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1 AMENDMENT TO SENATE BILL 2613

2 AMENDMENT NO. _____. Amend Senate Bill 2613 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Purpose.

5 (a) This Act is not intended to make any substantive change
6 in the law. It reconciles conflicts that have arisen from
7 multiple amendments and enactments made to Section 29B-1 of the
8 Criminal Code of 1961 by Public Acts 94-364 and 94-556. It also
9 makes a technical correction in subdivision (1)(3) of that
10 Section.

11 (b) In this Act, the reference at the end of Section 29B-1
12 of the Criminal Code of 1961 indicates the sources in the
13 Session Laws of Illinois that were used in the preparation of
14 the text of that Section. The text of Section 29B-1 included in
15 this Act is intended to include the different versions of that
16 Section found in the Public Acts included in the list of
17 sources, but may not include other versions of the Section to
18 be found in Public Acts not included in the list of sources.
19 The list of sources is not a part of the text of the Section.
20 Except for the one technical correction made in subdivision
21 (1)(3), the text of Section 29B-1 contains no striking or
22 underscoring because no other changes are being made in the
23 material that is being combined.

24 Section 5. The Criminal Code of 1961 is amended by changing

1 Section 29B-1 as follows:

2 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

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

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

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

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

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

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

21 (1.5) when he or she transports, transmits, or
22 transfers, or attempts to transport, transmit, or transfer
23 a monetary instrument:

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

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

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

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

1 (2) when, with the intent to:

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

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

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

10 he or she conducts or attempts to conduct a financial
11 transaction involving property he or she believes to be the
12 proceeds of specified criminal activity as defined by
13 subdivision (b) (6) or property used to conduct or
14 facilitate specified criminal activity as defined by
15 subdivision (b) (6).

16 (b) As used in this Section:

17 (0.5) "Knowing that the property involved in a
18 financial transaction represents the proceeds of some form
19 of unlawful activity" means that the person knew the
20 property involved in the transaction represented proceeds
21 from some form, though not necessarily which form, of
22 activity that constitutes a felony under State, federal, or
23 foreign law, regardless of whether or not such activity is
24 specified in subdivision (b) (4).

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

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

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

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

27 (4) "Criminally derived property" means: (A) any
28 property, real or personal, constituting or derived from
29 proceeds obtained, directly or indirectly, pursuant to a
30 violation of the Criminal Code of 1961, the Illinois
31 Controlled Substances Act, the Cannabis Control Act, or the
32 Methamphetamine Control and Community Protection Act; or
33 (B) any property represented to be property constituting or
34 derived from proceeds obtained, directly or indirectly,

1 pursuant to a violation of this Code, the Illinois
2 Controlled Substances Act, the Cannabis Control Act, or the
3 Methamphetamine Control and Community Protection Act.

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

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

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

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

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

17 (c) Sentence.

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

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

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

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

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

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

1 unlawful activity:

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

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

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

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

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

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

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

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

1 (e) Duty to enforce this Article.

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

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

20 (f) Protective orders.

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

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

32 (B) prior to the filing of such an indictment,
33 information, or complaint, if, after notice to persons
34 appearing to have an interest in the property and

1 opportunity for a hearing, the court determines that:

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

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

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

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

34 (3) The court may receive and consider, at a hearing

1 held pursuant to this subsection (f), evidence and
2 information that would be inadmissible under the Illinois
3 rules of evidence.

4 (4) Order to repatriate and deposit.

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

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

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

22 (h) Forfeiture.

23 (1) The following are subject to forfeiture:

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

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

32 (C) all conveyances, including aircraft, vehicles
33 or vessels, which are used, or intended for use, to
34 transport, or in any manner to facilitate the

1 transportation, sale, receipt, possession, or
2 concealment of property described in subparagraphs (A)
3 and (B), but:

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

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

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

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

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

34 (A) if the seizure is incident to a seizure

1 warrant;

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

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

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

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

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

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

30 (A) place the property under seal;

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

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

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

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

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

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

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

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

14 (B) (i) 12.5% shall be distributed to the Office of
15 the State's Attorney of the county in which the
16 prosecution resulting in the forfeiture was
17 instituted, deposited in a special fund in the county
18 treasury and appropriated to the State's Attorney for
19 use in the enforcement of laws. In counties over
20 3,000,000 population, 25% shall be distributed to the
21 Office of the State's Attorney for use in the
22 enforcement of laws. If the prosecution is undertaken
23 solely by the Attorney General, the portion provided
24 hereunder shall be distributed to the Attorney General
25 for use in the enforcement of laws.

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

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

5 (i) Notice to owner or interest holder.

6 (1) Whenever notice of pending forfeiture or service of
7 an in rem complaint is required under the provisions of
8 this Article, such notice or service shall be given as
9 follows:

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

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

34 (C) If the owner's or interest holder's address is

1 not known, and is not on record as provided in
2 paragraph (B), then by publication for 3 successive
3 weeks in a newspaper of general circulation in the
4 county in which the seizure occurred.

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

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

20 (k) Non-judicial forfeiture. If non-real property that
21 exceeds \$20,000 in value excluding the value of any conveyance,
22 or if real property is seized under the provisions of this
23 Article, the State's Attorney shall institute judicial in rem
24 forfeiture proceedings as described in subsection (l) of this
25 Section within 45 days from receipt of notice of seizure from
26 the seizing agency under subsection (j) of this Section.
27 However, if non-real property that does not exceed \$20,000 in
28 value excluding the value of any conveyance is seized, the
29 following procedure shall be used:

30 (1) If, after review of the facts surrounding the
31 seizure, the State's Attorney is of the opinion that the
32 seized property is subject to forfeiture, then within 45
33 days after the receipt of notice of seizure from the
34 seizing agency, the State's Attorney shall cause notice of

1 pending forfeiture to be given to the owner of the property
2 and all known interest holders of the property in
3 accordance with subsection (i) of this Section.

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

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

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

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

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

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

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

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

32 (vii) all essential facts supporting each
33 assertion; and

34 (viii) the relief sought.

1 (B) If a claimant files the claim and deposits with
2 the State's Attorney a cost bond, in the form of a
3 cashier's check payable to the clerk of the court, in
4 the sum of 10% of the reasonable value of the property
5 as alleged by the State's Attorney or the sum of \$100,
6 whichever is greater, upon condition that, in the case
7 of forfeiture, the claimant must pay all costs and
8 expenses of forfeiture proceedings, then the State's
9 Attorney shall institute judicial in rem forfeiture
10 proceedings and deposit the cost bond with the clerk of
11 the court as described in subsection (l) of this
12 Section within 45 days after receipt of the claim and
13 cost bond. In lieu of a cost bond, a person claiming
14 interest in the seized property may file, under penalty
15 of perjury, an indigency affidavit which has been
16 approved by a circuit court judge.

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

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

1 shall dispose of the property in accordance with law.

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

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

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

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

1 was obtained through a lawful source.

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

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

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

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

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

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

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

18 (G) the precise relief sought.

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

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

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

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

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

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

6 (10) An acquittal or dismissal in a criminal proceeding
7 does not preclude civil proceedings under this Article;
8 however, for good cause shown, on a motion by the State's
9 Attorney, the court may stay civil forfeiture proceedings
10 during the criminal trial for a related criminal indictment
11 or information alleging a money laundering violation. Such
12 a stay shall not be available pending an appeal. Property
13 subject to forfeiture under this Article shall not be
14 subject to return or release by a court exercising
15 jurisdiction over a criminal case involving the seizure of
16 such property unless such return or release is consented to
17 by the State's Attorney.

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

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

33 (m) Stay of time periods. If property is seized for
34 evidence and for forfeiture, the time periods for instituting

1 judicial and non-judicial forfeiture proceedings shall not
2 begin until the property is no longer necessary for evidence.

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

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

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

24 (q) Judicial review. If property has been declared
25 forfeited under subsection (k) of this Section, any person who
26 has an interest in the property declared forfeited may, within
27 30 days after the effective date of the notice of the
28 declaration of forfeiture, file a claim and cost bond as
29 described in paragraph (3) of subsection (k) of this Section.
30 If a claim and cost bond is filed under this Section, then the
31 procedures described in subsection (l) of this Section apply.

32 (r) Burden of proof of exemption or exception. It is not
33 necessary for the State to negate any exemption or exception in
34 this Article in any complaint, information, indictment or other

1 pleading or in any trial, hearing, or other proceeding under
2 this Article. The burden of proof of any exemption or exception
3 is upon the person claiming it.

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

25 (Source: P.A. 93-520, eff. 8-6-03; 94-364, eff. 7-29-05;
26 94-556, eff. 9-11-05; revised 8-19-05.)

27 Section 99. Effective date. This Act takes effect upon
28 becoming law."