

1 **H. B. 2713**

2
3 (By Delegates Frazier, Miley, Brown, caputo,
4 Longstreth, Moore, Ellem, Hamilton and Sobonya)

5 [Introduced January 21, 2011; referred to the
6 Committee on the Judiciary then Finance.]

**Interim
Bill**

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §61-14-1, §61-14-2,
12 §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7 and §61-14-8,
13 all relating to civil and criminal forfeiture actions related
14 to criminal activity; establishing general rules for civil
15 forfeiture proceedings; civil proceedings pertaining to
16 property and assets used in, acquired, gained or flowing from
17 various criminal fraudulent activities; providing definitions;
18 statement of purpose of forfeitures for certain offenses of
19 fraud; property subject to forfeiture; provisional title to
20 property subject to forfeiture; seizure of property; seizure
21 and disposition of forfeited and other property; interference
22 with or diminishing forfeitable property; providing right to
23 trial by jury; care of property in law-enforcement custody;
24 sale of forfeited property, application of proceeds and
25 forfeiture funds; and providing exceptions.

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

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

6 **ARTICLE 14. WEST VIRGINIA CRIMINAL AND CIVIL FORFEITURE FOR**
7 **FRAUDULENT CRIMES AND OFFENSES.**

8 **§61-14-1. Purpose and scope.**

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

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 associated with the commission of acts of fraud against the state
20 and its citizens, including acts of fraud against the elderly;

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

23 (3) To protect third parties from wrongful forfeiture of their
24 property; and

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

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

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

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

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

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

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

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

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

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

24 (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, and deputy sheriff, and municipal police officer or
12 other law-enforcement officer who is authorized to enforce any
13 offense covered by this article and has the general authority to
14 make arrests for any offense covered by this article, and execute
15 and 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

1 defined in section two, article one, chapter thirty-one-a of this
2 code.

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

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

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

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

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

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

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

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

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

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

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

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

1 article.

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

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

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

8 **§61-14-3. Property subject to forfeiture.**

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

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

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

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

22 (b) In determining whether an alleged instrumentality was used
23 in or was intended to be used in the commission or facilitation of
24 an offense or an attempt, complicity, or conspiracy to commit an

1 offense in a manner sufficient to warrant its forfeiture, the trier
2 of fact shall consider the following factors the trier of fact
3 determines are relevant:

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

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

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

10 **§61-14-4. Procedures for seizure of forfeitable property.**

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

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

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

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

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

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

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

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

13 (1) Place the property under seal;

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

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

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

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

24 **§61-14-5. Procedures for forfeiture.**

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

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

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

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

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

21 (A) A description of the property seized;

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

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

24 (D) The identity of the owner or owners of the property, if

1 known;

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

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

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

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

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

1 pursuant to the provisions of the West Virginia Rules of Civil
2 Procedure. Any copy of the petition for forfeiture so served shall
3 include a notice substantially as follows:

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

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

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

1 county wherein the petition for forfeiture is filed. The notice
2 shall advise any claimant to the property of their right to file a
3 claim on or before the date set forth in the notice, which date
4 shall not be less than thirty days from the date of the first
5 publication. The notice shall specify that any claim must clearly
6 state the identity of the claimant and an address where legal
7 process can be served upon that person. In addition, such notice
8 shall contain the following information:

9 (1) A description of the property seized;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 activity.

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

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

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

23 (f) Notwithstanding any other provisions of this article to
24 the contrary, any items of real property or any items of tangible

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

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

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

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

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

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

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

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

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

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

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

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

1 of proceeds.

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

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

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

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

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

24 (c) The proceeds of every public sale conducted pursuant to

1 this section shall be paid and applied as follows:

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

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

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

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

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

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

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

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

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

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

24 (e) Upon the sale of any forfeited property for which title or

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

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

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

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

1 the balance due on any security interest preserved by the court
2 from funds budgeted to the office or department or from the special
3 fund and retain possession of the forfeited property for official
4 use pursuant to subsection (a) of this section.

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

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

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

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

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

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