

1 **H. B. 4334**

2  
3 (By Delegates Longstreth, Frazier, Hamilton,  
4 Miley, Caputo, Hall, Swartzmiller and Skaff)

5  
6 [Introduced January 27, 2012; referred to the  
7 Committee on the Judiciary.]

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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 §61-13-1, §61-13-2,  
12 §61-13-3, §61-13-4, §61-13-5, §61-13-6, §61-13-7, §61-13-8,  
13 §61-13-9, §61-13-10, §61-13-11, §61-13-12, §61-13-13,  
14 §61-13-14, §61-13-15, §61-13-16, §61-13-17, §61-13-18,  
15 §61-13-19, §61-13-20, §61-13-21, and §61-13-22 all relating to  
16 establishment of the West Virginia Civil and Criminal  
17 Forfeiture Act; establishing civil and criminal forfeiture  
18 proceedings pertaining to property and assets used in,  
19 acquired, gained or flowing from gained from various criminal  
20 activities and juvenile offenses; providing definitions;  
21 statement of purpose of forfeitures; identifying property  
22 subject to forfeiture; establishing exemptions; providing the  
23 state with provisional title to property subject to  
24 forfeiture; establishing procedures seizure of property;  
25 establishing protections for innocent third party owners and  
26 interest holders; establishing a procedure for processing

1 uncontested forfeitures; establishing general procedures for  
2 challenging and evaluating forfeiture procedures; providing  
3 for the filing and processing of petitions for in rem  
4 forfeiture proceedings; providing for the filing and  
5 processing and establishing related procedures for in personam  
6 forfeiture proceedings; allowing additional procedures  
7 applicable in criminal and civil proceedings in which  
8 forfeiture of property is sought; allowing for forfeiture of  
9 and execution on substitute property under certain conditions;  
10 allowing for release of seized property upon provision of  
11 adequate security bond or deposit; providing certain  
12 exceptions and limitations; establishing procedures for  
13 forfeiture; establishing burdens of proof; providing for the  
14 seizure and disposition of forfeited and other property; civil  
15 forfeiture action and pretrial hardship release; establishing  
16 the crime of interference with or diminishing forfeitable  
17 property; providing right to trial by jury; creating standards  
18 and procedures for care of property in law-enforcement  
19 custody; providing provisions for the sale of forfeited  
20 property; prioritizing and directing the application of  
21 proceeds and forfeiture funds; providing exceptions; and  
22 criminal penalties.

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

24 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §61-13-1, §61-13-2,  
2 §61-13-3, §61-13-4, §61-13-5, §61-13-6, §61-13-7, §61-13-8,  
3 §61-13-9, §61-13-10, §61-13-11, §61-13-12, §61-13-13, §61-13-14,  
4 §61-13-15, §61-13-16, §61-13-17, §61-13-18, §61-13-19,  
5 §61-13-20, §61-13-21 and §61-13-22, all to read as follows:

6 **ARTICLE 13. WEST VIRGINIA CRIMINAL AND CIVIL FORFEITURE ACT.**

7 **§61-13-1. Purpose and scope.**

8 (a) The provisions of this article establish general  
9 forfeiture guidelines and procedures to be followed in both civil  
10 and criminal cases in which forfeiture of property or restitution  
11 is sought for the specified crimes and offenses set forth in  
12 subsection (c) of this section, when committed by adult offenders,  
13 or their equivalent if committed by a juvenile offender.

14 (b) Forfeitures under this article shall be governed by all of  
15 the 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 (2) To prioritize restitution for victims of offenses;

20 (3) To protect third parties from wrongful forfeiture of their  
21 property; and,

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

24 (c) Offenses for which property may be forfeited pursuant to

1 provisions of this article include any act or omission which, when  
2 committed by an adult, constitutes one or more of the following  
3 misdemeanor or felony offenses:

4 (1) Any of the following crimes of fraud:

5 (A) As defined in section nine, article eight, chapter thirty-  
6 one-a of this code as against banking institutions;

7 (B) As defined in section eighteen, article twenty, chapter  
8 forty-seven and section nineteen, article twenty, chapter forty-  
9 seven of this code as against bingo;

10 (C) As defined in section eighteen, article twenty-one,  
11 chapter forty-seven and section nineteen, article twenty-one,  
12 chapter forty-seven of this code as against charitable raffles;

13 (D) As defined in section twenty-six, article two, chapter  
14 fourteen as against claims against the state;

15 (E) As defined in section four, article three-c of this  
16 chapter as against computer fraud;

17 (F) As defined in section twenty-four, article three of this  
18 chapter as against credit cards;

19 (G) As defined in section twenty-four, article three of this  
20 chapter as against disposing of property to defraud creditors;

21 (H) As defined in section thirteen, article two-a, chapter  
22 seventeen-a of this code as against motor vehicle records;

23 (I) As defined in section forty, article three of this chapter  
24 of this chapter as against obtaining food or lodging;

1       (J) As defined in section twenty-four, article three of this  
2 chapter as against money, property and services;

3       (K) As defined in section forty-four, article three of this  
4 chapter as against public utilities;

5       (L) As defined in sections twenty-four-a and twenty-four-b,  
6 article three of this chapter as against telephone services;

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

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

11       (3) Any crime listed in section one, article eight-c of this  
12 chapter as against child pornography,

13       (4) Any crime listed in section thirteen, article two of this  
14 chapter as against extortion;

15       (5) Any crime listed in section fourteen, article two of this  
16 chapter as against abduction, kidnaping or concealing of a child;

17       (6) Any crime listed in section five, article eight of this  
18 chapter as against prostitution and houses of ill fame and  
19 assignation;

20       (7) Any crime listed in section fifty-four, article three of  
21 this chapter as against identity theft; and,

22       (8) Any crime listed in section twenty-four, article six of  
23 this chapter as against terrorist activities.

24       (d) Offenses for which property may be forfeited pursuant to

1 provisions of this article also include any comparable equivalent  
2 act or omission committed by a juvenile, which, if committed by an  
3 adult, would constitute any of the misdemeanor or felony offenses  
4 listed in subsection (c) of this section.

5 (e) The provisions of this article apply to any act or  
6 omission that could be charged as a felony or misdemeanor under the  
7 listed statutes, or an equivalent juvenile offense, whether or not  
8 a formal criminal prosecution or delinquent child proceeding is  
9 pending at the time the forfeiture is initiated.

10 (f) The seizure and forfeiture provisions of this article do  
11 not apply to:

12 (1) Any offenses in violation of article three-a, chapter  
13 sixty of this code, relating to sales by retail liquor licensees;

14 (2) Any offenses in violation of article four, chapter sixty  
15 of this code, relating to licenses under the state control of  
16 alcoholic liquors;

17 (3) Any offenses in violation of article six, chapter sixty of  
18 this code, relating to miscellaneous provisions under the state  
19 control of alcoholic liquors; or

20 (4) Any offenses in violation of chapter sixty-a, commonly  
21 known as the "Uniform Controlled Substances Act".

22 (g) The provisions of this article do not apply to or amend  
23 the provisions of article seven, chapter sixty-a of this code,  
24 commonly known as the "West Virginia Contraband Forfeiture Act".

1 **§61-13-2. Definitions.**

2 As used in this article:

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

5 (2) "Computers," "computer networks," "computer systems,"  
6 "computer software," and "telecommunications device" have the same  
7 meanings as described in section three, article three-c, chapter  
8 sixty-one of this chapter.

9 (3) "Financial institution" means a bank, credit union,  
10 savings and loan association, or a licensee or registrant as  
11 defined in section two, article one, chapter thirty-one-a of this  
12 code.

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

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

20 (6) "Instrumentality" means property otherwise lawful to  
21 possess that is used in or intended to be used in an offense. An  
22 "instrumentality" may include, but is not limited to, a firearm, a  
23 mobile instrumentality, a computer, a computer network, a computer  
24 system, computer software, a telecommunications device, money, and

1 any other means of exchange.

2 (7) "Law-enforcement officer" includes, but is not limited to,  
3 the definition contained in section three, article ten, chapter  
4 fifteen of this code and the office of the prosecutor.

5 (8) "Mobile instrumentality" means an instrumentality that is  
6 inherently mobile and used in the routine transport of persons.  
7 "Mobile instrumentality" includes, but is not limited to, any  
8 vehicle, any watercraft, and any aircraft.

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

11 (10) "Offense" means any act or omission that could be charged  
12 as a criminal offense or a delinquent act, whether or not a formal  
13 criminal prosecution or delinquent child proceeding began at the  
14 time the forfeiture is initiated.

15 (11) "Proceeds" means both of the following:

16 (A) In cases involving unlawful goods, services, or  
17 activities, "proceeds" means any property derived directly or  
18 indirectly from an offense. "Proceeds" may include, but is not  
19 limited to, money or any other means of exchange. "Proceeds" is  
20 not limited to the net gain or profit realized from the offense.

21 (B) In cases involving lawful goods or services that are sold  
22 or provided in an unlawful manner, "proceeds" means the amount of  
23 money or other means of exchange acquired through the illegal  
24 transactions resulting in the forfeiture, less the direct costs



1 lawfully incurred in providing the goods or services. The lawful  
2 costs deduction does not include any part of the overhead expenses  
3 of, or income taxes paid by, the entity providing the goods or  
4 services. The alleged offender or delinquent child has the burden  
5 to prove that any costs are lawfully incurred.

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

10 (13) "Property subject to forfeiture" includes contraband and  
11 proceeds and may include instrumentalities as provided in this  
12 article.

13 (14) "Prosecutor" means any duly elected or appointed  
14 prosecutor or special prosecutor.

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

18 (16) "Watercraft" means any motorized or nonmotorized vessel.

19 **§61-13-3. Property subject to forfeiture; exemptions; burden of**  
20 **proof.**

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

23 (1) Contraband involved in any offense set forth in  
24 subsections (c) and (d), section one of this article;

1 (2) Proceeds derived from or acquired through the commission  
2 of any offense set forth in subsections (c) and (d), section one of  
3 this article;

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

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

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

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

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

22 (c) All property, including all interests in such property,  
23 described in a statute providing for its forfeiture is subject to  
24 forfeiture. However:

1       (1) A vehicle used by any person as a common carrier in the  
2 transaction of business as a common carrier may not be forfeited  
3 under the provisions of this article unless it appears that the  
4 owner or other person in charge of the vehicle was a consenting  
5 party or privy to the act or omission giving rise to the forfeiture  
6 or know or had reason to know of it.

7       (2) A vehicle may not be forfeited under the provisions of  
8 this article for any act or omission established by the owner to  
9 have been committed or omitted by a person other than the owner  
10 while the vehicle was unlawfully in the possession of a person  
11 other than the owner in violation of the criminal laws of this  
12 state or of the United States.

13       (3) An owner's or interest holder's interest may not be  
14 forfeited under this article if the owner or interest establishes  
15 all of the following:

16       (A) He or she acquired the interest before or during the  
17 conduct giving rise to forfeiture;

18       (B) He or she is a bonafide purchaser for value not knowingly  
19 taking part in an illegal transaction; and,

20       (C) Her or she at the time of the purchase and at all times  
21 after the purchase and before the filing of a lien notice or the  
22 provisions of notice of pending forfeiture or the filing and notice  
23 of a civil or criminal proceeding relating to the property,  
24 whichever is earlier, was reasonably without notice of the act or

1 notice of the act or omission giving rise to the forfeiture and was  
2 reasonably without cause to believe that the property was subject  
3 to forfeiture.

4 (4) An owner's or interest holder's interest may not be  
5 forfeited under this article if the owner or interest holder  
6 establishes all of the following:

7 (A) He or she acquired the interest before or during the  
8 conduct giving rise to forfeiture; and,

9 (B) He or she did not know and could not reasonably have known  
10 of the act or omission which gave rise to the forfeiture, or that  
11 it was likely to occur.

12 (d) In any forfeiture action under the provisions of sections  
13 eleven, twelve or thirteen of this article, if a property owner or  
14 third party claims lawful interest in the subject property alleged  
15 to be proceeds, the state or political subdivision has provisional  
16 title and a right to hold the property if it proves both of the  
17 following by a preponderance of the evidence:

18 (1) The interest in the property was acquired by the alleged  
19 offender or delinquent child during the commission of the offense  
20 or within a reasonable time after that period; and,

21 (2) There is no likely source for the interest in the property  
22 other than as proceeds derived from or acquired through the  
23 commission of the offense.

24 (e) If the alleged offender or delinquent child claims that

1 the property was acquired in whole or in part with other lawful  
2 assets, the alleged offender or delinquent child shall have the  
3 burden to prove by a preponderance of the evidence the amount of  
4 any direct costs lawfully incurred.

5 **§61-13-4. Provisional title to property subject to forfeiture.**

6 The state or political subdivision acquires provisional title  
7 to property subject to forfeiture under this article upon a  
8 person's commission of an offense giving rise to forfeiture,  
9 subject to third party claims and a final adjudication under the  
10 provisions of this article. Provisional title authorizes the state  
11 or political subdivision to seize and hold the property, and to act  
12 to protect the property under this section before any proceeding  
13 under this article. Title to the property vests with the state or  
14 political subdivision when the trier of fact renders a final  
15 forfeiture verdict or order under the provisions of this article,  
16 but that title is subject to third party claims adjudicated under  
17 those sections.

18 **§61-13-5. Seizure of property.**

19 (a) Property subject to forfeiture under this article may be  
20 seized for forfeiture by a law-enforcement officer:

21 (1) On process issued pursuant to the rules of civil procedure  
22 or the provisions of this article including a seizure warrant.

23 (2) By making a seizure for forfeiture on property seized on  
24 process issued pursuant to law.

1       (3) By making a seizure for forfeiture without court process  
2 if any of the following is true:

3       (A) The seizure for forfeiture is of property seized incident  
4 to an arrest or search.

5       (B) The property subject to seizure for forfeiture has been  
6 the subject of a prior judgment in favor of this state or any other  
7 state or the federal government in a forfeiture proceeding.

8       (C) The law- enforcement officer has probable cause to believe  
9 that the property is subject to forfeiture.

10       (b) Property subject to forfeiture under this article may be  
11 seized for forfeiture by placing the property under constructive  
12 seizure. Constructive seizure may be made by posting notice of  
13 seizure for forfeiture on the property or by filing notice of  
14 seizure for forfeiture or notice of pending forfeiture in any  
15 appropriate public record relating to the property.

16       (c) The court shall determine probable cause for seizure  
17 before real property may be seized for forfeiture, unless the  
18 seizure is pursuant to a constructive seizure or the filing of a  
19 lis pendens. The court may make its determination ex parte if the  
20 state demonstrates that notice and an opportunity to appear would  
21 create a risk of harm to the public safety or welfare, including  
22 the risk of physical injury or the likelihood of property damage or  
23 financial loss.

24       (d) The court shall determine probable cause for seizure

1 before property may be seized for forfeiture as a substitute asset  
2 pursuant to subsection (a) of section thirteen of this article,  
3 unless the seizure is pursuant to a constructive seizure or the  
4 filing of a lien or lis pendens. The court may issue a seizure  
5 warrant for such property if it determines that there is probable  
6 cause to believe that the property is subject to forfeiture and is  
7 not available for seizure for forfeiture for any reason described  
8 in subsection (a), section thirteen of this article. The  
9 determinations shall be made ex parte unless real property is to be  
10 seized and subsection (c) of this section requires notice and an  
11 opportunity to appear.

12 (e) In establishing a preponderance of the evidence and in  
13 determining probable cause for seizure and for forfeiture, a  
14 rebuttable presumption exists that the property of any person is  
15 subject to forfeiture if the state establishes all of the following  
16 by the standard of proof applicable to that proceeding:

17 (1) Conduct giving rise to forfeiture occurred.

18 (2) The person acquired the property during the period of the  
19 conduct giving rise to forfeiture or within a reasonable time after  
20 that period.

21 (3) There is no likely source for the property other than the  
22 conduct giving rise to forfeiture.

23 (f) In establishing a preponderance of the evidence and in  
24 determining probable cause for seizure and for forfeiture, the fact

1 that money or any negotiable instrument was found in proximity to  
2 contraband or to instrumentalities of an offense gives rise to an  
3 inference that the money or instrument was the proceeds of  
4 contraband or was used or intended to be used to facilitate  
5 commission of the offense.

6 **§61-13-6. Powers and duties of law-enforcement officers and**  
7 **agencies.**

8 (a) In the event of a seizure for forfeiture under section  
9 five of this article, the property is not subject to replevin,  
10 conveyance, sequestration or attachment but is deemed to be in the  
11 custody of the law-enforcement agency making the seizure for  
12 forfeiture. The seizing agency or the attorney for the state may  
13 authorize the release of the seizure for forfeiture of the property  
14 if forfeiture or retention is unnecessary, may transfer the  
15 property to any other state or federal agency or may transfer the  
16 action to another attorney for the state by discontinuing  
17 forfeiture proceedings in favor of forfeiture proceedings initiated  
18 by the other agency or attorney. An action pursuant to this  
19 article shall be consolidated with any other action or proceeding  
20 pursuant to this article relating to the same property on motion by  
21 the attorney for the state in either action.

22 (b) If property is seized for forfeiture under section five of  
23 this article, pending forfeiture and final disposition, the seizing  
24 agency may do any of the following:



1       (1) Remove the property to a storage area for safekeeping or,  
2 if the property is a negotiable instrument or money, deposit it in  
3 an interest-bearing account.

4       (2) Remove the property to a place designated by the court.

5       (3) Provide for another custodian or agency to take custody of  
6 the property and remove it to an appropriate location within the  
7 jurisdiction of the court.

8       (c) As soon as practicable after seizure for forfeiture, the  
9 seizing agency shall conduct an inventory and estimate the value of  
10 the property seized. Within twenty days the seizing agency or the  
11 attorney for the state shall make reasonable efforts to provide  
12 notice of seizure for forfeiture to all persons known to have an  
13 interest in the seized property.

14       (d) A person who acts in good faith and in a reasonable manner  
15 to comply with an order of the court or a request of a law  
16 enforcement officer is not liable to any person for acts done in  
17 compliance with the order or request.

18       (e) A possessory lien of a person from whose possession  
19 property is seized is not affected by the seizure.

20       (f) If a seizure is for forfeiture under section five of this  
21 article, the seizing agency shall send to an attorney for the state  
22 a written request for forfeiture within twenty days, which shall  
23 include a statement of facts and circumstances of the seizure  
24 including the names of witnesses then known, the appraised or

1 estimated value of the property and a summary of the facts relied  
2 on for forfeiture.

3 (g) An owner of property seized for forfeiture may obtain the  
4 release of the seized property by posting with the attorney for the  
5 state a surety bond or cash in an amount equal to the full fair  
6 market value of the property as determined by the attorney for the  
7 state. The state may refuse to release the property if any of the  
8 following applies:

9 (1) The bond or cash tendered is inadequate.

10 (2) The property is retained as contraband or evidence.

11 (3) The property is particularly altered or designed for use  
12 in conduct giving rise to forfeiture.

13 (h) If an owner of property posts a surety bond or cash and  
14 the property is forfeited the court shall forfeit the surety bond  
15 or cash in lieu of the property.

16 **§61-13-7. Notice of pending forfeiture.**

17 Whenever notice of pending forfeiture is required under this  
18 article it shall be given or provided in one of the following ways  
19 and is effective at the time of personal service, publication or  
20 the mailing of written notice, whichever is earlier:

21 (a) If the owner's or interest holder's name and current  
22 address are known by either:

23 (1) Personal service.

24 (2) Mailing a copy of the notice by certified mail to the

1 address.

2 (b) If the owner's or interest holder's interest is required  
3 by law to be on record with a county recorder's office, the  
4 Secretary of State, the Department of Transportation Motor Vehicle  
5 Division, the Game and Fish Department, or another state or federal  
6 licensing agency in order to perfect an interest in the property,  
7 but his or her current address is not known, by mailing a copy of  
8 the notice by certified mail to any address on the record.

9 (c) If the owner's or interest holder's address is not known,  
10 and is not on record as provided in paragraph (b) of this section,  
11 or if his or her interest is not known, by publication in one issue  
12 of a newspaper of general circulation in the county in which the  
13 seizure occurs.

14 **§61-13-8. Commencement of proceedings.**

15 (a) The attorney for the state shall determine whether it is  
16 probable that the property is subject to forfeiture and, if so, may  
17 cause the initiation of uncontested or judicial proceedings against  
18 the property. If, on inquiry and examination, the attorney  
19 determines that the proceedings probably cannot be sustained or  
20 that justice does not require the institution of such proceedings,  
21 he or she shall notify the seizing agency and immediately authorize  
22 the release of the seizure for forfeiture on the property or on any  
23 specified interest in it.

24 (b) If the state fails to initiate forfeiture proceedings

1 against property seized for forfeiture by notice of pending  
2 forfeiture within sixty days after its seizure for forfeiture, or  
3 fails to pursue forfeiture of such property on which a timely claim  
4 has been properly filed by filing a complaint, information or  
5 indictment pursuant to section eleven or section twelve of this  
6 article within sixty days after notice of pending forfeiture or, if  
7 uncontested forfeiture has been made available, within sixty days  
8 after a declaration of forfeiture, whichever is later, the property  
9 shall be released from its seizure for forfeiture on the request of  
10 an owner or interest holder, pending further proceedings pursuant  
11 to this article, which shall be commenced within two years after  
12 actual discovery of the last act giving rise to forfeiture.

13 (c) If the property sought to be forfeited is real property,  
14 including fixtures, the attorney for the state may file a lis  
15 pendens or a notice of pending forfeiture with respect to the  
16 property with the county recorder of the county in which the  
17 property is located, without a filing fee or other charge.

18 **§61-13-9. Uncontested forfeiture.**

19 If a forfeiture is authorized by law, the attorney for the  
20 state may make uncontested civil forfeiture available to owners of  
21 and interest holders in personal property in the following manner:

22 (a) If the attorney for the state in his or her discretion  
23 makes uncontested forfeiture available, he or she shall provide  
24 notice of pending forfeiture by giving notice within thirty days

1 after seizure for forfeiture as provided in section seven of this  
2 article to all persons known to have an interest who have not  
3 previously received the notice.

4 (b) An owner of or interest holder in the property may elect  
5 to file either a claim with the court within thirty days after the  
6 notice or a petition for remission or mitigation of forfeiture with  
7 the attorney for the state within thirty days after the notice and  
8 not after a complaint has been filed, but may not file both. The  
9 claim or petition shall comply with the requirements for claims in  
10 subsections (e) and (f) of section eleven of this article.

11 (c) The following apply if one or more owners or interest  
12 holders timely file a petition for remission or mitigation:

13 (1) The attorney for the state shall inquire into whether the  
14 property is subject to forfeiture and the facts and circumstances  
15 surrounding petitions for remission or mitigation of forfeiture.

16 (2) The attorney for the state shall provide the seizing  
17 agency and the petitioner with a written declaration of forfeiture,  
18 remission or mitigation of any or all interest in the property in  
19 response to each petition within ninety days after the effective  
20 date of the notice of pending forfeiture unless one or more  
21 petitioners request an extension of time in writing or unless the  
22 circumstances of the case require additional time, in which case  
23 the attorney for the state shall notify the petitioner in writing  
24 and with specificity within the ninety-day period that the

1 circumstances of the case require additional time and further  
2 notify the petitioner of the expected decision date. The mailing  
3 of the declaration may not be more than one hundred twenty days  
4 after the date of the state's notice of pending forfeiture.

5 (3) An owner or interest holder in any property declared  
6 forfeited may file a claim as described in subsections (e) and (f)  
7 of section eleven in this article, in the circuit court in the  
8 county in which the uncontested forfeiture was declared within  
9 thirty days after the mailing of the declaration of forfeiture.

10 (4) If a declaration of forfeiture pursuant to this section is  
11 followed by a timely claim, or at any other time, the attorney for  
12 the state may elect to proceed as provided for judicial  
13 forfeitures.

14 (5) If no petitioner files a claim in the court within thirty  
15 days after the mailing of the declaration of forfeiture, the  
16 declaration becomes final and the attorney for the state shall  
17 proceed as provided in sections fourteen and fifteen of this  
18 article.

19 (d) If no petitions for remission or mitigation or claims are  
20 timely filed, the attorney for the state shall proceed as provided  
21 in sections fourteen and fifteen of this article.

22 (e) If one or more petitions for remission or mitigation and  
23 one or more claims are timely filed, no complaint for forfeiture  
24 need be filed by the state until sixty days after an uncontested

1 declaration of forfeiture.

2 (f) If a judicial forfeiture proceeding follows a notice of  
3 pending forfeiture making uncontested civil forfeiture available:

4 (1) A duplicate or repetitive notice or claim is not required.

5 The judicial proceedings shall adjudicate all timely filed claims.

6 If a claim has been timely filed pursuant to subsections (b) or (c)

7 of this section it shall be determined in a judicial forfeiture

8 proceeding after the commencement of such a proceeding pursuant to

9 subsection (a), section eleven or subsection (a), section twelve of

10 this article.

11 (2)The declarations of forfeiture, remission or mitigation

12 responsive to all petitioners who subsequently filed claims are

13 void and shall be regarded as rejected offers to compromise.

14 **§61-13-10. Judicial forfeiture proceedings; general.**

15 (a) In any proceeding pursuant to this article, the court, on

16 application of the state, may enter any restraining order or

17 injunction, require the execution of satisfactory performance

18 bonds, create receiverships, appoint conservators, appraisers,

19 accountants or trustees or take any other action to seize, secure,

20 maintain or preserve the availability of property subject to

21 forfeiture under this article, including a warrant for its seizure,

22 whether prior or subsequent to the filing of a notice of pending

23 forfeiture, complaint, indictment or information.

24 (b) If property is seized for forfeiture without a prior

1 judicial determination of probable cause, an order of forfeiture or  
2 a hearing pursuant to subsection (d), section twelve of this  
3 article, the court, on an application filed by an owner of or  
4 interest holder in the property within fifteen days after notice of  
5 its seizure for forfeiture or actual knowledge of it, whichever is  
6 earlier, and complying with the requirements for claims in  
7 subsections (e) and (f) of section eleven of this article, may  
8 issue an order to show cause to the seizing agency for a hearing on  
9 the sole issue of whether probable cause for forfeiture of the  
10 property then exists. Notice of the order to show cause hearing  
11 must be served upon the attorney for the state at least five  
12 working days before the hearing is held. If the court finds that  
13 no probable cause for forfeiture of the property then exists or if  
14 the state elects not to contest the issue, the property seized for  
15 forfeiture from the applicant shall be released to the custody of  
16 the applicant pending the outcome of a judicial proceeding pursuant  
17 to this article. If the court finds that probable cause for the  
18 forfeiture of the property then exists, the court shall not order  
19 the property released, except as provided in subsection (g),  
20 section six of this article.

21 (c) A defendant convicted in any criminal proceeding shall be  
22 precluded from subsequently denying the essential allegations of  
23 the criminal offense of which he or she was convicted in any  
24 proceeding pursuant to this article. For the purposes of this



1 article, a conviction may result from a verdict or plea including  
2 a no contest plea.

3 (d) In any judicial forfeiture hearing, determination or other  
4 proceeding pursuant to this article, the applicant, petitioner or  
5 claimant must establish by a preponderance of the evidence that he  
6 or she is an owner of or interest holder in the property seized for  
7 forfeiture before other evidence is taken. The burden of proving  
8 the standing of the claimant and the existence of the exemption is  
9 on the claimant or party raising the claim, and it is not necessary  
10 to negate the standing of any claimant or the existence of any  
11 exemption in any notice, application, complaint, information or  
12 indictment.

13 (e) In hearings and determinations pursuant to this article:

14 (1) The law of evidence relating to civil actions applies  
15 equally to all parties, including the state, an applicant, a  
16 petitioner, a claimant and a defendant, on all issues required to  
17 be established by a preponderance of the evidence.

18 (2) The court shall receive and consider, in making any  
19 determination of probable cause or reasonable cause, all evidence  
20 and information that would be permissible in determining probable  
21 cause at a preliminary hearing, at a grand jury or by a magistrate  
22 pursuant to section thirteen of this article, together with  
23 inferences from the evidence and information.

24 (3) Evidence may not be suppressed in any hearing pursuant to

1 this article on the ground that its acquisition by search or  
2 seizure violated constitutional protections applicable in criminal  
3 cases relating to unreasonable searches or seizures.

4 (f) All property, including all interests in such property,  
5 declared forfeited under this title vests in this state on the  
6 commission of the act or omission giving rise to forfeiture under  
7 this article together with the proceeds of the property after such  
8 time. Any such property or proceeds subsequently transferred to  
9 any person are subject to forfeiture and thereafter shall be  
10 ordered forfeited unless the transferee claims and establishes in  
11 a hearing pursuant to this article the showings set out in section  
12 three of this article.

13 (g) On the motion of a party and after notice to any persons  
14 who are known to have an interest in the property and an  
15 opportunity to be heard, the court may order property that has been  
16 seized for forfeiture sold, leased, rented or operated to satisfy  
17 an interest of any interest holder who has timely filed a proper  
18 claim or to preserve the interests of any party. The court may  
19 order a sale or any other disposition of the property if the  
20 property may perish, waste, be foreclosed on or otherwise be  
21 significantly reduced in value or if the expenses of maintaining  
22 the property are or will become greater than its fair market value.  
23 If the court orders a sale, the court shall designate a third party  
24 or state property manager to dispose of the property by public sale

1 or other commercially reasonable method and shall distribute the  
2 proceeds in the following order of priority:

3 (1) Payment of reasonable expenses incurred in connection with  
4 the sale.

5 (2) Satisfaction of exempt interests in the order of their  
6 priority.

7 (3) Preservation of the balance, if any, in the actual or  
8 constructive custody of the court in an interest-bearing account,  
9 subject to further proceedings under this article.

10 (h) If the property is disposed of pursuant to subsection (g)  
11 of this section, a successful claimant may apply to the court for  
12 actual monetary damages suffered, if any, as a result of the  
13 disposal of the property, but the state, a political subdivision of  
14 the state, or an officer, employee or agent of any of them shall  
15 not in any event be liable under this article for incidental or  
16 consequential damages or for damages either:

17 (1) That could have been avoided if the claimant had made full  
18 and immediate disclosure to the attorney for the state of facts or  
19 evidence known or available to the claimant.

20 (2) In excess of the fair market value of the property seized  
21 for forfeiture at the time of its seizure plus interest from the  
22 time of its seizure for forfeiture.

23 (i) If an indictment or information is filed alleging the same  
24 conduct as the conduct giving rise to forfeiture in a civil

1 forfeiture proceeding, the court in the civil proceeding may stay  
2 civil discovery against the criminal defendant and against the  
3 state in the civil proceeding until the defendant's criminal trial  
4 is completed. Before staying civil discovery, the court shall make  
5 adequate provision to prevent any loss or expense to any victim or  
6 party resulting from the delay, including loss or expense due to  
7 maintenance, management, insurance, storage or preservation of the  
8 availability of the property or due to depreciation in the value of  
9 the property.

10 (j) A person claiming to be an owner of or interest holder in  
11 property seized for forfeiture under this article may not commence  
12 or maintain any action against the state concerning the validity of  
13 the alleged interest other than as provided in this article.

14 **§61-13-11. Judicial in rem forfeiture proceedings.**

15 (a) If a forfeiture is authorized by law, it shall be ordered  
16 by a court on an action in rem brought by the state pursuant to a  
17 notice of pending forfeiture or a verified complaint for  
18 forfeiture. The state may serve the complaint in the manner  
19 provided by section seven of this article or by the West Virginia  
20 Rules of Civil Procedure.

21 (b) A civil in rem action may be brought by the state in  
22 addition to or in lieu of the civil and criminal in personam  
23 forfeiture procedures set forth in sections eleven, twelve and  
24 thirteen of this article or the uncontested civil forfeiture

1 procedures set forth in section nine of this article. Judicial in  
2 rem forfeiture proceedings are in the nature of an action in rem  
3 and are governed by the West Virginia Rules of Civil Procedure  
4 unless a different procedure is provided by law.

5 (c) On the filing of a civil in rem action by the state  
6 circuit court the clerk of the court in which the action is filed  
7 shall provide, and the attorney for the state may provide, the  
8 notice of pending forfeiture required by section seven of this  
9 article unless the files of the clerk of the court reflect that  
10 such notice has previously been made.

11 (d) An owner of or interest holder in the property may file a  
12 claim against the property, within thirty days after the notice,  
13 for a hearing to adjudicate the validity of his or her claimed  
14 interest in the property. The hearing shall be held by the court  
15 without a jury.

16 (e) The claim shall be signed by the claimant under penalty of  
17 perjury and shall set forth all of the following:

18 (1) The caption of the proceeding as set forth on the notice  
19 of pending forfeiture or complaint and the name of the claimant.

20 (2) The address at which the claimant will accept future  
21 mailings from the court or attorney for the state.

22 (3) The nature and extent of the claimant's interest in the  
23 property.

24 (4) The date, the identity of the transferor and the

1 circumstances of the claimant's acquisition of the interest in the  
2 property.

3 (5) The specific provisions of this article relied on in  
4 asserting that the property is not subject to forfeiture.

5 (6) All facts supporting each such assertion.

6 (7) Any additional facts supporting the claimant's claim.

7 (8) The precise relief sought.

8 (f) Copies of the claim shall be mailed to the seizing agency  
9 and to the attorney for the state. An extension of time for the  
10 filing of a claim may not be granted.

11 (g) Within twenty days after service of the complaint, the  
12 claimant shall file and serve the answer to the complaint and the  
13 answers to interrogatories and requests for admission if any were  
14 served with the complaint. The answer shall be signed by the owner  
15 or interest holder under penalty of perjury, shall comply with the  
16 West Virginia Rules of Civil Procedure relating to answers and  
17 shall comply with all of the requirements for claims. If no proper  
18 answer is timely filed, the attorney for the state shall proceed as  
19 provided in sections fourteen and fifteen with ten days' notice to  
20 any person who has timely filed a claim that has not been stricken  
21 by the court.

22 (h) At the time of filing its pleadings or at any other time  
23 not less than thirty days before the hearing, the state and any  
24 claimant who has timely answered the complaint may serve discovery

1 requests on any other party, the answers or response to which shall  
2 be due in twenty days, and may take the deposition of any person at  
3 any time after the expiration of fifteen days after the filing and  
4 service of the complaint. Any party may move for summary judgment  
5 at any time after an answer or responsive pleading is served and  
6 not less than thirty days before the hearing. The state, as the  
7 party defending against the claim, may make offers of judgment at  
8 any time more than ten days before the hearing begins.

9 (i) An injured person may submit a request for compensation  
10 from forfeited property to the court at any time before the earlier  
11 of the entry of a final judgment or an application for an order of  
12 the forfeiture of the property, or if a hearing pursuant to  
13 subsections (k), (l) and (m) of this section is held, not less than  
14 thirty days before the hearing. The request shall be signed by the  
15 requestor under penalty of perjury and shall set forth all of the  
16 following:

17 (1) The caption of the proceeding as set forth on the notice  
18 of pending forfeiture or complaint and the name of the requestor.

19 (2) The address at which the requestor will accept future  
20 mailings from the court or parties to the action.

21 (3) The property subject to forfeiture from which the  
22 requestor seeks compensation.

23 (4) The nature of the economic loss sustained by the  
24 requestor.

1 (5) All facts supporting each such assertion.

2 (6) Any additional facts supporting the request.

3 (7) The amount of economic loss for which the requestor seeks  
4 compensation.

5 (j) If a proper request for compensation from forfeited  
6 property is timely filed, the court shall hold a hearing to  
7 establish whether there is a factual basis for the request. The  
8 requestor has the burden of establishing by a preponderance of the  
9 evidence that the requestor is an injured person who sustained  
10 economic loss.

11 (k) The hearing on the claim, to the extent practicable and  
12 consistent with the interest of justice, shall be held sixty days  
13 after all parties have complied with the disclosure required by  
14 rule 26.1 of the West Virginia Rules of Civil Procedure. The court  
15 may consolidate the hearing on the claim with a hearing on any  
16 other claim concerning the same property.

17 (l) At the hearing, the claimant may testify, present evidence  
18 and witnesses on the claimant's own behalf and cross-examine  
19 witnesses who appear at the hearing. The state may present  
20 evidence and witnesses and cross-examine witnesses who appear at  
21 the hearing.

22 (m) At the hearing, the state has the burden of establishing  
23 by a preponderance of the evidence that the property is subject to  
24 forfeiture. Any claimant who has previously established by a



1 preponderance of the evidence that the claimant is an owner of or  
2 interest holder in the property has the burden of establishing by  
3 a preponderance of the evidence that the claimant's interest in the  
4 property is exempt from forfeiture.

5 (n) In accordance with its findings at the hearing:

6 (1) The court shall order an interest in property returned or  
7 conveyed to a claimant, if any, who has established by a  
8 preponderance of the evidence that the claimant is an owner of or  
9 interest holder in the property if either of the following applies:

10 (A) The state has failed to establish by a preponderance of  
11 the evidence that the interest is subject to forfeiture.

12 (B) The claimant has established by a preponderance of the  
13 evidence that the interest is exempt from forfeiture.

14 (2) The court shall order all other property, including all  
15 interests in the property, forfeited to this state and proceed  
16 pursuant to sections fourteen and fifteen of this article.

17 (3) If the court finds that a requestor is an injured person  
18 the court shall determine the amount of the injured person's  
19 economic loss caused by the conduct giving rise to the forfeiture  
20 of the designated property and shall require the following:

21 (A) If the designated property is not contraband and is not  
22 altered or designed for use in conduct giving rise to forfeiture,  
23 the attorney for the state shall sell the property as provided in  
24 subsections (a) and (b) of section fifteen, and shall apply the

1 resulting balance to compensate the injured person's economic loss  
2 in the amount found by the court.

3 (B) If the balance is insufficient to compensate the economic  
4 loss of all injured persons the attorney for the state shall  
5 distribute the balance among the injured persons according to a  
6 method determined by the court.

7 (C) After compensation of all injured persons, the attorney  
8 for the state shall transmit ten per cent of the remaining balance,  
9 if any, as set forth in sections nineteen and twenty of this  
10 article.

11 **§61-13-12. Judicial in personam proceedings.**

12 (a) If a forfeiture is authorized by law, it shall be ordered  
13 by a court on proceedings by the state in an in personam civil or  
14 criminal action pursuant to section thirteen of this article or any  
15 other law providing for a forfeiture.

16 (b) Any complaint, information or indictment alleging or  
17 charging one or more offenses included in section one, or any other  
18 offense giving rise to forfeiture under this article, shall set  
19 forth with reasonable particularity property that the state seeks  
20 to forfeit pursuant to this section in that action, if any. The  
21 court shall allow the allegation that particular new or different  
22 or differently described property is subject to forfeiture in an in  
23 personam criminal or civil case to be made at any time prior to the  
24 date the case is actually tried unless the allegation is filed

1 fewer than twenty days before the case is actually tried, and the  
2 court finds on the record that the defendant was in fact prejudiced  
3 by the untimely filing and states reasons for these findings,  
4 provided that when the allegation is filed, the state must make  
5 available to the defendant a copy of any material information  
6 concerning the allegation.

7 (c) In any proceeding pursuant to this section, the court, on  
8 application of the state, may enter any order authorized by  
9 subsection (a), section ten of this article, or take any other  
10 action to seize, secure, maintain or preserve the availability of  
11 property subject to forfeiture under this article, including a  
12 warrant for its seizure, whether before or after the filing of a  
13 complaint, indictment or information.

14 (d) Notwithstanding subsection (e) of this section, a  
15 temporary restraining order under this section may be entered on  
16 application of the state without notice or an opportunity for a  
17 hearing if the state demonstrates both that:

18 (1) There is probable cause to believe that the property with  
19 respect to which the order is sought would, in the event of final  
20 judgment or conviction, be subject to forfeiture under this  
21 article.

22 (2) Provision of notice will jeopardize the availability of  
23 the property for forfeiture. A temporary restraining order expires  
24 within ten days after the date on which it is entered unless the

1 party against whom it is entered consents to an extension for a  
2 longer period or unless after commencing a hearing the court enters  
3 or is considering a preliminary injunction.

4 (e) Notice of the entry of the restraining order and an  
5 opportunity for a hearing shall be afforded to persons known to  
6 have an interest in the property, whether or not a temporary  
7 restraining order is entered without notice. The hearing, however,  
8 is limited to the issues of whether both:

9 (1) There is a probability that the state will prevail on the  
10 issue of forfeiture and that failure to enter the order will result  
11 in the property being destroyed, conveyed, encumbered or further  
12 encumbered, removed from the jurisdiction of the court, concealed  
13 or otherwise made unavailable for forfeiture.

14 (2) The need to preserve the availability of property through  
15 the entry of the requested order outweighs the hardship on any  
16 owner, interest holder or defendant against whom the order is to be  
17 entered.

18 (f) A hearing requested by any owner or interest holder  
19 concerning an order entered under this section shall be held at the  
20 earliest possible time and before the expiration of a temporary  
21 order.

22 (g) On a determination of liability or the conviction of a  
23 person for conduct giving rise to forfeiture under this article,  
24 the court shall enter a judgment of forfeiture of the property

1 described in the forfeiture statute alleged and set out in the  
2 complaint, information or indictment, as amended, and shall also  
3 authorize the county attorney or attorney general, their agents or  
4 any peace officer to seize all property ordered forfeited that was  
5 not previously seized or is not then under seizure. Following the  
6 entry of an order declaring the property forfeited, the court, on  
7 application of the state, may enter any order authorized by  
8 subsection (a), section ten of this article or take any other  
9 action to protect the interest of this state or a political  
10 subdivision in the property ordered forfeited. The filing of the  
11 order of forfeiture in the appropriate public records perfects the  
12 interest of the state in the property described in the order as of  
13 the earlier of the date of the act or omission giving rise to  
14 forfeiture or the date that a notice of seizure for forfeiture or  
15 notice of pending forfeiture or lien was first filed in the  
16 records, which entitles the state to all rights of a secured party  
17 as to that property in addition to any other rights or remedies of  
18 the state in relation to the property. Any income accruing to, or  
19 derived from, an enterprise or any interest in an enterprise or  
20 other property interest that is forfeited under this article is  
21 also forfeited from the time of the conduct giving rise to  
22 forfeiture. It may be used pending procedures subsequent to a  
23 verdict or finding of liability to offset ordinary and necessary  
24 expenses of the enterprise or property as required by law or that

1 are necessary to protect the interests of this state or a political  
2 subdivision.

3 (h) Procedures subsequent to the verdict or finding of  
4 liability and order of forfeiture shall be as follows:

5 (1) Following the entry of an order of forfeiture under this  
6 subsection the clerk of the court shall, and the attorney for the  
7 state may, give notice of pending forfeiture to all owners and  
8 interest holders who have not previously been given notice, if any,  
9 in the manner provided in section seven of this article.

10 (2) An owner of or interest holder in property that has been  
11 ordered forfeited pursuant to such action whose claim is not  
12 precluded may file a claim as described in subsections (e) and (f),  
13 section eleven of this article in the court for a hearing to  
14 adjudicate the validity of his or her claimed interest in the  
15 property within thirty days after initial notice of pending  
16 forfeiture or after notice under paragraph one of this subsection,  
17 whichever is earlier.

18 (3) The hearing on the claim, to the extent practicable and  
19 consistent with the interest of justice, shall be held within sixty  
20 days after the order of forfeiture. The court may consolidate the  
21 hearing on the claim with a hearing on any other claim filed by a  
22 person other than a party or defendant in the underlying action and  
23 concerning the same property.

24 (4) The hearing shall be held by the court without a jury and

1 conducted in the manner provided in rem judicial forfeiture actions  
2 including the provisions of section eleven, subsections (j) and  
3 (k). In addition to testimony and evidence presented at the  
4 hearing, the court shall consider the relevant portions of the  
5 record of the underlying civil or criminal action that resulted in  
6 the order of forfeiture.

7 (5) In accordance with its findings at the hearing, the court  
8 may amend the order of forfeiture if it determines that any  
9 claimant has established by a preponderance of the evidence that  
10 the claimant is an owner of or interest holder in the property if  
11 either of the following applies:

12 (A) The state has failed to establish by a preponderance of  
13 the evidence that the interest is subject to forfeiture under this  
14 article.

15 (B) The claimant has established by a preponderance of the  
16 evidence that the interest is exempt from forfeiture under section  
17 three of this article.

18 (i) In order to facilitate the identification or location of  
19 property declared forfeited and to facilitate the disposition of  
20 filed or subsequent claims pursuant to subsection (h)(2) of this  
21 section, the court, on application of the state, may order that the  
22 testimony of any witness relating to the property forfeited or  
23 alleged to be subject to forfeiture be taken by deposition and that  
24 any designated book, paper, document, record, recording, electronic

1 or otherwise, or other material which is not privileged be produced  
2 at the same time and place and in the same manner as that provided  
3 for the taking of depositions under the rules of civil procedure.

4 **§61-13-13. Supplemental remedies.**

5 (a) The court shall order the forfeiture of any other property  
6 of a claimant or an in personam civil or criminal defendant up to  
7 the value of the claimant's or defendant's property that the court  
8 finds is subject to forfeiture if any of the following  
9 circumstances apply to the property:

10 (1) It cannot be located.

11 (2) It has been transferred or conveyed to, sold to or  
12 deposited with a third party.

13 (3) It has been placed beyond the jurisdiction of the court.

14 (4) It has been substantially diminished in value by any act  
15 or omission of the defendant.

16 (5) It has been commingled with other property which cannot be  
17 divided without difficulty.

18 (6) It is subject to any interest that is exempt from  
19 forfeiture.

20 (b) In addition to any other remedy provided by law, if property  
21 subject to forfeiture is conveyed, alienated, encumbered, disposed of,  
22 received, removed from the jurisdiction of the court, concealed or  
23 otherwise rendered unavailable for forfeiture after the filing of a  
24 lien notice or provision of notice of pending forfeiture or after the



1 filing and notice of a civil proceeding or criminal proceeding  
2 alleging forfeiture under this article, whichever is earlier, the  
3 state may institute an action in circuit court against the person  
4 named in the lien or notice of pending forfeiture or the defendant in  
5 the civil proceeding or criminal proceeding, and the court shall enter  
6 final judgment against the person named in the lien or notice of  
7 pending forfeiture or the defendant in the civil proceeding or  
8 criminal proceeding in an amount equal to the fair market value of the  
9 property, together with reasonable investigative expenses and attorney  
10 fees. If a civil proceeding under this article is pending, the action  
11 shall be filed only in the court where the civil proceeding is  
12 pending.

13 (c) This section does not limit the right of the state to obtain  
14 any order or injunction, receivership, writ, attachment, garnishment  
15 or other remedy authorized under this article or appropriate to  
16 protect the interests of the state or available under other applicable  
17 law.

18 **§61-13-14. Seizure of forfeited or other property - disposition.**

19 (a) If no petitions for remission or mitigation or claims are  
20 timely filed or if no petitioner files a claim in the court within  
21 thirty days after the mailing of a declaration of forfeiture, the  
22 attorney for the state shall apply to the court for an order of  
23 forfeiture and allocation of forfeited property pursuant to section  
24 fifteen of this article. On the state's written application showing

1 jurisdiction, notice and facts sufficient to demonstrate probable  
2 cause for forfeiture, the court shall order the property forfeited to  
3 the state.

4 (b) After the court's disposition of all claims timely filed  
5 under this article, the state has clear title to the forfeited  
6 property and the court shall so order. Title to the forfeited  
7 property and its proceeds is deemed to have vested in the state on the  
8 commission of the act or omission giving rise to the forfeiture under  
9 this article.

10 (c) If, in his or her discretion, the attorney for the state has  
11 entered into a stipulation with an interest holder that the interest  
12 holder has an interest that is exempted from forfeiture, the court, on  
13 application of the attorney for the state, may release or convey  
14 forfeited personal property to the interest holder if all of the  
15 following are true:

16 (1) The interest holder has an interest which was acquired in the  
17 regular course of business as a financial institution.

18 (2) The amount of the interest holder's encumbrance is readily  
19 determinable and it has been reasonably established by proof made  
20 available by the attorney for the state to the court.

21 (3) The encumbrance held by the interest holder seeking  
22 possession is the only interest exempted from forfeiture and the order  
23 forfeiting the property to the state transferred all of the rights of  
24 the owner prior to forfeiture, including rights to redemption, to the

1 state.

2 (4) After the court's release or conveyance, the interest holder  
3 shall dispose of the property by a commercially reasonable public  
4 sale, and within ten days of disposition shall tender to the state the  
5 amount received at disposition less the amount of the interest  
6 holder's encumbrance and reasonable expense incurred by the interest  
7 holder in connection with the sale or disposal.

8 (d) On order of the court forfeiting the subject property, the  
9 attorney for the state may transfer good and sufficient title to any  
10 subsequent purchaser or transferee, and the title shall be recognized  
11 by all courts, by this state and by all departments and agencies of  
12 this state and any political subdivision.

13 (e) On entry of judgment for a claimant or claimants in any  
14 proceeding to forfeit property under this article such property or  
15 interest in property shall be returned or conveyed immediately to the  
16 claimant or claimants designated by the court. If it appears that  
17 there was reasonable cause for the seizure for forfeiture or for the  
18 filing of the notice of pending forfeiture, complaint, information or  
19 indictment, the court shall cause a finding to be entered, and the  
20 claimant is not, in such case, entitled to costs or damages, nor is  
21 the person or seizing agency that made the seizure, nor is the  
22 attorney for the state liable to suit or judgment on account of such  
23 seizure, suit or prosecution.

24 (f) The court shall order any claimant who fails to establish

1 that his or her entire interest is exempt from forfeiture under  
2 section three of this article to pay the costs of any claimant who  
3 establishes that his or her entire interest is exempt from forfeiture  
4 under section three of this article and the state's costs and expenses  
5 of the investigation and prosecution of the matter, including  
6 reasonable attorney fees.

7 **§61-13-15. Seizure of forfeited or other property - disposition.**

8 (a) Upon the entry of a forfeiture order under the provisions of  
9 sections five, nine, eleven, twelve or thirteen of this article, if  
10 necessary, the court shall order an appropriate law-enforcement  
11 officer to seize the forfeited property on conditions that the court  
12 considers proper. If necessary, the court shall order the person in  
13 possession of the property to deliver the property by a specific date  
14 to the law-enforcement agency involved in the initial seizure of the  
15 property. The court shall deliver the order by personal service or  
16 certified mail.

17 (b) With respect to property that is the subject of a forfeiture  
18 order issued under the provisions of section five, nine, eleven,  
19 twelve or thirteen of this article, the court that issued the order,  
20 upon petition of the prosecutor who prosecuted the underlying offense  
21 or act or brought the civil forfeiture action, may do any of the  
22 following:

23 (1) Enter any appropriate restraining orders or injunctions;  
24 require execution of satisfactory performance bonds; appoint

1 receivers, conservators, appraisers, accountants, or trustees; or take  
2 any other action necessary to safeguard and maintain the forfeited  
3 property;

4 (2) Authorize the payment of rewards to persons who provide  
5 information resulting in forfeiture of the property under this  
6 article;

7 (3) Authorize the prosecutor to settle claims;

8 (4) Restore forfeited property to victims and grant petitions for  
9 mitigation or remission of forfeiture;

10 (5) Authorize a stay of the forfeiture order pending appeal or  
11 resolution of any claim to the property if requested by a person other  
12 than the defendant or a person acting in concert with, or on behalf  
13 of, the defendant.

14 (c) To facilitate the identification and location of property  
15 that is the subject of a forfeiture order and to facilitate the  
16 disposition of petitions for remission or mitigation issued under this  
17 section, after the issuance of a forfeiture order and upon application  
18 by the prosecutor, the court, consistent with the West Virginia Rules  
19 of Civil Procedure, may order that the testimony of any witness  
20 relating to the forfeited property be taken by deposition and that any  
21 designated material that is not privileged be produced at the same  
22 time and place as the testimony.

23 (d) The court shall order forfeiture of any other property of the  
24 offender or delinquent child up to the value of the unreachable

1 property if any of the following describe any property subject to a  
2 forfeiture order under the provisions of section eleven, twelve or  
3 thirteen of this article:

4 (1) It cannot be located through due diligence.

5 (2) It has been transferred, sold or deposited with a third  
6 party.

7 (3) It has been placed beyond the jurisdiction of the court.

8 (4) It has been substantially diminished in value or has been  
9 commingled with other property and cannot be divided without  
10 difficulty or undue injury to innocent persons.

11 (e) After the state or political subdivision is granted clear  
12 title under the provisions of section eleven, twelve or thirteen of  
13 this article, the prosecutor shall direct disposition of the property  
14 pursuant to this article, making due provisions for the rights of  
15 innocent persons.

16 (f) Any interest in property not exercisable by, or transferable  
17 for value to, the state or political subdivision shall expire and may  
18 not revert to the offender or delinquent child who forfeited the  
19 property. The offender or delinquent child may not purchase the  
20 property at a sale under this article.

21 (g) Any income accruing to or derived from forfeited property may  
22 be used to offset ordinary and necessary expenses related to the  
23 property that are required by law or necessary to protect the interest  
24 of the state, political subdivision or third parties.

1 **§61-13-16. Interference with or diminishing forfeitable property.**

2 (a) A person may not destroy, damage, remove, or transfer  
3 property that is subject to forfeiture or otherwise take any action in  
4 regard to property that is subject to forfeiture with purpose to do  
5 any of the following:

6 (1) Prevent or impair the state's or political subdivision's  
7 lawful authority to take the property into its custody or control  
8 under this article or to continue holding the property under its  
9 lawful custody or control;

10 (2) Impair or defeat the court's continuing jurisdiction over the  
11 person and property;

12 (3) Devalue property that the person knows, or has reasonable  
13 cause to believe, is subject to forfeiture proceedings under this  
14 article.

15 (b) (1) Whoever violates the provisions of this section is guilty  
16 of interference with or diminishing forfeitable property.

17 (2) A person who interferes with or diminishes forfeitable  
18 property is guilty of a felony and, upon conviction thereof, shall be  
19 fined not more than \$1,000 or imprisoned in a state correctional  
20 facility not less than one year, or both fined and imprisoned.

21 **§61-13-17. Right to trial by jury.**

22 Parties to a forfeiture action under this article have a right to  
23 trial by jury as follows:

24 (a) In a criminal forfeiture action, the defendant has the right

1 to trial by jury.

2 (b) In a civil forfeiture action, the defendant, the state or  
3 political subdivision and third party claimants have the right to  
4 trial by jury.

5 **§61-13-18. Forfeiture of property as instrumentality where value**  
6 **disproportionate.**

7 (a) Property may not be forfeited as an instrumentality under  
8 this article to the extent that the amount or value of the property is  
9 disproportionate to the severity of the offense. The owner of the  
10 property shall have the burden of going forward with the evidence and  
11 the burden to prove by a preponderance of the evidence that the amount  
12 or value of the property subject to forfeiture is disproportionate to  
13 the severity of the offense.

14 (b) Contraband and any proceeds obtained from the offense are not  
15 subject to proportionality review under this section.

16 (c) In determining the severity of the offense for purposes of  
17 forfeiture of an instrumentality, the court shall consider all  
18 relevant factors including, but not limited to, the following:

19 (1) The seriousness of the offense and its impact on the  
20 community, including the duration of the activity and the harm caused  
21 or intended by the person whose property is subject to forfeiture;

22 (2) The extent to which the person whose property is subject to  
23 forfeiture participated in the offense;

24 (3) Whether the offense was completed or attempted.



1 (d) In determining the value of the property that is an  
2 instrumentality and that is subject to forfeiture, the court shall  
3 consider relevant factors including, but not limited to, the  
4 following:

5 (1) The fair market value of the property;

6 (2) The value of the property to the person whose property is  
7 subject to forfeiture, including hardship to the person or to innocent  
8 persons if the property were forfeited.

9 **§61-13-19. Care of property in law-enforcement custody.**

10 (a) (1) Any property that has been lost, abandoned, stolen,  
11 seized pursuant to a search warrant, or otherwise lawfully seized or  
12 forfeited and that is in the custody of a law-enforcement agency shall  
13 be kept safely by the agency, pending the time it no longer is needed  
14 as evidence or for another lawful purpose, and shall be disposed of  
15 pursuant to the provisions of sections twenty and twenty-one of this  
16 article.

17 (2) This article does not apply to the custody and disposal of  
18 any of the following:

19 (A) Items seized under the provisions of:

20 (i) Article three-a, chapter sixty of this code, relating to  
21 sales by retail liquor licensees;

22 (ii) Article four, chapter sixty of this code, relating to  
23 licenses under the state control of alcoholic liquors;

24 (iii) Article six, chapter sixty of this code, relating to

1 miscellaneous provisions under the state control of alcoholic liquors;

2 or

3 (iv) Article seven, chapter sixty-a of this code, commonly known  
4 as the "West Virginia Contraband Forfeiture Act".

5 (B) Abandoned junk motor vehicles or other property of negligible  
6 value;

7 (C) Property held by a department of rehabilitation and  
8 correction institution that is unclaimed, that does not have an  
9 identified owner, that the owner agrees to dispose of, or that is  
10 identified by the department as having little value;

11 (D) Animals taken, and devices used in unlawfully taking animals,  
12 under the provisions of:

13 (i) Section four, article ten, chapter seven of this code,  
14 relating to custody and care of animals abandoned, neglected or  
15 cruelly treated;

16 (ii) Section eight, article twenty, chapter nineteen of this  
17 code, relating to dogs and cats, impounding and disposition;

18 (iii) Section twenty-three, article twenty, chapter nineteen of  
19 this code, relating to dogs and cats, impounding and disposition;

20 (iv) Section five-a, article two, chapter twenty of this code,  
21 relating to wildlife resources, forfeiture by person causing injury,  
22 death or destruction of game of protected species of animal;

23 (v) Section five-c, article two, chapter twenty of this code,  
24 relating to wildlife resources, protection of bald eagles and golden

1 eagles and forfeiture;

2 (vi) Section nineteen-a, article eight of this chapter, relating  
3 to cruelty to animals; and

4 (vii) Section nineteen-a, article eight of this chapter, relating  
5 to prohibiting animal fighting ventures.

6 (b)(1) Each law-enforcement agency that has custody of any  
7 property that is subject to this section shall adopt and comply with  
8 a written internal control policy that does all of the following:

9 (A) Provides for keeping detailed records as to the amount of  
10 property acquired by the agency and the date property was acquired;

11 (B) Provides for keeping detailed records of the disposition of  
12 the property, which shall include, but not be limited to, both of the  
13 following:

14 (i) The manner in which it was disposed, the date of disposition,  
15 detailed financial records concerning any property sold, and the name  
16 of any person who received the property. The record shall not  
17 identify or enable identification of the individual officer who seized  
18 any item of property.

19 (ii) The general types of expenditures made with amounts that are  
20 gained from the sale of the property and that are retained by the  
21 agency, including the specific amount expended on each general type of  
22 expenditure, except that the policy may not provide for or permit the  
23 identification of any specific expenditure that is made in an ongoing  
24 investigation.

1 (C) Complies with section twenty of this article if the agency  
2 has a Law-enforcement Trust Fund or similar fund created under that  
3 section.

4 (2) Each law-enforcement agency that during any calendar year has  
5 any seized or forfeited property covered by this section in its  
6 custody, including amounts distributed under section thirteen of this  
7 article to its Law-enforcement Trust Fund or a similar fund created  
8 for the West Virginia State Police, the State Tax Division or State  
9 Board of Pharmacy, shall prepare a report covering the calendar year  
10 that cumulates all of the information contained in all of the public  
11 records kept by the agency pursuant to this section for that calendar  
12 year. The agency shall send a copy of the cumulative report to the  
13 Attorney General not later than March 1 in the calendar year following  
14 the calendar year covered by the report.

15 (3) The records kept under the internal control policy shall be  
16 open to public inspection during the agency's regular business hours.

17 (4) Not later than April 15 in each calendar year in which  
18 reports are sent to the Attorney General under subsection (b)(2) of  
19 this section, the Attorney General shall send to the President of the  
20 Senate and the Speaker of the House of Delegates a written notice that  
21 indicates that the Attorney General received reports that cover the  
22 previous calendar year, that the reports are open for inspection under  
23 and that the Attorney General will provide a copy of any or all of the  
24 reports to the President of the Senate or the Speaker of the House of

1 Delegates upon request.

2 (c) A law-enforcement agency with custody of property to be  
3 disposed of under the provisions of sections fourteen or fifteen of  
4 this article shall make a reasonable effort to locate persons  
5 entitled to possession of the property, to notify them of when and  
6 where it may be claimed, and to return the property to them at the  
7 earliest possible time. In the absence of evidence identifying  
8 persons entitled to possession, it is sufficient notice to advertise  
9 in a newspaper of general circulation in the county and to briefly  
10 describe the nature of the property in custody and inviting persons to  
11 view and establish their right to it.

12 (d) As used in this article: "Law-enforcement agency" includes  
13 correctional institutions.

14 **§61-13-20. Disposal of unclaimed or forfeited property.**

15 (a) Unclaimed or forfeited property in the custody of a  
16 law-enforcement agency, other than property described in subsection  
17 (a) (2) of section nineteen of this article, shall be disposed of by  
18 order of any court of record that has territorial jurisdiction over  
19 the political subdivision that employs the law-enforcement agency, as  
20 follows:

21 (1) Drugs shall be disposed of pursuant to the provisions of  
22 chapter sixty-a of this code.

23 (2) Firearms and dangerous ordnance suitable for police work may  
24 be given to a law-enforcement agency for that purpose. Firearms

1 suitable for sporting use or as museum pieces or collectors' items may  
2 be sold at public auction pursuant to subsection (b) of this section.  
3 The agency shall destroy other firearms and dangerous ordnance or  
4 shall send them to the State Police for destruction by the State  
5 Police.

6 (3) Obscene materials shall be destroyed.

7 (4) Beer, intoxicating liquor, or alcohol seized from a person  
8 who does not hold a permit issued under the provisions of chapter  
9 sixty of this code or otherwise forfeited to the state for an offense  
10 under the provisions of that chapter shall be sold by the Alcohol  
11 Beverage Control Commissioner if the commissioner determines that it  
12 is fit for sale or shall be placed in the custody of the  
13 investigations unit in the State Police and be used for training  
14 relating to law-enforcement activities, notwithstanding any other  
15 existing provision of law to the contrary. All other money collected  
16 under this division shall be paid in accordance with this code. Any  
17 beer, intoxicating liquor or alcohol that the commissioner determines  
18 to be unfit for sale shall be destroyed.

19 (5) Money received by an inmate of a correctional institution  
20 from an unauthorized source or in an unauthorized manner shall be  
21 returned to the sender, if known, or deposited in the inmates'  
22 industrial and entertainment fund of the institution if the sender is  
23 not known.

24 (6) Any mobile instrumentality forfeited under this article may

1 be given to the law-enforcement agency that initially seized the  
2 mobile instrumentality for use in performing its duties, if the agency  
3 wants the mobile instrumentality. The agency shall take the mobile  
4 instrumentality subject to any security interest or lien on the mobile  
5 instrumentality.

6 (7) Vehicles and vehicle parts forfeited under the provisions of  
7 section two of this article may be given to a law-enforcement agency  
8 for use in performing its duties. Those parts may be incorporated  
9 into any other official vehicle. Parts that do not bear vehicle  
10 identification numbers or derivatives of them may be sold or disposed  
11 of as provided by rules of the Commissioner of Motor Vehicles. Parts  
12 from which a vehicle identification number or derivative of it has  
13 been removed, defaced, covered, altered, or destroyed and that are not  
14 suitable for police work or incorporation into an official vehicle  
15 shall be destroyed and sold as junk or scrap.

16 (8) Computers, computer networks, computer systems and computer  
17 software suitable for police work may be given to a law-enforcement  
18 agency for that purpose or disposed of in subsection (b) of this  
19 section.

20 (b) Unclaimed or forfeited property that is not described in  
21 subsection(a) of this section, with court approval, may be used by the  
22 law-enforcement agency who confiscated the item. If it is not used by  
23 the agency, it may be sold without appraisal at a public auction to  
24 the highest bidder for cash or disposed of in another manner that the

1 court considers proper.

2 (c) Except as provided in subsections (a) and (f) of this section  
3 and after compliance with subsection (d) of this section when  
4 applicable, any moneys acquired from the sale of property disposed of  
5 pursuant to this section shall be distributed as follows:

6 (1) First, to pay costs incurred in the seizure, storage,  
7 maintenance, security and sale of the property and in the forfeiture  
8 proceeding;

9 (2) Second, in a criminal forfeiture case, to satisfy any  
10 restitution ordered to the victim of the offense or, in a civil  
11 forfeiture case, to satisfy any recovery ordered for the person  
12 harmed, unless paid from other assets;

13 (3) Third, to pay the balance due on any security interest  
14 preserved under this article;

15 (4) Fourth, apply the remaining amounts as follows:

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

18 (B) Ten percent to the county prosecutor; and

19 (C) Seventy percent divided among the investigating agencies  
20 through a memo of understanding.

21 (d) Any property forfeited under this article shall not be used  
22 to pay any fine imposed upon a person who is convicted of or pleads  
23 guilty to an underlying criminal offense or a different offense  
24 arising out of the same facts and circumstances.



1 §61-13-21. Sale of forfeited property - application of proceeds -  
2 forfeiture funds.

3 (a) Except as otherwise provided in this section, property  
4 ordered forfeited as contraband, proceeds, or an instrumentality  
5 pursuant to this article shall be disposed of, used, or sold pursuant  
6 to the provisions of section twenty-one of this article. If the  
7 property is to be sold under that section, the prosecutor shall cause  
8 notice of the proposed sale to be given in accordance with law.

9 (b) If the contraband or instrumentality forfeited under this  
10 article is sold, any moneys acquired from a sale and any proceeds  
11 forfeited under this article shall be applied in the following order:

12 (1) First, to pay costs incurred in the seizure, storage,  
13 maintenance, security and sale of the property and in the forfeiture  
14 proceeding;

15 (2) Second, in a criminal forfeiture case, to satisfy any  
16 restitution ordered to the victim of the offense or, in a civil  
17 forfeiture case, to satisfy any recovery ordered for the person  
18 harmed, unless paid from other assets;

19 (3) Third, to pay the balance due on any security interest  
20 preserved under this article;

21 (4) Fourth, apply the remaining amounts as follows:

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

24 (B) Ten percent to the county prosecutor; and

1 (C) Seventy percent divided among the investigating agencies  
2 through a memo of understanding.

3 (c) Any failure of a law-enforcement officer or agency,  
4 prosecutor, court, or the Attorney General to comply with this section  
5 in relation to any property seized does not affect the validity of the  
6 seizure and shall not be considered to be the basis for suppressing  
7 any evidence resulting from the seizure, provided the seizure itself  
8 was lawful.

9 **§61-13-22. Forfeiture under federal law.**

10 (a) Nothing in this article precludes the head of a  
11 law-enforcement agency that seizes property from seeking forfeiture  
12 under federal law. If the property is forfeitable under this article  
13 and federal forfeiture is not sought, the property is subject only to  
14 this article.

15 (b) Any law-enforcement agency that receives moneys from a sale  
16 of forfeited property under federal law shall deposit, use, and  
17 account for the amounts, including any interest derived, in accordance  
18 with applicable federal law.

NOTE: The purpose of this bill is to provide for forfeiture of property used in various crimes and the disposition of such property.

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