



Sen. Don Harmon

Filed: 4/5/2011

09700SB2268sam001

LRB097 10022 RLC 51670 a

1 AMENDMENT TO SENATE BILL 2268

2 AMENDMENT NO. _____. Amend Senate Bill 2268 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by adding
5 Section 36-1.5 as follows:

6 (720 ILCS 5/36-1.5 new)

7 Sec. 36-1.5. Preliminary Review.

8 (a) Within 14 days of the seizure, the State shall seek a
9 preliminary determination from the circuit court as to whether
10 there is probable cause that the property may be subject to
11 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 of a prosecution is commenced by information or
2 complaint.

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

9 (e) Upon making a finding of probable cause as required
10 under this Section, the circuit court shall enter a restraining
11 order or injunction, or take other appropriate action, as
12 necessary to ensure that the property is not removed from the
13 court's jurisdiction and is not concealed, destroyed, or
14 otherwise disposed of by the property owner or interest holder
15 before a forfeiture hearing is conducted.

16 Section 10. The Drug Asset Forfeiture Procedure Act is
17 amended by changing Section 6 and by adding Section 3.5 as
18 follows:

19 (725 ILCS 150/3.5 new)

20 Sec. 3.5. Preliminary Review.

21 (a) Within 14 days of the seizure, the State shall seek a
22 preliminary determination from the circuit court as to whether
23 there is probable cause that the property may be subject to
24 forfeiture.

1 (b) The rules of evidence shall not apply to any proceeding
2 conducted under this Section.

3 (c) The court may conduct the review under subsection (a)
4 simultaneously with a proceeding pursuant to Section 109-1 of
5 the Code of Criminal Procedure of 1963 for a related criminal
6 offense of a prosecution is commenced by information or
7 complaint.

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

14 (e) Upon making a finding of probable cause as required
15 under this Section, the circuit court shall enter a restraining
16 order or injunction, or take other appropriate action, as
17 necessary to ensure that the property is not removed from the
18 court's jurisdiction and is not concealed, destroyed, or
19 otherwise disposed of by the property owner or interest holder
20 before a forfeiture hearing is conducted.

21 (725 ILCS 150/6) (from Ch. 56 1/2, par. 1676)

22 Sec. 6. Non-Judicial Forfeiture. If non-real property that
23 exceeds \$150,000 ~~\$20,000~~ in value excluding the value of any
24 conveyance, or if real property is seized under the provisions
25 of the Illinois Controlled Substances Act, the Cannabis Control

1 Act, or the Methamphetamine Control and Community Protection
2 Act, the State's Attorney shall institute judicial in rem
3 forfeiture proceedings as described in Section 9 of this Act
4 within 45 days from receipt of notice of seizure from the
5 seizing agency under Section 5 of this Act. However, if
6 non-real property that does not exceed \$150,000 ~~\$20,000~~ in
7 value excluding the value of any conveyance is seized, the
8 following procedure shall be used:

9 (A) If, after review of the facts surrounding the seizure,
10 the State's Attorney is of the opinion that the seized property
11 is subject to forfeiture, then within 45 days of the receipt of
12 notice of seizure from the seizing agency, the State's Attorney
13 shall cause notice of pending forfeiture to be given to the
14 owner of the property and all known interest holders of the
15 property in accordance with Section 4 of this Act.

16 (B) The notice of pending forfeiture must include a
17 description of the property, the estimated value of the
18 property, the date and place of seizure, the conduct giving
19 rise to forfeiture or the violation of law alleged, and a
20 summary of procedures and procedural rights applicable to the
21 forfeiture action.

22 (C) (1) Any person claiming an interest in property which
23 is the subject of notice under subsection (A) of Section 6
24 of this Act, may, within 45 days after the effective date
25 of notice as described in Section 4 of this Act, file a
26 verified claim with the State's Attorney expressing his or

1 her interest in the property. The claim must set forth:

2 (i) the caption of the proceedings as set forth on
3 the notice of pending forfeiture and the name of the
4 claimant;

5 (ii) the address at which the claimant will accept
6 mail;

7 (iii) the nature and extent of the claimant's
8 interest in the property;

9 (iv) the date, identity of the transferor, and
10 circumstances of the claimant's acquisition of the
11 interest in the property;

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

14 (vi) the specific provision of law relied on in
15 asserting the property is not subject to forfeiture;

16 (vii) all essential facts supporting each
17 assertion; and

18 (viii) the relief sought.

19 (2) If a claimant files the claim and deposits with the
20 State's Attorney a cost bond, in the form of a cashier's
21 check payable to the clerk of the court, in the sum of 10
22 percent of the reasonable value of the property as alleged
23 by the State's Attorney or the sum of \$100, whichever is
24 greater, upon condition that, in the case of forfeiture,
25 the claimant must pay all costs and expenses of forfeiture
26 proceedings, then the State's Attorney shall institute

1 judicial in rem forfeiture proceedings and deposit the cost
2 bond with the clerk of the court as described in Section 9
3 of this Act within 45 days after receipt of the claim and
4 cost bond. In lieu of a cost bond, a person claiming
5 interest in the seized property may file, under penalty of
6 perjury, an indigency affidavit.

7 (3) If none of the seized property is forfeited in the
8 judicial in rem proceeding, the clerk of the court shall
9 return to the claimant, unless the court orders otherwise,
10 90% of the sum which has been deposited and shall retain as
11 costs 10% of the money deposited. If any of the seized
12 property is forfeited under the judicial forfeiture
13 proceeding, the clerk of the court shall transfer 90% of
14 the sum which has been deposited to the State's Attorney
15 prosecuting the civil forfeiture to be applied to the costs
16 of prosecution and the clerk shall retain as costs 10% of
17 the sum deposited.

18 (D) If no claim is filed or bond given within the 45 day
19 period as described in subsection (C) of Section 6 of this Act,
20 the State's Attorney shall declare the property forfeited and
21 shall promptly notify the owner and all known interest holders
22 of the property and the Director of the Illinois Department of
23 State Police of the declaration of forfeiture and the Director
24 shall dispose of the property in accordance with law.

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