

HB5362



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5362

Introduced 2/5/2010, by Rep. Daniel J. Burke

SYNOPSIS AS INTRODUCED:

720 ILCS 5/29B-1

from Ch. 38, par. 29B-1

Amends the Criminal Code of 1961. Makes a technical change in the Section concerning the offense of money laundering.

LRB096 19269 RLC 34660 b

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

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

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

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

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

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

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

23 (ii) to avoid a transaction reporting

1 requirement under State law; or

2 (1.5) when he or she transports, transmits, or
3 transfers, or attempts to transport, transmit, or transfer
4 a monetary instrument:

5 (A) with the intent to promote the carrying on of
6 the unlawful activity from which the criminally
7 derived property was obtained; or

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

10 (i) to conceal or disguise the nature, the
11 location, the source, the ownership or the control
12 of the criminally derived property; or

13 (ii) to avoid a transaction reporting
14 requirement under State law; or

15 (2) when, with the intent to:

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

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

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

24 he or she conducts or attempts to conduct a financial
25 transaction involving property he or she believes to be the
26 proceeds of specified criminal activity as defined by

1 subdivision (b)(6) or property used to conduct or
2 facilitate specified criminal activity as defined by
3 subdivision (b)(6).

4 (b) As used in this Section:

5 (0.5) "Knowing that the property involved in a
6 financial transaction represents the proceeds of some form
7 of unlawful activity" means that the person knew the
8 property involved in the transaction represented proceeds
9 from some form, though not necessarily which form, of
10 activity that constitutes a felony under State, federal, or
11 foreign law.

12 (1) "Financial transaction" means a purchase, sale,
13 loan, pledge, gift, transfer, delivery or other
14 disposition utilizing criminally derived property, and
15 with respect to financial institutions, includes a
16 deposit, withdrawal, transfer between accounts, exchange
17 of currency, loan, extension of credit, purchase or sale of
18 any stock, bond, certificate of deposit or other monetary
19 instrument, use of safe deposit box, or any other payment,
20 transfer or delivery by, through, or to a financial
21 institution. For purposes of clause (a)(2) of this Section,
22 the term "financial transaction" also means a transaction
23 which without regard to whether the funds, monetary
24 instruments, or real or personal property involved in the
25 transaction are criminally derived, any transaction which
26 in any way or degree: (1) involves the movement of funds by

1 wire or any other means; (2) involves one or more monetary
2 instruments; or (3) the transfer of title to any real or
3 personal property. The receipt by an attorney of bona fide
4 fees for the purpose of legal representation is not a
5 financial transaction for purposes of this Section.

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

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

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

1 constituting or derived from proceeds obtained, directly
2 or indirectly, from activity that constitutes a felony
3 under State, federal, or foreign law.

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 29D-15.1 (720 ILCS 5/29D-15.1) and any violation
9 of 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)

1 of this Section is a Class X felony;

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

5 (6) In a prosecution under clause (a)(1.5)(B)(ii) of
6 this Section, the sentences are as follows:

7 (A) Laundering of property of a value not exceeding
8 \$10,000 is a Class 3 felony;

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

11 (C) Laundering of property of a value exceeding
12 \$100,000 but not exceeding \$500,000 is a Class 1
13 felony;

14 (D) Laundering of property of a value exceeding
15 \$500,000 is a Class 1 non-probationable felony.

16 (d) Evidence. In a prosecution under this Article, either
17 party may introduce the following evidence pertaining to the
18 issue of whether the property or proceeds were known to be some
19 form of criminally derived property or from some form of
20 unlawful activity:

21 (1) A financial transaction was conducted or
22 structured or attempted in violation of the reporting
23 requirements of any State or federal law; or

24 (2) A financial transaction was conducted or attempted
25 with the use of a false or fictitious name or a forged
26 instrument; or

1 (3) A falsely altered or completed written instrument
2 or a written instrument that contains any materially false
3 personal identifying information was made, used, offered
4 or presented, whether accepted or not, in connection with a
5 financial transaction; or

6 (4) A financial transaction was structured or
7 attempted to be structured so as to falsely report the
8 actual consideration or value of the transaction; or

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

15 (6) The criminally derived property is transported or
16 possessed in a fashion inconsistent with the ordinary or
17 usual means of transportation or possession of such
18 property and where the property is discovered in the
19 absence of any documentation or other indicia of legitimate
20 origin or right to such property; or

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

23 (8) A person engages in a transaction involving one or
24 more monetary instruments, where the physical condition or
25 form of the monetary instrument or instruments makes it
26 apparent that they are not the product of bona fide

1 business or financial transactions.

2 (e) Duty to enforce this Article.

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

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

21 (f) Protective orders.

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

1 (A) upon the filing of an indictment, information,
2 or complaint charging a violation of this Article for
3 which forfeiture may be ordered under this Article and
4 alleging that the property with respect to which the
5 order is sought would be subject to forfeiture under
6 this Article; or

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

11 (i) there is probable cause to believe that the
12 State will prevail on the issue of forfeiture and
13 that failure to enter the order will result in the
14 property being destroyed, removed from the
15 jurisdiction of the court, or otherwise made
16 unavailable for forfeiture; and

17 (ii) the need to preserve the availability of
18 the property through the entry of the requested
19 order outweighs the hardship on any party against
20 whom the order is to be entered.

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

26 (2) A temporary restraining order under this

1 subsection may be entered upon application of the State
2 without notice or opportunity for a hearing when an
3 indictment, information, complaint, or administrative
4 notice has not yet been filed with respect to the property,
5 if the State demonstrates that there is probable cause to
6 believe that the property with respect to which the order
7 is sought would be subject to forfeiture under this Section
8 and that provision of notice will jeopardize the
9 availability of the property for forfeiture. Such a
10 temporary order shall expire not more than 30 days after
11 the date on which it is entered, unless extended for good
12 cause shown or unless the party against whom it is entered
13 consents to an extension for a longer period. A hearing
14 requested concerning an order entered under this paragraph
15 shall be held at the earliest possible time and prior to
16 the expiration of the temporary order.

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

21 (4) Order to repatriate and deposit.

22 (A) In general. Pursuant to its authority to enter
23 a pretrial restraining order under this Section, the
24 court may order a defendant to repatriate any property
25 that may be seized and forfeited and to deposit that
26 property pending trial with the Illinois State Police

1 or another law enforcement agency designated by the
2 Illinois State Police.

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

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

13 (h) Forfeiture.

14 (1) The following are subject to forfeiture:

15 (A) any property, real or personal, constituting,
16 derived from, or traceable to any proceeds the person
17 obtained directly or indirectly, as a result of a
18 violation of this Article;

19 (B) any of the person's property used, or intended
20 to be used, in any manner or part, to commit, or to
21 facilitate the commission of, a violation of this
22 Article;

23 (C) all conveyances, including aircraft, vehicles
24 or vessels, which are used, or intended for use, to
25 transport, or in any manner to facilitate the
26 transportation, sale, receipt, possession, or

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

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

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

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

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

1 this Article.

2 (2) Property subject to forfeiture under this Article
3 may be seized by the Director or any peace officer upon
4 process or seizure warrant issued by any court having
5 jurisdiction over the property. Seizure by the Director or
6 any peace officer without process may be made:

7 (A) if the seizure is incident to a seizure
8 warrant;

9 (B) if the property subject to seizure has been the
10 subject of a prior judgment in favor of the State in a
11 criminal proceeding, or in an injunction or forfeiture
12 proceeding based upon this Article;

13 (C) if there is probable cause to believe that the
14 property is directly or indirectly dangerous to health
15 or safety;

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

20 (E) in accordance with the Code of Criminal
21 Procedure of 1963.

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

25 (4) Property taken or detained under this Section shall
26 not be subject to replevin, but is deemed to be in the

1 custody of the Director subject only to the order and
2 judgments of the circuit court having jurisdiction over the
3 forfeiture proceedings and the decisions of the State's
4 Attorney under this Article. When property is seized under
5 this Article, the seizing agency shall promptly conduct an
6 inventory of the seized property and estimate the
7 property's value and shall forward a copy of the inventory
8 of seized property and the estimate of the property's value
9 to the Director. Upon receiving notice of seizure, the
10 Director may:

11 (A) place the property under seal;

12 (B) remove the property to a place designated by
13 the Director;

14 (C) keep the property in the possession of the
15 seizing agency;

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

20 (E) place the property under constructive seizure
21 by posting notice of pending forfeiture on it, by
22 giving notice of pending forfeiture to its owners and
23 interest holders, or by filing notice of pending
24 forfeiture in any appropriate public record relating
25 to the property; or

26 (F) provide for another agency or custodian,

1 including an owner, secured party, or lienholder, to
2 take custody of the property upon the terms and
3 conditions set by the Director.

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

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

24 (A) 65% shall be distributed to the metropolitan
25 enforcement group, local, municipal, county, or State
26 law enforcement agency or agencies which conducted or

1 participated in the investigation resulting in the
2 forfeiture. The distribution shall bear a reasonable
3 relationship to the degree of direct participation of
4 the law enforcement agency in the effort resulting in
5 the forfeiture, taking into account the total value of
6 the property forfeited and the total law enforcement
7 effort with respect to the violation of the law upon
8 which the forfeiture is based. Amounts distributed to
9 the agency or agencies shall be used for the
10 enforcement of laws.

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

23 (ii) 12.5% shall be distributed to the Office
24 of the State's Attorneys Appellate Prosecutor and
25 deposited in the Narcotics Profit Forfeiture Fund
26 of that office to be used for additional expenses

1 incurred in the investigation, prosecution and
2 appeal of cases arising under laws. The Office of
3 the State's Attorneys Appellate Prosecutor shall
4 not receive distribution from cases brought in
5 counties with over 3,000,000 population.

6 (C) 10% shall be retained by the Department of
7 State Police for expenses related to the
8 administration and sale of seized and forfeited
9 property.

10 (i) Notice to owner or interest holder.

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

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

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

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

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

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

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

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

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

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

25 (2) The notice of pending forfeiture must include a
26 description of the property, the estimated value of the

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

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

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

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

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

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

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

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

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

3 (viii) the relief sought.

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

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

1 prosecuting the civil forfeiture to be applied to the costs
2 of prosecution and the clerk shall retain as costs 10% of
3 the sum deposited.

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

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

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

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

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

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

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

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

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

26 (C) the nature and extent of the claimant's

1 interest in the property;

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

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

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

9 (G) the precise relief sought.

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

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

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

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

25 (9) A defendant convicted in any criminal proceeding is
26 precluded from later denying the essential allegations of

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

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

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

24 (12) A civil action under this Article must be
25 commenced within 5 years after the last conduct giving rise
26 to forfeiture became known or should have become known or 5

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

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

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

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

25 (p) Construction. It is the intent of the General Assembly
26 that the forfeiture provisions of this Article be liberally

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

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

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

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

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

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