



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2936

by Rep. William Davis

SYNOPSIS AS INTRODUCED:

5 ILCS 283/10

30 ILCS 105/5.317 rep.

30 ILCS 105/5.891 new

30 ILCS 105/5.893 new

740 ILCS 175/8

from Ch. 127, par. 4108

Amends the Illinois False Claims Act. Creates the State Whistleblower Reward and Protection Fund as a fund to be held outside of the State Treasury with the State Treasurer as custodian. Creates the Attorney General Whistleblower Reward and Protection Fund and the State Police Whistleblower Reward and Protection Fund as special funds in the State Treasury. Provides for the allocation of specified amounts, regardless of appropriation, from the State Whistleblower Reward and Protection Fund into the Attorney General Whistleblower Reward and Protection Fund and the State Police Whistleblower Reward and Protection Fund. Amends the State Finance Act to provide for the Attorney General Whistleblower Reward and Protection Fund and the State Police Whistleblower Reward and Protection Fund. Repeals the Whistleblower Reward and Protection Fund as a special fund in the State Treasury. Amends the Public Corruption Profit Forfeiture Act to make conforming changes. Effective immediately.

LRB101 08951 RJF 54041 b

1 AN ACT concerning finance.

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

4 Section 5. The Public Corruption Profit Forfeiture Act is
5 amended by changing Section 10 as follows:

6 (5 ILCS 283/10)

7 Sec. 10. Penalties.

8 (a) A person who is convicted of a violation of any of the
9 following Sections, subsections, and clauses of the Criminal
10 Code of 1961 or the Criminal Code of 2012:

11 (1) clause (a)(6) of Section 12-6 (intimidation by a
12 public official),

13 (2) Section 33-1 (bribery),

14 (3) subsection (a) of Section 33E-7 (kickbacks), or

15 (4) Section 33C-4 or subsection (d) of Section 17-10.3
16 (fraudulently obtaining public moneys reserved for
17 disadvantaged business enterprises),

18 shall forfeit to the State of Illinois:

19 (A) any profits or proceeds and any property or
20 property interest he or she has acquired or maintained in
21 violation of any of the offenses listed in clauses (1)
22 through (4) of this subsection (a) that the court
23 determines, after a forfeiture hearing under subsection

1 (b) of this Section, to have been acquired or maintained as
2 a result of violating any of the offenses listed in clauses
3 (1) through (4) of this subsection (a); and

4 (B) any interest in, security of, claim against, or
5 property or contractual right of any kind affording a
6 source of influence over, any enterprise which he or she
7 has established, operated, controlled, conducted, or
8 participated in the conduct of, in violation of any of the
9 offenses listed in clauses (1) through (4) of this
10 subsection (a) that the court determines, after a
11 forfeiture hearing under subsection (b) of this Section, to
12 have been acquired or maintained as a result of violating
13 any of the offenses listed in clauses (1) through (4) of
14 this subsection (a) or used to facilitate a violation of
15 one of the offenses listed in clauses (1) through (4) of
16 this subsection (a).

17 (b) The court shall, upon petition by the Attorney General
18 or State's Attorney, at any time after the filing of an
19 information or return of an indictment, conduct a hearing to
20 determine whether any property or property interest is subject
21 to forfeiture under this Act. At the forfeiture hearing the
22 people shall have the burden of establishing, by a
23 preponderance of the evidence, that property or property
24 interests are subject to forfeiture under this Act. There is a
25 rebuttable presumption at such hearing that any property or
26 property interest of a person charged by information or

1 indictment with a violation of any of the offenses listed in
2 clauses (1) through (4) of subsection (a) of this Section or
3 who is convicted of a violation of any of the offenses listed
4 in clauses (1) through (4) of subsection (a) of this Section is
5 subject to forfeiture under this Section if the State
6 establishes by a preponderance of the evidence that:

7 (1) such property or property interest was acquired by
8 such person during the period of the violation of any of
9 the offenses listed in clauses (1) through (4) of
10 subsection (a) of this Section or within a reasonable time
11 after such period; and

12 (2) there was no likely source for such property or
13 property interest other than the violation of any of the
14 offenses listed in clauses (1) through (4) of subsection
15 (a) of this Section.

16 (c) In an action brought by the People of the State of
17 Illinois under this Act, wherein any restraining order,
18 injunction or prohibition or any other action in connection
19 with any property or property interest subject to forfeiture
20 under this Act is sought, the circuit court which shall preside
21 over the trial of the person or persons charged with any of the
22 offenses listed in clauses (1) through (4) of subsection (a) of
23 this Section shall first determine whether there is probable
24 cause to believe that the person or persons so charged have
25 committed a violation of any of the offenses listed in clauses
26 (1) through (4) of subsection (a) of this Section and whether

1 the property or property interest is subject to forfeiture
2 pursuant to this Act.

3 In order to make such a determination, prior to entering
4 any such order, the court shall conduct a hearing without a
5 jury, wherein the People shall establish that there is: (i)
6 probable cause that the person or persons so charged have
7 committed one of the offenses listed in clauses (1) through (4)
8 of subsection (a) of this Section and (ii) probable cause that
9 any property or property interest may be subject to forfeiture
10 pursuant to this Act. Such hearing may be conducted
11 simultaneously with a preliminary hearing, if the prosecution
12 is commenced by information or complaint, or by motion of the
13 People, at any stage in the proceedings. The court may accept a
14 finding of probable cause at a preliminary hearing following
15 the filing of a charge for violating one of the offenses listed
16 in clauses (1) through (4) of subsection (a) of this Section or
17 the return of an indictment by a grand jury charging one of the
18 offenses listed in clauses (1) through (4) of subsection (a) of
19 this Section as sufficient evidence of probable cause as
20 provided in item (i) above.

21 Upon such a finding, the circuit court shall enter such
22 restraining order, injunction or prohibition, or shall take
23 such other action in connection with any such property or
24 property interest subject to forfeiture under this Act, as is
25 necessary to insure that such property is not removed from the
26 jurisdiction of the court, concealed, destroyed or otherwise

1 disposed of by the owner of that property or property interest
2 prior to a forfeiture hearing under subsection (b) of this
3 Section. The Attorney General or State's Attorney shall file a
4 certified copy of such restraining order, injunction or other
5 prohibition with the recorder of deeds or registrar of titles
6 of each county where any such property of the defendant may be
7 located. No such injunction, restraining order or other
8 prohibition shall affect the rights of any bona fide purchaser,
9 mortgagee, judgment creditor or other lien holder arising prior
10 to the date of such filing.

11 The court may, at any time, upon verified petition by the
12 defendant, conduct a hearing to release all or portions of any
13 such property or interest which the court previously determined
14 to be subject to forfeiture or subject to any restraining
15 order, injunction, or prohibition or other action. The court
16 may release such property to the defendant for good cause shown
17 and within the sound discretion of the court.

18 (d) Prosecution under this Act may be commenced by the
19 Attorney General or a State's Attorney.

20 (e) Upon an order of forfeiture being entered pursuant to
21 subsection (b) of this Section, the court shall authorize the
22 Attorney General to seize any property or property interest
23 declared forfeited under this Act and under such terms and
24 conditions as the court shall deem proper. Any property or
25 property interest that has been the subject of an entered
26 restraining order, injunction or prohibition or any other

1 action filed under subsection (c) shall be forfeited unless the
2 claimant can show by a preponderance of the evidence that the
3 property or property interest has not been acquired or
4 maintained as a result of a violation of any of the offenses
5 listed in clauses (1) through (4) of subsection (a) of this
6 Section or has not been used to facilitate a violation of any
7 of the offenses listed in clauses (1) through (4) of subsection
8 (a) of this Section.

9 (f) The Attorney General or his or her designee is
10 authorized to sell all property forfeited and seized pursuant
11 to this Act, unless such property is required by law to be
12 destroyed or is harmful to the public, and, after the deduction
13 of all requisite expenses of administration and sale, shall
14 distribute the proceeds of such sale, along with any moneys
15 forfeited or seized, in accordance with subsection (g).

16 (g) All monies and the sale proceeds of all other property
17 forfeited and seized pursuant to this Act shall be distributed
18 as follows:

19 (1) An amount equal to 50% shall be distributed to the
20 unit of local government or other law enforcement agency
21 whose officers or employees conducted the investigation
22 into a violation of any of the offenses listed in clauses
23 (1) through (4) of subsection (a) of this Section and
24 caused the arrest or arrests and prosecution leading to the
25 forfeiture. Amounts distributed to units of local
26 government and law enforcement agencies shall be used for

1 enforcement of laws governing public corruption, or for
2 other law enforcement purposes. In the event, however, that
3 the investigation, arrest or arrests and prosecution
4 leading to the forfeiture were undertaken solely by a State
5 agency, the portion provided hereunder shall be paid into
6 the State Asset Forfeiture Fund in the State treasury to be
7 used by that State agency in accordance with law. If the
8 investigation, arrest or arrests and prosecution leading
9 to the forfeiture were undertaken by the Attorney General,
10 the portion provided hereunder shall be paid into the
11 Attorney General ~~General's~~ Whistleblower Reward and
12 Protection Fund in the State treasury to be used by the
13 Attorney General in accordance with law.

14 (2) An amount equal to 12.5% shall be distributed to
15 the county in which the prosecution resulting in the
16 forfeiture was instituted, deposited in a special fund in
17 the county treasury and appropriated to the State's
18 Attorney for use in accordance with law. If the prosecution
19 was conducted by the Attorney General, then the amount
20 provided under this subsection shall be paid into the
21 Attorney General ~~General's~~ Whistleblower Reward and
22 Protection Fund in the State treasury to be used by the
23 Attorney General in accordance with law.

24 (3) An amount equal to 12.5% shall be distributed to
25 the Office of the State's Attorneys Appellate Prosecutor
26 and deposited in the State's Attorneys Appellate

1 Prosecutor Anti-Corruption Fund, to be used by the Office
2 of the State's Attorneys Appellate Prosecutor for
3 additional expenses incurred in prosecuting appeals
4 arising under this Act. Any amounts remaining in the Fund
5 after all additional expenses have been paid shall be used
6 by the Office to reduce the participating county
7 contributions to the Office on a prorated basis as
8 determined by the board of governors of the Office of the
9 State's Attorneys Appellate Prosecutor based on the
10 populations of the participating counties. If the appeal is
11 to be conducted by the Attorney General, then the amount
12 provided under this subsection shall be paid into the
13 Attorney General ~~General's~~ Whistleblower Reward and
14 Protection Fund in the State treasury to be used by the
15 Attorney General in accordance with law.

16 (4) An amount equal to 25% shall be paid into the State
17 Asset Forfeiture Fund in the State treasury to be used by
18 the Department of State Police for the funding of the
19 investigation of public corruption activities. Any amounts
20 remaining in the Fund after full funding of such
21 investigations shall be used by the Department in
22 accordance with law to fund its other enforcement
23 activities.

24 (h) All moneys deposited pursuant to this Act in the State
25 Asset Forfeiture Fund shall, subject to appropriation, be used
26 by the Department of State Police in the manner set forth in

1 this Section. All moneys deposited pursuant to this Act in the
2 Attorney General ~~General's~~ Whistleblower Reward and Protection
3 Fund shall, subject to appropriation, be used by the Attorney
4 General for State law enforcement purposes and for the
5 performance of the duties of that office. All moneys deposited
6 pursuant to this Act in the State's Attorneys Appellate
7 Prosecutor Anti-Corruption Fund shall, subject to
8 appropriation, be used by the Office of the State's Attorneys
9 Appellate Prosecutor in the manner set forth in this Section.

10 (Source: P.A. 96-1019, eff. 1-1-11; 97-657, eff. 1-13-12;
11 97-1150, eff. 1-25-13.)

12 (30 ILCS 105/5.317 rep.)

13 Section 10. The State Finance Act is amended by repealing
14 Section 5.317.

15 Section 15. The State Finance Act is amended by adding
16 Sections 5.891 and 5.893 as follows:

17 (30 ILCS 105/5.891 new)

18 Sec. 5.891. The Attorney General Whistleblower Reward and
19 Protection Fund.

20 (30 ILCS 105/5.893 new)

21 Sec. 5.893. The State Police Whistleblower Reward and
22 Protection Fund.

1 Section 20. The Illinois False Claims Act is amended by
2 changing Section 8 as follows:

3 (740 ILCS 175/8) (from Ch. 127, par. 4108)

4 Sec. 8. Funds; Grants.

5 (a) There is hereby created the State Whistleblower Reward
6 and Protection Fund to be held outside of the State Treasury
7 with the State Treasurer as custodian ~~as a special fund in the~~
8 ~~State Treasury~~. All proceeds of an action or settlement of a
9 claim brought under this Act shall be deposited in the Fund.
10 Any attorneys' fees, expenses, and costs paid by or awarded
11 against any defendant pursuant to Section 4 of this Act shall
12 not be considered part of the proceeds to be deposited in the
13 Fund.

14 (b) Monies in the Fund shall be allocated, ~~subject to~~
15 ~~appropriation,~~ as follows: One-sixth of the monies shall be
16 paid to the Attorney General Whistleblower Reward and
17 Protection Fund, which is hereby created as a special fund in
18 the State Treasury, and one-sixth of the monies shall be paid
19 to the ~~Department of~~ State Police Whistleblower Reward and
20 Protection Fund, which is hereby created as a special fund in
21 the State Treasury, for State law enforcement purposes. The
22 remaining two-thirds of the monies in the Fund shall be used
23 for payment of awards to Qui Tam plaintiffs and as otherwise
24 specified in this Act, with any remainder to the General

1 Revenue Fund. The Attorney General shall direct the State
2 Treasurer to make disbursement of funds.

3 (Source: P.A. 96-1304, eff. 7-27-10.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.