WEST VIRGINIA CODE CHAPTER 60a ARTICLE 7

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§60A-7-701. Short title.

This article shall be known and cited as the "West Virginia Contraband Forfeiture Act."

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§60A-7-702. Legislative findings.

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve, section five of the West Virginia Constitution and to the extent that such seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article twelve, section five of the West Virginia Constitution.

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

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or possessed in violation of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

(3) All tax-not-paid tobacco products, as that term is defined in section two, article seventeen, chapter eleven of this code, declared to be contraband under said article;

(4) All property which is used, or has been used, or is intended for use, as a container for property described in subdivision (1), (2) or (3) of this subsection;

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this chapter; and

(iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this chapter;

(6) All books, records, research products and materials, including formulas, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of this chapter;

(7) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this chapter by any person in exchange for a controlled substance, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which have been used, or which are intended to be used to facilitate any violation of this chapter: Provided, That no property may be forfeited under

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this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(8) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter punishable by more than one year imprisonment: Provided, That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances to the real property.

(b) Property subject to forfeiture under this article may be seized by any person granted enforcement powers in section five hundred one, article five of this chapter (hereinafter referred to as the "appropriate person" in this article).

(c) Controlled substances listed in article two of this chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the controlled substances.

(d) Species of plant from which controlled substances may be derived which have been planted or cultivated in violation of the provisions of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state upon the seizure of the plants.

(e) The failure, upon demand by the appropriate person, or his or her authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(f) Notwithstanding any provision of this article to the contrary, controlled substances listed in article two of this chapter and species of plants from which controlled substances may be derived shall either be destroyed or used only for investigative or prosecutorial purposes.

(g) Notwithstanding any other provisions of this article to the contrary, any items of real property or any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years

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next preceding the sale been used in violation of this chapter or that the property is a controlled substance.

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

(a) Seizure of property made subject to forfeiture by the provisions of this article may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this article;

(3) The appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him

(3) Require the appropriate law-enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and appurtenances thereto.

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

(a) (1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.

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

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

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

(i) A description of the property seized;

(ii) A statement as to who is responsible for the seizure;

(iii) A statement of the time and place of seizure;

(iv) The identity of the owner or owners of the property, if known;

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

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

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

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

(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who

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was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows:

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

If no owner or possessors, lienholders or holders of a security interest be found, then such service may be by Class II legal publication in accordance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b) above, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition such notice shall contain the following information:

(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known;

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall

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be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this chapter.

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

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

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

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

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

(a) Notwithstanding the provisions of section seven hundred five of this article, forfeitable moneys are subject to administrative forfeiture by the prosecuting attorney of a county or duly appointed special prosecutor.

(b) An administrative forfeiture notice shall be provided by the prosecuting attorney after the seizure of the money in question. The notice shall contain the following:

(1) A description of the money seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the money, if known; and

(5) The identity of the person or persons in possession of the money at the time seized.

(c) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized money. Should diligent efforts fail to disclose the lawful owner or owners of the seized money, a copy of the petition for forfeiture shall be served upon any person who was in possession or alleged to be in possession of the money at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure.

(d) The administrative forfeiture notice shall include a statement substantially as follows: To any claimant: "The confiscated money is subject to administrative forfeiture unless you provide a written notice, within thirty days of receipt of this notice, that you wish to contest this forfeiture. If you fail to provide a notice to the prosecuting attorney, you will immediately and forever lose all right, claim, title and interest to the confiscated money, and it will be disposed of according to law."

(e) If, after thirty days of the delivery of notice from the prosecuting attorney as provided in subsections (c) and (d) of this section, no notice is received from any person indicating a desire to contest the administrative forfeiture, all right, title and interest to the confiscated money shall immediately vest in the state, and shall be disposed of in the same manner as in a civil forfeiture.

(f) If notice is received from any person, within the required period of time, indicating a desire to contest the administrative forfeiture, then no forfeiture may be obtained except through a civil forfeiture proceeding under section seven hundred five of this article.

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

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of the funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

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

(a) When property other than that referred to in section seven hundred six of this article is forfeited under this article, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the law-enforcement agency that seized said forfeited property, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning; or

(2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county where the public auction will be held.

(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after distribution pursuant to subsection (c) of this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding.

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property sold and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the chief of the law-enforcement agency may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall

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equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to subsection (a) of this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to subsection (a) of this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection (b), section seven hundred five of this article.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to subsection (a) of this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this article, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section seven, article four, chapter fifty-eight of this

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code.

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

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

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

(1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d) of this code, including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;

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

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

(4) In accordance with the provisions of §60A-7-704(d)(4) of this code, in the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;

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

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

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

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

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

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accounts; and

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

(b) Any law-enforcement agency or office in this state, excluding prosecuting attorneys, receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or other property under the provisions of this article shall report the same to the State Auditor. For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed in the following manner:

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

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

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

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

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

(6) Whether forfeiture was made by settlement agreement;

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

(8) The disposition of any action under the provisions of §60A-7-705 of this code;

(9) If an arrest was made;

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

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

(12) The total value of seized and forfeited or property held by the agency at the end of the

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reporting period; and

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

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

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

(e) In the course of preparing its annual report, the State Auditor may, in its discretion or for good cause shown, perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds by any law-enforcement agency or office in this state. This audit shall be conducted under the Generally Accepted Government Auditing Standards (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the Speaker of the House of Delegates, the President of the Senate, the Attorney General and the Governor.

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

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

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

(i) If a law-enforcement agency fails to timely file the report identified in subsection (b) of

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this section the State Auditor shall immediately notify the law-enforcement agency that the report has not been received.

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

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

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

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

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