

# Federal vs. State Forfeitures & Their Relationship to Sen. Buttar's S.B. 175

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## Terminology

- Seizure: Police have control of property, but not title
- Forfeiture/Confiscation: Action of transferring title from owner to government

Private property can be forfeited under *both* state and federal statutes

- State statutes – provide justice (see Title 24, Utah Code)
  - Burden of proof on prosecution
  - Clear and convincing evidentiary standard
  - Presumption of innocence
  - Attorneys' fees and costs to innocent owner (i.e. government doesn't prove case)
  - Proportionality: forfeiture value cannot exceed the wrongdoing, burden on prosecution
  - Due process: police cannot profit from taking your property
- Federal statutes – think injustice and tyranny (see Title 18, Chapter 46, Sect. 983, Federal Code)
  - Presumption of guilt: Owner must prove his innocence to recover property
  - Prosecutor doesn't have to prove guilt of owner, only his property
  - Preponderance of the evidence proof standard to take property
  - Value of forfeiture can be disproportional to the wrongdoing, burden on owner
  - Non-judicial proceedings allowed
  - No attorneys' fees or costs to innocent owner (i.e. government doesn't prove case)
  - Due process denied: state police can profit through collusion with federal government

Federal forfeiture is preferred by Utah police

- Little or no protection for innocent owners – greater probability to forfeit property
- Federal government provides up to 80% of forfeiture proceeds to state/local seizing agency
- Federal forfeiture proceeding can be extra-judicial and doesn't "burden" Utah's courts
- Through federal Byrne grants, \$3 can be obtained for each \$1 of forfeiture proceeds
- Burden and accountability of acquiring money through applicable legislative body is eliminated

Initiative B protects innocent property owners from federal forfeiture injustice caused by Utah police

- Restriction on transfer to federal government of property seized by Utah's police
  - State court must approve, circumstances for approval are limited, and consideration is given to subversion of rights that would occur
  - Owner has right to contest the transfer
  - Criminal penalty for violation
- Police cannot expend forfeiture proceeds from federal government – proceeds must be transferred to state treasurer

Sen. Buttar's SB 175 destroys the protection for innocent property owners provided by Initiative B

- Restrictions on transfer of seized property to the federal government by Utah's police are eliminated (lines 478-480)
- Utah's police can profit from federal forfeiture kickbacks – requirement to transfer them to state treasurer is eliminated (lines 483-491)
- State prosecutors are authorized to transfer forfeiture proceeding to federal government (lines 315-317)

Sen. Buttar, at least 21 other Senators, and confiscation lobbyists like General Shurtleff all claim that SB 175 "increases innocent owner protections" by eliminating restrictions on the transfer to the federal government and providing incentives for your seized property to be confiscated under tyrannical federal statutes

- You decide: do they lie?