

H. B. 3044

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

[Introduced February 7, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §61-14-1, §61-14-2,
§61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7 and §61-14-8,
all relating to civil forfeiture actions related to criminal
activity; establishing general rules and procedures for civil
forfeiture proceedings for crimes of fraud; authorizing civil
proceedings pertaining to property and assets used in,
acquired, gained or flowing from various criminal fraudulent
activities; providing definitions; statement of purpose of
forfeitures for certain offenses of fraud; property subject to
forfeiture; provisional title to property subject to
forfeiture; seizure of property; seizure and disposition of
forfeited and other property; interference with or diminishing
forfeitable property; providing right to trial by jury; care
of property in law-enforcement custody; sale of forfeited
property, application of proceeds and forfeiture funds; and

1 providing exceptions.

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

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

7 **ARTICLE 14. WEST VIRGINIA CIVIL FORFEITURE FOR FRAUDULENT CRIMES**

8 **AND OFFENSES.**

9 **§61-14-1. Purpose and scope.**

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

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

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

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

23 (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;

1 (9) Any crime of fraud against the elderly as "elderly" is
2 defined in section three-k, article five-p, chapter sixteen of this
3 code; and

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

6 (d) 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 **§61-14-2. Definitions.**

10 As used in this article:

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

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

20 (3) "Computers," "computer networks," "computer systems,"
21 "computer software," and "telecommunications device" have the same
22 meanings as described in section three, article three-c, chapter
23 sixty-one of this chapter.

24 (4) "Financial institution" means a bank, credit union,

1 savings and loan association, or a licensee or registrant as
2 defined in section two, article one, chapter thirty-one-a of this
3 code.

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

6 (6) "Innocent person" includes any bona fide purchaser of
7 property that is subject to forfeiture, including any person who
8 establishes a valid claim to or interest in the property in
9 accordance with the provisions of section seven, chapter sixty-a of
10 this code and any victim of an alleged offense.

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

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

20 (9) "Mobile instrumentality" means an instrumentality that is
21 inherently mobile and used in the routine transport of persons.
22 "Mobile instrumentality" includes, but is not limited to, any
23 vehicle, any watercraft, and any aircraft.

24 (10) "Money" has the same meaning as in section one, article

1 six, chapter forty-seven of this code.

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

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

6 (A) In cases involving fraudulent or lawful goods, services,
7 or activities, "proceeds" means any property derived directly or
8 indirectly from an offense. "Proceeds" may include, but is not
9 limited to, money or any other means of exchange. "Proceeds" is
10 not limited to the net gain or profit realized from the offense.

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

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

24 (14) "Property subject to forfeiture" includes contraband and

1 proceeds and may include instrumentalities as provided in this
2 article.

3 (15) "Prosecutor" means any duly elected or appointed
4 prosecutor or special prosecutor.

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

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

9 **§61-14-3. Property subject to forfeiture.**

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

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

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

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

23 (b) In determining whether an alleged instrumentality was used
24 in or was intended to be used in the commission or facilitation of

1 an offense or an attempt, complicity, or conspiracy to commit an
2 offense in a manner sufficient to warrant its forfeiture, the trier
3 of fact shall consider the following factors the trier of fact
4 determines are relevant:

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

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

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

11 **§61-14-4. Procedures for seizure of forfeitable property.**

12 (a) Seizure of property made subject to forfeiture by the
13 provisions of this article may be made upon process issued by any
14 court of record having jurisdiction over the property.

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

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

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

23 (3) The appropriate person has probable cause to believe that
24 the property is directly or indirectly dangerous to health or

1 safety; or

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

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

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

14 (1) Place the property under seal;

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

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

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

22 The requirements of this subsection pertaining to the removal
23 of seized property are not mandatory in the case of real property
24 and appurtenances thereto.

1 **§61-14-5. Procedures for forfeiture.**

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

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

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

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

16 (4) A petition for forfeiture of the seized property shall be
17 filed within ninety days after the seizure of the property in
18 question. The petition shall be verified by oath or affirmation of
19 a law-enforcement officer representing the law-enforcement agency
20 responsible for the seizure or the prosecuting attorney and shall
21 contain the following:

22 (A) A description of the property seized;

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

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

1 (D) The identity of the owner or owners of the property, if
2 known;

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

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

8 (G) The identity of all persons or corporations having a
9 perfected security interest or lien in the subject property, as
10 well as the identity of all persons or corporations known to the
11 affiant who may be holding a possessory or statutory lien against
12 the property; and

13 (H) A prayer for an order directing forfeiture of the seized
14 property to the state, and vesting ownership of the property in the
15 state.

16 (b) At the time of filing or as soon as practicable
17 thereafter, a copy of the petition for forfeiture shall be served
18 upon the owner or owners of the seized property, as well as all
19 holders of a perfected security interest or lien or of a possessory
20 or statutory lien in the same class, if known. Should diligent
21 efforts fail to disclose the lawful owner or owners of the seized
22 property, a copy of the petition for forfeiture shall be served
23 upon any person who was in possession or alleged to be in
24 possession of the property at the time of seizure, where the

1 person's identity is known. The above service shall be made
2 pursuant to the provisions of the West Virginia Rules of Civil
3 Procedure. Any copy of the petition for forfeiture so served shall
4 include a notice substantially as follows:

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

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

17 (c) In addition to the requirements of subsection (b) of this
18 section, the prosecuting attorney or law-enforcement officer upon
19 whose oath or affirmation the petition for forfeiture is based,
20 shall be responsible for the publication of a further notice. The
21 further notice that a petition for forfeiture has been filed shall
22 be published by Class II legal advertisement in accordance with
23 article three, chapter fifty nine of this code. The publication
24 area is the county in which the property was seized and the county

1 in which the petition for forfeiture is filed. The notice shall
2 advise any claimant to the property of their right to file a claim
3 on or before the date set forth in the notice, which date may not
4 be less than thirty days from the date of the first publication.

5 The notice shall specify that any claim must clearly state the
6 identity of the claimant and an address where legal process can be
7 served upon that person. In addition, the notice shall contain the
8 following information:

9 (1) A description of the property seized;

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

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

12 (4) The identity of the owner or owners of the property, if
13 known;

14 (5) The identity of the person or persons in possession of the
15 property at the time of seizure, if known; and

16 (6) A statement that prayer for an order directing forfeiture
17 of the seized property to the state, and vesting ownership of the
18 property in the state, shall be requested of the court.

19 (d) If no answer or claim is filed within thirty days of the
20 date of service of the petition pursuant to subsection (b) of this
21 section, or within thirty days of the first publication pursuant to
22 subsection (b) of this section, the court shall enter an order
23 forfeiting the seized property to the state. If any claim to the
24 seized property is timely filed, a time and place shall be set for

1 a hearing upon the claim. The claimant or claimants shall be given
2 notice of the hearing not less than ten days prior to the date set
3 for the hearing.

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

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

15 (g) During the pendency of a forfeiture proceeding, it is
16 unlawful for any property owner or holder of a bona fide security
17 interest or other valid lien-holder to transfer or attempt to
18 transfer any ownership interest or security interest in seized
19 property with the intent to defeat the purpose of this article, and
20 the court wherein the petition for forfeiture is filed may enjoin
21 a property owner or holder of a security interest or other lien-
22 holder from making such a transfer should one come to its
23 attention. Any such transfer, that is made in violation of the
24 provisions of this subsection, shall have no effect upon an order

1 of the court forfeiting seized property to the state if a notice of
2 lis pendens is filed prior to the recording of the instrument of
3 transfer.

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

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

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

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

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

1 personal property sold to a bona fide purchaser are not subject to
2 forfeiture unless the state establishes by clear and convincing
3 proof that the bona fide purchaser knew or should have known that
4 the property had been used to facilitate the offense of fraud or
5 were acquired with the proceeds of one or more of the fraudulent
6 offenses listed in subsection (c) of section one of this article
7 within three years preceding the sale.

8 **§61-14-7. Disposition of forfeited moneys, securities or other**
9 **negotiable instruments; distribution of proceeds.**

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

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

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

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

1 (3) Seventy percent of the remaining funds shall be deposited
2 in a special law-enforcement investigation fund. The fund may be
3 placed in any interest-bearing depository insured by an agency of
4 the federal government. The fund shall be administered by the
5 chief of the law-enforcement agency that seized the forfeited
6 property; and

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

9 (1) In the case of the funds belonging to the Department of
10 Public Safety, the funds may only be expended at the direction of
11 the superintendent of the department and in accordance with the
12 provisions of section fifteen, article two, chapter five-a of this
13 code and the provisions of subsection (j), section two, article
14 two, chapter twelve of this code;

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

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

24 **§61-14-8. Disposition of other forfeited property; distribution**

1 **of proceeds.**

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

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

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

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

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

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

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

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

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

6 (4) Fourth, to satisfy any order of restitution ordered to the
7 victim or victims of the fraudulent offense or offenses in a
8 related criminal proceeding, or to satisfy any recovery ordered for
9 the person harmed in a civil forfeiture case, unless paid from
10 other assets.

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

14 (1) Ten percent of the proceeds shall be tendered to the
15 office of the prosecuting attorney who initiated the forfeiture
16 proceeding.

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

19 (3) (A) Seventy percent divided among the investigating
20 agencies through a memo of understanding, with the proceeds to be
21 deposited in a special law-enforcement investigation fund. Such
22 fund shall be administered by the chief of the law-enforcement
23 agency that seized the forfeited property sold and shall take the
24 form of an interest-bearing account with any interest earned to be

1 compounded to the fund. Any funds deposited in the special law-
2 enforcement investigative fund pursuant to this article may be
3 expended only to defray the costs of protracted or complex
4 investigations, to provide additional technical equipment or
5 expertise, to provide matching funds to obtain federal grants or
6 for such other law-enforcement purposes as the chief of the law-
7 enforcement agency may deem appropriate; however, these funds may
8 not be utilized for regular operations of the agency.

9 (B) If more than one law-enforcement agency was substantially
10 involved in effecting the seizure and forfeiture of property, the
11 portion to be deposited into the law-enforcement investigative fund
12 shall be equitably distributed among the law-enforcement agencies
13 by the court wherein the petition for forfeiture was filed. In the
14 event of a public sale of the property pursuant to subsection (a)
15 of this section, the court shall equitably distribute forty percent
16 of any proceeds remaining after distributions pursuant to
17 subsection (c) and subdivisions (1) and (2), subsection (d) of this
18 section among such law-enforcement agencies for deposit into their
19 individual special law-enforcement investigative fund. Equitable
20 distribution shall be based upon the overall contribution of the
21 individual law-enforcement agency to the investigation which led to
22 the seizure.

23 (e) Upon the sale of any forfeited property for which title or
24 registration is required by law, the state shall issue a title or

1 registration certificate to any bona fide purchaser at a public
2 sale of the property conducted pursuant to subsection (a) of this
3 section. Upon the request of the law-enforcement agency receiving,
4 pursuant to the order of the court, or electing to retain, pursuant
5 to subsection (a) of this section, any forfeited property for which
6 title or registration is required by law, the state shall issue a
7 title or registration certificate to the appropriate governmental
8 body.

9 (f) Any funds expended pursuant to the provisions of this
10 section, may only be expended in the manner provided in subsection
11 (b), section seven hundred five of this article.

12 (g) Every prosecuting attorney or law-enforcement agency
13 receiving forfeited property or proceeds from the sale of forfeited
14 property pursuant to this article shall submit an annual report to
15 the body which has budgetary authority over the agency. The report
16 shall specify the type and approximate value of all forfeited
17 property and the amount of proceeds from the sale of forfeited
18 property received in the preceding year. No county or municipality
19 may use anticipated receipts of forfeited property in their
20 budgetary process.

21 (h) In lieu of the sale of any forfeited property subject to
22 a bona fide security interest preserved by an order of the court,
23 the law-enforcement agency receiving the forfeited property may pay
24 the balance due on any security interest preserved by the court

1 from funds budgeted to the office or department or from the special
2 fund and retain possession of the forfeited property for official
3 use pursuant to subsection (a) of this section.

4 (i) In every case where property is forfeited, disposition of
5 the forfeited property, in accordance with this article, shall be
6 made within six months of the date upon which the court of
7 jurisdiction orders forfeiture. Should the office or agency
8 receiving the property fail either to place the property in
9 official use or dispose of the property in accordance with law, the
10 court of jurisdiction shall cause disposition of the property to be
11 made with any proceeds therefrom to be awarded to the state.

12 (j) No disposition may occur until all applicable periods for
13 filing a notice of intent to appeal has expired and no party in
14 interest has filed such notice. The filing of the notice of intent
15 to appeal stays any such disposition until the appeal has been
16 finally adjudicated or until the appeal period of one hundred
17 eighty days has expired without an appeal having actually been
18 taken or filed, unless a valid extension of the appeal has been
19 granted by the circuit court under the provisions of section seven,
20 article four, chapter fifty-eight of this code.

21 (k) The special law-enforcement investigative funds of each
22 law-enforcement agency may be placed in an interest-bearing
23 depository insured by the federal government.

NOTE: The purpose of this bill is to establish a civil forfeiture procedure by which property used to facilitate crimes of fraud or traceable as proceeds from crimes of fraud may be seized by the state. The procedures and protections established by this bill include due process measures and notice requirements which are designed to protect the interests of the affected property owners, including innocent persons, lienholders and bona fide third party transfers. The bill also provides for the disposition forfeited property, and includes provisions by which for a portion of the forfeited proceeds would be applied to satisfy orders of restitution or recovery to victims of the fraudulent activity.

This article is new; therefore, it has been completely underscored.