

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 Drug Asset Forfeiture Procedure Act is
5 amended by changing Sections 3.5, 5, and 9 as follows:

6 (725 ILCS 150/3.5)

7 Sec. 3.5. Preliminary Review.

8 (a) Within 21 ~~14~~ days of the seizure, the State shall seek
9 a preliminary determination from the circuit court as to
10 whether there is probable cause that the property may be
11 subject to forfeiture.

12 (b) The rules of evidence shall not apply to any proceeding
13 conducted under this Section.

14 (c) The court may conduct the review under subsection (a)
15 simultaneously with a proceeding pursuant to Section 109-1 of
16 the Code of Criminal Procedure of 1963 for a related criminal
17 offense if a prosecution is commenced by information or
18 complaint, however if the review is not conducted
19 simultaneously, the court's findings shall not constitute a
20 collateral estoppel to the filing of criminal charges.

21 (d) The court may accept a finding of probable cause at a
22 preliminary hearing following the filing of an information or
23 complaint charging a related criminal offense or following the

1 return of indictment by a grand jury charging the related
2 offense as sufficient evidence of probable cause as required
3 under subsection (a).

4 ~~(c) Upon making a finding of probable cause as required~~
5 ~~under this Section, and after taking into account the~~
6 ~~respective interests of all known claimants to the property~~
7 ~~including the State, the circuit court shall enter a~~
8 ~~restraining order or injunction, or take other appropriate~~
9 ~~action, as necessary to ensure that the property is not removed~~
10 ~~from the court's jurisdiction and is not concealed, destroyed,~~
11 ~~or otherwise disposed of by the property owner or interest~~
12 ~~holder before a forfeiture hearing is conducted.~~

13 (Source: P.A. 97-544, eff. 1-1-12.)

14 (725 ILCS 150/5) (from Ch. 56 1/2, par. 1675)

15 Sec. 5. Notice to State's Attorney. The law enforcement
16 agency seizing property for forfeiture under the Illinois
17 Controlled Substances Act, the Cannabis Control Act, or the
18 Methamphetamine Control and Community Protection Act shall,
19 within 52 days of seizure, notify the State's Attorney for the
20 county in which an act or omission giving rise to the
21 forfeiture occurred or in which the property was seized of the
22 seizure of the property and the facts and circumstances giving
23 rise to the seizure and shall provide the State's Attorney with
24 the inventory of the property and its estimated value. For
25 purposes of forfeiture proceedings pursuant to Sections 6 and 9

1 of this Act, the notification to the State's Attorney shall
2 only be perfected by the delivery of the Illinois State Police
3 approved form 4-64. When the property seized for forfeiture is
4 a vehicle, the law enforcement agency seizing the property
5 shall immediately notify the Secretary of State that forfeiture
6 proceedings are pending regarding such vehicle.

7 (Source: P.A. 94-556, eff. 9-11-05.)

8 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

9 Sec. 9. Judicial in rem procedures. If property seized
10 under the provisions of the Illinois Controlled Substances Act,
11 the Cannabis Control Act, or the Methamphetamine Control and
12 Community Protection Act is non-real property that exceeds
13 \$150,000 ~~\$20,000~~ in value excluding the value of any
14 conveyance, or is real property, or a claimant has filed a
15 claim and a cost bond under subsection (C) of Section 6 of this
16 Act, the following judicial in rem procedures shall apply:

17 (A) If, after a review of the facts surrounding the
18 seizure, the State's Attorney is of the opinion that the seized
19 property is subject to forfeiture, then within 45 days of the
20 receipt of notice of seizure by the seizing agency or the
21 filing of the claim and cost bond, whichever is later, the
22 State's Attorney shall institute judicial forfeiture
23 proceedings by filing a verified complaint for forfeiture and,
24 if the claimant has filed a claim and cost bond, by depositing
25 the cost bond with the clerk of the court. When authorized by

1 law, a forfeiture must be ordered by a court on an action in
2 rem brought by a State's Attorney under a verified complaint
3 for forfeiture.

4 (B) During the probable cause portion of the judicial in
5 rem proceeding wherein the State presents its case-in-chief,
6 the court must receive and consider, among other things, all
7 relevant hearsay evidence and information. The laws of evidence
8 relating to civil actions shall apply to all other portions of
9 the judicial in rem proceeding.

10 (C) Only an owner of or interest holder in the property may
11 file an answer asserting a claim against the property in the
12 action in rem. For purposes of this Section, the owner or
13 interest holder shall be referred to as claimant.

14 (D) The answer must be signed by the owner or interest
15 holder under penalty of perjury and must set forth:

16 (i) the caption of the proceedings as set forth on the
17 notice of pending forfeiture and the name of the claimant;

18 (ii) the address at which the claimant will accept
19 mail;

20 (iii) the nature and extent of the claimant's interest
21 in the property;

22 (iv) the date, identity of transferor, and
23 circumstances of the claimant's acquisition of the
24 interest in the property;

25 (v) the name and address of all other persons known to
26 have an interest in the property;

1 (vi) the specific provisions of Section 8 of this Act
2 relied on in asserting it is not subject to forfeiture;

3 (vii) all essential facts supporting each assertion;
4 and

5 (viii) the precise relief sought.

6 (E) The answer must be filed with the court within 45 days
7 after service of the civil in rem complaint.

8 (F) The hearing must be held within 60 days after filing of
9 the answer unless continued for good cause.

10 (G) The State shall show the existence of probable cause
11 for forfeiture of the property. If the State shows probable
12 cause, the claimant has the burden of showing by a
13 preponderance of the evidence that the claimant's interest in
14 the property is not subject to forfeiture.

15 (H) If the State does not show existence of probable cause
16 or a claimant has established by a preponderance of evidence
17 that the claimant has an interest that is exempt under Section
18 8 of this Act, the court shall order the interest in the
19 property returned or conveyed to the claimant and shall order
20 all other property forfeited to the State. If the State does
21 show existence of probable cause and the claimant does not
22 establish by a preponderance of evidence that the claimant has
23 an interest that is exempt under Section 8 of this Act, the
24 court shall order all property forfeited to the State.

25 (I) A defendant convicted in any criminal proceeding is
26 precluded from later denying the essential allegations of the

1 criminal offense of which the defendant was convicted in any
2 proceeding under this Act regardless of the pendency of an
3 appeal from that conviction. However, evidence of the pendency
4 of an appeal is admissible.

5 (J) An acquittal or dismissal in a criminal proceeding
6 shall not preclude civil proceedings under this Act; however,
7 for good cause shown, on a motion by the State's Attorney, the
8 court may stay civil forfeiture proceedings during the criminal
9 trial for a related criminal indictment or information alleging
10 a violation of the Illinois Controlled Substances Act, the
11 Cannabis Control Act, or the Methamphetamine Control and
12 Community Protection Act. Such a stay shall not be available
13 pending an appeal. Property subject to forfeiture under the
14 Illinois Controlled Substances Act, the Cannabis Control Act,
15 or the Methamphetamine Control and Community Protection Act
16 shall not be subject to return or release by a court exercising
17 jurisdiction over a criminal case involving the seizure of such
18 property unless such return or release is consented to by the
19 State's Attorney.

20 (K) All property declared forfeited under this Act vests in
21 this State on the commission of the conduct giving rise to
22 forfeiture together with the proceeds of the property after
23 that time. Any such property or proceeds subsequently
24 transferred to any person remain subject to forfeiture and
25 thereafter shall be ordered forfeited unless the transferee
26 claims and establishes in a hearing under the provisions of

1 this Act that the transferee's interest is exempt under Section
2 8 of this Act.

3 (L) A civil action under this Act must be commenced within
4 5 years after the last conduct giving rise to forfeiture became
5 known or should have become known or 5 years after the
6 forfeitable property is discovered, whichever is later,
7 excluding any time during which either the property or claimant
8 is out of the State or in confinement or during which criminal
9 proceedings relating to the same conduct are in progress.
10 (Source: P.A. 94-556, eff. 9-11-05.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.