

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Introduced**

## **Senate Bill 277**

BY SENATORS TRUMP, CLEMENTS, AND RUCKER

[Introduced January 10, 2020; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-7-705 of the Code of West Virginia, 1931, as amended,  
2 relating to civil asset forfeiture; requiring that state prove the owner of seized property has  
3 been convicted of a felony controlled substance offense and that the seized property was  
4 substantially related to the crime before the state can perfect title to the seized property;  
5 modifying the standard of proof; and requiring that state return seized property to its owner  
6 if its evidentiary burden is not met.

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

## **ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.**

### **§60A-7-705. Procedures for forfeiture.**

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

6 (2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court  
7 of the county wherein the seizure was made, the real property subject to forfeiture is situate, or  
8 the circuit court of the county wherein any owner of the property subject to forfeiture may reside.

9 (3) Any civil trial stemming from a petition for forfeiture brought under this chapter at the  
10 demand of either party shall be by jury.

11 (4) A petition for forfeiture of the seized property shall be filed within 90 days after the  
12 seizure of the property in question. The petition shall be verified by oath or affirmation of a law-  
13 enforcement officer representing the law-enforcement agency responsible for the seizure or the  
14 prosecuting attorney and shall contain the following:

15 (i) A description of the property seized;

16 (ii) A statement ~~as to who is~~ identifying the law-enforcement agency or agencies  
17 responsible for the seizure;

- 18 (iii) A statement of the time and place of seizure;
- 19 (iv) The identity of the owner or owners of the property, if known;
- 20 (v) The identity of the person or persons in possession of the property at the time seized,  
21 if known;
- 22 (vi) A statement of facts upon which probable cause for belief that the seized property is  
23 subject to forfeiture pursuant to the provisions of this article is based;
- 24 (vii) The identity of all persons or corporations having a perfected security interest or lien  
25 in the subject property, as well as the identity of all persons or corporations known to the affiant  
26 who may be holding a possessory or statutory lien against such property;
- 27 (viii) A prayer for an order directing forfeiture of the seized property to the state, and  
28 vesting ownership of such property in the state.
- 29 (b) At the time of filing or as soon as practicable thereafter, a copy of the petition for  
30 forfeiture shall be served upon the owner or owners of the seized property, as well as all holders  
31 of a perfected security interest or lien or of a possessory or statutory lien in the same class, if  
32 known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a  
33 copy of the petition for forfeiture shall be served upon any person who was in possession or  
34 alleged to be in possession of the property at the time of seizure, where such person's identity is  
35 known. The above service shall be made pursuant to the provisions of the West Virginia Rules of  
36 Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially  
37 as follows:
- 38 "To any claimant to the within described property: You have the right to file an answer to  
39 this petition setting forth your title in, and right to possession of, the property within 30 days from  
40 the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will  
41 be entered, and such order is not subject to appeal."
- 42 If no owner or possessors, lienholders or holders of a security interest be found, then such  
43 service may be by Class II legal publication in accordance with the provisions of §59-3-1 *et seq.*

44 of this code, and the publication area shall be the county wherein such property was located at  
45 the time of seizure and the county wherein the petition for forfeiture is filed.

46 (c) In addition to the requirements of subsection (a) ~~above~~ of this section the prosecuting  
47 attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is  
48 based, shall be responsible for the publication of a further notice. Such further notice that a petition  
49 for forfeiture has been filed shall be published by Class II legal advertisement in accordance with  
50 §59-3-1 *et seq.* of this code. The publication area shall be the county wherein the property was  
51 seized and the county wherein the petition for forfeiture is filed. The notice shall advise any  
52 ~~claimant to~~ owner of the property of ~~their~~ the right to file a claim on or before the date set forth in  
53 the notice, which date shall not be less than 30 days from the date of the first publication. The  
54 notice shall specify that any claim must clearly state the identity of the claimant and an address  
55 where legal process can be served upon that person. In addition, ~~such~~ the notice shall contain  
56 the following information set forth in paragraphs (i) through (vi), subdivision (4), subsection (a) of  
57 this section.

58 (1) ~~A description of the property seized;~~

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

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

61 (4) ~~The identity of the owner or owners of the property, if known;~~

62 (5) ~~The identity of the person or persons in possession of the property at the time of~~  
63 ~~seizure, if known;~~

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

66 (d) ~~If no answer or claim is filed within thirty days of the date of service of the petition~~  
67 ~~pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to~~  
68 ~~subsection (b) of this section, the court shall enter an order forfeiting the seized property to the~~  
69 ~~state. If any claim to the seized property is timely filed, a time~~

70 (d) A time and place shall be set for a hearing upon such claim the petition. The claimant  
71 ~~or claimants~~ owner or owners, if known, and the person or persons in possession of the property  
72 at the time seized shall be given notice of such hearing not less than ~~ten~~ 20 days prior to the date  
73 set for the hearing.

74 (e) At the hearing upon the claim or claims, the ~~state~~ petitioner or petitioners shall have  
75 the burden of proving by a ~~preponderance of the evidence that the seized property is subject to~~  
76 ~~forfeiture pursuant to the~~ clear and convincing evidence that:

77 (1) The seized property is subject to forfeiture pursuant to the provisions of this chapter  
78 article;

79 (2) The owner of the seized property has been convicted of a felony violation of this  
80 chapter; and

81 (3) The seized property had a substantial relationship to the crime referred to in subdivision  
82 (2) of this subsection.

83 (f) If the petitioner or petitioners cannot meet the evidentiary burden under subsection (e)  
84 of this section, the court shall order the return of the seized property to its owner within 10 days  
85 of the entry of the court's order.

86 ~~(g)~~ (g) Any order forfeiting property to the state and entered pursuant to this section  
87 perfects the ~~state's~~ petition, title, and interest in the forfeited property ~~and relates~~ back to the date  
88 of seizure: *Provided*, That in any proceeding under this article the circuit court shall in its final  
89 order make specific findings with respect to whether or not probable cause to seize such property  
90 existed at the time of such seizure.

91 ~~(g)~~ (h) During the pendency of a forfeiture proceeding, it is unlawful for any property owner  
92 or holder of a bona fide security interest or other valid lienholder to transfer or attempt to transfer  
93 any ownership interest or security interest in seized property with the intent to defeat the purpose  
94 of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner  
95 or holder of a security interest or other lienholder from making such a transfer should one come

96 to its attention. Any such transfer which is made in violation of the provisions of this subsection  
 97 shall have no effect upon an order of the court forfeiting seized property to the state if a notice of  
 98 *lis pendens* is filed prior to the recording of the instrument of transfer.

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

102 ~~(i)~~ ~~An~~ (j) A petition for appeal of a decision of the circuit court concerning a forfeiture  
 103 proceeding brought pursuant to this ~~chapter~~ article must be filed within 120 days of the date of  
 104 entry of the final ~~appealable~~ order. The appellant shall be required to give notice of intent to appeal  
 105 within 30 days of the entry of ~~such appealable~~ the final order.

106 (k) As used in this section, seized property has a substantial relationship to the underlying  
 107 crime or conviction if it is real, personal, or mixed property used in the commission of a felony  
 108 controlled substances offense or is purchased with funds obtained by such an offense.

109 (l) Nothing in this section may be construed to authorize the forfeiture of assets titled to,  
 110 or owned by, an innocent owner or purchaser.

NOTE: The purpose of this bill is to require that the state prove that the owner of seized property has been convicted of a felony controlled substance offense and that the seized property was substantially related to the crime before the state can perfect title to the seized property. The bill modifies the standard of proof. The bill requires the state to return seized property to its owner if its evidentiary burden is not met.

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