

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

**House Bill 2367**

FISCAL  
NOTE

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[Introduced February 13, 2017; 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 article,  
2 designated §61-3F-1, §61-3F-2 and §61-3F-3, all relating to establishing a criminal offense  
3 of organized retail crime; defining terms; providing crime elements and penalties, and  
4 providing procedures for forfeiture of assets derived from defined criminal activity.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto  
2 a new article, designated §61-3F-1, §61-3F-2 and §61-3F-3, all to read as follows:

## **ARTICLE 3F. ORGANIZED RETAIL CRIME.**

### **§61-3F-1. Definitions.**

1 For the purpose of this article:

2 (1) "Organized retail crime" means the theft by one person, or by two or more persons  
3 working in association, from one or more than one retail establishment within a period of ninety  
4 days or less between the first and second episode, the second and third thefts, or between any  
5 succeeding thefts, with the intent to sell that retail property for monetary or other gain, and the  
6 aggregated value of the retail price of all the property exceeds \$1,500.

7 (3) "Retail property" means any article, product, commodity, item, or component offered  
8 for sale in a retail establishment.

9 (4) "Retail establishment" means any entity or person within this state who sells, transfers  
10 or distributes goods to an ultimate consumer.

11 (5) "Theft" means to take possession of, carry away, transfer, conceal or cause to be  
12 carried away the retail property of another with the intent to steal the retail property.

13 (6) "Retail price" means the retail value of an item offered for sale by a retail establishment.

### **§61-3F-2. Organized retail theft.**

1 (a)(1) Any person who knowingly commits an organized retail crime; or organizes,  
2 supervises, finances, conspires, receives retail goods from or otherwise manages or assists

3     another person in committing an organized retail crime of theft of \$2,000 or less, is guilty of a  
4     misdemeanor and, upon conviction thereof, shall be fined not less than \$1,500 nor more than  
5     \$3,000 or confined in jail not more than one year, or both fined and confined.

6         (2) Any person who knowingly commits an organized retail crime; or organizes,  
7     supervises, finances, conspires, receives retail goods from or otherwise manages or assists  
8     another person in committing an organized retail crime of theft of more than \$2,000, is guilty of a  
9     felony and, upon conviction thereof, shall be fined not more than \$2,500, be imprisoned in a state  
10    correctional facility not less than one nor more than five years, or both fined and imprisoned.

11             (b) Organized retail thefts committed pursuant to this section in different counties may be  
12    prosecuted in any county in which one of the thefts occurred.

13             (c) Any interest a person has acquired or maintained in any cash, asset or other property  
14    of value in any form, derived in part or total from any proceeds from participating in organized  
15    retail crime is subject to forfeiture pursuant to the provisions of section three of this article.

16             (d) It is not a defense to a charge under this section that the property was not stolen at the  
17    time of the violation if the property was explicitly represented to the accused person as being  
18    stolen property.

### **§61-3F-3. Procedures for forfeiture.**

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

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

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

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

- 14            (i) A description of the property seized;  
15            (ii) A statement as to who is responsible for the seizure;  
16            (iii) A statement of the time and place of seizure;  
17            (iv) The identity of the owner or owners of the property, if known;  
18            (v) The identity of the person or persons in possession of the property at the time seized,  
19        if known;

20            (vi) A statement of facts upon which probable cause for belief that the seized property is  
21        subject to forfeiture pursuant to the provisions of this article is based;

22            (vii) The identity of all persons or corporations having a perfected security interest or lien  
23        in the subject property, as well as the identity of all persons or corporations known to the affiant  
24        who may be holding a possessory or statutory lien against such property;

25            (viii) A prayer for an order directing forfeiture of the seized property to the state, and  
26        vesting ownership of such property in the state.

27            (b) At the time of filing or as soon as practicable thereafter, a copy of the petition for  
28        forfeiture shall be served upon the owner or owners of the seized property, as well as all holders  
29        of a perfected security interest or lien or of a possessory or statutory lien in the same class, if  
30        known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a  
31        copy of the petition for forfeiture shall be served upon any person who was in possession or  
32        alleged to be in possession of the property at the time of seizure, where such person's identity is  
33        known. The above service shall be made pursuant to the provisions of the West Virginia Rules of  
34        Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially  
35        as follows:

36        "To any claimant to the within described property: You have the right to file an answer to  
37        this petition setting forth your title in, and right to possession of, the property within thirty days  
38        from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state  
39        will be entered, and the order is not subject to appeal."

40        If no owner or possessors, lienholders or holders of a security interest is found, then  
41        service may be by Class II legal publication in accordance with the provisions of article three,  
42        chapter fifty-nine of this code, and the publication area shall be the county wherein the property  
43        was located at the time of seizure and the county wherein the petition for forfeiture is filed.

44        (c) In addition to the requirements of subsection (b) above, the prosecuting attorney or  
45        law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall  
46        be responsible for the publication of a further notice. The further notice that a petition for forfeiture  
47        has been filed shall be published by Class II legal advertisement in accordance with article three,  
48        chapter fifty-nine of this code. The publication area shall be the county wherein the property was  
49        seized and the county wherein the petition for forfeiture is filed. The notice shall advise any  
50        claimant to the property of his or her right to file a claim on or before the date set forth in the  
51        notice, which date shall not be less than thirty days from the date of the first publication. The  
52        notice shall specify that any claim must clearly state the identity of the claimant and an address  
53        where legal process can be served upon that person. In addition, the notice shall contain the  
54        following information:

55        (1) A description of the property seized;  
56        (2) A statement of who is responsible for the seizure;  
57        (3) A statement of the time and place of seizure;  
58        (4) The identity of the owner or owners of the property, if known;  
59        (5) The identity of the person or persons in possession of the property at the time of  
60        seizure, if known;  
61        (6) A statement that prayer for an order directing forfeiture of the seized property to the

62     state, and vesting ownership of the property in the state shall be requested of the court.

63         (d) If no answer or claim is filed within thirty days of the date of service of the petition  
64         pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to  
65         subsection (b) of this section, the court shall enter an order forfeiting the seized property to the  
66         state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing  
67         upon the claim. The claimant or claimants shall be given notice of the hearing not less than ten  
68         days prior to the date set for the hearing.

69         (e) At the hearing upon the claim or claims, the state shall have the burden of proving by  
70         a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the  
71         provisions of this chapter.

72         (f) Any order forfeiting property to the state and entered pursuant to this section perfects  
73         the state's right, title and interest in the forfeited property and relates back to the date of seizure:  
74         Provided, That in any proceeding under this article the circuit court shall in its final order make  
75         specific findings with respect to whether or not probable cause to seize the property existed at  
76         the time of the seizure.

77         (g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or  
78         holder of a bona fide security interest or other valid lienholder to transfer or attempt to transfer  
79         any ownership interest or security interest in seized property with the intent to defeat the purpose  
80         of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner  
81         or holder of a security interest or other lienholder from making such a transfer should one come  
82         to its attention. Any such transfer which is made in violation of the provisions of this subsection  
83         shall have no effect upon an order of the court forfeiting seized property to the state if a notice of  
84         *lis pendens* is filed prior to the recording of the instrument of transfer.

85         (h) The court may void any transfer of property subject to forfeiture, made before or after  
86         a forfeiture proceeding has been commenced, if the transfer was not to a bona fide purchaser  
87         without notice for value.

88        (i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought  
89        pursuant to this chapter must be filed within one hundred twenty days of the date of entry of the  
90        final appealable order. The appellant shall be required to give notice of intent to appeal within  
91        thirty days of the entry of the appealable order.

NOTE: The purpose of this bill is to establish a new crime of organized retail crime, establishing penalties; and providing for forfeiture of property or other asset derived from organized retail crime.

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