

H. B. 2555

(By Delegates Cowles, Overington, Folk, Faircloth and McGeehan)

[Introduced February 2, 2015; referred to the

Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. FORFEITURE REPORTING ACT.

§12-5B-1. Purpose.

This act provides a procedure to provide legislators with information necessary for basic oversight of law-enforcement agencies who obtain private property under state and federal forfeiture laws. Properties which may be seized and sold include, but are not limited to, money, securities,

1 negotiable instruments, vehicles and equipment. Proceeds from sale of forfeited property are used
2 to fund agency activities. Reporting is required of property seized and forfeited under, but not limited
3 to, provisions of article two, chapter twenty; article twenty-two-b, chapter twenty-nine; article seven,
4 chapter sixty-a; and article eight-c and article thirteen, chapter sixty-one of this code.

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

6 “Law-enforcement agency” means any police force, multijurisdictional task force, fire
7 department, or other local, county or state agency that has authority under state law or operates in
8 cooperation with a federal agency under federal law to engage in seizure and forfeiture.

9 **§12-5B-3. Reporting requirement.**

10 (a) On an annual basis, each law-enforcement agency shall report the following information
11 about each individual seizure and forfeiture completed by the agency under both state and federal
12 forfeiture laws:

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

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

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

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

17 (D) Outcome of related criminal action, such as whether: (i) No charges were brought; (ii)
18 a plea bargain was reached; (iii) a conviction was obtained; or (iv) an acquittal was issued;

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

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

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

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

- 1 (I) Market value of the property seized;
- 2 (J) Gross amount received from the forfeiture;
- 3 (K) Total administrative and other expenses deducted as part of the forfeiture process;
- 4 (L) Net amount received from the forfeiture;
- 5 (M) Disposition of property following seizure, such as whether the property was:
 - 6 (i) Returned to the owner;
 - 7 (ii) Destroyed;
 - 8 (iii) Sold after forfeiture; or
 - 9 (iv) Retained after forfeiture;
- 10 (N) Date of the aforementioned disposition of property; and
- 11 (O) Whether the forfeiture resulted from an adoptive seizure. An adoptive seizure occurs
12 when one hundred percent of the preseizure activity and related investigations are performed by the
13 state or local seizing agency before a request is made to the federal government for adoption. There
14 must be a state violation and a federal basis for forfeiture in order for the seizure to be an adoptive
15 seizure. A seizure resulting from a joint investigation or task force case is not an adoptive seizure.
- 16 (2) Data on expenditures of forfeiture funds by law- enforcement agencies, including the
17 following:
 - 18 (A) Crime, gang and substance-abuse programs;
 - 19 (B) Witness protection and victim reparations;
 - 20 (C) Informant fees and buy money;
 - 21 (D) Regular-time salaries, overtime pay and employee benefits of prosecutors;
 - 22 (E) Regular-time salaries, overtime pay and employee benefits of law-enforcement agency

1 personnel other than prosecutors;

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

4 (G) Travel, meals and entertainment;

5 (H) Training and conferences;

6 (I) Other operating expenses including supplies;

7 (J) Vehicles purchased;

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

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

10 (M) Other uses of forfeiture proceeds.

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

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

18 **§12-5B-4. Standard form, data entry and aggregate report.**

19 (a) The State Auditor shall develop a standard form, process and deadlines for electronic data
20 entry for annual submission of forfeiture data by law-enforcement agencies. The State Auditor shall
21 compile the submissions and issue an aggregate report of all forfeitures in the state.

22 (b) By the first day of April of each year, the State Auditor shall make available on its

1 website the reports submitted by law- enforcement agencies and its aggregate report. It shall
2 distribute printed copies of its aggregate report to legislators, other government officials and the
3 pubic upon request.

4 **§12-5B-5. Recommendations.**

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

9 **§12-5B-6. Penalty for failure to report.**

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

13 **§12-5B-7. Use of forfeiture proceeds to pay reporting costs.**

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

18 **§12-5B-8. Public disclosure.**

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

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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.

This article is new; therefore, it has been completely underscored.