

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**House Bill 4717**

BY DELEGATES SHOTT, FLEISCHAUER AND WILSON

[Introduced February 06, 2020; Referred to the  
Committee on the Judiciary.]



1 A BILL to amend and reenact §60A-7-708 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto a new section, designated §60A-7-708, all relating  
3 to bookkeeping procedures and internal controls for seized or forfeited property under the  
4 West Virginia Contraband Forfeiture Act; providing for record keeping and accounting  
5 procedures; providing for a report to the State Auditor from law enforcement agencies;  
6 requiring the State Auditor establish a public website for reporting information; providing  
7 the State Auditor prepare and disseminate a yearly report; establishing that the State  
8 Auditor may perform a financial audit; requiring the State Auditor to conduct an audit when  
9 seizure of assets or expenditure of funds from seized assets exceeds a designated  
10 amount; permitting the State Auditor to charge a fee; requiring the State Auditor to notify  
11 a law enforcement agency for failure to report; providing the State Auditor may promulgate  
12 rules; establishing that reported information is subject to the W.Va. Freedom of Information  
13 Act; establishing an effective date; and providing that a court may seal records.

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

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

**§60A-7-708. BOOKKEEPING PROCEDURES AND INTERNAL CONTROLS.**

1 (a) Any law-enforcement agency or office in this State, including, but not limited to, an  
2 “appropriate person” as identified in §60A-7-703(b), who seizes or receives forfeited moneys,  
3 securities, negotiable instruments, items subject to forfeiture in accordance with §60A-7-703(a),  
4 or other property under the provisions of this article shall account for the same in the following  
5 manner:

6 (1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d),  
7 including but not limited to moneys, securities, negotiable instruments or other items and property  
8 identified in the same manner as the agency’s appropriated funds. Bank accounts, checkbooks,  
9 purchase cards, and other financial instruments or documents must be maintained in the same  
10 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 §60A-7-704(d)(4), in the case of seized moneys, securities, or  
17 other negotiable instruments, place the assets in an interest-bearing depository insured by an  
18 agency of the federal government. Deposit all interest earned on equitable sharing funds into the  
19 respective account or accounting code. All interest is subject to the same use restrictions as  
20 equitable sharing funds. Losses to funds maintained in investment accounts in accordance with  
21 the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;

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

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

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

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

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

36           (10) Obtain approval for expenditures from the governing body, such as the county  
37 commission, town council or city manager's office, when required under normal established  
38 jurisdiction accounting procedures.

39           (b) Any law-enforcement agency or office in this State receiving forfeited moneys,  
40 securities, negotiable instruments, real property, personal property, or other property under the  
41 provisions of this article shall report the same to the State Auditor in the following manner:

42           (1) Name of the law-enforcement agency or office that seized the property, or if seized  
43 by a multijurisdictional task force, the name of the lead agency;

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

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

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

47           (5) The property's final disposition, including the amount received if the property was  
48 sold, or if the property was put to use on behalf of a law-enforcement agency or office, the identity  
49 of the agency or office that took possession and use of the property.

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

51           (7) Whether any procedure for forfeiture was initiated in accordance with §60A-7-705, or  
52 other identifying information sufficient to permit acquisition of any available public records related  
53 to the forfeiture procedure and disposition of the forfeited property;

54           (8) The disposition of any action under §60A-7-705 (Procedures for forfeiture);

55           (9) If an arrest was made;

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

59           (11) When an administrative forfeiture procedure has been initiated pursuant to §60A-7-  
60 705a, provide designated information contained in the administrative forfeiture notice;

61 (12) The total value of seized and forfeited or property held by the agency at the end of  
62 the reporting period.

63 (13) A copy of the United States Department of Justice Equitable Sharing Agreement and  
64 Certification - Annual Certification Report shall be provided to the State Auditor no later than thirty  
65 days after formal submission.

66 (c) The State Auditor shall establish and maintain a searchable public website that  
67 includes the information submitted by any law-enforcement agency or office required under  
68 subsection (b).

69 (d) The State Auditor, 150 days after the close of the fiscal year, shall submit to the  
70 Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the  
71 Governor a written report summarizing activity in the state, for the preceding fiscal year on the  
72 type, approximate value, and disposition of the property forfeited and/or seized and the amount  
73 of any proceeds received or expended at the state and local levels. The report shall provide a  
74 categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and  
75 expenditures of forfeiture proceeds shall be disaggregated by agency.

76 (e) In the course of preparing its annual report, the State Auditor may, in its discretion or  
77 for good cause shown, perform a financial audit of records related to inventory of seized property  
78 and expenditures of forfeiture proceeds by any law-enforcement agency or office in this State.  
79 This audit shall be conducted under the generally accepted government auditing standards  
80 (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later  
81 than 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report  
82 to the Speaker of the House of Delegates, the President of the Senate, the Attorney General and  
83 the Governor.

84 (f) If, in the course of a fiscal year, any law enforcement agency or office that secures  
85 seized or forfeited assets valued in excess of \$25,000, or expends more than \$25,000 of forfeited  
86 assets shall so advise the State Auditor, who shall perform a financial audit under the generally

87 accepted government auditing standards (GAGAS) of records related to inventory of seized  
88 property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted  
89 to the State Auditor no later than 90 days after the end of the fiscal year and shall be made public.

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

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

94 (i) If a law-enforcement agency fails to timely file the report identified in subsection (b) the  
95 State Auditor shall immediately notify the law enforcement agency that the report has not been  
96 received.

97 (j) The State Auditor may propose rules for legislative approval in accordance with §29A-  
98 3-1 et seq. of this code to implement this section.

99 (k) The data and reports compiled and prepared under this section are public information  
100 under the West Virginia Freedom of Information Act, chapter 29B of this code.

101 (l) This section is effective for the reporting period starting January 1, 2021.

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

NOTE: The purpose of this bill is to establish bookkeeping procedures and internal controls of forfeited properties under the West Virginia Contraband Forfeiture 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.