



Rep. Constance A. Howard

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LRB097 03727 RLC 53801 a

1 AMENDMENT TO HOUSE BILL 908

2 AMENDMENT NO. _____. Amend House Bill 908 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Drug Asset Forfeiture Procedure Act is
5 amended by changing Sections 4 and 9 and by adding Sections 5.1
6 and 5.2 as follows:

7 (725 ILCS 150/4) (from Ch. 56 1/2, par. 1674)

8 Sec. 4. Notice to Owner or Interest Holder.

9 (A) Whenever notice of pending forfeiture or service of an
10 in rem complaint is required under the provisions of this Act,
11 such notice or service shall be given as follows:

12 (1) If the owner's or interest holder's name and
13 current address are known, then by either personal service
14 or mailing a copy of the notice by certified mail, return
15 receipt requested, to that address. For purposes of notice
16 under this Section, if a person has been arrested for the

1 conduct giving rise to the forfeiture, then the address
2 provided to the arresting agency at the time of arrest
3 shall be deemed to be that person's known address.
4 Provided, however, if an owner or interest holder's address
5 changes prior to the effective date of the notice of
6 pending forfeiture, the owner or interest holder shall
7 promptly notify the seizing agency of the change in address
8 or, if the owner or interest holder's address changes
9 subsequent to the effective date of the notice of pending
10 forfeiture, the owner or interest holder shall promptly
11 notify the State's Attorney of the change in address. A
12 good faith effort shall be made to provide notice at their
13 institutional location to any owners or interest holders
14 who are known to be incarcerated at the time when notice is
15 required to be given under this Section; or

16 (2) If the property seized is a conveyance, to the
17 address reflected in the office of the agency or official
18 in which title or interest to the conveyance is required by
19 law to be recorded, then by mailing a copy of the notice by
20 certified mail, return receipt requested, to that address;
21 or

22 (3) If the owner's or interest holder's address is not
23 known, and is not on record as provided in paragraph (2),
24 then by publication for 3 successive weeks in a newspaper
25 of general circulation in the county in which the seizure
26 occurred.

1 (B) Notice served under this Act is effective upon personal
2 service, the last date of publication, or the mailing of
3 written notice, whichever is earlier.

4 (Source: P.A. 86-1382; 87-614.)

5 (725 ILCS 150/5.1 new)

6 Sec. 5.1. Notice; Right to a Preliminary Hearing. Within
7 72 hours of a seizure of personal property under the Illinois
8 Controlled Substances Act, the Cannabis Control Act, or the
9 Methamphetamine Control and Community Protection Act, the
10 seizing agency shall provide the owner or interest holder of
11 the property notice in accordance with this Section and in the
12 manner provided by Section 4 of this Act. For purposes of this
13 Section and Section 5.2, the owner or interest holder of the
14 personal property shall be referred to as claimant. Such notice
15 shall state that the seized property is subject to forfeiture.
16 The notice shall give a description of the property, the
17 estimated value of the property, the date and place of seizure,
18 the conduct giving rise to forfeiture or the violation of law
19 alleged, and a summary of procedures and procedural rights
20 applicable to the forfeiture action. Such notice shall state
21 that the claimant has a right to a preliminary adversarial
22 hearing to determine whether there is probable cause that such
23 property is subject to forfeiture. The claimant shall be given
24 15 business days from the receipt of the notice to request a
25 preliminary adversarial hearing by checking a box that is to be

1 provided upon the face of the notice and returning the notice
2 to the State's Attorney for the county in which the seizure has
3 occurred. Upon the timely receipt of notice, the State's
4 Attorney shall provide for an adversarial preliminary hearing
5 in accordance with Section 5.2. If the seizing agency does not
6 provide notice as required under this Section, the property
7 shall be released pending the commencement of the forfeiture
8 hearing under this Act.

9 (725 ILCS 150/5.2 new)

10 Sec. 5.2. Preliminary Forfeiture Review; Remedies.

11 (a) Where a claimant has requested a hearing in accordance
12 with Section 5.1, within 10 business days of the receipt of
13 such request, the State's Attorney shall commence an
14 adversarial hearing in the circuit court of the county in which
15 such personal property has been seized.

16 (b) The court shall review all supporting documentation and
17 take any testimony in order to make a preliminary determination
18 whether there is probable cause to believe that the property at
19 issue is subject to forfeiture. In such hearing, it shall be
20 the burden of the State to show probable cause that the
21 property is subject to forfeiture.

22 (c) A claimant shall have the right and opportunity to
23 cross-examine the State's witnesses and to present evidence in
24 response to the evidence offered by the State in support of
25 probable cause. The claimant shall also have the opportunity to

1 present evidence that he or she is not legally accountable for
2 the conduct giving rise to the forfeiture, did not acquiesce in
3 it, or did not know and could not reasonably have known of the
4 conduct or that the conduct was likely to occur.

5 (d) If the court finds that the State has not met its
6 burden under subsection (b) of this Section, the property shall
7 be released and all fees and costs associated with the storage
8 and seizure of the property shall be vacated.

9 (e) If the court finds that the State has met its burden
10 under subsection (b), the State must show by a preponderance of
11 evidence that its need for the retention of the property
12 outweighs the hardship to the claimant that would result from
13 denying him or her access to or use of the property pending the
14 forfeiture hearing.

15 (f) A claimant shall have the right and opportunity to
16 cross-examine the State's witnesses and to present evidence
17 concerning whether the burden of State's retaining the property
18 pending a forfeiture hearing outweighs the claimant's interest
19 in retaining the property pending the forfeiture hearing.

20 (g) If the court finds the State did not show under
21 subsection (e) that its need to retain the property is greater
22 than the claimant's need to keep the property, the court shall
23 grant the claimant reasonable access to and use of the property
24 pending the commencement of a forfeiture hearing. In such case,
25 the court shall order the property to be restrained by the
26 least restrictive means to protect against disposal, waste, or

1 continued illegal use of such property pending disposition of
2 the forfeiture proceeding. The court may order the owner or
3 interest holder to post a bond or other adequate security.

4 (h) The rules of evidence shall not apply to hearings
5 conducted under this Section.

6 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

7 Sec. 9. Judicial in rem procedures. If property seized
8 under the provisions of the Illinois Controlled Substances Act,
9 the Cannabis Control Act, or the Methamphetamine Control and
10 Community Protection Act is non-real property that exceeds
11 \$20,000 in value excluding the value of any conveyance, or is
12 real property, or a claimant has filed a claim and a cost bond
13 under subsection (C) of Section 6 of this Act, the following
14 judicial in rem procedures shall apply:

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

1 for forfeiture.

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

8 (C) Only an owner of or interest holder in the property may
9 file an answer asserting a claim against the property in the
10 action in rem. For purposes of this Section, the owner or
11 interest holder shall be referred to as claimant.

12 (D) The answer must be signed by the owner or interest
13 holder under penalty of perjury and must set forth:

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

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

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

20 (iv) the date, identity of 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 to
24 have an interest in the property;

25 (vi) the specific provisions of Section 8 of this Act
26 relied on in asserting it is not subject to forfeiture;

1 (vii) all essential facts supporting each assertion;
2 and
3 (viii) the precise relief sought.

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

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

8 (G) The State shall show the property is subject to
9 forfeiture by a preponderance of the evidence ~~existence of~~
10 ~~probable cause for forfeiture of the property~~. If the State
11 shows the property is subject to forfeiture by a preponderance
12 of the evidence ~~probable cause~~, the claimant has the burden of
13 showing by a preponderance of the evidence that the claimant's
14 interest in the property is not subject to forfeiture.

15 (H) If the State does not show the property is subject to
16 forfeiture by a preponderance of the evidence ~~existence of~~
17 ~~probable cause~~ or a claimant has established by a preponderance
18 of evidence that the claimant has an interest that is exempt
19 under Section 8 of this Act, the court shall order the interest
20 in the property returned or conveyed to the claimant and shall
21 order all other property forfeited to the State. If the State
22 does show the property is subject to forfeiture by a
23 preponderance of the evidence ~~existence of probable cause~~ and
24 the claimant does not establish by a preponderance of evidence
25 that the claimant has an interest that is exempt under Section
26 8 of this Act, the court shall order all property forfeited to

1 the State.

2 (I) A defendant convicted in any criminal proceeding is
3 precluded from later denying the essential allegations of the
4 criminal offense of which the defendant was convicted in any
5 proceeding under this Act regardless of the pendency of an
6 appeal from that conviction. However, evidence of the pendency
7 of an appeal is admissible.

8 (J) An acquittal or dismissal in a criminal proceeding
9 shall not preclude civil proceedings under this Act; however,
10 for good cause shown, on a motion by the State's Attorney, the
11 court may stay civil forfeiture proceedings during the criminal
12 trial for a related criminal indictment or information alleging
13 a violation of the Illinois Controlled Substances Act, the
14 Cannabis Control Act, or the Methamphetamine Control and
15 Community Protection Act. Such a stay shall not be available
16 pending an appeal. Property subject to forfeiture under the
17 Illinois Controlled Substances Act, the Cannabis Control Act,
18 or the Methamphetamine Control and Community Protection Act
19 shall not be subject to return or release by a court exercising
20 jurisdiction over a criminal case involving the seizure of such
21 property unless such return or release is consented to by the
22 State's Attorney.

23 (K) All property declared forfeited under this Act vests in
24 this State on the commission of the conduct giving rise to
25 forfeiture together with the proceeds of the property after
26 that time. Any such property or proceeds subsequently

1 transferred to any person remain subject to forfeiture and
2 thereafter shall be ordered forfeited unless the transferee
3 claims and establishes in a hearing under the provisions of
4 this Act that the transferee's interest is exempt under Section
5 8 of this Act.

6 (L) A civil action under this Act must be commenced within
7 5 years after the last conduct giving rise to forfeiture became
8 known or should have become known or 5 years after the
9 forfeitable property is discovered, whichever is later,
10 excluding any time during which either the property or claimant
11 is out of the State or in confinement or during which criminal
12 proceedings relating to the same conduct are in progress.

13 (Source: P.A. 94-556, eff. 9-11-05.)".