



Sen. William R. Haine

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09700SB3778sam001

LRB097 17712 RLC 67279 a

1 AMENDMENT TO SENATE BILL 3778

2 AMENDMENT NO. _____. Amend Senate Bill 3778 by replacing
3 everything after the enacting clause with the following:

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

1 offense if a prosecution is commenced by information or
2 complaint, however if the review is not conducted
3 simultaneously, the court's findings shall not constitute a
4 collateral estoppel to the filing of criminal charges.

5 (d) The court may accept a finding of probable cause at a
6 preliminary hearing following the filing of an information or
7 complaint charging a related criminal offense or following the
8 return of indictment by a grand jury charging the related
9 offense as sufficient evidence of probable cause as required
10 under subsection (a).

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

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

21 (725 ILCS 150/5) (from Ch. 56 1/2, par. 1675)

22 Sec. 5. Notice to State's Attorney. The law enforcement
23 agency seizing property for forfeiture under the Illinois
24 Controlled Substances Act, the Cannabis Control Act, or the
25 Methamphetamine Control and Community Protection Act shall,

1 within 52 days of seizure, notify the State's Attorney for the
2 county in which an act or omission giving rise to the
3 forfeiture occurred or in which the property was seized of the
4 seizure of the property and the facts and circumstances giving
5 rise to the seizure and shall provide the State's Attorney with
6 the inventory of the property and its estimated value. For
7 purposes of forfeiture proceedings pursuant to Sections 6 and 9
8 of this Act, the notification to the State's Attorney shall
9 only be perfected by the delivery of the Illinois State Police
10 approved form 4-64. When the property seized for forfeiture is
11 a vehicle, the law enforcement agency seizing the property
12 shall immediately notify the Secretary of State that forfeiture
13 proceedings are pending regarding such vehicle.

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

15 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

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

24 (A) If, after a review of the facts surrounding the
25 seizure, the State's Attorney is of the opinion that the seized

1 property is subject to forfeiture, then within 45 days of the
2 receipt of notice of seizure by the seizing agency or the
3 filing of the claim and cost bond, whichever is later, the
4 State's Attorney shall institute judicial forfeiture
5 proceedings by filing a verified complaint for forfeiture and,
6 if the claimant has filed a claim and cost bond, by depositing
7 the cost bond with the clerk of the court. When authorized by
8 law, a forfeiture must be ordered by a court on an action in
9 rem brought by a State's Attorney under a verified complaint
10 for forfeiture.

11 (B) During the probable cause portion of the judicial in
12 rem proceeding wherein the State presents its case-in-chief,
13 the court must receive and consider, among other things, all
14 relevant hearsay evidence and information. The laws of evidence
15 relating to civil actions shall apply to all other portions of
16 the judicial in rem proceeding.

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

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

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

25 (ii) the address at which the claimant will accept
26 mail;

1 (iii) the nature and extent of the claimant's interest
2 in the property;

3 (iv) the date, identity of transferor, and
4 circumstances of the claimant's acquisition of the
5 interest in the property;

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

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

10 (vii) all essential facts supporting each assertion;
11 and

12 (viii) the precise relief sought.

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

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

17 (G) The State shall show the existence of probable cause
18 for forfeiture of the property. If the State shows probable
19 cause, the claimant has the burden of showing by a
20 preponderance of the evidence that the claimant's interest in
21 the property is not subject to forfeiture.

22 (H) If the State does not show existence of probable cause
23 or a claimant has established by a preponderance of evidence
24 that the claimant has an interest that is exempt under Section
25 8 of this Act, the court shall order the interest in the
26 property returned or conveyed to the claimant and shall order

1 all other property forfeited to the State. If the State does
2 show existence of probable cause and the claimant does not
3 establish by a preponderance of evidence that the claimant has
4 an interest that is exempt under Section 8 of this Act, the
5 court shall order all property forfeited to the State.

6 (I) A defendant convicted in any criminal proceeding is
7 precluded from later denying the essential allegations of the
8 criminal offense of which the defendant was convicted in any
9 proceeding under this Act regardless of the pendency of an
10 appeal from that conviction. However, evidence of the pendency
11 of an appeal is admissible.

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

1 (K) All property declared forfeited under this Act vests in
2 this State on the commission of the conduct giving rise to
3 forfeiture together with the proceeds of the property after
4 that time. Any such property or proceeds subsequently
5 transferred to any person remain subject to forfeiture and
6 thereafter shall be ordered forfeited unless the transferee
7 claims and establishes in a hearing under the provisions of
8 this Act that the transferee's interest is exempt under Section
9 8 of this Act.

10 (L) A civil action under this Act must be commenced within
11 5 years after the last conduct giving rise to forfeiture became
12 known or should have become known or 5 years after the
13 forfeitable property is discovered, whichever is later,
14 excluding any time during which either the property or claimant
15 is out of the State or in confinement or during which criminal
16 proceedings relating to the same conduct are in progress.

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

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