



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5130

Introduced 1/29/2010, by Rep. Jay C. Hoffman

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2605/2605-585 new

30 ILCS 105/5.756 new

720 ILCS 5/29B-1

from Ch. 38, par. 29B-1

Amends the Department of State Police Law of the Civil Administrative Code of Illinois and the Criminal Code of 1961. Provides that moneys and the sale proceeds distributed to the Department of State Police pursuant to the money laundering statute shall be deposited in a special fund in the State treasury to be known as the Money Laundering Asset Recovery Fund. Provides that the moneys deposited in the Money Laundering Asset Recovery Fund shall be appropriated to and administered by the Department of State Police for State law enforcement purposes. Amends the State Finance Act. Creates the Money Laundering Asset Recovery Fund in the State treasury. Effective immediately.

LRB096 17682 RLC 34995 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning money laundering.

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

4 Section 5. The Department of State Police Law of the Civil  
5 Administrative Code of Illinois is amended by adding Section  
6 2605-585 as follows:

7 (20 ILCS 2605/2605-585 new)

8 Sec. 2605-585. Money Laundering Asset Recovery Fund.  
9 Moneys and the sale proceeds distributed to the Department of  
10 State Police pursuant to clause (h) (6) (C) of Section 29B-1 of  
11 the Criminal Code of 1961 shall be deposited in a special fund  
12 in the State treasury to be known as the Money Laundering Asset  
13 Recovery Fund. The moneys deposited in the Money Laundering  
14 Asset Recovery Fund shall be appropriated to and administered  
15 by the Department of State Police for State law enforcement  
16 purposes.

17 Section 10. The State Finance Act is amended by adding  
18 Section 5.756 as follows:

19 (30 ILCS 105/5.756 new)

20 Sec. 5.756. The Money Laundering Asset Recovery Fund.

1 Section 15. The Criminal Code of 1961 is amended by  
2 changing Section 29B-1 as follows:

3 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

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

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

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

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

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

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

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

25 (A) with the intent to promote the carrying on of

1 the unlawful activity from which the criminally  
2 derived property was obtained; or

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

5 (i) to conceal or disguise the nature, the  
6 location, the source, the ownership or the control  
7 of the criminally derived property; or

8 (ii) to avoid a transaction reporting  
9 requirement under State law; or

10 (2) when, with the intent to:

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

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

17 (C) avoid a transaction reporting requirement  
18 under State law,

19 he or she conducts or attempts to conduct a financial  
20 transaction involving property he or she believes to be the  
21 proceeds of specified criminal activity as defined by  
22 subdivision (b) (6) or property used to conduct or  
23 facilitate specified criminal activity as defined by  
24 subdivision (b) (6).

25 (b) As used in this Section:

26 (0.5) "Knowing that the property involved in a

1 financial transaction represents the proceeds of some form  
2 of unlawful activity" means that the person knew the  
3 property involved in the transaction represented proceeds  
4 from some form, though not necessarily which form, of  
5 activity that constitutes a felony under State, federal, or  
6 foreign law.

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

1           (2) "Financial institution" means any bank; saving and  
2           loan association; trust company; agency or branch of a  
3           foreign bank in the United States; currency exchange;  
4           credit union, mortgage banking institution; pawnbroker;  
5           loan or finance company; operator of a credit card system;  
6           issuer, redeemer or cashier of travelers checks, checks or  
7           money orders; dealer in precious metals, stones or jewels;  
8           broker or dealer in securities or commodities; investment  
9           banker; or investment company.

10          (3) "Monetary instrument" means United States coins  
11          and currency; coins and currency of a foreign country;  
12          travelers checks; personal checks, bank checks, and money  
13          orders; investment securities; bearer negotiable  
14          instruments; bearer investment securities; or bearer  
15          securities and certificates of stock in such form that  
16          title thereto passes upon delivery.

17          (4) "Criminally derived property" means: (A) any  
18          property, real or personal, constituting or derived from  
19          proceeds obtained, directly or indirectly, from activity  
20          that constitutes a felony under State, federal, or foreign  
21          law; or (B) any property represented to be property  
22          constituting or derived from proceeds obtained, directly  
23          or indirectly, from activity that constitutes a felony  
24          under State, federal, or foreign law.

25          (5) "Conduct" or "conducts" includes, in addition to  
26          its ordinary meaning, initiating, concluding, or

1 participating in initiating or concluding a transaction.

2 (6) "Specified criminal activity" means any violation  
3 of Section 29D-15.1 (720 ILCS 5/29D-15.1) and any violation  
4 of Article 29D of this Code.

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

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

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

12 (c) Sentence.

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

15 (2) Laundering of criminally derived property of a  
16 value exceeding \$10,000 but not exceeding \$100,000 is a  
17 Class 2 felony;

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

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

23 (5) Laundering of criminally derived property of a  
24 value exceeding \$500,000 is a Class 1 non-probationable  
25 felony;

26 (6) In a prosecution under clause (a) (1.5) (B) (ii) of

1           this Section, the sentences are as follows:

2                   (A) Laundering of property of a value not exceeding  
3           \$10,000 is a Class 3 felony;

4                   (B) Laundering of property of a value exceeding  
5           \$10,000 but not exceeding \$100,000 is a Class 2 felony;

6                   (C) Laundering of property of a value exceeding  
7           \$100,000 but not exceeding \$500,000 is a Class 1  
8           felony;

9                   (D) Laundering of property of a value exceeding  
10          \$500,000 is a Class 1 non-probationable felony.

11          (d) Evidence. In a prosecution under this Article, either  
12          party may introduce the following evidence pertaining to the  
13          issue of whether the property or proceeds were known to be some  
14          form of criminally derived property or from some form of  
15          unlawful activity:

16                   (1) A financial transaction was conducted or  
17          structured or attempted in violation of the reporting  
18          requirements of any State or federal law; or

19                   (2) A financial transaction was conducted or attempted  
20          with the use of a false or fictitious name or a forged  
21          instrument; or

22                   (3) A falsely altered or completed written instrument  
23          or a written instrument that contains any materially false  
24          personal identifying information was made, used, offered  
25          or presented, whether accepted or not, in connection with a  
26          financial transaction; or



1           (4) A financial transaction was structured or  
2 attempted to be structured so as to falsely report the  
3 actual consideration or value of the transaction; or

4           (5) A money transmitter, a person engaged in a trade or  
5 business or any employee of a money transmitter or a person  
6 engaged in a trade or business, knows or reasonably should  
7 know that false personal identifying information has been  
8 presented and incorporates the false personal identifying  
9 information into any report or record; or

10          (6) The criminally derived property is transported or  
11 possessed in a fashion inconsistent with the ordinary or  
12 usual means of transportation or possession of such  
13 property and where the property is discovered in the  
14 absence of any documentation or other indicia of legitimate  
15 origin or right to such property; or

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

18          (8) A person engages in a transaction involving one or  
19 more monetary instruments, where the physical condition or  
20 form of the monetary instrument or instruments makes it  
21 apparent that they are not the product of bona fide  
22 business or financial transactions.

23          (e) Duty to enforce this Article.

24           (1) It is the duty of the Department of State Police,  
25 and its agents, officers, and investigators, to enforce all  
26 provisions of this Article, except those specifically

1 delegated, and to cooperate with all agencies charged with  
2 the enforcement of the laws of the United States, or of any  
3 state, relating to money laundering. Only an agent,  
4 officer, or investigator designated by the Director may be  
5 authorized in accordance with this Section to serve seizure  
6 notices, warrants, subpoenas, and summonses under the  
7 authority of this State.

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

16 (f) Protective orders.

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

22 (A) upon the filing of an indictment, information,  
23 or complaint charging a violation of this Article for  
24 which forfeiture may be ordered under this Article and  
25 alleging that the property with respect to which the  
26 order is sought would be subject to forfeiture under

1           this Article; or

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

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

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

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

21           (2) A temporary restraining order under this  
22 subsection may be entered upon application of the State  
23 without notice or opportunity for a hearing when an  
24 indictment, information, complaint, or administrative  
25 notice has not yet been filed with respect to the property,  
26 if the State demonstrates that there is probable cause to

1 believe that the property with respect to which the order  
2 is sought would be subject to forfeiture under this Section  
3 and that provision of notice will jeopardize the  
4 availability of the property for forfeiture. Such a  
5 temporary order shall expire not more than 30 days after  
6 the date on which it is entered, unless extended for good  
7 cause shown or unless the party against whom it is entered  
8 consents to an extension for a longer period. A hearing  
9 requested concerning an order entered under this paragraph  
10 shall be held at the earliest possible time and prior to  
11 the expiration of the temporary order.

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

16 (4) Order to repatriate and deposit.

17 (A) In general. Pursuant to its authority to enter  
18 a pretrial restraining order under this Section, the  
19 court may order a defendant to repatriate any property  
20 that may be seized and forfeited and to deposit that  
21 property pending trial with the Illinois State Police  
22 or another law enforcement agency designated by the  
23 Illinois State Police.

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

1           (g) Warrant of seizure. The State may request the issuance  
2 of a warrant authorizing the seizure of property described in  
3 subsection (h) in the same manner as provided for a search  
4 warrant. If the court determines that there is probable cause  
5 to believe that the property to be seized would be subject to  
6 forfeiture, the court shall issue a warrant authorizing the  
7 seizure of such property.

8           (h) Forfeiture.

9           (1) The following are subject to forfeiture:

10           (A) any property, real or personal, constituting,  
11 derived from, or traceable to any proceeds the person  
12 obtained directly or indirectly, as a result of a  
13 violation of this Article;

14           (B) any of the person's property used, or intended  
15 to be used, in any manner or part, to commit, or to  
16 facilitate the commission of, a violation of this  
17 Article;

18           (C) all conveyances, including aircraft, vehicles  
19 or vessels, which are used, or intended for use, to  
20 transport, or in any manner to facilitate the  
21 transportation, sale, receipt, possession, or  
22 concealment of property described in subparagraphs (A)  
23 and (B), but:

24           (i) no conveyance used by any person as a  
25 common carrier in the transaction of business as a  
26 common carrier is subject to forfeiture under this

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

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

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

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

23 (2) Property subject to forfeiture under this Article  
24 may be seized by the Director or any peace officer upon  
25 process or seizure warrant issued by any court having  
26 jurisdiction over the property. Seizure by the Director or

1 any peace officer without process may be made:

2 (A) if the seizure is incident to a seizure  
3 warrant;

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

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

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

15 (E) in accordance with the Code of Criminal  
16 Procedure of 1963.

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

20 (4) Property taken or detained under this Section shall  
21 not be subject to replevin, but is deemed to be in the  
22 custody of the Director subject only to the order and  
23 judgments of the circuit court having jurisdiction over the  
24 forfeiture proceedings and the decisions of the State's  
25 Attorney under this Article. When property is seized under  
26 this Article, the seizing agency shall promptly conduct an

1 inventory of the seized property and estimate the  
2 property's value and shall forward a copy of the inventory  
3 of seized property and the estimate of the property's value  
4 to the Director. Upon receiving notice of seizure, the  
5 Director may:

6 (A) place the property under seal;

7 (B) remove the property to a place designated by  
8 the Director;

9 (C) keep the property in the possession of the  
10 seizing agency;

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

15 (E) place the property under constructive seizure  
16 by posting notice of pending forfeiture on it, by  
17 giving notice of pending forfeiture to its owners and  
18 interest holders, or by filing notice of pending  
19 forfeiture in any appropriate public record relating  
20 to the property; or

21 (F) provide for another agency or custodian,  
22 including an owner, secured party, or lienholder, to  
23 take custody of the property upon the terms and  
24 conditions set by the Director.

25 (5) When property is forfeited under this Article, the  
26 Director shall sell all such property unless such property



1 is required by law to be destroyed or is harmful to the  
2 public, and shall distribute the proceeds of the sale,  
3 together with any moneys forfeited or seized, in accordance  
4 with paragraph (6). However, upon the application of the  
5 seizing agency or prosecutor who was responsible for the  
6 investigation, arrest or arrests and prosecution which  
7 lead to the forfeiture, the Director may return any item of  
8 forfeited property to the seizing agency or prosecutor for  
9 official use in the enforcement of laws, if the agency or  
10 prosecutor can demonstrate that the item requested would be  
11 useful to the agency or prosecutor in its enforcement  
12 efforts. When any real property returned to the seizing  
13 agency is sold by the agency or its unit of government, the  
14 proceeds of the sale shall be delivered to the Director and  
15 distributed in accordance with paragraph (6).

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

19 (A) 65% shall be distributed to the metropolitan  
20 enforcement group, local, municipal, county, or State  
21 law enforcement agency or agencies which conducted or  
22 participated in the investigation resulting in the  
23 forfeiture. The distribution shall bear a reasonable  
24 relationship to the degree of direct participation of  
25 the law enforcement agency in the effort resulting in  
26 the forfeiture, taking into account the total value of

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

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

18 (ii) 12.5% shall be distributed to the Office  
19 of the State's Attorneys Appellate Prosecutor and  
20 deposited in the Narcotics Profit Forfeiture Fund  
21 of that office to be used for additional expenses  
22 incurred in the investigation, prosecution and  
23 appeal of cases arising under laws. The Office of  
24 the State's Attorneys Appellate Prosecutor shall  
25 not receive distribution from cases brought in  
26 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 Moneys and the sale proceeds distributed to the  
6 Department of State Police under this Article shall be  
7 deposited in the Money Laundering Asset Recovery Fund  
8 created in the State treasury and shall be used by the  
9 Department of State Police for State law enforcement  
10 purposes.

11 (i) Notice to owner or interest holder.

12 (1) Whenever notice of pending forfeiture or service of  
13 an in rem complaint is required under the provisions of  
14 this Article, such notice or service shall be given as  
15 follows:

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

1 owner or interest holder shall promptly notify the  
2 seizing agency of the change in address or, if the  
3 owner or interest holder's address changes subsequent  
4 to the effective date of the notice of pending  
5 forfeiture, the owner or interest holder shall  
6 promptly notify the State's Attorney of the change in  
7 address; or

8 (B) If the property seized is a conveyance, to the  
9 address reflected in the office of the agency or  
10 official in which title or interest to the conveyance  
11 is required by law to be recorded, then by mailing a  
12 copy of the notice by certified mail, return receipt  
13 requested, to that address; or

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

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

22 (j) Notice to State's Attorney. The law enforcement agency  
23 seizing property for forfeiture under this Article shall,  
24 within 90 days after seizure, notify the State's Attorney for  
25 the county, either where an act or omission giving rise to the  
26 forfeiture occurred or where the property was seized, of the

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

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

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

26 (2) The notice of pending forfeiture must include a

1 description of the property, the estimated value of the  
2 property, the date and place of seizure, the conduct giving  
3 rise to forfeiture or the violation of law alleged, and a  
4 summary of procedures and procedural rights applicable to  
5 the forfeiture action.

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

14 (i) the caption of the proceedings as set forth on  
15 the notice of pending forfeiture and the name of the  
16 claimant;

17 (ii) the address at which the claimant will accept  
18 mail;

19 (iii) the nature and extent of the claimant's  
20 interest in the property;

21 (iv) the date, identity of the transferor, and  
22 circumstances of the claimant's acquisition of the  
23 interest in the property;

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

26 (vi) the specific provision of law relied on in

1           asserting the property is not subject to forfeiture;

2           (vii) all essential facts supporting each  
3           assertion; and

4           (viii) the relief sought.

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

20          (C) If none of the seized property is forfeited in the  
21          judicial in rem proceeding, the clerk of the court shall  
22          return to the claimant, unless the court orders otherwise,  
23          90% of the sum which has been deposited and shall retain as  
24          costs 10% of the money deposited. If any of the seized  
25          property is forfeited under the judicial forfeiture  
26          proceeding, the clerk of the court shall transfer 90% of

1 the sum which has been deposited to the State's Attorney  
2 prosecuting the civil forfeiture to be applied to the costs  
3 of prosecution and the clerk shall retain as costs 10% of  
4 the sum deposited.

5 (4) If no claim is filed or bond given within the 45  
6 day period as described in paragraph (3) of this subsection  
7 (k), the State's Attorney shall declare the property  
8 forfeited and shall promptly notify the owner and all known  
9 interest holders of the property and the Director of State  
10 Police of the declaration of forfeiture and the Director  
11 shall dispose of the property in accordance with law.

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

18 (1) If, after a review of the facts surrounding the  
19 seizure, the State's Attorney is of the opinion that the  
20 seized property is subject to forfeiture, then within 45  
21 days of the receipt of notice of seizure by the seizing  
22 agency or the filing of the claim and cost bond, whichever  
23 is later, the State's Attorney shall institute judicial  
24 forfeiture proceedings by filing a verified complaint for  
25 forfeiture and, if the claimant has filed a claim and cost  
26 bond, by depositing the cost bond with the clerk of the



1 court. When authorized by law, a forfeiture must be ordered  
2 by a court on an action in rem brought by a State's  
3 Attorney under a verified complaint for forfeiture.

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

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

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

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

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

1 (C) the nature and extent of the claimant's  
2 interest in the property;

3 (D) the date, identity of transferor, and  
4 circumstances of the claimant's acquisition of the  
5 interest in the property;

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

8 (F) all essential facts supporting each assertion;  
9 and

10 (G) the precise relief sought.

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

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

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

20 (8) If the State does not show existence of probable  
21 cause, the court shall order the interest in the property  
22 returned or conveyed to the claimant and shall order all  
23 other property forfeited to the State. If the State does  
24 show existence of probable cause, the court shall order all  
25 property forfeited to the State.

26 (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

1 to forfeiture became known or should have become known or 5  
2 years after the forfeitable property is discovered,  
3 whichever is later, excluding any time during which either  
4 the property or claimant is out of the State or in  
5 confinement or during which criminal proceedings relating  
6 to the same conduct are in progress.

7 (m) Stay of time periods. If property is seized for  
8 evidence and for forfeiture, the time periods for instituting  
9 judicial and non-judicial forfeiture proceedings shall not  
10 begin until the property is no longer necessary for evidence.

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

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

26 (p) Construction. It is the intent of the General Assembly

1 that the forfeiture provisions of this Article be liberally  
2 construed so as to effect their remedial purpose. The  
3 forfeiture of property and other remedies hereunder shall be  
4 considered to be in addition to, and not exclusive of, any  
5 sentence or other remedy provided by law.

6 (q) Judicial review. If property has been declared  
7 forfeited under subsection (k) of this Section, any person who  
8 has an interest in the property declared forfeited may, within  
9 30 days after the effective date of the notice of the  
10 declaration of forfeiture, file a claim and cost bond as  
11 described in paragraph (3) of subsection (k) of this Section.  
12 If a claim and cost bond is filed under this Section, then the  
13 procedures described in subsection (l) of this Section apply.

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

20 (s) Review of administrative decisions. All administrative  
21 findings, rulings, final determinations, findings, and  
22 conclusions of the State's Attorney's Office under this Article  
23 are final and conclusive decisions of the matters involved. Any  
24 person aggrieved by the decision may obtain review of the  
25 decision pursuant to the provisions of the Administrative  
26 Review Law and the rules adopted pursuant to that Law. Pending

1 final decision on such review, the administrative acts, orders,  
2 and rulings of the State's Attorney's Office remain in full  
3 force and effect unless modified or suspended by order of court  
4 pending final judicial decision. Pending final decision on such  
5 review, the acts, orders, and rulings of the State's Attorney's  
6 Office remain in full force and effect, unless stayed by order  
7 of court. However, no stay of any decision of the  
8 administrative agency shall issue unless the person aggrieved  
9 by the decision establishes by a preponderance of the evidence  
10 that good cause exists for the stay. In determining good cause,  
11 the court shall find that the aggrieved party has established a  
12 substantial likelihood of prevailing on the merits and that  
13 granting the stay will not have an injurious effect on the  
14 general public.

15 (Source: P.A. 96-275, eff. 8-11-09; 96-710, eff. 1-1-10;  
16 revised 10-9-09.)

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.