WEST VIRGINIA CODE: §60-6-21

§60-6-21. Court procedure as to contraband and forfeited articles.

Proceedings for confiscation of articles, conveyances or vehicles declared contraband and forfeited to the state under section twenty shall be had in the circuit or inferior court having criminal jurisdiction, either in vacation or term time, in the county where such articles, conveyances or vehicles were seized, and the procedure shall be as follows:

(1) When such articles, conveyances or vehicles have been seized under or without a warrant provided for in section eighteen of this article, by an officer charged with the enforcement of this chapter, the officer shall take possession of such article, conveyance or vehicle and deliver the same and the alcoholic liquors so seized to the sheriff of the county in which such seizure was made, taking his receipt therefor in duplicate.

(2) The officer making such seizure shall forthwith report in writing of such seizure to the prosecuting attorney of the county in which such seizure was made and to the commission.

(3) Within not less than ten days nor more than sixty days after receiving notice of any such seizure, the prosecuting attorney for the county shall file, in the name of the state, a petition against the seized property, in the clerk's office of the circuit court of the county, returnable to the circuit court or inferior court having criminal jurisdiction, which petition shall be filed by the clerk without fee and may be heard by said court or judge thereof in vacation.

(4) Such petition shall allege the seizure, and set forth in general terms, the grounds of forfeiture of the seized property, and shall pray that the same be forfeited to the state and the proceeds disposed of according to law, and that all persons concerned or interested may appear and show cause why said property should not be forfeited to the state.

(5) The owner of and all persons in any manner then indebted or liable for the purchase price of said property, and any person having a lien thereon, if they be known to the prosecuting attorney, shall be made parties defendant thereto, and shall be served with the notice issued by the clerk of such court, hereinafter provided for in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on said petition, if they be residents of this state, and, if they be unknown or nonresidents, or cannot with reasonable diligence be found in this state, they shall be deemed sufficiently served by publication of said notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county.

(6) Any person claiming to be the owner of such seized property, or to hold a lien thereon or have an interest therein, may appear at any time before final judgment of the trial court, and be made a party defendant to the petition so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim or

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interest.

(7) If the court or judge thereof in vacation shall find that illegally acquired alcoholic liquors or alcoholic liquors being illegally transported in amounts in excess of one gallon, were not found in such conveyance or vehicle at the time of the seizure thereof, the judgment of the court shall be to entirely relieve said property from forfeiture, and no costs shall be taxed against such claimant.

(8) If the court or judge thereof in vacation trying the issue shall find or if it be admitted that said conveyance or vehicle at the time of the seizure contained illegally acquired liquor or that alcoholic liquors were being illegally transported therein, nevertheless:

(a) If it shall appear to the satisfaction of the court that such claimant is the bona fide owner and was such owner at the time of such seizure and that he was ignorant of such illegal use thereof and the illegal use was without his connivance or consent, expressed or implied, the court shall relieve said conveyance or vehicle from forfeiture and restore it to such claimant and no cost shall be taxed against such claimant,

(b) If it shall appear to the satisfaction of the court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such seizure and that he was ignorant of such illegal use thereof, or the use so made of such conveyance or vehicle was without his connivance or consent, expressed or implied, and that the claimant has perfected his lien, the court shall,

(1) If the lien so established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor upon the payment of storage and cost,

(2) If the lien is less than the value of the conveyance or vehicle, the lienor may have said conveyance or vehicle delivered to him upon payment of the difference in amount as determined in such proceedings; but should the lienor not demand delivery as aforesaid, an order shall be made for the sale of said property by the sheriff of the county, in the manner prescribed by law for sale of personal property under execution, out of the proceeds of which sale shall be paid, first, the storage, if any, second, the cost, third, the lien, and the residue, if any, shall be paid to the commission.

(9) If, however, no valid lien or claim is established against the seized property upon the trial of the petition, or, if it shall be determined that the owner thereof was himself using the same at the time of the seizure or that such illegal use was with his knowledge or consent, expressed or implied, the said property shall be completely forfeited to the state and turned over to the commission in accordance with the provisions of this chapter.

(10) In every case, the alcoholic liquors so seized shall be deemed contraband and forfeited to the state as heretofore provided.

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