

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4717

BY DELEGATES SHOTT, FLEISCHAUER AND WILSON

[Introduced February 06, 2020; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §60A-7-708, relating to the monitoring and reporting of seizures, forfeitures,
 3 and the use of forfeiture proceeds; defining a term; setting forth requirements; requiring
 4 audits; exempting data reports from the West Virginia Freedom of Information Act;
 5 authorizing rule-making; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-708. Seizure and Forfeiture Reporting Act.

1 (a) Purpose. -- Under state and federal forfeiture laws, state law-enforcement agencies
 2 can seize money and other property, have it sold and use forfeiture proceeds to fund agency
 3 budgets. It is the responsibility of state legislators to monitor seizures and forfeitures. This bill
 4 provides legislators with the information necessary for basic oversight of law-enforcement
 5 agencies that seize and forfeit property under state and federal laws.

6 (b) Definition. -- “Law-enforcement agency” means any police force, multijurisdictional task
 7 force, fire department, or other municipal, county or state agency that has authority under state
 8 law or collaborates with a federal agency under federal law to seize and forfeit property.

9 (c) This section is applicable to property seized and forfeited under the following:

10 (1) §60A-7-701 et seq. of this code, cited as West Virginia Contraband Forfeiture Act, and

11 (2) Any other section in the state criminal code that authorizes: (A) A law-enforcement
 12 agency to seize property that is used in the commission of a criminal offense; and (B) a
 13 government attorney to litigate the transfer of title to the property from the property owner to the
 14 government using a civil or criminal forfeiture process.

15 (d) The State Auditor shall establish and maintain a case tracking system and searchable
 16 public website that includes the following information about property seized and forfeited under
 17 state law and under any agreement with the federal government:

18 (1) Name of the law-enforcement agency that seized the property or, if seized by a

- 19 multijurisdictional task force, the name of the lead agency;
- 20 (2) Date of the seizure;
- 21 (3) Type of property seized. Currency or, if property other than currency, a description of
- 22 property seized including make, model, year, and serial number;
- 23 (4) Place of seizure, home, business or traffic stop, and, if a traffic stop on an interstate
- 24 or state highway, the direction of the traffic flow: eastbound, westbound, southbound or
- 25 northbound;
- 26 (5) Estimated value of the seizure;
- 27 (6) Criminal offense alleged that led to the seizure (include whether under state or federal
- 28 law);
- 29 (7) Crime for which suspect was charged (include whether under state or federal law);
- 30 (8) Criminal case number and court in which the case was filed;
- 31 (9) The outcome of suspect's criminal case:
- 32 (A) No charge was filed;
- 33 (B) Charges dropped;
- 34 (C) Acquittal;
- 35 (D) Plea agreement;
- 36 (E) Jury conviction; or
- 37 (F) Other;
- 38 (10) If forfeiture is sought under federal law, reason for the federal transfer: adoption or
- 39 joint task force. However, if forfeiture is sought under federal law, responses to subdivisions (12)
- 40 through (18) of this subsection may not be available readily and may be skipped;
- 41 (11) Forfeiture case number and court in which the case was filed;
- 42 (12) If a property owner filed a claim or counterclaim, identify against whom: the suspect,
- 43 innocent owner, joint owner or third-party owner;
- 44 (13) Method of final forfeiture proceeding, whether criminal, civil-judicial or civil-

- 45 administrative;
- 46 (14) Date of forfeiture order;
- 47 (15) Whether there was a forfeiture settlement agreement: yes or no;
- 48 (16) Property disposition: returned to owner, partially returned to owner, sold, destroyed
- 49 or retained by a law-enforcement agency;
- 50 (17) Date of property disposition;
- 51 (18) Value of the property forfeited, or, if forfeited under federal law, the amount of
- 52 proceeds received from the federal government;
- 53 (19) Estimate of total costs to the agency:
- 54 (A) To store property in impound lots or evidence rooms;
- 55 (B) To pay for law-enforcement personnel and prosecutors' time and expenses to litigate
- 56 forfeiture cases; and
- 57 (C) The cost to sell or dispose of forfeited property;
- 58 (20) Amount of the attorney fees awarded to property owners; and
- 59 (21) If any property was retained by a law-enforcement agency, the purpose for which it
- 60 is used.
- 61 (e) The State Auditor shall establish and maintain a searchable public website that
- 62 includes:
- 63 (1) The total amount of funds expended, in each of the following 10 categories, which
- 64 resulted from property seized, forfeited, and reported in subsection (d) of this section:
- 65 (A) Drug abuse, crime, and gang prevention programs;
- 66 (B) Victim reparations;
- 67 (C) Investigation costs, including witness protection, informant fees and controlled buys;
- 68 (D) Court costs and attorneys' fees;
- 69 (E) Salaries, overtime, and benefits, as permitted by law;
- 70 (F) Professional outside services, including auditing, court reporting, expert witness fees,

71 outside attorney fees, and membership fees paid to trade associations;
72 (G) Travel, meals, entertainment, conferences, training, and continuing education;
73 (H) Other operating expenses including office supplies, postage, and printing; and
74 (I) Capital expenditures including vehicles, firearms, equipment, computers, and furniture;
75 and
76 (J) Other expenditures of forfeiture proceeds.
77 (2) The total value of seized and forfeited property held by the agency at the end of the
78 reporting period.
79 (f) The law-enforcement agency that seizes property and prosecutors that litigate related
80 criminal cases and forfeiture proceedings shall update the State Auditor's website with the
81 information required under subsection (d) of this section at the end of the month following each
82 seizure of property. The commander of a multijurisdictional task force may appoint one agency to
83 report its seizures. If an agency has made no seizures during the previous year, a null report shall
84 be filed by the agency specifying that it did not engage in seizures or forfeitures under this title
85 during the reporting period.
86 (g) The law-enforcement agency that expends forfeiture-related proceeds shall update the
87 State Auditor's website with the information required under subsection (e) of this section within
88 30 days after the end of the fiscal year. The commander of a multijurisdictional task force may
89 appoint one agency to report its expenditures.
90 (h) The State Auditor, 120 days after the close of the fiscal year, shall submit to the
91 Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the
92 Governor a written report summarizing activity in the state, for the preceding fiscal year on the
93 type, approximate value, and disposition of the property seized and the amount of any proceeds
94 received or expended at the state and local levels. The report shall provide a categorized
95 accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of
96 forfeiture proceeds shall be disaggregated by agency. The aggregate report shall also be made

97 available on the State Auditor's website.

98 (i) State Auditor may include in its aggregate report required by subsection (h) of this
99 section recommendations to improve statutes, rules and policies to better ensure that seizure,
100 forfeiture and expenditures are done and reported in a manner that is fair to crime victims,
101 innocent property owners, secured interest holders, citizens, law enforcement and taxpayers.

102 (j) If a law-enforcement agency fails to file a report within 30 days after it is due and there
103 is no good cause as determined by the State Auditor, the agency or department shall be subject
104 to a civil fine payable to the General Revenue Fund of \$500 or the equivalent of one-quarter of
105 the forfeiture proceeds received by the agency, whichever is greater. In addition, the State Auditor
106 may make no expenditures from the forfeiture fund for the benefit of the agency until the report is
107 filed.

108 (k) The State Auditor shall perform annually a financial audit under the generally accepted
109 government auditing standards (GAGAS) of records related to inventory of seized property and
110 expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the State
111 Auditor no later than 90 days after the end of the fiscal year and shall be made public.

112 (l) The State Auditor may recoup its costs under this section by charging a fee to the law-
113 enforcement agency filing a report. The agency may use forfeiture proceeds to pay the costs of
114 compiling and reporting data under this section, and to pay any fees imposed by the State Auditor.

115 (m) The State Auditor may propose rules for legislative approval in accordance with §29A-
116 3-1 et seq. of this code to implement this section.

117 (n) The data and reports compiled and prepared under this section are public information
118 under the West Virginia Freedom of Information Act, chapter 29B of this code.

119 (o) This section is effective for the reporting period starting January 1, 2021.

NOTE: The purpose of this bill is to require the monitoring and reporting of seizures, forfeitures, and the use of forfeiture proceeds by law-enforcement agencies. The bill defines a term. The bill sets forth requirements. The bill requires audits. The bill exempts

data reports from the West Virginia Freedom of Information Act. The bill authorizes rule-making. The bill sets an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.