conduct an in camera  
826 inspection of evidence provided by the prosecuting attorney or seizing agency.  
827 (2) All property, money, or other things of value received by an agency pursuant to  
828 federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or  
829 the proceeds of the sale of forfeited property to an agency:  
830 (a) shall be used in compliance with federal laws and regulations relating to equitable  
831 sharing;  
832 (b) may be used for those law enforcement purposes specified in Subsection  
833 24-4-117(9); and

834 (c) may not be used for those law enforcement purposes prohibited in Subsection  
835 24-4-117(10).

836 (3) A state or local law enforcement agency awarded any equitable share of property  
837 forfeited by the federal government may only use the award money after approval of the use by  
838 the agency's legislative body.

839 (4) Each year, every agency awarded any equitable share of property forfeited by the  
840 federal government shall file with the commission:

841 (a) a copy of that agency's federal equitable sharing certification; and

842 (b) information, on a form provided by the commission, that details all awards received  
843 from the federal government during the preceding reporting period, including:

844 (i) the agency's case number or other identification;

845 (ii) the amount of the award;

846 (iii) the date of the award;

847 (iv) the identity of any federal agency involved in the forfeiture;

848 (v) how the awarded property has been used; and

849 (vi) a statement signed by both the agency's executive officer or designee and by the  
850 agency's legal counsel confirming that the agency has only used the awarded property for crime  
851 reduction or law enforcement purposes authorized under Section 24-4-117, and only upon  
852 approval by the agency's legislative body.

853 Section 26. Section **24-4-115** is enacted to read:

854 **24-4-115. Disposition and allocation of forfeiture property.**

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

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

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

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

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

865 (B) otherwise in saleable condition; or

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

868 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section  
869 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other  
870 tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the  
871 cigarette or tobacco product brand shall be permitted to inspect the cigarette.

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

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

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

879 (b) pay the legal costs and attorney fees associated with the litigation of the forfeiture  
880 proceeding.

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

884 (5) The remaining currency and the proceeds or revenue from the sale of the property  
885 shall then be transferred to the commission and deposited into the account.

886 Section 27. Section **24-4-116** is enacted to read:

887 **24-4-116. Criminal Forfeiture Restricted Account.**

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

890 (2) Proceeds from forfeited property and forfeited money through state forfeitures shall  
891 be deposited into the account.

892 (3) Money in the account shall be appropriated to the commission for implementing the  
893 program under Section 24-4-117.

894 Section 28. Section **24-4-117** is enacted to read:

895 **24-4-117. State Asset Forfeiture Grant Program.**

- 896 (1) There is created the State Asset Forfeiture Grant Program.  
897 (2) The program shall fund crime prevention and law enforcement activities that have  
898 the purpose of:  
899 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal  
900 activities;  
901 (b) weakening criminal enterprises by removing the instrumentalities of crime;  
902 (c) reducing crimes involving substance abuse by supporting the creation,  
903 administration, or operation of drug court programs throughout the state;  
904 (d) encouraging cooperation between local, state, and multijurisdictional law  
905 enforcement agencies;  
906 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited  
907 proceeds of crime; and  
908 (f) increasing the equitability and accountability of the use of forfeited property used to  
909 assist law enforcement in reducing and preventing crime.  
910 (3) (a) When property is forfeited under this chapter and transferred to the account, the  
911 commission shall allocate and administer grants from the account to state, local, or  
912 multijurisdictional law enforcement agencies or political subdivisions of the state in  
913 compliance with this section and to further the program purposes under Subsection (2).  
914 (b) The commission may retain up to 3% of the annual appropriation from the account  
915 to pay for administrative costs incurred by the commission, including salary and benefits,  
916 equipment, supplies, or travel costs that are directly related to the administration of the  
917 program.  
918 (4) Agencies or political subdivisions shall apply for an award from the program by  
919 completing and submitting forms specified by the commission.  
920 (5) In granting the awards, the commission shall ensure that the amount of each award  
921 takes into consideration the:  
922 (a) demonstrated needs of the agency;  
923 (b) demonstrated ability of the agency to appropriately use the award;  
924 (c) degree to which the agency's need is offset through the agency's participation in  
925 federal equitable sharing or through other federal and state grant programs; and  
926 (d) agency's cooperation with other state and local agencies and task forces.

927 (6) Applying agencies or political subdivisions shall demonstrate compliance with all  
928 reporting and policy requirements applicable under this chapter and under Title 63M, Chapter  
929 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

930 (7) (a) Recipient law enforcement agencies may only use award money after approval  
931 by the agency's legislative body.

932 (b) The award money is nonlapsing.

933 (8) A recipient law enforcement agency or political subdivision shall use awards only  
934 for law enforcement purposes as described in this section, and only as these purposes are  
935 specified by the agency or political subdivision in its application for the award.

936 (9) Permissible law enforcement purposes for which award money may be used  
937 include:

938 (a) controlled substance interdiction and enforcement activities;

939 (b) drug court programs;

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

941 (d) law enforcement training that includes:

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

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

946 (iii) the Tenth Amendment to the United States Constitution regarding states'

947 sovereignty and the states' reserved rights;

948 (e) law enforcement or detention facilities;

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

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

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

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

956 (10) Law enforcement purposes for which award money may not be granted or used  
957 include:

- 958 (a) payment of salaries, retirement benefits, or bonuses to any person;
- 959 (b) payment of expenses not related to law enforcement;
- 960 (c) uses not specified in the agency's award application;
- 961 (d) uses not approved by the agency's legislative body;
- 962 (e) payments, transfers, or pass-through funding to entities other than law enforcement
- 963 agencies; or

964 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

965 (11) (a) For each fiscal year, any state, local, or multijurisdictional agency or political  
 966 subdivision that received an award shall prepare, and file with the commission, a report in a  
 967 form specified by the commission.

968 (b) The report shall include the following regarding each award:

- 969 (i) the agency's name;
- 970 (ii) the amount of the award;
- 971 (iii) the date of the award;
- 972 (iv) how the award has been used; and

973 (v) a statement signed by both the agency's or political subdivision's executive officer  
 974 or designee and by the agency's legal counsel, that:

975 (A) the agency or political subdivision has complied with all inventory, policy, and  
 976 reporting requirements of this chapter; and

977 (B) all awards were used for crime reduction or law enforcement purposes as specified  
 978 in the application and only upon approval by the agency's or political subdivision's legislative  
 979 body.

980 (12) (a) The commission shall report in writing to the legislative Law Enforcement and  
 981 Criminal Justice Interim Committee annually regarding the forfeited property transferred to the  
 982 account, awards made by the program, uses of program awards, and any equitable share of  
 983 property forfeited by the federal government as reported by agencies pursuant to Subsection  
 984 24-4-114(4).

985 (b) The report shall be submitted annually on or before November 1.

986 Section 29. Section **32B-4-206** is amended to read:

987 **32B-4-206. Searches, seizures, forfeitures, and fines.**

988 [~~1~~] The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah



989 Uniform Forfeiture Procedures Act:]

990 [~~(a) an alcoholic product possessed, purchased, used, stored, sold, offered for sale,~~  
991 ~~furnished, given, received, warehoused, manufactured, distributed, shipped, carried,~~  
992 ~~transported, or adulterated in violation of this title or commission rules;]~~

993 [~~(b) a container or property used or intended for use as a container for an alcoholic~~  
994 ~~product in violation of this title or commission rules;]~~

995 [~~(c) raw materials, products, and equipment used, or intended for use, in~~  
996 ~~manufacturing, processing, delivering, importing, exporting, or adulterating an alcoholic~~  
997 ~~product in violation of this title or commission rules;]~~

998 [~~(d) implements, furniture, fixtures, or other personal property used or kept for a~~  
999 ~~violation of this title or commission rules;]~~

1000 [~~(e) conveyances including an aircraft, vehicle, or vessel used or intended for use, to~~  
1001 ~~transport or in any manner facilitate the transportation, sale, receipt, possession, or~~  
1002 ~~concealment of property described in Subsection (1)(a), (b), (c), or (d); and]~~

1003 [~~(f) a record used or intended for use in violation of this title or commission rules.]~~

1004 [~~(2) (a) Property subject to forfeiture under this title may be seized by a peace officer of~~  
1005 ~~this state or any other person authorized by law upon process issued by a court having~~  
1006 ~~jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating~~  
1007 ~~to search warrants or administrative warrants.]~~

1008 [~~(b) Notwithstanding Subsection (2)(a), seizure without process may be made when:]~~

1009 [~~(i) the seizure is incident to an arrest or search under a search warrant or an inspection~~  
1010 ~~under an administrative inspection warrant;]~~

1011 [~~(ii) the property subject to seizure has been the subject of a prior judgment in favor of~~  
1012 ~~the state in a criminal injunction or forfeiture proceeding under this title;]~~

1013 [~~(iii) the peace officer or other person authorized by law has probable cause to believe~~  
1014 ~~that the property is directly or indirectly dangerous to health or safety; or]~~

1015 [~~(iv) the peace officer or other person authorized by law has probable cause to believe~~  
1016 ~~that the property is being or has been used, intended to be used, held, or kept in violation of this~~  
1017 ~~title or commission rules.]~~

1018 [~~(3) If property is seized pursuant to a search or administrative warrant, a peace officer~~  
1019 ~~or other person authorized by law shall comply with the requirements of the Utah Rules of~~

1020 Criminal Procedure:]

1021 [~~(4) (a) If property is seized without process:]~~

1022 [~~(i) the peace officer or other person authorized by law shall make a return of the peace~~

1023 ~~officer's or person's acts without delay directly to the district court of the county in which the~~

1024 ~~property was located; and]~~

1025 [~~(ii) the district court shall have jurisdiction of the case:]~~

1026 [~~(b) A return shall describe:]~~

1027 [~~(i) the property seized;]~~

1028 [~~(ii) the place where the property is seized; and]~~

1029 [~~(iii) any person in apparent possession of the property:]~~

1030 [~~(c) A peace officer or other person described in Subsection (4)(a) shall promptly:]~~

1031 [~~(i) deliver a written inventory of anything seized to any person in apparent authority at~~

1032 ~~the premises where the seizure is made; or]~~

1033 [~~(ii) post a written inventory of anything seized in a conspicuous place at the premises:]~~

1034 [~~(d) A written inventory under this Subsection (4) shall state the place where the~~

1035 ~~property is being held:]~~

1036 [~~(5) Property taken or detained under this section is not repleviable but is considered in~~

1037 ~~custody of the law enforcement agency making the seizure subject only to the orders of the~~

1038 ~~court or the official having jurisdiction. When property is seized under this title, the~~

1039 ~~appropriate person or agency may:]~~

1040 [~~(a) place the property under seal;]~~

1041 [~~(b) remove the property to a place designated by:]~~

1042 [~~(i) the person or agency; or]~~

1043 [~~(ii) the warrant under which the property is seized; or]~~

1044 [~~(c) take custody of the property and remove the property to an appropriate location for~~

1045 ~~disposition in accordance with law:]~~

1046 [~~(6) When property is subject to forfeiture under this section, a proceeding shall be~~

1047 ~~instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

1048 [~~(7) When property is ordered forfeited under Title 24, Chapter 1, Utah Uniform~~

1049 ~~Forfeiture Procedures Act, by a finding of a court that no person is entitled to recover the~~

1050 ~~property, the property, if an alcohol container or product used as a container for an alcoholic~~

1051 ~~product, shall be disposed of as follows:]~~

1052 ~~[(a) An alcoholic product shall be sold in accordance with Section 24-1-17 if the~~  
1053 ~~alcoholic product is:]~~

1054 ~~[(i) unadulterated, pure, and free from crude, unrectified, or impure form of ethylic~~  
1055 ~~alcohol, or any other deleterious substance or liquid; and]~~

1056 ~~[(ii) otherwise in saleable condition:]~~

1057 ~~[(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the~~  
1058 ~~department shall destroy the alcoholic product and its container under competent supervision.]~~

1059 [(8)] Except when otherwise provided, a fine or forfeiture levied under this title shall  
1060 be paid to the county treasurer of the county in which the prosecution occurred.

1061 Section 30. Section ~~41-6a-527~~ is amended to read:

1062 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**  
1063 **requirements -- Removal of vehicle by owner.**

1064 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a  
1065 vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530,  
1066 41-6a-606, 53-3-231, 53-3-232, Subsections 53-3-227(3)(a)(i) through (vi), Subsection  
1067 53-3-227(3)(a)(ix), or a local ordinance similar to Section 41-6a-502 which complies with  
1068 Subsection 41-6a-510(1), the peace officer shall seize and impound the vehicle in accordance  
1069 with Section 41-6a-1406, except as provided under Subsection (2).

1070 (2) If a registered owner of the vehicle, other than the operator, is present at the time of  
1071 arrest, the peace officer may release the vehicle to that registered owner, but only if:

1072 (a) the registered owner:

1073 (i) requests to remove the vehicle from the scene; and

1074 (ii) presents to the peace officer sufficient identification to prove ownership of the  
1075 vehicle or motorboat;

1076 (b) the registered owner identifies a driver with a valid operator's license who:

1077 (i) complies with all restrictions of his operator's license; and

1078 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,  
1079 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231, 53-3-232, or a local ordinance  
1080 similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if permitted to  
1081 operate the vehicle; and

1082 (c) the vehicle itself is legally operable.

1083 (3) If necessary for transportation of a motorboat for impoundment under this section,  
1084 the motorboat's trailer may be used to transport the motorboat.

1085 ~~[(4) A motor vehicle is subject to criminal or civil forfeiture under the procedures and~~  
1086 ~~substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures~~  
1087 ~~Act, upon a finding by the court that:]~~

1088 ~~[(a) the motor vehicle was used in a violation of Section 41-6a-502, 41-6a-517, a local~~  
1089 ~~ordinance which complies with the requirements of Subsection 41-6a-510(1), Subsection~~  
1090 ~~58-37-8(2)(g), or Section 76-5-207;]~~

1091 ~~[(b) the operator of the vehicle has previously been convicted of a violation committed~~  
1092 ~~after May 12, 2009, of:]~~

1093 ~~[(i) a felony driving under the influence violation under Section 41-6a-502;]~~

1094 ~~[(ii) a felony violation of Subsection 58-37-8(2)(g); or]~~

1095 ~~[(iii) automobile homicide under Section 76-5-207;]~~

1096 ~~[(c) the operator of the vehicle was driving on a denied, suspended, revoked, or~~  
1097 ~~disqualified license; and]~~

1098 ~~[(d) (i) the denial, suspension, revocation, or disqualification under Subsection (4)(c)~~  
1099 ~~was imposed because of a violation of:]~~

1100 ~~[(A) Section 41-6a-502;]~~

1101 ~~[(B) Section 41-6a-517;]~~

1102 ~~[(C) a local ordinance which complies with the requirements of Subsection~~  
1103 ~~41-6a-510(1);]~~

1104 ~~[(D) Section 41-6a-520;]~~

1105 ~~[(E) Subsection 58-37-8(2)(g);]~~

1106 ~~[(F) Section 76-5-207; or]~~

1107 ~~[(G) a criminal prohibition that the person was charged with violating as a result of a~~  
1108 ~~plea bargain after having been originally charged with violating one or more of the sections or~~  
1109 ~~ordinances described in Subsections (4)(d)(i)(A) through (F); or]~~

1110 ~~[(ii) (A) the denial, suspension, revocation, or disqualification described in Subsection~~  
1111 ~~(4)(c) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,~~  
1112 ~~revocation, or disqualification; and]~~

1113 ~~[(B) the original denial, suspension, revocation, or disqualification was imposed~~  
1114 ~~because of a violation described in Subsection (4)(d)(i)(A) through (G).]~~

1115 Section 31. Section **53-7-406** is amended to read:

1116 **53-7-406. Penalties.**

1117 (1) (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer,  
1118 agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than  
1119 through retail sale, in violation of Section 53-7-403:

1120 (i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each  
1121 sale of cigarettes; and

1122 (ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per  
1123 each sale of such cigarettes.

1124 (b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any  
1125 30-day period against any one entity described in Subsection (1).

1126 (2) (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells  
1127 cigarettes in violation of Section 53-7-403 shall:

1128 (i) for a first offense for each sale or offer for sale of cigarettes, if the total number of  
1129 cigarettes sold or offered for sale:

1130 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500  
1131 for each sale or offer of sale; and

1132 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for  
1133 each sale or offer of sale; and

1134 (ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:

1135 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000  
1136 for each sale or offer of sale; and

1137 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for  
1138 each sale or offer of sale.

1139 (b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not  
1140 exceed \$25,000 during a 30-day period.

1141 (3) In addition to any penalty prescribed by law, any corporation, partnership, sole  
1142 proprietor, limited partnership, or association engaged in the manufacture of cigarettes that  
1143 knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false

1144 certification:

1145 (a) for a first offense, be liable for a civil penalty of at least \$75,000; and

1146 (b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.

1147 (4) Any person violating any other provision in this part shall be liable for a civil

1148 penalty for each violation:

1149 (a) for a first offense, not to exceed \$1,000; and

1150 (b) for a subsequent offense, not to exceed \$5,000.

1151 ~~[(5) Any cigarettes that have been sold or offered for sale that do not comply with the~~  
1152 ~~performance standard required by Section 53-7-403 shall be subject to forfeiture under Title 24,~~  
1153 ~~Chapter 1, Utah Uniform Forfeiture Procedures Act, and, upon being forfeited, shall be~~  
1154 ~~destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to~~  
1155 ~~this part, the true holder of the trademark rights in the cigarette brand shall be permitted to~~  
1156 ~~inspect the cigarette.]~~

1157 [(6)] (5) In addition to any other remedy provided by law, the state fire marshal or  
1158 attorney general may file an action in district court for a violation of this part, including  
1159 petitioning for injunctive relief or to recover any costs or damages suffered by the state because  
1160 of a violation of this part, including enforcement costs relating to the specific violation and  
1161 attorney fees. Each violation of this part or of rules or regulations adopted under this part  
1162 constitutes a separate civil violation for which the state fire marshal or attorney general may  
1163 obtain relief.

1164 Section 32. Section **63J-1-602.1** is amended to read:

1165 **63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title**  
1166 **1 through Title 30.**

1167 (1) Appropriations made to the Legislature and its committees.

1168 (2) The Percent-for-Art Program created in Section 9-6-404.

1169 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in  
1170 Section 9-18-102.

1171 (4) The LeRay McAllister Critical Land Conservation Program created in Section  
1172 11-38-301.

1173 (5) An appropriation made to the Division of Wildlife Resources for the appraisal and  
1174 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

1175 (6) Award money under the [~~Crime Reduction Assistance Program~~] State Asset  
1176 Forfeiture Grant Program, as provided under Section [~~24-1-19~~] 24-4-117.

1177 (7) Funds collected from the emergency medical services grant program, as provided in  
1178 Section 26-8a-207.

1179 (8) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.

1180 (9) State funds appropriated for matching federal funds in the Children's Health  
1181 Insurance Program as provided in Section 26-40-108.

1182 (10) The Utah Health Care Workforce Financial Assistance Program created in Section  
1183 26-46-102.

1184 Section 33. Section **76-6-903** is amended to read:

1185 **76-6-903. Penalties.**

1186 (1) A person is guilty of a class B misdemeanor if that person:

1187 (a) violates this part; or

1188 (b) counsels, procures, solicits, or employs any other person to violate this part.

1189 (2) A person is guilty of a third degree felony if:

1190 (a) that person commits a second or subsequent violation described in Subsection (1);

1191 or

1192 (b) the amount calculated under Subsection (3) for a violation described in Subsection  
1193 (1) exceeds \$500.

1194 (3) The amount described in Subsection (2)(b) is calculated by adding the:

1195 (a) commercial or archaeological value of the antiquities involved in the violation; and

1196 (b) cost of the restoration and repair of the antiquities involved in the violation.

1197 [~~(4) (a) All property used in conjunction with the criminal activity, together with all~~  
1198 ~~photographs and records, shall be forfeited to the state.~~]

1199 [~~(b)~~] (4) All articles and material discovered, collected, excavated, or offered for sale  
1200 or exchange shall be surrendered to the landowner.

1201 Section 34. Section **76-10-1603.5** is amended to read:

1202 **76-10-1603.5. Violation a felony -- Costs -- Fines -- Divestiture -- Restrictions --**  
1203 **Dissolution or reorganization -- Prior restraint.**

1204 (1) A person who violates any provision of Section 76-10-1603 is guilty of a second  
1205 degree felony. In addition to penalties prescribed by law, the court may order the person found

1206 guilty of the felony to pay to the state, if the attorney general brought the action, or to the  
1207 county, if the county attorney or district attorney brought the action, the costs of investigating  
1208 and prosecuting the offense and the costs of securing the forfeitures provided for in this  
1209 section. [~~The person shall forfeit:~~]

1210 [~~(a) any interest acquired or maintained in violation of any provision of Section~~  
1211 ~~76-10-1603;~~]

1212 [~~(b) any interest in, security of, claim against, or property or contractual right of any~~  
1213 ~~kind affording a source of influence over any enterprise which the person has established,~~  
1214 ~~operated, controlled, conducted, or participated in the conduct of in violation of Section~~  
1215 ~~76-10-1603; and]~~

1216 [~~(c) any property constituting or derived from the net proceeds which the person~~  
1217 ~~obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or~~  
1218 ~~from any act or conduct constituting the pattern of unlawful activity proven as part of the~~  
1219 ~~violation of any provision of Section 76-10-1603.]~~

1220 [~~(2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity~~  
1221 ~~consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or~~  
1222 ~~76-10-1222, the property subject to forfeiture under this section is limited to property, the~~  
1223 ~~seizure or forfeiture of which would not constitute a prior restraint on the exercise of an~~  
1224 ~~affected party's rights under the First Amendment to the Constitution of the United States or~~  
1225 ~~Utah Constitution Article I, Section 15, or would not otherwise unlawfully interfere with the~~  
1226 ~~exercise of those rights.]~~

1227 [~~(3)~~] (2) In lieu of a fine otherwise authorized by law for a violation of Section  
1228 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section  
1229 76-10-1603 may be fined not more than twice the amount of the net proceeds.

1230 [~~(4) Property subject to forfeiture in accordance with the procedures and substantive~~  
1231 ~~protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:]~~

1232 [~~(a) includes:]~~

1233 [~~(i) real property, including things growing on, affixed to, and found in land; and]~~

1234 [~~(ii) tangible and intangible personal property including money, rights, privileges,~~  
1235 ~~interests, claims, and securities of any kind; but]~~

1236 [~~(b) does not include property exchanged or to be exchanged for services rendered in~~



1237 ~~connection with the defense of the charges or any related criminal case.]~~

1238 ~~[(5)]~~ (3) Upon conviction for violating any provision of Section 76-10-1603, and in  
 1239 addition to any penalty prescribed by law ~~[and in addition to any forfeitures provided for in this~~  
 1240 ~~section]~~, the court may do any or all of the following:

1241 (a) order restitution to any victim or rightful owner of property obtained, directly or  
 1242 indirectly, from:

1243 (i) the conduct constituting the pattern of unlawful activity; or

1244 (ii) any act or conduct constituting the pattern of unlawful activity that is proven as part  
 1245 of the violation of any provision of Section 76-10-1603;

1246 (b) order the person to divest himself of any interest in or any control, direct or  
 1247 indirect, of any enterprise;

1248 (c) impose reasonable restrictions on the future activities or investments of any person,  
 1249 including prohibiting the person from engaging in the same type of endeavor as the enterprise  
 1250 engaged in, to the extent the Utah Constitution and the Constitution of the United States  
 1251 permit; or

1252 (d) order the dissolution or reorganization of any enterprise.

1253 ~~[(6)]~~ (4) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity  
 1254 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or  
 1255 76-10-1222, the court may not enter any order that would amount to a prior restraint on the  
 1256 exercise of an affected party's rights under the First Amendment to the Constitution of the  
 1257 United States or Utah Constitution Article I, Section 15.

1258 ~~[(7) All rights, title, and interest in forfeitable property described in Subsections (1)~~  
 1259 ~~and (2) are subject to forfeiture proceedings in accordance with the procedures and substantive~~  
 1260 ~~protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.]~~

1261 ~~[(8)]~~ (5) For purposes of this section, the "net proceeds" of an offense means property  
 1262 acquired as a result of the violation minus the direct costs of acquiring the property.

1263 Section 35. Section ~~77-24a-1~~ is repealed and reenacted to read:

1264 **CHAPTER 24a. LOST OR MISLAID PERSONAL PROPERTY**

1265 **77-24a-1. Definition.**

1266 (1) "Lost or mislaid property":

1267 (a) means any property that comes into the possession of a peace officer or law

1268 enforcement agency:

1269 (i) that is not claimed by anyone who is identified as the owner of the property; or

1270 (ii) for which no owner or interest holder can be found after a reasonable and diligent  
1271 search;

1272 (b) includes any property received by a peace officer or law enforcement agency from a  
1273 person claiming to have found the property; and

1274 (c) does not include property seized by a peace officer pursuant to Title 24, Forfeiture  
1275 and Disposition of Property Act.

1276 (2) "Public interest use" means:

1277 (a) use by a governmental agency as determined by the agency's legislative body; or

1278 (b) donation to a nonprofit charity registered with the state.

1279 Section 36. Section **77-24a-2** is amended to read:

1280 **77-24a-2. Disposition by police agency.**

1281 All [~~unclaimed~~] lost or mislaid property coming into the possession of a peace officer  
1282 or law enforcement agency shall be turned over to, held, and disposed of only by the local law  
1283 enforcement agency whose authority extends to the area where the item was found.

1284 Section 37. Section **77-24a-3** is amended to read:

1285 **77-24a-3. Statement of finder of property.**

1286 (1) A person [~~finding unclaimed~~] who finds lost or mislaid property and [~~delivering~~]  
1287 delivers it to a local law enforcement agency shall sign a statement included in a form provided  
1288 by the agency, stating [~~how~~]:

1289 (a) the manner in which the property came into [~~his~~] the person's possession, including  
1290 the time, date, and place[~~, and stating that he~~];

1291 (b) that the person does not know who [~~the owner of~~] owns the property [~~is, that~~];

1292 (c) that, to the person's knowledge, the property was not [~~to his knowledge~~] stolen[  
1293 ~~that his~~];

1294 (d) that the person's possession of [~~it~~] the property is not unlawful[~~;~~]; and [~~providing~~]

1295 (e) any information [~~he~~] the person is aware of which could lead to a determination of  
1296 the owner. [~~Other~~]

1297 (2) Additional information may be requested by the agency receiving the [~~item~~]  
1298 property, as necessary.

1299 Section 38. Section **77-24a-4** is amended to read:

1300 **77-24a-4. Locating owner of property.**

1301 (1) The local law enforcement agency shall take reasonable steps to determine the  
1302 identity and location of the owner, and notify ~~[him]~~ the owner that the property is in custody.

1303 (2) The owner may obtain the property only by ~~[making identification of himself and~~  
1304 ~~of]~~ providing personal identification, identifying the property, and paying any costs incurred by  
1305 the agency, including costs for advertising or storage.

1306 Section 39. Section **77-24a-5** is amended to read:

1307 **77-24a-5. Disposition of unclaimed property.**

1308 (1) (a) If the owner of any ~~[unclaimed]~~ lost or mislaid property cannot be determined or  
1309 notified, or if ~~[he]~~ the owner of the property is determined and notified, and fails to appear and  
1310 claim the property after three months of its receipt by the local law enforcement agency, the  
1311 agency shall:

1312 (i) publish ~~[at least one]~~ notice of the intent to dispose of the unclaimed property[:] on  
1313 Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b); and

1314 ~~[(A) in a newspaper of general circulation within the county; and]~~

1315 ~~[(B) as required in Section 45-1-101; and]~~

1316 (ii) post a similar notice in a public place designated for notice within the law  
1317 enforcement agency.

1318 (b) The notice shall:

1319 (i) give a general description of the item; and

1320 (ii) the date of intended disposition.

1321 (c) The agency may not dispose of the ~~[unclaimed]~~ lost or mislaid property until at  
1322 least eight days after the date of publication and posting.

1323 (2) (a) If no claim is made for the ~~[unclaimed]~~ lost or mislaid property within nine days  
1324 of publication and posting, the agency shall notify the person who turned the property over to  
1325 the local law enforcement agency, if it was turned over by a person under Section 77-24a-3.

1326 (b) Except as provided in Subsection (4), if that person has complied with the  
1327 provisions of this chapter, the person may take the ~~[unclaimed]~~ lost or mislaid property if the  
1328 person:

1329 (i) pays the costs incurred for advertising and storage; and

- 1330 (ii) signs a receipt for the item.
- 1331 (3) If the person who found the ~~[unclaimed]~~ lost or mislaid property fails to take the
- 1332 property under the provisions of this chapter, the agency shall ~~[dispose of that property and any~~
- 1333 ~~other property that is not claimed under this chapter as provided by Section 77-24-4.];~~
- 1334 (a) apply the property to a public interest use as provided in Subsection (4);
- 1335 (b) sell the property at public auction and apply the proceeds of the sale to a public
- 1336 interest use; or
- 1337 (c) destroy the property if it is unfit for a public interest use or sale.
- 1338 (4) Before applying the lost or mislaid property to a public interest use, the agency
- 1339 having possession of the property shall obtain from the agency's legislative body:
- 1340 (a) permission to apply the property to a public interest use; and
- 1341 (b) the designation and approval of the public interest use of the property.
- 1342 ~~[(4)]~~ (5) Any person employed by a law enforcement agency who finds property may
- 1343 not claim or receive property under this section.

Section 40. **Repealer.**

This bill repeals:

Section **24-1-1, Title.**

Section **24-1-2, Purpose.**

Section **24-1-3, Definitions.**

Section **24-1-3.5, Jurisdiction and venue.**

Section **24-1-4, Civil Procedures.**

Section **24-1-5, No bond required in civil cases.**

Section **24-1-6, Innocent owners.**

Section **24-1-7, Hardship release of seized property.**

Section **24-1-8, Criminal procedures.**

Section **24-1-9, Appointment of counsel for indigent claimants in civil and criminal forfeiture proceedings.**

Section **24-1-10, Prejudgment and postjudgment interest.**

Section **24-1-11, Attorneys' fees and costs.**

Section **24-1-12, Compensation for damaged property.**

Section **24-1-13, Limitation on fees for holding seized property.**

- 1361 Section 24-1-14, Proportionality.
- 1362 Section 24-1-15, Transfer and sharing procedures.
- 1363 Section 24-1-17, Disposition and allocation of forfeiture property.
- 1364 Section 24-1-18, Criminal Forfeiture Restricted Account.
- 1365 Section 24-1-19, Crime Reduction Assistance Program.
- 1366 Section 24-1-20, State Law Enforcement Forfeiture Account created -- Revenue
- 1367 sources -- Use of account designated.
- 1368 Section 41-6a-211, Vehicle subject to forfeiture -- Seizure -- Procedure.
- 1369 Section 58-37-13, Property subject to forfeiture -- Seizure -- Procedure.
- 1370 Section 76-3-501, Vehicle subject to forfeiture -- Seizure -- Procedure.
- 1371 Section 76-10-525, Disposition of weapons after use for court purposes.
- 1372 Section 76-10-1107, Seizure and sale of devices or equipment used for gambling.
- 1373 Section 76-10-1908, Forfeiture -- Grounds -- Procedure -- Disposition of property
- 1374 seized.
- 1375 Section 77-24-1, Definitions.
- 1376 Section 77-24-1.5, Safekeeping by officer pending disposition -- Records required.
- 1377 Section 77-24-2, Property not needed as evidence -- Child interview retention --
- 1378 Return procedure -- Conflict resolution for secondhand merchandise.
- 1379 Section 77-24-3, Receipt from owner of returned property.
- 1380 Section 77-24-4, Disposition of property.
- 1381 Section 77-24-5, Property seized from person -- Duplicate receipts.
- 1382 Section 41. Effective date.
- 1383 This bill takes effect on July 1, 2013.

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**Legislative Review Note**  
as of 2-27-13 3:33 PM

Office of Legislative Research and General Counsel