



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1002

Introduced 2/3/2005, by Rep. Kevin Joyce

SYNOPSIS AS INTRODUCED:

720 ILCS 5/29B-1

from Ch. 38, par. 29B-1

Amends the Criminal Code of 1961 concerning the offense of money laundering. Provides that money laundering also may occur when a person, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, 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. Provides for the introduction of certain evidence to show whether the property or proceeds were known to be some form of criminally derived property or from some form of specified unlawful activity. Provides for the forfeiture of property derived from money laundering. Specifies which units of government shall receive the proceeds of the forfeited property. Effective immediately.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 29B-1 as follows:

6 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

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

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

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

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

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

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

25 (1.5) when he or she transports, transmits, or
26 transfers, or attempts to transport, transmit, or transfer
27 a monetary instrument:

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

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

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

4 (ii) to avoid a transaction reporting
5 requirement under State law ~~when he knowingly~~
6 ~~engages or attempts to engage in a financial~~
7 ~~transaction in criminally derived property with~~
8 ~~either the intent to promote the carrying on of the~~
9 ~~unlawful activity from which the criminally~~
10 ~~derived property was obtained or where he knows or~~
11 ~~reasonably should know that the financial~~
12 ~~transaction is designed in whole or in part to~~
13 ~~conceal or disguise the nature, the location, the~~
14 ~~source, the ownership or the control of the~~
15 ~~criminally derived property; or~~

16 (2) when, with the intent to:

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

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

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

25 he or she conducts or attempts to conduct a financial
26 transaction involving property he or she believes to be the
27 proceeds of specified criminal activity as defined by
28 subdivision (b) (6) or property used to conduct or
29 facilitate specified criminal activity as defined by
30 subdivision (b) (6).

31 (b) As used in this Section:

32 (0.5) "Knowing that the property involved in a
33 financial transaction represents the proceeds of some form
34 of unlawful activity" means that the person knew the
35 property involved in the transaction represented proceeds
36 from some form, though not necessarily which form, of

1 activity that constitutes a felony under State, federal, or
2 foreign law, regardless of whether or not such activity is
3 specified in subdivision (b) (4).

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

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

33 (3) "Monetary instrument" means United States coins
34 and currency; coins and currency of a foreign country;
35 travelers checks; personal checks, bank checks, and money
36 orders; investment securities; bearer negotiable

1 instruments; bearer investment securities; or bearer
2 securities and certificates of stock in such form that
3 title thereto passes upon delivery.

4 (4) "Criminally derived property" means: (A) any
5 property, real or personal, constituting or derived from
6 proceeds obtained, directly or indirectly, pursuant to a
7 violation of the Criminal Code of 1961, the Illinois
8 Controlled Substances Act or the Cannabis Control Act; or
9 (B) any property represented to be property constituting or
10 derived from proceeds obtained, directly or indirectly,
11 pursuant to a violation of this Code, the Illinois
12 Controlled Substances Act, or the Cannabis Control Act.

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

16 (6) "Specified criminal activity" means any violation
17 of Section 20.5-5 (720 ILCS 5/20.5-5) and any violation of
18 Article 29D of this Code.

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

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

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

26 (c) Sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (e) Duty to enforce this Article.

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

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

25 (f) Protective orders.

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

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

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

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

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

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

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

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

5 (4) Order to repatriate and deposit.

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

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

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

23 (h) Forfeiture.

24 (1) The following are subject to forfeiture:

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

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

33 (C) all conveyances, including aircraft, vehicles
34 or vessels, which are used, or intended for use, to
35 transport, or in any manner to facilitate the
36 transportation, sale, receipt, possession, or

1 concealment of property described in subparagraphs (A)
2 and (B), but:

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

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

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

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

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

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

35 (B) if the property subject to seizure has been the
36 subject of a prior judgment in favor of the State in a

1 criminal proceeding, or in an injunction or forfeiture
2 proceeding based upon this Article;

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

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

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

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

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

27 (A) place the property under seal;

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

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

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

36 (E) place the property under constructive seizure

1 by posting notice of pending forfeiture on it, by
2 giving notice of pending forfeiture to its owners and
3 interest holders, or by filing notice of pending
4 forfeiture in any appropriate public record relating
5 to the property; or

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

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

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

30 (A) 65% shall be distributed to the metropolitan
31 enforcement group, local, municipal, county, or State
32 law enforcement agency or agencies which conducted or
33 participated in the investigation resulting in the
34 forfeiture. The distribution shall bear a reasonable
35 relationship to the degree of direct participation of
36 the law enforcement agency in the effort resulting in

1 the forfeiture, taking into account the total value of
2 the property forfeited and the total law enforcement
3 effort with respect to the violation of the law upon
4 which the forfeiture is based. Amounts distributed to
5 the agency or agencies shall be used for the
6 enforcement of laws.

7 (B) (i) 12.5% shall be distributed to the Office of
8 the State's Attorney of the county in which the
9 prosecution resulting in the forfeiture was
10 instituted, deposited in a special fund in the county
11 treasury and appropriated to the State's Attorney for
12 use in the enforcement of laws. In counties over
13 3,000,000 population, 25% shall be distributed to the
14 Office of the State's Attorney for use in the
15 enforcement of laws If the prosecution is undertaken
16 solely by the Attorney General, the portion provided
17 hereunder shall be distributed to the Attorney General
18 for use in the enforcement of laws.

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

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

32 (i) Notice to owner or interest holder.

33 (1) Whenever notice of pending forfeiture or service of
34 an in rem complaint is required under the provisions of
35 this Article, such notice or service shall be given as
36 follows:

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

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

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

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

33 (j) Notice to State's Attorney. The law enforcement agency
34 seizing property for forfeiture under this Article shall,
35 within 90 days after seizure, notify the State's Attorney for
36 the county, either where an act or omission giving rise to the

1 forfeiture occurred or where the property was seized, of the
2 seizure of the property and the facts and circumstances giving
3 rise to the seizure and shall provide the State's Attorney with
4 the inventory of the property and its estimated value. When the
5 property seized for forfeiture is a vehicle, the law
6 enforcement agency seizing the property shall immediately
7 notify the Secretary of State that forfeiture proceedings are
8 pending regarding such vehicle.

9 (k) Non-judicial forfeiture. If non-real property that
10 exceeds \$20,000 in value excluding the value of any conveyance,
11 or if real property is seized under the provisions of this
12 Article, the State's Attorney shall institute judicial in rem
13 forfeiture proceedings as described in subsection (l) of this
14 Section within 45 days from receipt of notice of seizure from
15 the seizing agency under subsection (j) of this Section.
16 However, if non-real property that does not exceed \$20,000 in
17 value excluding the value of any conveyance is seized, the
18 following procedure shall be used:

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

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

33 (3) (A) Any person claiming an interest in property
34 which is the subject of notice under paragraph (1) of this
35 subsection (k), must, in order to preserve any rights or
36 claims to the property, within 45 days after the effective

1 date of notice as described in subsection (i) of this
2 Section, file a verified claim with the State's Attorney
3 expressing his or her interest in the property. The claim
4 must set forth:

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

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

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

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

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

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

19 (vii) all essential facts supporting each
20 assertion; and

21 (viii) the relief sought.

22 (B) If a claimant files the claim and deposits with
23 the State's Attorney a cost bond, in the form of a
24 cashier's check payable to the clerk of the court, in
25 the sum of 10% of the reasonable value of the property
26 as alleged by the State's Attorney or the sum of \$100,
27 whichever is greater, upon condition that, in the case
28 of forfeiture, the claimant must pay all costs and
29 expenses of forfeiture proceedings, then the State's
30 Attorney shall institute judicial in rem forfeiture
31 proceedings and deposit the cost bond with the clerk of
32 the court as described in subsection (1) of this
33 Section within 45 days after receipt of the claim and
34 cost bond. In lieu of a cost bond, a person claiming
35 interest in the seized property may file, under penalty
36 of perjury, an indigency affidavit which has been

1 approved by a circuit court judge.

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

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

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

27 (1) If, after a review of the facts surrounding the
28 seizure, the State's Attorney is of the opinion that the
29 seized property is subject to forfeiture, then within 45
30 days of the receipt of notice of seizure by the seizing
31 agency or the filing of the claim and cost bond, whichever
32 is later, the State's Attorney shall institute judicial
33 forfeiture proceedings by filing a verified complaint for
34 forfeiture and, if the claimant has filed a claim and cost
35 bond, by depositing the cost bond with the clerk of the
36 court. When authorized by law, a forfeiture must be ordered

1 by a court on an action in rem brought by a State's
2 Attorney under a verified complaint for forfeiture.

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

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

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

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

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

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

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

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

33 (F) all essential facts supporting each assertion;
34 and

35 (G) the precise relief sought.

36 (5) The answer must be filed with the court within 45

1 days after service of the civil in rem complaint.

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

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

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

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

21 (10) An acquittal or dismissal in a criminal proceeding
22 does not preclude civil proceedings under this Article;
23 however, for good cause shown, on a motion by the State's
24 Attorney, the court may stay civil forfeiture proceedings
25 during the criminal trial for a related criminal indictment
26 or information alleging a money laundering violation. Such
27 a stay shall not be available pending an appeal. Property
28 subject to forfeiture under this Article shall not be
29 subject to return or release by a court exercising
30 jurisdiction over a criminal case involving the seizure of
31 such property unless such return or release is consented to
32 by the State's Attorney.

33 (11) All property declared forfeited under this
34 Article vests in this State on the commission of the
35 conduct giving rise to forfeiture together with the
36 proceeds of the property after that time. Any such property

1 or proceeds subsequently transferred to any person remain
2 subject to forfeiture and thereafter shall be ordered
3 forfeited.

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

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

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

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

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

1 (q) Judicial review. If property has been declared
2 forfeited under subsection (k) of this Section, any person who
3 has an interest in the property declared forfeited may, within
4 30 days after the effective date of the notice of the
5 declaration of forfeiture, file a claim and cost bond as
6 described in paragraph (3) of subsection (k) of this Section.
7 If a claim and cost bond is filed under this Section, then the
8 procedures described in subsection (l) of this Section apply.

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

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

36 (Source: P.A. 92-854, eff. 12-5-02; 93-520, eff. 8-6-03.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.