



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5592

by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/36-2

from Ch. 38, par. 36-2

Amends the Criminal Code of 1961 in relation to the distribution of the proceeds from the sale at public auction of forfeited vehicles, vessels, and aircraft. Provides that: (1) 65% of the proceeds shall be distributed to the local, municipal, county, sheriff, or State law enforcement agency or agencies that conducted or participated in the investigation resulting in the forfeiture; (2) 25% shall be distributed to the Office of the State's Attorney of the county in which the prosecution resulting in the forfeiture was instituted; and (3) 10% shall be retained by the Department of State Police for expenses related to the administration and sale of forfeited property. Provides for the deduction of actual, but reasonable, charges and expenses incurred by the sheriff in storing such vehicles, vessels, and aircraft. Effective immediately.

LRB095 16686 RLC 42717 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 36-2 as follows:

6 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

7 Sec. 36-2. Action for forfeiture. (a) The State's Attorney  
8 in the county in which such seizure occurs if he finds that  
9 such forfeiture was incurred without willful negligence or  
10 without any intention on the part of the owner of the vessel,  
11 vehicle or aircraft or any person whose right, title or  
12 interest is of record as described in Section 36-1, to violate  
13 the law, or finds the existence of such mitigating  
14 circumstances as to justify remission of the forfeiture, may  
15 cause the sheriff to remit the same upon such terms and  
16 conditions as the State's Attorney deems reasonable and just.  
17 The State's Attorney shall exercise his discretion under the  
18 foregoing provision of this Section 36-2(a) promptly after  
19 notice is given in accordance with Section 36-1. If the State's  
20 Attorney does not cause the forfeiture to be remitted he shall  
21 forthwith bring an action for forfeiture in the Circuit Court  
22 within whose jurisdiction the seizure and confiscation has  
23 taken place. The State's Attorney shall give notice of the

1 forfeiture proceeding by mailing a copy of the Complaint in the  
2 forfeiture proceeding to the persons, and upon the manner, set  
3 forth in Section 36-1. The owner of the seized vessel, vehicle  
4 or aircraft or any person whose right, title, or interest is of  
5 record as described in Section 36-1, may within 20 days after  
6 the mailing of such notice file a verified answer to the  
7 Complaint and may appear at the hearing on the action for  
8 forfeiture. The State shall show at such hearing by a  
9 preponderance of the evidence, that such vessel, vehicle or  
10 aircraft was used in the commission of an offense described in  
11 Section 36-1. The owner of such vessel, vehicle or aircraft or  
12 any person whose right, title, or interest is of record as  
13 described in Section 36-1, may show by a preponderance of the  
14 evidence that he did not know, and did not have reason to know,  
15 that the vessel, vehicle or aircraft was to be used in the  
16 commission of such an offense or that any of the exceptions set  
17 forth in Section 36-3 are applicable. Unless the State shall  
18 make such showing, the Court shall order such vessel, vehicle  
19 or aircraft released to the owner. Where the State has made  
20 such showing, the Court may order the vessel, vehicle or  
21 aircraft destroyed; may order it delivered to any local,  
22 municipal or county law enforcement agency, or the Department  
23 of State Police or the Department of Revenue of the State of  
24 Illinois; or may order it sold at public auction.

25 (b) A copy of the order shall be filed with the sheriff of  
26 the county in which the seizure occurs and with each Federal or

1 State office or agency with which such vessel, vehicle or  
2 aircraft is required to be registered. Such order, when filed,  
3 constitutes authority for the issuance of clear title to such  
4 vehicle, aircraft, or boat to the department or agency to whom  
5 it is delivered or any purchaser thereof. The sheriff shall  
6 comply promptly with instructions to remit received from the  
7 State's Attorney or Attorney General in accordance with  
8 Sections 36-2(a) or 36-3.

9 (c) The proceeds of any sale at public auction pursuant to  
10 Section 36-2 of this Act, after payment of all liens and  
11 deductions ~~deduction~~ of the actual, but reasonable charges and  
12 expenses incurred by the sheriff in storing ~~and selling~~ such  
13 vessels, vehicles, and aircraft ~~vehicle~~, shall be distributed  
14 as follows: paid into the general fund of the county of  
15 seizure.

16 (1) 65% shall be distributed to the local, municipal,  
17 county, sheriff, or State law enforcement agency or  
18 agencies that conducted or participated in the  
19 investigation resulting in the forfeiture. The  
20 distribution shall bear a reasonable relationship to the  
21 degree of direct participation of the law enforcement  
22 agency in the effort resulting in the forfeiture, taking  
23 into account the total value of the property forfeited and  
24 the total law enforcement effort with respect to the  
25 violation of the law upon which the forfeiture is based.  
26 Amounts distributed to the agency or agencies shall be used

1 in the enforcement of the criminal law and the Illinois  
2 Vehicle Code.

3 (2) 25% shall be distributed to the Office of the  
4 State's Attorney of the county in which the prosecution  
5 resulting in the forfeiture was instituted. Amounts  
6 distributed shall be used in the enforcement of the  
7 criminal laws and the Illinois Vehicle Code. If the  
8 prosecution is undertaken solely by the Attorney General,  
9 the portion provided hereunder shall be distributed to the  
10 Attorney General for use in the enforcement of the criminal  
11 laws and the Illinois Vehicle Code.

12 (3) 10% shall be retained by the Department of State  
13 Police for expenses related to the administration and sale  
14 of forfeited property.

15 (Source: P.A. 84-25.)

16 Section 99. Effective date. This Act takes effect upon  
17 becoming law.