

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 643

(By Senator Palumbo)

[Originating in the Committee on the Judiciary;
reported February 27, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-7-705a, relating to the West Virginia Contraband Forfeiture Act; revising procedures for administrative forfeiture of certain types of property involved in the trafficking of controlled substances; establishing time frames; and providing for notice.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §60A-7-705a, to read as follows:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

**§60A-7-705a. Expedited procedures for administrative forfeiture
of certain types of property.**

1 (a) Notwithstanding the provisions of section seven
2 hundred five of this article, the following items are subject
3 to forfeiture upon seizure pursuant to this section without
4 recourse to the procedures set forth in section seven hundred
5 five of this article:

6 (1) Forfeitable money, securities and other negotiable
7 instruments;

8 (2) Forfeitable conveyances which shall include automo-
9 biles of any configuration, airplanes, motorcycles and
10 bicycles; and

11 (3) Forfeitable firearms.

12 (b) An administrative forfeiture notice may be generated
13 by the prosecuting attorney no more than twenty days after
14 the seizure of the property in question. The notice shall be
15 styled "NOTICE OF SEIZURE AND INTENT TO FORFEIT
16 PROPERTY" and contain the following:

17 (1) A description of the property seized;

18 (2) The name and address of the agency responsible for
19 the seizure;

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

21 (4) The name or names of the owner or owners of the
22 property, if the property subject to forfeiture conveys by title

23 or has a serial number or other identifiable number that
24 gives notice of ownership;

25 (5) The name or names of the person or persons in
26 possession of the property at the time seized; and

27 (6) The legal basis and facts underlying the seizure and
28 proposals forfeiture.

29 (c) The administrative forfeiture notice shall include a
30 statement substantially as follows:

31 “To any claimant to the within described property, the
32 property is subject to administrative forfeiture unless you
33 provide a written notice, within thirty days of receipt of this
34 notice, that you wish to contest this forfeiture. If you fail to
35 provide a notice to the prosecuting attorney, you will
36 immediately and forever lose all right, claim, title and
37 interest to the subject property, and the property will be
38 disposed of according to law.” The notice shall also include
39 the address of the respective prosecuting attorney.

40 (d) The notice of seizure and intent to forfeit shall be
41 served upon any possessor or possessors of the property at
42 the time of its seizure, and, in the case of property which
43 conveys by title, any owner and/or lienholder of record.
44 Service may be by certified mail, return receipt requested, to
45 the last known address of the possessor or possessors, owner

46 or owners. Service may also be effected consistent with Rule
47 4 of the West Virginia Rules of Civil Procedure. The notice
48 shall contain the name of the prosecutor's office to which a
49 response shall be sent.

50 (e) If no owner or possessor can be located with diligent
51 effort or if the notice, provided in subsection (c) of this
52 section to the last known address of any person to whom the
53 notice was attempted, is returned unclaimed or refused, then
54 no further notice is required.

55 (f) If, after thirty days of the delivery of notice from the
56 prosecuting attorney as provided in this section, written
57 response is not received from any person stating a desire to
58 contest the administrative forfeiture, all right, title and
59 interest to the subject property shall immediately vest in the
60 state, and shall be disposed of in the same manner as in a
61 civil forfeiture, according to the provisions of sections seven
62 hundred six and seven hundred seven of this article.

63 (g) If the prosecutor receives a written response, within
64 the thirty-day period, stating a desire to contest the expe-
65 dited administrative forfeiture, then no forfeiture may be
66 obtained except through a civil forfeiture proceeding under
67 section seven hundred five of this article.