

SB2198



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2198

Introduced 2/14/2008, by Sen. William Delgado

SYNOPSIS AS INTRODUCED:

720 ILCS 550/12

from Ch. 56 1/2, par. 712

Amends the Cannabis Control Act. Provides that real property is subject to forfeiture if it is used or intended to be used to facilitate the possession, distribution, sale, receipt, or concealment of specified property that constitutes a felony violation of the Act or that is the proceeds of any felony violation of the Act. Provides that if the State's Attorney is of the opinion that real property is subject to forfeiture under the Act, forfeiture proceedings shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act. Provides that the exemptions from forfeiture provisions of that Act are applicable. Effective immediately.

LRB095 15662 RLC 41667 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Cannabis Control Act is amended by changing
5 Section 12 as follows:

6 (720 ILCS 550/12) (from Ch. 56 1/2, par. 712)

7 Sec. 12. (a) The following are subject to forfeiture:

8 (1) all substances containing cannabis which have been
9 produced, manufactured, delivered, or possessed in
10 violation of this Act;

11 (2) all raw materials, products and equipment of any
12 kind which are produced, delivered, or possessed in
13 connection with any substance containing cannabis in
14 violation of this Act;

15 (3) all conveyances, including aircraft, vehicles or
16 vessels, which are used, or intended for use, to transport,
17 or in any manner to facilitate the transportation, sale,
18 receipt, possession, or concealment of property described
19 in paragraph (1) or (2) that constitutes a felony violation
20 of the Act, but:

21 (i) no conveyance used by any person as a common
22 carrier in the transaction of business as a common
23 carrier is subject to forfeiture under this Section

1 unless it appears that the owner or other person in
2 charge of the conveyance is a consenting party or privy
3 to a violation of this Act;

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

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

12 (4) all money, things of value, books, records, and
13 research products and materials including formulas,
14 microfilm, tapes, and data which are used, or intended for
15 use in a felony violation of this Act;

16 (5) everything of value furnished or intended to be
17 furnished by any person in exchange for a substance in
18 violation of this Act, all proceeds traceable to such an
19 exchange, and all moneys, negotiable instruments, and
20 securities used, or intended to be used, to commit or in
21 any manner to facilitate any felony violation of this Act;

22 (6) all real property, including any right, title, and
23 interest including, but not limited to, any leasehold
24 interest or the beneficial interest to a land trust, in the
25 whole of any lot or tract of land and any appurtenances or
26 improvements, that is used or intended to be used to

1 facilitate the possession, distribution, sale, receipt, or
2 concealment of property described in paragraph (1) or (2)
3 of this subsection (a) that constitutes a felony violation
4 of this Act or that is the proceeds of any felony violation
5 of this Act.

6 (b) Property subject to forfeiture under this Act may be
7 seized by the Director or any peace officer upon process or
8 seizure warrant issued by any court having jurisdiction over
9 the property. Seizure by the Director or any peace officer
10 without process may be made:

11 (1) if the property subject to seizure has been the
12 subject of a prior judgment in favor of the State in a
13 criminal proceeding or in an injunction or forfeiture
14 proceeding based upon this Act or the Drug Asset Forfeiture
15 Procedure Act;

16 (2) if there is probable cause to believe that the
17 property is directly or indirectly dangerous to health or
18 safety;

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

23 (4) in accordance with the Code of Criminal Procedure
24 of 1963.

25 (c) In the event of seizure pursuant to subsection (b),
26 forfeiture proceedings shall be instituted in accordance with

1 the Drug Asset Forfeiture Procedure Act.

2 (c-1) In the event the State's Attorney is of the opinion
3 that real property is subject to forfeiture under this Act,
4 forfeiture proceedings shall be instituted in accordance with
5 the Drug Asset Forfeiture Procedure Act. The exemptions from
6 forfeiture provisions of Section 8 of the Drug Asset Forfeiture
7 Procedure Act are applicable.

8 (d) Property taken or detained under this Section shall not
9 be subject to replevin, but is deemed to be in the custody of
10 the Director subject only to the order and judgments of the
11 circuit court having jurisdiction over the forfeiture
12 proceedings and the decisions of the State's Attorney under the
13 Drug Asset Forfeiture Procedure Act. When property is seized
14 under this Act, the seizing agency shall promptly conduct an
15 inventory of the seized property, estimate the property's
16 value, and shall forward a copy of the inventory of seized
17 property and the estimate of the property's value to the
18 Director. Upon receiving notice of seizure, the Director may:

- 19 (1) place the property under seal;
- 20 (2) remove the property to a place designated by him;
- 21 (3) keep the property in the possession of the seizing
22 agency;
- 23 (4) remove the property to a storage area for
24 safekeeping or, if the property is a negotiable instrument
25 or money and is not needed for evidentiary purposes,
26 deposit it in an interest bearing account;

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

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

10 (e) No disposition may be made of property under seal until
11 the time for taking an appeal has elapsed or until all appeals
12 have been concluded unless a court, upon application therefor,
13 orders the sale of perishable substances and the deposit of the
14 proceeds of the sale with the court.

15 (f) When property is forfeited under this Act the Director
16 shall sell all such property unless such property is required
17 by law to be destroyed or is harmful to the public, and shall
18 distribute the proceeds of the sale, together with any moneys
19 forfeited or seized, in accordance with subsection (g).
20 However, upon the application of the seizing agency or
21 prosecutor who was responsible for the investigation, arrest or
22 arrests and prosecution which lead to the forfeiture, the
23 Director may return any item of forfeited property to the
24 seizing agency or prosecutor for official use in the
25 enforcement of laws relating to cannabis or controlled
26 substances, if the agency or prosecutor can demonstrate that

1 the item requested would be useful to the agency or prosecutor
2 in their enforcement efforts. When any forfeited conveyance,
3 including an aircraft, vehicle, or vessel, is returned to the
4 seizing agency or prosecutor, the conveyance may be used
5 immediately in the enforcement of the criminal laws of this
6 State. Upon disposal, all proceeds from the sale of the
7 conveyance must be used for drug enforcement purposes. When any
8 real property returned to the seizing agency is sold by the
9 agency or its unit of government, the proceeds of the sale
10 shall be delivered to the Director and distributed in
11 accordance with subsection (g).

12 (g) All monies and the sale proceeds of all other property
13 forfeited and seized under this Act shall be distributed as
14 follows:

15 (1) 65% shall be distributed to the metropolitan
16 enforcement group, local, municipal, county, or state law
17 enforcement agency or agencies which conducted or
18 participated in the investigation resulting in the
19 forfeiture. The distribution shall bear a reasonable
20 relationship to the degree of direct participation of the
21 law enforcement agency in the effort resulting in the
22 forfeiture, taking into account the total value of the
23 property forfeited and the total law enforcement effort
24 with respect to the violation of the law upon which the
25 forfeiture is based. Amounts distributed to the agency or
26 agencies shall be used for the enforcement of laws

1 governing cannabis and controlled substances or for
2 security cameras used for the prevention or detection of
3 violence, except that amounts distributed to the Secretary
4 of State shall be deposited into the Secretary of State
5 Evidence Fund to be used as provided in Section 2-115 of
6 the Illinois Vehicle Code.

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

21 (ii) 12.5% shall be distributed to the Office of the
22 State's Attorneys Appellate Prosecutor and deposited in
23 the Narcotics Profit Forfeiture Fund of that Office to be
24 used for additional expenses incurred in the
25 investigation, prosecution and appeal of cases arising
26 under laws governing cannabis and controlled substances.

1 The Office of the State's Attorneys Appellate Prosecutor
2 shall not receive distribution from cases brought in
3 counties with over 3,000,000 population.

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

7 (Source: P.A. 94-1004, eff. 7-3-06.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.