

COMMITTEE SUBSTITUTE

FOR

**H. B. 3044**

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(BY DELEGATES D. POLING, FRAZIER, MILEY, BROWN, CAPUTO,  
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(Originating in the Committee on Finance)  
[February 28, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and §61-14-9 all relating to civil forfeiture actions related to criminal activity; providing for the civil forfeiture of property and assets used in, acquired by, or gained or flowing from various criminal fraudulent activities; providing definitions;

subjecting certain property to forfeiture; providing procedures for seizure of forfeitable property; establishing rules and procedures for civil forfeiture proceedings involving crimes of fraud; providing for seizure and disposition of forfeited property; providing notice requirements; providing for care of forfeitable property in law-enforcement custody; providing for proportionality and innocent owner defenses; limiting forfeiture of property purchased by bona fide purchasers; providing for payment of liens in certain circumstances; providing for resale and disposition of forfeited property; disposing of proceeds and forfeiture funds; providing that dismissal of criminal charges vacates forfeiture orders; and providing exceptions.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and §61-14-9, all to read as follows:

**ARTICLE 14. WEST VIRGINIA CIVIL FORFEITURE FOR  
FRAUDULENT CRIMES AND OFFENSES.**

**§61-14-1. Purpose and scope.**

1       (a) The provisions of this article establish civil forfeiture  
2       guidelines and procedures to be followed in cases in which  
3       forfeiture of property or restitution is sought for the specified  
4       crimes and offenses set forth in subsection (c) of this section.

5       (b) Forfeitures under this article are governed by all of  
6       the following purposes:

7       (1) To provide economic disincentives and remedies to  
8       deter and offset the economic effect of offenses by seizing  
9       and forfeiting contraband, proceeds, and certain  
10       instrumentalities associated with the commission of acts of  
11       fraud against the state and its citizens, including acts of fraud  
12       against the elderly;

13       (2) To provide a means for restitution of victims of  
14       fraudulent offenses and fraudulent criminal enterprises;

15       (3) To protect third parties from wrongful forfeiture of  
16       their property; and

17       (4) To ensure that seizures and forfeitures of  
18       instrumentalities are proportionate to the offense committed.

19       (c) Offenses for which property may be forfeited  
20       pursuant to provisions of this article include any act or  
21       omission which, when committed by an adult, constitutes one  
22       or more of the following misdemeanor or felony offenses of  
23       fraud:

24       (1) As defined in section nine, article eight, chapter  
25       thirty-one-a of this code as against banking institutions;

26       (2) As defined in section four, article three-c of this  
27       chapter as against computer fraud;

28       (3) As defined in section thirteen, article three-c of this  
29       chapter as fraudulent activity in relation to access devices;

30       (4) As defined in section twenty-four-a, article three of  
31       this chapter as against credit cards;

32       (5) As defined in section twenty-four, article three of this  
33       chapter as against disposing of property to defraud creditors;

34       (6) As defined in section twenty-four, article three of this  
35       chapter as against money, property, goods and services;

36 (7) As defined in section twenty-four-d, article three of  
37 this chapter as common schemes against money, property,  
38 goods and services;

39 (8) As defined in section fifty-seven, article three of this  
40 chapter as against bogus receipts or universal product codes;

41 (9) Any crime of fraud against the elderly as “elderly” is  
42 defined in subsection (k), section three, article five-p, chapter  
43 sixteen of this code; and

44 (10) Any crime listed in section fifty-four, article three of  
45 this chapter as against identity theft.

46 (d) The provisions of this article do not apply to or  
47 amend the provisions of article seven, chapter sixty-a of this  
48 code, commonly known as the “West Virginia Contraband  
49 Forfeiture Act”.

**§61-14-2. Definitions.**

1 As used in this article:

2 (1) “Appropriate person” means any member of the State  
3 Police, any sheriff, and deputy sheriff, and municipal police  
4 officer or other law-enforcement officer who is authorized to

5 enforce any offense covered by this article and has the  
6 general authority to make arrests for any offense covered by  
7 this article, and execute and serve search warrants, arrest  
8 warrants, subpoenas and summonses issued under the  
9 authority of the state.

10 (2) “Aircraft” has the same meaning as described in  
11 section one, article two-a, chapter twenty-nine of this code.

12 (3) “Computers,” “computer networks,” and “computer  
13 software,” have the same meanings as described in section  
14 three, article three-c, chapter sixty-one of this chapter.

15 (4) “Financial institution” has the same meaning as  
16 described in section two, article one, chapter thirty-one-a of  
17 this code.

18 (5) “Firearm” and “deadly weapon” have the same  
19 meanings as in section two, article seven of this chapter.

20 (6) “Innocent person” includes any bona fide purchaser  
21 of property that is subject to forfeiture, including any person  
22 who establishes a valid claim to or interest in the property in  
23 accordance with the provisions of article seven, chapter  
24 sixty-a of this code and any victim of an alleged offense.

25 (7) “Instrumentality” means property otherwise lawful to  
26 possess that is used in or intended to be used in an offense. An  
27 “instrumentality” may include, but is not limited to, a firearm, a  
28 mobile instrumentality, a computer, a computer network, a  
29 computer system, computer software, a telecommunications  
30 device, money, and any other means of exchange.

31 (8) “Law-enforcement officer” includes, but is not  
32 limited to, the definition contained in section three, article  
33 ten, chapter fifteen of this code.

34 (9) “Mobile instrumentality” means an instrumentality  
35 that is inherently mobile and used in the routine transport of  
36 persons. “Mobile instrumentality” includes, but is not limited  
37 to, any vehicle, any watercraft, and any aircraft.

38 (10) “Money” has the same meaning as in section one,  
39 article six, chapter forty-seven of this code.

40 (11) “Offense” means any act or omission that could be  
41 charged as a criminal offense, whether or not a formal  
42 criminal prosecution began at the time the forfeiture is  
43 initiated.

44 (12) “Proceeds” means both of the following:

45 (A) In cases involving fraudulent or lawful goods,  
46 services, or activities, “proceeds” means any property  
47 derived directly or indirectly from an offense. “Proceeds”  
48 may include, but is not limited to, money or any other means  
49 of exchange. “Proceeds” is not limited to the net gain or  
50 profit realized from the offense.

51 (B) In cases involving lawful goods or services that are  
52 sold or provided in an unlawful manner, “proceeds” means  
53 the amount of money or other means of exchange acquired  
54 through the illegal transactions resulting in the forfeiture, less  
55 the direct costs lawfully incurred in providing the goods or  
56 services. The lawful costs deduction does not include any  
57 part of the overhead expenses of, or income taxes paid by,  
58 the entity providing the goods or services. The alleged  
59 offender or delinquent child has the burden to prove that any  
60 costs are lawfully incurred.

61 (13) “Property” means “property” as defined in section  
62 ten, article two, chapter two of this code and any benefit,



63 privilege, claim, position, interest in an enterprise, or right  
64 derived, directly or indirectly, from the offense.

65 (14) “Property subject to forfeiture” includes contraband  
66 and proceeds and may include instrumentalities as provided  
67 in this article.

68 (15) “Prosecutor” means any duly elected or appointed  
69 prosecutor or special prosecutor.

70 (16) “Vehicle” has the same meaning as in section four,  
71 article one, chapter seventeen and section one, article one,  
72 chapter seventeen-b of this code.

73 (17) “Watercraft” means any motorized or nonmotorized  
74 vessel.

**§61-14-3. Property subject to forfeiture.**

1 (a) The following property is subject to forfeiture to the  
2 state or a political subdivision pursuant to this article:

3 (1) Contraband involved in any offense set forth in  
4 subsection (c), section one of this article;

5 (2) Proceeds derived from or acquired through the  
6 commission of any offense set forth in subsection (c), section  
7 one of this article;

8           (3) An instrumentality that is used in or intended to be  
9           used in the commission or facilitation of any offense listed in  
10           subsection (c) of section one of this article: *Provided*, That  
11           the use or intended use is consistent with an attempt to  
12           commit, complicity in committing or a conspiracy to commit  
13           the described offense.

14           (b) In determining whether an alleged instrumentality  
15           was used in or was intended to be used in the commission or  
16           facilitation of an offense or an attempt, complicity, or  
17           conspiracy to commit an offense in a manner sufficient to  
18           warrant its forfeiture, the trier of fact shall consider the  
19           following factors the trier of fact determines are relevant:

20           (1) Whether the offense could not have been committed  
21           or attempted but for the presence of the instrumentality;

22           (2) Whether the primary purpose in using the  
23           instrumentality was to commit or attempt to commit the  
24           offense;

25           (3) The extent to which the instrumentality furthered the  
26           commission of, or attempt to commit, the offense.

**§61-14-4. Procedures for seizure of forfeitable property.**

1       (a) Seizure of property made subject to forfeiture by the  
2       provisions of this article may be made upon process issued  
3       by any court of record having jurisdiction over the property.

4       (b) Notwithstanding the provisions of subsection (a) of  
5       this section, seizure of property subject to forfeiture by the  
6       provisions of this article may be made without process if:

7       (1) The seizure is incident to a lawful arrest or pursuant  
8       to a search under a search warrant or an inspection warrant;

9       (2) The property subject to seizure has been the subject  
10      of a prior judgment in favor of the state in a forfeiture  
11      proceeding based upon this article;

12      (3) The appropriate person has probable cause to believe  
13      that the property is directly or indirectly dangerous to health  
14      or safety; or

15      (4) The appropriate person has probable cause to believe  
16      that the property was used or intended for use in the  
17      commission or facilitation of any offense listed in subsection

18      (c) of section one of this article.

19 (c) In the event of seizure pursuant to subsection (b) of  
20 this section, forfeiture proceedings shall be instituted within  
21 ninety days of the seizure thereof.

22 (d) Property taken or detained under this section is not  
23 subject to replevin, but is deemed to be in the custody of the  
24 appropriate person, subject only to the orders and decrees of  
25 the court having jurisdiction over the forfeiture proceedings.

26 When property is seized under this article, the appropriate  
27 person may:

28 (1) Place the property under seal;

29 (2) Remove the property to a place designated by him or  
30 her;

31 (3) Require the appropriate law-enforcement agency to  
32 take custody of the property and remove it to an appropriate  
33 location for disposition in accordance with law; or

34 (4) In the case of seized moneys, securities or other  
35 negotiable instruments, place the assets in any interest-  
36 bearing depository insured by an agency of the federal  
37 government.

38 The requirements of this subsection pertaining to the  
39 removal of seized property are not mandatory in the case of  
40 real property and appurtenances thereto.

**§61-14-5. Procedures for forfeiture.**

1 (a) The following procedures for forfeiture shall be  
2 followed:

3 (1) Any proceeding wherein the state seeks forfeiture of  
4 property subject to forfeiture under this section shall be a  
5 civil proceeding. A petition for forfeiture may be filed on  
6 behalf of the state and any law-enforcement agency making  
7 a seizure under this article by the prosecuting attorney of a  
8 county, or duly appointed special prosecutor;

9 (2) A petition for forfeiture may be filed and proceedings  
10 held thereon in the circuit court of the county wherein the  
11 seizure was made or the circuit court of the county wherein  
12 any owner of the property subject to forfeiture may reside;

13 (3) Any civil trial stemming from a petition for forfeiture  
14 brought under this article at the demand of either party shall  
15 be by jury;

16       (4) A petition for forfeiture of the seized property shall be  
17       filed within ninety days after the seizure of the property in  
18       question. The petition shall be verified by oath or affirmation  
19       of a law-enforcement officer representing the law-  
20       enforcement agency responsible for the seizure or the  
21       prosecuting attorney and shall contain the following:

22               (A) A description of the property seized;

23               (B) A statement as to who is responsible for the seizure;

24               (C) A statement of the time and place of seizure;

25               (D) The identity of the owner or owners of the property,  
26       if known;

27               (E) The identity of the person or persons in possession of  
28       the property at the time seized, if known;

29               (F) A statement of facts upon which probable cause for  
30       belief that the seized property is subject to forfeiture pursuant  
31       to the provisions of this article is based;

32               (G) The identity of all persons or corporations having a  
33       perfected security interest or lien in the subject property, as  
34       well as the identity of all persons or corporations known to

35 the affiant who may be holding a possessory or statutory lien  
36 against the property; and

37 (H) A prayer for an order directing forfeiture of the  
38 seized property to the state, and vesting ownership of the  
39 property in the state.

40 (b) At the time of filing or as soon as practicable  
41 thereafter, a copy of the petition for forfeiture shall be served  
42 upon the owner or owners of the seized property, as well as  
43 all holders of a perfected security interest or lien or of a  
44 possessory or statutory lien in the same class, if known.  
45 Should diligent efforts fail to disclose the lawful owner or  
46 owners of the seized property, a copy of the petition for  
47 forfeiture shall be served upon any person who was in  
48 possession or alleged to be in possession of the property at  
49 the time of seizure, where the person's identity is known.  
50 The above service shall be made pursuant to the provisions  
51 of the West Virginia Rules of Civil Procedure. Any copy of  
52 the petition for forfeiture so served shall include a notice  
53 substantially as follows:

54 “To any claimant to the within described property: You  
55 have the right to file an answer to this petition setting forth  
56 your title in, and right to possession of, the property within  
57 thirty days from the service hereof. If you fail to file an  
58 answer, a final order forfeiting the property to the state will  
59 be entered, and the order is not subject to appeal.”

60 If no owner or possessors, lienholders or holders of a  
61 security interest is found, then the service may be made by  
62 Class II legal publication in accordance with the provisions  
63 of article three, chapter fifty-nine of this code, and the  
64 publication area is the county in which the property was  
65 located at the time of seizure and the county in which the  
66 petition for forfeiture is filed.

67 (c) In addition to the requirements of subsection (b) of  
68 this section, the prosecuting attorney or law-enforcement  
69 officer upon whose oath or affirmation the petition for  
70 forfeiture is based, shall be responsible for the publication of  
71 a further notice. The further notice that a petition for  
72 forfeiture has been filed shall be published by Class II legal



73 advertisement in accordance with article three, chapter fifty-  
74 nine of this code. The publication area is the county in which  
75 the property was seized and the county in which the petition  
76 for forfeiture is filed. The notice shall advise any claimant to  
77 the property of their right to file a claim on or before the date  
78 set forth in the notice, which date may not be less than thirty  
79 days from the date of the first publication. The notice shall  
80 specify that any claim must clearly state the identity of the  
81 claimant and an address where legal process can be served  
82 upon that person. In addition, the notice shall contain the  
83 following information:

- 84 (1) A description of the property seized;  
85 (2) A statement as to who is responsible for the seizure;  
86 (3) A statement of the time and place of seizure;  
87 (4) The identity of the owner or owners of the property,  
88 if known;  
89 (5) The identity of the person or persons in possession of  
90 the property at the time of seizure, if known; and

91 (6) A statement that prayer for an order directing  
92 forfeiture of the seized property to the state, and vesting  
93 ownership of the property in the state, shall be requested of  
94 the court.

95 (d) If no answer or claim is filed within thirty days of the  
96 date of service of the petition pursuant to subsection (b) of  
97 this section, or within thirty days of the first publication  
98 pursuant to subsection (b) of this section, the court shall enter  
99 an order forfeiting the seized property to the state. If any  
100 claim to the seized property is timely filed, a time and place  
101 shall be set for a hearing upon the claim. The claimant or  
102 claimants shall be given notice of the hearing not less than  
103 ten days prior to the date set for the hearing.

104 (e) At the hearing upon the claim or claims, the state has  
105 the burden of proving by a preponderance of the evidence  
106 that the seized property is subject to forfeiture pursuant to the  
107 provisions of this article.

108 (f) Property may not be forfeited as an instrumentality  
109 under this article to the extent that the amount or value is  
110 disproportionate to the severity of the offense.

111 (g) Any order forfeiting property to the state and entered  
112 pursuant to this section perfects the state's right, title and  
113 interest in the forfeited property and relates back to the date  
114 of seizure: *Provided*, That in any proceeding under this  
115 article the circuit court shall in its final order make specific  
116 findings with respect to whether or not probable cause to  
117 seize the property existed at the time of the seizure.

118 (h) During the pendency of a forfeiture proceeding, it is  
119 unlawful for any property owner or holder of a bona fide  
120 security interest or other valid lien-holder to transfer or  
121 attempt to transfer any ownership interest or security interest  
122 in seized property with the intent to defeat the purpose of this  
123 article, and the court wherein the petition for forfeiture is  
124 filed may enjoin a property owner or holder of a security  
125 interest or other lien-holder from making such a transfer  
126 should one come to its attention. Any such transfer, that is  
127 made in violation of the provisions of this subsection, shall  
128 have no effect upon an order of the court forfeiting seized  
129 property to the state if a notice of lis pendens is filed prior to  
130 the recording of the instrument of transfer.

131 (i) The court may void any transfer of property made  
132 before or after a forfeiture proceeding has been commenced,  
133 which is subject to forfeiture, if the transfer was not to a bona  
134 fide purchaser without notice for value.

135 (j) An appeal of a decision of the circuit court concerning  
136 a forfeiture proceeding brought pursuant to this article must  
137 be filed within one hundred twenty days of the date of entry  
138 of the final appealable order. The appellant is required to  
139 give notice of intent to appeal within thirty days of the entry  
140 of the appealable order.

**§61-14-6. Innocent owner defense.**

1 (a) A mobile instrumentality used by any person as a  
2 common carrier in the transaction of business as a common  
3 carrier may not be forfeited under this article unless it  
4 appears that the person owning the mobile instrumentality is  
5 a consenting party or privy to the underlying criminal  
6 activity.

7 (b) A mobile instrumentality may not be forfeited under  
8 the provisions of this article if the person owning the mobile

9 instrumentality establishes that he or she neither knew, nor  
10 had reason to know, that the mobile instrumentality was  
11 being employed or was likely to be used to facilitate the  
12 underlying criminal activity.

13 (c) A bona fide security interest or other valid lien in any  
14 mobile instrumentality may not be forfeited under the  
15 provisions of this article, unless the state proves by a  
16 preponderance of the evidence that the holder of the security  
17 interest or lien either knew, or had reason to know, that the  
18 mobile instrumentality was being used or was likely to be  
19 used to facilitate the underlying criminal activity.

20 (d) No moneys, bonds, negotiable instruments, securities  
21 or other things of value obtained by or traceable as proceeds  
22 of fraudulent activity or used as instrumentalities to commit  
23 fraudulent acts covered by this article may be forfeited to the  
24 extent of the interest of an innocent owner or lienholder, who  
25 establishes by a preponderance of the evidence that the  
26 fraudulent activity was committed without his or her  
27 knowledge or consent.

28       (e) No real property or real property interest things of  
29       value obtained by or traceable as proceeds of fraudulent  
30       activity or used as instrumentalities to commit fraudulent acts  
31       covered by this article may be forfeited to the extent of the  
32       interest of an innocent owner or lienholder, who establishes  
33       by a preponderance of the evidence that the fraudulent  
34       activity was committed without his or her knowledge or  
35       consent.

36       (f) Notwithstanding any other provisions of this article to  
37       the contrary, any items of real property or any items of  
38       tangible personal property sold to a bona fide purchaser are  
39       not subject to forfeiture unless the state establishes by clear  
40       and convincing proof that the bona fide purchaser knew or  
41       should have known that the property had been used to  
42       facilitate the offense of fraud or were acquired with the  
43       proceeds of one or more of the fraudulent offenses listed in  
44       subsection (c) of section one of this article within three years  
45       preceding the sale.

**§61-14-7. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.**

1       (a) Whenever moneys, securities or other negotiable  
2       instruments are forfeited under the provisions of this article,  
3       the proceeds shall first be distributed to satisfy any order of  
4       restitution ordered to the victim or victims of the fraudulent  
5       offense or offenses in a related criminal proceeding, or to  
6       satisfy any recovery ordered for the person harmed in a civil  
7       forfeiture case, unless paid from other assets.

8       (b) Any funds which remain after the distribution of the  
9       proceeds remaining after distribution pursuant to subsection

10       (a) of this section shall be distributed as follows:

11       (1) Ten percent of the remaining proceeds shall be  
12       tendered to the office of the prosecuting attorney which  
13       initiated the forfeiture proceeding;

14       (2) Twenty percent to the Regional Jail Authority to  
15       offset the per diem rate for every county;

16       (3) Seventy percent of the remaining funds shall be  
17       deposited in a special law-enforcement investigation fund.

18 The fund may be placed in any interest-bearing depository  
19 insured by an agency of the federal government. The fund  
20 shall be administered by the chief of the law-enforcement  
21 agency that seized the forfeited property; and

22 (c) No funds may be expended from the special law-  
23 enforcement investigation fund except as follows:

24 (1) In the case of the funds belonging to the Department  
25 of Public Safety, the funds may only be expended at the  
26 direction of the superintendent of the department and in  
27 accordance with the provisions of article two, chapter eleven-  
28 b of this code and the provisions of article two, chapter  
29 twelve of this code;

30 (2) In the case of funds belonging to the office of either  
31 the sheriff or prosecuting attorney of any county in which the  
32 special fund has been created, the funds therein may only be  
33 expended in the manner provided in sections four and five,  
34 article five, chapter seven of this code; and

35 (3) In the case of funds belonging to the police  
36 department of any municipality in which the special fund has



37 been created, the funds therein may only be expended in the  
38 manner provided in section twenty-two, article thirteen,  
39 chapter eight of this code.

**§61-14-8. Disposition of other forfeited property; distribution of proceeds.**

1 (a) When property other than that referred to in section  
2 seven of this article is forfeited under this article, the circuit  
3 court ordering the forfeiture, upon application by the  
4 prosecuting attorney or the chief of the law-enforcement  
5 agency that seized said forfeited property, may direct that:

6 (1) Title to the forfeited property be vested in the  
7 law-enforcement agency so petitioning; or

8 (2) The law-enforcement agency responsible for the  
9 seizure to retain the property for official use; or

10 (3) The forfeited property shall be offered at public  
11 auction to the highest bidder for cash. Notice of the public  
12 auction shall be published as a Class III legal advertisement  
13 in accordance with article three, chapter fifty-nine of this  
14 code. The publication area is the county where the public  
15 auction will be held.

16 (b) When a law-enforcement agency receives property  
17 pursuant to this section, the court may, upon request of the  
18 prosecuting attorney initiating the forfeiture proceeding,  
19 require the law-enforcement agency to pay unto the office of  
20 said prosecuting attorney a sum not to exceed ten percent of  
21 the value of the property received to compensate said office  
22 for actual costs and expenses incurred.

23 (c) The proceeds of every public sale conducted pursuant  
24 to this section shall be paid and applied as follows:

25 (1) First, to the balance due on any security interest  
26 preserved by the court;

27 (2) Second, to the costs incurred in the storage,  
28 maintenance and security of the property;

29 (3) Third, to the costs incurred in selling the property;  
30 and

31 (4) Fourth, to satisfy any order of restitution ordered to  
32 the victim or victims of the fraudulent offense or offenses in  
33 a related criminal proceeding, or to satisfy any recovery  
34 ordered for the person harmed in a civil forfeiture case,  
35 unless paid from other assets.

36 (d) Any proceeds of a public sale remaining after  
37 distribution pursuant to subsection (c) of this section shall be  
38 distributed as follows:

39 (1) Ten percent of the proceeds shall be tendered to the  
40 office of the prosecuting attorney who initiated the forfeiture  
41 proceeding.

42 (2) Twenty percent to the Regional Jail Authority to  
43 offset the per diem rate for every county;

44 (3) (A) Seventy percent divided among the investigating  
45 agencies through a memo of understanding, with the  
46 proceeds to be deposited in a special law-enforcement  
47 investigation fund. Such fund shall be administered by the  
48 chief of the law-enforcement agency that seized the forfeited  
49 property sold and shall take the form of an interest-bearing  
50 account with any interest earned to be compounded to the  
51 fund. Any funds deposited in the special law-enforcement  
52 investigative fund pursuant to this article may be expended  
53 only to defray the costs of protracted or complex  
54 investigations, to provide additional technical equipment or

55 expertise, to provide matching funds to obtain federal grants  
56 or for such other law-enforcement purposes as the chief of  
57 the law-enforcement agency may deem appropriate;  
58 however, these funds may not be utilized for regular  
59 operations of the agency.

60 (B) If more than one law-enforcement agency was  
61 substantially involved in effecting the seizure and forfeiture  
62 of property, the portion to be deposited into the law-  
63 enforcement investigative fund shall be equitably distributed  
64 among the law-enforcement agencies by the court wherein  
65 the petition for forfeiture was filed. In the event of a public  
66 sale of the property pursuant to subsection (a) of this section,  
67 the court shall equitably distribute forty percent of any  
68 proceeds remaining after distributions pursuant to subsection  
69 (c) and subdivisions (1) and (2), subsection (d) of this section  
70 among such law-enforcement agencies for deposit into their  
71 individual special law-enforcement investigative fund.  
72 Equitable distribution shall be based upon the overall  
73 contribution of the individual law-enforcement agency to the  
74 investigation which led to the seizure.

75 (e) Upon the sale of any forfeited property for which title  
76 or registration is required by law, the state shall issue a title  
77 or registration certificate to any bona fide purchaser at a  
78 public sale of the property conducted pursuant to subsection  
79 (a) of this section. Upon the request of the law-enforcement  
80 agency receiving, pursuant to the order of the court, or  
81 electing to retain, pursuant to subsection (a) of this section,  
82 any forfeited property for which title or registration is  
83 required by law, the state shall issue a title or registration  
84 certificate to the appropriate governmental body.

85 (f) Every prosecuting attorney or law-enforcement  
86 agency receiving forfeited property or proceeds from the sale  
87 of forfeited property pursuant to this article shall submit an  
88 annual report to the body which has budgetary authority over  
89 the agency. The report shall specify the type and approximate  
90 value of all forfeited property and the amount of proceeds  
91 from the sale of forfeited property received in the preceding  
92 year. No county or municipality may use anticipated receipts  
93 of forfeited property in their budgetary process.

94 (g) In lieu of the sale of any forfeited property subject to  
95 a bona fide security interest preserved by an order of the  
96 court, the law-enforcement agency receiving the forfeited  
97 property may pay the balance due on any security interest  
98 preserved by the court from funds budgeted to the office or  
99 department or from the special fund and retain possession of  
100 the forfeited property for official use pursuant to subsection  
101 (a) of this section.

102 (h) In every case where property is forfeited, disposition  
103 of the forfeited property, in accordance with this article, shall  
104 be made within six months of the date upon which the court  
105 of jurisdiction orders forfeiture. Should the office or agency  
106 receiving the property fail either to place the property in  
107 official use or dispose of the property in accordance with  
108 law, the court of jurisdiction shall cause disposition of the  
109 property to be made with any proceeds therefrom to be  
110 awarded to the state.

111 (i) No disposition may occur until all applicable periods  
112 for filing a notice of intent to appeal has expired and no party

113 in interest has filed such notice. The filing of the notice of  
114 intent to appeal stays any such disposition until the appeal  
115 has been finally adjudicated or until the appeal period of one  
116 hundred eighty days has expired without an appeal having  
117 actually been taken or filed, unless a valid extension of the  
118 appeal has been granted by the circuit court under the  
119 provisions of section seven, article four, chapter fifty-eight of  
120 this code.

121 (j) The special law-enforcement investigative funds of  
122 each law-enforcement agency may be placed in an interest-  
123 bearing depository insured by the federal government.

**§61-14-9. Effect of Dismissal of Criminal Charges.**

1 Notwithstanding any provision of this article or the code  
2 to the contrary, the dismissal of criminal charges for the  
3 offense or offenses for which forfeiture of property is  
4 authorized under this article and any court order issued under  
5 the authority provided in this article will vacate any judgment  
6 or order authorizing the forfeiture of property and the  
7 property shall be returned to its owner or owners.