

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2563

BY DELEGATE WILSON

[Introduced January 21, 2019; 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 civil asset forfeiture; requiring that the state prove that the owner of seized
3 property has been convicted of a crime and that the seized property was substantially
4 related to said crime before the state can perfect title to the seized property; and requiring
5 that the state return seized property to its owner if the state cannot meet its evidentiary
6 burden.

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.

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

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

10 (4) A petition for forfeiture of the seized property shall be filed within 90 days after the
11 seizure of the property in question. The petition shall be verified by oath or affirmation of a law-
12 enforcement officer representing the law-enforcement agency responsible for the seizure or the
13 prosecuting attorney and shall contain the following:

- 14 (i) A description of the property seized;
- 15 (ii) A statement as to who is responsible for the seizure;
- 16 (iii) A statement of the time and place of seizure;
- 17 (iv) The identity of the owner or owners of the property, if known;

18 (v) The identity of the person or persons in possession of the property at the time seized,
19 if known;

20 (vi) A statement of facts upon which probable cause for belief that the seized property is
21 subject to forfeiture pursuant to the provisions of this article is based;

22 (vii) The identity of all persons or corporations having a perfected security interest or lien
23 in the subject property, as well as the identity of all persons or corporations known to the affiant
24 who may be holding a possessory or statutory lien against such property;

25 (viii) A prayer for an order directing forfeiture of the seized property to the state, and
26 vesting ownership of such property in the state.

27 (b) At the time of filing or as soon as practicable thereafter, a copy of the petition for
28 forfeiture shall be served upon the owner or owners of the seized property, as well as all holders
29 of a perfected security interest or lien or of a possessory or statutory lien in the same class, if
30 known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a
31 copy of the petition for forfeiture shall be served upon any person who was in possession or
32 alleged to be in possession of the property at the time of seizure, where such person's identity is
33 known. The above service shall be made pursuant to the provisions of the West Virginia Rules of
34 Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially
35 as follows:

36 "To any claimant to the within described property: You have the right to file an answer to
37 this petition setting forth your title in, and right to possession of, the property within 30 days from
38 the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will
39 be entered, and such order is not subject to appeal."

40 If no owner or possessors, lienholders or holders of a security interest be found, then such
41 service may be by Class II legal publication in accordance with the provisions of §59-3-1 *et seq.*
42 of this code, and the publication area shall be the county wherein such property was located at
43 the time of seizure and the county wherein the petition for forfeiture is filed.

44 (c) In addition to the requirements of §60A-7-705(b) of this code, the prosecuting attorney
45 or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall
46 be responsible for the publication of a further notice. Such further notice that a petition for forfeiture
47 has been filed shall be published by Class II legal advertisement in accordance with §59-3-1 *et*
48 *seq.* of this code. The publication area shall be the county wherein the property was seized and
49 the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the
50 property of their right to file a claim on or before the date set forth in the notice, which date shall
51 not be less than 30 days from the date of the first publication. The notice shall specify that any
52 claim must clearly state the identity of the claimant and an address where legal process can be
53 served upon that person. In addition such notice shall contain the following information:

- 54 (1) A description of the property seized;
- 55 (2) A statement as to who is responsible for the seizure;
- 56 (3) A statement of the time and place of seizure;
- 57 (4) The identity of the owner or owners of the property, if known;
- 58 (5) The identity of the person or persons in possession of the property at the time of
59 seizure, if known;
- 60 (6) A statement that prayer for an order directing forfeiture of the seized property to the
61 state, and vesting ownership of such property in the state shall be requested of the court.

62 ~~(d) If no answer or claim is filed within thirty days of the date of service of the petition~~
63 ~~pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to~~
64 ~~subsection (b) of this section, the court shall enter an order forfeiting the seized property to the~~
65 ~~state. If any claim to the seized property is timely filed~~ A time and place shall be set for a hearing
66 upon such claim prayer. The claimant or claimants owner or owners, if known, and the person or
67 persons in possession of the property at the time seized shall be given notice of such hearing not
68 less than 10 days prior to the date set for the hearing.

69 (e) At the hearing upon the claim or claims, the state shall have the burden of proving by

70 a preponderance of the evidence that:

71 (1) The seized property is subject to forfeiture pursuant to the provisions of this chapter;

72 (2) The owner of the seized property has been convicted of a crime; and

73 (3) The seized property had a substantial relationship to the crime referred to in §60A-7-
74 705(e)(2) of this code.

75 (f) If the state cannot meet its evidentiary burden pursuant to §60A-7-705(e) of this code,
76 the court shall order the state to return seized property to its owner within 48 hours of the entry of
77 the court's order.

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

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

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

94 ~~(i)~~ (j) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought
95 pursuant to this chapter must be filed within 120 days of the date of entry of the final appealable

- 96 order. The appellant shall be required to give notice of intent to appeal within 30 days of the entry
97 of such appealable order.

NOTE: The purpose of this bill is to require the state to prove that the owner of seized property has been convicted of a crime and that the seized property was substantially related to said crime before the state can perfect title to seized property; and require that the state return seized property to its owner if the state cannot meet its evidentiary burden.

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