

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 4049**

By Delegates Horst, Clark, Dean, Hillenbrand, Kimble,

Mallow, Martin, Masters, Phillips, Ridenour, and B.

Ward

[Introduced January 14, 2026; referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended; by adding a new article,  
2 designated §62-17-1, §62-17-2, §62-17-3, §62-17-4, §62-17-5, §62-17-6, §62-17-7, §62-  
3 17-8, §62-17-9, §62-17-10, §62-17-11, §62-17-12, §62-17-13, §62-17-14, §62-17-15, §62-  
4 17-16, §62-17-17, §62-17-18, §62-17-19, §62-17-20, §62-17-21, §62-17-22, §62-17-23,  
5 §62-17-24, §62-17-25, §62-17-26, §62-17-27, §62-17-28, §62-17-29, §62-17-30, §62-17-  
6 31, §62-17-32, §62-17-33, §62-17-34, §62-17-35, §62-17-36, §62-17-37, and §62-17-38,  
7 and to repeal §60A-7-701, §60A-7-702, §60A-7-703, §60A-7-704, §60A-7-705, §60A-7-  
8 705a, §60A-7-706, §60A-7-707, and §60A-7-708, relating to the creation of the Criminal  
9 Forfeiture Process Act replacing the West Virginia Contraband Forfeiture Act; providing  
10 that this article applies to the seizure and forfeiture of property used in and derived directly  
11 from the crime involving controlled substances; definitions; procedure; providing that there  
12 is no civil forfeiture and that the court with jurisdiction of criminal matter has jurisdiction of  
13 the forfeiture procedure; seizure of property, both real and personal; providing that there is  
14 no property right to contraband; hearing and appeal; return and disposition of property;  
15 restrictions on sales; preemption of local laws; and prohibiting an offer for adoption  
16 property, seized under state law, to a federal agency for the purpose of forfeiture under  
17 federal law.

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

## **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCE ACT.**

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

<b>§60A-7-701.</b>	<b>Short</b>	<b>title.</b>
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1 [Repealed.]

<b>§60A-7-702.</b>	<b>Legislative</b>	<b>findings.</b>
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1 [Repealed.]

**§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to**

forfeiture.

1 [Repealed.]

**§60A-7-704. Procedures for seizure of forfeitable property.**

1 [Repealed.]

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

1 [Repealed.]

**§60A-7-705a. Additional procedures for forfeiture.**

1 [Repealed.]

**§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.**

1 [Repealed.]

**§60A-7-707. Distribution of other forfeited property; distribution of proceeds.**

1 [Repealed.]

**§60A-7-708. Bookkeeping procedures and internal controls.**

1 [Repealed.]

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 17. CRIMINAL FORFEITURE PROCESS ACT.**

#### **§62-17-1. Short title and application.**

1 This article may be cited as the Criminal Forfeiture Process Act. It shall apply to the seizure  
2 and forfeiture of property used in and derived directly from any felony violation of the provisions of  
3 §60A-1-1 et seq. of this code.

#### **§62-17-2. Definitions.**

1 The terms defined in this section have the following meanings in this article:  
2 "Abandoned property" means personal property to which a possessor relinquishes all  
3 rights of ownership or control. Real property may not be abandoned.

4       "Actual knowledge" means direct and clear awareness of information, a fact, or a condition.

5       "Contraband" means goods that, in themselves, are unlawful to possess, including  
6       scheduled drugs without a lawful prescription.

7       "Conveyance" means a device used for transportation. It includes a motor vehicle, trailer,  
8       snowmobile, airplane, vessel, or any equipment attached to one of these devices. The term does  
9       not include property that is stolen in violation of the law.

10       "Innocent owner" means an owner, co-owner, defendant's heir, or a person who regularly  
11       uses property subject to forfeiture who does not have actual knowledge of the use of the property  
12       in a crime that authorizes the forfeiture of the property. The term does not include the defendant or  
13       a secured interest holder.

14       "Instrumentality" means property otherwise lawful to possess that is used in a crime that  
15       authorizes the forfeiture of property. It includes land, buildings, containers, conveyances,  
16       equipment, materials, products, tools, computers, computer software, telecommunications  
17       devices, firearms, ammunition and ammunition-and-firearm accessories: *Provided*, That nothing  
18       in this article shall be construed as superseding the provisions of §36-8A-5 of this code.

19       "Law-enforcement agency" means any non-federal police force, or other local, county, or  
20       state agency that has the authority under state law to engage in seizure and forfeiture.

21       "Personal property" means a movable object or intangible asset of value that is subject to  
22       ownership and is not real property or proceeds.

23       "Proceeds" means United States currency, currency of another nation, digital and  
24       cryptocurrency, securities, negotiable instruments, or other means of exchange obtained from the  
25       sale of property or contraband.

26       "Prosecuting authority" means a prosecuting attorney elected pursuant to the provisions of  
27       §7-4-1 *et seq.* of this code or an assistant prosecuting attorney appointed pursuant to the  
28       provisions of §7-7-8 of this code.

29       "Public defender" means any office of public defense or panel attorney appointed for

30 indigent defense pursuant to the provisions of §29-21-1 et seq. of this code.

31       "Real property" includes immovable property, real estate and realty, including land and  
32       anything growing on, attached to, or erected on land, including a building.

33       "Secured interest holder" means a person who is a secured creditor, mortgagee,  
34       lienholder, or other person who has a valid claim, security interest, mortgage, lien, leasehold, or  
35       other interest in the property subject to forfeiture. The term does not include the defendant or an  
36       innocent owner.

37       "State" means the State of West Virginia and any of its political subdivisions.

### **§62-17-3. Purpose; statutory interpretation.**

1       (a) The purpose of this article is to:

2       (1) Deter crime by reducing its economic incentives;

3       (2) Confiscate property used in the violation of the law;

4       (3) Disgorge the fruit of illegal conduct; and

5       (4) Protect the due process rights of property owners.

6       (b) Forfeiture is disfavored as a legal remedy, and this act is to be liberally construed in  
7       favor of the person or persons whose property rights are to be affected and strictly construed  
8       against forfeiture. A forfeiture action brought pursuant to this article is punitive in nature and  
9       subject to the Excessive Fines Clause of article III, section 5 of the West Virginia Constitution and  
10       the Eighth Amendment to the United States Constitution.

### **§62-17-4. Jurisdiction.**

1       (a) There shall be no civil forfeiture under this article.

2       (b) The circuit court that has jurisdiction in the related criminal case shall have jurisdiction  
3       over the forfeiture proceeding.

4       (c) The forfeiture proceeding shall be part of the prosecution of the related felony crime. It  
5       shall follow a finding of the defendant's guilt or be conducted at the circuit court's discretion. It shall  
6       be conducted by the circuit court without a jury.

7       (d) All forfeiture-related motions shall be filed in the circuit court that has jurisdiction of the  
8       criminal case at the time of filing.

9       (e) If an initial court binds over or transfers the criminal case to another court, the initial  
10      court shall transfer the forfeiture-related motions along with the criminal case to the other court. At  
11      its discretion, the initial court may postpone a forfeiture-related hearing and bind over a forfeiture-  
12      related motion to another court in the interests of justice and efficient use of judicial resources.

#### **§62-17-5. Seizure of proceeds and personal property with process.**

1       At the request of the state, an appropriate court may issue an ex parte order or warrant to  
2       search, attach, seize, or secure proceeds and personal property for which forfeiture is sought and  
3       to provide for their custody. Application, issuance, execution, and return are subject to state law  
4       and court rules.

#### **§62-17-6. Seizure of proceeds without process.**

1       Proceeds may be seized without process if the state has probable cause to believe the  
2       proceeds were used in the purchase of a controlled or other illegal substance, or derived directly  
3       from another illegal activity and:

4           (1) The seizure is incident to a lawful arrest;

5           (2) The delay caused by the necessity of obtaining process would reasonably result in the  
6       removal or destruction of the proceeds;

7           (3) The proceeds are the subject of a prior and valid judgment of forfeiture in favor of the  
8       state; or

9           (4) The proceeds are seized or impounded as evidence in a criminal prosecution or  
10      investigation independent of forfeiture.

#### **§62-17-7. Seizure of personal property without process.**

1       Personal property subject to forfeiture may be seized without process if:

2           (1) The seizure is incident to a lawful arrest;

3           (2) The state has probable cause to believe the property was used or was attempted to be

4       used in a manner that makes the property forfeitable under this article;

5           (3) The state has probable cause to believe the delay caused by the necessity of obtaining  
6       process would reasonably result in the removal or destruction of the property that is forfeitable  
7       under this article;

8           (4) The property is the subject of a prior and valid judgment of forfeiture in favor of the state;

9       or

10          (5) The property is independently seized or impounded as evidence in a criminal  
11       prosecution or investigation independent of forfeiture.

**§62-17-8. Seizure or restraint of real property with process.**

1           (a) Real property may not be seized or restrained without a circuit court order.

2           (b) A circuit court may not issue an order for the seizure or restraint of real property unless  
3       the defendant and any other person with a known interest in the property receive proper notice and  
4       are given an opportunity for a contested hearing to determine the existence of probable cause for  
5       the seizure or restraint.

6           (c) In cases where personal service of the notice cannot be obtained after due diligence  
7       upon any person with a known interest in the property, a copy of the notice of the order and  
8       opportunity for a hearing shall be mailed to the person by certified mail, addressee only, return  
9       receipt requested, to the last known address of the person. If the person signs the certificate,  
10       service is complete, and the certificate shall be filed as proof of the service with the clerk of the  
11       circuit court. If service cannot be obtained by personal service or by certified mail, notice shall be  
12       by publication as a Class II legal advertisement in compliance with §59-3-1 et seq. of this code.

13          (d) Nothing in this section prohibits the state from seeking a lis pendens or restraining order  
14       to hinder the sale or destruction of real property. However, if the state obtains a lis pendens or  
15       restraining order, the state shall notify the defendant and any other person with a known interest in  
16       the property within 30 days.

17          (e) Application, filing, issuance, execution, and return of any order are subject to state law

18 and court rules.

**§62-17-9. Stolen property and contraband.**

1 (a) No property right exists in stolen property or contraband. Such property is subject to  
2 seizure.

3 (b) Stolen property shall be returned to the lawful owner, and contraband shall be disposed  
4 of according to state law.

5 (c) Notwithstanding subsection (b) of this section, the circuit court may impose reasonable  
6 conditions on the release of stolen property and the disposal of contraband, including the use of  
7 photography, to preserve the property for later use as evidence or forensic testing in proceedings  
8 under this article or the related criminal prosecution.

**§62-17-10. Storing seized property and depositing seized currency.**

1 (a) The seizing agency is responsible for providing adequate storage, security,  
2 preservation, and maintenance for seized property unless another agency agrees to accept the  
3 responsibility. The commander of a multijurisdictional task force may assign the responsibility to  
4 one agency.

5 (b) The seizing agency shall store seized equipment and conveyances in an appropriate  
6 place for preservation and maintenance.

7 (c) The seizing agency shall deposit seized currency in an interest-bearing account  
8 pending the exhaustion of appeals or receiving an order from the circuit court to disburse the  
9 seized currency.

10 (d) Notwithstanding subsection (c) of this section, the seizing agency may take reasonable  
11 actions, including the use of photography, to preserve currency and other property for later use as  
12 evidence or forensic testing in proceedings under this article or the related criminal prosecution.

**§62-17-11. Receipt.**

1 (a) When property is seized, the law-enforcement officer shall give an itemized receipt to  
2 the person possessing the property at the time of the seizure.

3       (b) The receipt shall be numbered for future reference and shall constitute notice of  
4 seizure.

5       (c) If the person possessing the property is not present, the seizing officer shall leave a  
6 receipt in the place where the property was found, if possible.

**§62-17-12. Property exempt from seizure and forfeiture.**

1       (a) The prosecuting authority may establish minimum dollar amounts for seizure of U.S.  
2 currency and motor vehicles in the prosecuting authority's jurisdiction. The prosecuting authority  
3 shall set the minimums in the interests of justice and efficient use of government resources. The  
4 minimums shall be based on the prosecuting authority's exclusive determination and may reflect:

5       (1) The deterrence that minimum-dollar seizures have on crime;

6       (2) The criminal offenses that include the seizure of property; and

7       (3) The costs to seize and forfeit property.

8       (b) The prosecuting authority may post on its website the publications that law-  
9 enforcement agencies may use to establish the value of a motor vehicle in the prosecuting  
10 authority's jurisdiction. The publications may include the Kelley Blue Book and the JD  
11 Power/NADA Official Used Car Guide.

**§62-17-13. Waivers permitted and prohibited.**

1       (a) A person from whom property is seized may relinquish the person's rights, interests,  
2 and title in the seized property by knowingly and voluntarily executing a waiver that is agreed to by  
3 the prosecuting authority.

4       (b) A waiver may be part of any agreement with the prosecuting authority. However, the  
5 prosecuting authority may not condition the initial engagement in plea negotiations upon the  
6 waiver of the person's rights, interests, and title in the seized property.

7       (c) A waiver under subsection (a) and (b) of this section is subject to a claim by a secured  
8 interest holder, innocent owner, or other person entitled to notice under §62-17-16 of this code.  
9 Such a claimant may consent to certain issues and request the circuit court determine remaining

10 issues.

11       (d) A law-enforcement officer, other than the prosecuting authority, may not request,  
12 induce, or require a person to relinquish, for purpose of forfeiture, the person's rights, interests and  
13 title in property. Such a waiver is void and inadmissible in any court for any purpose.

**§62-17-14. Title.**

1       (a) Title to the property subject to forfeiture vests with the state when the circuit court  
2 issues a forfeiture judgment and relates back to the time the state seizes or restrains the property.  
3       (b) Title to substitute assets vests when the circuit court issues an order forfeiting  
4 substitute assets.

**§62-17-15. Counsel and pro se representation.**

1       (a) If a defendant in the related criminal matter is represented by a public defender or  
2 counsel appointed by the circuit court, the public defender or appointed counsel shall represent  
3 the defendant in the related forfeiture proceeding.  
4       (b) If the defendant or an innocent owner claimant engages in pro se representation in the  
5 forfeiture proceeding, the circuit court may exercise its discretion applying the rules of pleading,  
6 procedure, or evidence.

**§62-17-16. Notice to other known owners.**

1       (a) The prosecuting authority or designee shall perform a reasonable search of vehicle  
2 registrations, property records, and other public records to identify any person, other than the  
3 defendant, known to have an interest in the property subject to forfeiture.  
4       (b) The prosecuting authority or designee shall give notice to any person identified to have  
5 an interest in the property subject to forfeiture, who is not charged or indicted. The notice shall  
6 include the seizure receipt number in §62-17-11 of this code. Notice shall be made in accordance  
7 with the provisions of §62-17-18 of this code.  
8       (c) The following language must appear substantially and conspicuously in the notice:

9        "WARNING: You may lose the right to be heard in court if you do not file promptly a simple  
10      statement of interest or ownership. You do not have to pay a filing fee to file your notice".

11        (d) If notice is not served by personal service, certified mail, or publication and all extension  
12      periods have expired, the circuit court shall order the return of the property within five days to a  
13      claimant who has a valid interest in the property and is entitled to notice by subsection (a) of this  
14      section.

15        (e) Upon the circuit court's issuing an order to return the property, no further claim to the  
16      property is valid. Contraband shall not be returned.

17        (f) Notwithstanding subsection (d) of this section, the circuit court may impose reasonable  
18      conditions on the return of the property, including the use of photography, to preserve the property  
19      for later use as evidence or forensic testing in proceedings under this article or the related criminal  
20      prosecution.

#### **§62-17-17. Prompt post-seizure hearing.**

1        (a) Following seizure, a defendant or any other person with an interest in the property has a  
2      right to a prompt post-seizure hearing by summary petition to the circuit court with general  
3      jurisdiction over criminal offenses where the seizure occurred.

4        (b) Notwithstanding the provisions of §62-1A-6 of this code, a person with an interest in the  
5      property may petition the circuit court for a post-seizure hearing no later than 14 days after the  
6      seizure;

7        (c) At its discretion, the circuit court may hold a prompt post-seizure hearing:  
8        (1) As a separate hearing; or  
9        (2) At the same time as a probable cause hearing, a post-arrainment hearing, a  
10      suppression hearing, an omnibus hearing, or other pretrial hearing.

11        (d) A party, by agreement or for good cause, may move for one extension of the post-  
12      seizure hearing date. Any motion may be supported by affidavits or other submissions.

13       (e) The circuit court shall order the return of property within five days if it finds by a  
14       preponderance of the evidence that:

15       (1) The seizure was unconstitutional;

16       (2) A criminal charge has not been filed and no time remains to file a charge;

17       (3) The petitioner is a valid innocent owner or secured interest holder; or

18       (4) The government's continued possession of a motor vehicle will cause substantial

19       hardship to an immediate family member of the defendant, including, but not limited to, preventing  
20       the family member from working or inconveniencing the transportation of the family member's  
21       child or children.

22       (f) Upon the circuit court's issuing an order to return the property, no further claim to the  
23       property is valid. Contraband shall not be returned.

24       (g) Notwithstanding subsection (e) of this section, the circuit court may impose reasonable  
25       conditions on the return of the property, including the use of photography, to preserve the property  
26       for later use as evidence or forensic testing in proceedings under this article or the related criminal  
27       prosecution.

#### **§62-17-18. Notice of proposed forfeiture.**

1       (a) In a case in which the state seeks forfeiture of property the prosecuting authority shall  
2       file with the circuit court a Notice of Proposed Forfeiture.

3       (b) The notice shall be a separate document. It shall include:

4       (1) A description of the property seized;

5       (2) The time, date, and place of the seizure;

6       (3) The seizure receipt number in §62-17-11 of this code, if available; and

7       (4) A description of how the property was used in or derived from the alleged crime.

8       (c) The prosecuting authority shall allege in the notice that, after the conviction of the crime  
9       for which the defendant is charged, the forfeiture of property as a process will be initiated.

10       (d) The notice shall not be read to the jury.

11       (e) The prosecuting authority shall serve the notice:

12       (1) With the initial charging instrument;

13       (2) The earlier of 90 days after presentment to a grand jury or 180 days after an arrest; or

14       (3) At the circuit court's discretion.

15       (f) At its discretion, the circuit court may allow the prosecuting authority to amend the notice  
16       as required in the interest of justice.

17       (g) The Supreme Court of Appeals may promulgate rules to provide for proper notification  
18       of the provisions of this article.

19       (h) The circuit court shall order the return of the property to the owner within five days if the  
20       prosecuting authority does not file a charging instrument as provided by the court's rules, the  
21       period of an extension expires, or the circuit court does not grant an extension unless a charge is  
22       not filed pursuant to an agreement or waiver.

23       (i) Upon the circuit court's issuing an order to return the property, no further claim to the  
24       property is valid. Contraband shall not be returned.

25       (j) Notwithstanding subsection (h) of this section, the circuit court may impose reasonable  
26       conditions on the return of the property, including the use of photography, to preserve the property  
27       for later use as evidence in proceedings or forensic testing under this chapter or the related  
28       criminal prosecution.

#### **§62-17-19. Discovery.**

1       Discovery related to the forfeiture proceeding is subject to the rules of criminal procedure  
2       or court rules for general discovery promulgated by the Supreme Court of Appeals for criminal  
3       forfeiture proceedings.

#### **§62-17-20. Trial; conviction required; standard of proof.**

1       (a) Property may be forfeited if:

2       (1) The state secures a conviction of a crime applicable to this article pursuant to §62-17-1  
3       of this code or a felony lesser included offense thereof; and

4       (2) The state establishes by a preponderance of the evidence that the property is an  
5       instrumentality of, or proceeds derived directly from, the crime for which the state secured a  
6       conviction.

7       (b) The circuit court shall hold the forfeiture proceeding after the defendant's conviction in  
8       the criminal prosecution. At its discretion, the circuit court may hold the forfeiture proceeding as  
9       soon as practicable including concurrent with sentencing. The circuit court shall conduct the  
10      forfeiture proceeding without a jury.

11      (c) Provided that all persons entitled to notice under §62-17-16 of this code consent to the  
12      forfeiture, nothing in this article shall prohibit property from being forfeited by:

13       (1) Consent order or plea agreement approved by the circuit court;

14       (2) A diversion agreement; or

15       (3) A grant of immunity or reduced punishment, with or without the filing of a criminal  
16      charge, in exchange for testifying or assisting a law-enforcement investigation or prosecution.

17      (d) Persons entitled to notice may consent to some issues and litigate remaining issues  
18      before the circuit court without a jury.

#### **§62-17-21. Exceptions to the conviction requirement.**

1       (a) A circuit court may waive the conviction requirement in §62-17-20 of this code and  
2       grant title to the property to the state if the prosecuting authority files an ex parte motion in the  
3       circuit court in the same jurisdiction no fewer than 90 days after seizure and shows by a  
4       preponderance of the evidence that the defendant, before conviction:

5       (1) Abandoned the property;

6       (2) Absconded from the jurisdiction;

7       (3) Was deported by the U.S. government;

8       (4) Was extradited to another state or foreign jurisdiction; or

9       (5) Died.

10      (b) The death of the defendant does not preclude the defendant's heir or legatee from filing

11 a claim for the property as an innocent owner under §62-17-24 of this code.

**§62-17-22. Proportionality.**

1       (a) The defendant may motion the circuit court to determine whether the forfeiture is  
2       unconstitutionally excessive under the constitution of the state of West Virginia or the United  
3       States.

4       (b) At its discretion, the circuit court may hold a proportionality hearing:  
5           (1) As a separate hearing;  
6           (2) At the same time as a probable cause hearing, an omnibus hearing, or other pretrial  
7       hearing;

8           (3) At trial; or  
9           (4) Upon conviction.

10       (c) The defendant has the burden of establishing the forfeiture is unconstitutionally  
11       excessive by a preponderance of the evidence at a hearing conducted by the circuit court without  
12       a jury.

13       (d) At a hearing prior to conviction under subdivisions (1), (2), or (3), subsection (b) of this  
14       section, the circuit court first shall determine, by a preponderance of the evidence, if the  
15       prosecuting authority will secure a conviction. The circuit court then shall determine if the forfeiture  
16       is unconstitutionally excessive.

17       (e) At any hearing, under subsection (b) of this section, the circuit court may consider all  
18       relevant factors to determine if the forfeiture is unconstitutionally excessive including, but not  
19       limited to:

20           (1) The seriousness of the crime and its impact on the community, including the duration of  
21       the activity, use of a firearm, and harm caused by the defendant;  
22           (2) The extent to which the defendant participated in the crime;  
23           (3) The extent to which the property was integral to facilitating the crime;  
24           (4) Whether the crime was completed or attempted; and

25        (5) The sentence or fine to be imposed for committing the crime.

26        (f) In determining the value of the instrumentality subject to forfeiture, the circuit court may  
27        consider all relevant factors related to the fair market value of the property, including information in  
28        any publication advised by the prosecuting authority in §62-17-12 of this code.

29        (g) The circuit court may not consider the benefit or value of the property to the state in  
30        determining whether the forfeiture is unconstitutionally excessive.

31        (h) The circuit court shall order the return of property that is unconstitutionally excessive  
32        within five days.

33        (i) Upon the circuit court's issuing an order to return the property, no further claim of the  
34        state to the property is valid. Contraband shall not be returned.

**§62-17-23. Secured interest holder.**

1        (a) Property encumbered by a security interest shall not be forfeited up to the value of the  
2        security interest.

3        (b) The prosecuting authority summarily shall return property to a secured interest holder  
4        up to the value of the security interest. Contraband shall not be returned.

5        (c) If the property is not summarily returned, the secured interest holder may motion the  
6        circuit court at any time before it enters judgment in the criminal prosecution or grants the motion in  
7        §62-17-21 of this code. The motion shall include the seizure receipt number in §62-17-11 of this  
8        code, if available.

9        (d) The circuit court shall hear the motion within 30 days after filing or at its discretion. The  
10        hearing shall be held before the circuit court without a jury. The circuit court may consolidate the  
11        hearing on the motion with any other hearing in the case.

12        (e) The secured interest holder shall allege the validity of the security interest, mortgage,  
13        lien, leasehold, lease, rental agreement, or other agreement.

14        (f) If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a  
15        preponderance of the evidence that:

16        (1) The interest is invalid;  
17        (2) The interest resulted from a fraudulent conveyance;  
18        (3) The interest is held through a straw purchase, trust or otherwise for the benefit of the  
19        defendant; or  
20        (4) The secured interest holder consented to the use of the property in the crime for which  
21        the defendant is charged.

22        (g) If the state fails to meet in the burden established in subsection (f) of this section, the  
23        circuit court shall order the state to relinquish claims to the property, up to the value of the interest,  
24        and return the interest to the secured interest holder within five days.

25        (h) Notwithstanding subsection (g) of this section, the circuit court may impose reasonable  
26        conditions on the return of the property, including the use of photography, to preserve the property  
27        for later use as evidence in proceedings or forensic testing under this article or the related criminal  
28        prosecution.

29        (i) Upon the circuit court's issuing an order, no further claim on the property up to the value  
30        of the secured interest is valid. The forfeiture of the remaining interest may be litigated as provided  
31        by this article.

#### **§62-17-24. Innocent owner.**

1        (a) Property of an innocent owner shall not be forfeited.  
2        (b) The prosecuting authority summarily shall return property to an innocent owner.  
3        Contraband shall not be returned.  
4        (c) If the property is not summarily returned, an innocent owner claimant may motion the  
5        circuit court at any time before it enters judgment in the criminal prosecution or grants the motion in  
6        §62-17-21 of this code.  
7        (d) The circuit court shall hear the innocent owner claimant's motion within 30 days after  
8        filings or at its discretion. The hearing shall be held before the circuit court without a jury. The circuit

9     court may consolidate the hearing on the innocent owner claimant's motion with any other hearing  
10    in the case.

11       (e) The innocent owner claimant may motion the circuit court by filing a simple statement  
12    that sets forth:

13           (1) The innocent owner claimant's interest in or regular use of the property;  
14           (2) The time and circumstances of the innocent owner claimant's acquisition of the interest  
15    in the property;

16           (3) Additional facts or evidence supporting the innocent owner claimant's claim;  
17           (4) An affirmation of the validity of interest or regular use of the property;  
18           (5) The relief sought by the innocent owner claimant; and  
19           (6) The seizure receipt number in §62-17-11 of this code, if available.

20       (f) The filing fee for the innocent owner claimant's motion under this section is waived.

21       (g) If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a  
22    preponderance of the evidence the innocent owner claimant is not an innocent owner because:

23           (1) The innocent owner claimant did not regularly use the property;  
24           (2) The innocent owner claimant's interest in the property is invalid;  
25           (3) The innocent owner claimant's interest is held through a straw purchase, trust, or  
26    otherwise for the benefit of the defendant;

27           (4) The innocent owner claimant was not a bona fide purchaser without notice of any defect  
28    in title and for valuable consideration.

29           (5) The innocent owner claimant consented to the use of the property in the crime for which  
30    the defendant is charged;

31           (6) The innocent owner claimant was willfully blind to the crime for which the defendant is  
32    charged; or

33           (7) The innocent owner claimant had actual knowledge of the unlawful use and he or she  
34    did not take reasonable steps to prevent the use of the property in the crime for which the

35 defendant is charged. The innocent owner claimant is not required to take steps he or she  
36 reasonably believes would subject the innocent owner claimant to physical danger.

37 (h) If the prosecuting authority fails to meet its burden in subsection (g) of this section, the  
38 circuit court shall order the state to relinquish all claims and return the property to the innocent  
39 owner claimant within five days.

40 (i) Upon the circuit court's issuing an order, no further claim of the state on the property is  
41 valid.

42 (j) Notwithstanding subsection (h) of this section, the circuit court may impose reasonable  
43 conditions on the return of the property, including the use of photography, to preserve the property  
44 for later use as evidence in proceedings or forensic testing under this article or the related criminal  
45 prosecution.

46 (k) No information in the innocent owner claimant's statement in subsection (d) of this  
47 section shall be used as evidence in the related criminal prosecution.

48 (l) Nothing in this section prohibits the innocent owner claimant from providing information  
49 to any party or testifying in any trial as to facts known by the innocent owner claimant.

50 (m) The defendant or convicted offender may invoke the right against self-incrimination or  
51 the marital privilege during the forfeiture proceeding. The trier of fact may draw an adverse  
52 inference from the invocation of the right or privilege.

### **§62-17-25. Judgment.**

1 (a) If the prosecuting authority fails to meet its burden in the criminal prosecution or  
2 forfeiture proceeding, the circuit court shall enter judgment dismissing the forfeiture proceeding  
3 and ordering the return of property within five days, unless possession of the property is unlawful.  
4 Contraband shall not be returned.

5 (b) If the prosecuting authority meets its burden in the criminal prosecution and forfeiture  
6 proceeding, the circuit court shall enter judgment forfeiting the property.

7       (c) A circuit court may enter judgment following a hearing, pursuant to a stipulation,  
8 consent order, or plea agreement, or at its discretion.

**§62-17-26. Substitution of assets.**

1       Upon the prosecuting authority's motion following conviction or at the circuit court's  
2 discretion, the circuit court may order the forfeiture of substitute property owned solely by the  
3 defendant up to the value of property that is beyond the circuit court's jurisdiction or cannot be  
4 located through due diligence, if the state proves by a preponderance of the evidence that the  
5 defendant intentionally:

6       (1) Dissipated the property;  
7       (2) Transferred, sold, or deposited property with a third party to avoid forfeiture;  
8       (3) Diminished substantially the value of property; or  
9       (4) Commingled property with other property that cannot be divided without difficulty.

**§62-17-27. No additional remedies.**

1       The prosecuting authority may not seek personal money judgments or other remedies  
2 related to the forfeiture of property not provided for in this article.

**§62-17-28. No joint and several liability.**

1       A defendant is not jointly and severally liable for forfeiture awards owed by other  
2 defendants. When ownership is unclear, a circuit court may order each defendant to forfeit  
3 property on a pro rata basis or by another means the circuit court finds equitable.

**§62-17-29. Appeals.**

1       (a) Notwithstanding the provisions of §51-11-4 of this code, a party to a forfeiture  
2 proceeding, other than the defendant, shall have the right to appeal the circuit court's order  
3 concerning the disposition of property upon issuance of the order to the West Virginia Intermediate  
4 Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of such action.

5       (b) Notwithstanding the provisions of §51-11-4 of this code, the defendant may appeal the  
6 circuit court's decision regarding the seizure or forfeiture of property following final judgement in

7 the forfeiture proceeding to the West Virginia Intermediate Court of Appeals, created by §51-11-1  
8 et seq. of this code.

**§62-17-30. Attorney's fees.**

1 In any proceeding in which a property owner's claim prevails by recovering at least half of  
2 the value of the property or currency claimed, the circuit court may order the seizing agency or  
3 prosecuting authority at fault to pay:  
4       (1) Reasonable attorney fees and other litigation costs incurred by the claimant; and  
5       (2) Interest from the date of seizure.

**§62-17-31. Return of property; damages; costs.**

1       (a) If the circuit court orders the return of property, the law-enforcement agency that holds  
2 the property shall return the property to the owner within five days. Contraband shall not be  
3 returned.  
4       (b) The owner shall not be subject to any expenses related to towing, storage, or  
5 preservation of the property.  
6       (c) The law-enforcement agency that holds the property is responsible for any damages,  
7 storage fees, and related costs applicable to property returned under this section.  
8       (d) Notwithstanding subsection (a) of this section, the circuit court may impose reasonable  
9 conditions on the return of the property, including the use of photography, to preserve the property  
10 for later use as evidence in proceedings or forensic testing under this chapter or the related  
11 criminal prosecution.

**§62-17-32. Disposition of forfeited property and proceeds.**

1       (a) The circuit court may order contraband to be sold or destroyed according to state law  
2 when it is no longer needed as evidence.  
3       (b) The circuit court may order property to be sold when it is no longer needed as evidence.  
4       (c) If the circuit court grants forfeiture, it may order the sale of forfeited personal and real  
5 property.

6        (d) After all forfeited property is reduced to proceeds, the circuit court may order, upon  
7        conclusion or exhaustion of all direct appeals or at its discretion, the distribution of forfeited  
8        proceeds to:

9            (1) Pay restitution to the victim of the crime;

10            (2) Satisfy secured interest holders;

11            (3) Pay reasonable costs for the towing, storage, maintenance, repairs, advertising, and  
12        sale, and other operating costs related to the forfeited property;

13            (4) Reimburse the seizing law-enforcement agency for non-personnel operating costs,  
14        including controlled-drug buy money and confidential informants, related to the investigation of the  
15        crime; and

16            (5) Reimburse the prosecuting authority, public defender, or court-appointed attorney for  
17        non-personnel court costs, including filing fees, subpoenas, court reporters, and transcripts.

18        (e) After disbursements under subsections (d) of this section, the circuit court may order  
19        the remaining funds be disbursed to:

20            (1) The state's general revenue fund;

21            (2) The Department of Homeland Security, Division of Administrative Services, Justice and  
22        Community Services Section to supplement existing statewide grants to law-enforcement  
23        agencies for the purchases of equipment;

24            (3) The state's K-12 education fund;

25            (4) The prosecuting authority for uses other than reimbursement of salaries, benefits, and  
26        overtime pay of personnel associated with the criminal prosecution of the case; or

27            (5) To Public Defender Services to be disbursed to the appropriate public defender  
28        corporation for uses other than reimbursement of salaries, benefits, and overtime pay of personnel  
29        associated with the criminal defense of the case.

**§62-17-33. Sale restrictions.**

2        No law-enforcement agency may sell forfeited property directly or indirectly to an  
3        employee of the law-enforcement agency or to a person related to an employee within the third  
4        degree of consanguinity.

**§62-17-34. Preemption.**

1        This article preempts laws by municipal, county, and other political subdivisions in the state  
2        that regulate civil and criminal forfeiture.

**§62-17-35. Limitation on federal adoption.**

1        (a) A state or local law-enforcement agency shall not offer for adoption property, seized  
2        solely under state law, to a federal agency for the purpose of forfeiture under 18 U.S. Code  
3        Chapter 46, or other federal law unless the seized property includes U.S. currency that exceeds  
4        \$20,000.

5        (b) The limitation in subsection (a) of this section applies only to a seizure by state and or  
6        local law-enforcement agencies pursuant to their own authority under state law and without  
7        involvement of the federal government.

8        (c) Nothing in subsection (a) of this section shall be construed to limit state and local  
9        agencies from participating in joint task forces with the federal government if otherwise authorized  
10      by law.

11      (d) State and local law-enforcement agencies are prohibited from accepting payment of  
12      any kind or distribution of forfeiture proceeds from the federal government if the state or local law-  
13      enforcement agency violates subsection (a) of this section. All such proceeds shall be directed to  
14      the state's general revenue fund.

**§62-17-36. Limitation on state/federal joint task forces.**

1        (a) A joint task force of a law enforcement agency and a federal agency shall transfer  
2        seized property to the prosecuting authority for forfeiture under this article except as allowed for in  
3        subsection (b) of this section.

4        (b) The joint task force may transfer seized property to the U.S. Department of Justice for

5 forfeiture under federal law if the seized property includes U.S. currency that exceeds \$20,000.

6 (c) A law-enforcement agency is prohibited from accepting payment or distribution of any  
7 kind from the federal government if the federal government requires seized property that includes  
8 U.S. currency less than \$20,000 as established in subsection (b) of this section be transferred to  
9 the federal government for forfeiture under federal law.

10 (d) Nothing in subsections (a) or (b) of this section shall be construed to prohibit the federal  
11 government, acting alone, from seizing property and seeking forfeiture under federal law.

### **§62-17-37. Guidance.**

1 (a) A prosecuting authority shall consult with the responsible U.S. Attorney to minimize  
2 circumvention of state law under this article through the use of the federal government's equitable  
3 sharing program and other programs. This shall include establishing guidelines for joint task  
4 forces and multijurisdictional collaboration in the prosecuting authority's jurisdiction.

5 (b) The guidelines established under subsection (a) of this section shall be consistent with  
6 federal safeguards to ensure that activities are conducted in compliance with the U.S. Department  
7 of Justice policies.

8 (c) The Department of Homeland Security, Division of Administrative Services, Justice and  
9 Community Services Section, from time to time, may offer training on seizure and forfeiture under  
10 this article.

### **§62-17-38. Bookkeeping procedures and internal controls.**

1 (a) Any law-enforcement agency or office in this state, including, but not limited to, any  
2 person identified in §60A-5-501 of this code, excluding a prosecuting authority, who seizes or  
3 receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture in  
4 accordance with this article, or other property under the provisions of this article shall account for  
5 the same in the following manner:

6 (1) Maintain any items of property subject to forfeiture in accordance with this article,  
7 including, but not limited to, moneys, securities, negotiable instruments, or other items and

8     property identified in the same manner as the agency's appropriated funds. Bank accounts,  
9     checkbooks, purchase cards, and other financial instruments or documents must be maintained in  
10    the same manner as appropriated funds;

11       (2) Establish a segregated account or accounting codes to track both revenues and  
12    expenditures for each respective program. No other funds may be commingled in these accounts  
13    or with these accounting codes;

14       (3) Process all expenditures and payments in the same manner as appropriated funds,  
15    including procurement and payment transactions;

16       (4) In accordance with the provisions of this article, in the case of seized moneys,  
17    securities, or other negotiable instruments, place the assets in an interest-bearing depository  
18    insured by an agency of the federal government. Deposit all interest earned on equitable sharing  
19    funds into the respective account or accounting code. All interest is subject to the same use  
20    restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in  
21    accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable  
22    sharing account;

23       (5) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory  
24    control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution  
25    of relevant policies to all appropriate personnel;

26       (6) Maintain records of all revenue and expenditures posted to the account or accounting  
27    code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any  
28    other documents used or created during the procurement and disposition process;

29       (7) Report all transactions using cash-based accounting methods;

30       (8) Dispose of items purchased with shared funds in accordance with the agency's  
31    disposal policies. To the extent practicable and, if consistent with the agency's procurement and  
32    disposal policies, deposit proceeds from the sale of such property into the agency's sharing  
33    account or accounting code. If an item has minimal or no value, an agency may donate the item to

34       a recipient of its choice if permitted under the agency's disposal policies;

35           (9) Ensure the agency head, or designee, authorizes all expenditures from the sharing

36       accounts; and

37           (10) Obtain approval for expenditures from the governing body, such as the county

38       commission, town council, or city manager's office, when required under normal established

39       jurisdiction accounting procedures.

40           (b) Any law-enforcement agency or office in this state, excluding prosecuting attorneys,

41       receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or

42       other property under the provisions of this article shall report the same to the State Auditor. For

43       each seizure only one report shall be filed by the agency that made the seizure. All agencies

44       receiving forfeited property shall report disposition and expenditures of any proceeds of that

45       property. Reports shall be filed in the following manner:

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

47       multijurisdictional task force, the name of the lead agency;

48           (2) The time and date the property was seized;

49           (3) The type of property seized, whether real or personal;

50           (4) The actual or estimated value of the property seized;

51           (5) The property's final disposition, including the amount received if the property was sold,

52       or if the property was put to use on behalf of a law-enforcement agency or office, the identity of the

53       agency or office that took possession and use of the property;

54           (6) Whether forfeiture was made by settlement agreement;

55           (7) Whether any procedure for forfeiture was initiated in accordance with the provisions of

56       this article, or other identifying information sufficient to permit acquisition of any available public

57       records related to the forfeiture procedure and disposition of the forfeited property;

58           (8) The disposition of any action under the provisions of this article;

59           (9) If an arrest was made;

60        (10) Whether any charges brought against a defendant in conjunction with a seizure  
61        pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing  
62        criminal case;

63        (11) When an administrative forfeiture procedure has been initiated pursuant to the  
64        provisions of this article, provide designated information contained in the administrative forfeiture  
65        notice;

66        (12) The total value of seized and forfeited or property held by the agency at the end of the  
67        reporting period; and

68        (13) A copy of the United States Department of Justice's Equitable Sharing Agreement and  
69        Certification - Annual Certification Report shall be provided to the State Auditor no later than  
70        October 31 each calendar year.

71        (c) The State Auditor shall establish and maintain a searchable public website that  
72        includes the aggregate information submitted by any law-enforcement agency or office required  
73        under subsection (b) of this section: *Provided*, That the State Auditor's website must not provide  
74        individual case details on its public website.

75        (d) The State Auditor, before December 31 of each year, shall submit to the Speaker of the  
76        House of Delegates, the President of the Senate, the Attorney General, and the Governor a written  
77        report summarizing activity in the state for the preceding fiscal year on the type, approximate  
78        value, and disposition of the property forfeited and/or seized and the amount of any proceeds  
79        received or expended at the state and local levels. The report shall provide a categorized  
80        accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of  
81        forfeiture proceeds shall be disaggregated by agency.

82        (e) In the course of preparing its annual report, the State Auditor may, in its discretion or for  
83        good cause shown, perform a financial audit of records related to inventory of seized property and  
84        expenditures of forfeiture proceeds by any law-enforcement agency or office in this state. This  
85        audit shall be conducted under the Generally Accepted Government Auditing Standards

86 (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than  
87 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the  
88 Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the  
89 Governor.

90 (f) If, in the course of a calendar year, any law-enforcement agency or office that secures  
91 seized or forfeited assets valued in excess of 50% of the prior year's total seized or forfeited  
92 assets, or expends more than 50% of the prior year's total expenditures of forfeited assets, shall so  
93 advise the State Auditor, who shall perform a financial audit under GAGAS of records related to  
94 inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit  
95 report shall be submitted to the State Auditor no later than 90 days after the end of the fiscal year  
96 and shall be made public.

97 (g) The State Auditor may recoup its costs under this section by charging a fee.

98 (h) The State Auditor may include in its aggregate report required by subsection (d) of this  
99 section recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and  
100 expenditures. The aggregate report shall be made available on the State Auditor's website.

101 (i) If a law-enforcement agency fails to timely file the report identified in subsection (b) of  
102 this section the State Auditor shall immediately notify the law-enforcement agency that the report  
103 has not been received.

104 (j) The State Auditor may propose rules for legislative approval in accordance with the  
105 provisions of §29A-3-1 et seq. of this code to implement this section.

106 (k) The data and reports compiled and prepared under this section are public information  
107 under the West Virginia Freedom of Information Act, §29B-1-1 et seq. of this code.

108 (l) This section is effective for the reporting period starting January 1, 2027.

109 (m) Nothing provided in this section would prevent a court of competent jurisdiction from  
110 sealing records otherwise made available under the provisions of this section.

NOTE: The purpose of this bill is to create the Criminal Forfeiture Process Act.

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