

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 1. Short title. This Act may be cited as the Public  
5 Corruption Profit Forfeiture Act.

6 Section 5. Legislative declaration. Public corruption is a  
7 far-reaching, continuing and extremely profitable criminal  
8 enterprise, which diverts significant amounts of public money  
9 for illicit purposes. Public corruption-related schemes  
10 persist despite the threat of prosecution and the actual  
11 prosecution and imprisonment of individual participants  
12 because existing sanctions do not effectively reach the money  
13 and other assets generated by such schemes. It is therefore  
14 necessary to supplement existing sanctions by mandating  
15 forfeiture of money and other assets generated by public  
16 corruption-related activities. Forfeiture diminishes the  
17 financial incentives which encourage and sustain public  
18 corruption, restores public moneys which have been diverted by  
19 public corruption, and secures for the People of the State of  
20 Illinois assets to be used for enforcement of laws governing  
21 public corruption.

22 Section 10. Penalties.

1 (a) A person who is convicted of a violation of any of the  
2 following Sections, subsections, and clauses of the Criminal  
3 Code of 1961:

4 (1) clause (a)(6) of Section 12-6 (intimidation by a  
5 public official),

6 (2) Section 33-1 (bribery), or

7 (3) subsection (a) of Section 33E-7 (kickbacks),

8 shall forfeit to the State of Illinois:

9 (A) any profits or proceeds and any property or  
10 property interest he or she has acquired or maintained in  
11 violation of any of the offenses listed in clauses (1)  
12 through (3) of this subsection (a) that the court  
13 determines, after a forfeiture hearing under subsection  
14 (b) of this Section, to have been acquired or maintained as  
15 a result of violating any of the offenses listed in clauses  
16 (1) through (3) of this subsection (a); and

17 (B) any interest in, security of, claim against, or  
18 property or contractual right of any kind affording a  
19 source of influence over, any enterprise which he or she  
20 has established, operated, controlled, conducted, or  
21 participated in the conduct of, in violation of any of the  
22 offenses listed in clauses (1) through (3) of this  
23 subsection (a) that the court determines, after a  
24 forfeiture hearing under subsection (b) of this Section, to  
25 have been acquired or maintained as a result of violating  
26 any of the offenses listed in clauses (1) through (3) of

1           this subsection (a) or used to facilitate a violation of  
2           one of the offenses listed in clauses (1) through (3) of  
3           this subsection (a).

4           (b) The court shall, upon petition by the Attorney General  
5           or State's Attorney, at any time after the filing of an  
6           information or return of an indictment, conduct a hearing to  
7           determine whether any property or property interest is subject  
8           to forfeiture under this Act. At the forfeiture hearing the  
9           people shall have the burden of establishing, by a  
10          preponderance of the evidence, that property or property  
11          interests are subject to forfeiture under this Act. There is a  
12          rebuttable presumption at such hearing that any property or  
13          property interest of a person charged by information or  
14          indictment with a violation of any of the offenses listed in  
15          clauses (1) through (3) of subsection (a) of this Section or  
16          who is convicted of a violation of any of the offenses listed  
17          in clauses (1) through (3) of subsection (a) of this Section is  
18          subject to forfeiture under this Section if the State  
19          establishes by a preponderance of the evidence that:

20               (1) such property or property interest was acquired by  
21               such person during the period of the violation of any of  
22               the offenses listed in clauses (1) through (3) of  
23               subsection (a) of this Section or within a reasonable time  
24               after such period; and

25               (2) there was no likely source for such property or  
26               property interest other than the violation of any of the

1 offenses listed in clauses (1) through (3) of subsection  
2 (a) of this Section.

3 (c) In an action brought by the People of the State of  
4 Illinois under this Act, wherein any restraining order,  
5 injunction or prohibition or any other action in connection  
6 with any property or property interest subject to forfeiture  
7 under this Act is sought, the circuit court which shall preside  
8 over the trial of the person or persons charged with any of the  
9 offenses listed in clauses (1) through (3) of subsection (a) of  
10 this Section shall first determine whether there is probable  
11 cause to believe that the person or persons so charged have  
12 committed a violation of any of the offenses listed in clauses  
13 (1) through (3) of subsection (a) of this Section and whether  
14 the property or property interest is subject to forfeiture  
15 pursuant to this Act.

16 In order to make such a determination, prior to entering  
17 any such order, the court shall conduct a hearing without a  
18 jury, wherein the People shall establish that there is: (i)  
19 probable cause that the person or persons so charged have  
20 committed one of the offenses listed in clauses (1) through (3)  
21 of subsection (a) of this Section and (ii) probable cause that  
22 any property or property interest may be subject to forfeiture  
23 pursuant to this Act. Such hearing may be conducted  
24 simultaneously with a preliminary hearing, if the prosecution  
25 is commenced by information or complaint, or by motion of the  
26 People, at any stage in the proceedings. The court may accept a

1 finding of probable cause at a preliminary hearing following  
2 the filing of a charge for violating one of the offenses listed  
3 in clauses (1) through (3) of subsection (a) of this Section or  
4 the return of an indictment by a grand jury charging one of the  
5 offenses listed in clauses (1) through (3) of subsection (a) of  
6 this Section as sufficient evidence of probable cause as  
7 provided in item (i) above.

8 Upon such a finding, the circuit court shall enter such  
9 restraining order, injunction or prohibition, or shall take  
10 such other action in connection with any such property or  
11 property interest subject to forfeiture under this Act, as is  
12 necessary to insure that such property is not removed from the  
13 jurisdiction of the court, concealed, destroyed or otherwise  
14 disposed of by the owner of that property or property interest  
15 prior to a forfeiture hearing under subsection (b) of this  
16 Section. The Attorney General or State's Attorney shall file a  
17 certified copy of such restraining order, injunction or other  
18 prohibition with the recorder of deeds or registrar of titles  
19 of each county where any such property of the defendant may be  
20 located. No such injunction, restraining order or other  
21 prohibition shall affect the rights of any bona fide purchaser,  
22 mortgagee, judgment creditor or other lien holder arising prior  
23 to the date of such filing.

24 The court may, at any time, upon verified petition by the  
25 defendant, conduct a hearing to release all or portions of any  
26 such property or interest which the court previously determined

1 to be subject to forfeiture or subject to any restraining  
2 order, injunction, or prohibition or other action. The court  
3 may release such property to the defendant for good cause shown  
4 and within the sound discretion of the court.

5 (d) Prosecution under this Act may be commenced by the  
6 Attorney General or a State's Attorney.

7 (e) Upon an order of forfeiture being entered pursuant to  
8 subsection (b) of this Section, the court shall authorize the  
9 Attorney General to seize any property or property interest  
10 declared forfeited under this Act and under such terms and  
11 conditions as the court shall deem proper. Any property or  
12 property interest that has been the subject of an entered  
13 restraining order, injunction or prohibition or any other  
14 action filed under subsection (c) shall be forfeited unless the  
15 claimant can show by a preponderance of the evidence that the  
16 property or property interest has not been acquired or  
17 maintained as a result of a violation of any of the offenses  
18 listed in clauses (1) through (3) of subsection (a) of this  
19 Section or has not been used to facilitate a violation of any  
20 of the offenses listed in clauses (1) through (3) of subsection  
21 (a) of this Section.

22 (f) The Attorney General or his or her designee is  
23 authorized to sell all property forfeited and seized pursuant  
24 to this Act, unless such property is required by law to be  
25 destroyed or is harmful to the public, and, after the deduction  
26 of all requisite expenses of administration and sale, shall

1 distribute the proceeds of such sale, along with any moneys  
2 forfeited or seized, in accordance with subsection (g).

3 (g) All monies and the sale proceeds of all other property  
4 forfeited and seized pursuant to this Act shall be distributed  
5 as follows:

6 (1) An amount equal to 50% shall be distributed to the  
7 unit of local government or other law enforcement agency  
8 whose officers or employees conducted the investigation  
9 into a violation of any of the offenses listed in clauses  
10 (1) through (3) of subsection (a) of this Section and  
11 caused the arrest or arrests and prosecution leading to the  
12 forfeiture. Amounts distributed to units of local  
13 government and law enforcement agencies shall be used for  
14 enforcement of laws governing public corruption, or for  
15 other law enforcement purposes. In the event, however, that  
16 the investigation, arrest or arrests and prosecution  
17 leading to the forfeiture were undertaken solely by a State  
18 agency, the portion provided hereunder shall be paid into  
19 the State Asset Forfeiture Fund in the State treasury to be  
20 used by that State agency in accordance with law.

21 (2) An amount equal to 12.5% shall be distributed to  
22 the county in which the prosecution resulting in the  
23 forfeiture was instituted, deposited in a special fund in  
24 the county treasury and appropriated to the State's  
25 Attorney for use in accordance with law. If the prosecution  
26 was conducted by the Attorney General, then the amount

1 provided under this subsection shall be paid into the State  
2 Asset Forfeiture Fund in the State treasury to be used by  
3 the Attorney General in accordance with law.

4 (3) An amount equal to 12.5% shall be distributed to  
5 the Office of the State's Attorneys Appellate Prosecutor  
6 and deposited in the State Asset Forfeiture Fund, to be  
7 used by the Office of the State's Attorneys Appellate  
8 Prosecutor for additional expenses incurred in prosecuting  
9 appeals arising under this Act. Any amounts remaining in  
10 the Fund after all additional expenses have been paid shall  
11 be used by the Office to reduce the participating county  
12 contributions to the Office on a prorated basis as  
13 determined by the board of governors of the Office of the  
14 State's Attorneys Appellate Prosecutor based on the  
15 populations of the participating counties. If the appeal is  
16 to be conducted by the Attorney General, then the amount  
17 provided under this subsection shall be paid into the State  
18 Asset Forfeiture Fund in the State treasury to be used by  
19 the Attorney General in accordance with law.

20 (4) An amount equal to 25% shall be paid into the State  
21 Asset Forfeiture Fund in the State treasury to be used by  
22 the Department of State Police for the funding of the  
23 investigation of public corruption activities. Any amounts  
24 remaining in the Fund after full funding of such  
25 investigations shall be used by the Department in  
26 accordance with law to fund its other enforcement

1 activities.

2 (h) All monies deposited pursuant to this Act in the State  
3 Asset Forfeiture Fund are appropriated, on a continuing basis,  
4 to the Department of State Police to be used in the manner set  
5 forth in this Section.

6 Section 15. Forfeiture of political contribution. Whenever  
7 any person pleads guilty to, or is found guilty of, any offense  
8 under subsection (a) of Section 10 of this Act, or is convicted  
9 of a violation of any of the following Sections of Title 18 of  
10 the United States Code: (i) Section 872 (extortion); (ii)  
11 Section 880 (receiving the proceeds of extortion); (iii)  
12 Section 201 (bribery); or (iv) Section 874 (kickbacks), in  
13 addition to any other penalty imposed by the court, all  
14 contributions (as defined by Section 9-1.4 of the Election  
15 Code) or other receipts held at the time of forfeiture by a  
16 political committee (as defined by Section 9-1.8 of the  
17 Election Code), which is controlled by that person, shall be  
18 paid to the State within 30 days from the date of the entry of  
19 the guilty plea or conviction. Payments received by the State  
20 pursuant to this Section shall be deposited into the General  
21 Revenue Fund.

22 Section 20. Fines.

23 (a) Whenever any person pleads guilty to or is found guilty  
24 of an offense under this Act, a fine may be levied in addition

1 to any other penalty imposed by the court.

2 (b) In determining whether to impose a fine under this  
3 Section and the amount, time for payment, and method of payment  
4 of any fine so imposed, the court shall:

5 (1) consider the defendant's income, regardless of  
6 source, the defendant's earning capacity, and the  
7 defendant's financial resources, as well as the nature of  
8 the burden the fine will impose on the defendant and any  
9 person legally or financially dependent upon the  
10 defendant;

11 (2) consider the proof received at trial, or as a  
12 result of a plea of guilty, concerning any profits or other  
13 proceeds derived by the defendant from the violation of  
14 this Act;

15 (3) take into account any other pertinent equitable  
16 considerations; and

17 (4) give primary consideration to the need to deprive  
18 the defendant of illegally obtained profits or other  
19 proceeds from the offense.

20 (c) As a condition of a fine, the court may require that  
21 payment be made in specified installments or within a specified  
22 period of time, but such period shall not be greater than the  
23 maximum applicable term of probation or imprisonment,  
24 whichever is greater. Unless otherwise specified, payment of a  
25 fine shall be due immediately.

26 (d) If a fine for a violation of this Act is imposed on an

1 organization, it is the duty of each individual authorized to  
2 make disbursements of the assets of the organization to pay the  
3 fine from assets of the organization.

4 (e) (1) A defendant who has been sentenced to pay a fine,  
5 and who has paid part but not all of such fine, may petition  
6 the court for an extension of the time for payment or  
7 modification of the method of payment.

8 (2) The court may grant a petition made pursuant to  
9 this subsection if it finds that:

10 (i) the circumstances that warranted payment by  
11 the time or method specified no longer exist; or

12 (ii) it is otherwise unjust to require payment of  
13 the fine by the time or method specified.

14 Section 25. Distribution of proceeds of fines.

15 (a) The proceeds of all fines received under the provisions  
16 of this Act shall be transmitted to and deposited in the  
17 treasurer's office at the level of government as follows:

18 (1) If the seizure was made by a combination of law  
19 enforcement personnel representing differing units of  
20 local government, the court levying the fine shall  
21 equitably allocate 50% of the fine among these units of  
22 local government and shall allocate 50% to the county  
23 general corporate fund. In the event that the seizure was  
24 made by law enforcement personnel representing a unit of  
25 local government from a municipality where the number of

1           inhabitants exceeds 2 million, the court levying the fine  
2           shall allocate 100% of the fine to that unit of local  
3           government. If the seizure was made by a combination of law  
4           enforcement personnel representing differing units of  
5           local government, and at least one of those units  
6           represents a municipality where the number of inhabitants  
7           exceeds 2 million, the court shall equitably allocate 100%  
8           of the proceeds of the fines received among the differing  
9           units of local government.

10           (2) If such seizure was made by State law enforcement  
11           personnel, then the court shall allocate 50% to the State  
12           treasury and 50% to the county general corporate fund.

13           (3) If a State law enforcement agency in combination  
14           with a law enforcement agency or agencies of a unit or  
15           units of local government conducted the seizure, the court  
16           shall equitably allocate 50% of the fines to or among the  
17           law enforcement agency or agencies of the unit or units of  
18           local government which conducted the seizure and shall  
19           allocate 50% to the county general corporate fund.

20           (b) The proceeds of all fines allocated to the law  
21           enforcement agency or agencies of the unit or units of local  
22           government pursuant to subsection (a) shall be made available  
23           to that law enforcement agency as expendable receipts for use  
24           in the enforcement of laws regulating public corruption and  
25           other laws. The proceeds of fines awarded to the State treasury  
26           shall be deposited in the State Asset Forfeiture Fund. Monies

1 from this Fund may be used by the Department of State Police in  
2 the enforcement of laws regulating public corruption and other  
3 laws; and all other monies shall be paid into the General  
4 Revenue Fund in the State treasury.

5 Section 30. Preventing and restraining violations.

6 (a) The circuit courts of the State shall have jurisdiction  
7 to prevent and restrain violations of this Act by issuing  
8 appropriate orders, including, but not limited to: ordering any  
9 person to divest himself of any interest, direct or indirect,  
10 in any enterprise; imposing reasonable restrictions on the  
11 future activities or investment of any person, including, but  
12 not limited to, prohibiting any person from engaging in the  
13 same type of endeavor as the enterprise engaged in, the  
14 activities of which affect business in the State of Illinois;  
15 or ordering dissolution or reorganization of any enterprise,  
16 making due provision for the rights of innocent persons.

17 (b) The Attorney General or the State's Attorney may  
18 institute proceedings under this Section. In any action brought  
19 by the State of Illinois under this Section, the court shall  
20 proceed as soon as practicable to the hearing and determination  
21 thereof. Pending that determination, the court may at any time  
22 enter such temporary restraining orders, preliminary or  
23 permanent injunctions, or prohibitions, or take such other  
24 actions including the acceptance of satisfactory performance  
25 bonds by a defendant, as it shall deem proper.

1           (c) Any person directly injured in his business, person or  
2 property by reason of a violation of this Act may sue the  
3 violator therefor in any appropriate circuit court and shall  
4 recover threefold the damages he or she sustains and the cost  
5 of the action, including a reasonable attorney's fee.

6           (d) A final judgment entered in favor of the People of the  
7 State of Illinois in any criminal proceeding brought under this  
8 Act shall estop the defendant in the criminal case from denying  
9 the essential allegations of the criminal offense in any  
10 subsequent civil proceeding brought under this Act.

11           Section 35. Venue. Any civil action or proceeding under  
12 this Act against any person may be instituted in the circuit  
13 court for any county in which such person resides, is found,  
14 has an agent, transacts his or her affairs, or in which  
15 property that is the subject of these proceedings is located.

16           Section 40. Intent. It is the intent of the General  
17 Assembly that this Act be liberally construed so as to effect  
18 the purposes of this Act and be construed in accordance with  
19 similar provisions contained in the Narcotics Profit  
20 Forfeiture Act.

21           Section 45. Severability. If any provision of this Act or  
22 the application thereof to any person or circumstance is  
23 invalid, such invalidation shall not affect other provisions or

1 applications of the Act which can be given effect without the  
2 invalid provision or application, and to this end the  
3 provisions of this Act are declared to be severable.

4 Section 50. The Election Code is amended by changing  
5 Section 9-8.10 as follows:

6 (10 ILCS 5/9-8.10)

7 Sec. 9-8.10. Use of political committee and other reporting  
8 organization funds.

9 (a) A political committee, ~~or organization subject to~~  
10 ~~Section 9-7.5,~~ shall not make expenditures:

11 (1) In violation of any law of the United States or of  
12 this State.

13 (2) Clearly in excess of the fair market value of the  
14 services, materials, facilities, or other things of value  
15 received in exchange.

16 (3) For satisfaction or repayment of any debts other  
17 than loans made to the committee or to the public official  
18 or candidate on behalf of the committee or repayment of  
19 goods and services purchased by the committee under a  
20 credit agreement. Nothing in this Section authorizes the  
21 use of campaign funds to repay personal loans. The  
22 repayments shall be made by check written to the person who  
23 made the loan or credit agreement. The terms and conditions  
24 of any loan or credit agreement to a committee shall be set

1       forth in a written agreement, including but not limited to  
2       the method and amount of repayment, that shall be executed  
3       by the chairman or treasurer of the committee at the time  
4       of the loan or credit agreement. The loan or agreement  
5       shall also set forth the rate of interest for the loan, if  
6       any, which may not substantially exceed the prevailing  
7       market interest rate at the time the agreement is executed.

8           (4) For the satisfaction or repayment of any debts or  
9       for the payment of any expenses relating to a personal  
10      residence. Campaign funds may not be used as collateral for  
11      home mortgages.

12          (5) For clothing or personal laundry expenses, except  
13      clothing items rented by the public official or candidate  
14      for his or her own use exclusively for a specific  
15      campaign-related event, provided that committees may  
16      purchase costumes, novelty items, or other accessories  
17      worn primarily to advertise the candidacy.

18          (6) For the travel expenses of any person unless the  
19      travel is necessary for fulfillment of political,  
20      governmental, or public policy duties, activities, or  
21      purposes.

22          (7) For membership or club dues charged by  
23      organizations, clubs, or facilities that are primarily  
24      engaged in providing health, exercise, or recreational  
25      services; provided, however, that funds received under  
26      this Article may be used to rent the clubs or facilities

1 for a specific campaign-related event.

2 (8) In payment for anything of value or for  
3 reimbursement of any expenditure for which any person has  
4 been reimbursed by the State or any person. For purposes of  
5 this item (8), a per diem allowance is not a reimbursement.

6 (9) For the purchase of or installment payment for a  
7 motor vehicle unless the political committee can  
8 demonstrate that purchase of a motor vehicle is more  
9 cost-effective than leasing a motor vehicle as permitted  
10 under this item (9). A political committee may lease or  
11 purchase and insure, maintain, and repair a motor vehicle  
12 if the vehicle will be used primarily for campaign purposes  
13 or for the performance of governmental duties. A committee  
14 shall not make expenditures for use of the vehicle for  
15 non-campaign or non-governmental purposes. Persons using  
16 vehicles not purchased or leased by a political committee  
17 may be reimbursed for actual mileage for the use of the  
18 vehicle for campaign purposes or for the performance of  
19 governmental duties. The mileage reimbursements shall be  
20 made at a rate not to exceed the standard mileage rate  
21 method for computation of business expenses under the  
22 Internal Revenue Code.

23 (10) Directly for an individual's tuition or other  
24 educational expenses, except for governmental or political  
25 purposes directly related to a candidate's or public  
26 official's duties and responsibilities.

1           (11) For payments to a public official or candidate or  
2           his or her family member unless for compensation for  
3           services actually rendered by that person. The provisions  
4           of this item (11) do not apply to expenditures by a  
5           political committee in an aggregate amount not exceeding  
6           the amount of funds reported to and certified by the State  
7           Board or county clerk as available as of June 30, 1998, in  
8           the semi-annual report of contributions and expenditures  
9           filed by the political committee for the period concluding  
10          June 30, 1998.

11          (b) The Board shall have the authority to investigate, upon  
12          receipt of a verified complaint, violations of the provisions  
13          of this Section. The Board may levy a fine on any person who  
14          knowingly makes expenditures in violation of this Section and  
15          on any person who knowingly makes a malicious and false  
16          accusation of a violation of this Section. The Board may act  
17          under this subsection only upon the affirmative vote of at  
18          least 5 of its members. The fine shall not exceed \$500 for each  
19          expenditure of \$500 or less and shall not exceed the amount of  
20          the expenditure plus \$500 for each expenditure greater than  
21          \$500. The Board shall also have the authority to render rulings  
22          and issue opinions relating to compliance with this Section.

23          (c) Nothing in this Section prohibits the expenditure of  
24          funds of ~~(i)~~ a political committee controlled by an  
25          officeholder or by a candidate ~~or (ii) an organization subject~~  
26          ~~to Section 9-7.5~~ to defray the customary and reasonable

1 expenses of an officeholder in connection with the performance  
2 of governmental and public service functions.

3 (d) Nothing in this Section prohibits the funds of a  
4 political committee which is controlled by a person convicted  
5 of a violation of any of the offenses listed in subsection (a)  
6 of Section 10 of the Public Corruption Profit Forfeiture Act  
7 from being forfeited to the State under Section 15 of the  
8 Public Corruption Profit Forfeiture Act.

9 (Source: P.A. 93-615, eff. 11-19-03; 93-685, eff. 7-8-04.)

10 Section 99. Effective date. This Act takes effect January  
11 1, 2011.