

Senate Bill No. 223

(By Senators Foster, Chafin, Jenkins, Laird, Minard, Palumbo,
Snyder, William, Hall, Nohe, Plymale, Miller, Klempa and Kessler
(Acting President))

**Interim
Bill**

[Introduced January 20, 2011; referred to the Committee on the
Judiciary.]

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 and criminal forfeiture actions related
to criminal activity; establishing general rules for civil
forfeiture proceedings; 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

1 forfeiture funds; and 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 CRIMINAL AND CIVIL FORFEITURE FOR**
8 **FRAUDULENT CRIMES AND OFFENSES.**

9 **§61-14-1. Purpose and scope.**

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

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

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

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

24 (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
21 this 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

1 defined in section three-k, article five-p, chapter sixteen of this
2 code; and

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

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

8 **§61-14-2. Definitions.**

9 As used in this article:

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

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

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

23 (4) "Financial institution" means a bank, credit union,
24 savings and loan association, or a licensee or registrant as
25 defined in section two, article one, chapter thirty-one-a of this

1 code.

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

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

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

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

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

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

24 (11) "Offense" means any act or omission that could be charged
25 as a criminal offense, whether or not a formal criminal prosecution

1 began at the time the forfeiture is initiated.

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

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

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

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

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

24 (15) "Prosecutor" means any duly elected or appointed
25 prosecutor or special prosecutor.

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

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

5 **§61-14-3. Property subject to forfeiture.**

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

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

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

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

19 (b) In determining whether an alleged instrumentality was used
20 in or was intended to be used in the commission or facilitation of
21 an offense or an attempt, complicity, or conspiracy to commit an
22 offense in a manner sufficient to warrant its forfeiture, the trier
23 of fact shall consider the following factors the trier of fact
24 determines are relevant:

25 (1) Whether the offense could not have been committed or

1 attempted but for the presence of the instrumentality;

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

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

6 **§61-14-4. Procedures for seizure of forfeitable property.**

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

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

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

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

18 (3) The appropriate person has probable cause to believe that
19 the property is directly or indirectly dangerous to health or
20 safety; or

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

25 (c) In the event of seizure pursuant to subsection (b) of this

1 section, forfeiture proceedings shall be instituted within ninety
2 days of the seizure thereof.

3 (d) Property taken or detained under this section shall not be
4 subject to replevin, but is deemed to be in the custody of the
5 appropriate person, subject only to the orders and decrees of the
6 court having jurisdiction over the forfeiture proceedings. When
7 property is seized under this article, the appropriate person may:

8 (1) Place the property under seal;

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

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

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

16 The requirements of this subsection pertaining to the removal
17 of seized property are not mandatory in the case of real property
18 and appurtenances thereto.

19 **§61-14-5. Procedures for forfeiture.**

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

21 (1) Any proceeding wherein the state seeks forfeiture of
22 property subject to forfeiture under this section shall be a civil
23 proceeding. A petition for forfeiture may be filed on behalf of
24 the state and any law-enforcement agency making a seizure under
25 this article by the prosecuting attorney of a county, or duly

1 appointed special prosecutor;

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

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

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

15 (A) A description of the property seized;

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

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

18 (D) The identity of the owner or owners of the property, if
19 known;

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

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

25 (G) The identity of all persons or corporations having a

1 perfected security interest or lien in the subject property, as
2 well as the identity of all persons or corporations known to the
3 affiant who may be holding a possessory or statutory lien against
4 such property; and

5 (H) A prayer for an order directing forfeiture of the seized
6 property to the state, and vesting ownership of such property in
7 the state.

8 (b) At the time of filing or as soon as practicable
9 thereafter, a copy of the petition for forfeiture shall be served
10 upon the owner or owners of the seized property, as well as all
11 holders of a perfected security interest or lien or of a possessory
12 or statutory lien in the same class, if known. Should diligent
13 efforts fail to disclose the lawful owner or owners of the seized
14 property, a copy of the petition for forfeiture shall be served
15 upon any person who was in possession or alleged to be in
16 possession of the property at the time of seizure, where such
17 person's identity is known. The above service shall be made
18 pursuant to the provisions of the West Virginia Rules of Civil
19 Procedure. Any copy of the petition for forfeiture so served shall
20 include a notice substantially as follows:

21 "To any claimant to the within described property: You have
22 the right to file an answer to this petition setting forth your
23 title in, and right to possession of, the property within thirty
24 days from the service hereof. If you fail to file an answer, a
25 final order forfeiting the property to the state will be entered,

1 and such order is not subject to appeal.”

2 If no owner or possessors, lienholders or holders of a
3 security interest be found, then such service may be made by Class
4 II legal publication in accordance with the provisions of article
5 three, chapter fifty-nine of this code, and the publication area
6 shall be the county wherein such property was located at the time
7 of seizure and the county wherein the petition for forfeiture is
8 filed.

9 (c) In addition to the requirements of subsection (b) of this
10 section, the prosecuting attorney or law-enforcement officer upon
11 whose oath or affirmation the petition for forfeiture is based,
12 shall be responsible for the publication of a further notice. Such
13 further notice that a petition for forfeiture has been filed shall
14 be published by Class II legal advertisement in accordance with
15 article three, chapter fifty nine of this code. The publication
16 area shall be the county wherein the property was seized and the
17 county wherein the petition for forfeiture is filed. The notice
18 shall advise any claimant to the property of their right to file a
19 claim on or before the date set forth in the notice, which date
20 shall not be less than thirty days from the date of the first
21 publication. The notice shall specify that any claim must clearly
22 state the identity of the claimant and an address where legal
23 process can be served upon that person. In addition, such notice
24 shall contain the following information:

25 (1) A description of the property seized;

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

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

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

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

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

10 (d) If no answer or claim is filed within thirty days of the
11 date of service of the petition pursuant to subsection (b) of this
12 section, or within thirty days of the first publication pursuant to
13 subsection (b) of this section, the court shall enter an order
14 forfeiting the seized property to the state. If any claim to the
15 seized property is timely filed, a time and place shall be set for
16 a hearing upon such claim. The claimant or claimants shall be
17 given notice of such hearing not less than ten days prior to the
18 date set for the hearing.

19 (e) At the hearing upon the claim or claims, the state shall
20 have the burden of proving by a preponderance of the evidence that
21 the seized property is subject to forfeiture pursuant to the
22 provisions of this article.

23 (f) Any order forfeiting property to the state and entered
24 pursuant to this section perfects the state's right, title and
25 interest in the forfeited property and relates back to the date of

1 seizure: *Provided*, That in any proceeding under this article the
2 circuit court shall in its final order make specific findings with
3 respect to whether or not probable cause to seize such property
4 existed at the time of such seizure.

5 (g) During the pendency of a forfeiture proceeding, it is
6 unlawful for any property owner or holder of a bona fide security
7 interest or other valid lien-holder to transfer or attempt to
8 transfer any ownership interest or security interest in seized
9 property with the intent to defeat the purpose of this article, and
10 the court wherein the petition for forfeiture is filed may enjoin
11 a property owner or holder of a security interest or other lien-
12 holder from making such a transfer should one come to its
13 attention. Any such transfer, that is made in violation of the
14 provisions of this subsection, shall have no effect upon an order
15 of the court forfeiting seized property to the state if a notice of
16 lis pendens is filed prior to the recording of the instrument of
17 transfer.

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

22 (i) An appeal of a decision of the circuit court concerning a
23 forfeiture proceeding brought pursuant to this article must be
24 filed within one hundred twenty days of the date of entry of the
25 final appealable order. The appellant shall be required to give

1 notice of intent to appeal within thirty days of the entry of such
2 appealable order.

3 **§61-14-6. Innocent owner defense.**

4 (a) A mobile instrumentality used by any person as a common
5 carrier in the transaction of business as a common carrier shall
6 not be forfeited under this article unless it appears that the
7 person owning the mobile instrumentality is a consenting party or
8 privy to the underlying criminal activity.

9 (b) A mobile instrumentality shall not be forfeited under the
10 provisions of this article if the person owning the mobile
11 instrumentality establishes that he or she neither knew, nor had
12 reason to know, that the mobile instrumentality was being employed
13 or was likely to be used to facilitate the underlying criminal
14 activity.

15 (c) A bona fide security interest or other valid lien in any
16 mobile instrumentality shall not be forfeited under the provisions
17 of this article, unless the state proves by a preponderance of the
18 evidence that the holder of the security interest or lien either
19 knew, or had reason to know, that the mobile instrumentality was
20 being used or was likely to be used to facilitate the underlying
21 criminal activity.

22 (d) No moneys, bonds, negotiable instruments, securities or
23 other things of value obtained by or traceable as proceeds of
24 fraudulent activity or used as instrumentalities to commit
25 fraudulent acts covered by this article may be forfeited to the

1 extent of the interest of an innocent owner or lienholder, who
2 establishes by a preponderance of the evidence that the fraudulent
3 activity was committed without his or her knowledge or consent.

4 (e) No real property or real property interest things of value
5 obtained by or traceable as proceeds of fraudulent activity or used
6 as instrumentalities to commit fraudulent acts covered by this
7 article may be forfeited to the extent of the interest of an
8 innocent owner or lienholder, who establishes by a preponderance of
9 the evidence that the fraudulent activity was committed without
10 his or her knowledge or consent.

11 (f) Notwithstanding any other provisions of this article to
12 the contrary, any items of real property or any items of tangible
13 personal property sold to a bona fide purchaser are not subject to
14 forfeiture unless the state establishes by clear and convincing
15 proof that the bona fide purchaser knew or should have known that
16 the property had been used to facilitate the offense of fraud or
17 were acquired with the proceeds of one or more of the fraudulent
18 offenses listed in subsection (c) of section one of this article
19 within three years preceding the sale.

20 **§61-14-7. Disposition of forfeited moneys, securities or other**
21 **negotiable instruments; distribution of proceeds.**

22 (a) Whenever moneys, securities or other negotiable
23 instruments are forfeited under the provisions of this article,
24 such proceeds shall first be distributed to satisfy any order of
25 restitution ordered to the victim or victims of the fraudulent

1 offense or offenses in a related criminal proceeding, or to satisfy
2 any recovery ordered for the person harmed in a civil forfeiture
3 case, unless paid from other assets.

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

7 (1) Ten percent of the remaining proceeds shall be tendered to
8 the office of the prosecuting attorney which initiated the
9 forfeiture proceeding;

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

12 (3) Seventy percent of the remaining funds shall be
13 deposited in a special law enforcement investigation fund. The
14 fund may be placed in any interest-bearing depository insured by an
15 agency of the federal government. The fund shall be administered
16 by the chief of the law-enforcement agency that seized the
17 forfeited property; and,

18 (c) No funds shall be expended from the special law
19 enforcement investigation fund except as follows:

20 (1) In the case of the funds belonging to the Department of
21 Public Safety, the funds shall only be expended at the direction of
22 the superintendent of the department and in accordance with the
23 provisions of section fifteen, article two, chapter five-a of this
24 code and the provisions of subsection (j), section two, article
25 two, chapter twelve of this code;

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

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

10 **§61-14-8. Disposition of other forfeited property; distribution**
11 **of proceeds.**

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

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

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

21 (3) The forfeited property shall be offered at public auction
22 to the highest bidder for cash. Notice of such public auction
23 shall be published as a Class III legal advertisement in accordance
24 with article three, chapter fifty-nine of this code. The
25 publication area shall be the county where the public auction will

1 be held.

2 (b) When a law-enforcement agency receives property pursuant
3 to this section, the court may, upon request of the prosecuting
4 attorney initiating the forfeiture proceeding, require the
5 law-enforcement agency to pay unto the office of said prosecuting
6 attorney a sum not to exceed ten percent of the value of the
7 property received to compensate said office for actual costs and
8 expenses incurred.

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

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

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

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

16 (4) Fourth, to satisfy any order of restitution ordered to the
17 victim or victims of the fraudulent offense or offenses in a
18 related criminal proceeding, or to satisfy any recovery ordered for
19 the person harmed in a civil forfeiture case, unless paid from
20 other assets.

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

24 (1) Ten percent of such proceeds shall be tendered to the
25 office of the prosecuting attorney who initiated the forfeiture

1 proceeding.

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

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

18 (B) If more than one law-enforcement agency was substantially
19 involved in effecting the seizure and forfeiture of property, the
20 portion to be deposited into the law enforcement investigative fund
21 shall be equitably distributed among the law-enforcement agencies
22 by the court wherein the petition for forfeiture was filed. In the
23 event of a public sale of such property pursuant to subsection (a)
24 of this section, the court shall equitably distribute forty percent
25 of any proceeds remaining after distributions pursuant to

1 subsection (c) and subdivisions (1) and (2), subsection (d) of this
2 section among such law-enforcement agencies for deposit into their
3 individual special law enforcement investigative fund. Equitable
4 distribution shall be based upon the overall contribution of the
5 individual law-enforcement agency to the investigation which led to
6 the seizure.

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

17 (f) Any funds expended pursuant to the provisions of this
18 section, shall only be expended in the manner provided in
19 subsection (b), section seven hundred five of this article.

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

1 forfeited property received in the preceding year. No county or
2 municipality may use anticipated receipts of forfeited property in
3 their budgetary process.

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

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

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

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

3 (k) 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.

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, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the 2011 Legislature by the Joint Standing Committee on the Judiciary.