

SB 452

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

96 APR - 1 PM 4: 45

RECEIVED

ENROLLED

SENATE BILL NO. 452

(By Senator BUCKALEW)

PASSED MARCH 8, 1996  
In Effect NINETY DAYS FROM Passage

RECEIVED

96 APR - 1 PM 4: 45

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

### Senate Bill No. 452

(BY SENATOR BUCKALEW)

---

[Passed March 8, 1996; in effect ninety days from passage.]

---

AN ACT to amend and reenact sections seven hundred four, seven hundred six and seven hundred seven, article seven, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing seized or forfeited assets to be deposited into interest-bearing depositories insured by an agency of the federal government.

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

That sections seven hundred four, seven hundred six and seven hundred seven, article seven, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

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

- 1 (a) Seizure of property made subject to forfeiture by
- 2 the provisions of this article may be made upon process

3 issued by any court of record having jurisdiction over the  
4 property.

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

9 (1) The seizure is incident to a lawful arrest or pursu-  
10 ant to a search under a search warrant or an inspection  
11 warrant;

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

15 (3) The appropriate person has probable cause to  
16 believe that the property is directly or indirectly danger-  
17 ous to health or safety; or

18 (4) The appropriate person has probable cause to  
19 believe that the property was used or intended for use in  
20 violation of this chapter.

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

24 (d) Property taken or detained under this section shall  
25 not be subject to replevin, but is deemed to be in the  
26 custody of the appropriate person, subject only to the  
27 orders and decrees of the court having jurisdiction over  
28 the forfeiture proceedings. When property is seized  
29 under this article, the appropriate person may:

30 (1) Place the property under seal;

31 (2) Remove the property to a place designated by him;

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

35 (4) In the case of seized moneys, securities or other  
36 negotiable instruments, place the assets in any interest

37 bearing depository insured by an agency of the federal  
38 government.

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

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

1 (a) Whenever moneys, securities or other negotiable  
2 instruments are forfeited under the provisions of this  
3 article, such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to the  
5 office of the prosecuting attorney which initiated the  
6 forfeiture proceeding;

7 (2) The balance shall be deposited in a special law-  
8 enforcement investigation fund. The fund may be placed  
9 in any interest-bearing depository insured by an agency  
10 of the federal government. The fund shall be adminis-  
11 tered by the chief of the law-enforcement agency that  
12 seized the forfeited property.

13 (b) No funds shall be expended from the special law-  
14 enforcement investigation fund except as follows:

15 (1) In the case of the funds belonging to the department  
16 of public safety, the funds shall only be expended at the  
17 direction of the superintendent of the department and in  
18 accordance with the provisions of section fifteen, article  
19 two, chapter five-a of this code and the provisions of  
20 subsection (j), section two, article two, chapter twelve of  
21 this code;

22 (2) In the case of funds belonging to the office of either  
23 the sheriff or prosecuting attorney of any county in  
24 which the special fund has been created, the funds  
25 therein may only be expended in the manner provided in  
26 sections four and five, article five, chapter seven of this  
27 code; and

28 (3) In the case of funds belonging to the police depart-  
29 ment of any municipality in which the special fund has  
30 been created, the funds therein may only be expended in  
31 the manner provided in section twenty-two, article  
32 thirteen, chapter eight of this code.

**§60A-7-707. Disposition of other forfeited property; distribu-  
tion of proceeds.**

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

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

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

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

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

25 (c) The proceeds of every public sale conducted pursu-  
26 ant to this section shall be paid and applied as follows:  
27 First, to the balance due on any security interest pre-  
28 served by the court; second, to the costs incurred in the  
29 storage, maintenance and security of the property; third,

30 to the costs incurred in selling the property.

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

34 (1) Ten percent of such proceeds shall be tendered to  
35 the office of the prosecuting attorney who initiated the  
36 forfeiture proceeding.

37 (2) The balance shall be deposited in a special law-  
38 enforcement investigation fund. Such fund shall be  
39 administered by the chief of the law-enforcement agency  
40 that seized the forfeited property sold and shall take the  
41 form of an interest-bearing account with any interest  
42 earned to be compounded to the fund. Any funds  
43 deposited in the special law-enforcement investigative  
44 fund pursuant to this article shall be expended only to  
45 defray the costs of protracted or complex investigations,  
46 to provide additional technical equipment or expertise,  
47 to provide matching funds to obtain federal grants or for  
48 such other law-enforcement purposes as the chief of the  
49 law-enforcement agency may deem appropriate; how-  
50 ever, these funds may not be utilized for regular operat-  
51 ing needs.

52 (e) If more than one law-enforcement agency was  
53 substantially involved in effecting the seizure and  
54 forfeiture of property, the court wherein the petition for  
55 forfeiture was filed shall equitably distribute the for-  
56 feited property among the law-enforcement agencies. In  
57 the event of a public sale of such property pursuant to  
58 subsection (a) of this section, the court shall equitably  
59 distribute any proceeds remaining after distribution  
60 pursuant to subsection (c) and subdivision (1), subsection  
61 (d) of this section among such law-enforcement agencies  
62 for deposit into their individual special law-enforcement  
63 investigative fund. Equitable distribution shall be based  
64 upon the overall contribution of the individual law-  
65 enforcement agency to the investigation which led to the  
66 seizure.

67 (f) Upon the sale of any forfeited property for which  
68 title or registration is required by law, the state shall  
69 issue a title or registration certificate to any bona fide  
70 purchaser at a public sale of the property conducted  
71 pursuant to subsection (a) of this section. Upon the  
72 request of the law-enforcement agency receiving,  
73 pursuant to the order of the court, or electing to retain,  
74 pursuant to subsection (a) of this section, any forfeited  
75 property for which title or registration is required by  
76 law, the state shall issue a title or registration certificate  
77 to the appropriate governmental body.

78 (g) Any funds expended pursuant to the provisions of  
79 this section, shall only be expended in the manner  
80 provided in subsection (b), section seven hundred five of  
81 this article.

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

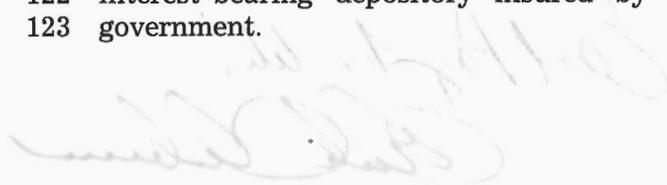
92 (i) In lieu of the sale of any forfeited property subject  
93 to a bona fide security interest preserved by an order of  
94 the court, the law-enforcement agency receiving the  
95 forfeited property may pay the balance due on any  
96 security interest preserved by the court from funds  
97 budgeted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

100 (j) In every case where property is forfeited, disposition  
101 of the forfeited property, in accordance with this article,  
102 shall be made within six months of the date upon which  
103 the court of jurisdiction orders forfeiture. Should the  
104 office or agency receiving the property fail either to

105 place the property in official use or dispose of the  
106 property in accordance with law, the court of jurisdic-  
107 tion shall cause disposition of the property to be made  
108 with any proceeds therefrom to be awarded to the state.

109 (k) No disposition shall occur until all applicable  
110 periods for filing a notice of intent to appeal has expired  
111 and no party in interest shall have filed such notice. The  
112 filing of the notice of intent to appeal shall stay any  
113 such disposition until the appeal has been finally adjudi-  
114 cated or until the appeal period of one hundred eighty  
115 days has expired without an appeal having actually been  
116 taken or filed, unless a valid extension of the appeal has  
117 been granted by the circuit court under the provisions of  
118 section seven, article four, chapter fifty-eight of this  
119 code.

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



That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Ray Ashmover*  
.....  
Chairman Senate Committee

*Rudy Seaman*  
.....  
Chairman House Committee

Originated in the Senate.  
In effect ninety days from passage

*Carroll E. Egan*  
.....  
Clerk of the Senate

*Bryan W. Gray*  
.....  
Clerk of the House of Delegates

*Earl Ray Swelton*  
.....  
President of the Senate

*Earl K. Abernethy*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *15<sup>th</sup>* .....  
day of *April* ....., 1996.

*Gaston Caputo*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 9:49am

9 23