

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4615

BY DELEGATES SHOTT, HANSHAW, MCGEEHAN, FOLK,

PAYNTER, WILSON AND FOSTER

[Introduced February 13, 2018; Referred

to the Committee on the Judiciary.]

1 A BILL to repeal §60A-7-704, §60A-7-705a, §60A-7-706, and §60A-7-707, of the Code of West
 2 Virginia, 1931, as amended; to amend said code by adding thereto a new section,
 3 designated §60A-7-702a; to amend and reenact §60A-7-703 of said code; to amend said
 4 code by adding thereto two new sections, designated §60A-7-703a and §60A-7-703b; to
 5 amend and reenact §60A-7-705 of said code; and to amend said code by adding thereto
 6 nine new sections, designated §60A-7-708, §60A-7-709, §60A-7-710, §60A-7-711, §60A-
 7 7-712, §60A-7-713, §60A-7-714, §60A-7-715 and §60A-7-716, all relating generally to
 8 forfeiture of contraband; establishing criminal forfeiture and the items and property subject
 9 to forfeiture; setting forth additional procedures for forfeiture; establishing dates; permitting
 10 a court to waive a conviction requirement; protecting innocent owners; permitting seizure
 11 of personal property with and without process; providing that there are no additional
 12 remedies and no joint and severable liability; establishing title; setting forth the disposition
 13 of forfeited property and proceeds; establishing prohibition on retaining property;
 14 establishing sales restrictions, return of property, damages, and costs; permitting the
 15 transfer of forfeited property to the federal government; providing for preemption; and
 16 defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-702a. Definitions.

1 As used in this article, the terms defined in this section have the following meanings:

2 “Abandoned property” means personal property left by an owner who intentionally
 3 relinquishes all rights to its control. Real property may not be abandoned.

4 “Actual knowledge” means direct and clear awareness of information, a fact, or a
 5 condition.

6 “Contraband” means goods that are unlawful to possess, including scheduled drugs
 7 without a valid prescription.

8 “Constructive knowledge” means knowledge that is imputed to family or household
9 members of the defendant if, in the 10 years prior to the alleged offense, the defendant admitted
10 guilt or was adjudicated guilty three or more times for the same or similar offense, as specified in
11 statute.

12 “Conveyance” means a device used for transportation and includes any motor vehicle,
13 trailer, all-terrain vehicle, snowmobile, aircraft, boat, or other vessel, and any equipment attached
14 to it. The term does not include property that is stolen or taken in violation of the law.

15 “Forfeiture charge” means the initiating document for the forfeiture procedure.

16 “Instrumentality” means lawful property that is used in the furtherance or commission of
17 an offense subject to forfeiture. An “instrumentality” includes, but is not limited to, land, buildings,
18 a container, a conveyance, equipment, materials, products, a tool, a computer, computer
19 software, a telecommunications device, a firearm, or ammunition.

20 “Law-enforcement agency” means any non-federal police force, or other local, county, or
21 state agency that has the authority under state law to engage in seizure and forfeiture.

22 “Law subject to forfeiture” means a felony and that explicitly includes forfeiture as a
23 punishment or sanction for the offense.

24 “Proceeds” means money, securities, negotiable instruments, or other means of exchange
25 obtained by the sale of property.

§60A-7-703. ~~Items subject to forfeiture; persons authorized to seize property~~ Criminal
forfeiture; items and property subject to forfeiture.

26 (a) When a person is convicted of violating a law subject to forfeiture, the court, consistent
27 with this chapter, may order the person to forfeit:

28 (1) Proceeds the person derived from the commission of the crime;

29 (2) Property directly traceable to proceeds derived from the commission of the crime; and

30 (3) Instrumentalities the person used in the commission of the crime.

31 (a) The (b) Notwithstanding any provision of this code to the contrary, upon conviction of

32 any felony the following items are deemed contraband and are subject to forfeiture:

33 (1) All controlled substances which have been manufactured, distributed, dispensed, or
34 possessed in violation of this chapter;

35 (2) All raw materials, products, and equipment of any kind which are used, or intended for
36 use, in manufacturing, compounding, processing, delivering, importing, or exporting any
37 controlled substance in violation of this chapter;

38 (3) All tax-not-paid tobacco products, as that term is defined in §11-17-2 of this code,
39 declared to be contraband under said article;

40 (4) All property which is used, or has been used, or is intended for use, as a container for
41 property described in subdivision (1), (2) or (3) of this subsection;

42 (5) All conveyances ~~including aircraft, vehicles or vessels~~ which are used, have been
43 used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale,
44 receipt, possession, or concealment of property described in subdivision (1), (2) or (3) of this
45 subsection, except that:

46 (i) A conveyance used by any person as a common carrier in the transaction of business
47 as a common carrier shall not be forfeited under this section unless it appears that the person
48 owning the conveyance is a consenting party or privy to a violation of this chapter;

49 (ii) A conveyance shall not be forfeited under the provisions of this article if the person
50 owning the conveyance establishes that he or she neither knew, nor had reason to know, that the
51 conveyance was being employed or was likely to be employed in a violation of this chapter; and

52 (iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited
53 under the provisions of this article, unless the state proves by a preponderance of the evidence
54 that the holder of the security interest or lien either knew, or had reason to know, that the
55 conveyance was being used or was likely to be used in a violation of this chapter;

56 (6) All books, records, research products, and materials, including formulas, microfilm,
57 tapes, and data which are used, or have been used, or are intended for use, in violation of this

58 chapter;

59 (7) All moneys, negotiable instruments, securities, or other things of value furnished or
60 intended to be furnished in violation of this chapter by any person in exchange for a controlled
61 substance, all proceeds traceable to the exchange and all moneys, negotiable instruments and
62 securities used, or which have been used, or which are intended to be used to facilitate any
63 violation of this chapter: *Provided*, That no property may be forfeited under this subdivision, to the
64 extent of the interest of an owner, by reason of any act or omission established by that owner to
65 have been committed or omitted without his or her knowledge or consent; and

66 (8) All real property, including any right, title, and interest in any lot or tract of land, and
67 any appurtenances or improvements, which are used, or have been used, or are intended to be
68 used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter
69 punishable by more than one year imprisonment: *Provided*, That no property may be forfeited
70 under this subdivision, to the extent of an interest of an owner, by reason of any act or omission
71 established by that owner to have been committed or omitted without his or her knowledge or
72 consent.

73 The requirements of this subsection pertaining to the removal of seized property are not
74 mandatory in the case of real property and the appurtenances to the real property.

75 ~~(b)~~ (c) Property subject to forfeiture under this article may be seized by any person granted
76 enforcement powers in §60A-5-501 *et seq.* of this code (hereinafter referred to as the “appropriate
77 person” in this article).

78 ~~(e)~~ (d) Controlled substances listed in §60A-2-1 *et seq.* of this code which are
79 manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are
80 contraband and shall be seized and summarily forfeited to the state. Controlled substances which
81 are seized or come into the possession of the state, the owners of which are unknown, are
82 contraband and shall be summarily forfeited to the state upon the seizure of the controlled
83 substances.

84 ~~(d)~~ (e) Species of plant from which controlled substances may be derived which have been
85 planted or cultivated in violation of the provisions of this chapter, or of which the owners or
86 cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the
87 state upon the seizure of the plants.

88 ~~(e)~~ (f) The failure, upon demand by the appropriate person, or his or her authorized agent,
89 of the person in occupancy or in control of land or premises upon which the species of plants are
90 growing or being stored, to produce an appropriate registration, or proof that he or she is the
91 holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the
92 plants.

93 ~~(g)~~ ~~(h)~~ (g) Notwithstanding any provision of this article to the contrary, controlled
94 substances listed in article two of this chapter and species of plants from which controlled
95 substances may be derived shall either be destroyed or used only for investigative or prosecutorial
96 purposes.

97 ~~(g)~~ ~~(i)~~ (h) Notwithstanding any other provisions of this article to the contrary, any items of
98 real property or any items of tangible personal property sold to a bona fide purchaser are not
99 subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide
100 purchaser knew or should have known that the property had in the previous three years next
101 preceding the sale been used in violation of this chapter or that the property is a controlled
102 substance.

60A-7-703a. Contraband.

1 No property right exists in contraband. Contraband is subject to seizure and shall be
2 disposed of according to state law. Contraband is not subject to forfeiture under this chapter.

§60A-7-703b. Exemption.

1 Real property used as the accused's personal dwelling, a motor vehicle of less than \$5,000
2 in market value, and U.S. currency totaling \$500 or less are exempt from forfeiture.

§60A-7-704. Procedures for seizure of forfeitable property.

1 [Repealed].

§60A-7-705. Procedures for forfeiture; conviction required; standard of proof; pretrial replevin; trial proceedings; proportionality hearing; substitute property; appeal.

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

5 (2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court
6 of the county wherein the seizure was made, the real property subject to forfeiture is situate, or
7 the circuit court of the county wherein any owner of the property subject to forfeiture may reside.

8 (3) Any civil trial stemming from a petition for forfeiture brought under this chapter at the
9 demand of either party shall be by jury.

10 (4) A petition for forfeiture of the seized property shall be filed within 90 days after the
11 seizure of the property in question. The petition shall be verified by oath or affirmation of a law-
12 enforcement officer representing the law enforcement agency responsible for the seizure or the
13 prosecuting attorney and shall contain the following:

14 (i) A description of the property seized;

15 (ii) A statement as to who is responsible for the seizure;

16 (iii) A statement of the time and place of seizure;

17 (iv) The identity of the owner or owners of the property, if known;

18 (v) The identity of the person or persons in possession of the property at the time seized,
19 if known;

20 (vi) A statement of facts upon which probable cause for belief that the seized property is
21 subject to forfeiture pursuant to the provisions of this article is based;

22 (vii) The identity of all persons or corporations having a perfected security interest or lien
23 in the subject property, as well as the identity of all persons or corporations known to the affiant

24 ~~who may be holding a possessory or statutory lien against such property;~~

25 ~~(viii) A prayer for an order directing forfeiture of the seized property to the state, and~~
26 ~~vesting ownership of such property in the state~~

27 (a)(1) The State of West Virginia will use the criminal forfeiture process to litigate that
28 transfer of title of any seizures in which the aggregate net equity value of the property and
29 currency seized, in a single case, is less than \$100,000, excluding the value of contraband.

30 (2) Discovery in all proceedings under this section is subject to the rules of criminal
31 procedure.

32 (b) Such property may be forfeited only if:

33 (1) The offense is of a law subject to forfeiture,

34 (2) The offense is established by proof of a criminal conviction, and

35 (3) The state establishes that the property is forfeitable under §60A-7-704 through §60A-
36 7-706 of this code by clear and convincing evidence.

37 (c) Within 30 days of the seizure of property or simultaneously upon filing a related
38 criminal indictment, the state shall file a forfeiture charge that shall include:

39 (1) A description of the property seized;

40 (2) The date, time, and place of seizure of the property;

41 (3) The name and address of the law-enforcement agency responsible for making the
42 seizure;

43 (4) The specific statutory and factual grounds for the seizure;

44 (5) Whether the property was seized pursuant to an order of seizure, and if the property
45 was seized without an order of seizure, an affidavit from a law-enforcement officer stating the
46 legal and factual grounds why an order of seizure was not required; and

47 (6) The names of persons known to the state who may claim an interest in the property
48 and the basis for each person's alleged interest, including the identity of the owner or owners of
49 the property, if known; and the identity of the person or persons in possession of the property at

50 the time of seizure, if known.

51 (d) The forfeiture charge shall be served upon the person from whom the property was
52 seized, the person's attorney of record and all persons known or reasonably believed to have an
53 interest in the property.

54 ~~A petition for forfeiture~~ The forfeiture charge may be filed and proceedings held thereon in
55 the circuit court of the county wherein the accused is to be tried, the seizure was made, the real
56 property subject to forfeiture is situate, or the circuit court of the county wherein any owner of the
57 property subject to forfeiture may reside.

58 ~~(b)~~ At the time of filing or as soon as practicable thereafter, a copy of the ~~petition for~~
59 forfeiture charge shall be served upon the owner or owners of the seized property, as well as all
60 holders of a perfected security interest or lien or of a possessory or statutory lien in the same
61 class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized
62 property, a copy of the ~~petition for forfeiture~~ charge shall be served upon any person who was in
63 possession or alleged to be in possession of the property at the time of seizure, where such
64 person's identity is known. The above service shall be made pursuant to the provisions of the
65 West Virginia Rules of Civil Procedure. Any copy of the ~~petition for forfeiture~~ charge so served
66 shall include a notice substantially as follows:

67 "To any claimant to the within described property: You have the right to file an answer to
68 this ~~petition~~ forfeiture charge setting forth your title in, and right to possession of, the property
69 within 30 days from the service hereof. If you fail to file an answer, a final order forfeiting the
70 property to the state will be entered, and such order is not subject to appeal."

71 If no owner or possessors, lienholders, or holders of a security interest be found, then
72 such service may be by Class II legal publication in accordance with the provisions of §59-3-1 *et*
73 *seq.* of this code, and the publication area shall be the county wherein such property was located
74 at the time of seizure and the county wherein the petition for forfeiture is filed.

75 ~~(c)~~ (e) In addition to the requirements of subsection ~~(b)~~ ~~above~~ (d) of this section, the

76 prosecuting attorney or law-enforcement officer upon whose oath or affirmation the ~~petition for~~
77 forfeiture charge is based, shall be responsible for the publication of a further notice. Such further
78 notice that a ~~petition for~~ forfeiture charge has been filed shall be published by Class II legal
79 advertisement in accordance with §59-3-1 *et seq.* of this code. The publication area shall be the
80 county wherein the property was seized and the county wherein the ~~petition for~~ forfeiture charge
81 is filed. The notice shall advise any claimant to the property of their right to file a claim on or before
82 the date set forth in the notice, which date shall not be less than 30 days from the date of the first
83 publication. The notice shall specify that any claim must clearly state the identity of the claimant
84 and an address where legal process can be served upon that person. In addition such notice shall
85 contain the following information:

86 (1) A description of the property seized;

87 ~~(2) A statement as to who is responsible for the seizure;~~

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

89 ~~(4) The identity of the owner or owners of the property, if known;~~

90 ~~(5) The identity of the person or persons in possession of the property at the time of~~
91 ~~seizure, if known~~

92 (2) The date, time, and place of seizure of the property;

93 (3) The name and address of the law-enforcement agency responsible for making the
94 seizure;

95 (4) The specific statutory and factual grounds for the seizure;

96 (5) Whether the property was seized pursuant to an order of seizure, and if the property
97 was seized without an order of seizure, an affidavit from a law-enforcement officer stating the
98 legal and factual grounds why an order of seizure was not required; and

99 (6) The names of persons known to the state who may claim an interest in the property
100 and the basis for each person's alleged interest, including the identity of the owner or owners of
101 the property, if known; and the identity of the person or persons in possession of the property at

102 the time of seizure, if known.

103 ~~(6)~~ (7) A statement that prayer for an order directing forfeiture of the seized property to the
104 state, and vesting ownership of such property in the state shall be requested of the court.

105 (f)(1) Following the seizure of property, a defendant has a right to a pretrial replevin
106 hearing to determine the validity of the seizure.

107 (2) The defendant may claim at any time prior to 60 days before trial of the related
108 criminal offense the right to possession of property by motion to the court for a writ of replevin
109 by filing a motion establishing the validity of the alleged interest in the property; which motion
110 shall be heard more than 30 days after it is filed.

111 (3) The state shall file an answer showing probable cause for the seizure, or cross
112 motions at least 10 days before the hearing.

113 (4) Either party may, by agreement or for good cause, move the court for one extension
114 of no more than 10 days. Any such motion may be supported by affidavits or other submissions.

115 (5) The court shall grant the motion if it finds by a preponderance of the evidence that:

116 (A) It is likely the final judgment will be that the state must return the property to the
117 claimant; or

118 (B) The property is not reasonably required to be held for investigatory reasons; or

119 (C) The property is the only reasonable means for a defendant to pay for legal
120 representation in the forfeiture or criminal proceeding. At the court's discretion under paragraph

121 (B) of this subdivision, it may order the return of funds or property sufficient to obtain legal
122 counsel but less than the total amount seized, and require an accounting.

123 (6) In lieu of ordering the issuance of the writ:

124 (A) The court may order the state to give security or written assurance for satisfaction of
125 any judgment, including damages, that may be rendered in the action, or

126 (B) The court may order other relief as may be just.

127 ~~(d)~~ (g)(1) If no answer or claim is filed within 30 days of the date of service of the petition

128 forfeiture charge pursuant to subsection ~~(b)~~ (d) of this section, or within 30 days of the first
129 publication pursuant to subsection ~~(b)~~ (d) of this section, upon conviction, then the court shall
130 enter an order forfeiting the seized property to the state. If any claim to the seized property is
131 timely filed, a time and place shall be set for a hearing upon such claim. The claimant or claimants
132 shall be given notice of such hearing not less than 10 days prior to the date set for the hearing.

133 (2) The litigation related to the forfeiture of property shall be held in a single proceeding
134 following the trial of the related alleged offense. The litigation associated with the forfeiture of
135 property of less than \$10,000 in value shall be held before only a judge.

136 ~~(e)~~ (3) At the hearing upon the claim or claims, the state shall have the burden of proving
137 by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to
138 the provisions of this chapter.

139 (h) (1) Within 30 days following entry of an order of forfeiture by the circuit court, the
140 defendant may petition the court to determine whether the forfeiture is unconstitutionally
141 excessive under the state or federal constitution.

142 (A) The defendant has the burden of establishing the forfeiture is grossly disproportional
143 to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by
144 the court without a jury.

145 (B) In determining whether the forfeiture of an instrumentality is unconstitutionally
146 excessive, the court may consider all relevant factors, including, but not limited to:

147 (i) The seriousness of the offense and its impact on the community, including the
148 duration of the activity and the harm caused by the defendant;

149 (ii) The extent to which the defendant participated in the offense;

150 (iii) The extent to which the property was used in committing the offense;

151 (iv) The sentence imposed for committing the crime subject to forfeiture; and

152 (v) Whether the offense was completed or attempted.

153 (2) In determining the value of the instrumentality subject to forfeiture, the court may
154 consider all relevant factors, including, but not limited to:

155 (A) The fair market value of the property;

156 (B) The value of the property to the defendant including hardship to the defendant if the
157 forfeiture is realized, including any factors establishing a personal value to the defendant; and

158 (C) The hardship from the loss of a primary residence, motor vehicle, or other property to
159 the defendant's family members or others if the property is forfeited.

160 (3) The court may not consider the value of the instrumentality to the state in determining
161 whether the forfeiture of an instrumentality is constitutionally excessive.

162 ~~(f)~~ (i) Any order forfeiting property to the state and entered pursuant to this section perfects
163 the state's right, title and interest in the forfeited property and relates back to the date of seizure:
164 *Provided*, That in any proceeding under this article the circuit court shall in its final order make
165 specific findings with respect to whether or not probable cause to seize such property existed at
166 the time of such seizure.

167 ~~(g)~~ (j) During the pendency of a forfeiture proceeding, it is unlawful for any property owner
168 or holder of a bona fide security interest or other valid lienholder to transfer or attempt to transfer
169 any ownership interest or security interest in seized property with the intent to defeat the purpose
170 of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner
171 or holder of a security interest or other lienholder from making such a transfer should one come
172 to its attention. Any such transfer which is made in violation of the provisions of this subsection
173 shall have no effect upon an order of the court forfeiting seized property to the state if a notice of
174 lis pendens is filed prior to the recording of the instrument of transfer.

175 ~~(h)~~ (k) The court may void any transfer of property made before or after a forfeiture
176 proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona
177 fide purchaser without notice for value.

178 ~~(i)~~ (l) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought

179 pursuant to this chapter must be filed within 120 days of the date of entry of the final appealable
180 order. The appellant shall be required to give notice of intent to appeal within 30 days of the entry
181 of such appealable order.

182 (m) Nothing herein prevents property from being forfeited by plea agreement agreeing to
183 a forfeiture by the defendant and approved by the circuit court.

184 (n) The court may waive the conviction requirement upon a motion by the prosecuting
185 attorney that shows by clear and convincing evidence that the defendant:

186 (1) Died;

187 (2) Was deported by the U.S. government;

188 (3) Was granted immunity or reduced punishment in exchange for testifying or assisting
189 a law enforcement investigation or prosecution;

190 (4) Fled the jurisdiction; or

191 (5) Abandoned the property.

192 (6) The property of a person who has fled the jurisdiction or who has abandoned
193 property shall be delivered to the State Treasurer within 30 days without further forfeiture-
194 related litigation. The State Treasurer shall dispose of all noncurrency property. The sale
195 proceeds and currency shall be deposited into the State's General Fund.

196 (o) Upon the prosecuting attorney's motion following conviction, the court may order the
197 forfeiture of substitute property owned by the defendant up to the value of unreachable property
198 that is beyond the court's jurisdiction or cannot be located through due diligence only if the state
199 proves by a preponderance of the evidence that the defendant intentionally transferred, sold, or
200 deposited property with a third party to avoid the court's jurisdiction.

201 (p) Notwithstanding the prosecuting attorney's motion for a waiver, the property remains
202 subject to claims by innocent owners, creditors, and other third parties pursuant to this chapter.

203 (q) A party to forfeiture litigation may appeal the circuit court's decision regarding the
204 seizure, forfeiture, and distribution of property under this chapter.

§60A-7-705a. Additional procedures for forfeiture.

1 [Repealed.]

**§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments;
distribution of proceeds.**

1 [Repealed.]

§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

1 [Repealed.]

§60A-7-708. Secured Interests.

1 (a) Property encumbered by a bona fide security interest is not subject to forfeiture. A
2 person claiming a security interest must establish by a preponderance of the evidence the validity
3 of the interest perfected under chapter 46 and other appropriate provisions of this code or produce
4 a lease or rental agreement.

5 (b) The prosecuting authority shall summarily return seized property to the person with a
6 bona fide security interest.

7 (c) If the person alleging a valid security interest had actual knowledge of the underlying
8 crime giving rise to the forfeiture, the state may seek to proceed with the forfeiture against the
9 property, the state shall prove by a preponderance of the evidence that the person had such
10 actual knowledge.

§60A-7-709. Innocent Owner.

1 (a) The property of an innocent owner may not be forfeited.

2 (b) An innocent owner having an ownership interest in property subject to forfeiture
3 existing at the time that the illegal conduct giving rise to forfeiture occurred bears the burden of
4 proving by a preponderance of the evidence that the said innocent owner has a legal right, title,
5 or interest in the property seized under this chapter.

6 (c) If the requirements of subsection (b) of this section are satisfied and the state seeks to
7 proceed with the forfeiture, the state shall prove by a preponderance of the evidence that the

8 alleged innocent owner had actual or constructive knowledge of the underlying crime giving rise
9 to the forfeiture.

10 (d) A person who acquired an ownership interest in property subject to forfeiture after the
11 commission of a crime giving rise to the forfeiture and who claims to be an innocent owner bears
12 the burden of proving by a preponderance of the evidence that the person has legal right, title, or
13 interest in the property seized under this chapter.

14 (e) If the requirements of subsection (d) of this section are met and the state seeks to
15 proceed with the forfeiture against the property, the state shall prove by a preponderance of the
16 evidence that at the time the person acquired the property the person:

17 (1) Had actual or constructive knowledge that the property was subject to forfeiture; or

18 (2) Was not a bona fide purchaser without notice of any defect in title and for valuable
19 consideration.

20 (f) If the state fails to meet its burden in subsections (c) or (e) of this section, the court
21 shall find that the person is an innocent owner and shall order the state to relinquish all claims of
22 title to the property.

23 (g) The suspect or convicted offender may invoke the right against self-incrimination or
24 the marital privilege at the civil hearing. The trier of fact in the civil hearing may draw an adverse
25 inference from the invocation of the right or privilege.

§60A-7-710. Seizure of personal property with process; seizure of personal property
without process; seizure of real property with process; receipt.

1 (a) At the request of the state at any time, a court may issue an ex parte preliminary order
2 to attach, seize, or secure personal property for which forfeiture is sought and to provide for its
3 custody. Application, issuance, execution, and return are subject to state statute or court rules.

4 (b) Personal property subject to forfeiture may be seized at any time without a court order
5 if:

6 (1) The seizure of personal property is incident to a lawful arrest or a search lawfully

7 conducted;

8 (2) The personal property subject to seizure has been the subject of a prior judgment in
9 favor of the state; or

10 (3) The state has probable cause to believe that the delay occasioned by the necessity to
11 obtain process would result in the removal or destruction of the personal property and that the
12 personal property is forfeitable under this chapter.

13 (c)(1) Seizure of real property requires a court order. A court may issue an order to seize
14 or secure real property for which forfeiture is sought only after proper notice to property owners
15 and an opportunity for a contested hearing to determine the sufficiency of probable cause for the
16 seizure.

17 (2) Nothing in this section prohibits the prosecuting authority from seeking a lis pendens
18 or restraining order to hinder the sale or destruction of the real property.

19 (3) Application, issuance, execution, and return of any order are subject to state law.

20 (d) When property is seized, the law-enforcement officer shall give an itemized receipt to
21 the person possessing the property; or in the absence of any person, leave a receipt in the place
22 where the property was found, if reasonably possible.

§60A-7-711. No additional remedies; no joint-and-several liability.

1 (a) The state may not seek personal money judgments or other remedies not provided for
2 in this chapter.

3 (b) A defendant is not jointly and severally liable for forfeiture awards owed by other
4 defendants. When ownership is unclear, a court may order each defendant to forfeit property on
5 a pro rata basis or by another means the court finds equitable.

§60A-7-712. Title.

1 (a) At the time of seizure or entry of a restraining order, the state acquires provisional title
2 to the seized property. Provisional title authorizes the state to hold and protect the property.

3 (b) Title to the property vests with the state when the trier of fact renders a final forfeiture

4 verdict and relates back to the time when the state acquired provisional title. However, this title is
5 subject to claims by third parties adjudicated under this chapter.

§60A-7-713. Disposition of forfeited property and proceeds.

1 (a) At any time when unclaimed property or contraband held for evidentiary purposes is
2 no longer needed for that purpose, the court may order it be delivered to the State Treasurer
3 within 30 days, or, in the case of contraband, be destroyed within 30 days.

4 (b) If the forfeiture is granted, the court may order the property be delivered to the State
5 Treasurer within 30 days.

6 (c) Upon motion, the court may order that a portion of the currency seized or proceeds
7 from public auction be used to pay reasonable nonpersonnel expenses of the seizure, storage,
8 and maintenance of custody of any forfeited items.

9 (d) All abandoned property shall be delivered to the State Treasurer within 30 days.

10 (e)The State Treasurer shall dispose of all noncurrency forfeited and abandoned property
11 at public auction. The auction proceeds and forfeited currency shall first be used to pay all
12 outstanding recorded liens on the forfeited property, then to comply with an order of the court to
13 pay reasonable nonpersonnel expenses, with all remaining funds to be deposited into the State's
14 General Fund.

§60A-7-714. Prohibition on retaining property; sale restrictions; reporting; return of
property, damages, and costs.

1 (a) No law-enforcement agency may retain forfeited or abandoned property for its own use
2 or sell it directly or indirectly to any employee of the agency, to a person related to an employee
3 by blood or marriage, or to another law-enforcement agency.

4 (b) On an annual basis, each law enforcement agency shall report the following
5 information about seizures and forfeitures completed by the agency under state forfeiture law and
6 federal forfeiture law:

7 (1) The total number of seizures of currency;

8 (2) The total number of seizures and the number of items in each class of property seized
9 including vehicles, houses, and other types of property seized.

10 (3) The market value of each class of property seized including currency, vehicles, houses,
11 and other types of property seized.

12 (4) The total number of occurrences of each class of crime underlying the forfeitures
13 including controlled substances, driving while intoxicated, and other crimes.

14 (c) The Department of Military Affairs and Public Safety may require that information not
15 specified in this section also be reported. The department shall develop standard forms,
16 processes, and deadlines for electronic data entry for annual submission of forfeiture data by law-
17 enforcement agencies.

18 (d) Each law-enforcement agency shall file with the department the report required under
19 subsection (b) of this section for the law-enforcement agency and the corresponding prosecuting
20 authority. The law-enforcement agency shall file separate reports for forfeitures completed under
21 state forfeiture law and federal forfeiture law. A null report shall be filed by a law-enforcement
22 agency that did not engage in seizures or forfeitures during the reporting period. The department
23 shall compile the submissions and issue an aggregate report of all forfeitures in the state.

24 (e) By April 1 of each year, the department shall make available on its website the reports
25 submitted by law-enforcement agencies and its aggregate report.

26 (f) The law-enforcement agency that holds the property shall return property to the owner
27 within a reasonable period of time not to exceed five days after:

28 (1) The court finds that the owner had a bona fide security interest;

29 (2) The court finds that the owner was an innocent owner;

30 (3) The acquittal of or dismissal of the owner of the criminal charge that is the basis of the
31 forfeiture proceedings; or

32 (4) The disposal of the criminal charge that is the basis of the forfeiture proceedings by
33 nolle prosequi.

34 (g) The law-enforcement agency that holds the property is responsible for any damages,
 35 storage fees and related costs applicable to property returned under subsection (a) of this section.

§60A-7-715. Transfer of forfeitable property to federal government.

1 Law-enforcement agency or prosecuting authority shall not directly or indirectly transfer
 2 seized property to any federal law-enforcement authority or other federal agency unless:

3 (1) The value of the seized property exceeds \$50,000, excluding the potential value of the
 4 sale of contraband, or

5 (2) The seized property is not forfeitable under state law and may only be forfeited under
 6 federal law.

§60A-7-716. Preemption.

1 This chapter preempts all law, resolutions, and ordinances by all political subdivisions of
 2 the state which regulate civil and criminal forfeiture.

NOTE: The purpose of this bill concerns forfeiture of contraband. The bill establishes criminal forfeiture and the items and property subject to forfeiture. The bill sets forth additional procedures for forfeiture. The bill establishes dates. The bill permits a court to waive a conviction requirement. The bill protects innocent owners. The bill permits seizure of personal property with and without process. The bill provides that there are no additional remedies and no joint and severable liability. The bill establishes title. The bill sets forth the disposition of forfeited property and proceeds. The bill establishes prohibition on retaining property. The bill establishes sales restrictions, return of property, damages, and costs. The bill permits the transfer of forfeited property to the federal government. The bill provides for preemption. The bill defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.