

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3044**

4 (By Delegates D. Poling, Frazier, Miley, Brown, Caputo,
5 Longstreth, Moore, Skaff, Ellem, Hamilton and Sobonya)

6 (Originating in the Committee on Finance)

7 [February 28, 2011]

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §61-14-1, §61-14-2,
12 §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and
13 §61-14-9 all relating to civil forfeiture actions related to
14 criminal activity; providing for the civil forfeiture of
15 property and assets used in, acquired by, or gained or flowing
16 from various criminal fraudulent activities; providing
17 definitions; subjecting certain property to forfeiture;
18 providing procedures for seizure of forfeitable property;
19 establishing rules and procedures for civil forfeiture
20 proceedings involving crimes of fraud; providing for seizure
21 and disposition of forfeited property; providing notice
22 requirements; providing for care of forfeitable property in
23 law-enforcement custody; providing for proportionality and
24 innocent owner defenses; limiting forfeiture of property
25 purchased by bona fide purchasers; providing for payment of
26 liens in certain circumstances; providing for resale and

1 disposition of forfeited property; disposing of proceeds and
2 forfeiture funds; providing that dismissal of criminal charges
3 vacates forfeiture orders; and providing exceptions.

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

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

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

11 **§61-14-1. Purpose and scope.**

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

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

18 (1) To provide economic disincentives and remedies to deter
19 and offset the economic effect of offenses by seizing and
20 forfeiting contraband, proceeds, and certain instrumentalities
21 associated with the commission of acts of fraud against the state
22 and its citizens, including acts of fraud against the elderly;

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

25 (3) To protect third parties from wrongful forfeiture of their

1 property; and

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

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

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

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

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

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

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

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

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

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

25 (9) Any crime of fraud against the elderly as "elderly" is
26 defined in subsection (k), section three, article five-p, chapter

1 sixteen of this code; and

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

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

7 **§61-14-2. Definitions.**

8 As used in this article:

9 (1) "Appropriate person" means any member of the State Police,
10 any sheriff, and deputy sheriff, and municipal police officer or
11 other law-enforcement officer who is authorized to enforce any
12 offense covered by this article and has the general authority to
13 make arrests for any offense covered by this article, and execute
14 and serve search warrants, arrest warrants, subpoenas and summonses
15 issued under the authority of the state.

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

18 (3) "Computers," "computer networks," and "computer software,"
19 have the same meanings as described in section three, article
20 three-c, chapter sixty-one of this chapter.

21 (4) "Financial institution" has the same meaning as described
22 in section two, article one, chapter thirty-one-a of this code.

23 (5) "Firearm" and "deadly weapon" have the same meanings as in
24 section two, article seven of this chapter.

25 (6) "Innocent person" includes any bona fide purchaser of
26 property that is subject to forfeiture, including any person who

1 establishes a valid claim to or interest in the property in
2 accordance with the provisions of article seven, chapter sixty-a of
3 this code and any victim of an alleged offense.

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

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

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

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

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

22 (12) "Proceeds" means both of the following:

23 (A) In cases involving fraudulent or lawful goods, services,
24 or activities, "proceeds" means any property derived directly or
25 indirectly from an offense. "Proceeds" may include, but is not
26 limited to, money or any other means of exchange. "Proceeds" is

1 not limited to the net gain or profit realized from the offense.

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

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

15 (14) "Property subject to forfeiture" includes contraband and
16 proceeds and may include instrumentalities as provided in this
17 article.

18 (15) "Prosecutor" means any duly elected or appointed
19 prosecutor or special prosecutor.

20 (16) "Vehicle" has the same meaning as in section four,
21 article one, chapter seventeen and section one, article one,
22 chapter seventeen-b of this code.

23 (17) "Watercraft" means any motorized or nonmotorized vessel.

24 **§61-14-3. Property subject to forfeiture.**

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

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

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

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

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

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

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

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

24 **§61-14-4. Procedures for seizure of forfeitable property.**

25 (a) Seizure of property made subject to forfeiture by the
26 provisions of this article may be made upon process issued by any

1 court of record having jurisdiction over the property.

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

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

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

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

13 (4) The appropriate person has probable cause to believe that
14 the property was used or intended for use in the commission or
15 facilitation of any offense listed in subsection (c) of section one
16 of this article.

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

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

25 (1) Place the property under seal;

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

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

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

7 The requirements of this subsection pertaining to the removal
8 of seized property are not mandatory in the case of real property
9 and appurtenances thereto.

10 **§61-14-5. Procedures for forfeiture.**

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

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

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

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

25 (4) A petition for forfeiture of the seized property shall be
26 filed within ninety days after the seizure of the property in

1 question. The petition shall be verified by oath or affirmation of
2 a law-enforcement officer representing the law-enforcement agency
3 responsible for the seizure or the prosecuting attorney and shall
4 contain the following:

5 (A) A description of the property seized;

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

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

8 (D) The identity of the owner or owners of the property, if
9 known;

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

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

15 (G) The identity of all persons or corporations having a
16 perfected security interest or lien in the subject property, as
17 well as the identity of all persons or corporations known to the
18 affiant who may be holding a possessory or statutory lien against
19 the property; and

20 (H) A prayer for an order directing forfeiture of the seized
21 property to the state, and vesting ownership of the property in the
22 state.

23 (b) At the time of filing or as soon as practicable
24 thereafter, a copy of the petition for forfeiture shall be served
25 upon the owner or owners of the seized property, as well as all
26 holders of a perfected security interest or lien or of a possessory

1 or statutory lien in the same class, if known. Should diligent
2 efforts fail to disclose the lawful owner or owners of the seized
3 property, a copy of the petition for forfeiture shall be served
4 upon any person who was in possession or alleged to be in
5 possession of the property at the time of seizure, where the
6 person's identity is known. The above service shall be made
7 pursuant to the provisions of the West Virginia Rules of Civil
8 Procedure. Any copy of the petition for forfeiture so served shall
9 include a notice substantially as follows:

10 "To any claimant to the within described property: You have
11 the right to file an answer to this petition setting forth your
12 title in, and right to possession of, the property within thirty
13 days from the service hereof. If you fail to file an answer, a
14 final order forfeiting the property to the state will be entered,
15 and the order is not subject to appeal."

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

22 (c) In addition to the requirements of subsection (b) of this
23 section, the prosecuting attorney or law-enforcement officer upon
24 whose oath or affirmation the petition for forfeiture is based,
25 shall be responsible for the publication of a further notice. The
26 further notice that a petition for forfeiture has been filed shall

1 be published by Class II legal advertisement in accordance with
2 article three, chapter fifty-nine of this code. The publication
3 area is the county in which the property was seized and the county
4 in which the petition for forfeiture is filed. The notice shall
5 advise any claimant to the property of their right to file a claim
6 on or before the date set forth in the notice, which date may not
7 be less than thirty days from the date of the first publication.
8 The notice shall specify that any claim must clearly state the
9 identity of the claimant and an address where legal process can be
10 served upon that person. In addition, the notice shall contain the
11 following information:

- 12 (1) A description of the property seized;
- 13 (2) A statement as to who is responsible for the seizure;
- 14 (3) A statement of the time and place of seizure;
- 15 (4) The identity of the owner or owners of the property, if
16 known;
- 17 (5) The identity of the person or persons in possession of the
18 property at the time of seizure, if known; and
- 19 (6) A statement that prayer for an order directing forfeiture
20 of the seized property to the state, and vesting ownership of the
21 property in the state, shall be requested of the court.

22 (d) If no answer or claim is filed within thirty days of the
23 date of service of the petition pursuant to subsection (b) of this
24 section, or within thirty days of the first publication pursuant to
25 subsection (b) of this section, the court shall enter an order
26 forfeiting the seized property to the state. If any claim to the

1 seized property is timely filed, a time and place shall be set for
2 a hearing upon the claim. The claimant or claimants shall be given
3 notice of the hearing not less than ten days prior to the date set
4 for the hearing.

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

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

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

19 (h) During the pendency of a forfeiture proceeding, it is
20 unlawful for any property owner or holder of a bona fide security
21 interest or other valid lien-holder to transfer or attempt to
22 transfer any ownership interest or security interest in seized
23 property with the intent to defeat the purpose of this article, and
24 the court wherein the petition for forfeiture is filed may enjoin
25 a property owner or holder of a security interest or other lien-
26 holder from making such a transfer should one come to its

1 attention. Any such transfer, that is made in violation of the
2 provisions of this subsection, shall have no effect upon an order
3 of the court forfeiting seized property to the state if a notice of
4 lis pendens is filed prior to the recording of the instrument of
5 transfer.

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

10 (j) An appeal of a decision of the circuit court concerning a
11 forfeiture proceeding brought pursuant to this article must be
12 filed within one hundred twenty days of the date of entry of the
13 final appealable order. The appellant is required to give notice
14 of intent to appeal within thirty days of the entry of the
15 appealable order.

16 **§61-14-6. Innocent owner defense.**

17 (a) A mobile instrumentality used by any person as a common
18 carrier in the transaction of business as a common carrier may not
19 be forfeited under this article unless it appears that the person
20 owning the mobile instrumentality is a consenting party or privy to
21 the underlying criminal activity.

22 (b) A mobile instrumentality may not be forfeited under the
23 provisions of this article if the person owning the mobile
24 instrumentality establishes that he or she neither knew, nor had
25 reason to know, that the mobile instrumentality was being employed
26 or was likely to be used to facilitate the underlying criminal

1 activity.

2 (c) A bona fide security interest or other valid lien in any
3 mobile instrumentality may not be forfeited under the provisions of
4 this article, unless the state proves by a preponderance of the
5 evidence that the holder of the security interest or lien either
6 knew, or had reason to know, that the mobile instrumentality was
7 being used or was likely to be used to facilitate the underlying
8 criminal activity.

9 (d) No moneys, bonds, negotiable instruments, securities or
10 other things of value obtained by or traceable as proceeds of
11 fraudulent activity or used as instrumentalities to commit
12 fraudulent acts covered by this article may be forfeited to the
13 extent of the interest of an innocent owner or lienholder, who
14 establishes by a preponderance of the evidence that the fraudulent
15 activity was committed without his or her knowledge or consent.

16 (e) No real property or real property interest things of value
17 obtained by or traceable as proceeds of fraudulent activity or used
18 as instrumentalities to commit fraudulent acts covered by this
19 article may be forfeited to the extent of the interest of an
20 innocent owner or lienholder, who establishes by a preponderance of
21 the evidence that the fraudulent activity was committed without his
22 or her knowledge or consent.

23 (f) Notwithstanding any other provisions of this article to
24 the contrary, any items of real property or any items of tangible
25 personal property sold to a bona fide purchaser are not subject to
26 forfeiture unless the state establishes by clear and convincing

1 proof that the bona fide purchaser knew or should have known that
2 the property had been used to facilitate the offense of fraud or
3 were acquired with the proceeds of one or more of the fraudulent
4 offenses listed in subsection (c) of section one of this article
5 within three years preceding the sale.

6 **§61-14-7. Disposition of forfeited moneys, securities or other**
7 **negotiable instruments; distribution of proceeds.**

8 (a) Whenever moneys, securities or other negotiable
9 instruments are forfeited under the provisions of this article, the
10 proceeds shall first be distributed to satisfy any order of
11 restitution ordered to the victim or victims of the fraudulent
12 offense or offenses in a related criminal proceeding, or to satisfy
13 any recovery ordered for the person harmed in a civil forfeiture
14 case, unless paid from other assets.

15 (b) Any funds which remain after the distribution of the
16 proceeds remaining after distribution pursuant to subsection (a) of
17 this section shall be distributed as follows:

18 (1) Ten percent of the remaining proceeds shall be tendered to
19 the office of the prosecuting attorney which initiated the
20 forfeiture proceeding;

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

23 (3) Seventy percent of the remaining funds shall be deposited
24 in a special law-enforcement investigation fund. The fund may be
25 placed in any interest-bearing depository insured by an agency of
26 the federal government. The fund shall be administered by the

1 chief of the law-enforcement agency that seized the forfeited
2 property; and

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

5 (1) In the case of the funds belonging to the Department of
6 Public Safety, the funds may only be expended at the direction of
7 the superintendent of the department and in accordance with the
8 provisions of article two, chapter eleven-b of this code and the
9 provisions of article two, chapter twelve of this code;

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

15 (3) In the case of funds belonging to the police department of
16 any municipality in which the special fund has been created, the
17 funds therein may only be expended in the manner provided in
18 section twenty-two, article thirteen, chapter eight of this code.

19 **§61-14-8. Disposition of other forfeited property; distribution**
20 **of proceeds.**

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

26 (1) Title to the forfeited property be vested in the

1 law-enforcement agency so petitioning; or

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

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

9 (b) When a law-enforcement agency receives property pursuant
10 to this section, the court may, upon request of the prosecuting
11 attorney initiating the forfeiture proceeding, require the law-
12 enforcement agency to pay unto the office of said prosecuting
13 attorney a sum not to exceed ten percent of the value of the
14 property received to compensate said office for actual costs and
15 expenses incurred.

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

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

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

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

23 (4) Fourth, to satisfy any order of restitution ordered to the
24 victim or victims of the fraudulent offense or offenses in a
25 related criminal proceeding, or to satisfy any recovery ordered for
26 the person harmed in a civil forfeiture case, unless paid from

1 other assets.

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

5 (1) Ten percent of the proceeds shall be tendered to the
6 office of the prosecuting attorney who initiated the forfeiture
7 proceeding.

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

10 (3) (A) Seventy percent divided among the investigating
11 agencies through a memo of understanding, with the proceeds to be
12 deposited in a special law-enforcement investigation fund. Such
13 fund shall be administered by the chief of the law-enforcement
14 agency that seized the forfeited property sold and shall take the
15 form of an interest-bearing account with any interest earned to be
16 compounded to the fund. Any funds deposited in the special law-
17 enforcement investigative fund pursuant to this article may be
18 expended only to defray the costs of protracted or complex
19 investigations, to provide additional technical equipment or
20 expertise, to provide matching funds to obtain federal grants or
21 for such other law-enforcement purposes as the chief of the law-
22 enforcement agency may deem appropriate; however, these funds may
23 not be utilized for regular operations of the agency.

24 (B) If more than one law-enforcement agency was substantially
25 involved in effecting the seizure and forfeiture of property, the
26 portion to be deposited into the law-enforcement investigative fund

1 shall be equitably distributed among the law-enforcement agencies
2 by the court wherein the petition for forfeiture was filed. In the
3 event of a public sale of the property pursuant to subsection (a)
4 of this section, the court shall equitably distribute forty percent
5 of any proceeds remaining after distributions pursuant to
6 subsection (c) and subdivisions (1) and (2), subsection (d) of this
7 section among such law-enforcement agencies for deposit into their
8 individual special law-enforcement investigative fund. Equitable
9 distribution shall be based upon the overall contribution of the
10 individual law-enforcement agency to the investigation which led to
11 the seizure.

12 (e) Upon the sale of any forfeited property for which title or
13 registration is required by law, the state shall issue a title or
14 registration certificate to any bona fide purchaser at a public
15 sale of the property conducted pursuant to subsection (a) of this
16 section. Upon the request of the law-enforcement agency receiving,
17 pursuant to the order of the court, or electing to retain, pursuant
18 to subsection (a) of this section, any forfeited property for which
19 title or registration is required by law, the state shall issue a
20 title or registration certificate to the appropriate governmental
21 body.

22 (f) Every prosecuting attorney or law-enforcement agency
23 receiving forfeited property or proceeds from the sale of forfeited
24 property pursuant to this article shall submit an annual report to
25 the body which has budgetary authority over the agency. The report
26 shall specify the type and approximate value of all forfeited

1 property and the amount of proceeds from the sale of forfeited
2 property received in the preceding year. No county or municipality
3 may use anticipated receipts of forfeited property in their
4 budgetary process.

5 (g) In lieu of the sale of any forfeited property subject to
6 a bona fide security interest preserved by an order of the court,
7 the law-enforcement agency receiving the forfeited property may pay
8 the balance due on any security interest preserved by the court
9 from funds budgeted to the office or department or from the special
10 fund and retain possession of the forfeited property for official
11 use pursuant to subsection (a) of this section.

12 (h) In every case where property is forfeited, disposition of
13 the forfeited property, in accordance with this article, shall be
14 made within six months of the date upon which the court of
15 jurisdiction orders forfeiture. Should the office or agency
16 receiving the property fail either to place the property in
17 official use or dispose of the property in accordance with law, the
18 court of jurisdiction shall cause disposition of the property to be
19 made with any proceeds therefrom to be awarded to the state.

20 (i) No disposition may occur until all applicable periods for
21 filing a notice of intent to appeal has expired and no party in
22 interest has filed such notice. The filing of the notice of intent
23 to appeal stays any such disposition until the appeal has been
24 finally adjudicated or until the appeal period of one hundred
25 eighty days has expired without an appeal having actually been
26 taken or filed, unless a valid extension of the appeal has been

1 granted by the circuit court under the provisions of section seven,
2 article four, chapter fifty-eight of this code.

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

6 **§61-14-9. Effect of Dismissal of Criminal Charges.**

7 Notwithstanding any provision of this article or the code to
8 the contrary, the dismissal of criminal charges for the offense or
9 offenses for which forfeiture of property is authorized under this
10 article and any court order issued under the authority provided in
11 this article will vacate any judgment or order authorizing the
12 forfeiture of property and the property shall be returned to its
13 owner or owners.