

AN ACT concerning criminal law.

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

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

(5 ILCS 283/10)

Sec. 10. Penalties.

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

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

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

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

(4) Section 33C-4 or subsection (d) of Section 17-10.3 (fraudulently obtaining public moneys reserved for disadvantaged business enterprises),

shall forfeit to the State of Illinois:

(A) any profits or proceeds and any property or property interest he or she has acquired or maintained in violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of this subsection (a) that the court determines, after a forfeiture hearing under subsection

(b) of this Section, to have been acquired or maintained as a result of violating any of the offenses listed in clauses (1) through (4) ~~(3)~~ of this subsection (a); and

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

(b) The court shall, upon petition by the Attorney General or State's Attorney, at any time after the filing of an information or return of an indictment, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this Act. At the forfeiture hearing the people shall have the burden of establishing, by a preponderance of the evidence, that property or property interests are subject to forfeiture under this Act. There is a rebuttable presumption at such hearing that any property or property interest of a person charged by information or

indictment with a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section or who is convicted of a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section is subject to forfeiture under this Section if the State establishes by a preponderance of the evidence that:

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

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

(c) In an action brought by the People of the State of Illinois under this Act, wherein any restraining order, injunction or prohibition or any other action in connection with any property or property interest subject to forfeiture under this Act is sought, the circuit court which shall preside over the trial of the person or persons charged with any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section shall first determine whether there is probable cause to believe that the person or persons so charged have committed a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section

and whether the property or property interest is subject to forfeiture pursuant to this Act.

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

Upon such a finding, the circuit court shall enter such restraining order, injunction or prohibition, or shall take such other action in connection with any such property or property interest subject to forfeiture under this Act, as is necessary to insure that such property is not removed from the jurisdiction of the court, concealed, destroyed or otherwise

disposed of by the owner of that property or property interest prior to a forfeiture hearing under subsection (b) of this Section. The Attorney General or State's Attorney shall file a certified copy of such restraining order, injunction or other prohibition with the recorder of deeds or registrar of titles of each county where any such property of the defendant may be located. No such injunction, restraining order or other prohibition shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor or other lien holder arising prior to the date of such filing.

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

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

(e) Upon an order of forfeiture being entered pursuant to subsection (b) of this Section, the court shall authorize the Attorney General to seize any property or property interest declared forfeited under this Act and under such terms and conditions as the court shall deem proper. Any property or property interest that has been the subject of an entered restraining order, injunction or prohibition or any other

action filed under subsection (c) shall be forfeited unless the claimant can show by a preponderance of the evidence that the property or property interest has not been acquired or maintained as a result of a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section or has not been used to facilitate a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section.

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

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

(1) An amount equal to 50% shall be distributed to the unit of local government or other law enforcement agency whose officers or employees conducted the investigation into a violation of any of the offenses listed in clauses (1) through (4) ~~(3)~~ of subsection (a) of this Section and caused the arrest or arrests and prosecution leading to the forfeiture. Amounts distributed to units of local government and law enforcement agencies shall be used for

enforcement of laws governing public corruption, or for other law enforcement purposes. In the event, however, that the investigation, arrest or arrests and prosecution leading to the forfeiture were undertaken solely by a State agency, the portion provided hereunder shall be paid into the State Asset Forfeiture Fund in the State treasury to be used by that State agency in accordance with law. If the investigation, arrest or arrests and prosecution leading to the forfeiture were undertaken by the Attorney General, the portion provided hereunder shall be paid into the Attorney General's Whistleblower Reward and Protection Fund in the State treasury to be used by the Attorney General in accordance with law.

(2) An amount equal to 12.5% shall be distributed to the county in which the prosecution resulting in the forfeiture was instituted, deposited in a special fund in the county treasury and appropriated to the State's Attorney for use in accordance with law. If the prosecution was conducted by the Attorney General, then the amount provided under this subsection shall be paid into the Attorney General's Whistleblower Reward and Protection Fund in the State treasury to be used by the Attorney General in accordance with law.

(3) An amount equal to 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the State's Attorneys Appellate

Prosecutor Anti-Corruption Fund, to be used by the Office of the State's Attorneys Appellate Prosecutor for additional expenses incurred in prosecuting appeals arising under this Act. Any amounts remaining in the Fund after all additional expenses have been paid shall be used by the Office to reduce the participating county contributions to the Office on a prorated basis as determined by the board of governors of the Office of the State's Attorneys Appellate Prosecutor based on the populations of the participating counties. If the appeal is to be conducted by the Attorney General, then the amount provided under this subsection shall be paid into the Attorney General's Whistleblower Reward and Protection Fund in the State treasury to be used by the Attorney General in accordance with law.

(4) An amount equal to 25% shall be paid into the State Asset Forfeiture Fund in the State treasury to be used by the Department of State Police for the funding of the investigation of public corruption activities. Any amounts remaining in the Fund after full funding of such investigations shall be used by the Department in accordance with law to fund its other enforcement activities.

(h) All moneys deposited pursuant to this Act in the State Asset Forfeiture Fund shall, subject to appropriation, be used by the Department of State Police in the manner set forth in

this Section. All moneys deposited pursuant to this Act in the Attorney General's Whistleblower Reward and Protection Fund shall, subject to appropriation, be used by the Attorney General for State law enforcement purposes and for the performance of the duties of that office. All moneys deposited pursuant to this Act in the State's Attorneys Appellate Prosecutor Anti-Corruption Fund shall, subject to appropriation, be used by the Office of the State's Attorneys Appellate Prosecutor in the manner set forth in this Section.

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

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