

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### House Bill 2463

FISCAL  
NOTE

BY DELEGATE COWLES

[Introduced February 15, 2017; Referred  
to the Committee on the Judiciary then Finance. ]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §12-5A-1, §12-5A-2, §12-5A-3, §12-5A-4, §12-5A-5, §12-5A-6, §12-5A-7 and  
 3 §12-5A-8, all related to oversight of law-enforcement agencies which receive private  
 4 property through forfeiture laws; and providing reporting requirements.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §12-5A-1, §12-5A-2, §12-5A-3, §12-5A-4, §12-5A-5, §12-5A-6, §12-5A-7 and  
 3 §12-5A-8, all to read as follows:

**ARTICLE 5A. FORFEITURE REPORTING ACT.**

**§12-5A-1. Purpose.**

1 This article provides a procedure to provide legislators with information necessary for  
 2 basic oversight of law-enforcement agencies who obtain private property under state and federal  
 3 forfeiture laws. Properties which may be seized and sold include, but are not limited to, money,  
 4 securities, negotiable instruments, vehicles and equipment. Proceeds from sale of forfeited  
 5 property are used to fund agency activities. Reporting is required of property seized and forfeited  
 6 under, but not limited to, provisions of article two, chapter twenty; article twenty-two-b, chapter  
 7 twenty-nine; article seven, chapter sixty-a; and article eight-c and article thirteen, chapter sixty-  
 8 one of this code.

**§12-5A-2. Definition of law-enforcement agency.**

1 "Law-enforcement agency" means any police force, multijurisdictional task force, fire  
 2 department, or other local, county or state agency that has authority under state law or operates  
 3 in cooperation with a federal agency under federal law to engage in seizure and forfeiture.

**§12-5A-3. Reporting requirement.**

1 (a) On an annual basis, each law-enforcement agency shall report the following  
 2 information about each individual seizure and forfeiture completed by the agency under both state

3 and federal forfeiture laws:

4 (1) Data on seizures and forfeitures including the following:

5 (A) Date that currency, vehicles, houses or other types of property were seized;

6 (B) Type of property seized, including year, make and model, as applicable;

7 (C) Type of alleged crime associated with the seizure of the property;

8 (D) Outcome of related criminal action, such as whether: (i) No charges were brought; (ii)

9 a plea bargain was reached; (iii) a conviction was obtained; or (iv) an acquittal was issued;

10 (E) Type of forfeiture procedure: criminal forfeiture or civil forfeiture;

11 (F) Type of civil forfeiture: administrative, judicial or other;

12 (G) Venue of forfeiture case: administrative agency, magistrate court, circuit court or other;

13 (H) Whether property owner was represented by an attorney in the forfeiture case;

14 (I) Market value of the property seized;

15 (J) Gross amount received from the forfeiture;

16 (K) Total administrative and other expenses deducted as part of the forfeiture process;

17 (L) Net amount received from the forfeiture;

18 (M) Disposition of property following seizure, such as whether the property was:

19 (i) Returned to the owner;

20 (ii) Destroyed;

21 (iii) Sold after forfeiture; or

22 (iv) Retained after forfeiture;

23 (N) Date of the aforementioned disposition of property; and

24 (O) Whether the forfeiture resulted from an adoptive seizure. An adoptive seizure occurs

25 when one hundred percent of the preseizure activity and related investigations are performed by

26 the state or local seizing agency before a request is made to the federal government for adoption.

27 There must be a state violation and a federal basis for forfeiture in order for the seizure to be an

28 adoptive seizure. A seizure resulting from a joint investigation or task force case is not an adoptive

29 seizure.

30 (2) Data on expenditures of forfeiture funds by law- enforcement agencies, including the  
31 following:

32 (A) Crime, gang and substance-abuse programs;

33 (B) Witness protection and victim reparations;

34 (C) Informant fees and buy money;

35 (D) Regular-time salaries, overtime pay and employee benefits of prosecutors;

36 (E) Regular-time salaries, overtime pay and employee benefits of law-enforcement agency  
37 personnel other than prosecutors;

38 (F) Professional or outside services, including services related to auditing, court reporting,  
39 expert witnesses and other court costs;

40 (G) Travel, meals and entertainment;

41 (H) Training and conferences;

42 (I) Other operating expenses including supplies;

43 (J) Vehicles purchased;

44 (K) Canines, firearms and equipment, such as tactical gear;

45 (L) Capital expenditures, such as furniture, computers and office equipment; and

46 (M) Other uses of forfeiture proceeds.

47 (b) The State Auditor and the Joint Committee on Government and Finance may also  
48 require information not specified in this section to be reported.

49 (c) Each law-enforcement agency shall file with the State Auditor the report required under  
50 subsection (a) of this section for the law-enforcement agency and the corresponding prosecutor's  
51 office. The law-enforcement agency shall file separate reports for forfeitures completed under  
52 state forfeiture law and federal forfeiture law. A null report shall be filed by a law-enforcement  
53 agency that did not engage in seizures or forfeitures during the reporting period.

**§12-5A-4. Standard form, data entry and aggregate report.**

1 (a) The State Auditor shall develop a standard form, process and deadlines for electronic  
2 data entry for annual submission of forfeiture data by law-enforcement agencies. The State

3 Auditor shall compile the submissions and issue an aggregate report of all forfeitures in the state.

4 (b) By April 1 of each year, the State Auditor shall make available on its website the reports  
5 submitted by law-enforcement agencies and its aggregate report. It shall distribute printed copies  
6 of its aggregate report to legislators, other government officials and the public upon request.

**§12-5A-5. Recommendations.**

1 The State Auditor shall include in its aggregate report recommendations to the Legislature  
2 to improve forfeiture statutes to better ensure that forfeiture proceedings are reported and handled  
3 in a manner that is fair to crime victims, innocent property owners, secured interest holders,  
4 citizens and taxpayers.

**§12-5A-6. Penalty for failure to report.**

1 The State Auditor shall include in the aggregate report information on law-enforcement  
2 agencies not in compliance with this article. The state shall withhold payment of any funds due to  
3 those agencies until compliance is achieved.

**§12-5A-7. Use of forfeiture proceeds to pay reporting costs.**

1 The State Auditor may recoup his or her costs by charging a fee to law-enforcement  
2 agencies that engage in seizures or forfeitures during the reporting period. Each law-enforcement  
3 agency may use forfeiture proceeds to pay the cost of compiling and reporting data under this  
4 article, including any fee imposed by the State Auditor.

**§12-5A-8. Public disclosure.**

1 The data and reports compiled and prepared under this article about completed forfeitures  
2 are public information under the state's Freedom of Information Act, and are not exempted from  
3 disclosure by section four, article one, chapter twenty-nine-b of this code.

NOTE: The purpose of this bill is to provide legislators with information necessary for basic oversight of law-enforcement agencies who obtain private property under state and federal forfeiture laws. The information will be available to the public.

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