

AN ACT concerning criminal law.

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

Section 1. Short title. This Act may be cited as the Public Corruption Profit Forfeiture Act.

Section 5. Legislative declaration. Public corruption is a far-reaching, continuing and extremely profitable criminal enterprise, which diverts significant amounts of public money for illicit purposes. Public corruption-related schemes persist despite the threat of prosecution and the actual prosecution and imprisonment of individual participants because existing sanctions do not effectively reach the money and other assets generated by such schemes. It is therefore necessary to supplement existing sanctions by mandating forfeiture of money and other assets generated by public corruption-related activities. Forfeiture diminishes the financial incentives which encourage and sustain public corruption, restores public moneys which have been diverted by public corruption, and secures for the People of the State of Illinois assets to be used for enforcement of laws governing public corruption.

Section 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),

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 (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 (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 (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 (3) of

this subsection (a) or used to facilitate a violation of one of the offenses listed in clauses (1) through (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 (3) of subsection (a) of this Section or who is convicted of a violation of any of the offenses listed in clauses (1) through (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 (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 (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 (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 (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 (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 (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 (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 (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 (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 (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.

Section 15. Forfeiture of political contribution. Whenever any person pleads guilty to, or is found guilty of, any offense under subsection (a) of Section 10 of this Act, or is convicted

of a violation of any of the following Sections of Title 18 of the United States Code: (i) Section 872 (extortion); (ii) Section 880 (receiving the proceeds of extortion); (iii) Section 201 (bribery); or (iv) Section 874 (kickbacks), in addition to any other penalty imposed by the court, all contributions (as defined by Section 9-1.4 of the Election Code) or other receipts held at the time of forfeiture by a political committee (as defined by Section 9-1.8 of the Election Code), which is controlled by that person, shall be paid to the State within 30 days from the date of the entry of the guilty plea or conviction. Payments received by the State pursuant to this Section shall be deposited into the General Revenue Fund.

Section 20. Fines.

(a) Whenever any person pleads guilty to or is found guilty of an offense under this Act, a fine may be levied in addition to any other penalty imposed by the court.

(b) In determining whether to impose a fine under this Section and the amount, time for payment, and method of payment of any fine so imposed, the court shall:

(1) consider the defendant's income, regardless of source, the defendant's earning capacity, and the defendant's financial resources, as well as the nature of the burden the fine will impose on the defendant and any person legally or financially dependent upon the

defendant;

(2) consider the proof received at trial, or as a result of a plea of guilty, concerning any profits or other proceeds derived by the defendant from the violation of this Act;

(3) take into account any other pertinent equitable considerations; and

(4) give primary consideration to the need to deprive the defendant of illegally obtained profits or other proceeds from the offense.

(c) As a condition of a fine, the court may require that payment be made in specified installments or within a specified period of time, but such period shall not be greater than the maximum applicable term of probation or imprisonment, whichever is greater. Unless otherwise specified, payment of a fine shall be due immediately.

(d) If a fine for a violation of this Act is imposed on an organization, it is the duty of each individual authorized to make disbursements of the assets of the organization to pay the fine from assets of the organization.

(e) (1) A defendant who has been sentenced to pay a fine, and who has paid part but not all of such fine, may petition the court for an extension of the time for payment or modification of the method of payment.

(2) The court may grant a petition made pursuant to this subsection if it finds that:

(i) the circumstances that warranted payment by the time or method specified no longer exist; or

(ii) it is otherwise unjust to require payment of the fine by the time or method specified.

Section 25. Distribution of proceeds of fines.

(a) The proceeds of all fines received under the provisions of this Act shall be transmitted to and deposited in the treasurer's office at the level of government as follows:

(1) If the seizure was made by a combination of law enforcement personnel representing differing units of local government, the court levying the fine shall equitably allocate 50% of the fine among these units of local government and shall allocate 50% to the county general corporate fund. In the event that the seizure was made by law enforcement personnel representing a unit of local government from a municipality where the number of inhabitants exceeds 2 million, the court levying the fine shall allocate 100% of the fine to that unit of local government. If the seizure was made by a combination of law enforcement personnel representing differing units of local government, and at least one of those units represents a municipality where the number of inhabitants exceeds 2 million, the court shall equitably allocate 100% of the proceeds of the fines received among the differing units of local government.

(2) If such seizure was made by State law enforcement personnel, then the court shall allocate 50% to the State treasury and 50% to the county general corporate fund.

(3) If a State law enforcement agency in combination with a law enforcement agency or agencies of a unit or units of local government conducted the seizure, the court shall equitably allocate 50% of the fines to or among the law enforcement agency or agencies of the unit or units of local government which conducted the seizure and shall allocate 50% to the county general corporate fund.

(b) The proceeds of all fines allocated to the law enforcement agency or agencies of the unit or units of local government pursuant to subsection (a) shall be made available to that law enforcement agency as expendable receipts for use in the enforcement of laws regulating public corruption and other laws. The proceeds of fines awarded to the State treasury shall be deposited in the State Asset Forfeiture Fund. Monies from this Fund may be used by the Department of State Police in the enforcement of laws regulating public corruption and other laws; and all other monies shall be paid into the General Revenue Fund in the State treasury.

Section 30. Preventing and restraining violations.

(a) The circuit courts of the State shall have jurisdiction to prevent and restrain violations of this Act by issuing appropriate orders, including, but not limited to: ordering any

person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investment of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect business in the State of Illinois; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General or the State's Attorney may institute proceedings under this Section. In any action brought by the State of Illinois under this Section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending that determination, the court may at any time enter such temporary restraining orders, preliminary or permanent injunctions, or prohibitions, or take such other actions including the acceptance of satisfactory performance bonds by a defendant, as it shall deem proper.

(c) Any person directly injured in his business, person or property by reason of a violation of this Act may sue the violator therefor in any appropriate circuit court and shall recover threefold the damages he or she sustains and the cost of the action, including a reasonable attorney's fee.

(d) A final judgment entered in favor of the People of the State of Illinois in any criminal proceeding brought under this Act shall estop the defendant in the criminal case from denying the essential allegations of the criminal offense in any

subsequent civil proceeding brought under this Act.

Section 35. Venue. Any civil action or proceeding under this Act against any person may be instituted in the circuit court for any county in which such person resides, is found, has an agent, transacts his or her affairs, or in which property that is the subject of these proceedings is located.

Section 40. Intent. It is the intent of the General Assembly that this Act be liberally construed so as to effect the purposes of this Act and be construed in accordance with similar provisions contained in the Narcotics Profit Forfeiture Act.

Section 45. Severability. If any provision of this Act or the application thereof to any person or circumstance is invalid, such invalidation shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 50. The Election Code is amended by changing Section 9-8.10 as follows:

(10 ILCS 5/9-8.10)

Sec. 9-8.10. Use of political committee and other reporting

organization funds.

(a) A political committee, ~~or organization subject to Section 9-7.5,~~ shall not make expenditures:

(1) In violation of any law of the United States or of this State.

(2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.

(3) For satisfaction or repayment of any debts other than loans made to the committee or to the public official or candidate on behalf of the committee or repayment of goods and services purchased by the committee under a credit agreement. Nothing in this Section authorizes the use of campaign funds to repay personal loans. The repayments shall be made by check written to the person who made the loan or credit agreement. The terms and conditions of any loan or credit agreement to a committee shall be set forth in a written agreement, including but not limited to the method and amount of repayment, that shall be executed by the chairman or treasurer of the committee at the time of the loan or credit agreement. The loan or agreement shall also set forth the rate of interest for the loan, if any, which may not substantially exceed the prevailing market interest rate at the time the agreement is executed.

(4) For the satisfaction or repayment of any debts or for the payment of any expenses relating to a personal

residence. Campaign funds may not be used as collateral for home mortgages.

(5) For clothing or personal laundry expenses, except clothing items rented by the public official or candidate for his or her own use exclusively for a specific campaign-related event, provided that committees may purchase costumes, novelty items, or other accessories worn primarily to advertise the candidacy.

(6) For the travel expenses of any person unless the travel is necessary for fulfillment of political, governmental, or public policy duties, activities, or purposes.

(7) For membership or club dues charged by organizations, clubs, or facilities that are primarily engaged in providing health, exercise, or recreational services; provided, however, that funds received under this Article may be used to rent the clubs or facilities for a specific campaign-related event.

(8) In payment for anything of value or for reimbursement of any expenditure for which any person has been reimbursed by the State or any person. For purposes of this item (8), a per diem allowance is not a reimbursement.

(9) For the purchase of or installment payment for a motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted

under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code.

(10) Directly for an individual's tuition or other educational expenses, except for governmental or political purposes directly related to a candidate's or public official's duties and responsibilities.

(11) For payments to a public official or candidate or his or her family member unless for compensation for services actually rendered by that person. The provisions of this item (11) do not apply to expenditures by a political committee in an aggregate amount not exceeding the amount of funds reported to and certified by the State Board or county clerk as available as of June 30, 1998, in the semi-annual report of contributions and expenditures filed by the political committee for the period concluding

June 30, 1998.

(b) The Board shall have the authority to investigate, upon receipt of a verified complaint, violations of the provisions of this Section. The Board may levy a fine on any person who knowingly makes expenditures in violation of this Section and on any person who knowingly makes a malicious and false accusation of a violation of this Section. The Board may act under this subsection only upon the affirmative vote of at least 5 of its members. The fine shall not exceed \$500 for each expenditure of \$500 or less and shall not exceed the amount of the expenditure plus \$500 for each expenditure greater than \$500. The Board shall also have the authority to render rulings and issue opinions relating to compliance with this Section.

(c) Nothing in this Section prohibits the expenditure of funds of ~~(i)~~ a political committee controlled by an officeholder or by a candidate ~~or (ii) an organization subject to Section 9-7.5~~ to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions.

(d) Nothing in this Section prohibits the funds of a political committee which is controlled by a person convicted of a violation of any of the offenses listed in subsection (a) of Section 10 of the Public Corruption Profit Forfeiture Act from being forfeited to the State under Section 15 of the Public Corruption Profit Forfeiture Act.

(Source: P.A. 93-615, eff. 11-19-03; 93-685, eff. 7-8-04.)

Public Act 096-1019

SB2551 Enrolled

LRB096 17492 RLC 32848 b

Section 55. The State Finance Act is amended by adding Section 5.755 as follows:

(30 ILCS 105/5.755 new)

Sec. 5.755. The State's Attorneys Appellate Prosecutor Anti-Corruption Fund.

Section 99. Effective date. This Act takes effect January 1, 2011.