

SB2345



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2345

Introduced 1/28/2016, by Sen. Michael Connelly

SYNOPSIS AS INTRODUCED:

720 ILCS 550/12

from Ch. 56 1/2, par. 712

Amends the Cannabis Control Act. Provides that monies and sale proceeds of all other property forfeited and distributed under an intergovernmental agreement to a municipality that has a population in excess of 20,000, may, in addition to other authorized uses, use the funds for public education in the community or schools in the prevention, detection, or abuse of drugs or alcohol. Effective immediately.

LRB099 16741 SLF 41080 b

A BILL FOR

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 Cannabis Control Act is amended by changing
5 Section 12 as follows:

6 (720 ILCS 550/12) (from Ch. 56 1/2, par. 712)

7 Sec. 12. (a) The following are subject to forfeiture:

8 (1) all substances containing cannabis which have been
9 produced, manufactured, delivered, or possessed in
10 violation of this Act;

11 (2) all raw materials, products and equipment of any
12 kind which are produced, delivered, or possessed in
13 connection with any substance containing cannabis in
14 violation of this Act;

15 (3) all conveyances, including aircraft, vehicles or
16 vessels, which are used, or intended for use, to transport,
17 or in any manner to facilitate the transportation, sale,
18 receipt, possession, or concealment of property described
19 in paragraph (1) or (2) that constitutes a felony violation
20 of the Act, but:

21 (i) no conveyance used by any person as a common
22 carrier in the transaction of business as a common
23 carrier is subject to forfeiture under this Section

1 unless it appears that the owner or other person in
2 charge of the conveyance is a consenting party or privy
3 to a violation of this Act;

4 (ii) no conveyance is subject to forfeiture under
5 this Section by reason of any act or omission which the
6 owner proves to have been committed or omitted without
7 his knowledge or consent;

8 (iii) a forfeiture of a conveyance encumbered by a
9 bona fide security interest is subject to the interest
10 of the secured party if he neither had knowledge of nor
11 consented to the act or omission;

12 (4) all money, things of value, books, records, and
13 research products and materials including formulas,
14 microfilm, tapes, and data which are used, or intended for
15 use in a felony violation of this Act;

16 (5) everything of value furnished or intended to be
17 furnished by any person in exchange for a substance in
18 violation of this Act, all proceeds traceable to such an
19 exchange, and all moneys, negotiable instruments, and
20 securities used, or intended to be used, to commit or in
21 any manner to facilitate any felony violation of this Act;

22 (6) all real property, including any right, title, and
23 interest including, but not limited to, any leasehold
24 interest or the beneficial interest to a land trust, in the
25 whole of any lot or tract of land and any appurtenances or
26 improvements, that is used or intended to be used to

1 facilitate the manufacture, distribution, sale, receipt,
2 or concealment of property described in paragraph (1) or
3 (2) of this subsection (a) that constitutes a felony
4 violation of more than 2,000 grams of a substance
5 containing cannabis or that is the proceeds of any felony
6 violation of this Act.

7 (b) Property subject to forfeiture under this Act may be
8 seized by the Director or any peace officer upon process or
9 seizure warrant issued by any court having jurisdiction over
10 the property. Seizure by the Director or any peace officer
11 without process may be made:

12 (1) if the property subject to seizure has been the
13 subject of a prior judgment in favor of the State in a
14 criminal proceeding or in an injunction or forfeiture
15 proceeding based upon this Act or the Drug Asset Forfeiture
16 Procedure Act;

17 (2) if there is probable cause to believe that the
18 property is directly or indirectly dangerous to health or
19 safety;

20 (3) if there is probable cause to believe that the
21 property is subject to forfeiture under this Act and the
22 property is seized under circumstances in which a
23 warrantless seizure or arrest would be reasonable; or

24 (4) in accordance with the Code of Criminal Procedure
25 of 1963.

26 (c) In the event of seizure pursuant to subsection (b),

1 notice shall be given forthwith to all known interest holders
2 that forfeiture proceedings, including a preliminary review,
3 shall be instituted in accordance with the Drug Asset
4 Forfeiture Procedure Act and such proceedings shall thereafter
5 be instituted in accordance with that Act. Upon a showing of
6 good cause, the notice required for a preliminary review under
7 this Section may be postponed.

8 (c-1) In the event the State's Attorney is of the opinion
9 that real property is subject to forfeiture under this Act,
10 forfeiture proceedings shall be instituted in accordance with
11 the Drug Asset Forfeiture Procedure Act. The exemptions from
12 forfeiture provisions of Section 8 of the Drug Asset Forfeiture
13 Procedure Act are applicable.

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

- 25 (1) place the property under seal;
26 (2) remove the property to a place designated by him;

1 (3) keep the property in the possession of the seizing
2 agency;

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

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

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

16 (e) No disposition may be made of property under seal until
17 the time for taking an appeal has elapsed or until all appeals
18 have been concluded unless a court, upon application therefor,
19 orders the sale of perishable substances and the deposit of the
20 proceeds of the sale with the court.

21 (f) When property is forfeited under this Act the Director
22 shall sell all such property unless such property is required
23 by law to be destroyed or is harmful to the public, and shall
24 distribute the proceeds of the sale, together with any moneys
25 forfeited or seized, in accordance with subsection (g).
26 However, upon the application of the seizing agency or

1 prosecutor who was responsible for the investigation, arrest or
2 arrests and prosecution which lead to the forfeiture, the
3 Director may return any item of forfeited property to the
4 seizing agency or prosecutor for official use in the
5 enforcement of laws relating to cannabis or controlled
6 substances, if the agency or prosecutor can demonstrate that
7 the item requested would be useful to the agency or prosecutor
8 in their enforcement efforts. When any forfeited conveyance,
9 including an aircraft, vehicle, or vessel, is returned to the
10 seizing agency or prosecutor, the conveyance may be used
11 immediately in the enforcement of the criminal laws of this
12 State. Upon disposal, all proceeds from the sale of the
13 conveyance must be used for drug enforcement purposes. When any
14 real property returned to the seizing agency is sold by the
15 agency or its unit of government, the proceeds of the sale
16 shall be delivered to the Director and distributed in
17 accordance with subsection (g).

18 (g) All monies and the sale proceeds of all other property
19 forfeited and seized under this Act shall be distributed as
20 follows:

21 (1) (i) 65% shall be distributed to the metropolitan
22 enforcement group, local, municipal, county, or state law
23 enforcement agency or agencies which conducted or
24 participated in the investigation resulting in the
25 forfeiture. The distribution shall bear a reasonable
26 relationship to the degree of direct participation of the

1 law enforcement agency in the effort resulting in the
2 forfeiture, taking into account the total value of the
3 property forfeited and the total law enforcement effort
4 with respect to the violation of the law upon which the
5 forfeiture is based. Amounts distributed to the agency or
6 agencies shall be used for the enforcement of laws
7 governing cannabis and controlled substances or for
8 security cameras used for the prevention or detection of
9 violence, except that amounts distributed to the Secretary
10 of State shall be deposited into the Secretary of State
11 Evidence Fund to be used as provided in Section 2-115 of
12 the Illinois Vehicle Code.

13 (ii) Any local, municipal, or county law enforcement
14 agency entitled to receive a monetary distribution of
15 forfeiture proceeds may share those forfeiture proceeds
16 pursuant to the terms of an intergovernmental agreement
17 with a municipality that has a population in excess of
18 20,000 if:

19 (I) the receiving agency has entered into an
20 intergovernmental agreement with the municipality to
21 provide police services;

22 (II) the intergovernmental agreement for police
23 services provides for consideration in an amount of not
24 less than \$1,000,000 per year;

25 (III) the seizure took place within the
26 geographical limits of the municipality; and

1 (IV) the funds are used only for: the enforcement
2 of laws governing cannabis and controlled substances;
3 ~~or~~ for security cameras used for the prevention or
4 detection of violence; ~~or~~ the establishment of a
5 municipal police force, including the training of
6 officers, construction of a police station, the
7 purchase of law enforcement equipment, or vehicles; or
8 public education in the community or schools in the
9 prevention, detection, or the abuse of drugs or
10 alcohol.

11 (2) (i) 12.5% shall be distributed to the Office of the
12 State's Attorney of the county in which the prosecution
13 resulting in the forfeiture was instituted, deposited in a
14 special fund in the county treasury and appropriated to the
15 State's Attorney for use in the enforcement of laws
16 governing cannabis and controlled substances, or at the
17 discretion of the State's Attorney, in addition to other
18 authorized purposes, to make grants to local substance
19 abuse treatment facilities and half-way houses. In
20 counties over 3,000,000 population, 25% will be
21 distributed to the Office of the State's Attorney for use
22 in the enforcement of laws governing cannabis and
23 controlled substances, or at the discretion of the State's
24 Attorney, in addition to other authorized purposes, to make
25 grants to local substance abuse treatment facilities and
26 half-way houses. If the prosecution is undertaken solely by

1 the Attorney General, the portion provided hereunder shall
2 be distributed to the Attorney General for use in the
3 enforcement of laws governing cannabis and controlled
4 substances.

5 (ii) 12.5% shall be distributed to the Office of the
6 State's Attorneys Appellate Prosecutor and deposited in
7 the Narcotics Profit Forfeiture Fund of that Office to be
8 used for additional expenses incurred in the
9 investigation, prosecution and appeal of cases arising
10 under laws governing cannabis and controlled substances.
11 The Office of the State's Attorneys Appellate Prosecutor
12 shall not receive distribution from cases brought in
13 counties with over 3,000,000 population.

14 (3) 10% shall be retained by the Department of State
15 Police for expenses related to the administration and sale
16 of seized and forfeited property.

17 (Source: P.A. 97-253, eff. 1-1-12; 97-544, eff. 1-1-12; 97-813,
18 eff. 7-13-12; 97-985, eff. 1-1-13.)

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