

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 184**

By Senator Chapman

[Introduced February 12, 2025; 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 prohibiting pre-conviction forfeiture of someone who is merely accused of a  
3 crime.

*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 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. A petition for forfeiture shall not be filed  
5 based solely on allegations that a person has committed a crime and such forfeiture may not be  
6 effectuated until a conviction of said person is obtained in a court of proper jurisdiction.

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

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

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

- 16 (i) A description of the property seized;
- 17 (ii) A statement as to who is 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, if

21 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 in  
25 the subject property, as well as the identity of all persons or corporations known to the affiant who  
26 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 vesting  
28 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 of  
31 a perfected security interest or lien or of a possessory or statutory lien in the same class, if known.  
32 Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of  
33 the petition for forfeiture shall be served upon any person who was in possession or alleged to be  
34 in possession of the property at the time of seizure, where such person's identity is known. The  
35 above service shall be made pursuant to the provisions of the West Virginia Rules of Civil  
36 Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as  
37 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 thirty days from  
40 the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be  
41 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 article three,  
44 chapter fifty-nine of this code, and the publication area shall be the county wherein such property  
45 was located at the time of seizure and the county wherein the petition for forfeiture is filed.

46 (c) In addition to the requirements of subsection (b) above, the prosecuting attorney or law-

47 enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be  
48 responsible for the publication of a further notice. Such further notice that a petition for forfeiture  
49 has been filed shall be published by Class II legal advertisement in accordance with article three,  
50 chapter fifty-nine 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 the property of their right to file a claim on or before the date set forth in the notice,  
53 which date shall not be less than thirty days from the date of the first publication. The notice shall  
54 specify that any claim must clearly state the identity of the claimant and an address where legal  
55 process can be served upon that person. In addition such notice shall contain the following  
56 information:

- 57 (1) A description of the property seized;
- 58 (2) A statement as to who is responsible for the seizure;
- 59 (3) A statement of the time and place of seizure;
- 60 (4) The identity of the owner or owners of the property, if known;
- 61 (5) The identity of the person or persons in possession of the property at the time of  
62 seizure, if known;
- 63 (6) A statement that prayer for an order directing forfeiture of the seized property to the  
64 state, and vesting ownership of such property in the state shall be requested of the court.
- 65 (d) If no answer or claim is filed within thirty days of the date of service of the petition  
66 pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to  
67 subsection (b) of this section, the court shall enter an order forfeiting the seized property to the  
68 state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing  
69 upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten  
70 days prior to the date set for the hearing.
- 71 (e) At the hearing upon the claim or claims, the state shall have the burden of proving by a  
72 preponderance of the evidence that the seized property is subject to forfeiture pursuant to the

73 provisions of this chapter.

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

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

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

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

NOTE: The purpose of this bill is to prohibit pre-conviction forfeiture of someone who is merely accused of a 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.