

AN ACT concerning criminal law.

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

Section 5. The Seizure and Forfeiture Reporting Act is amended by changing Sections 10 and 15 and by adding Section 20 as follows:

(5 ILCS 810/10)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 10. Reporting by law enforcement agency.

(a) Each law enforcement agency that seizes property subject to reporting under this Act shall report the following information about property seized or forfeited under State law:

(1) the name of the law enforcement agency that seized the property;

(2) the date of the seizure;

(3) the type of property seized, including a building, vehicle, boat, cash, negotiable security, or firearm, except reporting is not required for seizures of contraband including alcohol, gambling devices, drug paraphernalia, and controlled substances;

(4) a description of the property seized and the estimated value of the property and if the property is a

conveyance, the description shall include the make, model, year, and vehicle identification number or serial number; and

(5) the location where the seizure occurred.

The filing requirement shall be met upon filing Illinois State Police Notice/Inventory of Seized Property (Form 4-64) ~~the form 4-64~~ with the State's Attorney's Office in the county where the forfeiture action is being commenced or with the Attorney General's Office if the forfeiture action is being commenced by that office, and the forwarding of Form ~~the form~~ 4-64 upon approval of the State's Attorney's Office or the Attorney General's Office to the Department of State Police Asset Forfeiture Section. With regard to seizures for which Form ~~form~~ 4-64 is not required to be filed, the filing requirement shall be met by the filing of an annual summary report with the Department of State Police no later than 60 days after December 31 of that year.

(b) Each law enforcement agency, including a drug task force or Metropolitan Enforcement Group (MEG) unit, that receives proceeds from forfeitures subject to reporting under this Act shall file an annual report with the Department of State Police no later than 60 days after December 31 of that year. The format of the report shall be developed by the Department of State Police and shall be completed by the law enforcement agency. The report shall include, at a minimum, the amount of funds and other property distributed to the law

enforcement agency by the Department of State Police, the amount of funds expended by the law enforcement agency, and the category of expenditure, including:

(1) crime, gang, or abuse prevention or intervention programs;

(2) compensation or services for crime victims;

(3) witness protection, informant fees, and controlled purchases of contraband;

(4) salaries, overtime, and benefits, as permitted by law;

(5) operating expenses, including but not limited to, capital expenditures for vehicles, firearms, equipment, computers, furniture, office supplies, postage, printing, membership fees paid to trade associations, and fees for professional services including auditing, court reporting, expert witnesses, and attorneys;

(6) travel, meals, entertainment, conferences, training, and continuing education seminars; and

(7) other expenditures of forfeiture proceeds.

(c) The Department of State Police shall establish and maintain on its official website a public database that includes annual aggregate data for each law enforcement agency that reports seizures of property under subsection (a) of this Section, that receives distributions of forfeiture proceeds subject to reporting under this Act, or reports expenditures under subsection (b) of this Section. This aggregate data shall

include, for each law enforcement agency:

(1) the total number of asset seizures reported by each law enforcement agency during the calendar year;

(2) the monetary value of all currency or its equivalent seized by the law enforcement agency during the calendar year;

(3) the number of conveyances seized by the law enforcement agency during the calendar year, and the aggregate estimated value;

(4) the aggregate estimated value of all other property seized by the law enforcement agency during the calendar year;

(5) the monetary value of distributions by the Department of State Police of forfeited currency or auction proceeds from forfeited property to the law enforcement agency during the calendar year; and

(6) the total amount of the law enforcement agency's expenditures of forfeiture proceeds during the calendar year, categorized as provided under subsection (b) of this Section.

The database shall not provide names, addresses, phone numbers, or other personally identifying information of owners or interest holders, persons, business entities, covert office locations, or business entities involved in the forfeiture action and shall not disclose the vehicle identification number or serial number of any conveyance.

(d) The Department of State Police shall adopt rules to administer the asset forfeiture program, including the categories of authorized expenditures consistent with the statutory guidelines for each of the included forfeiture statutes, the use of forfeited funds, other expenditure requirements, and the reporting of seizure and forfeiture information. The Department may adopt rules necessary to implement this Act through the use of emergency rulemaking under Section 5-45 of the Illinois Administrative Procedure Act for a period not to exceed 180 days after the effective date of this Act.

(e) The Department of State Police shall have authority and oversight over all law enforcement agencies receiving forfeited funds from the Department. This authority shall include enforcement of rules and regulations adopted by the Department and sanctions for violations of any rules and regulations, including the withholding of distributions of forfeiture proceeds from the law enforcement agency in violation.

(f) Upon application by a law enforcement agency to the Department of State Police, the reporting of a particular asset forfeited under this Section may be delayed if the asset in question was seized from a person who has become a confidential informant under the agency's confidential informant policy, or if the asset was seized as part of an ongoing investigation. This delayed reporting shall be granted by the Department of

State Police for a maximum period of 6 months if the confidential informant is still providing cooperation to law enforcement or the investigation is still ongoing, after which ~~and at that time~~ the asset shall be reported as required under this Act.

(g) The Department of State Police shall, on or before January 1, 2019, establish and implement the requirements of this Act. In order to implement the reporting and public database requirements under this Act, the Department of State Police Asset Forfeiture Section requires a one-time upgrade of its information technology software and hardware. This one-time upgrade shall be funded by a temporary allocation of 5% of all forfeited currency and 5% of the auction proceeds from each forfeited asset, which are to be distributed after the effective date of this Act. The Department of State Police shall transfer these funds at the time of distribution to a separate fund established by the Department of State Police. Moneys ~~Monies~~ deposited in this fund shall be accounted for and shall be used only to pay for the actual one-time cost of purchasing and installing the hardware and software required to comply with this new reporting and public database requirement. Moneys ~~Monies~~ deposited in the fund shall not be subject to reappropriation ~~re-appropriation~~, reallocation, or redistribution for any other purpose. After sufficient funds are transferred to the fund to cover the actual one-time cost of purchasing and installing the hardware and software required

to comply with this new reporting and public database requirement, no additional funds shall be transferred to the fund for any purpose. At the completion of the one-time upgrade of the information technology hardware and software to comply with this new reporting and public database requirement, any remaining funds in the fund shall be returned to the participating agencies under the distribution requirements of the statutes from which the funds were transferred, and the fund shall no longer exist.

(h) (1) The Department of State Police, in consultation with and subject to the approval of the Chief Procurement Officer, may procure a single contract or multiple contracts to implement ~~the provisions of~~ this Act.

(2) A contract or contracts under this subsection (h) are not subject to the Illinois Procurement Code, except for Sections 20-60, 20-65, 20-70, and 20-160 and Article 50 of that Code, provided that the Chief Procurement Officer may, in writing with justification, waive any certification required under Article 50 of the Illinois Procurement Code. The provisions of this paragraph (2), other than this sentence, are inoperative on and after July 1, 2019.

(Source: P.A. 100-512, eff. 7-1-18.)

(5 ILCS 810/15)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 15. Fund audits.

(a) The Auditor General shall conduct, as a part of its 2-year ~~2-year~~ compliance audit, an audit of the State Asset Forfeiture Fund for compliance with the requirements of this Act. The audit shall include, but not be limited to, the following determinations:

(1) if detailed records of all receipts and disbursements from the State Asset Forfeiture Fund are being maintained;

(2) if administrative costs charged to the fund are adequately documented and are reasonable; and

(3) if the procedures for making disbursements under the Act are adequate.

(b) The Department of State Police, and any other entity or person that may have information relevant to the audit, shall cooperate fully and promptly with the Office of the Auditor General in conducting the audit. The Auditor General shall begin the audit during the next regular 2-year ~~two-year~~ compliance audit of the Department of State Police and distribute the report upon completion under Section 3-14 of the Illinois State Auditing Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(5 ILCS 810/20 new)

Sec. 20. Applicability. This Act and the changes made to this Act by this amendatory Act of the 100th General Assembly

only apply to property seized on and after July 1, 2018.

Section 10. The Department of State Police Law of the Civil Administrative Code of Illinois is amended by changing Section 2605-585 as follows:

(20 ILCS 2605/2605-585)

Sec. 2605-585. Money Laundering Asset Recovery Fund. Moneys and the sale proceeds distributed to the Department of State Police under paragraph (3) of Section 29B-26 ~~pursuant to clause (h)(6)(C) of Section 29B-1 of the Criminal Code of 1961 or the~~ Criminal Code of 2012 shall be deposited in a special fund in the State treasury to be known as the Money Laundering Asset Recovery Fund. The moneys deposited in the Money Laundering Asset Recovery Fund shall be appropriated to and administered by the Department of State Police for State law enforcement purposes.

(Source: P.A. 96-1234, eff. 7-23-10; 97-1150, eff. 1-25-13.)

Section 15. The Illinois Food, Drug and Cosmetic Act is amended by changing Section 3.23 as follows:

(410 ILCS 620/3.23)

(Text of Section before amendment by P.A. 100-512)

Sec. 3.23. Legend drug prohibition.

(a) In this Section:

"Legend drug" means a drug limited by the Federal Food, Drug and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

- (1) habit forming;
- (2) toxic or having potential for harm; or
- (3) limited in use by the new drug application for the drug to use only under a medical practitioner's supervision.

"Medical practitioner" means any person licensed to practice medicine in all its branches in the State.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of possession of a legend drug, with or without consideration, whether or not there is an agency relationship.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a legend drug, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling of its container. "Manufacture" does not include:

- (1) by an ultimate user, the preparation or compounding of a legend drug for his own use; or
- (2) by a medical practitioner, or his authorized agent under his supervision, the preparation, compounding,

packaging, or labeling of a legend drug:

(A) as an incident to his administering or dispensing of a legend drug in the course of his professional practice; or

(B) as an incident to lawful research, teaching, or chemical analysis and not for sale.

"Prescription" has the same meaning ascribed to it in Section 3 of the Pharmacy Practice Act.

(b) It is unlawful for any person to knowingly manufacture or deliver or possess with the intent to manufacture or deliver a legend drug of 6 or more pills, tablets, capsules, or caplets or 30 ml or more of a legend drug in liquid form who is not licensed by applicable law to prescribe or dispense legend drugs or is not an employee of the licensee operating in the normal course of business under the supervision of the licensee. Any person who violates this Section is guilty of a Class 3 felony, the fine for which shall not exceed \$100,000. A person convicted of a second or subsequent violation of this Section is guilty of a Class 1 felony, the fine for which shall not exceed \$250,000.

(c) The following are subject to forfeiture:

(1) all substances that have been manufactured, distributed, dispensed, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind which are used, or intended for use in manufacturing,

distributing, dispensing, administering, or possessing any substance in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in items (1) and (2) of this subsection (c), but:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

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

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

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data that are used, or intended to be used in violation of this Act;

(5) everything of value furnished, or intended to be

furnished, in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any violation of this Act; and

(6) all real property, including any right, title, and interest, including, but not limited to, any leasehold interest or the beneficial interest in a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of Section 33.1 of this Act or that is the proceeds of any violation or act that constitutes a violation of Section 33.1 of this Act.

(d) Property subject to forfeiture under this Act may be seized by the Director of the Department of State Police or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property. Seizure by the Director of the Department of State Police or any peace officer without process may be made:

(1) if the seizure is incident to inspection under an administrative inspection warrant;

(2) if the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal proceeding, or in an injunction or forfeiture

proceeding based upon this Act or the Drug Asset Forfeiture Procedure Act;

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety;

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

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

(e) In the event of seizure pursuant to subsection (c) of this Section, forfeiture proceedings shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act.

(f) Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the Director of the Department of State Police subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney under the Drug Asset Forfeiture Procedure Act. If property is seized under this Act, then the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value, and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director of the Department of State Police. Upon receiving notice of seizure,

the Secretary may:

- (1) place the property under seal;
 - (2) remove the property to a place designated by the Secretary;
 - (3) keep the property in the possession of the seizing agency;
 - (4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, deposit it in an interest bearing account;
 - (5) place the property under constructive seizure by posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property; or
 - (6) provide for another agency or custodian, including an owner, secured party, or lienholder, to take custody of the property upon the terms and conditions set by the Director of the Department of State Police.
- (g) If the Department suspends or revokes a registration, all legend drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable

substances and the deposit of the proceeds of the sale with the court. Upon a revocation rule becoming final, all substances may be forfeited to the Department.

(h) If property is forfeited under this Act, then the Director of the Department of State Police must sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (i) of this Section. Upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests, and prosecution that led to the forfeiture, the Director of the Department of State Police may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws if the agency or prosecutor can demonstrate that the item requested would be useful to the agency or prosecutor in their enforcement efforts. If any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, then the conveyance may be used immediately in the enforcement of the criminal laws of the State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. If any real property returned to the seizing agency is sold by the agency or its unit of government, then the proceeds of the sale shall be delivered to the Director of the Department of State Police and distributed in

accordance with subsection (i) of this Section.

(i) All moneys and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws.

(2) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws. In counties over 3,000,000 population, 25% will be distributed to the Office of the State's Attorney for use in the enforcement of laws governing cannabis and controlled substances. If the prosecution is undertaken solely by the Attorney General, the portion provided

hereunder shall be distributed to the Attorney General for use in the enforcement of laws.

(3) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in a separate fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

(4) 10% shall be retained by the Department of State Police for expenses related to the administration and sale of seized and forfeited property.

(Source: P.A. 96-573, eff. 8-18-09.)

(Text of Section after amendment by P.A. 100-512)

Sec. 3.23. Legend drug prohibition.

(a) In this Section:

"Legend drug" means a drug limited by the Federal Food, Drug and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(1) habit forming;

(2) toxic or having potential for harm; or

(3) limited in use by the new drug application for the drug to use only under a medical practitioner's supervision.

"Medical practitioner" means any person licensed to

practice medicine in all its branches in the State.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of possession of a legend drug, with or without consideration, whether or not there is an agency relationship.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a legend drug, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling of its container. "Manufacture" does not include:

(1) by an ultimate user, the preparation or compounding of a legend drug for his own use; or

(2) by a medical practitioner, or his authorized agent under his supervision, the preparation, compounding, packaging, or labeling of a legend drug:

(A) as an incident to his administering or dispensing of a legend drug in the course of his professional practice; or

(B) as an incident to lawful research, teaching, or chemical analysis and not for sale.

"Prescription" has the same meaning ascribed to it in Section 3 of the Pharmacy Practice Act.

(b) It is unlawful for any person to knowingly manufacture

or deliver or possess with the intent to manufacture or deliver a legend drug of 6 or more pills, tablets, capsules, or caplets or 30 ml or more of a legend drug in liquid form who is not licensed by applicable law to prescribe or dispense legend drugs or is not an employee of the licensee operating in the normal course of business under the supervision of the licensee. Any person who violates this Section is guilty of a Class 3 felony, the fine for which shall not exceed \$100,000. A person convicted of a second or subsequent violation of this Section is guilty of a Class 1 felony, the fine for which shall not exceed \$250,000.

(c) The following are subject to forfeiture:

(1) (blank);

(2) all raw materials, products, and equipment of any kind which are used, or intended for use in manufacturing, distributing, dispensing, administering, or possessing any substance in violation of this Section;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any substance manufactured, distributed, dispensed, or possessed in violation of this Section or property described in paragraph (2) of this subsection (c), but:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common

carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the violation;

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

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

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data that are used, or intended to be used in violation of this Section;

(5) everything of value furnished, or intended to be furnished, in exchange for a substance in violation of this Section, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any violation of this Section; and

(6) all real property, including any right, title, and interest, including, but not limited to, any leasehold interest or the beneficial interest in a land trust, in the whole of any lot or tract of land and any appurtenances or

improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of this Section or that is the proceeds of any violation or act that constitutes a violation of this Section.

(d) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(e) Forfeiture under this Act is subject to an 8th Amendment ~~amendment~~ to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act.

(f) With regard to possession of legend drug offenses only, a sum of currency with a value of less than \$500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than ~~currency with a value of under~~ \$100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(f-5) For felony offenses involving possession of legend drug only, no property shall be subject to forfeiture under this Act because of the possession of less than 2 single unit doses of a legend drug ~~controlled substance~~. This exemption

shall not apply in instances when the possessor, or another person at the direction of the possessor, is engaged in the destruction of any amount of a legend drug. The amount of a single unit dose shall be the State's burden to prove in its ~~their~~ case in chief.

(g) If the Department suspends or revokes a registration, all legend drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation rule becoming final, all substances are subject to seizure and forfeiture under the Drug Asset Forfeiture Procedure Act.

(h) (Blank).

(i) (Blank).

(j) Contraband, including legend drugs possessed without a prescription or other authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(k) The changes made to this Section by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(Source: P.A. 100-512, eff. 7-1-18.)

Section 20. The Criminal Code of 2012 is amended by changing Sections 17-10.6, 29B-1, 33G-6, 36-1.1, 36-1.3, 36-1.4, 36-1.5, 36-2, 36-2.1, 36-2.2, 36-2.5, 36-2.7, and 36-7 and by adding Sections 29B-0.5, 29B-2, 29B-3, 29B-4, 29B-5, 29B-6, 29B-7, 29B-8, 29B-9, 29B-10, 29B-11, 29B-12, 29B-13, 29B-14, 29B-15, 29B-16, 29B-17, 29B-18, 29B-19, 29B-20, 29B-21, 29B-22, 29B-23, 29B-24, 29B-25, 29B-26, 29B-27, and 36-10 as follows:

(720 ILCS 5/17-10.6)

(Text of Section before amendment by P.A. 100-512)

Sec. 17-10.6. Financial institution fraud.

(a) Misappropriation of financial institution property. A person commits misappropriation of a financial institution's property whenever he or she knowingly obtains or exerts unauthorized control over any of the moneys, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution, or under the custody or care of any agent, officer, director, or employee of such financial institution.

(b) Commercial bribery of a financial institution.

(1) A person commits commercial bribery of a financial institution when he or she knowingly confers or offers or agrees to confer any benefit upon any employee, agent, or

fiduciary without the consent of the latter's employer or principal, with the intent to influence his or her conduct in relation to his or her employer's or principal's affairs.

(2) An employee, agent, or fiduciary of a financial institution commits commercial bribery of a financial institution when, without the consent of his or her employer or principal, he or she knowingly solicits, accepts, or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his or her conduct in relation to his or her employer's or principal's affairs.

(c) Financial institution fraud. A person commits financial institution fraud when he or she knowingly executes or attempts to execute a scheme or artifice:

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution, by means of pretenses, representations, or promises he or she knows to be false.

(d) Loan fraud. A person commits loan fraud when he or she knowingly, with intent to defraud, makes any false statement or report, or overvalues any land, property, or security, with the intent to influence in any way the action of a financial institution to act upon any application, advance, discount,

purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security.

(e) Concealment of collateral. A person commits concealment of collateral when he or she, with intent to defraud, knowingly conceals, removes, disposes of, or converts to the person's own use or to that of another any property mortgaged or pledged to or held by a financial institution.

(f) Financial institution robbery. A person commits robbery when he or she knowingly, by force or threat of force, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion, any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, a financial institution.

(g) Conspiracy to commit a financial crime.

(1) A person commits conspiracy to commit a financial crime when, with the intent that any violation of this Section be committed, he or she agrees with another person to the commission of that offense.

(2) No person may be convicted of conspiracy to commit a financial crime unless an overt act or acts in furtherance of the agreement is alleged and proved to have been committed by that person or by a co-conspirator and the accused is a part of a common scheme or plan to engage

in the unlawful activity.

(3) It shall not be a defense to conspiracy to commit a financial crime that the person or persons with whom the accused is alleged to have conspired:

- (A) has not been prosecuted or convicted;
- (B) has been convicted of a different offense;
- (C) is not amenable to justice;
- (D) has been acquitted; or
- (E) lacked the capacity to commit the offense.

(h) Continuing financial crimes enterprise. A person commits a continuing financial crimes enterprise when he or she knowingly, within an 18-month period, commits 3 or more separate offenses constituting any combination of the following:

- (1) an offense under this Section;
- (2) a felony offense in violation of Section 16A-3 or subsection (a) of Section 16-25 or paragraph (4) or (5) of subsection (a) of Section 16-1 of this Code for the purpose of reselling or otherwise re-entering the merchandise in commerce, including conveying the merchandise to a merchant in exchange for anything of value; or
- (3) if involving a financial institution, any other felony offense under this Code.

(i) Organizer of a continuing financial crimes enterprise.

(1) A person commits being an organizer of a continuing financial crimes enterprise when he or she:

(A) with the intent to commit any offense, agrees with another person to the commission of any combination of the following offenses on 3 or more separate occasions within an 18-month period:

(i) an offense under this Section;

(ii) a felony offense in violation of Section 16A-3 or subsection (a) of Section 16-25 or paragraph (4) or (5) of subsection (a) of Section 16-1 of this Code for the purpose of reselling or otherwise re-entering the merchandise in commerce, including conveying the merchandise to a merchant in exchange for anything of value; or

(iii) if involving a financial institution, any other felony offense under this Code; and

(B) with respect to the other persons within the conspiracy, occupies a position of organizer, supervisor, or financier or other position of management.

(2) The person with whom the accused agreed to commit the 3 or more offenses under this Section, or, if involving a financial institution, any other felony offenses under this Code, need not be the same person or persons for each offense, as long as the accused was a part of the common scheme or plan to engage in each of the 3 or more alleged offenses.

(j) Sentence.

(1) Except as otherwise provided in this subsection, a violation of this Section, the full value of which:

(A) does not exceed \$500, is a Class A misdemeanor;

(B) does not exceed \$500, and the person has been previously convicted of a financial crime or any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, or home invasion, is guilty of a Class 4 felony;

(C) exceeds \$500 but does not exceed \$10,000, is a Class 3 felony;

(D) exceeds \$10,000 but does not exceed \$100,000, is a Class 2 felony;

(E) exceeds \$100,000 but does not exceed \$500,000, is a Class 1 felony;

(F) exceeds \$500,000 but does not exceed \$1,000,000, is a Class 1 non-probationable felony; when a charge of financial crime, the full value of which exceeds \$500,000 but does not exceed \$1,000,000, is brought, the value of the financial crime involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$500,000;

(G) exceeds \$1,000,000, is a Class X felony; when a charge of financial crime, the full value of which exceeds \$1,000,000, is brought, the value of the financial crime involved is an element of the offense

to be resolved by the trier of fact as either exceeding or not exceeding \$1,000,000.

(2) A violation of subsection (f) is a Class 1 felony.

(3) A violation of subsection (h) is a Class 1 felony.

(4) A violation for subsection (i) is a Class X felony.

(k) A "financial crime" means an offense described in this Section.

(l) Period of limitations. The period of limitations for prosecution of any offense defined in this Section begins at the time when the last act in furtherance of the offense is committed.

(m) Forfeiture. Any violation of subdivision (2) of subsection (h) or subdivision (i) (1) (A) (ii) shall be subject to the remedies, procedures, and forfeiture as set forth in subsections (f) through (s) of Section 29B-1 of this Code.

(Source: P.A. 96-1551, eff. 7-1-11; incorporates P.A. 96-1532, eff. 1-1-12, and 97-147, eff. 1-1-12; 97-1109, eff. 1-1-13.)

(Text of Section after amendment by P.A. 100-512)

Sec. 17-10.6. Financial institution fraud.

(a) Misappropriation of financial institution property. A person commits misappropriation of a financial institution's property whenever he or she knowingly obtains or exerts unauthorized control over any of the moneys, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution, or under the

custody or care of any agent, officer, director, or employee of such financial institution.

(b) Commercial bribery of a financial institution.

(1) A person commits commercial bribery of a financial institution when he or she knowingly confers or offers or agrees to confer any benefit upon any employee, agent, or fiduciary without the consent of the latter's employer or principal, with the intent to influence his or her conduct in relation to his or her employer's or principal's affairs.

(2) An employee, agent, or fiduciary of a financial institution commits commercial bribery of a financial institution when, without the consent of his or her employer or principal, he or she knowingly solicits, accepts, or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his or her conduct in relation to his or her employer's or principal's affairs.

(c) Financial institution fraud. A person commits financial institution fraud when he or she knowingly executes or attempts to execute a scheme or artifice:

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution, by means of pretenses, representations, or promises he or she knows to

be false.

(d) Loan fraud. A person commits loan fraud when he or she knowingly, with intent to defraud, makes any false statement or report, or overvalues any land, property, or security, with the intent to influence in any way the action of a financial institution to act upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security.

(e) Concealment of collateral. A person commits concealment of collateral when he or she, with intent to defraud, knowingly conceals, removes, disposes of, or converts to the person's own use or to that of another any property mortgaged or pledged to or held by a financial institution.

(f) Financial institution robbery. A person commits robbery when he or she knowingly, by force or threat of force, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion, any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, a financial institution.

(g) Conspiracy to commit a financial crime.

(1) A person commits conspiracy to commit a financial crime when, with the intent that any violation of this Section be committed, he or she agrees with another person

to the commission of that offense.

(2) No person may be convicted of conspiracy to commit a financial crime unless an overt act or acts in furtherance of the agreement is alleged and proved to have been committed by that person or by a co-conspirator and the accused is a part of a common scheme or plan to engage in the unlawful activity.

(3) It shall not be a defense to conspiracy to commit a financial crime that the person or persons with whom the accused is alleged to have conspired:

- (A) has not been prosecuted or convicted;
- (B) has been convicted of a different offense;
- (C) is not amenable to justice;
- (D) has been acquitted; or
- (E) lacked the capacity to commit the offense.

(h) Continuing financial crimes enterprise. A person commits a continuing financial crimes enterprise when he or she knowingly, within an 18-month period, commits 3 or more separate offenses constituting any combination of the following:

- (1) an offense under this Section;
- (2) a felony offense in violation of Section 16A-3 or subsection (a) of Section 16-25 or paragraph (4) or (5) of subsection (a) of Section 16-1 of this Code for the purpose of reselling or otherwise re-entering the merchandise in commerce, including conveying the merchandise to a

merchant in exchange for anything of value; or

(3) if involving a financial institution, any other felony offense under this Code.

(i) Organizer of a continuing financial crimes enterprise.

(1) A person commits being an organizer of a continuing financial crimes enterprise when he or she:

(A) with the intent to commit any offense, agrees with another person to the commission of any combination of the following offenses on 3 or more separate occasions within an 18-month period:

(i) an offense under this Section;

(ii) a felony offense in violation of Section 16A-3 or subsection (a) of Section 16-25 or paragraph (4) or (5) of subsection (a) of Section 16-1 of this Code for the purpose of reselling or otherwise re-entering the merchandise in commerce, including conveying the merchandise to a merchant in exchange for anything of value; or

(iii) if involving a financial institution, any other felony offense under this Code; and

(B) with respect to the other persons within the conspiracy, occupies a position of organizer, supervisor, or financier or other position of management.

(2) The person with whom the accused agreed to commit the 3 or more offenses under this Section, or, if involving

a financial institution, any other felony offenses under this Code, need not be the same person or persons for each offense, as long as the accused was a part of the common scheme or plan to engage in each of the 3 or more alleged offenses.

(j) Sentence.

(1) Except as otherwise provided in this subsection, a violation of this Section, the full value of which:

(A) does not exceed \$500, is a Class A misdemeanor;

(B) does not exceed \$500, and the person has been previously convicted of a financial crime or any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, or home invasion, is guilty of a Class 4 felony;

(C) exceeds \$500 but does not exceed \$10,000, is a Class 3 felony;

(D) exceeds \$10,000 but does not exceed \$100,000, is a Class 2 felony;

(E) exceeds \$100,000 but does not exceed \$500,000, is a Class 1 felony;

(F) exceeds \$500,000 but does not exceed \$1,000,000, is a Class 1 non-probationable felony; when a charge of financial crime, the full value of which exceeds \$500,000 but does not exceed \$1,000,000, is brought, the value of the financial crime involved is an element of the offense to be resolved by the

trier of fact as either exceeding or not exceeding \$500,000;

(G) exceeds \$1,000,000, is a Class X felony; when a charge of financial crime, the full value of which exceeds \$1,000,000, is brought, the value of the financial crime involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$1,000,000.

(2) A violation of subsection (f) is a Class 1 felony.

(3) A violation of subsection (h) is a Class 1 felony.

(4) A violation for subsection (i) is a Class X felony.

(k) A "financial crime" means an offense described in this Section.

(l) Period of limitations. The period of limitations for prosecution of any offense defined in this Section begins at the time when the last act in furtherance of the offense is committed.

(m) Forfeiture. Any violation of subdivision (2) of subsection (h) or subdivision (i) (1) (A) (ii) shall be subject to the remedies, procedures, and forfeiture as set forth in Article 29B ~~subsections (f) through (s) of Section 29B-1~~ of this Code.

Property seized or forfeited under this Section is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/29B-0.5 new)

Sec. 29B-0.5. Definitions. In this Article:

"Conduct" or "conducts" includes, in addition to its ordinary meaning, initiating, concluding, or participating in initiating or concluding a transaction.

"Criminally derived property" means: (1) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law; or (2) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law.

"Department" means the Department of State Police of this State or its successor agency.

"Director" means the Director of State Police or his or her designated agents.

"Financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union; mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer, or cashier of travelers checks, checks, or money orders; dealer in precious metals, stones, or jewels; broker or dealer in securities or commodities; investment banker; or investment company.

"Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition utilizing criminally derived property, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, use of safe deposit box, or any other payment, transfer or delivery by, through, or to a financial institution. "Financial transaction" also means a transaction which without regard to whether the funds, monetary instruments, or real or personal property involved in the transaction are criminally derived, any transaction which in any way or degree: (1) involves the movement of funds by wire or any other means; (2) involves one or more monetary instruments; or (3) the transfer of title to any real or personal property. The receipt by an attorney of bona fide fees for the purpose of legal representation is not a financial transaction for purposes of this Article.

"Form 4-64" means the Illinois State Police Notice/Inventory of Seized Property (Form 4-64).

"Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, federal, or foreign law.

"Monetary instrument" means United States coins and currency; coins and currency of a foreign country; travelers checks; personal checks, bank checks, and money orders; investment securities; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock in a form that title passes upon delivery.

"Specified criminal activity" means any violation of Section 29D-15.1 and any violation of Article 29D of this Code.

"Transaction reporting requirement under State law" means any violation as defined under the Currency Reporting Act.

(720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

(Text of Section before amendment by P.A. 100-512)

Sec. 29B-1. (a) A person commits the offense of money laundering:

(1) when, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, he or she conducts or attempts to conduct such a financial transaction which in fact involves criminally derived property:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) where he or she knows or reasonably should know that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property; or

(ii) to avoid a transaction reporting requirement under State law; or

(1.5) when he or she transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) knowing, or having reason to know, that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property; or

(ii) to avoid a transaction reporting requirement under State law; or

(2) when, with the intent to:

(A) promote the carrying on of a specified criminal activity as defined in this Article; or

(B) conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of a specified criminal activity as defined by subdivision (b) (6); or

(C) avoid a transaction reporting requirement

under State law,
he or she conducts or attempts to conduct a financial transaction involving property he or she believes to be the proceeds of specified criminal activity as defined by subdivision (b) (6) or property used to conduct or facilitate specified criminal activity as defined by subdivision (b) (6).

(b) As used in this Section:

(0.5) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, federal, or foreign law.

(1) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition utilizing criminally derived property, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, use of safe deposit box, or any other payment, transfer or delivery by, through, or to a financial institution. For purposes of clause (a) (2) of this Section, the term "financial transaction" also means a transaction

which without regard to whether the funds, monetary instruments, or real or personal property involved in the transaction are criminally derived, any transaction which in any way or degree: (1) involves the movement of funds by wire or any other means; (2) involves one or more monetary instruments; or (3) the transfer of title to any real or personal property. The receipt by an attorney of bona fide fees for the purpose of legal representation is not a financial transaction for purposes of this Section.

(2) "Financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union, mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer or cashier of travelers checks, checks or money orders; dealer in precious metals, stones or jewels; broker or dealer in securities or commodities; investment banker; or investment company.

(3) "Monetary instrument" means United States coins and currency; coins and currency of a foreign country; travelers checks; personal checks, bank checks, and money orders; investment securities; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock in such form that title thereto passes upon delivery.

(4) "Criminally derived property" means: (A) any

property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law; or (B) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law.

(5) "Conduct" or "conducts" includes, in addition to its ordinary meaning, initiating, concluding, or participating in initiating or concluding a transaction.

(6) "Specified criminal activity" means any violation of Section 29D-15.1 (720 ILCS 5/29D-15.1) and any violation of Article 29D of this Code.

(7) "Director" means the Director of State Police or his or her designated agents.

(8) "Department" means the Department of State Police of the State of Illinois or its successor agency.

(9) "Transaction reporting requirement under State law" means any violation as defined under the Currency Reporting Act.

(c) Sentence.

(1) Laundering of criminally derived property of a value not exceeding \$10,000 is a Class 3 felony;

(2) Laundering of criminally derived property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(3) Laundering of criminally derived property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

(4) Money laundering in violation of subsection (a) (2) of this Section is a Class X felony;

(5) Laundering of criminally derived property of a value exceeding \$500,000 is a Class 1 non-probationable felony;

(6) In a prosecution under clause (a) (1.5) (B) (ii) of this Section, the sentences are as follows:

(A) Laundering of property of a value not exceeding \$10,000 is a Class 3 felony;

(B) Laundering of property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(C) Laundering of property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

(D) Laundering of property of a value exceeding \$500,000 is a Class 1 non-probationable felony.

(d) Evidence. In a prosecution under this Article, either party may introduce the following evidence pertaining to the issue of whether the property or proceeds were known to be some form of criminally derived property or from some form of unlawful activity:

(1) A financial transaction was conducted or structured or attempted in violation of the reporting

requirements of any State or federal law; or

(2) A financial transaction was conducted or attempted with the use of a false or fictitious name or a forged instrument; or

(3) A falsely altered or completed written instrument or a written instrument that contains any materially false personal identifying information was made, used, offered or presented, whether accepted or not, in connection with a financial transaction; or

(4) A financial transaction was structured or attempted to be structured so as to falsely report the actual consideration or value of the transaction; or

(5) A money transmitter, a person engaged in a trade or business or any employee of a money transmitter or a person engaged in a trade or business, knows or reasonably should know that false personal identifying information has been presented and incorporates the false personal identifying information into any report or record; or

(6) The criminally derived property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of such property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property; or

(7) A person pays or receives substantially less than face value for one or more monetary instruments; or

(8) A person engages in a transaction involving one or more monetary instruments, where the physical condition or form of the monetary instrument or instruments makes it apparent that they are not the product of bona fide business or financial transactions.

(e) Duty to enforce this Article.

(1) It is the duty of the Department of State Police, and its agents, officers, and investigators, to enforce all provisions of this Article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, or of any state, relating to money laundering. Only an agent, officer, or investigator designated by the Director may be authorized in accordance with this Section to serve seizure notices, warrants, subpoenas, and summonses under the authority of this State.

(2) Any agent, officer, investigator, or peace officer designated by the Director may: (A) make seizure of property pursuant to the provisions of this Article; and (B) perform such other law enforcement duties as the Director designates. It is the duty of all State's Attorneys to prosecute violations of this Article and institute legal proceedings as authorized under this Article.

(f) Protective orders.

(1) Upon application of the State, the court may enter

a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (h) for forfeiture under this Article:

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

(B) prior to the filing of such an indictment, information, or complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that:

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

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

Provided, however, that an order entered pursuant to subparagraph (B) shall be effective for not more

than 90 days, unless extended by the court for good cause shown or unless an indictment, information, complaint, or administrative notice has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the State without notice or opportunity for a hearing when an indictment, information, complaint, or administrative notice has not yet been filed with respect to the property, if the State demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this Section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 30 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection (f), evidence and information that would be inadmissible under the Illinois rules of evidence.

(4) Order to repatriate and deposit.

(A) In general. Pursuant to its authority to enter

a pretrial restraining order under this Section, the court may order a defendant to repatriate any property that may be seized and forfeited and to deposit that property pending trial with the Illinois State Police or another law enforcement agency designated by the Illinois State Police.

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

(g) Warrant of seizure. The State may request the issuance of a warrant authorizing the seizure of property described in subsection (h) in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would be subject to forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(h) Forfeiture.

(1) The following are subject to forfeiture:

(A) any property, real or personal, constituting, derived from, or traceable to any proceeds the person obtained directly or indirectly, as a result of a violation of this Article;

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

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

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

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

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

(D) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, which is used or

intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation of this Article or that is the proceeds of any violation or act that constitutes a violation of this Article.

(2) Property subject to forfeiture under this Article may be seized by the Director or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property. Seizure by the Director or any peace officer without process may be made:

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

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

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

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

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

(3) In the event of seizure pursuant to paragraph (2),

forfeiture proceedings shall be instituted in accordance with subsections (i) through (r).

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

(A) place the property under seal;

(B) remove the property to a place designated by the Director;

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

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

(E) place the property under constructive seizure by posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and

interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property; or

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

(5) When property is forfeited under this Article, the Director shall sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with paragraph (6). However, upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests and prosecution which lead to the forfeiture, the Director may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws, if the agency or prosecutor can demonstrate that the item requested would be useful to the agency or prosecutor in its enforcement efforts. When any real property returned to the seizing agency is sold by the agency or its unit of government, the proceeds of the sale shall be delivered to the Director and distributed in accordance with paragraph (6).

(6) All monies and the sale proceeds of all other property forfeited and seized under this Article shall be

distributed as follows:

(A) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws.

(B) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws. In counties over 3,000,000 population, 25% shall be distributed to the Office of the State's Attorney for use in the enforcement of laws. If the prosecution is undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws.

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

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

Moneys and the sale proceeds distributed to the Department of State Police under this Article shall be deposited in the Money Laundering Asset Recovery Fund created in the State treasury and shall be used by the Department of State Police for State law enforcement purposes.

(7) All moneys and sale proceeds of property forfeited and seized under this Article and distributed according to paragraph (6) may also be used to purchase opioid antagonists as defined in Section 5-23 of the Alcoholism and Other Drug Abuse and Dependency Act.

(i) Notice to owner or interest holder.

(1) Whenever notice of pending forfeiture or service of

an in rem complaint is required under the provisions of this Article, such notice or service shall be given as follows:

(A) If the owner's or interest holder's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or

(B) If the property seized is a conveyance, to the address reflected in the office of the agency or official in which title or interest to the conveyance is required by law to be recorded, then by mailing a copy of the notice by certified mail, return receipt

requested, to that address; or

(C) If the owner's or interest holder's address is not known, and is not on record as provided in paragraph (B), then by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(2) Notice served under this Article is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

(j) Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under this Article shall, within 90 days after seizure, notify the State's Attorney for the county, either where an act or omission giving rise to the forfeiture occurred or where the property was seized, of the seizure of the property and the facts and circumstances giving rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. When the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle.

(k) Non-judicial forfeiture. If non-real property that exceeds \$20,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of this Article, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in subsection (l) of this

Section within 45 days from receipt of notice of seizure from the seizing agency under subsection (j) of this Section. However, if non-real property that does not exceed \$20,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:

(1) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days after the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with subsection (i) of this Section.

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

(3) (A) Any person claiming an interest in property which is the subject of notice under paragraph (1) of this subsection (k), must, in order to preserve any rights or claims to the property, within 45 days after the effective date of notice as described in subsection (i) of this Section, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim

must set forth:

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

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

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

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

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

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

(vii) all essential facts supporting each assertion; and

(viii) the relief sought.

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

judicial in rem forfeiture proceedings and deposit the cost bond with the clerk of the court as described in subsection (1) of this Section within 45 days after receipt of the claim and cost bond. In lieu of a cost bond, a person claiming interest in the seized property may file, under penalty of perjury, an indigency affidavit which has been approved by a circuit court judge.

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

(4) If no claim is filed or bond given within the 45 day period as described in paragraph (3) of this subsection (k), the State's Attorney shall declare the property forfeited and shall promptly notify the owner and all known interest holders of the property and the Director of State Police of the declaration of forfeiture and the Director shall dispose of the property in accordance with law.

(1) Judicial in rem procedures. If property seized under

the provisions of this Article is non-real property that exceeds \$20,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim and a cost bond under paragraph (3) of subsection (k) of this Section, the following judicial in rem procedures shall apply:

(1) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days of the receipt of notice of seizure by the seizing agency or the filing of the claim and cost bond, whichever is later, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture and, if the claimant has filed a claim and cost bond, by depositing the cost bond with the clerk of the court. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(2) During the probable cause portion of the judicial in rem proceeding wherein the State presents its case-in-chief, the court must receive and consider, among other things, all relevant hearsay evidence and information. The laws of evidence relating to civil actions apply to all other portions of the judicial in rem proceeding.

(3) Only an owner of or interest holder in the property may file an answer asserting a claim against the property

in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. Upon motion of the State, the court shall first hold a hearing, wherein any claimant must establish by a preponderance of the evidence, that he or she has a lawful, legitimate ownership interest in the property and that it was obtained through a lawful source.

(4) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

(A) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(B) the address at which the claimant will accept mail;

(C) the nature and extent of the claimant's interest in the property;

(D) the date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

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

(F) all essential facts supporting each assertion; and

(G) the precise relief sought.

(5) The answer must be filed with the court within 45 days after service of the civil in rem complaint.

(6) The hearing must be held within 60 days after filing of the answer unless continued for good cause.

(7) The State shall show the existence of probable cause for forfeiture of the property. If the State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(8) If the State does not show existence of probable cause, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does show existence of probable cause, the court shall order all property forfeited to the State.

(9) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Article regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(10) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under this Article; however, for good cause shown, on a motion by the State's Attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a money laundering violation. Such a stay shall not be available pending an appeal. Property

subject to forfeiture under this Article shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.

(11) All property declared forfeited under this Article vests in this State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited.

(12) A civil action under this Article must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(m) Stay of time periods. If property is seized for evidence and for forfeiture, the time periods for instituting judicial and non-judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(n) Settlement of claims. Notwithstanding other provisions of this Article, the State's Attorney and a claimant of seized

property may enter into an agreed-upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(o) Property constituting attorney fees. Nothing in this Article applies to property which constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto where such property was paid before its seizure, before the issuance of any seizure warrant or court order prohibiting transfer of the property and where the attorney, at the time he or she received the property did not know that it was property subject to forfeiture under this Article.

(p) Construction. It is the intent of the General Assembly that the forfeiture provisions of this Article be liberally construed so as to effect their remedial purpose. The forfeiture of property and other remedies hereunder shall be considered to be in addition to, and not exclusive of, any sentence or other remedy provided by law.

(q) Judicial review. If property has been declared forfeited under subsection (k) of this Section, any person who has an interest in the property declared forfeited may, within 30 days after the effective date of the notice of the declaration of forfeiture, file a claim and cost bond as described in paragraph (3) of subsection (k) of this Section. If a claim and cost bond is filed under this Section, then the

procedures described in subsection (l) of this Section apply.

(r) Burden of proof of exemption or exception. It is not necessary for the State to negate any exemption or exception in this Article in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Article. The burden of proof of any exemption or exception is upon the person claiming it.

(s) Review of administrative decisions. All administrative findings, rulings, final determinations, findings, and conclusions of the State's Attorney's Office under this Article are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant to that Law. Pending final decision on such review, the administrative acts, orders, and rulings of the State's Attorney's Office remain in full force and effect unless modified or suspended by order of court pending final judicial decision. Pending final decision on such review, the acts, orders, and rulings of the State's Attorney's Office remain in full force and effect, unless stayed by order of court. However, no stay of any decision of the administrative agency shall issue unless the person aggrieved by the decision establishes by a preponderance of the evidence that good cause exists for the stay. In determining good cause, the court shall find that the aggrieved party has established a substantial likelihood of prevailing on the merits and that

granting the stay will not have an injurious effect on the general public.

(Source: P.A. 99-480, eff. 9-9-15.)

(Text of Section after amendment by P.A. 100-512)

Sec. 29B-1. Money laundering.

(a) A person commits the offense of money laundering:

(1) when, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, he or she conducts or attempts to conduct the ~~such a~~ financial transaction which in fact involves criminally derived property:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) where he or she knows or reasonably should know that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property; or

(ii) to avoid a transaction reporting requirement under State law; or

(1.5) when he or she transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) knowing, or having reason to know, that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property; or

(ii) to avoid a transaction reporting requirement under State law; or

(2) when, with the intent to:

(A) promote the carrying on of a specified criminal activity as defined in this Article; or

(B) conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of a specified criminal activity as defined in this Article ~~by subdivision (b) (6)~~; or

(C) avoid a transaction reporting requirement under State law,

he or she conducts or attempts to conduct a financial transaction involving property he or she believes to be the proceeds of specified criminal activity ~~as defined by subdivision (b) (6)~~ or property used to conduct or facilitate specified criminal activity as defined in this Article ~~by subdivision (b) (6)~~.

(b) (Blank). ~~As used in this Section:~~

~~(0.5) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, federal, or foreign law.~~

~~(1) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition utilizing criminally derived property, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, use of safe deposit box, or any other payment, transfer or delivery by, through, or to a financial institution. For purposes of clause (a) (2) of this Section, the term "financial transaction" also means a transaction which without regard to whether the funds, monetary instruments, or real or personal property involved in the transaction are criminally derived, any transaction which in any way or degree: (1) involves the movement of funds by wire or any other means; (2) involves one or more monetary instruments; or (3) the transfer of title to any real or personal property. The receipt by an attorney of bona fide fees for the purpose of legal representation is not a~~

~~financial transaction for purposes of this Section.~~

~~(2) "Financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union; mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer or cashier of travelers checks, checks or money orders; dealer in precious metals, stones or jewels; broker or dealer in securities or commodities; investment banker; or investment company.~~

~~(3) "Monetary instrument" means United States coins and currency; coins and currency of a foreign country; travelers checks; personal checks, bank checks, and money orders; investment securities; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock in such form that title thereto passes upon delivery.~~

~~(4) "Criminally derived property" means: (A) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law; or (B) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law.~~

~~(5) "Conduct" or "conducts" includes, in addition to~~

~~its ordinary meaning, initiating, concluding, or participating in initiating or concluding a transaction.~~

~~(6) "Specified criminal activity" means any violation of Section 29D-15.1 (720 ILCS 5/29D-15.1) and any violation of Article 29D of this Code.~~

~~(7) "Director" means the Director of State Police or his or her designated agents.~~

~~(8) "Department" means the Department of State Police of the State of Illinois or its successor agency.~~

~~(9) "Transaction reporting requirement under State law" means any violation as defined under the Currency Reporting Act.~~

(c) Sentence.

(1) Laundering of criminally derived property of a value not exceeding \$10,000 is a Class 3 felony;

(2) Laundering of criminally derived property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(3) Laundering of criminally derived property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

(4) Money laundering in violation of subsection (a)(2) of this Section is a Class X felony;

(5) Laundering of criminally derived property of a value exceeding \$500,000 is a Class 1 non-probationable felony;

(6) In a prosecution under clause (a)(1.5)(B)(ii) of this Section, the sentences are as follows:

(A) Laundering of property of a value not exceeding \$10,000 is a Class 3 felony;

(B) Laundering of property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(C) Laundering of property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

(D) Laundering of property of a value exceeding \$500,000 is a Class 1 non-probationable felony.

~~(d) Evidence. In a prosecution under this Article, either party may introduce the following evidence pertaining to the issue of whether the property or proceeds were known to be some form of criminally derived property or from some form of unlawful activity:~~

~~(1) A financial transaction was conducted or structured or attempted in violation of the reporting requirements of any State or federal law; or~~

~~(2) A financial transaction was conducted or attempted with the use of a false or fictitious name or a forged instrument; or~~

~~(3) A falsely altered or completed written instrument or a written instrument that contains any materially false personal identifying information was made, used, offered or presented, whether accepted or not, in connection with a~~

~~financial transaction; or~~

~~(4) A financial transaction was structured or attempted to be structured so as to falsely report the actual consideration or value of the transaction; or~~

~~(5) A money transmitter, a person engaged in a trade or business or any employee of a money transmitter or a person engaged in a trade or business, knows or reasonably should know that false personal identifying information has been presented and incorporates the false personal identifying information into any report or record; or~~

~~(6) The criminally derived property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of such property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property; or~~

~~(7) A person pays or receives substantially less than face value for one or more monetary instruments; or~~

~~(8) A person engages in a transaction involving one or more monetary instruments, where the physical condition or form of the monetary instrument or instruments makes it apparent that they are not the product of bona fide business or financial transactions.~~

~~(e) Duty to enforce this Article.~~

~~(1) It is the duty of the Department of State Police, and its agents, officers, and investigators, to enforce all~~

~~provisions of this Article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, or of any state, relating to money laundering. Only an agent, officer, or investigator designated by the Director may be authorized in accordance with this Section to serve seizure notices, warrants, subpoenas, and summonses under the authority of this State.~~

~~(2) Any agent, officer, investigator, or peace officer designated by the Director may: (A) make seizure of property pursuant to the provisions of this Article; and (B) perform such other law enforcement duties as the Director designates. It is the duty of all State's Attorneys to prosecute violations of this Article and institute legal proceedings as authorized under this Article.~~

~~(f) Protective orders.~~

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

~~(A) upon the filing of an indictment, information, or complaint charging a violation of this Article for which forfeiture may be ordered under this Article and alleging that the property with respect to which the~~

~~order is sought would be subject to forfeiture under this Article; or~~

~~(B) prior to the filing of such an indictment, information, or complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that:~~

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

~~(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.~~

~~Provided, however, that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment, information, complaint, or administrative notice has been filed.~~

~~(2) A temporary restraining order under this subsection may be entered upon application of the State without notice or opportunity for a hearing when an indictment, information, complaint, or administrative notice has not yet been filed with respect to the property,~~

~~if the State demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this Section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 30 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.~~

~~(3) The court may receive and consider, at a hearing held pursuant to this subsection (f), evidence and information that would be inadmissible under the Illinois rules of evidence.~~

~~(4) Order to repatriate and deposit.~~

~~(A) In general. Pursuant to its authority to enter a pretrial restraining order under this Section, the court may order a defendant to repatriate any property that may be seized and forfeited and to deposit that property pending trial with the Illinois State Police or another law enforcement agency designated by the Illinois State Police.~~

~~(B) Failure to comply. Failure to comply with an order under this subsection (f) is punishable as a~~

~~civil or criminal contempt of court.~~

~~(g) Warrant of seizure. The State may request the issuance of a warrant authorizing the seizure of property described in subsection (h) in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would be subject to forfeiture, the court shall issue a warrant authorizing the seizure of such property.~~

~~(h) Forfeiture.~~

~~(1) The following are subject to forfeiture:~~

~~(A) any property, real or personal, constituting, derived from, or traceable to any proceeds the person obtained directly or indirectly, as a result of a violation of this Article;~~

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

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

~~(i) no conveyance used by any person as a common carrier in the transaction of business as a~~

~~common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Article;~~

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

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

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

~~(2) Property subject to forfeiture under this Article may be seized by the Director or any peace officer upon process or seizure warrant issued by any court having~~

~~jurisdiction over the property. Seizure by the Director or any peace officer without process may be made:~~

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

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

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

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

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

~~(3) In the event of seizure pursuant to paragraph (2), forfeiture proceedings shall be instituted in accordance with subsections (i) through (r).~~

~~(4) Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the Director subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney under this Article. When property is seized under~~

~~this Article, the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director. Upon receiving notice of seizure, the Director may:~~

~~(A) place the property under seal;~~

~~(B) remove the property to a place designated by the Director;~~

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

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

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

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

~~(5) When property is forfeited under this Article, the~~

~~Director shall sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with paragraph (6).~~

~~(6) All monies and the sale proceeds of all other property forfeited and seized under this Article shall be distributed as follows:~~

~~(A) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws.~~

~~(B) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws. In counties over 3,000,000 population, 25% shall be distributed to the Office of the State's Attorney for use in the enforcement of laws. If the prosecution is undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws.~~

~~(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.~~

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

~~Moneys and the sale proceeds distributed to the Department of State Police under this Article shall be deposited in the Money Laundering Asset Recovery Fund created in the State treasury and shall be used by the Department of State Police for State law enforcement purposes.~~

~~(7) All moneys and sale proceeds of property forfeited and seized under this Article and distributed according to paragraph (6) may also be used to purchase opioid antagonists as defined in Section 5-23 of the Alcoholism and Other Drug Abuse and Dependency Act.~~

~~(7.5) Preliminary Review.~~

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

~~(B) The rules of evidence shall not apply to any proceeding conducted under this Section.~~

~~(C) The court may conduct the review under subparagraph (A) of this paragraph (7.5) simultaneously with a proceeding under Section 109-1 of the Code of Criminal Procedure of 1963 for a related criminal offense if a prosecution is commenced by information or complaint.~~

~~(D) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subparagraph (A) of this paragraph (7.5).~~

~~(E) Upon a finding of probable cause as required~~

~~under this Section, the circuit court shall order the property subject to the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.~~

~~(i) Notice to owner or interest holder.~~

~~(1) The first attempted service shall be commenced within 28 days of the latter of filing of the verified claim or the receipt of the notice from seizing agency by form 4 64. A complaint for forfeiture or a notice of pending forfeiture shall be served on a claimant if the owner's or interest holder's name and current address are known, then by either: (i) personal service or; (ii) mailing a copy of the notice by certified mail, return receipt requested and first class mail, to that address. If no signed return receipt is received by the State's Attorney within 28 days of mailing or no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by the parties, the State's Attorney shall, within a reasonable period of time, mail a second copy of the notice by certified mail, return receipt requested and first class mail, to that address. If no signed return receipt is received by the State's Attorney within 28 days of the second mailing, or no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by the parties, the State's Attorney shall have 60 days to attempt to personally serve the notice by personal service,~~

~~including substitute service by leaving a copy at the usual place of abode with some person of the family or a person residing there, of the age of 13 years or upwards. If after 3 attempts at service in this manner, and no service of the notice is accomplished, the notice shall be posted in a conspicuous manner at this address and service shall be made by the posting. The attempts at service and the posting if required, shall be documented by the person attempting service and the documentation shall be made part of a return of service returned to the State's Attorney. The State's Attorney may utilize any Sheriff or Deputy Sheriff, a peace officer, a private process server or investigator, or an employee, agent, or investigator of the State's Attorney's Office to attempt service without seeking leave of court. After the procedures listed are followed, service shall be effective on the owner or interest holder on the date of receipt by the State's Attorney of a returned return receipt requested, or on the date of receipt of a communication from an owner or interest holder documenting actual notice, whichever is first in time, or on the date of the last act performed by the State's Attorney in attempting personal service. For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address.~~

~~Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address. If the property seized is a conveyance, notice shall also be directed to the address reflected in the office of the agency or official in which title or interest to the conveyance is required by law to be recorded.~~

~~(A) (Blank);~~

~~(A 5) If the owner's or interest holder's address is not known, and is not on record as provided in paragraph (1), service by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred shall suffice for service requirements.~~

~~(A 10) Notice to any business entity, corporation, LLC, LLP, or partnership shall be complete by a single mailing of a copy of the notice by certified mail, return receipt requested and first class mail, to that address. This notice is complete regardless of the return of a signed "return receipt requested".~~

~~(A 15) Notice to a person whose address is not~~

~~within the State shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested and first class mail to that address. This notice is complete regardless of the return of a signed "return receipt requested".~~

~~(A 20) Notice to a person whose address is not within the United States shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested and first class mail to that address. This notice is complete regardless of the return of a signed "return receipt requested". If certified mail is not available in the foreign country where the person has an address, notice shall proceed by paragraph (A 15) publication requirements.~~

~~(A 25) A person who the State's Attorney reasonably should know is incarcerated within this State, shall also include, mailing a copy of the notice by certified mail, return receipt requested and first class mail, to the address of the detention facility with the inmate's name clearly marked on the envelope.~~

~~After a claimant files a verified claim with the State's Attorney and provides an address at which they will accept service, the complaint shall be served and notice shall be complete upon the mailing of the complaint to the claimant at the address the claimant provided via certified mail, return receipt requested~~

~~and first class mail. No return receipt card need be received, or any other attempts at service need be made to comply with service and notice requirements under this Section. This certified mailing, return receipt requested shall be proof of service of the complaint on the claimant. If notice is to be shown by actual notice from communication with a claimant, then the State's Attorney shall file an affidavit as proof of service providing details of the communication which shall be accepted as proof of service by the court.~~

~~(B) If the property seized is a conveyance, to the address reflected in the office of the agency or official in which title or interest to the conveyance is required by law to be recorded, then by mailing a copy of the notice by certified mail, return receipt requested, to that address; or~~

~~(C) (Blank).~~

~~(2) Notice served under this Article is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.~~

~~(j) Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under this Article shall, within 60 days after seizure, notify the State's Attorney for the county, either where an act or omission giving rise to the forfeiture occurred or where the property was seized, of the seizure of the property and the facts and circumstances giving~~

~~rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. When the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle. This notice shall be by the form 4-64.~~

~~(k) Non judicial forfeiture. If non real property that exceeds \$20,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of this Article, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in subsection (l) of this Section within 28 days from receipt of notice of seizure from the seizing agency under subsection (j) of this Section. However, if non real property that does not exceed \$20,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:~~

~~(1) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days after the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with subsection (i) of this Section.~~

~~(2) The notice of pending forfeiture must include a~~

~~description of the property, the estimated value of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.~~

~~(3) (A) Any person claiming an interest in property which is the subject of notice under paragraph (1) of this subsection (k), must, in order to preserve any rights or claims to the property, within 45 days after the effective date of notice as described in subsection (i) of this Section, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim must set forth:~~

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

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

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

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

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

~~(vi) the specific provision of law relied on in~~

~~asserting the property is not subject to forfeiture;~~

~~(vii) all essential facts supporting each
assertion; and~~

~~(viii) the relief sought.~~

~~(B) If a claimant files the claim, then the State's
Attorney shall institute judicial in rem forfeiture
proceedings with the clerk of the court as described in
subsection (1) of this Section within 45 days after receipt
of the claim.~~

~~(C) (Blank).~~

~~(4) If no claim is filed within the 45 day period as
described in paragraph (3) of this subsection (k), the
State's Attorney shall declare the property forfeited and
shall promptly notify the owner and all known interest
holders of the property and the Director of State Police of
the declaration of forfeiture and the Director shall
dispose of the property in accordance with law.~~

~~(1) Judicial in rem procedures. If property seized under
the provisions of this Article is non real property that
exceeds \$20,000 in value excluding the value of any conveyance,
or is real property, or a claimant has filed a claim under
paragraph (3) of subsection (k) of this Section, the following
judicial in rem procedures shall apply:~~

~~(1) If, after a review of the facts surrounding the
seizure, the State's Attorney is of the opinion that the
seized property is subject to forfeiture, then within 28~~

~~days of the receipt of notice of seizure by the seizing agency or the filing of the claim, whichever is later, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.~~

~~(1.5) A complaint of forfeiture shall include:~~

~~(i) a description of the property seized;~~

~~(ii) the date and place of seizure of the property;~~

~~(iii) the name and address of the law enforcement agency making the seizure; and~~

~~(iv) the specific statutory and factual grounds for the seizure.~~

~~(1.10) The complaint shall be served upon the person from whom the property was seized and all persons known or reasonably believed by the State to claim an interest in the property, as provided in subsection (i) of this Section. The complaint shall be accompanied by the following written notice:~~

~~"This is a civil court proceeding subject to the Code of Civil Procedure. You received this Complaint of Forfeiture because the State's Attorney's office has brought a legal action seeking forfeiture of your seized property. This complaint starts the court process where the State seeks to prove that your property should be forfeited~~

~~and not returned to you. This process is also your opportunity to try to prove to a judge that you should get your property back. The complaint lists the date, time, and location of your first court date. You must appear in court on that day, or you may lose the case automatically. You must also file an appearance and answer. If you are unable to pay the appearance fee, you may qualify to have the fee waived. If there is a criminal case related to the seizure of your property, your case may be set for trial after the criminal case has been resolved. Before trial, the judge may allow discovery, where the State can ask you to respond in writing to questions and give them certain documents, and you can make similar requests of the State. The trial is your opportunity to explain what happened when your property was seized and why you should get the property back."~~

~~(2) The laws of evidence relating to civil actions shall apply to proceedings under this Article with the following exception. The parties shall be allowed to use, and the court shall receive and consider all relevant hearsay evidence which relates to evidentiary foundation, chain of custody, business records, recordings, laboratory analysis, laboratory reports, and relevant hearsay related to the use of technology in the investigation which resulted in the seizure of property which is now subject to this forfeiture action.~~

~~(3) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. Upon motion of the State, the court shall first hold a hearing, wherein any claimant must establish by a preponderance of the evidence, that he or she has a lawful, legitimate ownership interest in the property and that it was obtained through a lawful source.~~

~~(4) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:~~

~~(A) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;~~

~~(B) the address at which the claimant will accept mail;~~

~~(C) the nature and extent of the claimant's interest in the property;~~

~~(D) the date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;~~

~~(E) the name and address of all other persons known to have an interest in the property;~~

~~(F) all essential facts supporting each assertion;~~

~~(G) the precise relief sought; and~~

~~(H) the answer shall follow the rules under the~~

~~Code of Civil Procedure.~~

~~(5) The answer must be filed with the court within 45 days after service of the civil in rem complaint.~~

~~(6) The hearing must be held within 60 days after filing of the answer unless continued for good cause.~~

~~(7) At the judicial in rem proceeding, in the State's case in chief, the State shall show by a preponderance of the evidence that the property is subject to forfeiture. If the State makes such a showing, the claimant shall have the burden of production to set forth evidence that the property is not related to the alleged factual basis of the forfeiture. After this production of evidence, the State shall maintain the burden of proof to overcome this assertion. A claimant shall provide the State notice of its intent to allege that the currency or its equivalent is not related to the alleged factual basis of the forfeiture and why. As to conveyances, at the judicial in rem proceeding, in their case in chief, the State shall show by a preponderance of the evidence, that (1) the property is subject to forfeiture; and (2) at least one of the following:~~

~~(i) that the claimant was legally accountable for the conduct giving rise to the forfeiture;~~

~~(ii) that the claimant knew or reasonably should have known of the conduct giving rise to the forfeiture;~~

~~(iii) that the claimant knew or reasonable should have known that the conduct giving rise to the forfeiture was likely to occur;~~

~~(iv) that the claimant held the property for the benefit of, or as nominee for, any person whose conduct gave rise to its forfeiture;~~

~~(v) that if the claimant acquired their interest through any person engaging in any of the conduct described above or conduct giving rise to the forfeiture;~~

~~(1) the claimant did not acquire it as a bona fide purchaser for value; or~~

~~(2) the claimant acquired the interest under the circumstances that they reasonably should have known the property was derived from, or used in, the conduct giving rise to the forfeiture; or~~

~~(vii) that the claimant is not the true owner of the property that is subject to forfeiture.~~

~~(8) If the State does not meet its burden to show that the property is subject to forfeiture, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does meet its burden to show that the property is subject to forfeiture, the court shall order all property forfeited to the State.~~

~~(9) A defendant convicted in any criminal proceeding is~~

~~precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Article regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.~~

~~(10) On a motion by the the parties, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a money laundering violation. Such a stay shall not be available pending an appeal. Property subject to forfeiture under this Article shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.~~

~~Notwithstanding any other provision of this Section, the State's burden of proof at the trial of the forfeiture action shall be by clear and convincing evidence if: (1) a finding of not guilty is entered as to all counts and all defendants in a criminal proceeding relating to the conduct giving rise to the forfeiture action; or (2) the State receives an adverse finding at a preliminary hearing and fails to secure an indictment in a criminal proceeding relating to the factual allegations of the forfeiture action.~~

~~(11) All property declared forfeited under this~~

~~Article vests in this State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Except as otherwise provided in this Article, title to any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the person to whom the property was transferred makes an appropriate claim and has his or her claim adjudicated at the judicial in rem hearing.~~

~~(12) A civil action under this Article must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.~~

~~(m) Stay of time periods. If property is seized for evidence and for forfeiture, the time periods for instituting judicial and non-judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.~~

~~(n) Settlement of claims. Notwithstanding other provisions of this Article, the State's Attorney and a claimant of seized property may enter into an agreed upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement. All proceeds~~

~~from a settlement agreement shall be tendered to the Department of State Police and distributed under paragraph (6) of subsection (h) of this Section.~~

~~(e) Property constituting attorney fees. Nothing in this Article applies to property which constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto where such property was paid before its seizure, before the issuance of any seizure warrant or court order prohibiting transfer of the property and where the attorney, at the time he or she received the property did not know that it was property subject to forfeiture under this Article.~~

~~(p) Construction. It is the intent of the General Assembly that the forfeiture provisions of this Article be liberally construed so as to effect their remedial purpose. The forfeiture of property and other remedies hereunder shall be considered to be in addition to, and not exclusive of, any sentence or other remedy provided by law.~~

~~(q) Judicial review. If property has been declared forfeited under subsection (k) of this Section, any person who has an interest in the property declared forfeited may, within 30 days after the effective date of the notice of the declaration of forfeiture, file a claim as described in paragraph (3) of subsection (k) of this Section. If a claim is filed under this Section, then the procedures described in~~

~~subsection (l) of this Section apply.~~

~~(r) (Blank).~~

~~(s) Review of administrative decisions. All administrative findings, rulings, final determinations, findings, and conclusions of the State's Attorney's Office under this Article are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant to that Law. Pending final decision on such review, the administrative acts, orders, and rulings of the State's Attorney's Office remain in full force and effect unless modified or suspended by order of court pending final judicial decision. Pending final decision on such review, the acts, orders, and rulings of the State's Attorney's Office remain in full force and effect, unless stayed by order of court. However, no stay of any decision of the administrative agency shall issue unless the person aggrieved by the decision establishes by a preponderance of the evidence that good cause exists for the stay. In determining good cause, the court shall find that the aggrieved party has established a substantial likelihood of prevailing on the merits and that granting the stay will not have an injurious effect on the general public.~~

~~(t) Actual physical seizure of real property subject to forfeiture under this Act requires the issuance of a seizure warrant. Nothing in this Section prohibits the constructive~~

~~seizure of real property through the filing of a complaint for forfeiture in circuit court and the recording of a lis pendens against the real property which is subject to forfeiture without any hearing, warrant application, or judicial approval.~~

~~(u) Property which is forfeited shall be subject to an 8th amendment to the United States Constitution disproportionate penalties analysis and the property forfeiture may be denied in whole or in part if the court finds that the forfeiture would constitute an excessive fine in violation of the 8th amendment as interpreted by case law.~~

~~(v) If property is ordered forfeited under this Section from a claimant who held title to the property in joint tenancy or tenancy in common with another claimant, the court shall determine the amount of each owner's interest in the property according to principles of property law.~~

~~(w) A claimant or a party interested in personal property contained within a seized conveyance may file a request with the State's Attorney in a non judicial forfeiture action, or a motion with the court in a judicial forfeiture action for the return of any personal property contained within a conveyance which is seized under this Article. The return of personal property shall not be unreasonably withheld if the personal property is not mechanically or electrically coupled to the conveyance, needed for evidentiary purposes, or otherwise contraband. Any law enforcement agency that returns property~~

~~under a court order under this Section shall not be liable to any person who claims ownership to the property if it is returned to an improper party.~~

~~(x) Innocent owner hearing.~~

~~(1) After a complaint for forfeiture has been filed and all claimants have appeared and answered, a claimant may file a motion with the court for an innocent owner hearing prior to trial. This motion shall be made and supported by sworn affidavit and shall assert the following along with specific facts which support each assertion:~~

~~(i) that the claimant filing the motion is the true owner of the conveyance as interpreted by case law;~~

~~(ii) that the claimant was not legally accountable for the conduct giving rise to the forfeiture or acquiesced in the conduct;~~

~~(iii) that the claimant did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture;~~

~~(iv) that the claimant did not know or did not have reason to know that the conduct giving rise to the forfeiture was likely to occur; and~~

~~(v) that the claimant did not hold the property for the benefit of, or as nominee for any person whose conduct gave rise to its forfeiture or if the owner or interest holder acquired the interest through any person, the owner or interest holder did not acquire it~~

~~as a bona fide purchaser for value or acquired the interest without knowledge of the seizure of the property for forfeiture.~~

~~(2) The claimant shall include specific facts which support these assertions in their motion.~~

~~(3) Upon this filing, a hearing may only be conducted after the parties have been given the opportunity to conduct limited discovery as to the ownership and control of the property, the claimant's knowledge, or any matter relevant to the issues raised or facts alleged in the claimant's motion. Discovery shall be limited to the People's requests in these areas but may proceed by any means allowed in the Code of Civil Procedure.~~

~~(i) After discovery is complete and the court has allowed for sufficient time to review and investigate the discovery responses, the court shall conduct a hearing. At the hearing, the fact that the conveyance is subject to forfeiture shall not be at issue. The court shall only hear evidence relating to the issue of innocent ownership.~~

~~(ii) At the hearing on the motion, it shall be the burden of the claimant to prove each of the assertions listed in paragraph (1) of this subsection (x) by a preponderance of the evidence.~~

~~(iii) If a claimant meets his burden of proof, the court shall grant the motion and order the property~~

~~returned to the claimant. If the claimant fails to meet his or her burden of proof then the court shall deny the motion.~~

~~(y) No property shall be forfeited under this Section from a person who, without actual or constructive notice that the property was the subject of forfeiture proceedings, obtained possession of the property as a bona fide purchaser for value. A person who purports to affect transfer of property after receiving actual or constructive notice that the property is subject to seizure or forfeiture is guilty of contempt of court, and shall be liable to the State for a penalty in the amount of the fair market value of the property.~~

~~(z) Forfeiture proceedings under this Section shall be subject to the Code of Civil Procedure and the rules of evidence relating to civil actions.~~

~~(aa) Return of property, damages, and costs.~~

~~(1) The law enforcement agency that holds custody of property seized for forfeiture shall deliver property ordered by the court to be returned or conveyed to the claimant within a reasonable time not to exceed 7 days, unless the order is stayed by the trial court or a reviewing court pending an appeal, motion to reconsider, or other reason.~~

~~(2) The law enforcement agency that holds custody of property is responsible for any damages, storage fees, and related costs applicable to property returned. The~~

~~claimant shall not be subject to any charges by the State for storage of the property or expenses incurred in the preservation of the property. Charges for the towing of a conveyance shall be borne by the claimant unless the conveyance was towed for the sole reason of seizure for forfeiture. This Section does not prohibit the imposition of any fees or costs by a home rule unit of local government related to the impoundment of a conveyance under an ordinance enacted by the unit of government.~~

~~(3) A law enforcement agency shall not retain forfeited property for its own use or transfer the property to any person or entity, except as provided under this Section. A law enforcement agency may apply in writing to the Director of State Police to request that a forfeited property be awarded to the agency for a specifically articulated official law enforcement use in an investigation. The Director of State Police shall provide a written justification in each instance detailing the reasons why the forfeited property was placed into official use and the justification shall be retained for a period of not less than 3 years.~~

~~(bb) The changes made to this Section by this amendatory Act of the 100th General Assembly are subject to Sections 2 and 4 of the Statute on Statutes.~~

(Source: P.A. 99-480, eff. 9-9-15; 100-512, eff. 7-1-18.)

(720 ILCS 5/29B-2 new)

Sec. 29B-2. Evidence in money laundering prosecutions.

In a prosecution under this Article, either party may introduce the following evidence pertaining to the issue of whether the property or proceeds were known to be some form of criminally derived property or from some form of unlawful activity:

(1) a financial transaction was conducted or structured or attempted in violation of the reporting requirements of any State or federal law;

(2) a financial transaction was conducted or attempted with the use of a false or fictitious name or a forged instrument;

(3) a falsely altered or completed written instrument or a written instrument that contains any materially false personal identifying information was made, used, offered or presented, whether accepted or not, in connection with a financial transaction;

(4) a financial transaction was structured or attempted to be structured so as to falsely report the actual consideration or value of the transaction;

(5) a money transmitter, a person engaged in a trade or business, or any employee of a money transmitter or a person engaged in a trade or business, knows or reasonably should know that false personal identifying information has been presented and incorporates the false personal

identifying information into any report or record;

(6) the criminally derived property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of the property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to the property;

(7) a person pays or receives substantially less than face value for one or more monetary instruments; or

(8) a person engages in a transaction involving one or more monetary instruments, where the physical condition or form of the monetary instrument or instruments makes it apparent that they are not the product of bona fide business or financial transactions.

(720 ILCS 5/29B-3 new)

Sec. 29B-3. Duty to enforce this Article.

(a) It is the duty of the Department of State Police, and its agents, officers, and investigators, to enforce this Article, except those provisions otherwise specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, or of any state, relating to money laundering. Only an agent, officer, or investigator designated by the Director may be authorized in accordance with this Section to serve seizure notices, warrants, subpoenas, and summonses under the authority of this

State.

(b) An agent, officer, investigator, or peace officer designated by the Director may: (1) make seizure of property under this Article; and (2) perform other law enforcement duties as the Director designates. It is the duty of all State's Attorneys to prosecute violations of this Article and institute legal proceedings as authorized under this Article.

(720 ILCS 5/29B-4 new)

Sec. 29B-4. Protective orders and warrants for forfeiture purposes.

(a) Upon application of the State, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in Section 29B-5 of this Article for forfeiture under this Article:

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

(2) prior to the filing of the indictment, information, or complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that:

(A) there is probable cause to believe that the

State will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(B) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

Provided, however, that an order entered under paragraph (2) of this Section shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment, information, complaint, or administrative notice has been filed.

(b) A temporary restraining order under this subsection (b) may be entered upon application of the State without notice or opportunity for a hearing when an indictment, information, complaint, or administrative notice has not yet been filed with respect to the property, if the State demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this Article and that provision of notice will jeopardize the availability of the property for forfeiture. The temporary order shall expire not more than 30 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an

extension for a longer period. A hearing requested concerning an order entered under this subsection (b) shall be held at the earliest possible time and prior to the expiration of the temporary order.

(c) The court may receive and consider, at a hearing held under this Section, evidence and information that would be inadmissible under the Illinois rules of evidence.

(d) Under its authority to enter a pretrial restraining order under this Section, the court may order a defendant to repatriate any property that may be seized and forfeited and to deposit that property pending trial with the Department of State Police or another law enforcement agency designated by the Department of State Police. Failure to comply with an order under this Section is punishable as a civil or criminal contempt of court.

(e) The State may request the issuance of a warrant authorizing the seizure of property described in Section 29B-5 of this Article in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would be subject to forfeiture, the court shall issue a warrant authorizing the seizure of that property.

(720 ILCS 5/29B-5 new)

Sec. 29B-5. Property subject to forfeiture. The following are subject to forfeiture:

(1) any property, real or personal, constituting, derived from, or traceable to any proceeds the person obtained directly or indirectly, as a result of a violation of this Article;

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

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraphs (1) and (2) of this Section, but:

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

(B) no conveyance is subject to forfeiture under this Article by reason of any act or omission which the owner proves to have been committed or omitted without his or her knowledge or consent;

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

(4) all real property, including any right, title, and

interest, including, but not limited to, any leasehold interest or the beneficial interest in a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation of this Article or that is the proceeds of any violation or act that constitutes a violation of this Article.

(720 ILCS 5/29B-6 new)

Sec. 29B-6. Seizure.

(a) Property subject to forfeiture under this Article may be seized by the Director or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property. Seizure by the Director or any peace officer without process may be made:

(1) if the seizure is incident to a seizure warrant;

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

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety;

(4) if there is probable cause to believe that the property is subject to forfeiture under this Article and the property is seized under circumstances in which a

warrantless seizure or arrest would be reasonable; or

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

(b) In the event of seizure under subsection (a) of this Section, forfeiture proceedings shall be instituted in accordance with this Article.

(c) Actual physical seizure of real property subject to forfeiture requires the issuance of a seizure warrant. Nothing in this Article prohibits the constructive seizure of real property through the filing of a complaint for forfeiture in circuit court and the recording of a lis pendens against the real property that is subject to forfeiture without any hearing, warrant application, or judicial approval.

(720 ILCS 5/29B-7 new)

Sec. 29B-7. Safekeeping of seized property pending disposition.

(a) If property is seized under this Article, the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director. Upon receiving notice of seizure, the Director may:

(1) place the property under seal;

(2) remove the property to a place designated by the Director;

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

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

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

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

(b) When property is forfeited under this Article, the Director shall sell all the property unless the property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, under Section 29B-26 of this Article.

(720 ILCS 5/29B-8 new)

Sec. 29B-8. Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under this Article shall, within 60 days after seizure, notify the State's

Attorney for the county, either where an act or omission giving rise to the forfeiture occurred or where the property was seized, of the seizure of the property and the facts and circumstances giving rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. If the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding the vehicle. This notice shall be by Form 4-64.

(720 ILCS 5/29B-9 new)

Sec. 29B-9. Preliminary review.

(a) Within 28 days of the seizure, the State shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

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

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

(d) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or

complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subsection (a) of this Section.

(e) Upon a finding of probable cause as required under this Section, the circuit court shall order the property subject to the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.

(720 ILCS 5/29B-10 new)

Sec. 29B-10. Notice to owner or interest holder.

(a) The first attempted service of notice shall be commenced within 28 days of the latter of filing of the verified claim or the receipt of the notice from the seizing agency by Form 4-64. A complaint for forfeiture or a notice of pending forfeiture shall be served on a claimant if the owner's or interest holder's name and current address are known, then by either: (1) personal service; or (2) mailing a copy of the notice by certified mail, return receipt requested, and first class mail to that address.

(b) If no signed return receipt is received by the State's Attorney within 28 days of mailing or no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by the parties, the State's Attorney shall, within a reasonable period of time, mail a second copy of the notice by certified mail, return receipt requested, and

first class mail to that address. If no signed return receipt is received by the State's Attorney within 28 days of the second mailing, or no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by the parties, the State's Attorney shall have 60 days to attempt to serve the notice by personal service, including substitute service by leaving a copy at the usual place of abode with some person of the family or a person residing there, of the age of 13 years or upwards. If, after 3 attempts at service in this manner, no service of the notice is accomplished, the notice shall be posted in a conspicuous manner at the address and service shall be made by the posting. The attempts at service and the posting if required, shall be documented by the person attempting service which shall be made part of a return of service returned to the State's Attorney. The State's Attorney may utilize any Sheriff or Deputy Sheriff, a peace officer, a private process server or investigator, or an employee, agent, or investigator of the State's Attorney's Office to attempt service without seeking leave of court.

(c) After the procedures listed are followed, service shall be effective on the owner or interest holder on the date of receipt by the State's Attorney of a return receipt, or on the date of receipt of a communication from an owner or interest holder documenting actual notice, whichever is first in time, or on the date of the last act performed by the State's Attorney in attempting personal service. For purposes of notice

under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address. If the property seized is a conveyance, notice shall also be directed to the address reflected in the office of the agency or official in which title to or interest in the conveyance is required by law to be recorded.

(d) If the owner's or interest holder's address is not known, and is not on record as provided in this Section, service by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred shall suffice for service requirements.

(e) Notice to any business entity, corporation, limited liability company, limited liability partnership, or partnership shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail to that address. This notice is complete regardless of the return of a signed return receipt.

(f) Notice to a person whose address is not within the State shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail to that address. This notice is complete regardless of the return of a signed return receipt.

(g) Notice to a person whose address is not within the United States shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail to that address. This notice is complete regardless of the return of a signed return receipt. If certified mail is not available in the foreign country where the person has an address, notice shall proceed by publication requirements under subsection (d) of this Section.

(h) A person whom the State's Attorney reasonably should know is incarcerated within this State, shall also include, mailing a copy of the notice by certified mail, return receipt requested, and first class mail to the address of the detention facility with the inmate's name clearly marked on the envelope.

(i) After a claimant files a verified claim with the State's Attorney and provides an address at which the claimant will accept service, the complaint shall be served and notice shall be complete upon the mailing of the complaint to the claimant at the address the claimant provided via certified mail, return receipt requested, and first class mail. No return receipt need be received, or any other attempts at service need be made to comply with service and notice requirements under

this Section. This certified mailing, return receipt requested, shall be proof of service of the complaint on the claimant. If notice is to be shown by actual notice from communication with a claimant, then the State's Attorney shall file an affidavit as proof of service, providing details of the communication, which shall be accepted as proof of service by the court.

(j) If the property seized is a conveyance, to the address reflected in the office of the agency or official in which title to or interest in the conveyance is required by law to be recorded, then by mailing a copy of the notice by certified mail, return receipt requested, to that address.

(k) Notice served under this Article is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

(720 ILCS 5/29B-11 new)

Sec. 29B-11. Replevin prohibited. Property taken or detained under this Article shall not be subject to replevin, but is deemed to be in the custody of the Director subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney under this Article.

(720 ILCS 5/29B-12 new)

Sec. 29B-12. Non-judicial forfeiture. If non-real

property that exceeds \$20,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of this Article, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in Section 29B-13 of this Article within 28 days from receipt of notice of seizure from the seizing agency under Section 29B-8 of this Article. However, if non-real property that does not exceed \$20,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:

(1) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 28 days after the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with Section 29B-10 of this Article.

(2) The notice of pending forfeiture shall include a description of the property, the estimated value of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

(3) (A) Any person claiming an interest in property that is the subject of notice under paragraph (1) of this Section, must, in order to preserve any rights or claims to the property, within 45 days after the effective date of notice as

described in Section 29B-10 of this Article, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim shall set forth:

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

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

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

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

(v) the names and addresses of all other persons known to have an interest in the property;

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

(vii) all essential facts supporting each assertion;
and

(viii) the relief sought.

(B) If a claimant files the claim, then the State's Attorney shall institute judicial in rem forfeiture proceedings with the clerk of the court as described in Section 29B-13 of this Article within 28 days after receipt of the claim.

(4) If no claim is filed within the 28-day period as described in paragraph (3) of this Section, the State's

Attorney shall declare the property forfeited and shall promptly notify the owner and all known interest holders of the property and the Director of State Police of the declaration of forfeiture and the Director shall dispose of the property in accordance with law.

(720 ILCS 5/29B-13 new)

Sec. 29B-13. Judicial in rem procedures. If property seized under this Article is non-real property that exceeds \$20,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim under paragraph (3) of Section 29B-12 of this Article, the following judicial in rem procedures shall apply:

(1) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 28 days of the receipt of notice of seizure by the seizing agency or the filing of the claim, whichever is later, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture. If authorized by law, a forfeiture shall be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(2) A complaint of forfeiture shall include:

(A) a description of the property seized;

(B) the date and place of seizure of the property;

(C) the name and address of the law enforcement agency making the seizure; and

(D) the specific statutory and factual grounds for the seizure.

(3) The complaint shall be served upon the person from whom the property was seized and all persons known or reasonably believed by the State to claim an interest in the property, as provided in Section 29B-10 of this Article. The complaint shall be accompanied by the following written notice:

"This is a civil court proceeding subject to the Code of Civil Procedure. You received this Complaint of Forfeiture because the State's Attorney's office has brought a legal action seeking forfeiture of your seized property. This complaint starts the court process where the State seeks to prove that your property should be forfeited and not returned to you. This process is also your opportunity to try to prove to a judge that you should get your property back. The complaint lists the date, time, and location of your first court date. You must appear in court on that day, or you may lose the case automatically. You must also file an appearance and answer. If you are unable to pay the appearance fee, you may qualify to have the fee waived. If there is a criminal case related to the seizure of your property, your case may be set for trial after the criminal case has been resolved. Before trial, the judge may allow discovery, where the State can ask you to respond in writing to questions and give them certain

documents, and you can make similar requests of the State. The trial is your opportunity to explain what happened when your property was seized and why you should get the property back."

(4) Forfeiture proceedings under this Article shall be subject to the Code of Civil Procedure and the rules of evidence relating to civil actions shall apply to proceedings under this Article with the following exception. The parties shall be allowed to use, and the court shall receive and consider, all relevant hearsay evidence that relates to evidentiary foundation, chain of custody, business records, recordings, laboratory analysis, laboratory reports, and relevant hearsay related to the use of technology in the investigation that resulted in the seizure of property that is subject to the forfeiture action.

(5) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. Upon motion of the State, the court shall first hold a hearing, in which a claimant shall establish by a preponderance of the evidence, that he or she has a lawful, legitimate ownership interest in the property and that it was obtained through a lawful source.

(6) The answer must be signed by the owner or interest holder under penalty of perjury and shall set forth:

(A) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(B) the address at which the claimant will accept mail;

(C) the nature and extent of the claimant's interest in the property;

(D) the date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

(E) the names and addresses of all other persons known to have an interest in the property;

(F) all essential facts supporting each assertion;

(G) the precise relief sought;

(H) in a forfeiture action involving currency or its equivalent, a claimant shall provide the State with notice of his or her intent to allege that the currency or its equivalent is not related to the alleged factual basis for the forfeiture, and why; and

(I) the answer shall follow the rules under the Code of Civil Procedure.

(7) The answer shall be filed with the court within 45 days after service of the civil in rem complaint.

(8) The hearing shall be held within 60 days after filing of the answer unless continued for good cause.

(9) At the judicial in rem proceeding, in the State's case in chief, the State shall show by a preponderance of the evidence that the property is subject to forfeiture. If the State makes such a showing, the claimant shall have the burden of production to set forth evidence that the property is not

related to the alleged factual basis of the forfeiture. After this production of evidence, the State shall maintain the burden of proof to overcome this assertion. A claimant shall provide the State notice of its intent to allege that the currency or its equivalent is not related to the alleged factual basis of the forfeiture and why. As to conveyances, at the judicial in rem proceeding, in its case in chief, the State shall show by a preponderance of the evidence, that (A) the property is subject to forfeiture; and (B) at least one of the following:

(i) that the claimant was legally accountable for the conduct giving rise to the forfeiture;

(ii) that the claimant knew or reasonably should have known of the conduct giving rise to the forfeiture;

(iii) that the claimant knew or reasonably should have known that the conduct giving rise to the forfeiture was likely to occur;

(iv) that the claimant held the property for the benefit of, or as nominee for, any person whose conduct gave rise to its forfeiture;

(v) that if the claimant acquired the interest through any person engaging in any of the conduct described above or conduct giving rise to the forfeiture:

(a) the claimant did not acquire it as a bona fide purchaser for value; or

(b) the claimant acquired the interest under the

circumstances that the claimant reasonably should have known the property was derived from, or used in, the conduct giving rise to the forfeiture; or
(vi) that the claimant is not the true owner of the property that is subject to forfeiture.

(10) If the State does not meet its burden to show that the property is subject to forfeiture, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does meet its burden to show that the property is subject to forfeiture, the court shall order all property forfeited to the State.

(11) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Article regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(12) On a motion by the parties, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a money laundering violation. Such a stay shall not be available pending an appeal. Property subject to forfeiture under this Article shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of the property unless the return or release is consented to by the

State's Attorney.

(720 ILCS 5/29B-14 new)

Sec. 29B-14. Innocent owner hearing.

(a) After a complaint for forfeiture has been filed and all claimants have appeared and answered, a claimant may file a motion with the court for an innocent owner hearing prior to trial. This motion shall be made and supported by sworn affidavit and shall assert the following along with specific facts that support each assertion:

(1) that the claimant filing the motion is the true owner of the conveyance as interpreted by case law;

(2) that the claimant was not legally accountable for the conduct giving rise to the forfeiture or acquiesced in the conduct;

(3) that the claimant did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture;

(4) that the claimant did not know or did not have reason to know that the conduct giving rise to the forfeiture was likely to occur; and

(5) that the claimant did not hold the property for the benefit of, or as nominee for any person whose conduct gave rise to its forfeiture or if the owner or interest holder acquired the interest through any person, the owner or interest holder did not acquire it as a bona fide purchaser

for value or acquired the interest without knowledge of the seizure of the property for forfeiture.

(b) The claimant's motion shall include specific facts supporting these assertions.

(c) Upon this filing, a hearing may only be conducted after the parties have been given the opportunity to conduct limited discovery as to the ownership and control of the property, the claimant's knowledge, or any matter relevant to the issues raised or facts alleged in the claimant's motion. Discovery shall be limited to the People's requests in these areas but may proceed by any means allowed in the Code of Civil Procedure.

(1) After discovery is complete and the court has allowed for sufficient time to review and investigate the discovery responses, the court shall conduct a hearing. At the hearing, the fact that the conveyance is subject to forfeiture shall not be at issue. The court shall only hear evidence relating to the issue of innocent ownership.

(2) At the hearing on the motion, it shall be the burden of the claimant to prove each of the assertions listed in subsection (a) of this Section by a preponderance of the evidence.

(3) If a claimant meets his or her burden of proof, the court shall grant the motion and order the property returned to the claimant. If the claimant fails to meet his or her burden of proof, then the court shall deny the

motion and the forfeiture case shall proceed according to the Code of Civil Procedure.

(720 ILCS 5/29B-15 new)

Sec. 29B-15. Burden and commencement of forfeiture action.

(a) Notwithstanding any other provision of this Article, the State's burden of proof at the trial of the forfeiture action shall be by clear and convincing evidence if:

(1) a finding of not guilty is entered as to all counts and all defendants in a criminal proceeding relating to the conduct giving rise to the forfeiture action; or

(2) the State receives an adverse finding at a preliminary hearing and fails to secure an indictment in a criminal proceeding relating to the factual allegations of the forfeiture action.

(b) All property declared forfeited under this Article vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Except as otherwise provided in this Article, title to any property or proceeds subject to forfeiture subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the person to whom the property was transferred makes an appropriate claim and has his or her claim adjudicated at the judicial in rem hearing.

(c) A civil action under this Article shall be commenced within 5 years after the last conduct giving rise to forfeiture

became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(720 ILCS 5/29B-16 new)

Sec. 29B-16. Joint tenancy or tenancy in common. If property is ordered forfeited under this Section from a claimant who held title to the property in joint tenancy or tenancy in common with another claimant, the court shall determine the amount of each owner's interest in the property according to principles of property law.

(720 ILCS 5/29B-17 new)

Sec. 29B-17. Exception for bona fide purchasers. No property shall be forfeited under this Article from a person who, without actual or constructive notice that the property was the subject of forfeiture proceedings, obtained possession of the property as a bona fide purchaser for value. A person who purports to affect transfer of property after receiving actual or constructive notice that the property is subject to seizure or forfeiture is guilty of contempt of court, and shall be liable to the State for a penalty in the amount of the fair market value of the property.

(720 ILCS 5/29B-18 new)

Sec. 29B-18. Proportionality. Property that is forfeited shall be subject to an 8th Amendment to the United States Constitution disproportionate penalties analysis and the property forfeiture may be denied in whole or in part if the court finds that the forfeiture would constitute an excessive fine in violation of the 8th Amendment as interpreted by case law.

(720 ILCS 5/29B-19 new)

Sec. 29B-19. Stay of time periods. If property is seized for evidence and for forfeiture, the time periods for instituting judicial and non-judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(720 ILCS 5/29B-20 new)

Sec. 29B-20. Settlement of claims. Notwithstanding other provisions of this Article, the State's Attorney and a claimant of seized property may enter into an agreed-upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement. All proceeds from a settlement agreement shall be tendered to the Department of State Police and distributed under Section 29B-26 of this Article.

(720 ILCS 5/29B-21 new)

Sec. 29B-21. Attorney's fees. Nothing in this Article applies to property that constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto if the property was paid before its seizure, before the issuance of any seizure warrant or court order prohibiting transfer of the property and if the attorney, at the time he or she received the property did not know that it was property subject to forfeiture under this Article.

(720 ILCS 5/29B-22 new)

Sec. 29B-22. Construction.

(a) It is the intent of the General Assembly that the forfeiture provisions of this Article be liberally construed so as to effect their remedial purpose. The forfeiture of property and other remedies under this Article shall be considered to be in addition to, and not exclusive of, any sentence or other remedy provided by law.

(b) The changes made to this Article by Public Act 100-0512 and this amendatory Act of the 100th General Assembly are subject to Section 2 of the Statute on Statutes.

(720 ILCS 5/29B-23 new)

Sec. 29B-23. Judicial review. If property has been declared forfeited under Section 29B-12 of this Article, any person who

has an interest in the property declared forfeited may, within 30 days after the effective date of the notice of the declaration of forfeiture, file a claim as described in paragraph (3) of Section 29B-12 of this Article. If a claim is filed under this Section, then the procedures described in Section of 29B-13 of this Article apply.

(720 ILCS 5/29B-24 new)

Sec. 29B-24. Review of administrative decisions. All administrative findings, rulings, final determinations, findings, and conclusions of the State's Attorney's Office under this Article are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision under the provisions of the Administrative Review Law and the rules adopted under that Law. Pending final decision on such review, the administrative acts, orders, and rulings of the State's Attorney's Office remain in full force and effect unless modified or suspended by order of court pending final judicial decision. Pending final decision on such review, the acts, orders, and rulings of the State's Attorney's Office remain in full force and effect, unless stayed by order of court. However, no stay of any decision of the administrative agency shall issue unless the person aggrieved by the decision establishes by a preponderance of the evidence that good cause exists for the stay. In determining good cause, the court shall find that the aggrieved party has

established a substantial likelihood of prevailing on the merits and that granting the stay will not have an injurious effect on the general public.

(720 ILCS 5/29B-25 new)

Sec. 29B-25. Return of property, damages, and costs.

(a) The law enforcement agency that holds custody of property seized for forfeiture shall deliver property ordered by the court to be returned or conveyed to the claimant within a reasonable time not to exceed 7 days, unless the order is stayed by the trial court or a reviewing court pending an appeal, motion to reconsider, or other reason.

(b) The law enforcement agency that holds custody of property is responsible for any damages, storage fees, and related costs applicable to property returned. The claimant shall not be subject to any charges by the State for storage of the property or expenses incurred in the preservation of the property. Charges for the towing of a conveyance shall be borne by the claimant unless the conveyance was towed for the sole reason of seizure for forfeiture. This Section does not prohibit the imposition of any fees or costs by a home rule unit of local government related to the impoundment of a conveyance under an ordinance enacted by the unit of government.

(c) A law enforcement agency shall not retain forfeited property for its own use or transfer the property to any person

or entity, except as provided under this Section. A law enforcement agency may apply in writing to the Director of State Police to request that forfeited property be awarded to the agency for a specifically articulated official law enforcement use in an investigation. The Director shall provide a written justification in each instance detailing the reasons why the forfeited property was placed into official use and the justification shall be retained for a period of not less than 3 years.

(d) A claimant or a party interested in personal property contained within a seized conveyance may file a request with the State's Attorney in a non-judicial forfeiture action, or a motion with the court in a judicial forfeiture action for the return of any personal property contained within a conveyance that is seized under this Article. The return of personal property shall not be unreasonably withheld if the personal property is not mechanically or electrically coupled to the conveyance, needed for evidentiary purposes, or otherwise contraband. Any law enforcement agency that returns property under a court order under this Section shall not be liable to any person who claims ownership to the property if it is returned to an improper party.

(720 ILCS 5/29B-26 new)

Sec. 29B-26. Distribution of proceeds.

All monies and the sale proceeds of all other property

forfeited and seized under this Article shall be distributed as follows:

(1) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies that conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws.

(2) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws. In counties over 3,000,000 population, 25% shall be distributed to the Office of the State's Attorney for use in the enforcement of laws. If the prosecution is undertaken solely by the Attorney General, the portion provided under this subparagraph (i) shall be distributed to the Attorney General for use in the enforcement of laws.

(ii) 12.5% shall be distributed to the Office of the

State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that office to be used for additional expenses incurred in the investigation, prosecution, and appeal of cases arising under laws. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

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

Moneys and the sale proceeds distributed to the Department of State Police under this Article shall be deposited in the Money Laundering Asset Recovery Fund created in the State treasury and shall be used by the Department of State Police for State law enforcement purposes. All moneys and sale proceeds of property forfeited and seized under this Article and distributed according to this Section may also be used to purchase opioid antagonists as defined in Section 5-23 of the Alcoholism and Other Drug Abuse and Dependency Act.

(720 ILCS 5/29B-27 new)

Sec. 29B-27. Applicability; savings clause.

(a) The changes made to this Article by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(b) The changes made to this Article by this amendatory Act

of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

(720 ILCS 5/33G-6)

(Text of Section before amendment by P.A. 100-512)

(Section scheduled to be repealed on June 11, 2022)

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

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

(1) ordering any person to disgorge illicit proceeds obtained by a violation of this Article or divest himself or herself of any interest, direct or indirect, in any enterprise or real or personal property of any character, including money, obtained, directly or indirectly, by a violation of this Article;

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

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

(b) Any violation of this Article is subject to the

remedies, procedures, and forfeiture as set forth in subsections (f) through (s) of Section 29B-1 of this Code.

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

(Text of Section after amendment by P.A. 100-512)

(Section scheduled to be repealed on June 11, 2022)

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

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

(1) ordering any person to disgorge illicit proceeds obtained by a violation of this Article or divest himself or herself of any interest, direct or indirect, in any enterprise or real or personal property of any character, including money, obtained, directly or indirectly, by a violation of this Article;

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

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

(b) Any violation of this Article is subject to the

remedies, procedures, and forfeiture as set forth in Article 29B ~~subsections (f) through (s) of Section 29B-1~~ of this Code.

(c) Property seized or forfeited under this Article is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-1.1)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-1.1. Seizure.

(a) Any property subject to forfeiture under this Article may be seized and impounded by the Director of State Police or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property.

(b) Any property subject to forfeiture under this Article may be seized and impounded by the Director of State Police or any peace officer without process if there is probable cause to believe that the property is subject to forfeiture under Section 36-1 of this Article and the property is seized under circumstances in which a warrantless seizure or arrest would be reasonable.

(c) If the seized property is a conveyance, an investigation shall be made by the law enforcement agency as to any person whose right, title, interest, or lien is of record in the office of the agency or official in which title to or

interest in ~~to~~ the conveyance is required by law to be recorded.

(d) After seizure under this Section, notice shall be given to all known interest holders that forfeiture proceedings, including a preliminary review, may be instituted and the proceedings may be instituted under this Article.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-1.3)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-1.3. Safekeeping of seized property pending disposition.

(a) Property seized under this Article is deemed to be in the custody of the Director of State Police, subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney under this Article.

(b) If property is seized under this Article, the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value, and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director of State Police. Upon receiving notice of seizure, the Director of State Police may:

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

Director of State Police;

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

(4) remove the property to a storage area for safekeeping; ~~or~~

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

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

(c) The seizing agency shall exercise ordinary care to protect the subject of the forfeiture from negligent loss, damage, or destruction.

(d) Property seized or forfeited under this Article is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-1.4)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-1.4. Notice to State's Attorney. The law

enforcement agency seizing property for forfeiture under this Article shall, as soon as practicable but not later than 28 days after the seizure, notify the State's Attorney for the county in which an act or omission giving rise to the seizure occurred or in which the property was seized and the facts and circumstances giving rise to the seizure, and shall provide the State's Attorney with the inventory of the property and its estimated value. The notice shall be by the delivery of Illinois State Police Notice/Inventory of Seized Property (Form 4-64) ~~the form 4-64~~. If the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding the vehicle.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-1.5)

(Text of Section before amendment by P.A. 100-512)

Sec. 36-1.5. Preliminary review.

(a) Within 14 days of the seizure, the State's Attorney in the county in which the seizure occurred shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

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

(c) The court may conduct the review under subsection (a)

simultaneously with a proceeding pursuant to Section 109-1 of the Code of Criminal Procedure of 1963 for a related criminal offense if a prosecution is commenced by information or complaint.

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

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.

For seizures of conveyances, within 7 days of a finding of probable cause under subsection (a), the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship. The court shall consider the following factors in determining whether a substantial hardship has been proven:

- (1) the nature of the claimed hardship;
- (2) the availability of public transportation or other available means of transportation; and
- (3) any available alternatives to alleviate the

hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The court shall place conditions on the conveyance limiting its use to the stated hardship and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The court shall revoke the order releasing the conveyance and order that the conveyance be resealed by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code.

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the registered owner or his or her authorized designee shall post a cash security with the Clerk of the Court as ordered by the court.

The court shall consider the following factors in determining the amount of the cash security:

- (A) the full market value of the conveyance;
- (B) the nature of the hardship;
- (C) the extent and length of the usage of the conveyance; and
- (D) such other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against

the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

(Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12; 98-1020, eff. 8-22-14.)

(Text of Section after amendment by P.A. 100-512)

Sec. 36-1.5. Preliminary review.

(a) Within 14 days of the seizure, the State's Attorney of ~~in~~ the county in which the seizure occurred shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

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

(c) The court may conduct the review under subsection (a)

of this Section simultaneously with a proceeding under ~~pursuant to~~ Section 109-1 of the Code of Criminal Procedure of 1963 for a related criminal offense if a prosecution is commenced by information or complaint.

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

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.

For seizures of conveyances, within 28 days of a finding of probable cause under subsection (a) of this Section, the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship and alleges facts showing that the hardship ~~delay~~ was not due to his or her culpable negligence. The court shall consider the following factors in determining whether a substantial hardship has been proven:

- (1) the nature of the claimed hardship;
- (2) the availability of public transportation or other

available means of transportation; and

(3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The court shall place conditions on the conveyance limiting its use to the stated hardship and providing transportation for employment, religious purposes, medical needs, child care, and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The use of the vehicle shall be further restricted to exclude all recreational and entertainment purposes. The court may order additional restrictions it deems reasonable and just on its own motion or on motion of the People. The court shall revoke the order releasing the conveyance and order that the conveyance be resealed by law enforcement if the conditions of release are

violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code.

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the court may order the registered owner or his or her authorized designee to post a cash security with the clerk ~~Clerk~~ of the court ~~Court~~ as ordered by the court. If cash security is ordered, the court shall consider the following factors in determining the amount of the cash security:

- (A) the full market value of the conveyance;
- (B) the nature of the hardship;
- (C) the extent and length of the usage of the conveyance;
- (D) the ability of the owner or designee to pay; and
- (E) other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

(Text of Section before amendment by P.A. 100-512)

Sec. 36-2. Action for forfeiture.

(a) The State's Attorney in the county in which such seizure occurs if he or she finds that the forfeiture was incurred without willful negligence or without any intention on the part of the owner of the vessel or watercraft, vehicle or aircraft or any person whose right, title or interest is of record as described in Section 36-1, to violate the law, or finds the existence of such mitigating circumstances as to justify remission of the forfeiture, may cause the law enforcement agency to remit the same upon such terms and conditions as the State's Attorney deems reasonable and just. The State's Attorney shall exercise his or her discretion under the foregoing provision of this Section 36-2(a) prior to or promptly after the preliminary review under Section 36-1.5.

(b) If the State's Attorney does not cause the forfeiture to be remitted he or she shall forthwith bring an action for forfeiture in the Circuit Court within whose jurisdiction the seizure and confiscation has taken place. The State's Attorney shall give notice of seizure and the forfeiture proceeding to each person according to the following method: upon each person whose right, title, or interest is of record in the office of the Secretary of State, the Secretary of Transportation, the Administrator of the Federal Aviation Agency, or any other department of this State, or any other state of the United States if the vessel or watercraft, vehicle, or aircraft is required to be so registered, as the case may be, by delivering

the notice and complaint in open court or by certified mail to the address as given upon the records of the Secretary of State, the Division of Aeronautics of the Department of Transportation, the Capital Development Board, or any other department of this State or the United States if the vessel or watercraft, vehicle, or aircraft is required to be so registered.

(c) The owner of the seized vessel or watercraft, vehicle, or aircraft or any person whose right, title, or interest is of record as described in Section 36-1, may within 20 days after delivery in open court or the mailing of such notice file a verified answer to the Complaint and may appear at the hearing on the action for forfeiture.

(d) The State shall show at such hearing by a preponderance of the evidence, that such vessel or watercraft, vehicle, or aircraft was used in the commission of an offense described in Section 36-1.

(e) The owner of such vessel or watercraft, vehicle, or aircraft or any person whose right, title, or interest is of record as described in Section 36-1, may show by a preponderance of the evidence that he did not know, and did not have reason to know, that the vessel or watercraft, vehicle, or aircraft was to be used in the commission of such an offense or that any of the exceptions set forth in Section 36-3 are applicable.

(f) Unless the State shall make such showing, the Court

shall order such vessel or watercraft, vehicle, or aircraft released to the owner. Where the State has made such showing, the Court may order the vessel or watercraft, vehicle, or aircraft destroyed or may order it forfeited to any local, municipal or county law enforcement agency, or the Department of State Police or the Department of Revenue of the State of Illinois.

(g) A copy of the order shall be filed with the law enforcement agency, and with each Federal or State office or agency with which such vessel or watercraft, vehicle, or aircraft is required to be registered. Such order, when filed, constitutes authority for the issuance of clear title to such vessel or watercraft, vehicle, or aircraft, to the department or agency to whom it is delivered or any purchaser thereof. The law enforcement agency shall comply promptly with instructions to remit received from the State's Attorney or Attorney General in accordance with Sections 36-2(a) or 36-3.

(h) The proceeds of any sale at public auction pursuant to Section 36-2 of this Act, after payment of all liens and deduction of the reasonable charges and expenses incurred by the State's Attorney's Office shall be paid to the law enforcement agency having seized the vehicle for forfeiture.

(Source: P.A. 98-699, eff. 1-1-15; 98-1020, eff. 8-22-14; 99-78, eff. 7-20-15.)

(Text of Section after amendment by P.A. 100-512)

Sec. 36-2. Complaint for forfeiture.

(a) If the State's Attorney of ~~in~~ the county in which such seizure occurs finds that the alleged violation of law giving rise to the seizure was incurred without willful negligence or without any intention on the part of the owner of the vessel or watercraft, vehicle or aircraft or any person whose right, title or interest is of record as described in Section 36-1 of this Article, to violate the law, or finds the existence of such mitigating circumstances as to justify remission of the forfeiture, he or she may cause the law enforcement agency having custody of the property to return the property to the owner within a reasonable time not to exceed 7 days. The State's Attorney shall exercise his or her discretion under this subsection (a) prior to or promptly after the preliminary review under Section 36-1.5.

(b) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture and the State's Attorney does not cause the forfeiture to be remitted under subsection (a) of this Section, he or she shall ~~forthwith~~ bring an action for forfeiture in the circuit court ~~Circuit Court~~ within whose jurisdiction the seizure and confiscation has taken place by filing a verified complaint for ~~of~~ forfeiture in the circuit court within whose jurisdiction the seizure occurred, or within whose jurisdiction an act or omission giving rise to the seizure occurred, subject to Supreme Court Rule 187. The

complaint shall be filed as soon as practicable but not later
~~less~~ than 28 days after the State's Attorney receives notice
from the seizing agency as provided ~~a finding of probable cause~~
~~at a preliminary review~~ under Section 36-1.4 ~~36-1.5~~ of this
Article. A complaint of forfeiture shall include:

- (1) a description of the property seized;
- (2) the date and place of seizure of the property;
- (3) the name and address of the law enforcement agency
making the seizure; and
- (4) the specific statutory and factual grounds for the
seizure.

The complaint shall be served upon each person whose right,
title, or interest is of record in the office of the Secretary
of State, the Secretary of Transportation, the Administrator of
the Federal Aviation Agency, or any other department of this
State, or any other state of the United States if the vessel or
watercraft, vehicle, or aircraft is required to be so
registered, as the case may be, the person from whom the
property was seized, and all persons known or reasonably
believed by the State to claim an interest in the property, as
provided in this Article. The complaint shall be accompanied by
the following written notice:

"This is a civil court proceeding subject to the Code of
Civil Procedure. You received this Complaint of Forfeiture
because the State's Attorney's office has brought a legal
action seeking forfeiture of your seized property. This

complaint starts the court process where the State seeks to prove that your property should be forfeited and not returned to you. This process is also your opportunity to try to prove to a judge that you should get your property back. The complaint lists the date, time, and location of your first court date. You must appear in court on that day, or you may lose the case automatically. You must also file an appearance and answer. If you are unable to pay the appearance fee, you may qualify to have the fee waived. If there is a criminal case related to the seizure of your property, your case may be set for trial after the criminal case has been resolved. Before trial, the judge may allow discovery, where the State can ask you to respond in writing to questions and give them certain documents, and you can make similar requests of the State. The trial is your opportunity to explain what happened when your property was seized and why you should get the property back."

(c) (Blank).

(d) (Blank).

(e) (Blank).

(f) (Blank).

(g) (Blank).

(h) (Blank).

(Source: P.A. 99-78, eff. 7-20-15; 100-512, eff. 7-1-18.)

(720 ILCS 5/36-2.1)

(This Section may contain text from a Public Act with a

delayed effective date)

Sec. 36-2.1. Notice to owner or interest holder. The first attempted service of notice shall be commenced within 28 days of the receipt of the notice from the seizing agency by Form ~~the form~~ 4-64. If the property seized is a conveyance, notice shall also be directed to the address reflected in the office of the agency or official in which title to or interest in ~~to~~ the conveyance is required by law to be recorded. A complaint for forfeiture shall be served upon the property owner or interest holder in the following manner:

(1) If the owner's or interest holder's name and current address are known, then by either:

(A) personal service; or

(B) mailing a copy of the notice by certified mail, return receipt requested, and first class mail, to that address.

(i) If notice is sent by certified mail and no signed return receipt is received by the State's Attorney within 28 days of mailing, and no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by said parties, the State's Attorney shall, within a reasonable period of time, mail a second copy of the notice by certified mail, return receipt requested, and first class mail, to that address.

(ii) If no signed return receipt is received by the State's Attorney within 28 days of the second attempt at service by certified mail, and no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by said parties, the State's Attorney shall have 60 days to attempt to serve the notice by personal service, which also includes substitute service by leaving a copy at the usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards. If, after 3 attempts at service in this manner, no service of the notice is accomplished, then the notice shall be posted in a conspicuous manner at this address and service shall be made by the posting.

The attempts at service and the posting if required, shall be documented by the person attempting service and said documentation shall be made part of a return of service returned to the State's Attorney.

The State's Attorney may utilize a Sheriff or Deputy Sheriff, any peace officer, a private process server or investigator, or any employee, agent, or investigator of the State's Attorney's office to attempt service without seeking leave of court.

After the procedures are followed, service shall

be effective on an owner or interest holder on the date of receipt by the State's Attorney of a ~~returned~~ return receipt ~~requested~~, or on the date of receipt of a communication from an owner or interest holder documenting actual notice, whichever is first in time, or on the date of the last act performed by the State's Attorney in attempting personal service under item (ii) of this paragraph (1). If notice is to be shown by actual notice from communication with a claimant, then the State's Attorney shall file an affidavit providing details of the communication, which shall be accepted as sufficient proof of service by the court.

For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the complaint for forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or if the property seized is a conveyance, to

the address reflected in the office of the agency or official in which title to or interest in ~~to~~ the conveyance is required by law to be recorded.

(2) If the owner's or interest holder's address is not known, and is not on record, then notice shall be served by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(3) Notice to any business entity, corporation, limited liability company, limited liability partnership ~~LLC, LLP~~, or partnership shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, ~~to~~ that address. This notice is complete regardless of the return of a signed "return receipt requested".

(4) Notice to a person whose address is not within the State shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, ~~to~~ that address. This notice is complete regardless of the return of a signed "return receipt requested".

(5) Notice to a person whose address is not within the United States shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, ~~to~~ that address. This notice shall be complete regardless of the return of a

signed "~~return receipt requested~~". If certified mail is not available in the foreign country where the person has an address, then notice shall proceed by publication under paragraph (2) of this Section.

(6) Notice to any person whom the State's Attorney reasonably should know is incarcerated within the State shall also include the mailing a copy of the notice by certified mail, return receipt requested, and first class mail to the address of the detention facility with the inmate's name clearly marked on the envelope.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-2.2)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-2.2. Replevin prohibited; return of personal property inside seized conveyance.

(a) Property seized under this Article shall not be subject to replevin, but is deemed to be in the custody of the Director of State Police, subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney.

(b) A claimant or a party interested in personal property contained within a seized conveyance may file a motion with the court in a judicial forfeiture action for the return of any personal property contained within a conveyance seized under

this Article. The return of personal property shall not be unreasonably withheld if the personal property is not mechanically or electrically coupled to the conveyance, needed for evidentiary purposes, or otherwise contraband. A law enforcement agency that returns property under a court order under this Section shall not be liable to any person who claims ownership to the property if the property is returned to an improper party.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-2.5)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-2.5. Judicial in rem procedures.

(a) The laws of evidence relating to civil actions shall apply to judicial in rem proceedings under this Article.

(b) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. A person not named in the forfeiture complaint who claims to have an interest in the property may petition to intervene as a claimant under Section 2-408 of the Code of Civil Procedure.

(c) The answer shall be filed with the court within 45 days after service of the civil in rem complaint.

(d) The trial shall be held within 60 days after filing of

the answer unless continued for good cause.

(e) In its case in chief, the State shall show by a preponderance of the evidence that:

(1) the property is subject to forfeiture; and

(2) at least one of the following:

(i) the claimant knew or should have known that the conduct was likely to occur; or

(ii) the claimant is not the true owner of the property that is subject to forfeiture.

In any forfeiture case under this Article, a claimant may present evidence to overcome evidence presented by the State that the property is subject to forfeiture.

(f) Notwithstanding any other provision of this Section, the State's burden of proof at the trial of the forfeiture action shall be by clear and convincing evidence if:

(1) a finding of not guilty is entered as to all counts and all defendants in a criminal proceeding relating to the conduct giving rise to the forfeiture action; or

(2) the State receives an adverse finding at a preliminary hearing and fails to secure an indictment in a criminal proceeding related to the factual allegations of the forfeiture action.

(g) If the State does not meet its burden of proof, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property in which the State does meet its burden of proof forfeited to the

State. If the State does meet its burden of proof, the court shall order all property forfeited to the State.

(h) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Article regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(i) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this Act; however, for good cause shown, on a motion by either party, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of law authorizing forfeiture under Section 36-1 of this Article.

(j) Title to all property declared forfeited under this Act vests in this State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Except as otherwise provided in this Article, any property or proceeds subsequently transferred to any person remain subject to forfeiture unless a person to whom the property was transferred makes an appropriate claim under or has the ~~their~~ claim adjudicated at the judicial in rem hearing.

(k) No property shall be forfeited under this Article from a person who, without actual or constructive notice that the property was the subject of forfeiture proceedings, obtained

possession of the property as a bona fide purchaser for value. A person who purports to transfer property after receiving actual or constructive notice that the property is subject to seizure or forfeiture is guilty of contempt of court, and shall be liable to the State for a penalty in the amount of the fair market value of the property.

(l) A civil action under this Article shall be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(m) If property is ordered forfeited under this Article from a claimant who held title to the property in joint tenancy or tenancy in common with another claimant, the court shall determine the amount of each owner's interest in the property according to principles of property law.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-2.7)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-2.7. Innocent owner hearing.

(a) After a complaint for forfeiture has been filed and all claimants have appeared and answered, a claimant may file a

motion with the court for an innocent owner hearing prior to trial. This motion shall be made and supported by sworn affidavit and shall assert the following along with specific facts that ~~which~~ support each assertion:

(1) that the claimant filing the motion is the true owner of the conveyance as interpreted by case law; and

(2) that the claimant did not know or did not have reason to know the conduct giving rise to the forfeiture was likely to occur.

~~(b)~~ The claimant's motion ~~claimant~~ shall include specific facts that ~~which~~ support these assertions ~~in their motion~~.

(b) ~~(e)~~ Upon the filing, a hearing may only be conducted after the parties have been given the opportunity to conduct limited discovery as to the ownership and control of the property, the claimant's knowledge, or any matter relevant to the issues raised or facts alleged in the claimant's motion. Discovery shall be limited to the People's requests in these areas but may proceed by any means allowed in the Code of Civil Procedure.

(c) ~~(d)~~ After discovery is complete and the court has allowed for sufficient time to review and investigate the discovery responses, the court shall conduct a hearing. At the hearing, the fact that the conveyance is subject to forfeiture shall not be at issue. The court shall only hear evidence relating to the issue of innocent ownership.

(d) ~~(e)~~ At the hearing on the motion, the claimant shall

bear the burden of proving each of the assertions listed in subsection (a) of this Section by a preponderance of the evidence. ~~(f)~~ If a claimant meets the ~~their~~ burden of proof, the court shall grant the motion and order the conveyance returned to the claimant. If the claimant fails to meet the ~~their~~ burden of proof, the court shall deny the motion and the forfeiture case shall proceed according to the Code ~~Rules~~ of Civil Procedure.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-7)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 36-7. Distribution of proceeds; selling or retaining seized property prohibited.

(a) Except as otherwise provided in this Section, the court shall order that property forfeited under this Article be delivered to the Department of State Police within 60 days.

(b) The Department of State Police or its designee shall dispose of all property at public auction and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, under subsection (c) of this Section.

(c) All moneys ~~moneys~~ and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1) 65% shall be distributed to the drug task force,

metropolitan enforcement group, local, municipal, county, or State ~~state~~ law enforcement agency or agencies that ~~which~~ conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used, at the discretion of the agency, for the enforcement of criminal laws; or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

- (A) the receiving agency has entered into an intergovernmental agreement with the municipality to

provide police services;

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

(C) the seizure took place within the geographical limits of the municipality; and

(D) the funds are used only for the enforcement of criminal laws; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence or the establishment of a municipal police force, including the training of officers, construction of a police station, the purchase of law enforcement equipment, or vehicles.

(2) 12.5% shall be distributed to the Office of the State's Attorney of 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, at the discretion of the State's Attorney, in the enforcement of criminal laws; or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses.

In counties over 3,000,000 population, 25% will be distributed to the Office of the State's Attorney for use, at the discretion of the State's Attorney, in the enforcement of criminal laws; or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. If the prosecution is undertaken solely by the Attorney General, the portion provided shall be distributed to the Attorney General for use in the enforcement of criminal laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol.

12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and shall be used at the discretion of the State's Attorneys Appellate Prosecutor for additional expenses incurred in the investigation, prosecution and appeal of cases arising in the enforcement of criminal laws; or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

(3) 10% shall be retained by the Department of State

Police for expenses related to the administration and sale of seized and forfeited property.

(d) A law enforcement agency shall not retain forfeited property for its own use or transfer the property to any person or entity, except as provided under this Section. A law enforcement agency may apply in writing to the Director of State Police to request that a forfeited property be awarded to the agency for a specifically articulated official law enforcement use in an investigation. The Director of State Police shall provide a written justification in each instance detailing the reasons why the forfeited property was placed into official use, and the justification shall be retained for a period of not less than 3 years.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/36-10 new)

Sec. 36-10. Applicability; savings clause.

(a) The changes made to this Article by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(b) The changes made to this Article by this amendatory Act of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

Section 25. The Cannabis Control Act is amended by changing Section 12 as follows:

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

(Text of Section before amendment by P.A. 100-512)

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

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

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

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

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

(ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission which the owner proves to have been committed or omitted without

his knowledge or consent;

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

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

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

(6) all real property, including any right, title, and interest including, but not limited to, any leasehold interest or the beneficial interest to a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to facilitate the manufacture, distribution, sale, receipt, or concealment of property described in paragraph (1) or (2) of this subsection (a) that constitutes a felony violation of more than 2,000 grams of a substance containing cannabis or that is the proceeds of any felony violation of this Act.

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

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

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

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

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

(c) In the event of seizure pursuant to subsection (b), notice shall be given forthwith to all known interest holders that forfeiture proceedings, including a preliminary review, shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act and such proceedings shall thereafter be instituted in accordance with that Act. Upon a showing of good cause, the notice required for a preliminary review under

this Section may be postponed.

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

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

- (1) place the property under seal;
- (2) remove the property to a place designated by him;
- (3) keep the property in the possession of the seizing agency;
- (4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, deposit it in an interest bearing account;

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

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

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

(f) When property is forfeited under this Act the Director shall sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (g). However, upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests and prosecution which lead to the forfeiture, the Director may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws relating to cannabis or controlled substances, if the agency or prosecutor can demonstrate that

the item requested would be useful to the agency or prosecutor in their enforcement efforts. When any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, the conveyance may be used immediately in the enforcement of the criminal laws of this State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. When any real property returned to the seizing agency is sold by the agency or its unit of government, the proceeds of the sale shall be delivered to the Director and distributed in accordance with subsection (g).

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

(1)(i) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or state law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws

governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

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

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

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

(IV) the funds are used only for the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or

alcohol; or for security cameras used for the prevention or detection of violence or the establishment of a municipal police force, including the training of officers, construction of a police station, the purchase of law enforcement equipment, or vehicles.

(2) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. In counties over 3,000,000 population, 25% will be distributed to the Office of the State's Attorney for use in the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. If the prosecution is

undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws governing cannabis and controlled substances.

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that Office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

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

(Source: P.A. 99-686, eff. 7-29-16.)

(Text of Section after amendment by P.A. 100-512)

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

(1) (blank);

(2) all raw materials, products, and equipment of any kind which are produced, delivered, or possessed in connection with any substance containing cannabis in a

felony violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any substance containing cannabis or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of the Act, but:

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

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

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

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

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

(6) all real property, including any right, title, and interest including, but not limited to, any leasehold interest or the beneficial interest in ~~to~~ a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to facilitate the manufacture, distribution, sale, receipt, or concealment of a substance containing cannabis or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of this Act involving more than 2,000 grams of a substance containing cannabis or that is the proceeds of any felony violation of this Act.

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to ~~subject to~~ an 8th Amendment ~~amendment~~ to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act.

(c-1) With regard to possession of cannabis offenses only,

a sum of currency with a value of less than \$500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than \$100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(d) (Blank).

(e) (Blank).

(f) (Blank).

(g) (Blank).

(h) Contraband, including cannabis possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(i) The changes made to this Section by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(j) The changes made to this Section by this amendatory Act of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

(Source: P.A. 99-686, eff. 7-29-16; 100-512, eff. 7-1-18.)

Section 30. The Illinois Controlled Substances Act is amended by changing Section 505 as follows:

(720 ILCS 570/505) (from Ch. 56 1/2, par. 1505)

(Text of Section before amendment by P.A. 100-512)

Sec. 505. (a) The following are subject to forfeiture:

(1) all substances which have been manufactured, distributed, dispensed, or possessed in violation of this Act;

(2) all raw materials, products and equipment of any kind which are used, or intended for use in manufacturing, distributing, dispensing, administering or possessing any substance in violation of this Act;

(3) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraphs (1) and (2), but:

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

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

(iii) a forfeiture of a conveyance encumbered by a

bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended to be used in violation of this Act;

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

(6) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of Section 401 or 405 of this Act or that is the proceeds of any violation or act that constitutes a violation of Section 401 or 405 of this Act.

(b) Property subject to forfeiture under this Act may be seized by the Director or any peace officer upon process or seizure warrant issued by any court having jurisdiction over

the property. Seizure by the Director or any peace officer without process may be made:

(1) if the seizure is incident to inspection under an administrative inspection warrant;

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

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety;

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

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

(c) In the event of seizure pursuant to subsection (b), notice shall be given forthwith to all known interest holders that forfeiture proceedings, including a preliminary review, shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act and such proceedings shall thereafter be instituted in accordance with that Act. Upon a showing of good cause, the notice required for a preliminary review under this Section may be postponed.

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

- (1) place the property under seal;
- (2) remove the property to a place designated by the Director;
- (3) keep the property in the possession of the seizing agency;
- (4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, deposit it in an interest bearing account;
- (5) place the property under constructive seizure by posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property; or
- (6) provide for another agency or custodian, including

an owner, secured party, or lienholder, to take custody of the property upon the terms and conditions set by the Director.

(e) If the Department of Financial and Professional Regulation suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal by the Director. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a suspension or revocation order becoming final, all substances may be forfeited to the Illinois State Police.

(f) When property is forfeited under this Act the Director shall sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (g). However, upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests and prosecution which lead to the forfeiture, the Director may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws relating to cannabis or controlled substances, if the agency or prosecutor can demonstrate that

the item requested would be useful to the agency or prosecutor in their enforcement efforts. When any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, the conveyance may be used immediately in the enforcement of the criminal laws of this State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. When any real property returned to the seizing agency is sold by the agency or its unit of government, the proceeds of the sale shall be delivered to the Director and distributed in accordance with subsection (g).

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

(1)(i) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or state law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws

governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

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

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

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

(IV) the funds are used only for the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or

alcohol; or for security cameras used for the prevention or detection of violence or the establishment of a municipal police force, including the training of officers, construction of a police station, the purchase of law enforcement equipment, or vehicles.

(2) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. In counties over 3,000,000 population, 25% will be distributed to the Office of the State's Attorney for use in the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. If the prosecution is

undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol.

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

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

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State. The failure, upon demand by the Director or any peace officer, of the person in

occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce registration, or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(Source: P.A. 99-686, eff. 7-29-16.)

(Text of Section after amendment by P.A. 100-512)

Sec. 505. (a) The following are subject to forfeiture:

(1) (blank);

(2) all raw materials, products, and equipment of any kind which are used, or intended for use in manufacturing, distributing, dispensing, administering or possessing any substance in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of substances manufactured, distributed, dispensed, or possessed in violation of this Act, or property described in paragraph ~~paragraphs~~ (2) of this subsection (a), but:

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

to a violation of this Act;

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

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

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended to be used in violation of this Act;

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

(6) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a

violation of Section 401 or 405 of this Act or that is the proceeds of any violation or act that constitutes a violation of Section 401 or 405 of this Act.

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to ~~subject to~~ an 8th Amendment ~~amendment~~ to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act.

(d) With regard to possession of controlled substances offenses only, a sum of currency with a value of less than \$500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than ~~currency with a value of under~~ \$100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(d-5) For felony offenses involving possession of controlled substances only, no property shall be subject to forfeiture under this Act because of the possession of less than 2 single unit doses of a controlled substance. This exemption shall not apply in instances when the possessor, or another person at the direction of the possessor, engaged in the destruction of any amount of a controlled substance. The

amount of a single unit dose shall be the State's burden to prove in its ~~their~~ case in chief.

(e) If the Department of Financial and Professional Regulation suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal by the Director. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a suspension or revocation order becoming final, all substances are subject to seizure and forfeiture under the Drug Asset Forfeiture Procedure Act.

(f) (Blank).

(g) (Blank).

(h) (Blank).

(i) Contraband, including controlled substances possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(j) The changes made to this Section by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(k) The changes made to this Section by this amendatory Act

of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

(Source: P.A. 99-686, eff. 7-29-16; 100-512, eff. 7-1-18.)

Section 35. The Methamphetamine Control and Community Protection Act is amended by changing Section 85 as follows:

(720 ILCS 646/85)

(Text of Section before amendment by P.A. 100-512)

Sec. 85. Forfeiture.

(a) The following are subject to forfeiture:

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

(2) all methamphetamine manufacturing materials which have been produced, delivered, or possessed in connection with any substance containing methamphetamine in violation of this Act;

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

(i) no conveyance used by any person as a common carrier in the transaction of business as a common

carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

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

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

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

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

(6) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or

improvements, which is used, or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of this Act or that is the proceeds of any violation or act that constitutes a violation of this Act.

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

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

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

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

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

(c) In the event of seizure pursuant to subsection (b), notice shall be given forthwith to all known interest holders

that forfeiture proceedings, including a preliminary review, shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act and such proceedings shall thereafter be instituted in accordance with that Act. Upon a showing of good cause, the notice required for a preliminary review under this Section may be postponed.

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

- (1) place the property under seal;
- (2) remove the property to a place designated by him or her;
- (3) keep the property in the possession of the seizing agency;
- (4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, deposit it in an interest bearing account;

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

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

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

(f) When property is forfeited under this Act, the Director shall sell the property unless the property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (g). However, upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests and prosecution which lead to the forfeiture, the Director may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws relating to methamphetamine, cannabis, or controlled substances, if the agency or prosecutor

demonstrates that the item requested would be useful to the agency or prosecutor in their enforcement efforts. When any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, the conveyance may be used immediately in the enforcement of the criminal laws of this State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. When any real property returned to the seizing agency is sold by the agency or its unit of government, the proceeds of the sale shall be delivered to the Director and distributed in accordance with subsection (g).

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

(1)(i) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws

governing methamphetamine, cannabis, and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

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

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

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

(IV) the funds are used only for the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or

alcohol; or for security cameras used for the prevention or detection of violence or the establishment of a municipal police force, including the training of officers, construction of a police station, the purchase of law enforcement equipment, or vehicles.

(2) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws governing methamphetamine, cannabis, and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. In counties with a population over 3,000,000, 25% shall be distributed to the Office of the State's Attorney for use in the enforcement of laws governing methamphetamine, cannabis, and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and

half-way houses. If the prosecution is undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws governing methamphetamine, cannabis, and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol.

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that Office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws governing methamphetamine, cannabis, and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with a population over 3,000,000.

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

(Source: P.A. 99-686, eff. 7-29-16.)

(Text of Section after amendment by P.A. 100-512)

Sec. 85. Forfeiture.

(a) The following are subject to forfeiture:

(1) (blank);

(2) all methamphetamine manufacturing materials which have been produced, delivered, or possessed in connection with any substance containing methamphetamine in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any substance containing methamphetamine or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of the Act, but:

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

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

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

of nor consented to the act or omission;

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

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

▬

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

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to ~~subject to~~ an

8th Amendment ~~amendment~~ to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act.

(d) With regard to possession of methamphetamine offenses only, a sum of currency with a value of less than \$500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than ~~under~~ \$100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(e) For felony offenses involving possession of a substance containing methamphetamine only, no property shall be subject to forfeiture under this Act because of the possession of less than 2 single unit doses of a substance. This exemption shall not apply in instances when the possessor, or another person at the direction of the possessor, is engaged in the destruction of any amount of a substance containing methamphetamine. The amount of a single unit dose shall be the State's burden to prove in its ~~their~~ case in chief.

(f) (Blank).

(g) (Blank).

(h) Contraband, including methamphetamine or any controlled substance possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(i) The changes made to this Section by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(j) The changes made to this Section by this amendatory Act of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

(Source: P.A. 99-686, eff. 7-29-16; 100-512, eff. 7-1-18.)

Section 40. The Drug Asset Forfeiture Procedure Act is amended by changing Sections 3.1, 3.3, 3.5, 4, 5, 5.1, 6, 7, 8, 9, 9.1, and 11, by adding Section 13.4, renumbering and changing Sections 15 and 17, and renumbering Section 20 as follows:

(725 ILCS 150/3.1)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 3.1. Seizure.

(a) Actual physical seizure of real property subject to forfeiture under this Act requires the issuance of a seizure warrant. Nothing in this Section prohibits the constructive seizure of real property through the filing of a complaint for forfeiture in circuit court and the recording of a lis pendens against the real property without a hearing, warrant application, or judicial approval.

(b) Personal property subject to forfeiture under the

Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act may be seized by the Director of State Police or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property.

(c) Personal property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act may be seized by the Director of State Police or any peace officer without process:

(1) if the seizure is incident to inspection under an administrative inspection warrant;

(2) if the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal proceeding or in an injunction or forfeiture proceeding based upon this Act;

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety;

(4) if there is probable cause to believe that the property is subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act, and

the property is seized under circumstances in which a warrantless seizure or arrest would be reasonable; or

(5) under the Code of Criminal Procedure of 1963.

(d) If a conveyance is seized under this Act, an investigation shall be made by the law enforcement agency as to any person whose right, title, interest, or lien is of record in the office of the agency or official in which title to or interest in ~~to~~ the conveyance is required by law to be recorded.

(e) After seizure under this Section, notice shall be given to all known interest holders that forfeiture proceedings, including a preliminary review, may be instituted and the proceedings may be instituted under this Act. Upon a showing of good cause related to an ongoing investigation, the notice required for a preliminary review under this Section may be postponed.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/3.3)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 3.3. Safekeeping of seized property pending disposition.

(a) Property seized under this Act is deemed to be in the custody of the Director of State Police, subject only to the order and judgments of the circuit court having jurisdiction

over the forfeiture proceedings and the decisions of the State's Attorney under this Act.

(b) If property is seized under this Act, the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value, and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director of State Police. Upon receiving notice of seizure, the Director of State Police may:

(1) place the property under seal;

(2) remove the property to a place designated by the seizing agency;

(3) keep the property in the possession of the Director of State Police;

(4) remove the property to a storage area for safekeeping; ~~or~~

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

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

(c) The seizing agency is required to exercise ordinary care to protect the seized property from negligent loss,

damage, or destruction.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/3.5)

(Text of Section before amendment by P.A. 100-512)

Sec. 3.5. Preliminary review.

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

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

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

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

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held

until the conclusion of any forfeiture proceeding.

For seizures of conveyances, within 7 days of a finding of probable cause under subsection (a), the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship. The court shall consider the following factors in determining whether a substantial hardship has been proven:

- (1) the nature of the claimed hardship;
- (2) the availability of public transportation or other available means of transportation; and
- (3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The

court shall place conditions on the conveyance limiting its use to the stated hardship and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The court shall revoke the order releasing the conveyance and order that the conveyance be resealed by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code.

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the registered owner or his or her authorized designee shall post a cash security with the Clerk of the Court as ordered by the court. The court shall consider the following factors in determining the amount of the cash security:

- (A) the full market value of the conveyance;
- (B) the nature of the hardship;
- (C) the extent and length of the usage of the conveyance; and
- (D) such other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the

conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

(Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12.)

(Text of Section after amendment by P.A. 100-512)

Sec. 3.5. Preliminary review.

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

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

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

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

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.

For seizures of conveyances, within 28 days after a finding

of probable cause under subsection (a) of this Section, the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship and alleges facts showing that the hardship delay was not due to his or her culpable negligence. The court shall consider the following factors in determining whether a substantial hardship has been proven:

- (1) the nature of the claimed hardship;
- (2) the availability of public transportation or other available means of transportation; and
- (3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The

court shall place conditions on the conveyance limiting its use to the stated hardship and providing transportation for employment, religious purposes, medical needs, child care, and obtaining food, and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The use of the vehicle shall be further restricted to exclude all recreational and entertainment purposes. The court may order any additional restrictions it deems reasonable and just on its own motion or on motion of the People. The court shall revoke the order releasing the conveyance and order that the conveyance be resealed by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code.

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the court may order the registered owner or his or her authorized designee to post a cash security with the clerk ~~Clerk~~ of the court ~~Court~~ as ordered by the court. If cash security is ordered, the court shall consider the following factors in determining the amount of the cash security:

- (A) the full market value of the conveyance;
- (B) the nature of the hardship;
- (C) the extent and length of the usage of the conveyance;

- (D) the ability of the owner or designee to pay; and
- (E) other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c) (2) (A) or 919.80(c) (2) (B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security

shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/4) (from Ch. 56 1/2, par. 1674)

(Text of Section before amendment by P.A. 100-512)

Sec. 4. Notice to owner or interest holder.

(A) Whenever notice of pending forfeiture or service of an in rem complaint is required under the provisions of this Act, such notice or service shall be given as follows:

(1) If the owner's or interest holder's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of

pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or

(2) If the property seized is a conveyance, to the address reflected in the office of the agency or official in which title or interest to the conveyance is required by law to be recorded, then by mailing a copy of the notice by certified mail, return receipt requested, to that address; or

(3) If the owner's or interest holder's address is not known, and is not on record as provided in paragraph (2), then by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(B) Notice served under this Act is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

(Source: P.A. 86-1382; 87-614.)

(Text of Section after amendment by P.A. 100-512)

Sec. 4. Notice to owner or interest holder. The first attempted service of notice shall be commenced within 28 days of the filing of the verified claim or the receipt of the

notice from the seizing agency by Illinois State Police Notice/Inventory of Seized Property (Form 4-64) ~~the form 4-64~~, whichever occurs sooner. A complaint for forfeiture or a notice of pending forfeiture shall be served upon the property owner or interest holder in the following manner:

(1) If the owner's or interest holder's name and current address are known, then by either:

(A) personal service; or

(B) mailing a copy of the notice by certified mail, return receipt requested_u, and first class mail₇ to that address.

(i) If notice is sent by certified mail and no signed return receipt is received by the State's Attorney within 28 days of mailing, and no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by said parties, then the State's Attorney shall, within a reasonable period of time, mail a second copy of the notice by certified mail, return receipt requested_u, and first class mail₇ to that address.

(ii) If no signed return receipt is received by the State's Attorney within 28 days of the second attempt at service by certified mail, and no communication from the owner or interest holder is received by the State's Attorney documenting

actual notice by said parties, then the State's Attorney shall have 60 days to attempt to serve the notice by personal service, which also includes substitute service by leaving a copy at the usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards. If, after 3 attempts at service in this manner, no service of the notice is accomplished, then the notice shall be posted in a conspicuous manner at this address and service shall be made by posting.

The attempts at service and the posting if required, shall be documented by the person attempting service and said documentation shall be made part of a return of service returned to the State's Attorney.

The State's Attorney may utilize any Sheriff or Deputy Sheriff, any peace officer, a private process server or investigator, or any employee, agent, or investigator of the State's Attorney's Office to attempt service without seeking leave of court.

After the procedures set forth are followed, service shall be effective on an owner or interest holder on the date of receipt by the State's Attorney of a ~~returned~~ return receipt ~~requested~~,

or on the date of receipt of a communication from an owner or interest holder documenting actual notice, whichever is first in time, or on the date of the last act performed by the State's Attorney in attempting personal service under subparagraph (ii) above. If notice is to be shown by actual notice from communication with a claimant, then the State's Attorney shall file an affidavit providing details of the communication, which may be accepted as sufficient proof of service by the court.

After a claimant files a verified claim with the State's Attorney and provides ~~provide~~ an address at which the claimant ~~they~~ will accept service, the complaint shall be served and notice shall be perfected upon mailing of the complaint to the claimant at the address the claimant provided via certified mail, return receipt requested, and first class mail. No return receipt ~~card~~ need be received, or any other attempts at service need be made to comply with service and notice requirements under this Act. This certified mailing, return receipt requested, shall be proof of service of the complaint on the claimant.

For purposes of notice under this Section, if a person has been arrested for the conduct giving

rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or if the property seized is a conveyance, to the address reflected in the office of the agency or official in which title to or interest in ~~to~~ the conveyance is required by law to be recorded.

(2) If the owner's or interest holder's address is not known, and is not on record, then notice shall be served by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(3) After a claimant files a verified claim with the State's Attorney and provides an address at which the claimant ~~they~~ will accept service, the complaint shall be served and notice shall be perfected upon mailing of the

complaint to the claimant at the address the claimant provided via certified mail, return receipt requested, and first class mail. No return receipt ~~card~~ need be received or any other attempts at service need be made to comply with service and notice requirements under this Act. This certified mailing, return receipt requested, shall be proof of service of the complaint on the claimant.

(4) Notice to any business entity, corporation, limited liability company, limited liability partnership ~~LLC, LLP~~, or partnership shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, to that address. This notice is complete regardless of the return of a signed "return receipt ~~requested~~".

(5) Notice to a person whose address is not within the State shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, to that address. This notice is complete regardless of the return of a signed "return receipt ~~requested~~".

(6) Notice to a person whose address is not within the United States shall be completed ~~complete~~ by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail, to that address. This notice shall be complete regardless of the return of a signed "return receipt ~~requested~~". If certified mail is not

available in the foreign country where the person has an address, then notice shall proceed by publication under paragraph (2) of this Section.

(7) Notice to any person whom the State's Attorney reasonably should know is incarcerated within the State shall also include the mailing a copy of the notice by certified mail, return receipt requested, and first class mail~~7~~ to the address of the detention facility with the inmate's name clearly marked on the envelope.

~~(A) (Blank).~~

~~(B) (Blank).~~

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/5) (from Ch. 56 1/2, par. 1675)

(Text of Section before amendment by P.A. 100-512)

Sec. 5. Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall, within 52 days of seizure, notify the State's Attorney for the county in which an act or omission giving rise to the forfeiture occurred or in which the property was seized of the seizure of the property and the facts and circumstances giving rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. When the property seized for forfeiture is a vehicle, the law

enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle.

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

(Text of Section after amendment by P.A. 100-512)

Sec. 5. Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or the Illinois Food, Drug, and Cosmetic Act shall, as soon as practicable but not later than 28 days after the seizure, notify the State's Attorney for the county in which an act or omission giving rise to the seizure occurred or in which the property was seized of the seizure of the property and the facts and circumstances giving rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. Said notice shall be by the delivery of Form ~~the form~~ 4-64. When the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/5.1)

(This Section may contain text from a Public Act with a

delayed effective date)

Sec. 5.1. Replevin prohibited; return of personal property inside seized conveyance.

(a) Property seized under this Act shall not be subject to replevin, but is deemed to be in the custody of the Director of State Police, subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney.

(b) A claimant or a party interested in personal property contained within a seized conveyance may file a request with the State's Attorney in an administrative forfeiture action, or a motion with the court in a judicial forfeiture action, for the return of any personal property contained within a conveyance seized under this Act. The return of personal property shall not be unreasonably withheld if the personal property is not mechanically or electrically coupled to the conveyance, needed for evidentiary purposes, or otherwise contraband. A law enforcement agency that returns property under a court order under this Section shall not be liable to any person who claims ownership to the property if the property is returned to an improper party.

(Source: P.A. 100-512, eff. 7-1-18.)

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

(Text of Section before amendment by P.A. 100-512)

Sec. 6. Non-judicial forfeiture. If non-real property that

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

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

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

(C) (1) Any person claiming an interest in property

which is the subject of notice under subsection (A) of Section 6 of this Act, may, within 45 days after the effective date of notice as described in Section 4 of this Act, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim must set forth:

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

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

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

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

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

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

(vii) all essential facts supporting each assertion; and

(viii) the relief sought.

(2) If a claimant files the claim and deposits with the State's Attorney a cost bond, in the form of a cashier's check payable to the clerk of the court, in the

sum of 10 percent of the reasonable value of the property as alleged by the State's Attorney or the sum of \$100, whichever is greater, upon condition that, in the case of forfeiture, the claimant must pay all costs and expenses of forfeiture proceedings, then the State's Attorney shall institute judicial in rem forfeiture proceedings and deposit the cost bond with the clerk of the court as described in Section 9 of this Act within 45 days after receipt of the claim and cost bond. In lieu of a cost bond, a person claiming interest in the seized property may file, under penalty of perjury, an indigency affidavit.

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

(D) If no claim is filed or bond given within the 45 day period as described in subsection (C) of Section 6 of this Act, the State's Attorney shall declare the property forfeited and shall promptly notify the owner and all known

interest holders of the property and the Director of the Illinois Department of State Police of the declaration of forfeiture and the Director shall dispose of the property in accordance with law.

(Source: P.A. 97-544, eff. 1-1-12.)

(Text of Section after amendment by P.A. 100-512)

Sec. 6. Non-judicial forfeiture. If non-real property that exceeds \$150,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in Section 9 of this Act within 28 ~~45~~ days from receipt of notice of seizure from the seizing agency under Section 5 of this Act. However, if non-real property that does not exceed \$150,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:

(A) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 28 ~~45~~ days of the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with

Section 4 of this Act.

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

(C) (1) Any person claiming an interest in property which is the subject of notice under subsection (A) of this Section ~~6 of this Act,~~ may, within 45 days after the effective date of notice as described in Section 4 of this Act, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim must set forth:

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

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

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

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

(v) the names and addresses ~~name and address~~ of all other persons known to have an interest in the

property;

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

(vii) all essential facts supporting each assertion; and

(viii) the relief sought.

(2) If a claimant files the claim then the State's Attorney shall institute judicial in rem forfeiture proceedings within 28 ~~30~~ days after receipt of the claim. ~~—~~

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

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/7) (from Ch. 56 1/2, par. 1677)

(Text of Section before amendment by P.A. 100-512)

Sec. 7. Presumptions. The following situations shall give rise to a presumption that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control

and Community Protection Act, or is the proceeds of such an exchange, and therefore forfeitable under this Act, such presumptions being rebuttable by a preponderance of the evidence:

(1) All moneys, coin, or currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances;

(2) All property acquired or caused to be acquired by a person either between the dates of occurrence of two or more acts in felony violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or an act committed in another state, territory or country which would be punishable as a felony under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, committed by that person within 5 years of each other, or all property acquired by such person within a reasonable amount of time after the commission of such acts if:

(a) At least one of the above acts was committed after the effective date of this Act; and

(b) At least one of the acts is or was punishable as a Class X, Class 1, or Class 2 felony; and

(c) There was no likely source for such property other than a violation of the above Acts.

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

(Text of Section after amendment by P.A. 100-512)

Sec. 7. Presumptions and inferences.

(1) The following situation shall give rise to a presumption that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or is the proceeds of such an exchange, and therefore forfeitable under this Act, such presumptions being rebuttable by a preponderance of the evidence:

All moneys, coin, or currency found in close proximity to any ~~forfeitable~~ substances manufactured, distributed, dispensed, or possessed in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances.

(2) In the following situation, the trier of fact may infer that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or

is the proceeds of such an exchange, and therefore forfeitable under this Act:

All property acquired or caused to be acquired by a person either between the dates of occurrence of two or more acts in felony violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or an act committed in another state, territory or country which would be punishable as a felony under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, committed by that person within 5 years of each other, or all property acquired by such person within a reasonable amount of time after the commission of such acts if:

(a) at ~~At~~ least one of the above acts was committed after the effective date of this Act; and

(b) both ~~Both~~ of the acts are or were punishable as a Class X, Class 1, or Class 2 felony; and

(c) there ~~There~~ was no likely source for such property other than a violation of the above Acts.

(3) Presumptions and permissive inferences set forth in this Section shall apply to all portions of all phases of all ~~the judicial in rem~~ forfeiture proceedings under this Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/8) (from Ch. 56 1/2, par. 1678)

(Text of Section before amendment by P.A. 100-512)

Sec. 8. Exemptions from forfeiture. A property interest is exempt from forfeiture under this Section if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(A) (i) in the case of personal property, is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or

(ii) in the case of real property, is not legally accountable for the conduct giving rise to the forfeiture, or did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture; and

(B) had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arms length commercial transaction; and

(C) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture; and

(D) does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the

forfeiture; and

(E) that the owner or interest holder acquired the interest:

(i) before the commencement of the conduct giving rise to its forfeiture and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(ii) after the commencement of the conduct giving rise to its forfeiture, and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct which gave rise to the forfeiture; and

(a) in the case of personal property, without knowledge of the seizure of the property for forfeiture; or

(b) in the case of real estate, before the filing in the office of the Recorder of Deeds of the county in which the real estate is located of a notice of seizure for forfeiture or a lis pendens notice.

(Source: P.A. 86-1382.)

(Text of Section after amendment by P.A. 100-512)

Sec. 8. Exemptions from forfeiture.

(a) No vessel or watercraft, vehicle, or aircraft used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under this Act unless the State proves by a preponderance of the evidence that:

(1) in the case of a railway car or engine, the owner,
or

(2) in the case of any other such vessel or watercraft,
vehicle or aircraft, the owner or the master of such vessel
or watercraft or the owner or conductor, driver, pilot, or
other person in charge of that vehicle or aircraft was at
the time of the alleged illegal act a consenting party or
privy to that knowledge.

(b) No vessel or watercraft, vehicle, or aircraft shall be
forfeited under this Act by reason of any act or omission
committed or omitted by any person other than such owner while
a vessel or watercraft, vehicle, or aircraft was unlawfully in
the possession of a person who acquired possession in violation
of the criminal laws of the United States⁷ or of any state.

~~(A) (blank); and~~

~~(B) (blank); and~~

~~(C) (blank); and~~

~~(D) (blank); and~~

~~(E) (blank); and~~

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

(Text of Section before amendment by P.A. 100-512)

Sec. 9. Judicial in rem procedures. If property seized
under the provisions of the Illinois Controlled Substances Act,
the Cannabis Control Act, or the Methamphetamine Control and

Community Protection Act is non-real property that exceeds \$20,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim and a cost bond under subsection (C) of Section 6 of this Act, the following judicial in rem procedures shall apply:

(A) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days of the receipt of notice of seizure by the seizing agency or the filing of the claim and cost bond, whichever is later, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture and, if the claimant has filed a claim and cost bond, by depositing the cost bond with the clerk of the court. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(B) During the probable cause portion of the judicial in rem proceeding wherein the State presents its case-in-chief, the court must receive and consider, among other things, all relevant hearsay evidence and information. The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.

(C) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or

interest holder shall be referred to as claimant.

(D) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

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

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

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

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

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

(vi) the specific provisions of Section 8 of this Act relied on in asserting it is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the precise relief sought.

(E) The answer must be filed with the court within 45 days after service of the civil in rem complaint.

(F) The hearing must be held within 60 days after filing of the answer unless continued for good cause.

(G) The State shall show the existence of probable cause for forfeiture of the property. If the State shows probable cause, the claimant has the burden of showing by a

preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(H) If the State does not show existence of probable cause or a claimant has established by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does show existence of probable cause and the claimant does not establish by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order all property forfeited to the State.

(I) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Act regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(J) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this Act; however, for good cause shown, on a motion by the State's Attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act. Such a stay shall not be available

pending an appeal. Property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.

(K) All property declared forfeited under this Act vests in this State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under Section 8 of this Act.

(L) A civil action under this Act must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

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

(Text of Section after amendment by P.A. 100-512)

Sec. 9. Judicial in rem procedures. If property seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act is non-real property that exceeds \$150,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim ~~and a cost bond~~ under subsection (C) of Section 6 of this Act, the following judicial in rem procedures shall apply:

(A) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture in the circuit court within whose jurisdiction the seizure occurred, or within whose jurisdiction an act or omission giving rise to the seizure occurred, subject to Supreme Court Rule 187. The complaint for ~~of~~ forfeiture shall be filed as soon as practicable, but not later than 28 days after the filing of a verified claim by a claimant if the property was acted upon under a non-judicial forfeiture action, or 28 days after the State's Attorney receives notice from the seizing agency as provided under Section 5 of this Act, whichever occurs later. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(A-5) If the State's Attorney finds that the alleged

violation of law giving rise to the seizure was incurred without willful negligence or without any intention on the part of the owner of the property to violate the law or finds the existence of ~~those~~ mitigating circumstances to justify remission of the forfeiture, may cause the law enforcement agency having custody of the property to return the property to the owner within a reasonable time not to exceed 7 days. The State's Attorney shall exercise his or her discretion prior to or promptly after the preliminary review under Section 3.5 of this Act. Judicial in rem forfeiture proceedings under this Act shall be subject to the Code of Civil Procedure and the rules of evidence relating to civil actions.

(A-10) A complaint of forfeiture shall include:

- (1) a description of the property seized;
- (2) the date and place of seizure of the property;
- (3) the name and address of the law enforcement agency making the seizure; and
- (4) the specific statutory and factual grounds for the seizure.

The complaint shall be served upon the person from whom the property was seized and all persons known or reasonably believed by the State to claim an interest in the property, as provided in Section 4 of this Act. The complaint shall be accompanied by the following written notice:

"This is a civil court proceeding subject to the Code of Civil Procedure. You received this Complaint of Forfeiture

because the State's Attorney's office has brought a legal action seeking forfeiture of your seized property. This complaint starts the court process where the state seeks to prove that your property should be forfeited and not returned to you. This process is also your opportunity to try to prove to a judge that you should get your property back. The complaint lists the date, time, and location of your first court date. You must appear in court on that day, or you may lose the case automatically. You must also file an appearance and answer. If you are unable to pay the appearance fee, you may qualify to have the fee waived. If there is a criminal case related to the seizure of your property, your case may be set for trial after the criminal case has been resolved. Before trial, the judge may allow discovery, where the State can ask you to respond in writing to questions and give them certain documents, and you can make similar requests of the State. The trial is your opportunity to explain what happened when your property was seized and why you should get the property back.".

(B) The laws of evidence relating to civil actions shall apply to all other proceedings under this Act except that the parties shall be allowed to use, and the court must receive and consider, all relevant hearsay evidence that ~~which~~ relates to evidentiary foundation, chain of custody, business records, recordings, laboratory analysis, laboratory reports, and the

use of technology in the investigation that resulted in the seizure of the property that ~~which~~ is subject to the ~~this~~ forfeiture action.

(C) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. A person not named in the forfeiture complaint who claims to have an interest in the property may petition to intervene as a claimant under Section 2-408 of the Code of Civil Procedure.

(D) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

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

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

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

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

(v) the names and addresses ~~name and address~~ of all other persons known to have an interest in the property;

(vi) the specific provisions of Section 8 of this Act relied on in asserting it is exempt from forfeiture, if applicable;

(vii) all essential facts supporting each assertion;

(viii) the precise relief sought; and

(ix) in a forfeiture action involving currency or its equivalent, a claimant shall provide the State with notice of the claimant's ~~their~~ intent to allege that the currency or its equivalent is not related to the alleged factual basis for the forfeiture, and why.

(E) The answer must be filed with the court within 45 days after service of the civil in rem complaint.

(F) The trial shall be held within 60 days after filing of the answer unless continued for good cause.

(G) The State, in its case in chief, shall show by a preponderance of the evidence the property is subject to forfeiture; and at least one of the following:

(i) In the case of personal property, including conveyances:

(a) that the claimant was legally accountable for the conduct giving rise to the forfeiture;

(b) that the claimant knew or reasonably should have known of the conduct giving rise to the forfeiture;

(c) that the claimant knew or reasonably should have known that the conduct giving rise to the forfeiture was likely to occur;

(d) that the claimant held the property for the benefit of, or as nominee for, any person whose conduct

gave rise to its forfeiture;

(e) that if the claimant acquired the ~~their~~ interest through any person engaging in any of the conduct described above or conduct giving rise to the forfeiture:

(1) the claimant did not acquire it as a bona fide purchaser for value, or

(2) the claimant acquired the interest under such circumstances that the claimant ~~they~~ reasonably should have known the property was derived from, or used in, the conduct giving rise to the forfeiture; ~~or~~

(f) that the claimant is not the true owner of the property;

(g) that the claimant acquired the interest:

(1) before the commencement of the conduct giving rise to the forfeiture and the person whose conduct gave rise to the forfeiture did not have authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(2) after the commencement of the conduct giving rise to the forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that ~~which~~ gave rise to the forfeiture, and

without the knowledge of the seizure of the property for forfeiture.

(ii) In the case of real property:

(a) that the claimant was legally accountable for the conduct giving rise to the forfeiture;

(b) that the claimant solicited, conspired, or attempted to commit the conduct giving rise to the forfeiture; or

(c) that the claimant had acquired or stood to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arm's length transaction;

(d) that the claimant is not the true owner of the property;

(e) that the claimant acquired the interest:

(1) before the commencement of the conduct giving rise to the forfeiture and the person whose conduct gave rise to the forfeiture did not have authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(2) after the commencement of the conduct giving rise to the forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that ~~which~~ gave rise to the forfeiture, and

before the filing in the office of the recorder of deeds of the county in which the real estate is located a notice of seizure for forfeiture or a lis pendens notice.

(G-5) If the property that is the subject of the forfeiture proceeding is currency or its equivalent, the State, in its case in chief, shall show by a preponderance of the evidence that the property is subject to forfeiture. If the State makes that showing, the claimant shall have the burden of production to set forth evidence that the currency or its equivalent is not related to the alleged factual basis of the forfeiture. After the production of evidence, the State shall maintain the burden of proof to overcome this assertion.

(G-10) Notwithstanding any other provision of this Section, the State's burden of proof at the trial of the forfeiture action shall be by clear and convincing evidence if:

(1) a finding of not guilty is entered as to all counts and all defendants in a criminal proceeding relating to the conduct giving rise to the forfeiture action; or

(2) the State receives an adverse finding at a preliminary hearing and fails to secure an indictment in a criminal proceeding related to the factual allegations of the forfeiture action.

(H) If the State does not meet its burden of proof, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property as

to which the State does meet its burden of proof forfeited to the State. If the State does meet its burden of proof, the court shall order all property forfeited to the State.

(I) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Act regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(J) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this Act; however, for good cause shown, on a motion by the State's Attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act. Such a stay shall not be available pending an appeal. Property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.

(K) Title to all property declared forfeited under this Act vests in the ~~this~~ State on the commission of the conduct giving

rise to forfeiture together with the proceeds of the property after that time. Except as otherwise provided in this Act, any such property or proceeds subsequently transferred to any person remain subject to forfeiture unless a person to whom the property was transferred makes an appropriate claim under this Act and has the ~~their~~ claim adjudicated in the judicial in rem proceeding.

(L) A civil action under this Act must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(M) No property shall be forfeited under this Act from a person who, without actual or constructive notice that the property was the subject of forfeiture proceedings, obtained possession of the property as a bona fide purchaser for value. A person who purports to transfer property after receiving actual or constructive notice that the property is subject to seizure or forfeiture is guilty of contempt of court and shall be liable to the State for a penalty in the amount of the fair market value of the property.

(N) If property is ordered forfeited under this Act from a claimant who held title to the property in joint tenancy or tenancy in common with another claimant, the court shall

determine the amount of each owner's interest in the property according to principles of property law.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/9.1)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 9.1. Innocent owner hearing.

(a) After a complaint for forfeiture is filed and all claimants have appeared and answered, a claimant may file a motion with the court for an innocent owner hearing prior to trial. This motion shall be made and supported by sworn affidavit and shall assert the following along with specific facts that ~~which~~ support each assertion:

(1) that the claimant filing the motion is the true owner of the conveyance as interpreted by case law;

(2) that the claimant was not legally accountable for the conduct giving rise to the forfeiture or acquiesced in the conduct;

(3) that the claimant did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture;

(4) that the claimant did not know or did not ~~they~~ have reason to know that the conduct giving rise to the forfeiture was likely to occur; and

(5) that the claimant did not hold the property for the

benefit of, or as nominee for any person whose conduct gave rise to its forfeiture, or if the owner or interest holder acquired the interest through any such person, the owner or interest holder did not acquire it as a bona fide purchaser for value, or acquired the interest without knowledge of the seizure of the property for forfeiture.

~~(b)~~ The claimant's motion shall include specific facts supporting these assertions.

(b) ~~(e)~~ Upon this filing, a hearing may only be held after the parties have been given the opportunity to conduct limited discovery as to the ownership and control of the property, the claimant's knowledge, or any matter relevant to the issues raised or facts alleged in the claimant's motion. Discovery shall be limited to the People's requests in these areas but may proceed by any means allowed in the Code of Civil Procedure.

(c) ~~(d)~~ After discovery is complete and the court has allowed for sufficient time to review and investigate the discovery responses, the court shall conduct a hearing. At the hearing, the fact that the property is subject to forfeiture shall not be at issue. The court shall only hear evidence relating to the issue of innocent ownership.

(d) ~~(e)~~ At the hearing on the motion, the claimant shall bear the burden of proving by a preponderance of the evidence each of the assertions set forth in subsection (a) of this Section. ~~(f)~~ If a claimant meets the ~~their~~ burden of proof, the

court shall grant the motion and order the property returned to the claimant. If the claimant fails to meet the ~~their~~ burden of proof, then the court shall deny the motion and the forfeiture case shall proceed according to the Code ~~Rules~~ of Civil Procedure.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/11) (from Ch. 56 1/2, par. 1681)

(Text of Section before amendment by P.A. 100-512)

Sec. 11. Settlement of claims. Notwithstanding other provisions of this Act, the State's Attorney and a claimant of seized property may enter into an agreed-upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(Source: P.A. 86-1382.)

(Text of Section after amendment by P.A. 100-512)

Sec. 11. Settlement of claims. Notwithstanding other provisions of this Act, the State's Attorney and a claimant of seized property may enter into an agreed-upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement. All proceeds from a settlement agreement shall be tendered to the Department of State Police and distributed in accordance with the provisions of Section 13.2 ~~17~~ of this Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/13.1)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 13.1 ~~15~~. Return of property, damages, and costs.

(a) The law enforcement agency that holds custody of property seized for forfeiture shall deliver property ordered by the court to be returned or conveyed to the claimant within a reasonable time not to exceed 7 days, unless the order is stayed by the trial court or a reviewing court pending an appeal, motion to reconsider, or other reason.

(b) The law enforcement agency that holds custody of property described in subsection (a) of this Section is responsible for any damages, storage fees, and related costs applicable to property returned. The claimant shall not be subject to any charges by the State for storage of the property or expenses incurred in the preservation of the property. Charges for the towing of a conveyance shall be borne by the claimant unless the conveyance was towed for the sole reason of seizure for forfeiture. This Section does not prohibit the imposition of any fees or costs by a home rule unit of local government related to the impoundment of a conveyance pursuant to an ordinance enacted by the unit of government.

(c) A law enforcement agency shall not retain forfeited property for its own use or transfer the property to any person or entity, except as provided under this Section. A law

enforcement agency may apply in writing to the Director of State Police to request that ~~a~~ forfeited property be awarded to the agency for a specifically articulated official law enforcement use in an investigation. The Director of State Police shall provide a written justification in each instance detailing the reasons why the forfeited property was placed into official use and the justification shall be retained for a period of not less than 3 years.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/13.2)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 13.2 ~~17~~. Distribution of proceeds; selling or retaining seized property prohibited.

(a) Except as otherwise provided in this Section, the court shall order that property forfeited under this Act be delivered to the Department of State Police within 60 days.

(b) All moneys ~~monies~~ and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1)(i) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State ~~state~~ law enforcement agency or agencies that ~~which~~ conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable

relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or agencies shall be used for the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

(A) the receiving agency has entered into an intergovernmental agreement with the municipality to provide police services;

(B) the intergovernmental agreement for police services provides for consideration in an amount of not

less than \$1,000,000 per year;

(C) the seizure took place within the geographical limits of the municipality; and

(D) the funds are used only for the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or for security cameras used for the prevention or detection of violence or the establishment of a municipal police force, including the training of officers, construction of a police station, or the purchase of law enforcement equipment or vehicles.

(2) (i) 12.5% shall be distributed to the Office of the State's Attorney of 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 the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or, at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. In counties over 3,000,000 population, 25% shall be distributed to the Office of the State's Attorney for use

in the enforcement of laws governing cannabis and controlled substances; for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol; or at the discretion of the State's Attorney, in addition to other authorized purposes, to make grants to local substance abuse treatment facilities and half-way houses. If the prosecution is undertaken solely by the Attorney General, the portion provided shall be distributed to the Attorney General for use in the enforcement of laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol.

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising under laws governing cannabis and controlled substances or for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

(3) 10% shall be retained by the Department of State Police for expenses related to the administration and sale

of seized and forfeited property.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/13.3)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 13.3 ~~20~~. Reporting. Property seized or forfeited under this Act is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(725 ILCS 150/13.4 new)

Sec. 13.4. Applicability; savings clause.

(a) The changes made to this Act by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(b) The changes made to this Act by this amendatory Act of the 100th General Assembly are subject to Section 4 of the Statute on Statutes.

Section 42. The Illinois Streetgang Terrorism Omnibus Prevention Act is amended by changing Section 40 as follows:

(740 ILCS 147/40)

(Text of Section before amendment by P.A. 100-512)

Sec. 40. Contraband.

(a) The following are declared to be contraband and no person shall have a property interest in them:

(1) any property that is directly or indirectly used or intended for use in any manner to facilitate streetgang related activity; and

(2) any property constituting or derived from gross profits or other proceeds obtained from streetgang related activity.

(b) Within 60 days of the date of the seizure of contraband under this Section, the State's Attorney shall initiate forfeiture proceedings as provided in Article 36 of the Criminal Code of 2012. An owner or person who has a lien on the property may establish as a defense to the forfeiture of property that is subject to forfeiture under this Section that the owner or lienholder had no knowledge that the property was acquired through a pattern of streetgang related activity. Property that is forfeited under this Section shall be disposed of as provided in Article 36 of the Criminal Code of 2012 for the forfeiture of vehicles, vessels, and aircraft. The proceeds of the disposition shall be paid to the Gang Violence Victims and Witnesses Fund to be used to assist in the prosecution of gang crimes.

(Source: P.A. 97-1150, eff. 1-25-13.)

(Text of Section after amendment by P.A. 100-512)

Sec. 40. Forfeiture.

(a) The following are subject to seizure and forfeiture:

(1) any property that is directly or indirectly used or intended for use in any manner to facilitate streetgang related activity; and

(2) any property constituting or derived from gross profits or other proceeds obtained from streetgang related activity.

(b) Property subject to forfeiture under this Section may be seized under the procedures set forth under Section 36-2.1 of the Criminal Code of 2012, except that actual physical seizure of real property subject to forfeiture under this Act requires the issuance of a seizure warrant. Nothing in this Section prohibits the constructive seizure of real property through the filing of a complaint for forfeiture in circuit court and the recording of a lis pendens against the real property without a hearing, warrant application, or judicial approval.

(c) The State's Attorney may initiate forfeiture proceedings under the procedures in Article 36 of the Criminal Code of 2012. The State shall bear the burden of proving by a preponderance of the evidence that the property was acquired through a pattern of streetgang related activity.

(d) Property forfeited under this Section shall be disposed of in accordance with Section 36-7 of Article 36 of the Criminal Code of 2012 for the forfeiture of vehicles, vessels, and aircraft.

(e) Within 60 days of the date of the seizure of contraband under this Section, the State's Attorney shall initiate forfeiture proceedings as provided in Article 36 of the Criminal Code of 2012. An owner or person who has a lien on the property may establish as a defense to the forfeiture of property that is subject to forfeiture under this Section that the owner or lienholder had no knowledge that the property was acquired through a pattern of streetgang related activity. Property that is forfeited under this Section shall be disposed of as provided in Article 36 of the Criminal Code of 2012 for the forfeiture of vehicles, vessels, and aircraft. The proceeds of the disposition shall be paid to the Gang Violence Victims and Witnesses Fund to be used to assist in the prosecution of gang crimes.

(f) Property seized or forfeited under this Section is subject to reporting under the Seizure and Forfeiture Reporting Act.

(g) The changes made to this Section by Public Act 100-0512 only apply to property seized on and after July 1, 2018.

(Source: P.A. 100-512, eff. 7-1-18.)

Section 45. The Illinois Securities Law of 1953 is amended by changing Section 11 as follows:

(815 ILCS 5/11) (from Ch. 121 1/2, par. 137.11)

(Text of Section before amendment by P.A. 100-512)

Sec. 11. Duties and powers of the Secretary of State.

A. (1) The administration of this Act is vested in the Secretary of State, who may from time to time make, amend and rescind such rules and regulations as may be necessary to carry out this Act, including rules and regulations governing procedures of registration, statements, applications and reports for various classes of securities, persons and matters within his or her jurisdiction and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with this Act. The rules and regulations adopted by the Secretary of State under this Act shall be effective in the manner provided for in the Illinois Administrative Procedure Act.

(2) Among other things, the Secretary of State shall have authority, for the purposes of this Act, to prescribe the form or forms in which required information shall be set forth, accounting practices, the items or details to be shown in balance sheets and earning statements, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation of consolidated balance sheets or income accounts of any person, directly or indirectly, controlling or controlled by the issuer, or any person under direct or indirect common control

with the issuer.

(3) No provision of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Secretary of State under this Act, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) The Securities Department of the Office of the Secretary of State shall be deemed a criminal justice agency for purposes of all federal and state laws and regulations and, in that capacity, shall be entitled to access to any information available to criminal justice agencies and has the power to appoint special agents to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The special agents have and may exercise all the powers of peace officers solely for the purpose of enforcing provisions of this Act.

The Director must authorize to each special agent employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

Special agents shall comply with all training requirements established for law enforcement officers by provisions of the Illinois Police Training Act.

(5) The Secretary of State, by rule, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of Section 5, 6, 7, 8, 8a, or 9 of this Act or of any rule promulgated under these Sections, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

B. The Secretary of State may, anything in this Act to the contrary notwithstanding, require financial statements and reports of the issuer, dealer, Internet portal, salesperson, investment adviser, or investment adviser representative as often as circumstances may warrant. In addition, the Secretary of State may secure information or books and records from or through others and may make or cause to be made investigations respecting the business, affairs, and property of the issuer of securities, any person involved in the sale or offer for sale, purchase or offer to purchase of any mineral investment contract, mineral deferred delivery contract, or security and of dealers, Internet portals, salespersons, investment advisers, and investment adviser representatives that are registered or are the subject of an application for registration under this Act. The costs of an investigation shall be borne by the registrant or the applicant, provided that the registrant or applicant shall not be obligated to pay the costs without his, her or its consent in advance.

C. Whenever it shall appear to the Secretary of State,

either upon complaint or otherwise, that this Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion, do one or more of the following:

(1) require or permit the person to file with the Secretary of State a statement in writing under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate, audit, examine, or inspect;

(2) conduct an investigation, audit, examination, or inspection as necessary or advisable for the protection of the interests of the public; and

(3) appoint investigators to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The Director must authorize to each investigator employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

D. (1) For the purpose of all investigations, audits, examinations, or inspections which in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations,

subpoena witnesses, take evidence, and require, by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State, the production of any books and records, papers, or other documents which the Secretary of State or a person designated by him or her deems relevant or material to the inquiry.

(2) The Secretary of State or a person designated by him or her is further empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books and records, papers, or other documents in this State at the request of a securities agency of another state, if the activities constituting the alleged violation for which the information is sought would be in violation of Section 12 of this Act if the activities had occurred in this State.

(3) The Circuit Court of any County of this State, upon application of the Secretary of State or a person designated by him or her may order the attendance of witnesses, the production of books and records, papers, accounts and documents and the giving of testimony before the Secretary of State or a person designated by him or her; and any failure to obey the order may be punished by the Circuit Court as a contempt thereof.

(4) The fees of subpoenaed witnesses under this Act for attendance and travel shall be the same as fees of witnesses before the Circuit Courts of this State, to be paid when the witness is excused from further attendance, provided, the

witness is subpoenaed at the instance of the Secretary of State; and payment of the fees shall be made and audited in the same manner as other expenses of the Secretary of State.

(5) Whenever a subpoena is issued at the request of a complainant or respondent as the case may be, the Secretary of State may require that the cost of service and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

(6) The Secretary of State shall have power at his or her discretion, to require a deposit to cover the cost of the service and witness fees and the payment of the legal witness fee and mileage to the witness served with subpoena.

(7) A subpoena issued under this Act shall be served in the same manner as a subpoena issued out of a circuit court.

(8) The Secretary of State may in any investigation, audits, examinations, or inspections cause the taking of depositions of persons residing within or without this State in the manner provided in civil actions under the laws of this State.

E. Anything in this Act to the contrary notwithstanding:

(1) If the Secretary of State shall find that the offer or sale or proposed offer or sale or method of offer or sale of any securities by any person, whether exempt or not, in this State, is fraudulent, or would work or tend to work a fraud or deceit, or is being offered or sold in violation of Section 12, or there has been a failure or

refusal to submit any notification filing or fee required under this Act, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person or deny or revoke the registration of the securities or the exemption from registration for the securities.

(2) If the Secretary of State shall find that any person has violated subsection C, D, E, F, G, H, I, J, or K of Section 12 of this Act, the Secretary of State may by written order temporarily or permanently prohibit or suspend the person from offering or selling any securities, any mineral investment contract, or any mineral deferred delivery contract in this State, provided that any person who is the subject of an order of permanent prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the order of permanent prohibition.

(3) If the Secretary of State shall find that any person is engaging or has engaged in the business of selling or offering for sale securities as a dealer, Internet portal, or salesperson or is acting or has acted as an investment adviser, investment adviser representative, or federal covered investment adviser, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by

written order prohibit or suspend the person from engaging in the business of selling or offering for sale securities, or acting as an investment adviser, investment adviser representative, or federal covered investment adviser, in this State.

(4) In addition to any other sanction or remedy contained in this subsection E, the Secretary of State, after finding that any provision of this Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000 for each violation of this Act, may issue an order of public censure against the violator, and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

F. (1) The Secretary of State shall not deny, suspend or revoke the registration of securities, suspend or revoke the registration of a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative, prohibit or suspend the offer or sale of any securities, prohibit or suspend any person from offering or selling any securities in this State, prohibit or suspend a dealer or salesperson from engaging in the business of selling or offering for sale securities, prohibit or suspend a person from acting as an investment adviser or federal covered investment adviser, or investment adviser representative, impose any fine for violation of this Act, issue an order of public censure, or

enter into an agreed settlement except after an opportunity for hearing upon not less than 10 days notice given by personal service or registered mail or certified mail, return receipt requested, to the person or persons concerned. Such notice shall state the date and time and place of the hearing and shall contain a brief statement of the proposed action of the Secretary of State and the grounds for the proposed action. A failure to appear at the hearing or otherwise respond to the allegations set forth in the notice of hearing shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to enter an order.

(2) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, the offer or sale or registration of securities, the registration of a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative, or the offer or sale of securities by any person, or the business of rendering investment advice, without the notice and prior hearing in this subsection prescribed, if the Secretary of State shall in his or her opinion, based on credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to investors which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of

State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing, that the request for a hearing will not stop the effectiveness of the temporary order and that respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to make the temporary order final. Any provision of this paragraph (2) to the contrary notwithstanding, the Secretary of State may not pursuant to the provisions of this paragraph (2) suspend the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative based upon sub-paragraph (n) of paragraph (1) of subsection E of Section 8 of this Act or revoke the registration of securities or revoke the registration of any dealer, salesperson, investment adviser representative, or investment adviser.

(3) The Secretary of State may issue a temporary order suspending or delaying the effectiveness of any registration of securities under subsection A or B of Section 5, 6 or 7 of this Act subsequent to and upon the basis of the issuance of any stop, suspension or similar order by the Securities and Exchange Commission with respect to the securities which are

the subject of the registration under subsection A or B of Section 5, 6 or 7 of this Act, and the order shall become effective as of the date and time of effectiveness of the Securities and Exchange Commission order and shall be vacated automatically at such time as the order of the Securities and Exchange Commission is no longer in effect.

(4) When the Secretary of State finds that an application for registration as a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative should be denied, the Secretary of State may enter an order denying the registration. Immediately after taking such action, the Secretary of State shall deliver a copy of the order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The order shall state the grounds for the action and that the matter will be set for hearing upon written request filed with the Secretary of State within 30 days after the receipt of the request by the respondent. The respondent's failure to request a hearing within 30 days after receipt of the order shall constitute an admission of any facts alleged therein and shall make the order final. If a hearing is held, the Secretary of State shall affirm, vacate, or modify the order.

(5) The findings and decision of the Secretary of State upon the conclusion of each final hearing held pursuant to this subsection shall be set forth in a written order signed on behalf of the Secretary of State by his or her designee and

shall be filed as a public record. All hearings shall be held before a person designated by the Secretary of State, and appropriate records thereof shall be kept.

(6) Notwithstanding the foregoing, the Secretary of State, after notice and opportunity for hearing, may at his or her discretion enter into an agreed settlement, stipulation or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation or consent order shall have the full force and effect of an order issued by the Secretary of State.

(7) Anything in this Act to the contrary notwithstanding, whenever the Secretary of State finds that a person is currently expelled from, refused membership in or association with, or limited in any material capacity by a self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act because of a fraudulent or deceptive act or a practice in violation of a rule, regulation, or standard duly promulgated by the self-regulatory organization, the Secretary of State may, at his or her discretion, enter a Summary Order of Prohibition, which shall prohibit the offer or sale of any securities, mineral investment contract, or mineral deferred delivery contract by the person in this State. The order shall take effect immediately upon its entry. Immediately after taking the action the Secretary of State shall deliver a copy of the order to the named Respondent by personal service or

registered mail or certified mail, return receipt requested. A person who is the subject of an Order of Prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the Order of Prohibition.

G. No administrative action shall be brought by the Secretary of State for relief under this Act or upon or because of any of the matters for which relief is granted by this Act after the earlier to occur of (i) 3 years from the date upon which the Secretary of State had notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of the Act, or (ii) 5 years from the date on which the alleged violation occurred.

H. The action of the Secretary of State in denying, suspending, or revoking the registration of a dealer, Internet portal, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, in prohibiting any person from engaging in the business of offering or selling securities as a dealer, limited Canadian dealer, or salesperson, in prohibiting or suspending the offer or sale of securities by any person, in prohibiting a person from acting as an investment adviser, federal covered investment adviser, or investment adviser representative, in denying, suspending, or revoking the registration of securities, in prohibiting or suspending the offer or sale or proposed offer or sale of

securities, in imposing any fine for violation of this Act, or in issuing any order shall be subject to judicial review in the Circuit Courts of Cook or Sangamon Counties in this State. The Administrative Review Law shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State under this Act.

I. Notwithstanding any other provisions of this Act to the contrary, whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act or of any rule or regulation prescribed under authority of this Act, the Secretary of State may at his or her discretion, through the Attorney General take any of the following actions:

(1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without bond, to enforce this Act.

(2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and a hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any sales or purchases of securities, mineral investment contracts, or mineral deferred delivery contracts determined by the court to be unlawful under this Act.

(3) Seek the seizure of assets when probable cause exists that the assets were obtained by a defendant through conduct in violation of Section 12, paragraph F, G, I, J, K, or L of this Act, and thereby subject to a judicial forfeiture hearing as required under this Act.

(a) In the event that such probable cause exists that the subject of an investigation who is alleged to have committed one of the relevant violations of this Act has in his possession assets obtained as a result of the conduct giving rise to the violation, the Secretary of State may seek a seizure warrant in any circuit court in Illinois.

(b) In seeking a seizure warrant, the Secretary of State, or his or her designee, shall submit to the court a sworn affidavit detailing the probable cause evidence for the seizure, the location of the assets to be seized, the relevant violation under Section 12 of this Act, and a statement detailing any known owners or interest holders in the assets.

(c) Seizure of the assets shall be made by any peace officer upon process of the seizure warrant issued by the court. Following the seizure of assets under this Act and pursuant to a seizure warrant, notice of seizure, including a description of the seized assets, shall immediately be returned to the issuing court. Seized assets shall be maintained

pending a judicial forfeiture hearing in accordance with the instructions of the court.

(d) In the event that management of seized assets becomes necessary to prevent the devaluation, dissipation, or otherwise to preserve the property, the court shall have jurisdiction to appoint a receiver, conservator, ancillary receiver, or ancillary conservator for that purpose, as provided in item (2) of this subsection.

(4) Seek the forfeiture of assets obtained through conduct in violation of Section 12, paragraph F, G, H, I, J, K, or L when authorized by law. A forfeiture must be ordered by a circuit court or an action brought by the Secretary of State as provided for in this Act, under a verified complaint for forfeiture.

(a) In the event assets have been seized pursuant to this Act, forfeiture proceedings shall be instituted by the Attorney General within 45 days of seizure.

(b) Service of the complaint filed under the provisions of this Act shall be made in the manner as provided in civil actions in this State.

(c) Only an owner of or interest holder in the property may file an answer asserting a claim against the property. For purposes of this Section, the owner or interest holder shall be referred to as claimant.

(d) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

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

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

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

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

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

(vi) the specific provisions of this Act relied on in asserting that the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the precise relief sought.

(e) The answer must be filed with the court within 45 days after service of the complaint.

(f) A property interest is exempt from forfeiture under this Act if its owner or interest holder establishes by a preponderance of evidence that the

owner or interest holder:

(i) is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur;

(ii) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture;

(iii) does not hold the property for the benefit of or as a nominee for any person whose conduct gave rise to its forfeiture and the owner or interest holder acquires it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; or

(iv) acquired the interest after the commencement of the conduct giving rise to its forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that gave rise to the forfeiture.

(g) The hearing must be held within 60 days after the answer is filed unless continued for good cause.

(h) During the probable cause portion of the judicial in rem proceeding wherein the Secretary of

State presents its case-in-chief, the court must receive and consider, among other things, any relevant hearsay evidence and information. The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.

(i) The Secretary of State shall show the existence of probable cause for forfeiture of the property. If the Secretary of State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(j) If the Secretary of State does not show the existence of probable cause or a claimant has an interest that is exempt under subdivision I (4) (d) of this Section, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the Secretary of State pursuant to all provisions of this Act. If the Secretary of State does show the existence of probable cause and the claimant does not establish by a preponderance of the evidence that the claimant has an interest that is exempt under subsection D herein, the court shall order all the property forfeited to the Secretary of State pursuant to the provisions of the Section.

(k) A defendant convicted in any criminal

proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding for violations of the Act giving rise to forfeiture of property herein regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(l) An acquittal or dismissal in a criminal proceeding for violations of the Act giving rise to the forfeiture of property herein shall not preclude civil proceedings under this provision; however, for good cause shown, on a motion by the Secretary of State, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging violation of the provisions of Section 12 of the Illinois Securities Law of 1953. Property subject to forfeiture under this Section shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of the property unless the return or release is consented to by the Secretary of State.

(m) All property declared forfeited under this Act vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain

subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under the Act. Any assets forfeited to the State shall be disposed of in following manner:

(i) all forfeited property and assets shall be liquidated by the Secretary of State in accordance with all laws and rules governing the disposition of such property;

(ii) the Secretary of State shall provide the court at the time the property and assets are declared forfeited a verified statement of investors subject to the conduct giving rise to the forfeiture;

(iii) after payment of any costs of sale, receivership, storage, or expenses for preservation of the property seized, other costs to the State, and payment to claimants for any amount deemed exempt from forfeiture, the proceeds from liquidation shall be distributed pro rata to investors subject to the conduct giving rise to the forfeiture; and

(iv) any proceeds remaining after all verified investors have been made whole shall be distributed 25% to the Securities Investors

Education Fund, 25% to the Securities Audit and Enforcement Fund, 25% to the Attorney General or any State's Attorney bringing criminal charges for the conduct giving rise to the forfeiture, and 25% to other law enforcement agencies participating in the investigation of the criminal charges for the conduct giving rise to the forfeiture. In the event that no other law enforcement agencies are involved in the investigation of the conduct giving rise to the forfeiture, then the portion to other law enforcement agencies shall be distributed to the Securities Investors Education Fund.

(n) The Secretary of State shall notify by certified mail, return receipt requested, all known investors in the matter giving rise to the forfeiture of the forfeiture proceeding and sale of assets forfeited arising from the violations of this Act, and shall further publish notice in a paper of general circulation in the district in which the violations were prosecuted. The notice to investors shall identify the name, address, and other identifying information about any defendant prosecuted for violations of this Act that resulted in forfeiture and sale of property, the offense for which the defendant was convicted, and that the court has ordered

forfeiture and sale of property for claims of investors who incurred losses or damages as a result of the violations. Investors may then file a claim in a form prescribed by the Secretary of State in order to share in disbursement of the proceeds from sale of the forfeited property. Investor claims must be filed with the Secretary of State within 30 days after receipt of the certified mail return receipt, or within 30 days after the last date of publication of the general notice in a paper of general circulation in the district in which the violations were prosecuted, whichever occurs last.

(o) A civil action under this subsection must be commenced within 5 years after the last conduct giving rise to the forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding time during which either the property or claimant is out of this State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(p) If property is seized for evidence and for forfeiture, the time periods for instituting judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(q) Notwithstanding other provisions of this Act,

the Secretary of State and a claimant of forfeitable property may enter into an agreed-upon settlement concerning the forfeitable property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(r) Nothing in this Act shall apply to property that constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto when the property was paid before its seizure and before the issuance of any seizure warrant or court order prohibiting transfer of the property and when the attorney, at the time he or she received the property, did not know that it was property subject to forfeiture under this Act.

The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution, damages or disgorgement of profits on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs against the defendant for the use of the State; provided, however, that the civil remedies of rescission and appointment of a receiver,

conservator, ancillary receiver or ancillary conservator shall not be available against any person by reason of the failure to file with the Secretary of State, or on account of the contents of, any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act. Appeals may be taken as in other civil cases.

J. In no case shall the Secretary of State, or any of his or her employees or agents, in the administration of this Act, incur any official or personal liability by instituting an injunction or other proceeding or by denying, suspending or revoking the registration of a dealer or salesperson, or by denying, suspending or revoking the registration of securities or prohibiting the offer or sale of securities, or by suspending or prohibiting any person from acting as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or from offering or selling securities.

K. No provision of this Act shall be construed to require or to authorize the Secretary of State to require any investment adviser or federal covered investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of the investment adviser or federal covered investment adviser, except insofar as the disclosure may be necessary or appropriate in a particular proceeding or investigation having

as its object the enforcement of this Act.

L. Whenever, after an examination, investigation or hearing, the Secretary of State deems it of public interest or advantage, he or she may certify a record to the State's Attorney of the county in which the act complained of, examined or investigated occurred. The State's Attorney of that county within 90 days after receipt of the record shall file a written statement at the Office of the Secretary of State, which statement shall set forth the action taken upon the record, or if no action has been taken upon the record that fact, together with the reasons therefor, shall be stated.

M. The Secretary of State may initiate, take, pursue, or prosecute any action authorized or permitted under Section 6d of the Federal 1974 Act.

N. (1) Notwithstanding any provision of this Act to the contrary, to encourage uniform interpretation, administration, and enforcement of the provisions of this Act, the Secretary of State may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, and any governmental law enforcement or regulatory agency.

(2) The cooperation authorized by paragraph (1) of this subsection includes, but is not limited to, the following:

(a) establishing or participating in a central depository or depositories for registration under this Act and for documents or records required under this Act;

(b) making a joint audit, inspection, examination, or investigation;

(c) holding a joint administrative hearing;

(d) filing and prosecuting a joint civil or criminal proceeding;

(e) sharing and exchanging personnel;

(f) sharing and exchanging information and documents;

or

(g) issuing any joint statement or policy.

(Source: P.A. 99-182, eff. 1-1-16.)

(Text of Section after amendment by P.A. 100-512)

Sec. 11. Duties and powers of the Secretary of State.

A. (1) The administration of this Act is vested in the Secretary of State, who may from time to time make, amend and rescind such rules and regulations as may be necessary to carry out this Act, including rules and regulations governing procedures of registration, statements, applications and reports for various classes of securities, persons and matters within his or her jurisdiction and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with this Act. The rules and regulations adopted by the Secretary of State under this Act shall be effective in

the manner provided for in the Illinois Administrative Procedure Act.

(2) Among other things, the Secretary of State shall have authority, for the purposes of this Act, to prescribe the form or forms in which required information shall be set forth, accounting practices, the items or details to be shown in balance sheets and earning statements, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation of consolidated balance sheets or income accounts of any person, directly or indirectly, controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(3) No provision of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Secretary of State under this Act, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) The Securities Department of the Office of the Secretary of State shall be deemed a criminal justice agency for purposes of all federal and state laws and regulations and,

in that capacity, shall be entitled to access to any information available to criminal justice agencies and has the power to appoint special agents to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The special agents have and may exercise all the powers of peace officers solely for the purpose of enforcing provisions of this Act.

The Director must authorize to each special agent employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

Special agents shall comply with all training requirements established for law enforcement officers by provisions of the Illinois Police Training Act.

(5) The Secretary of State, by rule, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of Section 5, 6, 7, 8, 8a, or 9 of this Act or of any rule promulgated under these Sections, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

B. The Secretary of State may, anything in this Act to the contrary notwithstanding, require financial statements and reports of the issuer, dealer, Internet portal, salesperson, investment adviser, or investment adviser representative as

often as circumstances may warrant. In addition, the Secretary of State may secure information or books and records from or through others and may make or cause to be made investigations respecting the business, affairs, and property of the issuer of securities, any person involved in the sale or offer for sale, purchase or offer to purchase of any mineral investment contract, mineral deferred delivery contract, or security and of dealers, Internet portals, salespersons, investment advisers, and investment adviser representatives that are registered or are the subject of an application for registration under this Act. The costs of an investigation shall be borne by the registrant or the applicant, provided that the registrant or applicant shall not be obligated to pay the costs without his, her or its consent in advance.

C. Whenever it shall appear to the Secretary of State, either upon complaint or otherwise, that this Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion, do one or more of the following:

(1) require or permit the person to file with the Secretary of State a statement in writing under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate, audit, examine, or inspect;

(2) conduct an investigation, audit, examination, or

inspection as necessary or advisable for the protection of the interests of the public; and

(3) appoint investigators to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The Director must authorize to each investigator employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

D. (1) For the purpose of all investigations, audits, examinations, or inspections which in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require, by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State, the production of any books and records, papers, or other documents which the Secretary of State or a person designated by him or her deems relevant or material to the inquiry.

(2) The Secretary of State or a person designated by him or her is further empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books and records, papers, or other documents in this State at the request of a securities agency of another state,

if the activities constituting the alleged violation for which the information is sought would be in violation of Section 12 of this Act if the activities had occurred in this State.

(3) The Circuit Court of any County of this State, upon application of the Secretary of State or a person designated by him or her may order the attendance of witnesses, the production of books and records, papers, accounts and documents and the giving of testimony before the Secretary of State or a person designated by him or her; and any failure to obey the order may be punished by the Circuit Court as a contempt thereof.

(4) The fees of subpoenaed witnesses under this Act for attendance and travel shall be the same as fees of witnesses before the Circuit Courts of this State, to be paid when the witness is excused from further attendance, provided, the witness is subpoenaed at the instance of the Secretary of State; and payment of the fees shall be made and audited in the same manner as other expenses of the Secretary of State.

(5) Whenever a subpoena is issued at the request of a complainant or respondent as the case may be, the Secretary of State may require that the cost of service and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

(6) The Secretary of State shall have power at his or her discretion, to require a deposit to cover the cost of the service and witness fees and the payment of the legal witness

fee and mileage to the witness served with subpoena.

(7) A subpoena issued under this Act shall be served in the same manner as a subpoena issued out of a circuit court.

(8) The Secretary of State may in any investigation, audits, examinations, or inspections cause the taking of depositions of persons residing within or without this State in the manner provided in civil actions under the laws of this State.

E. Anything in this Act to the contrary notwithstanding:

(1) If the Secretary of State shall find that the offer or sale or proposed offer or sale or method of offer or sale of any securities by any person, whether exempt or not, in this State, is fraudulent, or would work or tend to work a fraud or deceit, or is being offered or sold in violation of Section 12, or there has been a failure or refusal to submit any notification filing or fee required under this Act, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person or deny or revoke the registration of the securities or the exemption from registration for the securities.

(2) If the Secretary of State shall find that any person has violated subsection C, D, E, F, G, H, I, J, or K of Section 12 of this Act, the Secretary of State may by written order temporarily or permanently prohibit or suspend the person from offering or selling any securities, any mineral investment contract, or any mineral deferred

delivery contract in this State, provided that any person who is the subject of an order of permanent prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the order of permanent prohibition.

(3) If the Secretary of State shall find that any person is engaging or has engaged in the business of selling or offering for sale securities as a dealer, Internet portal, or salesperson or is acting or has acted as an investment adviser, investment adviser representative, or federal covered investment adviser, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by written order prohibit or suspend the person from engaging in the business of selling or offering for sale securities, or acting as an investment adviser, investment adviser representative, or federal covered investment adviser, in this State.

(4) In addition to any other sanction or remedy contained in this subsection E, the Secretary of State, after finding that any provision of this Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000 for each violation of this Act, may issue an order of public censure against the

violator, and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

F. (1) The Secretary of State shall not deny, suspend or revoke the registration of securities, suspend or revoke the registration of a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative, prohibit or suspend the offer or sale of any securities, prohibit or suspend any person from offering or selling any securities in this State, prohibit or suspend a dealer or salesperson from engaging in the business of selling or offering for sale securities, prohibit or suspend a person from acting as an investment adviser or federal covered investment adviser, or investment adviser representative, impose any fine for violation of this Act, issue an order of public censure, or enter into an agreed settlement except after an opportunity for hearing upon not less than 10 days notice given by personal service or registered mail or certified mail, return receipt requested, to the person or persons concerned. Such notice shall state the date and time and place of the hearing and shall contain a brief statement of the proposed action of the Secretary of State and the grounds for the proposed action. A failure to appear at the hearing or otherwise respond to the allegations set forth in the notice of hearing shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to enter an order.

(2) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, the offer or sale or registration of securities, the registration of a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative, or the offer or sale of securities by any person, or the business of rendering investment advice, without the notice and prior hearing in this subsection prescribed, if the Secretary of State shall in his or her opinion, based on credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to investors which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing, that the request for a hearing will not stop the effectiveness of the temporary order and that respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to make the temporary order final. Any provision of this paragraph (2)

to the contrary notwithstanding, the Secretary of State may not pursuant to the provisions of this paragraph (2) suspend the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative based upon sub-paragraph (n) of paragraph (1) of subsection E of Section 8 of this Act or revoke the registration of securities or revoke the registration of any dealer, salesperson, investment adviser representative, or investment adviser.

(3) The Secretary of State may issue a temporary order suspending or delaying the effectiveness of any registration of securities under subsection A or B of Section 5, 6 or 7 of this Act subsequent to and upon the basis of the issuance of any stop, suspension or similar order by the Securities and Exchange Commission with respect to the securities which are the subject of the registration under subsection A or B of Section 5, 6 or 7 of this Act, and the order shall become effective as of the date and time of effectiveness of the Securities and Exchange Commission order and shall be vacated automatically at such time as the order of the Securities and Exchange Commission is no longer in effect.

(4) When the Secretary of State finds that an application for registration as a dealer, Internet portal, salesperson, investment adviser, or investment adviser representative should be denied, the Secretary of State may enter an order denying the registration. Immediately after taking such

action, the Secretary of State shall deliver a copy of the order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The order shall state the grounds for the action and that the matter will be set for hearing upon written request filed with the Secretary of State within 30 days after the receipt of the request by the respondent. The respondent's failure to request a hearing within 30 days after receipt of the order shall constitute an admission of any facts alleged therein and shall make the order final. If a hearing is held, the Secretary of State shall affirm, vacate, or modify the order.

(5) The findings and decision of the Secretary of State upon the conclusion of each final hearing held pursuant to this subsection shall be set forth in a written order signed on behalf of the Secretary of State by his or her designee and shall be filed as a public record. All hearings shall be held before a person designated by the Secretary of State, and appropriate records thereof shall be kept.

(6) Notwithstanding the foregoing, the Secretary of State, after notice and opportunity for hearing, may at his or her discretion enter into an agreed settlement, stipulation or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation or consent order shall have the full force and effect of an order issued by the Secretary of State.

(7) Anything in this Act to the contrary notwithstanding, whenever the Secretary of State finds that a person is currently expelled from, refused membership in or association with, or limited in any material capacity by a self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act because of a fraudulent or deceptive act or a practice in violation of a rule, regulation, or standard duly promulgated by the self-regulatory organization, the Secretary of State may, at his or her discretion, enter a Summary Order of Prohibition, which shall prohibit the offer or sale of any securities, mineral investment contract, or mineral deferred delivery contract by the person in this State. The order shall take effect immediately upon its entry. Immediately after taking the action the Secretary of State shall deliver a copy of the order to the named Respondent by personal service or registered mail or certified mail, return receipt requested. A person who is the subject of an Order of Prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the Order of Prohibition.

G. No administrative action shall be brought by the Secretary of State for relief under this Act or upon or because of any of the matters for which relief is granted by this Act after the earlier to occur of (i) 3 years from the date upon which the Secretary of State had notice of facts which in the

exercise of reasonable diligence would lead to actual knowledge of the alleged violation of the Act, or (ii) 5 years from the date on which the alleged violation occurred.

H. The action of the Secretary of State in denying, suspending, or revoking the registration of a dealer, Internet portal, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, in prohibiting any person from engaging in the business of offering or selling securities as a dealer, limited Canadian dealer, or salesperson, in prohibiting or suspending the offer or sale of securities by any person, in prohibiting a person from acting as an investment adviser, federal covered investment adviser, or investment adviser representative, in denying, suspending, or revoking the registration of securities, in prohibiting or suspending the offer or sale or proposed offer or sale of securities, in imposing any fine for violation of this Act, or in issuing any order shall be subject to judicial review in the Circuit Courts of Cook or Sangamon Counties in this State. The Administrative Review Law shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State under this Act.

I. Notwithstanding any other provisions of this Act to the contrary, whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act or of any rule or regulation prescribed under

authority of this Act, the Secretary of State may at his or her discretion, through the Attorney General take any of the following actions:

(1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without bond, to enforce this Act.

(2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and a hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any sales or purchases of securities, mineral investment contracts, or mineral deferred delivery contracts determined by the court to be unlawful under this Act.

(3) Seek the seizure of assets when probable cause exists that the assets were obtained by a defendant through conduct in violation of Section 12, paragraph F, G, I, J, K, or L of this Act, and thereby subject to a judicial forfeiture hearing as required under this Act.

(a) In the event that such probable cause exists that the subject of an investigation who is alleged to have committed one of the relevant violations of this Act has in his possession assets obtained as a result of the conduct giving rise to the violation, the Secretary of State may seek a seizure warrant in any

circuit court in Illinois.

(b) In seeking a seizure warrant, the Secretary of State, or his or her designee, shall submit to the court a sworn affidavit detailing the probable cause evidence for the seizure, the location of the assets to be seized, the relevant violation under Section 12 of this Act, and a statement detailing any known owners or interest holders in the assets.

(c) Seizure of the assets shall be made by any peace officer upon process of the seizure warrant issued by the court. Following the seizure of assets under this Act and pursuant to a seizure warrant, notice of seizure, including a description of the seized assets, shall immediately be returned to the issuing court. Seized assets shall be maintained pending a judicial forfeiture hearing in accordance with the instructions of the court.

(d) In the event that management of seized assets becomes necessary to prevent the devaluation, dissipation, or otherwise to preserve the property, the court shall have jurisdiction to appoint a receiver, conservator, ancillary receiver, or ancillary conservator for that purpose, as provided in item (2) of this subsection.

(4) Seek the forfeiture of assets obtained through conduct in violation of Section 12, paragraph F, G, H, I,

J, K, or L when authorized by law. A forfeiture must be ordered by a circuit court or an action brought by the Secretary of State as provided for in this Act, under a verified complaint for forfeiture.

(a) In the event assets have been seized pursuant to this Act, forfeiture proceedings shall be instituted by the Attorney General within 45 days of seizure.

(b) Service of the complaint filed under the provisions of this Act shall be made in the manner as provided in civil actions in this State.

(c) Only an owner of or interest holder in the property may file an answer asserting a claim against the property. For purposes of this Section, the owner or interest holder shall be referred to as claimant.

(d) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

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

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

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

(iv) the date, identity of the transferor, and

circumstances of the claimant's acquisition of the interest in the property;

(v) the names and addresses ~~name and address~~ of all other persons known to have an interest in the property;

(vi) the specific provisions of this Act relied on in asserting that the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the precise relief sought.

(e) The answer must be filed with the court within 45 days after service of the complaint.

(f) A property interest is exempt from forfeiture under this Act if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(i) is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur;

(ii) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture;

(iii) does not hold the property for the

benefit of or as a nominee for any person whose conduct gave rise to its forfeiture and the owner or interest holder acquires it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; or

(iv) acquired the interest after the commencement of the conduct giving rise to its forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that gave rise to the forfeiture.

(g) The hearing must be held within 60 days after the answer is filed unless continued for good cause.

(h) During the probable cause portion of the judicial in rem proceeding wherein the Secretary of State presents its case-in-chief, the court must receive and consider, among other things, any relevant hearsay evidence and information. The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.

(i) The Secretary of State shall show the existence of probable cause for forfeiture of the property. If the Secretary of State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the

property is not subject to forfeiture.

(j) If the Secretary of State does not show the existence of probable cause or a claimant has an interest that is exempt under subdivision I (4) (d) of this Section, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the Secretary of State pursuant to all provisions of this Act. If the Secretary of State does show the existence of probable cause and the claimant does not establish by a preponderance of the evidence that the claimant has an interest that is exempt under subsection D herein, the court shall order all the property forfeited to the Secretary of State pursuant to the provisions of the Section.

(k) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding for violations of the Act giving rise to forfeiture of property herein regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(l) An acquittal or dismissal in a criminal proceeding for violations of the Act giving rise to the forfeiture of property herein shall not preclude civil

proceedings under this provision; however, for good cause shown, on a motion by the Secretary of State, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging violation of the provisions of Section 12 of the Illinois Securities Law of 1953. Property subject to forfeiture under this Section shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of the property unless the return or release is consented to by the Secretary of State.

(m) All property declared forfeited under this Act vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under the Act. Any assets forfeited to the State shall be disposed of in following manner:

(i) all forfeited property and assets shall be liquidated by the Secretary of State in accordance with all laws and rules governing the disposition of such property;

(ii) the Secretary of State shall provide the court at the time the property and assets are declared forfeited a verified statement of investors subject to the conduct giving rise to the forfeiture;

(iii) after payment of any costs of sale, receivership, storage, or expenses for preservation of the property seized, other costs to the State, and payment to claimants for any amount deemed exempt from forfeiture, the proceeds from liquidation shall be distributed pro rata to investors subject to the conduct giving rise to the forfeiture; and

(iv) any proceeds remaining after all verified investors have been made whole shall be distributed 25% to the Securities Investors Education Fund, 25% to the Securities Audit and Enforcement Fund, 25% to the Attorney General or any State's Attorney bringing criminal charges for the conduct giving rise to the forfeiture, and 25% to other law enforcement agencies participating in the investigation of the criminal charges for the conduct giving rise to the forfeiture. In the event that no other law enforcement agencies are involved in the investigation of the conduct giving rise to the forfeiture, then the portion to

other law enforcement agencies shall be distributed to the Securities Investors Education Fund.

(n) The Secretary of State shall notify by certified mail, return receipt requested, all known investors in the matter giving rise to the forfeiture of the forfeiture proceeding and sale of assets forfeited arising from the violations of this Act, and shall further publish notice in a paper of general circulation in the district in which the violations were prosecuted. The notice to investors shall identify the name, address, and other identifying information about any defendant prosecuted for violations of this Act that resulted in forfeiture and sale of property, the offense for which the defendant was convicted, and that the court has ordered forfeiture and sale of property for claims of investors who incurred losses or damages as a result of the violations. Investors may then file a claim in a form prescribed by the Secretary of State in order to share in disbursement of the proceeds from sale of the forfeited property. Investor claims must be filed with the Secretary of State within 30 days after receipt of the certified mail return receipt, or within 30 days after the last date of publication of the general notice in a paper of general circulation in the

district in which the violations were prosecuted, whichever occurs last.

(o) A civil action under this subsection must be commenced within 5 years after the last conduct giving rise to the forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding time during which either the property or claimant is out of this State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(p) If property is seized for evidence and for forfeiture, the time periods for instituting judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(q) Notwithstanding other provisions of this Act, the Secretary of State and a claimant of forfeitable property may enter into an agreed-upon settlement concerning the forfeitable property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(r) Nothing in this Act shall apply to property that constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto when the property

was paid before its seizure and before the issuance of any seizure warrant or court order prohibiting transfer of the property and when the attorney, at the time he or she received the property, did not know that it was property subject to forfeiture under this Act.

The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution, damages or disgorgement of profits on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs against the defendant for the use of the State; provided, however, that the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator shall not be available against any person by reason of the failure to file with the Secretary of State, or on account of the contents of, any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act. Appeals may be taken as in other civil cases.

I-5. Property forfeited under this Section is subject to reporting under the Seizure and Forfeiture Reporting Act.

J. In no case shall the Secretary of State, or any of his

or her employees or agents, in the administration of this Act, incur any official or personal liability by instituting an injunction or other proceeding or by denying, suspending or revoking the registration of a dealer or salesperson, or by denying, suspending or revoking the registration of securities or prohibiting the offer or sale of securities, or by suspending or prohibiting any person from acting as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or from offering or selling securities.

K. No provision of this Act shall be construed to require or to authorize the Secretary of State to require any investment adviser or federal covered investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of the investment adviser or federal covered investment adviser, except insofar as the disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of this Act.

L. Whenever, after an examination, investigation or hearing, the Secretary of State deems it of public interest or advantage, he or she may certify a record to the State's Attorney of the county in which the act complained of, examined or investigated occurred. The State's Attorney of that county within 90 days after receipt of the record shall file a written statement at the Office of the Secretary of State, which

statement shall set forth the action taken upon the record, or if no action has been taken upon the record that fact, together with the reasons therefor, shall be stated.

M. The Secretary of State may initiate, take, pursue, or prosecute any action authorized or permitted under Section 6d of the Federal 1974 Act.

N. (1) Notwithstanding any provision of this Act to the contrary, to encourage uniform interpretation, administration, and enforcement of the provisions of this Act, the Secretary of State may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, and any governmental law enforcement or regulatory agency.

(2) The cooperation authorized by paragraph (1) of this subsection includes, but is not limited to, the following:

(a) establishing or participating in a central depository or depositories for registration under this Act and for documents or records required under this Act;

(b) making a joint audit, inspection, examination, or investigation;

(c) holding a joint administrative hearing;

(d) filing and prosecuting a joint civil or criminal proceeding;

(e) sharing and exchanging personnel;

(f) sharing and exchanging information and documents;

or

(g) issuing any joint statement or policy.

(Source: P.A. 99-182, eff. 1-1-16; 100-512, eff. 7-1-18.)

Section 50. "AN ACT concerning criminal law", approved September 19, 2017, (Public Act 100-0512) is amended by adding Section 997 as follows:

Section 997. Savings clause. The provisions of this Act are subject to Section 4 of the Statute on Statutes.

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Section 99. Effective date. This Act takes effect July 1, 2018.