



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4786

by Rep. Dennis M. Reboletti

SYNOPSIS AS INTRODUCED:

625 ILCS 5/Chapter 16A heading new
625 ILCS 5/16A-1 new
625 ILCS 5/16A-5 new
625 ILCS 5/16A-10 new
625 ILCS 5/16A-15 new
625 ILCS 5/16A-20 new
625 ILCS 5/16A-25 new
625 ILCS 5/16A-30 new
625 ILCS 5/16A-35 new
625 ILCS 5/16A-40 new
625 ILCS 5/16A-45 new
625 ILCS 5/16A-50 new
720 ILCS 5/36-1

from Ch. 38, par. 36-1

Amends the Illinois Vehicle Code. Provides for the seizure of any motor vehicle used in violation of one of the listed Sections. Requires the seizing agency to notify, within 30 days after seizure of the motor vehicle, the sheriff of the county of the seizure and the State's Attorney of the county in which the act or omission giving rise to the forfeiture occurred. Requires the seizing agency to notify the Secretary of State that forfeiture proceedings are pending regarding the vehicle. Outlines requirements for notice to the owner and interest holders of the seized vehicle. Provides exemptions from forfeiture. Provides for judicial proceedings and settlement of claims. Amends the Criminal Code of 1961. Removes various Illinois Vehicle Code violations from the list of violations under which a vehicle may be seized and delivered to the sheriff of the county of the seizure.

LRB095 18041 LCT 44124 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 5. The Illinois Vehicle Code is amended by adding
5 Chapter 16A as follows:

6 (625 ILCS 5/Chapter 16A heading new)

7 CHAPTER 16A. TRAFFIC SAFETY FORFEITURES

8 (625 ILCS 5/16A-1 new)

9 Sec. 16A-1. Short title. This Chapter may be cited as the
10 Traffic Safety Forfeiture Law of 2008.

11 (625 ILCS 5/16A-5 new)

12 Sec. 16A-5. Legislative declaration. The Illinois General
13 Assembly finds that persons who drive without a valid driver's
14 license or permit or with a suspended or revoked driver's
15 license or permit pose a significant and dangerous threat to
16 Illinois motorists. The civil forfeiture of motor vehicles used
17 by persons who drive without a valid driver's license or permit
18 or with a suspended or revoked driver's license or permit will
19 have a significant beneficial effect in deterring this type of
20 activity and will reduce the number of traffic fatalities and
21 accidents caused by those persons. It is necessary and

1 appropriate to take additional steps to prevent drivers who
2 drive without a valid driver's license or permit or with
3 suspended or revoked licenses or permits from driving,
4 including civil forfeiture of vehicles used by those persons.
5 The State has a critical interest in enforcing its traffic laws
6 and keeping drivers with suspended or revoked licenses or
7 permits from illegally driving. Seizing the vehicles used by
8 those persons serves an important governmental and public
9 interest, namely the protection of the health, safety, and
10 welfare of Illinois motorists from the harm associated with
11 driving without a valid driver's license or permit or with a
12 suspended or revoked license or permit.

13 (625 ILCS 5/16A-10 new)

14 Sec. 16A-10. Applicability. This Chapter applies to all
15 motor vehicles used by persons who drive without a valid
16 driver's license or permit or with suspended or revoked
17 licenses or permits in violation of Section 6-303 of this Code,
18 if the person's driving privileges were revoked or suspended as
19 a result of a violation listed in paragraph (1), (2), or (3) of
20 subsection (c) of Section 6-303 of this Code or as a result of
21 a statutory summary suspension as provided in paragraph (4) of
22 subsection (c) of Section 6-303, or if the person committed the
23 offenses described in the following provisions of this Code:
24 Section 11-501, subdivisions (d) (1) (A), (d) (1) (D), (d) (1) (G),
25 (d) (1) (H), or (d) (1) (I); or an offense described in subsection

1 (e) of Section 6-101 of this Code.

2 (625 ILCS 5/16A-15 new)

3 Sec. 16A-15. Seizure.

4 (a) Any motor vehicle used in violation of Section 6-101,
5 6-303, or 11-501 of this Code may be seized for forfeiture if:

6 (1) the person's driving privileges were revoked or
7 suspended as a result of a violation listed in paragraph
8 (1), (2), or (3) of subsection (c) of Section 6-303;

9 (2) the person's driving privileges were revoked or
10 suspended as a result of a summary suspension as provided
11 in paragraph (4) of subsection (c) of Section 6-303;

12 (3) the person committed the offenses described in the
13 following provisions of this Code: Section 11-501,
14 subdivisions (d) (1) (A), (d) (1) (D), (d) (1) (G), (d) (1) (H),
15 or (d) (1) (I); or

16 (4) the person committed an offense described in
17 subsection (e) of Section 6-101 of this Code.

18 (b) The seizing agency shall, within 30 days after seizure,
19 deliver the vehicle to the sheriff of the county of seizure and
20 notify the State's Attorney of the county in which the act or
21 omission giving rise to the forfeiture occurred, or in which
22 the motor vehicle was seized, of the seizure and the facts and
23 circumstances giving rise to the seizure and shall provide the
24 State's Attorney with the inventory of the motor vehicle and
25 its estimated value. The seizing agency shall also notify the

1 Secretary of State that forfeiture proceedings are pending
2 regarding the vehicle.

3 (c) If, after review of the facts surrounding the seizure,
4 the State's Attorney is of the opinion that the seized motor
5 vehicle is subject to forfeiture, the State's Attorney shall,
6 within 45 days of the receipt of notice of seizure from the
7 seizing agency, cause notice of pending forfeiture of the motor
8 vehicle to be given to the owner and any person whose right,
9 title, or interest is of record with the Secretary of State.

10 (625 ILCS 5/16A-20 new)

11 Sec. 16A-20. Notice to owner or interest holder.

12 (a) Whenever notice of pending forfeiture or service of an
13 in rem complaint is required under this Chapter:

14 (1) the notice of pending forfeiture must include a
15 description of the motor vehicle, the estimated value of
16 the motor vehicle, the date and place of seizure, the
17 conduct giving rise to forfeiture or the violation of law
18 alleged, and a summary of procedures and procedural rights
19 applicable to the forfeiture action; and

20 (2) if the name and address of the owner or any person
21 whose right, title, or interest is of record are known, the
22 notice or service shall be given by either personal service
23 or by mailing a copy of the notice by certified mail,
24 return receipt requested, to that address. If the address
25 of an owner or any person whose right, title, or interest

1 is of record changes prior to the effective date of the
2 notice of pending forfeiture, the owner or any person whose
3 right, title, or interest is of record shall promptly
4 notify the seizing agency of the change in address or, if
5 the address of an owner or any person whose right, title,
6 or interest is of record changes subsequent to the
7 effective date of the notice of pending forfeiture, the
8 owner or any person whose right, title, or interest is of
9 record shall promptly notify the seizing agency and the
10 State's Attorney's Office of the change in address.

11 (b) Notice served under this Chapter is effective upon
12 personal service or the mailing of written notice, whichever is
13 earlier.

14 (625 ILCS 5/16A-25 new)

15 Sec. 16A-25. Non-judicial forfeiture.

16 (a) Any person claiming ownership of the motor vehicle that
17 is the subject of notice under Section 16A-20 may, within 45
18 days after the effective date of notice as described in Section
19 16A-20, file with the State's Attorney a verified claim of his
20 or her ownership of the motor vehicle. The claim must set
21 forth:

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

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

25 (3) the nature and extent of the claimant's ownership

1 of the motor vehicle;

2 (4) the date and circumstances of the claimant's
3 acquisition of the ownership of the motor vehicle and the
4 identity of the transferor;

5 (5) the name and address of all other persons known to
6 have ownership of the motor vehicle;

7 (6) the specific provision of law relied on in
8 asserting that the motor vehicle is not subject to
9 forfeiture;

10 (7) all essential facts supporting each assertion; and

11 (8) the relief sought.

12 (b) If a claimant files a claim and deposits with the
13 State's Attorney a cost bond, in the form of a cashier's check
14 payable to the clerk of the court, in the sum of 10% of the
15 reasonable value of the motor vehicle as alleged by the State's
16 Attorney, the State's Attorney shall, within 45 days after
17 receipt of the claim and cost bond, institute judicial in rem
18 forfeiture proceedings and deposit the cost bond with the clerk
19 of the court as described in Section 16A-35. In lieu of a cost
20 bond, a person claiming ownership of the seized motor vehicle
21 may file, under penalty of perjury, an indigency affidavit.

22 (c) If the motor vehicle is not forfeited in the judicial
23 in rem proceeding, the clerk of the court shall return to the
24 claimant, unless the court orders otherwise, 90% of the sum
25 that has been deposited and shall retain as costs 10% of the
26 money deposited. If the motor vehicle is forfeited in the

1 judicial in rem proceeding, the clerk of the court shall
2 transfer 80% of the sum that has been deposited to the Office
3 of the State's Attorney prosecuting the civil forfeiture to be
4 applied to the costs of prosecution and 10% to the sheriff's
5 office of the county in which the prosecution resulting in the
6 forfeiture was instituted for expenses related to the
7 administration and sale of the seized property and the clerk
8 shall retain as costs 10% of the money deposited.

9 (d) If no claim is filed or bond given within the 45 day
10 period described in this Section, the State's Attorney shall
11 declare the property forfeited and shall promptly notify the
12 owner, any person whose right, title, or interest is of record,
13 and the sheriff of the county in which the seizure occurred, of
14 the declaration of forfeiture.

15 (e) A copy of the declaration of forfeiture shall be filed
16 with the sheriff of the county in which the seizure occurs and
17 with the Secretary of State. The declaration, when filed,
18 constitutes authority for the issuance of clear title to the
19 vehicle to the department or agency to whom it is delivered or
20 to any purchaser of the vehicle.

21 (f) When a motor vehicle is forfeited under this Section,
22 the sheriff of the county in which the seizure occurs shall
23 sell the motor vehicle at public auction, unless the motor
24 vehicle is required by law to be destroyed, is harmful to the
25 public, or is awarded to the seizing agency or prosecutor as
26 set forth in paragraph (g) of this Section.

1 (g) Upon application of the seizing agency or the
2 prosecutor who was responsible for the investigation, arrest,
3 and prosecution that led to the forfeiture of the motor
4 vehicle, the county sheriff shall award the motor vehicle to
5 the seizing agency or prosecutor for their official use.

6 (h) The proceeds of any sale at public auction by the
7 sheriff under this Chapter after deduction of the reasonable
8 charges and expenses incurred by the sheriff in storing and
9 selling the vehicle, shall be paid into the general fund of the
10 county of seizure.

11 (625 ILCS 5/16A-30 new)

12 Sec. 16A-30. Presumptions. Suspension or revocation of the
13 driver's license or permit of the driver of the motor vehicle
14 shall be conclusively presumed to be known by the driver and
15 any person whose right, title, or interest is or record if:

16 (1) the Secretary of State has sent the driver a
17 certified letter, return receipt requested, regarding the
18 suspension or revocation; or

19 (2) the suspension or revocation was the result of a
20 court order.

21 (625 ILCS 5/16A-35 new)

22 Sec. 16A-35. Exemptions from forfeiture. A motor vehicle is
23 exempt from forfeiture under this Chapter if:

24 (1) the owner or any person whose right, title, or

1 interest is of record with the Secretary of State
2 establishes by a preponderance of the evidence that he or
3 she made a reasonable effort or inquiry to determine
4 whether the driver possessed a valid driver's license
5 before allowing him or her to operate the owner's vehicle.
6 The owner or any person whose right, title, or interest is
7 of record is not required to inquire of the Secretary of
8 State whether the driver possessed a valid driver's
9 license;

10 (2) the owner or any person whose right, title, or
11 interest is of record with the Secretary of State did not
12 hold the property jointly or in common with a person whose
13 conduct gave rise to the forfeiture;

14 (3) the owner or any person whose right, title, or
15 interest is of record with the Secretary of State does not
16 hold the property for the benefit of or as nominee for any
17 person whose conduct gave rise to its forfeiture, and, if
18 the owner or any person whose right, title, or interest is
19 of record acquired the interest through any such person,
20 the owner or any person whose right, title, or interest is
21 of record acquired it as a bona fide purchaser for value
22 without knowingly taking part in the conduct giving rise to
23 the forfeiture; and

24 (4) the owner or any person whose right, title, or
25 interest is of record with the Secretary of State acquired
26 the interest before the commencement of the conduct giving

1 rise to its forfeiture, and the person whose conduct gave
2 rise to its forfeiture did not have the authority to convey
3 the interest to a bona fide purchaser for value at the time
4 of the conduct.

5 (625 ILCS 5/16A-40 new)

6 Sec. 16A-40. Judicial in rem procedures.

7 (a) Within 45 days of receipt of a proper verified claim
8 and cost bond, the State's Attorney shall institute judicial
9 forfeiture proceedings by filing a verified complaint for
10 forfeiture and, if the claimant has filed a claim and cost
11 bond, by depositing the cost bond with the clerk of the court.
12 When authorized by law, a forfeiture must be ordered by a court
13 in an action in rem brought by a State's Attorney under a
14 verified complaint for forfeiture.

15 (b) During the probable cause portion of the judicial in
16 rem proceeding in which the State presents its case-in-chief,
17 the court must receive and consider, among other things, all
18 relevant hearsay evidence and information. The laws of evidence
19 relating to civil actions shall apply to all other portions of
20 the judicial in rem proceeding.

21 (c) Only an owner or a person or legal entity whose right,
22 title, or interest is of record with the Secretary of State on
23 or before the date of seizure of the vehicle may file an answer
24 asserting a claim against the motor vehicle in the action in
25 rem. For purposes of this Section, any person or legal entity

1 whose right, title, or interest is of record shall be referred
2 to as the claimant.

3 (d) The answer must be signed by the claimant under penalty
4 of perjury and must indicate:

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

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

8 (3) the nature and extent of the claimant's ownership
9 of the motor vehicle;

10 (4) the date and circumstances of the claimant's
11 acquisition of ownership of the motor vehicle and the
12 identity of transferor;

13 (5) the name and address of all other persons known to
14 have ownership of the motor vehicle;

15 (6) the specific language of Section 16A-35 relied on
16 in asserting that the motor vehicle is not subject to
17 forfeiture;

18 (7) all essential facts supporting each assertion; and

19 (8) the precise relief sought.

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

22 (f) The hearing must be held within 60 days after filing of
23 the answer unless continued for good cause. If a related
24 traffic or criminal case that gave rise to this proceeding is
25 still pending, however, all forfeiture proceedings shall, upon
26 motion of the State, be stayed until the underlying case is

1 concluded.

2 (g) The State must, at the hearing, show probable cause for
3 forfeiture of the motor vehicle. If the State shows probable
4 cause, the claimant has the burden of showing by a
5 preponderance of the evidence that the claimant's ownership of
6 the motor vehicle is not subject to forfeiture.

7 (h) If the State does not show probable cause, or a
8 claimant has established by a preponderance of evidence that
9 the claimant's ownership is exempt under Section 16A-35, the
10 court shall order the motor vehicle returned to the claimant.
11 If the State does show probable cause and the claimant does not
12 establish by a preponderance of evidence that the claimant's
13 ownership is exempt under Section 16A-35, the court shall order
14 the motor vehicle forfeited to the seizing agency or prosecutor
15 for their official use; or may order the motor vehicle
16 destroyed; or may order it sold at public auction by the
17 sheriff of the seizing county as set forth in paragraph (h) of
18 Section 16A-25.

19 (i) A defendant who has pled guilty or has been found
20 guilty in any underlying traffic or criminal proceeding is
21 precluded from later denying the essential allegations of the
22 traffic or criminal offense of which the defendant was
23 convicted in any proceeding under this Act, regardless of the
24 pendency of an appeal from that conviction. Evidence of the
25 pendency of an appeal is admissible, however.

26 (j) An acquittal or dismissal in a traffic or criminal

1 proceeding shall not preclude civil proceedings under this
2 Chapter. A motor vehicle subject to forfeiture under this
3 Chapter shall not be subject to return or release by a court
4 exercising jurisdiction over a traffic or criminal case
5 involving the seizure of that motor vehicle, unless the return
6 or release is consented to by the State's Attorney.

7 (k) Any motor vehicle declared forfeited under this Chapter
8 vests in the county in which the seizure occurs on the
9 commission of the conduct giving rise to forfeiture of the
10 motor vehicle after that time. The motor vehicle remains
11 subject to forfeiture after any subsequent transfer to any
12 person, and the motor vehicle shall be ordered forfeited unless
13 the transferee claims and establishes in a hearing under this
14 Chapter that the transferee's ownership is exempt under Section
15 16A-35.

16 (l) A civil action under this Chapter must be commenced
17 within 5 years after the last conduct giving rise to forfeiture
18 became known or should have become known, or 5 years after the
19 forfeitable motor vehicle is discovered, whichever is later,
20 excluding any time during which either the motor vehicle or
21 claimant is out of the State or in confinement or during which
22 criminal proceedings relating to the same conduct are in
23 progress.

24 (m) Motor vehicles taken or detained under this Chapter are
25 not subject to replevin and are deemed to be in the custody of
26 the county sheriff, subject only to the order and judgments of

1 the circuit court having jurisdiction over the forfeiture
2 proceedings and the decisions of the State's Attorney under
3 this Chapter.

4 (625 ILCS 5/16A-45 new)

5 Sec. 16A-45. Stay of time periods. If a motor vehicle is
6 seized for evidence and for forfeiture, the time periods for
7 instituting judicial and non-judicial forfeiture proceedings
8 shall not begin until the motor vehicle is no longer needed for
9 evidence.

10 (625 ILCS 5/16A-50 new)

11 Sec. 16A-50. Settlement of claims.

12 (a) Notwithstanding other provisions of this Chapter, the
13 State's Attorney and a claimant of a seized motor vehicle may
14 enter into an agreed settlement concerning the seized motor
15 vehicle in the amount and upon the terms that are set out in
16 writing in a settlement agreement.

17 (b) If the county sheriff or the State's Attorney agrees to
18 release a motor vehicle to an owner or person whose right,
19 title, or interest is of record, that person must sign a
20 stipulated vehicle release agreement that provides for the
21 automatic forfeiture of any vehicle registered to him or her if
22 the vehicle is driven by a driver with a suspended or revoked
23 license or permit. This Section applies to any vehicle
24 currently owned or any vehicle registered in the future. If the

1 person does not sign the agreement, the vehicle may not be
2 released. A signed agreement precludes any claim, if the motor
3 vehicle is subsequently driven by a person with a suspended or
4 revoked driver's license or permit, that the person to whom the
5 vehicle was released is an innocent owner.

6 Section 10. The Criminal Code of 1961 is amended by
7 changing Section 36-1 as follows:

8 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

9 Sec. 36-1. Seizure. Any vessel, vehicle or aircraft used
10 with the knowledge and consent of the owner in the commission
11 of, or in the attempt to commit as defined in Section 8-4 of
12 this Code, an offense prohibited by (a) Section 9-1, 9-3, 10-2,
13 11-6, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-4.1, 12-4.2,
14 12-4.2-5, 12-4.3, 12-4.6, 12-7.3, 12-7.4, 12-13, 12-14, 18-2,
15 19-1, 19-2, 19-3, 20-1, 20-2, 20.5-6, 24-1.2, 24-1.2-5, 24-1.5,
16 or 28-1 of this Code, paragraph (a) of Section 12-4 of this
17 Code, paragraph (a) of Section 12-15 or paragraphs (a), (c) or
18 (d) of Section 12-16 of this Code, or paragraph (a)(6) or
19 (a)(7) of Section 24-1 of this Code; (b) Section 21, 22, 23, 24
20 or 26 of the Cigarette Tax Act if the vessel, vehicle or
21 aircraft contains more than 10 cartons of such cigarettes; (c)
22 Section 28, 29 or 30 of the Cigarette Use Tax Act if the
23 vessel, vehicle or aircraft contains more than 10 cartons of
24 such cigarettes; (d) Section 44 of the Environmental Protection

1 Act; or (e) Section 11-204.1 of the Illinois Vehicle Code; ~~(f)~~
2 ~~the offenses described in the following provisions of the~~
3 ~~Illinois Vehicle Code: Section 11-501 subdivisions (c-1)(1),~~
4 ~~(c-1)(2), (c-1)(3), (d)(1)(A), (d)(1)(D), (d)(1)(G), or~~
5 ~~(d)(1)(H); (g) an offense described in subsection (g) of~~
6 ~~Section 6-303 of the Illinois Vehicle Code; or (h) an offense~~
7 ~~described in subsection (e) of Section 6-101 of the Illinois~~
8 ~~Vehicle Code;~~ may be seized and delivered forthwith to the
9 sheriff of the county of seizure.

10 Within 15 days after such delivery the sheriff shall give
11 notice of seizure to each person according to the following
12 method: Upon each such person whose right, title or interest is
13 of record in the office of the Secretary of State, the
14 Secretary of Transportation, the Administrator of the Federal
15 Aviation Agency, or any other Department of this State, or any
16 other state of the United States if such vessel, vehicle or
17 aircraft is required to be so registered, as the case may be,
18 by mailing a copy of the notice by certified mail to the
19 address as given upon the records of the Secretary of State,
20 the Department of Aeronautics, Department of Public Works and
21 Buildings or any other Department of this State or the United
22 States if such vessel, vehicle or aircraft is required to be so
23 registered. Within that 15 day period the sheriff shall also
24 notify the State's Attorney of the county of seizure about the
25 seizure.

26 In addition, any mobile or portable equipment used in the

1 commission of an act which is in violation of Section 7g of the
2 Metropolitan Water Reclamation District Act shall be subject to
3 seizure and forfeiture under the same procedures provided in
4 this Article for the seizure and forfeiture of vessels,
5 vehicles and aircraft, and any such equipment shall be deemed a
6 vessel, vehicle or aircraft for purposes of this Article.

7 When a person discharges a firearm at another individual
8 from a vehicle with the knowledge and consent of the owner of
9 the vehicle and with the intent to cause death or great bodily
10 harm to that individual and as a result causes death or great
11 bodily harm to that individual, the vehicle shall be subject to
12 seizure and forfeiture under the same procedures provided in
13 this Article for the seizure and forfeiture of vehicles used in
14 violations of clauses (a), (b), (c), or (d) of this Section.

15 If the spouse of the owner of a vehicle seized for an
16 offense described in ~~subsection (g) of Section 6-303 of the~~
17 ~~Illinois Vehicle Code, a violation of subdivision (c-1)(1),~~
18 ~~(c-1)(2), (c-1)(3), (d)(1)(A), or (d)(1)(D) of Section 11-501~~
19 ~~of the Illinois Vehicle Code, or Section 9-3 of this Code makes~~
20 a showing that the seized vehicle is the only source of
21 transportation and it is determined that the financial hardship
22 to the family as a result of the seizure outweighs the benefit
23 to the State from the seizure, the vehicle may be forfeited to
24 the spouse or family member and the title to the vehicle shall
25 be transferred to the spouse or family member who is properly
26 licensed and who requires the use of the vehicle for employment

1 or family transportation purposes. A written declaration of
2 forfeiture of a vehicle under this Section shall be sufficient
3 cause for the title to be transferred to the spouse or family
4 member. The provisions of this paragraph shall apply only to
5 one forfeiture per vehicle. If the vehicle is the subject of a
6 subsequent forfeiture proceeding by virtue of a subsequent
7 conviction of either spouse or the family member, the spouse or
8 family member to whom the vehicle was forfeited under the first
9 forfeiture proceeding may not utilize the provisions of this
10 paragraph in another forfeiture proceeding. If the owner of the
11 vehicle seized owns more than one vehicle, the procedure set
12 out in this paragraph may be used for only one vehicle.

13 Property declared contraband under Section 40 of the
14 Illinois Streetgang Terrorism Omnibus Prevention Act may be
15 seized and forfeited under this Article.

16 (Source: P.A. 93-187, eff. 7-11-03; 94-329, eff. 1-1-06;
17 94-1017, eff. 7-7-06.)