

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 643**

4 (By Senator Palumbo)

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7 [Originating in the Committee on the Judiciary;  
8 reported February 27, 2012.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new section, designated §60A-7-705a, relating  
14 to the West Virginia Contraband Forfeiture Act; revising  
15 procedures for administrative forfeiture of certain types of  
16 property involved in the trafficking of controlled substances;  
17 establishing time frames; and providing for notice.

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

19 That the Code of West Virginia, 1931, as amended, be amended  
20 by adding thereto a new section, designated §60A-7-705a, to read as  
21 follows:

22 **ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.**

23 **§60A-7-705a. Expedited procedures for administrative forfeiture of**  
24 **certain types of property.**

1 (a) Notwithstanding the provisions of section seven hundred  
2 five of this article, the following items are subject to forfeiture  
3 upon seizure pursuant to this section without recourse to the  
4 procedures set forth in section seven hundred five of this article:

5 (1) Forfeitable money, securities and other negotiable  
6 instruments;

7 (2) Forfeitable conveyances which shall include automobiles of  
8 any configuration, airplanes, motorcycles and bicycles; and

9 (3) Forfeitable firearms.

10 (b) An administrative forfeiture notice may be generated by  
11 the prosecuting attorney no more than twenty days after the seizure  
12 of the property in question. The notice shall be styled "NOTICE OF  
13 SEIZURE AND INTENT TO FORFEIT PROPERTY" and contain the following:

14 (1) A description of the property seized;

15 (2) The name and address of the agency responsible for the  
16 seizure;

17 (3) A statement of the time and place of seizure;

18 (4) The name or names of the owner or owners of the property,  
19 if the property subject to forfeiture conveys by title or has a  
20 serial number or other identifiable number that gives notice of  
21 ownership;

22 (5) The name or names of the person or persons in possession  
23 of the property at the time seized; and

24 (6) The legal basis and facts underlying the seizure and

1 proposals forfeiture.

2 (c) The administrative forfeiture notice shall include a  
3 statement substantially as follows:

4 "To any claimant to the within described property, the  
5 property is subject to administrative forfeiture unless you provide  
6 a written notice, within thirty days of receipt of this notice,  
7 that you wish to contest this forfeiture. If you fail to provide  
8 a notice to the prosecuting attorney, you will immediately and  
9 forever lose all right, claim, title and interest to the subject  
10 property, and the property will be disposed of according to law."  
11 The notice shall also include the address of the respective  
12 prosecuting attorney.

13 (d) The notice of seizure and intent to forfeit shall be  
14 served upon any possessor or possessors of the property at the time  
15 of its seizure, and, in the case of property which conveys by  
16 title, any owner and/or lienholder of record. Service may be by  
17 certified mail, return receipt requested, to the last known address  
18 of the possessor or possessors, owner or owners. Service may also  
19 be effected consistent with Rule 4 of the West Virginia Rules of  
20 Civil Procedure. The notice shall contain the name of the  
21 prosecutor's office to which a response shall be sent.

22 (e) If no owner or possessor can be located with diligent  
23 effort or if the notice, provided in subsection (c) of this section  
24 to the last known address of any person to whom the notice was

1 attempted, is returned unclaimed or refused, then no further notice  
2 is required.

3 (f) If, after thirty days of the delivery of notice from the  
4 prosecuting attorney as provided in this section, written response  
5 is not received from any person stating a desire to contest the  
6 administrative forfeiture, all right, title and interest to the  
7 subject property shall immediately vest in the state, and shall be  
8 disposed of in the same manner as in a civil forfeiture, according  
9 to the provisions of sections seven hundred six and seven hundred  
10 seven of this article.

11 (g) If the prosecutor receives a written response, within the  
12 thirty-day period, stating a desire to contest the expedited  
13 administrative forfeiture, then no forfeiture may be obtained  
14 except through a civil forfeiture proceeding under section seven  
15 hundred five of this article.