



Rep. Michael J. Zalewski

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09900HB1120ham001

LRB099 04981 RLC 33734 a

1 AMENDMENT TO HOUSE BILL 1120

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1120 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing Sections 33G-6 and 33G-9 as follows:

6 (720 ILCS 5/33G-6)

7 (Section scheduled to be repealed on June 11, 2017)

8 Sec. 33G-6. Remedial proceedings, procedures, and  
9 forfeiture. Under this Article:

10 (a) The circuit court shall have jurisdiction to prevent  
11 and restrain violations of this Article by issuing appropriate  
12 orders, including:

13 (1) ordering any person to disgorge illicit proceeds  
14 obtained by a violation of this Article or divest himself  
15 or herself of any interest, direct or indirect, in any  
16 enterprise or real or personal property of any character,

1 including money, obtained, directly or indirectly, by a  
2 violation of this Article;

3 (2) imposing reasonable restrictions on the future  
4 activities or investments of any person or enterprise,  
5 including prohibiting any person or enterprise from  
6 engaging in the same type of endeavor as the person or  
7 enterprise engaged in, that violated this Article; or

8 (3) ordering dissolution or reorganization of any  
9 enterprise, making due provision for the rights of innocent  
10 persons.

11 (b) Protective orders.

12 (1) Upon application of the State, the court may enter  
13 a restraining order or injunction, require the execution of  
14 a satisfactory performance bond, or take any other action  
15 to preserve the availability of property described in  
16 subsection (c) for forfeiture under this Article:

17 (A) upon the filing of an indictment, information,  
18 or complaint charging a violation of this Article for  
19 which forfeiture may be ordered under this Article and  
20 alleging that the property with respect to which the  
21 order is sought would be subject to forfeiture under  
22 this Article; or

23 (B) prior to the filing of an indictment,  
24 information, or complaint described in subparagraph  
25 (A) of this paragraph (1), if, after notice to persons  
26 appearing to have an interest in the property and

1           opportunity for a hearing, the court determines that:

2                   (i) there is probable cause to believe the  
3                   State will prevail on the issue of forfeiture and  
4                   that failure to enter the order will result in the  
5                   property being destroyed, removed from the  
6                   jurisdiction of the court, or otherwise made  
7                   unavailable for forfeiture; and

8                   (ii) the need to preserve the availability of  
9                   the property through the entry of the requested  
10                   order outweighs the hardship on any party against  
11                   whom the order is to be entered. Provided, however,  
12                   that an order entered under this subparagraph (B)  
13                   shall be effective for not more than 90 days,  
14                   unless extended by the court for good cause shown  
15                   or unless an indictment, information, complaint,  
16                   or administrative notice has been filed.

17           (2) A temporary restraining order under this  
18           subsection (b) may be entered upon application of the State  
19           without notice or opportunity for a hearing when an  
20           indictment, information, complaint, or administrative  
21           notice has not yet been filed with respect to the property,  
22           if the State demonstrates that there is probable cause to  
23           believe that the property with respect to which the order  
24           is sought would, in the event of a conviction, be subject  
25           to forfeiture under this Section and that provision of  
26           notice will jeopardize the integrity of the investigation,

1 the safety of any persons, or the availability of the  
2 property for forfeiture. The temporary order shall expire  
3 not more than 30 days after the date on which it is  
4 entered, unless extended for good cause shown or unless the  
5 party against whom it is entered consents to an extension  
6 for a longer period. A hearing requested concerning an  
7 order entered under this paragraph shall be held at the  
8 earliest possible time and prior to the expiration of the  
9 temporary order.

10 (3) The court may receive and consider, at a hearing  
11 held under this subsection (b), evidence and information  
12 that would be inadmissible under the Illinois Rules of  
13 Evidence.

14 (4) Order to repatriate and deposit.

15 (A) Under its authority to enter a pretrial  
16 restraining order under this Section, the court may  
17 order a defendant to repatriate any property that may  
18 be seized and forfeited and to deposit that property  
19 pending trial with the State's Attorney or another  
20 designated law enforcement agency.

21 (B) Failure to comply with an order under this  
22 subsection (b) is punishable as a civil or criminal  
23 contempt of court.

24 (c) Forfeiture.

25 (1) The following are subject to forfeiture:

26 (A) any property, real or personal, constituting,

1           derived from, or traceable to any proceeds the person  
2           obtained directly or indirectly, as a result of a  
3           violation of this Article;

4           (B) any of the person's property used, or intended  
5           to be used, in any manner or part, to commit, or to  
6           facilitate the commission of, a violation of this  
7           Article;

8           (C) all conveyances, including aircraft, vehicles,  
9           or vessels, which are used, or intended for use, to  
10          transport, or in any manner to facilitate the  
11          transportation, sale, receipt, possession, or  
12          concealment of property described in subparagraphs (A)  
13          and (B), but:

14           (i) no conveyance used by any person as a  
15           common carrier in the transaction of business as a  
16           common carrier is subject to forfeiture under this  
17           Section unless it appears that the owner or other  
18           person in charge of the conveyance is a consenting  
19           party or privy to a violation of this Article;

20           (ii) no conveyance is subject to forfeiture  
21           under this Section by reason of any act or omission  
22           which the owner proves to have been committed or  
23           omitted without his or her knowledge or consent;

24           (iii) a forfeiture of a conveyance encumbered  
25           by a bona fide security interest is subject to the  
26           interest of the secured party if he or she neither

1           had knowledge of nor consented to the act or  
2           omission;

3           (D) all real property, including any right, title,  
4           and interest (including, but not limited to, any  
5           leasehold interest or the beneficial interest in a land  
6           trust) in the whole of any lot or tract of land and any  
7           appurtenances or improvements, which is used or  
8           intended to be used, in any manner or part, to commit,  
9           or in any manner to facilitate the commission of, any  
10           violation of this Article or that is the proceeds of  
11           any violation or act that constitutes a violation of  
12           this Article.

13           (2) Property subject to forfeiture under this Article  
14           may be seized by the sheriff, or his or her agent, upon  
15           process or seizure warrant issued by any court having  
16           jurisdiction over the property. Seizure by the sheriff or  
17           his or her agent without process may be made:

18           (A) if the seizure is incident to a seizure  
19           warrant;

20           (B) if the property subject to seizure has been the  
21           subject of a prior judgment in favor of the State in a  
22           criminal proceeding, or in an injunction or forfeiture  
23           proceeding based upon this Article;

24           (C) if there is probable cause to believe that the  
25           property is directly or indirectly dangerous to health  
26           or safety;

1           (D) if there is probable cause to believe that the  
2           property is subject to forfeiture under this Article  
3           and the property is seized under circumstances in which  
4           a warrantless seizure or arrest would be reasonable; or

5           (E) in accordance with the Code of Criminal  
6           Procedure of 1963.

7           (3) After seizure under paragraph (2), forfeiture  
8           proceedings shall be instituted in accordance with  
9           subsections (i) through (r) of Section 29B-1 of this Code.

10          (4) Property taken or detained under this Section shall  
11          not be subject to replevin, but is deemed to be in the  
12          custody of the sheriff subject only to the order and  
13          judgments of the circuit court having jurisdiction over the  
14          forfeiture proceedings and the decisions of the State's  
15          Attorney under this Article. When property is seized under  
16          this Article, the seizing agency shall promptly conduct an  
17          inventory of the seized property and estimate the  
18          property's value and shall forward a copy of the inventory  
19          of seized property and the estimate of the property's value  
20          to the sheriff. Upon receiving notice of seizure, the  
21          sheriff may:

22                (A) place the property under seal;

23                (B) remove the property to a place designated by  
24                the sheriff;

25                (C) keep the property in the possession of the  
26                seizing agency;

1           (D) remove the property to a storage area for  
2           safekeeping or, if the property is a negotiable  
3           instrument or money and is not needed for evidentiary  
4           purposes, deposit it in an interest bearing account;

5           (E) place the property under constructive seizure  
6           by posting notice of pending forfeiture on it, by  
7           giving notice of pending forfeiture to its owners and  
8           interest holders, or by filing notice of pending  
9           forfeiture in any appropriate public record relating  
10           to the property; or

11           (F) provide for another agency or custodian,  
12           including an owner, secured party, or lienholder, to  
13           take custody of the property upon the terms and  
14           conditions set by the sheriff.

15           (5) When property is forfeited under this Article, the  
16           State's Attorney shall sell all the property unless the  
17           property is required by law to be destroyed or is harmful  
18           to the public, and shall distribute the proceeds of the  
19           sale, together with any moneys forfeited or seized, in  
20           accordance with paragraph (6). However, upon the  
21           application of the seizing agency or prosecutor who was  
22           responsible for the investigation, arrest, or arrests and  
23           prosecution which lead to the forfeiture, the State's  
24           Attorney may return any item of forfeited property to the  
25           seizing agency or prosecutor for official use in the  
26           enforcement of laws, if the agency or prosecutor can



1       demonstrate that the item requested would be useful to the  
2       agency or prosecutor in its enforcement efforts. When any  
3       real property returned to the seizing agency is sold by the  
4       agency or its unit of government, the proceeds of the sale  
5       shall be delivered to the State's Attorney and distributed  
6       in accordance with paragraph (6).

7       (6) All moneys and the sale proceeds of all other  
8       property forfeited and seized under this Article shall be  
9       distributed as follows:

10       (A) 75% shall be distributed to the metropolitan  
11       enforcement group, local, municipal, county, or State  
12       law enforcement agency or agencies which conducted or  
13       participated in the investigation resulting in the  
14       forfeiture. The distribution shall bear a reasonable  
15       relationship to the degree of direct participation of  
16       the law enforcement agency in the effort resulting in  
17       the forfeiture, taking into account the total value of  
18       the property forfeited and the total law enforcement  
19       effort with respect to the violation of the law upon  
20       which the forfeiture is based. Amounts distributed to  
21       the agency or agencies shall be used for the  
22       enforcement of laws.

23       (B) (i) 12.5% shall be retained by the Office of the  
24       State's Attorney of the county in which the prosecution  
25       resulting in the forfeiture was instituted, deposited  
26       in a special fund in the county treasury and

1           appropriated to the State's Attorney for use in the  
2           enforcement of laws. In counties over 3,000,000  
3           population, 25% shall be retained by the Office of the  
4           State's Attorney for use in the enforcement of laws. If  
5           the prosecution is undertaken solely by the Attorney  
6           General, 25% shall be distributed to the Attorney  
7           General for use in the enforcement of laws.

8           (ii) 12.5% shall be distributed to the Office of  
9           the State's Attorneys Appellate Prosecutor and  
10           deposited in the Narcotics Profit Forfeiture Fund of  
11           that office to be used for additional expenses incurred  
12           in the investigation, prosecution and appeal of cases  
13           arising under laws. However, the Office of the State's  
14           Attorneys Appellate Prosecutor shall not receive  
15           distribution from cases brought in counties with over  
16           3,000,000 population or cases brought solely by the  
17           Attorney General.

18           (d) ~~(b)~~ Any violation of this Article is subject to the  
19 remedies, procedures, and forfeiture as set forth in  
20 subsections (g) and (i) ~~(f)~~ through (s) of Section 29B-1 of  
21 this Code.

22           (Source: P.A. 97-686, eff. 6-11-12.)

23           (720 ILCS 5/33G-9)

24           (Section scheduled to be repealed on June 11, 2017)

25           Sec. 33G-9. Repeal. This Article is repealed on June 11,

1 2020 ~~5 years after it becomes law.~~

2 (Source: P.A. 97-686, eff. 6-11-12.)".