WEST VIRGINIA CODE: §61-8C-7

§61-8C-7. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

(a) The following are subject to forfeiture:

(1) All visual depictions which have been manufactured, distributed, dispensed or possessed in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, processing, delivering, importing or exporting any visual depictions or any crimes against children in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(3) All books, records, research products and materials, including hard drives, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(4) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of articles eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter by any person in exchange for a visual depiction, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which are intended to be used, to facilitate any violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter: Provided, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter; and

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(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter.

(b) Property subject to forfeiture under this article may be seized by the State Police (hereinafter referred to as the "appropriate person" in this article).

(c) Visual depictions which are manufactured, possessed, transferred, sold or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Visual depictions which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the visual depictions.

(d) Notwithstanding any other provisions of this article to the contrary, any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years next preceding the sale been used in violation of this chapter.

(e) Notwithstanding any other provisions of this code to the contrary, any person who has an ownership interest in items of tangible personal property subject to forfeiture by this article shall be presumed to be an innocent owner. Unless the state establishes by clear and convincing proof that the innocent owner knew or should have known that the property subject to forfeiture had been used in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter and, if applicable, that the innocent owner did not do all that reasonably could be expected under the circumstances to terminate the illegal use of the property once he or she had knowledge of it, the court shall enter an order either: (1) Severing the property appropriately; (2) transferring the property to the state with a provision that the state shall compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or (3) permitting the innocent owner to retain the property subject to a lien in favor of the state to the extent of the forfeitable interest in the property. If the state meets the burden set forth in this section, then the court shall enter an order declaring the person with an ownership interest is not an innocent owner and allowing forfeiture proceedings to continue, pursuant to the requirements set forth in this article.

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