



Rep. Kelly Burke

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09700HB0909ham001

LRB097 03728 HLH 58452 a

1 AMENDMENT TO HOUSE BILL 909

2 AMENDMENT NO. _____. Amend House Bill 909 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Corruption Profit Forfeiture Act is
5 amended by changing Section 10 as follows:

6 (5 ILCS 283/10)

7 Sec. 10. Penalties.

8 (a) A person who is convicted of a violation of any of the
9 following Sections, subsections, and clauses of the Criminal
10 Code of 1961:

11 (1) clause (a) (6) of Section 12-6 (intimidation by a
12 public official),

13 (2) Section 33-1 (bribery), ~~or~~

14 (3) subsection (a) of Section 33E-7 (kickbacks), or

15 (4) Section 33C-4 or subsection (d) of Section 17-10.3

16 (fraudulently obtaining public moneys reserved for

1 disadvantaged business enterprises),
2 shall forfeit to the State of Illinois:

3 (A) any profits or proceeds and any property or
4 property interest he or she has acquired or maintained in
5 violation of any of the offenses listed in clauses (1)
6 through (4) ~~(3)~~ of this subsection (a) that the court
7 determines, after a forfeiture hearing under subsection
8 (b) of this Section, to have been acquired or maintained as
9 a result of violating any of the offenses listed in clauses
10 (1) through (4) ~~(3)~~ of this subsection (a); and

11 (B) any interest in, security of, claim against, or
12 property or contractual right of any kind affording a
13 source of influence over, any enterprise which he or she
14 has established, operated, controlled, conducted, or
15 participated in the conduct of, in violation of any of the
16 offenses listed in clauses (1) through (4) ~~(3)~~ of this
17 subsection (a) that the court determines, after a
18 forfeiture hearing under subsection (b) of this Section, to
19 have been acquired or maintained as a result of violating
20 any of the offenses listed in clauses (1) through (4) ~~(3)~~
21 of this subsection (a) or used to facilitate a violation of
22 one of the offenses listed in clauses (1) through (4) ~~(3)~~
23 of this subsection (a).

24 (b) The court shall, upon petition by the Attorney General
25 or State's Attorney, at any time after the filing of an
26 information or return of an indictment, conduct a hearing to

1 determine whether any property or property interest is subject
2 to forfeiture under this Act. At the forfeiture hearing the
3 people shall have the burden of establishing, by a
4 preponderance of the evidence, that property or property
5 interests are subject to forfeiture under this Act. There is a
6 rebuttable presumption at such hearing that any property or
7 property interest of a person charged by information or
8 indictment with a violation of any of the offenses listed in
9 clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section
10 or who is convicted of a violation of any of the offenses
11 listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this
12 Section is subject to forfeiture under this Section if the
13 State establishes by a preponderance of the evidence that:

14 (1) such property or property interest was acquired by
15 such person during the period of the violation of any of
16 the offenses listed in clauses (1) through (4) ~~(3)~~ of
17 subsection (a) of this Section or within a reasonable time
18 after such period; and

19 (2) there was no likely source for such property or
20 property interest other than the violation of any of the
21 offenses listed in clauses (1) through (4) ~~(3)~~ of
22 subsection (a) of this Section.

23 (c) In an action brought by the People of the State of
24 Illinois under this Act, wherein any restraining order,
25 injunction or prohibition or any other action in connection
26 with any property or property interest subject to forfeiture

1 under this Act is sought, the circuit court which shall preside
2 over the trial of the person or persons charged with any of the
3 offenses listed in clauses (1) through (4) ~~(3)~~ of subsection
4 (a) of this Section shall first determine whether there is
5 probable cause to believe that the person or persons so charged
6 have committed a violation of any of the offenses listed in
7 clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section
8 and whether the property or property interest is subject to
9 forfeiture pursuant to this Act.

10 In order to make such a determination, prior to entering
11 any such order, the court shall conduct a hearing without a
12 jury, wherein the People shall establish that there is: (i)
13 probable cause that the person or persons so charged have
14 committed one of the offenses listed in clauses (1) through (4)
15 ~~(3)~~ of subsection (a) of this Section and (ii) probable cause
16 that any property or property interest may be subject to
17 forfeiture pursuant to this Act. Such hearing may be conducted
18 simultaneously with a preliminary hearing, if the prosecution
19 is commenced by information or complaint, or by motion of the
20 People, at any stage in the proceedings. The court may accept a
21 finding of probable cause at a preliminary hearing following
22 the filing of a charge for violating one of the offenses listed
23 in clauses (1) through (4) ~~(3)~~ of subsection (a) of this
24 Section or the return of an indictment by a grand jury charging
25 one of the offenses listed in clauses (1) through (4) ~~(3)~~ of
26 subsection (a) of this Section as sufficient evidence of

1 probable cause as provided in item (i) above.

2 Upon such a finding, the circuit court shall enter such
3 restraining order, injunction or prohibition, or shall take
4 such other action in connection with any such property or
5 property interest subject to forfeiture under this Act, as is
6 necessary to insure that such property is not removed from the
7 jurisdiction of the court, concealed, destroyed or otherwise
8 disposed of by the owner of that property or property interest
9 prior to a forfeiture hearing under subsection (b) of this
10 Section. The Attorney General or State's Attorney shall file a
11 certified copy of such restraining order, injunction or other
12 prohibition with the recorder of deeds or registrar of titles
13 of each county where any such property of the defendant may be
14 located. No such injunction, restraining order or other
15 prohibition shall affect the rights of any bona fide purchaser,
16 mortgagee, judgment creditor or other lien holder arising prior
17 to the date of such filing.

18 The court may, at any time, upon verified petition by the
19 defendant, conduct a hearing to release all or portions of any
20 such property or interest which the court previously determined
21 to be subject to forfeiture or subject to any restraining
22 order, injunction, or prohibition or other action. The court
23 may release such property to the defendant for good cause shown
24 and within the sound discretion of the court.

25 (d) Prosecution under this Act may be commenced by the
26 Attorney General or a State's Attorney.

1 (e) Upon an order of forfeiture being entered pursuant to
2 subsection (b) of this Section, the court shall authorize the
3 Attorney General to seize any property or property interest
4 declared forfeited under this Act and under such terms and
5 conditions as the court shall deem proper. Any property or
6 property interest that has been the subject of an entered
7 restraining order, injunction or prohibition or any other
8 action filed under subsection (c) shall be forfeited unless the
9 claimant can show by a preponderance of the evidence that the
10 property or property interest has not been acquired or
11 maintained as a result of a violation of any of the offenses
12 listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this
13 Section or has not been used to facilitate a violation of any
14 of the offenses listed in clauses (1) through (4) ~~(3)~~ of
15 subsection (a) of this Section.

16 (f) The Attorney General or his or her designee is
17 authorized to sell all property forfeited and seized pursuant
18 to this Act, unless such property is required by law to be
19 destroyed or is harmful to the public, and, after the deduction
20 of all requisite expenses of administration and sale, shall
21 distribute the proceeds of such sale, along with any moneys
22 forfeited or seized, in accordance with subsection (g).

23 (g) All monies and the sale proceeds of all other property
24 forfeited and seized pursuant to this Act shall be distributed
25 as follows:

26 (1) An amount equal to 50% shall be distributed to the

1 unit of local government or other law enforcement agency
2 whose officers or employees conducted the investigation
3 into a violation of any of the offenses listed in clauses
4 (1) through (4) ~~(3)~~ of subsection (a) of this Section and
5 caused the arrest or arrests and prosecution leading to the
6 forfeiture. Amounts distributed to units of local
7 government and law enforcement agencies shall be used for
8 enforcement of laws governing public corruption, or for
9 other law enforcement purposes. In the event, however, that
10 the investigation, arrest or arrests and prosecution
11 leading to the forfeiture were undertaken solely by a State
12 agency, the portion provided hereunder shall be paid into
13 the State Asset Forfeiture Fund in the State treasury to be
14 used by that State agency in accordance with law. If the
15 investigation, arrest or arrests and prosecution leading
16 to the forfeiture were undertaken by the Attorney General,
17 the portion provided hereunder shall be paid into the
18 Attorney General's Whistleblower Reward and Protection
19 Fund in the State treasury to be used by the Attorney
20 General in accordance with law.

21 (2) An amount equal to 12.5% shall be distributed to
22 the county in which the prosecution resulting in the
23 forfeiture was instituted, deposited in a special fund in
24 the county treasury and appropriated to the State's
25 Attorney for use in accordance with law. If the prosecution
26 was conducted by the Attorney General, then the amount

1 provided under this subsection shall be paid into the
2 Attorney General's Whistleblower Reward and Protection
3 Fund in the State treasury to be used by the Attorney
4 General in accordance with law.

5 (3) An amount equal to 12.5% shall be distributed to
6 the Office of the State's Attorneys Appellate Prosecutor
7 and deposited in the State's Attorneys Appellate
8 Prosecutor Anti-Corruption Fund, to be used by the Office
9 of the State's Attorneys Appellate Prosecutor for
10 additional expenses incurred in prosecuting appeals
11 arising under this Act. Any amounts remaining in the Fund
12 after all additional expenses have been paid shall be used
13 by the Office to reduce the participating county
14 contributions to the Office on a prorated basis as
15 determined by the board of governors of the Office of the
16 State's Attorneys Appellate Prosecutor based on the
17 populations of the participating counties. If the appeal is
18 to be conducted by the Attorney General, then the amount
19 provided under this subsection shall be paid into the
20 Attorney General's Whistleblower Reward and Protection
21 Fund in the State treasury to be used by the Attorney
22 General in accordance with law.

23 (4) An amount equal to 25% shall be paid into the State
24 Asset Forfeiture Fund in the State treasury to be used by
25 the Department of State Police for the funding of the
26 investigation of public corruption activities. Any amounts

1 remaining in the Fund after full funding of such
2 investigations shall be used by the Department in
3 accordance with law to fund its other enforcement
4 activities.

5 (h) All moneys deposited pursuant to this Act in the State
6 Asset Forfeiture Fund shall, subject to appropriation, be used
7 by the Department of State Police in the manner set forth in
8 this Section. All moneys deposited pursuant to this Act in the
9 Attorney General's Whistleblower Reward and Protection Fund
10 shall, subject to appropriation, be used by the Attorney
11 General for State law enforcement purposes and for the
12 performance of the duties of that office. All moneys deposited
13 pursuant to this Act in the State's Attorneys Appellate
14 Prosecutor Anti-Corruption Fund shall, subject to
15 appropriation, be used by the Office of the State's Attorneys
16 Appellate Prosecutor in the manner set forth in this Section.

17 (Source: P.A. 96-1019, eff. 1-1-11.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."