

Senate Bill No. 403

(By Senators Miller, Laird and Wills)

[Introduced January 24, 2012; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A Bill to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §61-13-1, §61-13-2,
§61-13-3, §61-13-4, §61-13-5, §61-13-6, §61-13-7, §61-13-8,
§61-13-9, §61-13-10, §61-13-11, §61-13-12, §61-13-13,
§61-13-14, §61-13-15, §61-13-16, §61-13-17, §61-13-18,
§61-13-19, §61-13-20, §61-13-21 and §61-13-22, all relating to
establishment of the West Virginia Criminal and Civil
Forfeiture Act; establishing civil and criminal forfeiture
proceedings pertaining to property and assets used in,
acquired, gained or flowing from various criminal activities
and juvenile offenses; providing definitions; statement of
purpose of forfeitures; identifying property subject to
forfeiture; establishing exemptions; providing the state with
provisional title to property subject to forfeiture;

1 establishing procedures for seizure of property; establishing
2 protections for innocent third party owners and interest
3 holders; establishing a procedure for processing uncontested
4 forfeitures; establishing general procedures for challenging
5 and evaluating forfeiture procedures; providing for the filing
6 and processing of petitions for in rem forfeiture proceedings;
7 providing for the filing and processing and establishing
8 related procedures for in personam forfeiture proceedings;
9 allowing additional procedures applicable in criminal and
10 civil proceedings in which forfeiture of property is sought;
11 allowing for forfeiture of and execution on substitute
12 property under certain conditions; allowing for release of
13 seized property upon provision of adequate security bond or
14 deposit; providing certain exceptions and limitations;
15 establishing procedures for forfeiture; establishing burdens
16 of proof; providing for the seizure and disposition of
17 forfeited and other property; civil forfeiture action and
18 pretrial hardship release; establishing the crime of
19 interference with or diminishing forfeitable property;
20 providing right to trial by jury; creating standards and
21 procedures for care of property in law-enforcement custody;
22 providing provisions for the sale of forfeited property;
23 prioritizing and directing the application of proceeds and

1 forfeiture funds; providing exceptions; and criminal
2 penalties.

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

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §61-13-1, §61-13-2,
6 §61-13-3, §61-13-4, §61-13-5, §61-13-6, §61-13-7, §61-13-8,
7 §61-13-9, §61-13-10, §61-13-11, §61-13-12, §61-13-13, §61-13-14,
8 §61-13-15, §61-13-16, §61-13-17, §61-13-18, §61-13-19, §61-13-20,
9 §61-13-21 and §61-13-22, all to read as follows:

10 **ARTICLE 13. WEST VIRGINIA CRIMINAL AND CIVIL FORFEITURE ACT.**

11 **§61-13-1. Purpose and scope.**

12 (a) The provisions of this article establish general
13 forfeiture guidelines and procedures to be followed in both civil
14 and criminal cases in which forfeiture of property or restitution
15 is sought for the specified crimes and offenses set forth in
16 subsection (c) of this section, when committed by adult offenders,
17 or their equivalent if committed by a juvenile offender.

18 (b) Forfeitures under this article shall be governed by all of
19 the following purposes:

20 (1) To provide economic disincentives and remedies to deter
21 and offset the economic effect of offenses by seizing and
22 forfeiting contraband, proceeds, and certain instrumentalities;

23 (2) To prioritize restitution for victims of offenses;

1 (3) To protect third parties from wrongful forfeiture of their
2 property; and,

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

5 (c) Offenses for which property may be forfeited pursuant to
6 provisions of this article include any act or omission which, when
7 committed by an adult, constitutes one or more of the following
8 misdemeanor or felony offenses:

9 (1) Any of the following crimes of fraud:

10 (A) As defined in section nine, article eight, chapter thirty-
11 one-a of this code as against banking institutions;

12 (B) As defined in section eighteen, article twenty, chapter
13 forty-seven and section nineteen, article twenty, chapter forty-
14 seven of this code as against bingo;

15 (C) As defined in section eighteen, article twenty-one,
16 chapter forty-seven and section nineteen, article twenty-one,
17 chapter forty-seven of this code as against charitable raffles;

18 (D) As defined in section twenty-six, article two, chapter
19 fourteen as against claims against the state;

20 (E) As defined in section four, article three-c of this
21 chapter as against computer fraud;

22 (F) As defined in section twenty-four, article three of this
23 chapter as against credit cards;

1 (G) As defined in section twenty-four, article three of this
2 chapter as against disposing of property to defraud creditors;

3 (H) As defined in section thirteen, article two-a, chapter
4 seventeen-a of this code as against motor vehicle records;

5 (I) As defined in section forty, article three of this chapter
6 of this chapter as against obtaining food or lodging;

7 (J) As defined in section twenty-four, article three of this
8 chapter as against money, property and services;

9 (K) As defined in section forty-four, article three of this
10 chapter as against public utilities;

11 (L) As defined in sections twenty-four-a and twenty-four-b,
12 article three of this chapter as against telephone services;

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

15 (2) Any crime against the elderly as "elderly" is defined in
16 section three-k, article five-p, chapter sixteen of this code;

17 (3) Any crime listed in section one, article eight-c of this
18 chapter as against child pornography,

19 (4) Any crime listed in section thirteen, article two of this
20 chapter as against extortion;

21 (5) Any crime listed in section fourteen, article two of this
22 chapter as against abduction, kidnaping or concealing of a child;

23 (6) Any crime listed in section five, article eight of this

1 chapter as against prostitution and houses of ill fame and
2 assignation;

3 (7) Any crime listed in section fifty-four, article three of
4 this chapter as against identity theft; and,

5 (8) Any crime listed in section twenty-four, article six of
6 this chapter as against terrorist activities.

7 (d) Offenses for which property may be forfeited pursuant to
8 provisions of this article also include any comparable equivalent
9 act or omission committed by a juvenile, which, if committed by an
10 adult, would constitute any of the misdemeanor or felony offenses
11 listed in subsection (c) of this section.

12 (e) The provisions of this article apply to any act or
13 omission that could be charged as a felony or misdemeanor under the
14 listed statutes, or an equivalent juvenile offense, whether or not
15 a formal criminal prosecution or delinquent child proceeding is
16 pending at the time the forfeiture is initiated.

17 (f) The seizure and forfeiture provisions of this article do
18 not apply to:

19 (1) Any offenses in violation of article three-a, chapter
20 sixty of this code, relating to sales by retail liquor licensees;

21 (2) Any offenses in violation of article four, chapter sixty
22 of this code, relating to licenses under the state control of
23 alcoholic liquors;

1 (3) Any offenses in violation of article six, chapter sixty of
2 this code, relating to miscellaneous provisions under the state
3 control of alcoholic liquors; or

4 (4) Any offenses in violation of chapter sixty-a, commonly
5 known as the "Uniform Controlled Substances Act".

6 (g) The provisions of this article do not apply to or amend
7 the provisions of article seven, chapter sixty-a of this code,
8 commonly known as the "West Virginia Contraband Forfeiture Act".

9 **§61-13-2. Definitions.**

10 As used in this article:

11 (1) "Aircraft" has the same meaning as described in section
12 one, article two-a, chapter twenty-nine of this code.

13 (2) "Computers," "computer networks," "computer systems,"
14 "computer software," and "telecommunications device" have the same
15 meanings as described in section three, article three-c, chapter
16 sixty-one of this chapter.

17 (3) "Financial institution" means a bank, credit union,
18 savings and loan association, or a licensee or registrant as
19 defined in section two, article one, chapter thirty-one-a of this
20 code.

21 (4) "Firearm" and "deadly weapon" have the same meanings as in
22 section two, article seven of this chapter.

23 (5) "Innocent person" includes any bona fide purchaser of

1 property that is subject to forfeiture, including any person who
2 establishes a valid claim to or interest in the property in
3 accordance with the provisions of section seven, chapter sixty-a of
4 this code and any victim of an alleged offense.

5 (6) "Instrumentality" means property otherwise lawful to
6 possess that is used in or intended to be used in an offense. An
7 "instrumentality" may include, but is not limited to, a firearm, a
8 mobile instrumentality, a computer, a computer network, a computer
9 system, computer software, a telecommunications device, money, and
10 any other means of exchange.

11 (7) "Law-enforcement officer" includes, but is not limited to,
12 the definition contained in section three, article ten, chapter
13 fifteen of this code and the office of the prosecutor.

14 (8) "Mobile instrumentality" means an instrumentality that is
15 inherently mobile and used in the routine transport of persons.
16 "Mobile instrumentality" includes, but is not limited to, any
17 vehicle, any watercraft, and any aircraft.

18 (9) "Money" has the same meaning as in section one, article
19 six, chapter forty-seven of this code.

20 (10) "Offense" means any act or omission that could be charged
21 as a criminal offense or a delinquent act, whether or not a formal
22 criminal prosecution or delinquent child proceeding began at the
23 time the forfeiture is initiated.

1 (11) "Proceeds" means both of the following:

2 (A) In cases involving unlawful goods, services, or
3 activities, "proceeds" means any property derived directly or
4 indirectly from an offense. "Proceeds" may include, but is not
5 limited to, money or any other means of exchange. "Proceeds" is
6 not limited to the net gain or profit realized from the offense.

7 (B) In cases involving lawful goods or services that are sold
8 or provided in an unlawful manner, "proceeds" means the amount of
9 money or other means of exchange acquired through the illegal
10 transactions resulting in the forfeiture, less the direct costs
11 lawfully incurred in providing the goods or services. The lawful
12 costs deduction does not include any part of the overhead expenses
13 of, or income taxes paid by, the entity providing the goods or
14 services. The alleged offender or delinquent child has the burden
15 to prove that any costs are lawfully incurred.

16 (12) "Property" means "property" as defined in section ten,
17 article two, chapter two of this code and any benefit, privilege,
18 claim, position, interest in an enterprise, or right derived,
19 directly or indirectly, from the offense.

20 (13) "Property subject to forfeiture" includes contraband and
21 proceeds and may include instrumentalities as provided in this
22 article.

23 (14) "Prosecutor" means any duly elected or appointed

1 prosecutor or special prosecutor.

2 (15) "Vehicle" has the same meaning as in section four,
3 article one, chapter seventeen and section one, article one,
4 chapter seventeen-b of this code.

5 (16) "Watercraft" means any motorized or nonmotorized vessel.

6 **§61-13-3. Property subject to forfeiture; exemptions; burden of**
7 **proof.**

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

10 (1) Contraband involved in any offense set forth in
11 subsections (c) and (d), section one of this article;

12 (2) Proceeds derived from or acquired through the commission
13 of any offense set forth in subsections (c) and (d), section one of
14 this article;

15 (3) An instrumentality that is used in or intended to be used
16 in the commission or facilitation of any offense listed in
17 subsections (c) and (d) of section one of this article: *Provided,*
18 That the use or intended use is consistent with an attempt to
19 commit, complicity in committing or a conspiracy to commit the
20 described offense.

21 (b) In determining whether an alleged instrumentality was used
22 in or was intended to be used in the commission or facilitation of
23 an offense or an attempt, complicity, or conspiracy to commit an

1 offense in a manner sufficient to warrant its forfeiture, the trier
2 of fact shall consider the following factors the trier of fact
3 determines are relevant:

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

6 (2) Whether the primary purpose in using the instrumentality
7 was to commit or attempt to commit the offense;

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

10 (c) All property, including all interests in such property,
11 described in a statute providing for its forfeiture is subject to
12 forfeiture. However:

13 (1) A vehicle used by any person as a common carrier in the
14 transaction of business as a common carrier may not be forfeited
15 under the provisions of this article unless it appears that the
16 owner or other person in charge of the vehicle was a consenting
17 party or privy to the act or omission giving rise to the forfeiture
18 or know or had reason to know of it.

19 (2) A vehicle may not be forfeited under the provisions of
20 this article for any act or omission established by the owner to
21 have been committed or omitted by a person other than the owner
22 while the vehicle was unlawfully in the possession of a person
23 other than the owner in violation of the criminal laws of this

1 state or of the United States.

2 (3) An owner's or interest holder's interest may not be
3 forfeited under this article if the owner or interest establishes
4 all of the following:

5 (A) He or she acquired the interest before or during the
6 conduct giving rise to forfeiture;

7 (B) He or she is a bonafide purchaser for value not knowingly
8 taking part in an illegal transaction; and,

9 (C) Her or she at the time of the purchase and at all times
10 after the purchase and before the filing of a lien notice or the
11 provisions of notice of pending forfeiture or the filing and notice
12 of a civil or criminal proceeding relating to the property,
13 whichever is earlier, was reasonably without notice of the act or
14 notice of the act or omission giving rise to the forfeiture and was
15 reasonably without cause to believe that the property was subject
16 to forfeiture.

17 (4) An owner's or interest holder's interest may not be
18 forfeited under this article if the owner or interest holder
19 establishes all of the following:

20 (A) He or she acquired the interest before or during the
21 conduct giving rise to forfeiture; and,

22 (B) He or she did not know and could not reasonably have known
23 of the act or omission which gave rise to the forfeiture, or that

1 it was likely to occur.

2 (e) In any forfeiture action under the provisions of sections
3 eleven, twelve or thirteen of this article, if a property owner or
4 third party claims lawful interest in the subject property alleged
5 to be proceeds, the state or political subdivision has provisional
6 title and a right to hold the property if it proves both of the
7 following by a preponderance of the evidence:

8 (1) The interest in the property was acquired by the alleged
9 offender or delinquent child during the commission of the offense
10 or within a reasonable time after that period; and,

11 (2) There is no likely source for the interest in the property
12 other than as proceeds derived from or acquired through the
13 commission of the offense.

14 (e) If the alleged offender or delinquent child claims that
15 the property was acquired in whole or in part with other lawful
16 assets, the alleged offender or delinquent child shall have the
17 burden to prove by a preponderance of the evidence the amount of
18 any direct costs lawfully incurred.

19 **§61-13-4. Provisional title to property subject to forfeiture.**

20 The state or political subdivision acquires provisional title
21 to property subject to forfeiture under this article upon a
22 person's commission of an offense giving rise to forfeiture,
23 subject to third party claims and a final adjudication under the

1 provisions of this article. Provisional title authorizes the state
2 or political subdivision to seize and hold the property, and to act
3 to protect the property under this section before any proceeding
4 under this article. Title to the property vests with the state or
5 political subdivision when the trier of fact renders a final
6 forfeiture verdict or order under the provisions of this article,
7 but that title is subject to third party claims adjudicated under
8 those sections.

9 **§61-13-5. Seizure of property.**

10 (a) Property subject to forfeiture under this article may be
11 seized for forfeiture by a law-enforcement officer:

12 (1) On process issued pursuant to the rules of civil procedure
13 or the provisions of this article including a seizure warrant.

14 (2) By making a seizure for forfeiture on property seized on
15 process issued pursuant to law.

16 (3) By making a seizure for forfeiture without court process
17 if any of the following is true:

18 (A) The seizure for forfeiture is of property seized incident
19 to an arrest or search.

20 (B) The property subject to seizure for forfeiture has been
21 the subject of a prior judgment in favor of this state or any other
22 state or the federal government in a forfeiture proceeding.

23 (C) The law- enforcement officer has probable cause to believe

1 that the property is subject to forfeiture.

2 (b) Property subject to forfeiture under this article may be
3 seized for forfeiture by placing the property under constructive
4 seizure. Constructive seizure may be made by posting notice of
5 seizure for forfeiture on the property or by filing notice of
6 seizure for forfeiture or notice of pending forfeiture in any
7 appropriate public record relating to the property.

8 (c) The court shall determine probable cause for seizure
9 before real property may be seized for forfeiture, unless the
10 seizure is pursuant to a constructive seizure or the filing of a
11 lis pendens. The court may make its determination ex parte if the
12 state demonstrates that notice and an opportunity to appear would
13 create a risk of harm to the public safety or welfare, including
14 the risk of physical injury or the likelihood of property damage or
15 financial loss.

16 (d) The court shall determine probable cause for seizure
17 before property may be seized for forfeiture as a substitute asset
18 pursuant to subsection (a) of section thirteen of this article,
19 unless the seizure is pursuant to a constructive seizure or the
20 filing of a lien or lis pendens. The court may issue a seizure
21 warrant for such property if it determines that there is probable
22 cause to believe that the property is subject to forfeiture and is
23 not available for seizure for forfeiture for any reason described

1 in subsection (a), section thirteen of this article. The
2 determinations shall be made ex parte unless real property is to be
3 seized and subsection (c) of this section requires notice and an
4 opportunity to appear.

5 (e) In establishing a preponderance of the evidence and in
6 determining probable cause for seizure and for forfeiture, a
7 rebuttable presumption exists that the property of any person is
8 subject to forfeiture if the state establishes all of the following
9 by the standard of proof applicable to that proceeding:

10 (1) Conduct giving rise to forfeiture occurred.

11 (2) The person acquired the property during the period of the
12 conduct giving rise to forfeiture or within a reasonable time after
13 that period.

14 (3) There is no likely source for the property other than the
15 conduct giving rise to forfeiture.

16 (f) In establishing a preponderance of the evidence and in
17 determining probable cause for seizure and for forfeiture, the fact
18 that money or any negotiable instrument was found in proximity to
19 contraband or to instrumentalities of an offense gives rise to an
20 inference that the money or instrument was the proceeds of
21 contraband or was used or intended to be used to facilitate
22 commission of the offense.

23 **§61-13-6. Powers and duties of law-enforcement officers and**

1 **agencies.**

2 (a) In the event of a seizure for forfeiture under section
3 five of this article, the property is not subject to replevin,
4 conveyance, sequestration or attachment but is deemed to be in the
5 custody of the law-enforcement agency making the seizure for
6 forfeiture. The seizing agency or the attorney for the state may
7 authorize the release of the seizure for forfeiture of the property
8 if forfeiture or retention is unnecessary, may transfer the
9 property to any other state or federal agency or may transfer the
10 action to another attorney for the state by discontinuing
11 forfeiture proceedings in favor of forfeiture proceedings initiated
12 by the other agency or attorney. An action pursuant to this
13 article shall be consolidated with any other action or proceeding
14 pursuant to this article relating to the same property on motion by
15 the attorney for the state in either action.

16 (b) If property is seized for forfeiture under section five of
17 this article, pending forfeiture and final disposition, the seizing
18 agency may do any of the following:

19 (1) Remove the property to a storage area for safekeeping or,
20 if the property is a negotiable instrument or money, deposit it in
21 an interest-bearing account.

22 (2) Remove the property to a place designated by the court.

23 (3) Provide for another custodian or agency to take custody of

1 the property and remove it to an appropriate location within the
2 jurisdiction of the court.

3 (c) As soon as practicable after seizure for forfeiture, the
4 seizing agency shall conduct an inventory and estimate the value of
5 the property seized. Within twenty days the seizing agency or the
6 attorney for the state shall make reasonable efforts to provide
7 notice of seizure for forfeiture to all persons known to have an
8 interest in the seized property.

9 (d) A person who acts in good faith and in a reasonable manner
10 to comply with an order of the court or a request of a law
11 enforcement officer is not liable to any person for acts done in
12 compliance with the order or request.

13 (e) A possessory lien of a person from whose possession
14 property is seized is not affected by the seizure.

15 (f) If a seizure is for forfeiture under section five of this
16 article, the seizing agency shall send to an attorney for the state
17 a written request for forfeiture within twenty days, which shall
18 include a statement of facts and circumstances of the seizure
19 including the names of witnesses then known, the appraised or
20 estimated value of the property and a summary of the facts relied
21 on for forfeiture.

22 (g) An owner of property seized for forfeiture may obtain the
23 release of the seized property by posting with the attorney for the

1 state a surety bond or cash in an amount equal to the full fair
2 market value of the property as determined by the attorney for the
3 state. The state may refuse to release the property if any of the
4 following applies:

5 (1) The bond or cash tendered is inadequate.

6 (2) The property is retained as contraband or evidence.

7 (3) The property is particularly altered or designed for use
8 in conduct giving rise to forfeiture.

9 (h) If an owner of property posts a surety bond or cash and
10 the property is forfeited the court shall forfeit the surety bond
11 or cash in lieu of the property.

12 **§61-13-7. Notice of pending forfeiture.**

13 Whenever notice of pending forfeiture is required under this
14 article it shall be given or provided in one of the following ways
15 and is effective at the time of personal service, publication or
16 the mailing of written notice, whichever is earlier:

17 (a) If the owner's or interest holder's name and current
18 address are known by either:

19 (1) Personal service.

20 (2) Mailing a copy of the notice by certified mail to the
21 address.

22 (b) If the owner's or interest holder's interest is required
23 by law to be on record with a county recorder's office, the

1 Secretary of State, the Department of Transportation Motor Vehicle
2 Division, the Game and Fish Department, or another state or federal
3 licensing agency in order to perfect an interest in the property,
4 but his or her current address is not known, by mailing a copy of
5 the notice by certified mail to any address on the record.

6 (c) If the owner's or interest holder's address is not known,
7 and is not on record as provided in paragraph (b) of this section,
8 or if his or her interest is not known, by publication in one issue
9 of a newspaper of general circulation in the county in which the
10 seizure occurs.

11 **§61-13-8. Commencement of proceedings.**

12 (a) The attorney for the state shall determine whether it is
13 probable that the property is subject to forfeiture and, if so, may
14 cause the initiation of uncontested or judicial proceedings against
15 the property. If, on inquiry and examination, the attorney
16 determines that the proceedings probably cannot be sustained or
17 that justice does not require the institution of such proceedings,
18 he or she shall notify the seizing agency and immediately authorize
19 the release of the seizure for forfeiture on the property or on any
20 specified interest in it.

21 (b) If the state fails to initiate forfeiture proceedings
22 against property seized for forfeiture by notice of pending
23 forfeiture within sixty days after its seizure for forfeiture, or

1 fails to pursue forfeiture of such property on which a timely claim
2 has been properly filed by filing a complaint, information or
3 indictment pursuant to section eleven or section twelve of this
4 article within sixty days after notice of pending forfeiture or, if
5 uncontested forfeiture has been made available, within sixty days
6 after a declaration of forfeiture, whichever is later, the property
7 shall be released from its seizure for forfeiture on the request of
8 an owner or interest holder, pending further proceedings pursuant
9 to this article, which shall be commenced within two years after
10 actual discovery of the last act giving rise to forfeiture.

11 (c) If the property sought to be forfeited is real property,
12 including fixtures, the attorney for the state may file a lis
13 pendens or a notice of pending forfeiture with respect to the
14 property with the county recorder of the county in which the
15 property is located, without a filing fee or other charge.

16 **§61-13-9. Uncontested forfeiture.**

17 If a forfeiture is authorized by law, the attorney for the
18 state may make uncontested civil forfeiture available to owners of
19 and interest holders in personal property in the following manner:

20 (a) If the attorney for the state in his or her discretion
21 makes uncontested forfeiture available, he or she shall provide
22 notice of pending forfeiture by giving notice within thirty days
23 after seizure for forfeiture as provided in section seven of this

1 article to all persons known to have an interest who have not
2 previously received the notice.

3 (b) An owner of or interest holder in the property may elect
4 to file either a claim with the court within thirty days after the
5 notice or a petition for remission or mitigation of forfeiture with
6 the attorney for the state within thirty days after the notice and
7 not after a complaint has been filed, but may not file both. The
8 claim or petition shall comply with the requirements for claims in
9 subsections (e) and (f) of section eleven of this article.

10 (c) The following apply if one or more owners or interest
11 holders timely file a petition for remission or mitigation:

12 (1) The attorney for the state shall inquire into whether the
13 property is subject to forfeiture and the facts and circumstances
14 surrounding petitions for remission or mitigation of forfeiture.

15 (2) The attorney for the state shall provide the seizing
16 agency and the petitioner with a written declaration of forfeiture,
17 remission or mitigation of any or all interest in the property in
18 response to each petition within ninety days after the effective
19 date of the notice of pending forfeiture unless one or more
20 petitioners request an extension of time in writing or unless the
21 circumstances of the case require additional time, in which case
22 the attorney for the state shall notify the petitioner in writing
23 and with specificity within the ninety-day period that the

1 circumstances of the case require additional time and further
2 notify the petitioner of the expected decision date. The mailing
3 of the declaration may not be more than one hundred twenty days
4 after the date of the state's notice of pending forfeiture.

5 (3) An owner or interest holder in any property declared
6 forfeited may file a claim as described in subsections (e) and (f)
7 of section eleven in this article, in the circuit court in the
8 county in which the uncontested forfeiture was declared within
9 thirty days after the mailing of the declaration of forfeiture.

10 (4) If a declaration of forfeiture pursuant to this section is
11 followed by a timely claim, or at any other time, the attorney for
12 the state may elect to proceed as provided for judicial
13 forfeitures.

14 (5) If no petitioner files a claim in the court within thirty
15 days after the mailing of the declaration of forfeiture, the
16 declaration becomes final and the attorney for the state shall
17 proceed as provided in sections fourteen and fifteen of this
18 article.

19 (d) If no petitions for remission or mitigation or claims are
20 timely filed, the attorney for the state shall proceed as provided
21 in sections fourteen and fifteen of this article.

22 (e) If one or more petitions for remission or mitigation and
23 one or more claims are timely filed, no complaint for forfeiture

1 need be filed by the state until sixty days after an uncontested
2 declaration of forfeiture.

3 (f) If a judicial forfeiture proceeding follows a notice of
4 pending forfeiture making uncontested civil forfeiture available:

5 (1) A duplicate or repetitive notice or claim is not required.
6 The judicial proceedings shall adjudicate all timely filed claims.
7 If a claim has been timely filed pursuant to subsections (b) or (c)
8 of this section it shall be determined in a judicial forfeiture
9 proceeding after the commencement of such a proceeding pursuant to
10 subsection (a), section eleven or subsection (a), section twelve of
11 this article.

12 (2) The declarations of forfeiture, remission or mitigation
13 responsive to all petitioners who subsequently filed claims are
14 void and shall be regarded as rejected offers to compromise.

15 **§61-13-10. Judicial forfeiture proceedings; general.**

16 (a) In any proceeding pursuant to this article, the court, on
17 application of the state, may enter any restraining order or
18 injunction, require the execution of satisfactory performance
19 bonds, create receiverships, appoint conservators, appraisers,
20 accountants or trustees or take any other action to seize, secure,
21 maintain or preserve the availability of property subject to
22 forfeiture under this article, including a warrant for its seizure,
23 whether prior or subsequent to the filing of a notice of pending

1 forfeiture, complaint, indictment or information.

2 (b) If property is seized for forfeiture without a prior
3 judicial determination of probable cause, an order of forfeiture or
4 a hearing pursuant to subsection (d), section twelve of this
5 article, the court, on an application filed by an owner of or
6 interest holder in the property within fifteen days after notice of
7 its seizure for forfeiture or actual knowledge of it, whichever is
8 earlier, and complying with the requirements for claims in
9 subsections (e) and (f) of section eleven of this article, may
10 issue an order to show cause to the seizing agency for a hearing on
11 the sole issue of whether probable cause for forfeiture of the
12 property then exists. Notice of the order to show cause hearing
13 must be served upon the attorney for the state at least five
14 working days before the hearing is held. If the court finds that
15 no probable cause for forfeiture of the property then exists or if
16 the state elects not to contest the issue, the property seized for
17 forfeiture from the applicant shall be released to the custody of
18 the applicant pending the outcome of a judicial proceeding pursuant
19 to this article. If the court finds that probable cause for the
20 forfeiture of the property then exists, the court shall not order
21 the property released, except as provided in subsection (g),
22 section six of this article.

23 (c) A defendant convicted in any criminal proceeding shall be

1 precluded from subsequently denying the essential allegations of
2 the criminal offense of which he or she was convicted in any
3 proceeding pursuant to this article. For the purposes of this
4 article, a conviction may result from a verdict or plea including
5 a no contest plea.

6 (d) In any judicial forfeiture hearing, determination or other
7 proceeding pursuant to this article, the applicant, petitioner or
8 claimant must establish by a preponderance of the evidence that he
9 or she is an owner of or interest holder in the property seized for
10 forfeiture before other evidence is taken. The burden of proving
11 the standing of the claimant and the existence of the exemption is
12 on the claimant or party raising the claim, and it is not necessary
13 to negate the standing of any claimant or the existence of any
14 exemption in any notice, application, complaint, information or
15 indictment.

16 (e) In hearings and determinations pursuant to this article:

17 (1) The law of evidence relating to civil actions applies
18 equally to all parties, including the state, an applicant, a
19 petitioner, a claimant and a defendant, on all issues required to
20 be established by a preponderance of the evidence.

21 (2) The court shall receive and consider, in making any
22 determination of probable cause or reasonable cause, all evidence
23 and information that would be permissible in determining probable

1 cause at a preliminary hearing, at a grand jury or by a magistrate
2 pursuant to section thirteen of this article, together with
3 inferences from the evidence and information.

4 (3) Evidence may not be suppressed in any hearing pursuant to
5 this article on the ground that its acquisition by search or
6 seizure violated constitutional protections applicable in criminal
7 cases relating to unreasonable searches or seizures.

8 (f) All property, including all interests in such property,
9 declared forfeited under this title vests in this state on the
10 commission of the act or omission giving rise to forfeiture under
11 this article together with the proceeds of the property after such
12 time. Any such property or proceeds subsequently transferred to
13 any person are subject to forfeiture and thereafter shall be
14 ordered forfeited unless the transferee claims and establishes in
15 a hearing pursuant to this article the showings set out in section
16 three of this article.

17 (g) On the motion of a party and after notice to any persons
18 who are known to have an interest in the property and an
19 opportunity to be heard, the court may order property that has been
20 seized for forfeiture sold, leased, rented or operated to satisfy
21 an interest of any interest holder who has timely filed a proper
22 claim or to preserve the interests of any party. The court may
23 order a sale or any other disposition of the property if the

1 property may perish, waste, be foreclosed on or otherwise be
2 significantly reduced in value or if the expenses of maintaining
3 the property are or will become greater than its fair market value.
4 If the court orders a sale, the court shall designate a third party
5 or state property manager to dispose of the property by public sale
6 or other commercially reasonable method and shall distribute the
7 proceeds in the following order of priority:

8 (1) Payment of reasonable expenses incurred in connection with
9 the sale.

10 (2) Satisfaction of exempt interests in the order of their
11 priority.

12 (3) Preservation of the balance, if any, in the actual or
13 constructive custody of the court in an interest-bearing account,
14 subject to further proceedings under this article.

15 (h) If the property is disposed of pursuant to subsection (g)
16 of this section, a successful claimant may apply to the court for
17 actual monetary damages suffered, if any, as a result of the
18 disposal of the property, but the state, a political subdivision of
19 the state, or an officer, employee or agent of any of them shall
20 not in any event be liable under this article for incidental or
21 consequential damages or for damages either:

22 (1) That could have been avoided if the claimant had made full
23 and immediate disclosure to the attorney for the state of facts or

1 evidence known or available to the claimant.

2 (2) In excess of the fair market value of the property seized
3 for forfeiture at the time of its seizure plus interest from the
4 time of its seizure for forfeiture.

5 (i) If an indictment or information is filed alleging the same
6 conduct as the conduct giving rise to forfeiture in a civil
7 forfeiture proceeding, the court in the civil proceeding may stay
8 civil discovery against the criminal defendant and against the
9 state in the civil proceeding until the defendant's criminal trial
10 is completed. Before staying civil discovery, the court shall make
11 adequate provision to prevent any loss or expense to any victim or
12 party resulting from the delay, including loss or expense due to
13 maintenance, management, insurance, storage or preservation of the
14 availability of the property or due to depreciation in the value of
15 the property.

16 (j) A person claiming to be an owner of or interest holder in
17 property seized for forfeiture under this article may not commence
18 or maintain any action against the state concerning the validity of
19 the alleged interest other than as provided in this article.

20 **§61-13-11. Judicial in rem forfeiture proceedings.**

21 (a) If a forfeiture is authorized by law, it shall be ordered
22 by a court on an action in rem brought by the state pursuant to a
23 notice of pending forfeiture or a verified complaint for

1 forfeiture. The state may serve the complaint in the manner
2 provided by section seven of this article or by the West Virginia
3 Rules of Civil Procedure.

4 (b) A civil in rem action may be brought by the state in
5 addition to or in lieu of the civil and criminal in personam
6 forfeiture procedures set forth in sections eleven, twelve and
7 thirteen of this article or the uncontested civil forfeiture
8 procedures set forth in section nine of this article. Judicial in
9 rem forfeiture proceedings are in the nature of an action in rem
10 and are governed by the West Virginia Rules of Civil Procedure
11 unless a different procedure is provided by law.

12 (c) On the filing of a civil in rem action by the state
13 circuit court the clerk of the court in which the action is filed
14 shall provide, and the attorney for the state may provide, the
15 notice of pending forfeiture required by section seven of this
16 article unless the files of the clerk of the court reflect that
17 such notice has previously been made.

18 (d) An owner of or interest holder in the property may file a
19 claim against the property, within thirty days after the notice,
20 for a hearing to adjudicate the validity of his or her claimed
21 interest in the property. The hearing shall be held by the court
22 without a jury.

23 (e) The claim shall be signed by the claimant under penalty of

1 perjury and shall set forth all of the following:

2 (1) The caption of the proceeding as set forth on the notice
3 of pending forfeiture or complaint and the name of the claimant.

4 (2) The address at which the claimant will accept future
5 mailings from the court or attorney for the state.

6 (3) The nature and extent of the claimant's interest in the
7 property.

8 (4) The date, the identity of the transferor and the
9 circumstances of the claimant's acquisition of the interest in the
10 property.

11 (5) The specific provisions of this article relied on in
12 asserting that the property is not subject to forfeiture.

13 (6) All facts supporting each such assertion.

14 (7) Any additional facts supporting the claimant's claim.

15 (8) The precise relief sought.

16 (f) Copies of the claim shall be mailed to the seizing agency
17 and to the attorney for the state. An extension of time for the
18 filing of a claim may not be granted.

19 (g) Within twenty days after service of the complaint, the
20 claimant shall file and serve the answer to the complaint and the
21 answers to interrogatories and requests for admission if any were
22 served with the complaint. The answer shall be signed by the owner
23 or interest holder under penalty of perjury, shall comply with the

1 West Virginia Rules of Civil Procedure relating to answers and
2 shall comply with all of the requirements for claims. If no proper
3 answer is timely filed, the attorney for the state shall proceed as
4 provided in sections fourteen and fifteen with ten days' notice to
5 any person who has timely filed a claim that has not been stricken
6 by the court.

7 (h) At the time of filing its pleadings or at any other time
8 not less than thirty days before the hearing, the state and any
9 claimant who has timely answered the complaint may serve discovery
10 requests on any other party, the answers or response to which shall
11 be due in twenty days, and may take the deposition of any person at
12 any time after the expiration of fifteen days after the filing and
13 service of the complaint. Any party may move for summary judgment
14 at any time after an answer or responsive pleading is served and
15 not less than thirty days before the hearing. The state, as the
16 party defending against the claim, may make offers of judgment at
17 any time more than ten days before the hearing begins.

18 (i) An injured person may submit a request for compensation
19 from forfeited property to the court at any time before the earlier
20 of the entry of a final judgment or an application for an order of
21 the forfeiture of the property, or if a hearing pursuant to
22 subsections (k), (l) and (m) of this section is held, not less than
23 thirty days before the hearing. The request shall be signed by the

1 requestor under penalty of perjury and shall set forth all of the
2 following:

3 (1) The caption of the proceeding as set forth on the notice
4 of pending forfeiture or complaint and the name of the requestor.

5 (2) The address at which the requestor will accept future
6 mailings from the court or parties to the action.

7 (3) The property subject to forfeiture from which the
8 requestor seeks compensation.

9 (4) The nature of the economic loss sustained by the
10 requestor.

11 (5) All facts supporting each such assertion.

12 (6) Any additional facts supporting the request.

13 (7) The amount of economic loss for which the requestor seeks
14 compensation.

15 (j) If a proper request for compensation from forfeited
16 property is timely filed, the court shall hold a hearing to
17 establish whether there is a factual basis for the request. The
18 requestor has the burden of establishing by a preponderance of the
19 evidence that the requestor is an injured person who sustained
20 economic loss.

21 (k) The hearing on the claim, to the extent practicable and
22 consistent with the interest of justice, shall be held sixty days
23 after all parties have complied with the disclosure required by

1 rule 26.1 of the West Virginia Rules of Civil Procedure. The court
2 may consolidate the hearing on the claim with a hearing on any
3 other claim concerning the same property.

4 (l) At the hearing, the claimant may testify, present evidence
5 and witnesses on the claimant's own behalf and cross-examine
6 witnesses who appear at the hearing. The state may present
7 evidence and witnesses and cross-examine witnesses who appear at
8 the hearing.

9 (m) At the hearing, the state has the burden of establishing
10 by a preponderance of the evidence that the property is subject to
11 forfeiture. Any claimant who has previously established by a
12 preponderance of the evidence that the claimant is an owner of or
13 interest holder in the property has the burden of establishing by
14 a preponderance of the evidence that the claimant's interest in the
15 property is exempt from forfeiture.

16 (n) In accordance with its findings at the hearing:

17 (1) The court shall order an interest in property returned or
18 conveyed to a claimant, if any, who has established by a
19 preponderance of the evidence that the claimant is an owner of or
20 interest holder in the property if either of the following applies:

21 (A) The state has failed to establish by a preponderance of
22 the evidence that the interest is subject to forfeiture.

23 (B) The claimant has established by a preponderance of the

1 evidence that the interest is exempt from forfeiture.

2 (2) The court shall order all other property, including all
3 interests in the property, forfeited to this state and proceed
4 pursuant to sections fourteen and fifteen of this article.

5 (3) If the court finds that a requestor is an injured person
6 the court shall determine the amount of the injured person's
7 economic loss caused by the conduct giving rise to the forfeiture
8 of the designated property and shall require the following:

9 (A) If the designated property is not contraband and is not
10 altered or designed for use in conduct giving rise to forfeiture,
11 the attorney for the state shall sell the property as provided in
12 subsections (a) and (b) of section fifteen, and shall apply the
13 resulting balance to compensate the injured person's economic loss
14 in the amount found by the court.

15 (B) If the balance is insufficient to compensate the economic
16 loss of all injured persons the attorney for the state shall
17 distribute the balance among the injured persons according to a
18 method determined by the court.

19 (C) After compensation of all injured persons, the attorney
20 for the state shall transmit ten per cent of the remaining balance,
21 if any, as set forth in sections nineteen and twenty of this
22 article.

23 **§61-13-12. Judicial in personam proceedings.**

1 (a) If a forfeiture is authorized by law, it shall be ordered
2 by a court on proceedings by the state in an in personam civil or
3 criminal action pursuant to section thirteen of this article or any
4 other law providing for a forfeiture.

5 (b) Any complaint, information or indictment alleging or
6 charging one or more offenses included in section one, or any other
7 offense giving rise to forfeiture under this article, shall set
8 forth with reasonable particularity property that the state seeks
9 to forfeit pursuant to this section in that action, if any. The
10 court shall allow the allegation that particular new or different
11 or differently described property is subject to forfeiture in an in
12 personam criminal or civil case to be made at any time prior to the
13 date the case is actually tried unless the allegation is filed
14 fewer than twenty days before the case is actually tried, and the
15 court finds on the record that the defendant was in fact prejudiced
16 by the untimely filing and states reasons for these findings,
17 provided that when the allegation is filed, the state must make
18 available to the defendant a copy of any material information
19 concerning the allegation.

20 (c) In any proceeding pursuant to this section, the court, on
21 application of the state, may enter any order authorized by
22 subsection (a), section ten of this article, or take any other
23 action to seize, secure, maintain or preserve the availability of

1 property subject to forfeiture under this article, including a
2 warrant for its seizure, whether before or after the filing of a
3 complaint, indictment or information.

4 (d) Notwithstanding subsection (e) of this section, a
5 temporary restraining order under this section may be entered on
6 application of the state without notice or an opportunity for a
7 hearing if the state demonstrates both that:

8 (1) There is probable cause to believe that the property with
9 respect to which the order is sought would, in the event of final
10 judgment or conviction, be subject to forfeiture under this
11 article.

12 (2) Provision of notice will jeopardize the availability of
13 the property for forfeiture. A temporary restraining order expires
14 within ten days after the date on which it is entered unless the
15 party against whom it is entered consents to an extension for a
16 longer period or unless after commencing a hearing the court enters
17 or is considering a preliminary injunction.

18 (e) Notice of the entry of the restraining order and an
19 opportunity for a hearing shall be afforded to persons known to
20 have an interest in the property, whether or not a temporary
21 restraining order is entered without notice. The hearing, however,
22 is limited to the issues of whether both:

23 (1) There is a probability that the state will prevail on the

1 issue of forfeiture and that failure to enter the order will result
2 in the property being destroyed, conveyed, encumbered or further
3 encumbered, removed from the jurisdiction of the court, concealed
4 or otherwise made unavailable for forfeiture.

5 (2) The need to preserve the availability of property through
6 the entry of the requested order outweighs the hardship on any
7 owner, interest holder or defendant against whom the order is to be
8 entered.

9 (f) A hearing requested by any owner or interest holder
10 concerning an order entered under this section shall be held at the
11 earliest possible time and before the expiration of a temporary
12 order.

13 (g) On a determination of liability or the conviction of a
14 person for conduct giving rise to forfeiture under this article,
15 the court shall enter a judgment of forfeiture of the property
16 described in the forfeiture statute alleged and set out in the
17 complaint, information or indictment, as amended, and shall also
18 authorize the county attorney or attorney general, their agents or
19 any peace officer to seize all property ordered forfeited that was
20 not previously seized or is not then under seizure. Following the
21 entry of an order declaring the property forfeited, the court, on
22 application of the state, may enter any order authorized by
23 subsection (a), section ten of this article or take any other

1 action to protect the interest of this state or a political
2 subdivision in the property ordered forfeited. The filing of the
3 order of forfeiture in the appropriate public records perfects the
4 interest of the state in the property described in the order as of
5 the earlier of the date of the act or omission giving rise to
6 forfeiture or the date that a notice of seizure for forfeiture or
7 notice of pending forfeiture or lien was first filed in the
8 records, which entitles the state to all rights of a secured party
9 as to that property in addition to any other rights or remedies of
10 the state in relation to the property. Any income accruing to, or
11 derived from, an enterprise or any interest in an enterprise or
12 other property interest that is forfeited under this article is
13 also forfeited from the time of the conduct giving rise to
14 forfeiture. It may be used pending procedures subsequent to a
15 verdict or finding of liability to offset ordinary and necessary
16 expenses of the enterprise or property as required by law or that
17 are necessary to protect the interests of this state or a political
18 subdivision.

19 (h) Procedures subsequent to the verdict or finding of
20 liability and order of forfeiture shall be as follows:

21 (1) Following the entry of an order of forfeiture under this
22 subsection the clerk of the court shall, and the attorney for the
23 state may, give notice of pending forfeiture to all owners and

1 interest holders who have not previously been given notice, if any,
2 in the manner provided in section seven of this article.

3 (2) An owner of or interest holder in property that has been
4 ordered forfeited pursuant to such action whose claim is not
5 precluded may file a claim as described in subsections (e) and (f),
6 section eleven of this article in the court for a hearing to
7 adjudicate the validity of his or her claimed interest in the
8 property within thirty days after initial notice of pending
9 forfeiture or after notice under paragraph one of this subsection,
10 whichever is earlier.

11 (3) The hearing on the claim, to the extent practicable and
12 consistent with the interest of justice, shall be held within sixty
13 days after the order of forfeiture. The court may consolidate the
14 hearing on the claim with a hearing on any other claim filed by a
15 person other than a party or defendant in the underlying action and
16 concerning the same property.

17 (4) The hearing shall be held by the court without a jury and
18 conducted in the manner provided in rem judicial forfeiture actions
19 including the provisions of section eleven, subsections (j) and
20 (k). In addition to testimony and evidence presented at the
21 hearing, the court shall consider the relevant portions of the
22 record of the underlying civil or criminal action that resulted in
23 the order of forfeiture.

1 (5) In accordance with its findings at the hearing, the court
2 may amend the order of forfeiture if it determines that any
3 claimant has established by a preponderance of the evidence that
4 the claimant is an owner of or interest holder in the property if
5 either of the following applies:

6 (A) The state has failed to establish by a preponderance of
7 the evidence that the interest is subject to forfeiture under this
8 article.

9 (B) The claimant has established by a preponderance of the
10 evidence that the interest is exempt from forfeiture under section
11 three of this article.

12 (i) In order to facilitate the identification or location of
13 property declared forfeited and to facilitate the disposition of
14 filed or subsequent claims pursuant to subsection (h)(2) of this
15 section, the court, on application of the state, may order that the
16 testimony of any witness relating to the property forfeited or
17 alleged to be subject to forfeiture be taken by deposition and that
18 any designated book, paper, document, record, recording, electronic
19 or otherwise, or other material which is not privileged be produced
20 at the same time and place and in the same manner as that provided
21 for the taking of depositions under the rules of civil procedure.

22 **§61-13-13. Supplemental remedies.**

23 (a) The court shall order the forfeiture of any other property

1 of a claimant or an in personam civil or criminal defendant up to
2 the value of the claimant's or defendant's property that the court
3 finds is subject to forfeiture if any of the following
4 circumstances apply to the property:

5 (1) It cannot be located.

6 (2) It has been transferred or conveyed to, sold to or
7 deposited with a third party.

8 (3) It has been placed beyond the jurisdiction of the court.

9 (4) It has been substantially diminished in value by any act
10 or omission of the defendant.

11 (5) It has been commingled with other property which cannot be
12 divided without difficulty.

13 (6) It is subject to any interest that is exempt from
14 forfeiture.

15 (b) In addition to any other remedy provided by law, if property
16 subject to forfeiture is conveyed, alienated, encumbered, disposed of,
17 received, removed from the jurisdiction of the court, concealed or
18 otherwise rendered unavailable for forfeiture after the filing of a
19 lien notice or provision of notice of pending forfeiture or after the
20 filing and notice of a civil proceeding or criminal proceeding
21 alleging forfeiture under this article, whichever is earlier, the
22 state may institute an action in circuit court against the person
23 named in the lien or notice of pending forfeiture or the defendant in

1 the civil proceeding or criminal proceeding, and the court shall enter
2 final judgment against the person named in the lien or notice of
3 pending forfeiture or the defendant in the civil proceeding or
4 criminal proceeding in an amount equal to the fair market value of the
5 property, together with reasonable investigative expenses and attorney
6 fees. If a civil proceeding under this article is pending, the action
7 shall be filed only in the court where the civil proceeding is
8 pending.

9 (c) This section does not limit the right of the state to obtain
10 any order or injunction, receivership, writ, attachment, garnishment
11 or other remedy authorized under this article or appropriate to
12 protect the interests of the state or available under other applicable
13 law.

14 **§61-13-14. Seizure of forfeited or other property - disposition.**

15 (a) If no petitions for remission or mitigation or claims are
16 timely filed or if no petitioner files a claim in the court within
17 thirty days after the mailing of a declaration of forfeiture, the
18 attorney for the state shall apply to the court for an order of
19 forfeiture and allocation of forfeited property pursuant to section
20 fifteen of this article. On the state's written application showing
21 jurisdiction, notice and facts sufficient to demonstrate probable
22 cause for forfeiture, the court shall order the property forfeited to
23 the state.

1 (b) After the court's disposition of all claims timely filed
2 under this article, the state has clear title to the forfeited
3 property and the court shall so order. Title to the forfeited
4 property and its proceeds is deemed to have vested in the state on the
5 commission of the act or omission giving rise to the forfeiture under
6 this article.

7 (c) If, in his or her discretion, the attorney for the state has
8 entered into a stipulation with an interest holder that the interest
9 holder has an interest that is exempted from forfeiture, the court, on
10 application of the attorney for the state, may release or convey
11 forfeited personal property to the interest holder if all of the
12 following are true:

13 (1) The interest holder has an interest which was acquired in the
14 regular course of business as a financial institution.

15 (2) The amount of the interest holder's encumbrance is readily
16 determinable and it has been reasonably established by proof made
17 available by the attorney for the state to the court.

18 (3) The encumbrance held by the interest holder seeking
19 possession is the only interest exempted from forfeiture and the order
20 forfeiting the property to the state transferred all of the rights of
21 the owner prior to forfeiture, including rights to redemption, to the
22 state.

23 (4) After the court's release or conveyance, the interest holder

1 shall dispose of the property by a commercially reasonable public
2 sale, and within ten days of disposition shall tender to the state the
3 amount received at disposition less the amount of the interest
4 holder's encumbrance and reasonable expense incurred by the interest
5 holder in connection with the sale or disposal.

6 (d) On order of the court forfeiting the subject property, the
7 attorney for the state may transfer good and sufficient title to any
8 subsequent purchaser or transferee, and the title shall be recognized
9 by all courts, by this state and by all departments and agencies of
10 this state and any political subdivision.

11 (e) On entry of judgment for a claimant or claimants in any
12 proceeding to forfeit property under this article such property or
13 interest in property shall be returned or conveyed immediately to the
14 claimant or claimants designated by the court. If it appears that
15 there was reasonable cause for the seizure for forfeiture or for the
16 filing of the notice of pending forfeiture, complaint, information or
17 indictment, the court shall cause a finding to be entered, and the
18 claimant is not, in such case, entitled to costs or damages, nor is
19 the person or seizing agency that made the seizure, nor is the
20 attorney for the state liable to suit or judgment on account of such
21 seizure, suit or prosecution.

22 (f) The court shall order any claimant who fails to establish
23 that his or her entire interest is exempt from forfeiture under

1 section three of this article to pay the costs of any claimant who
2 establishes that his or her entire interest is exempt from forfeiture
3 under section three of this article and the state's costs and expenses
4 of the investigation and prosecution of the matter, including
5 reasonable attorney fees.

6 **§61-13-15. Seizure of forfeited or other property - disposition.**

7 (a) Upon the entry of a forfeiture order under the provisions of
8 sections five, nine, eleven, twelve or thirteen of this article, if
9 necessary, the court shall order an appropriate law-enforcement
10 officer to seize the forfeited property on conditions that the court
11 considers proper. If necessary, the court shall order the person in
12 possession of the property to deliver the property by a specific date
13 to the law-enforcement agency involved in the initial seizure of the
14 property. The court shall deliver the order by personal service or
15 certified mail.

16 (b) With respect to property that is the subject of a forfeiture
17 order issued under the provisions of section five, nine, eleven,
18 twelve or thirteen of this article, the court that issued the order,
19 upon petition of the prosecutor who prosecuted the underlying offense
20 or act or brought the civil forfeiture action, may do any of the
21 following:

22 (1) Enter any appropriate restraining orders or injunctions;
23 require execution of satisfactory performance bonds; appoint

1 receivers, conservators, appraisers, accountants, or trustees; or take
2 any other action necessary to safeguard and maintain the forfeited
3 property;

4 (2) Authorize the payment of rewards to persons who provide
5 information resulting in forfeiture of the property under this
6 article;

7 (3) Authorize the prosecutor to settle claims;

8 (4) Restore forfeited property to victims and grant petitions for
9 mitigation or remission of forfeiture;

10 (5) Authorize a stay of the forfeiture order pending appeal or
11 resolution of any claim to the property if requested by a person other
12 than the defendant or a person acting in concert with, or on behalf
13 of, the defendant.

14 (c) To facilitate the identification and location of property
15 that is the subject of a forfeiture order and to facilitate the
16 disposition of petitions for remission or mitigation issued under this
17 section, after the issuance of a forfeiture order and upon application
18 by the prosecutor, the court, consistent with the West Virginia Rules
19 of Civil Procedure, may order that the testimony of any witness
20 relating to the forfeited property be taken by deposition and that any
21 designated material that is not privileged be produced at the same
22 time and place as the testimony.

23 (d) The court shall order forfeiture of any other property of the

1 offender or delinquent child up to the value of the unreachable
2 property if any of the following describe any property subject to a
3 forfeiture order under the provisions of section eleven, twelve or
4 thirteen of this article:

5 (1) It cannot be located through due diligence.

6 (2) It has been transferred, sold or deposited with a third
7 party.

8 (3) It has been placed beyond the jurisdiction of the court.

9 (4) It has been substantially diminished in value or has been
10 commingled with other property and cannot be divided without
11 difficulty or undue injury to innocent persons.

12 (e) After the state or political subdivision is granted clear
13 title under the provisions of section eleven, twelve or thirteen of
14 this article, the prosecutor shall direct disposition of the property
15 pursuant to this article, making due provisions for the rights of
16 innocent persons.

17 (f) Any interest in property not exercisable by, or transferable
18 for value to, the state or political subdivision shall expire and may
19 not revert to the offender or delinquent child who forfeited the
20 property. The offender or delinquent child may not purchase the
21 property at a sale under this article.

22 (g) Any income accruing to or derived from forfeited property may
23 be used to offset ordinary and necessary expenses related to the

1 property that are required by law or necessary to protect the interest
2 of the state, political subdivision or third parties.

3 **§61-13-16. Interference with or diminishing forfeitable property.**

4 (a) A person may not destroy, damage, remove, or transfer
5 property that is subject to forfeiture or otherwise take any action in
6 regard to property that is subject to forfeiture with purpose to do
7 any of the following:

8 (1) Prevent or impair the state's or political subdivision's
9 lawful authority to take the property into its custody or control
10 under this article or to continue holding the property under its
11 lawful custody or control;

12 (2) Impair or defeat the court's continuing jurisdiction over the
13 person and property;

14 (3) Devalue property that the person knows, or has reasonable
15 cause to believe, is subject to forfeiture proceedings under this
16 article.

17 (b) (1) Whoever violates the provisions of this section is guilty
18 of interference with or diminishing forfeitable property.

19 (2) A person who interferes with or diminishes forfeitable
20 property is guilty of a felony and, upon conviction thereof, shall be
21 fined not more than \$1,000 or imprisoned in a state correctional
22 facility not less than one year, or both fined and imprisoned.

23 **§61-13-17. Right to trial by jury.**

1 Parties to a forfeiture action under this article have a right to
2 trial by jury as follows:

3 (a) In a criminal forfeiture action, the defendant has the right
4 to trial by jury.

5 (b) In a civil forfeiture action, the defendant, the state or
6 political subdivision and third party claimants have the right to
7 trial by jury.

8 **§61-13-18. Forfeiture of property as instrumentality where value**
9 **disproportionate.**

10 (a) Property may not be forfeited as an instrumentality under
11 this article to the extent that the amount or value of the property is
12 disproportionate to the severity of the offense. The owner of the
13 property shall have the burden of going forward with the evidence and
14 the burden to prove by a preponderance of the evidence that the amount
15 or value of the property subject to forfeiture is disproportionate to
16 the severity of the offense.

17 (b) Contraband and any proceeds obtained from the offense are not
18 subject to proportionality review under this section.

19 (c) In determining the severity of the offense for purposes of
20 forfeiture of an instrumentality, the court shall consider all
21 relevant factors including, but not limited to, the following:

22 (1) The seriousness of the offense and its impact on the
23 community, including the duration of the activity and the harm caused

1 or intended by the person whose property is subject to forfeiture;

2 (2) The extent to which the person whose property is subject to
3 forfeiture participated in the offense;

4 (3) Whether the offense was completed or attempted.

5 (d) In determining the value of the property that is an
6 instrumentality and that is subject to forfeiture, the court shall
7 consider relevant factors including, but not limited to, the
8 following:

9 (1) The fair market value of the property;

10 (2) The value of the property to the person whose property is
11 subject to forfeiture, including hardship to the person or to innocent
12 persons if the property were forfeited.

13 **§61-13-19. Care of property in law-enforcement custody.**

14 (a) (1) Any property that has been lost, abandoned, stolen,
15 seized pursuant to a search warrant, or otherwise lawfully seized or
16 forfeited and that is in the custody of a law-enforcement agency shall
17 be kept safely by the agency, pending the time it no longer is needed
18 as evidence or for another lawful purpose, and shall be disposed of
19 pursuant to the provisions of sections twenty and twenty-one of this
20 article.

21 (2) This article does not apply to the custody and disposal of
22 any of the following:

23 (A) Items seized under the provisions of:

1 (i) Article three-a, chapter sixty of this code, relating to
2 sales by retail liquor licensees;

3 (ii) Article four, chapter sixty of this code, relating to
4 licenses under the state control of alcoholic liquors;

5 (iii) Article six, chapter sixty of this code, relating to
6 miscellaneous provisions under the state control of alcoholic liquors;
7 or

8 (iv) Article seven, chapter sixty-a of this code, commonly known
9 as the "West Virginia Contraband Forfeiture Act".

10 (B) Abandoned junk motor vehicles or other property of negligible
11 value;

12 (C) Property held by a department of rehabilitation and
13 correction institution that is unclaimed, that does not have an
14 identified owner, that the owner agrees to dispose of, or that is
15 identified by the department as having little value;

16 (D) Animals taken, and devices used in unlawfully taking animals,
17 under the provisions of:

18 (i) Section four, article ten, chapter seven of this code,
19 relating to custody and care of animals abandoned, neglected or
20 cruelly treated;

21 (ii) Section eight, article twenty, chapter nineteen of this
22 code, relating to dogs and cats, impounding and disposition;

23 (iii) Section twenty-three, article twenty, chapter nineteen of

1 this code, relating to dogs and cats, impounding and disposition;

2 (iv) Section five-a, article two, chapter twenty of this code,
3 relating to wildlife resources, forfeiture by person causing injury,
4 death or destruction of game of protected species of animal;

5 (v) Section five-c, article two, chapter twenty of this code,
6 relating to wildlife resources, protection of bald eagles and golden
7 eagles and forfeiture;

8 (vi) Section nineteen-a, article eight of this chapter, relating
9 to cruelty to animals; and

10 (vii) Section nineteen-a, article eight of this chapter, relating
11 to prohibiting animal fighting ventures.

12 (b) (1) Each law-enforcement agency that has custody of any
13 property that is subject to this section shall adopt and comply with
14 a written internal control policy that does all of the following:

15 (A) Provides for keeping detailed records as to the amount of
16 property acquired by the agency and the date property was acquired;

17 (B) Provides for keeping detailed records of the disposition of
18 the property, which shall include, but not be limited to, both of the
19 following:

20 (i) The manner in which it was disposed, the date of disposition,
21 detailed financial records concerning any property sold, and the name
22 of any person who received the property. The record shall not
23 identify or enable identification of the individual officer who seized

1 any item of property.

2 (ii) The general types of expenditures made with amounts that are
3 gained from the sale of the property and that are retained by the
4 agency, including the specific amount expended on each general type of
5 expenditure, except that the policy may not provide for or permit the
6 identification of any specific expenditure that is made in an ongoing
7 investigation.

8 (C) Complies with section twenty of this article if the agency
9 has a Law-enforcement Trust Fund or similar fund created under that
10 section.

11 (2) Each law-enforcement agency that during any calendar year has
12 any seized or forfeited property covered by this section in its
13 custody, including amounts distributed under section thirteen of this
14 article to its Law-enforcement Trust Fund or a similar fund created
15 for the West Virginia State Police, the State Tax Division or State
16 Board of Pharmacy, shall prepare a report covering the calendar year
17 that cumulates all of the information contained in all of the public
18 records kept by the agency pursuant to this section for that calendar
19 year. The agency shall send a copy of the cumulative report to the
20 Attorney General not later than March 1 in the calendar year following
21 the calendar year covered by the report.

22 (3) The records kept under the internal control policy shall be
23 open to public inspection during the agency's regular business hours.

1 (4) Not later than April 15 in each calendar year in which
2 reports are sent to the Attorney General under subsection (b)(2) of
3 this section, the Attorney General shall send to the President of the
4 Senate and the Speaker of the House of Delegates a written notice that
5 indicates that the Attorney General received reports that cover the
6 previous calendar year, that the reports are open for inspection under
7 and that the Attorney General will provide a copy of any or all of the
8 reports to the President of the Senate or the Speaker of the House of
9 Delegates upon request.

10 (c) A law-enforcement agency with custody of property to be
11 disposed of under the provisions of sections fourteen or fifteen of
12 this article section shall make a reasonable effort to locate persons
13 entitled to possession of the property, to notify them of when and
14 where it may be claimed, and to return the property to them at the
15 earliest possible time. In the absence of evidence identifying
16 persons entitled to possession, it is sufficient notice to advertise
17 in a newspaper of general circulation in the county and to briefly
18 describe the nature of the property in custody and inviting persons to
19 view and establish their right to it.

20 (d) As used in this article: "Law-enforcement agency" includes
21 correctional institutions.

22 **§61-13-20. Disposal of unclaimed or forfeited property.**

23 (a) Unclaimed or forfeited property in the custody of a

1 law-enforcement agency, other than property described in subsection
2 (a)(2) of section nineteen of this article, shall be disposed of by
3 order of any court of record that has territorial jurisdiction over
4 the political subdivision that employs the law-enforcement agency, as
5 follows:

6 (1) Drugs shall be disposed of pursuant to the provisions of
7 chapter sixty-a of this code.

8 (2) Firearms and dangerous ordnance suitable for police work may
9 be given to a law-enforcement agency for that purpose. Firearms
10 suitable for sporting use or as museum pieces or collectors' items may
11 be sold at public auction pursuant to subsection (b) of this section.
12 The agency shall destroy other firearms and dangerous ordnance or
13 shall send them to the State Police for destruction by the State
14 Police.

15 (3) Obscene materials shall be destroyed.

16 (4) Beer, intoxicating liquor, or alcohol seized from a person
17 who does not hold a permit issued under the provisions of chapter
18 sixty of this code or otherwise forfeited to the state for an offense
19 under the provisions of that chapter shall be sold by the Alcohol
20 Beverage Control Commissioner if the commissioner determines that it
21 is fit for sale or shall be placed in the custody of the
22 investigations unit in the State Police and be used for training
23 relating to law - enforcement activities, notwithstanding any other

1 existing provision of law to the contrary. All other money collected
2 under this division shall be paid in accordance with this code. Any
3 beer, intoxicating liquor or alcohol that the commissioner determines
4 to be unfit for sale shall be destroyed.

5 (5) Money received by an inmate of a correctional institution
6 from an unauthorized source or in an unauthorized manner shall be
7 returned to the sender, if known, or deposited in the inmates'
8 industrial and entertainment fund of the institution if the sender is
9 not known.

10 (6) Any mobile instrumentality forfeited under this article may
11 be given to the law-enforcement agency that initially seized the
12 mobile instrumentality for use in performing its duties, if the agency
13 wants the mobile instrumentality. The agency shall take the mobile
14 instrumentality subject to any security interest or lien on the mobile
15 instrumentality.

16 (7) Vehicles and vehicle parts forfeited under the provisions of
17 section two of this article may be given to a law-enforcement agency
18 for use in performing its duties. Those parts may be incorporated
19 into any other official vehicle. Parts that do not bear vehicle
20 identification numbers or derivatives of them may be sold or disposed
21 of as provided by rules of the Commissioner of Motor Vehicles. Parts
22 from which a vehicle identification number or derivative of it has
23 been removed, defaced, covered, altered, or destroyed and that are not

1 suitable for police work or incorporation into an official vehicle
2 shall be destroyed and sold as junk or scrap.

3 (8) Computers, computer networks, computer systems and computer
4 software suitable for police work may be given to a law-enforcement
5 agency for that purpose or disposed of in subsection (b) of this
6 section.

7 (b) Unclaimed or forfeited property that is not described in
8 subsection(a) of this section, with court approval, may be used by the
9 law-enforcement agency who confiscated the item. If it is not used by
10 the agency, it may be sold without appraisal at a public auction to
11 the highest bidder for cash or disposed of in another manner that the
12 court considers proper.

13 (c) Except as provided in subsection (a) and (f) of this section
14 and after compliance with subsection (d) of this section when
15 applicable, any moneys acquired from the sale of property disposed of
16 pursuant to this section shall be distributed as follows:

17 (1) First, to pay costs incurred in the seizure, storage,
18 maintenance, security and sale of the property and in the forfeiture
19 proceeding;

20 (2) Second, in a criminal forfeiture case, to satisfy any
21 restitution ordered to the victim of the offense or, in a civil
22 forfeiture case, to satisfy any recovery ordered for the person
23 harmed, unless paid from other assets;

1 (3) Third, to pay the balance due on any security interest
2 preserved under this article;

3 (4) Fourth, apply the remaining amounts as follows:

4 (A) Twenty percent to the Regional Jail Authority to offset the
5 per diem rate for every county;

6 (B) Ten percent to the county prosecutor; and

7 (C) Seventy percent divided among the investigating agencies
8 through a memo of understanding.

9 (d) Any property forfeited under this article shall not be used
10 to pay any fine imposed upon a person who is convicted of or pleads
11 guilty to an underlying criminal offense or a different offense
12 arising out of the same facts and circumstances.

13 **§61-13-21. Sale of forfeited property - application of proceeds -**
14 **forfeiture funds.**

15 (a) Except as otherwise provided in this section, property
16 ordered forfeited as contraband, proceeds, or an instrumentality
17 pursuant to this article shall be disposed of, used, or sold pursuant
18 to the provisions of section twenty-one of this article. If the
19 property is to be sold under that section, the prosecutor shall cause
20 notice of the proposed sale to be given in accordance with law.

21 (b) If the contraband or instrumentality forfeited under this
22 article is sold, any moneys acquired from a sale and any proceeds
23 forfeited under this article shall be applied in the following order:

1 (1) First, to pay costs incurred in the seizure, storage,
2 maintenance, security and sale of the property and in the forfeiture
3 proceeding;

4 (2) Second, in a criminal forfeiture case, to satisfy any
5 restitution ordered to the victim of the offense or, in a civil
6 forfeiture case, to satisfy any recovery ordered for the person
7 harmed, unless paid from other assets;

8 (3) Third, to pay the balance due on any security interest
9 preserved under this article;

10 (4) Fourth, apply the remaining amounts as follows:

11 (A) Twenty percent to the Regional Jail Authority to offset the
12 per diem rate for every county;

13 (B) Ten percent to the county prosecutor; and

14 (C) Seventy percent divided among the investigating agencies
15 through a memo of understanding.

16 (c) Any failure of a law-enforcement officer or agency,
17 prosecutor, court, or the Attorney General to comply with this section
18 in relation to any property seized does not affect the validity of the
19 seizure and shall not be considered to be the basis for suppressing
20 any evidence resulting from the seizure, provided the seizure itself
21 was lawful.

22 **§61-13-22. Forfeiture under federal law.**

23 (a) Nothing in this article precludes the head of a

1 law-enforcement agency that seizes property from seeking forfeiture
2 under federal law. If the property is forfeitable under this article
3 and federal forfeiture is not sought, the property is subject only to
4 this article.

5 (b) Any law-enforcement agency that receives moneys from a sale
6 of forfeited property under federal law shall deposit, use, and
7 account for the amounts, including any interest derived, in accordance
8 with applicable federal law.

NOTE: The purpose of this bill is to provide for forfeiture of
property used in various crimes and the disposition of such property.

This article is new; therefore, strike-throughs and underscoring
have been omitted.