

# SEN. JOHN VALENTINE'S SB 31: "TECHNICAL AMENDMENTS" OR *THE END OF PROPERTY RIGHTS?*

Citizen's Initiative B, the *Utah Property Protection Act*, was approved by 69% of Utah voters in November 2000. Among other protections, Initiative B requires prosecutors to prove criminal involvement by the owner before property forfeiture can occur. Initiative B stops police from profiting from confiscated property by directing forfeiture proceeds to the State Treasurer. Despite the strong public support for and the benefits of Initiative B, Sen. John Valentine has sponsored Senate Bill (SB) 31. This bill has been characterized as containing little more than "technical amendments" necessary to clarify ambiguous language in the initiative. Below is a synopsis of *some* of these "technical amendments":

**"Technical Amendment" One (Utah Constitution Nullified):** SB 31 repeals those provisions of Initiative B that restrict the ability of Utah law enforcement agencies to transfer your seized property to the federal government. Once your property is transferred, the federal government can forfeit it without a court hearing, and return up to 80% of the proceeds to the Utah seizing agency. Unlike the Utah statute, *under federal forfeiture law property owners are presumed guilty and must attempt to prove their innocence.*

~~[(b) Notwithstanding Subparagraph (2)(a), the court may refuse to enter an order authorizing a transfer to the federal government if such transfer would circumvent the protections of the Utah Constitution or this chapter that would otherwise be available to the property owner.] (SB 31, lines 461-464)~~

~~[Any agent, including state law enforcement officers who are detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise trades seized property in violation of Subparagraph (2)(a) [restricting transfer of seized property to the federal government] or who receives property, money or other things of value under Subparagraph (3)(a) and knowingly fails to transfer such property to the state treasurer is guilty of a class B misdemeanor.] (SB 31, lines 494-499)~~

Note: The federal transfer methodology was used back in 1992 to confiscate \$100,900 from Hurdley Evans in Emery County. The Utah Supreme Court ordered the money returned to Evans because it found "no attempt was made to prove the money came from or was intended to be used in a drug transaction". The county prosecutor was found in contempt of court for failure to return the money. She arranged for the FBI to seize the money, defeating the order of the Utah Supreme Court. (*Salt Lake Tribune*, 5/4/92) *Don't be fooled! State protections are meaningless when you're in federal court!*

**"Technical Amendment" Two (Attorney General Political Fund Created):** Under SB 31, most of the forfeiture proceeds will be funneled through the Utah Attorney General's Office. He will have virtually unchecked power to appropriate those funds via his new Law Enforcement Assistance Program. County Sheriffs and municipal police who want part of the spoils must comply with the Attorney General's dictates and agenda. In essence, SB 31 makes the Attorney General a one-man legislature, and provides him with a de facto Political Action Committee that is funded with proceeds from property that may be confiscated from innocent owners.

(6) The residual 2/3 of the remaining forfeited property shall then be transferred by the seizing agency to the state treasurer, to be deposited in the Attorney General Law Enforcement Assistance Fund created in this section for award and distribution pursuant to the Attorney General Law Enforcement Assistance Program created in Section 24-1-19.

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The information contained in this flier was prepared by Arnold J. Gaunt and represents his views and opinions.

## **“Technical Amendment” Two (cont.):**

(7) (a) All property and proceeds awarded to the state through forfeiture proceedings under this chapter and transferred to the fund shall be held by the state treasurer until the attorney general approves awards and disbursements under the program. (SB 31, lines 531-537)

**“Technical Amendment” Three (Judicial Abuse Encouraged):** SB 31 will undermine the integrity of the judicial system, threatening to turn our judges and courts against innocent property owners. Fully one-third of net forfeited property shall be allocated to the Utah Administrative Office of the Courts. Judges would have a perverse financial motivation to partake of the spoils by wrongfully facilitating or ordering the confiscation of your property.

Until now, the Utah Supreme Court has provided a strong defense against the confiscation schemes of the pro-forfeiture lobby. SB 31 attempts to bribe our judiciary with this massive potential infusion of additional revenue.

(5) One-third of the remaining forfeited property shall then be transferred by the seizing agency to the state treasurer, to be deposited in the Substance Abuse Forfeiture Account created in Section 62A-15-113 for appropriation by the Legislature. (SB 31, lines 528-530)

(2) The Administrative Office of the Courts shall expend amounts as appropriated by the Legislature from the Substance Abuse Forfeiture Account... (SB 31, lines 731-732)

**Are We Exaggerating the Threat?** On January 22, 2003, the State Auditor released a startling report that revealed that various prosecutors and courts have ignored Initiative B. From his letter:

- **“The remaining 28 [forfeiture] cases involved cash and property that should have been transferred to the State Treasurer [but were not] for fiscal year 2002 pursuant to the UUFPA [Initiative B].”**
- **“During our investigation, we discovered that ... county district attorney offices filing these cases did not comply with the UUFPA and ... the court also violated the UUFPA...”**

The disregard for Initiative B displayed by police, prosecutors, and courts justifies apprehension about the likelihood for even greater abuse under the massive increase in confiscation power, and the incentive to misuse it, provided by SB 31.

**If John Valentine’s “technical amendments” concern you,  
HELP US KILL SB 31!**

**Assert Your Power to Protect Your Rights! Take Action NOW!**

1. Contact Arnold J. Gaunt at [ajgaunt@xmission.com](mailto:ajgaunt@xmission.com) (or 801-621-3122) and sign up for free alerts and further information on property forfeiture threats.
2. Call your state senator (Main #: 801-538-1035; Fax: 801-538-1414) and state representative (Main #: 801-538-1029; Fax: 801-538-1908) and request that they oppose SB 31.
3. Call and fax Sen. John Valentine (Home: 801-224-1693; Office: 801-373-6345; Fax: 801-377-4991) and implore him to withdraw SB 31.
4. Share this information with your family and friends.