

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 adding  
5 Section 36-1.5 as follows:

6 (720 ILCS 5/36-1.5 new)

7 Sec. 36-1.5. Preliminary Review.

8 (a) Within 14 days of the seizure, the State shall seek a  
9 preliminary determination from the circuit court as to whether  
10 there is probable cause that the property may be subject to  
11 forfeiture.

12 (b) The rules of evidence shall not apply to any proceeding  
13 conducted under this Section.

14 (c) The court may conduct the review under subsection (a)  
15 simultaneously with a proceeding pursuant to Section 109-1 of  
16 the Code of Criminal Procedure of 1963 for a related criminal  
17 offense if a prosecution is commenced by information or  
18 complaint.

19 (d) The court may accept a finding of probable cause at a  
20 preliminary hearing following the filing of an information or  
21 complaint charging a related criminal offense or following the  
22 return of indictment by a grand jury charging the related  
23 offense as sufficient evidence of probable cause as required

1 under subsection (a).

2 (e) Upon making a finding of probable cause as required  
3 under this Section, the circuit court shall enter a restraining  
4 order or injunction, or take other appropriate action, as  
5 necessary to ensure that the property is not removed from the  
6 court's jurisdiction and is not concealed, destroyed, or  
7 otherwise disposed of by the property owner or interest holder  
8 before a forfeiture hearing is conducted.

9 Section 10. The Drug Asset Forfeiture Procedure Act is  
10 amended by changing Section 6 and by adding Section 3.5 as  
11 follows:

12 (725 ILCS 150/3.5 new)

13 Sec. 3.5. Preliminary Review.

14 (a) Within 14 days of the seizure, the State shall seek a  
15 preliminary determination from the circuit court as to whether  
16 there is probable cause that the property may be subject to  
17 forfeiture.

18 (b) The rules of evidence shall not apply to any proceeding  
19 conducted under this Section.

20 (c) The court may conduct the review under subsection (a)  
21 simultaneously with a proceeding pursuant to Section 109-1 of  
22 the Code of Criminal Procedure of 1963 for a related criminal  
23 offense if a prosecution is commenced by information or  
24 complaint.

1       (d) The court may accept a finding of probable cause at a  
2 preliminary hearing following the filing of an information or  
3 complaint charging a related criminal offense or following the  
4 return of indictment by a grand jury charging the related  
5 offense as sufficient evidence of probable cause as required  
6 under subsection (a).

7       (e) Upon making a finding of probable cause as required  
8 under this Section, the circuit court shall enter a restraining  
9 order or injunction, or take other appropriate action, as  
10 necessary to ensure that the property is not removed from the  
11 court's jurisdiction and is not concealed, destroyed, or  
12 otherwise disposed of by the property owner or interest holder  
13 before a forfeiture hearing is conducted.

14       (725 ILCS 150/6) (from Ch. 56 1/2, par. 1676)

15       Sec. 6. Non-Judicial Forfeiture. If non-real property that  
16 exceeds \$150,000 ~~\$20,000~~ in value excluding the value of any  
17 conveyance, or if real property is seized under the provisions  
18 of the Illinois Controlled Substances Act, the Cannabis Control  
19 Act, or the Methamphetamine Control and Community Protection  
20 Act, the State's Attorney shall institute judicial in rem  
21 forfeiture proceedings as described in Section 9 of this Act  
22 within 45 days from receipt of notice of seizure from the  
23 seizing agency under Section 5 of this Act. However, if  
24 non-real property that does not exceed \$150,000 ~~\$20,000~~ in  
25 value excluding the value of any conveyance is seized, the

1 following procedure shall be used:

2 (A) If, after review of the facts surrounding the seizure,  
3 the State's Attorney is of the opinion that the seized property  
4 is subject to forfeiture, then within 45 days of the receipt of  
5 notice of seizure from the seizing agency, the State's Attorney  
6 shall cause notice of pending forfeiture to be given to the  
7 owner of the property and all known interest holders of the  
8 property in accordance with Section 4 of this Act.

9 (B) The notice of pending forfeiture must include a  
10 description of the property, the estimated value of the  
11 property, the date and place of seizure, the conduct giving  
12 rise to forfeiture or the violation of law alleged, and a  
13 summary of procedures and procedural rights applicable to the  
14 forfeiture action.

15 (C) (1) Any person claiming an interest in property which  
16 is the subject of notice under subsection (A) of Section 6  
17 of this Act, may, within 45 days after the effective date  
18 of notice as described in Section 4 of this Act, file a  
19 verified claim with the State's Attorney expressing his or  
20 her interest in the property. The claim must set forth:

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

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

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

1 interest in the property;

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

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

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

9 (vii) all essential facts supporting each  
10 assertion; and

11 (viii) the relief sought.

12 (2) If a claimant files the claim and deposits with the  
13 State's Attorney a cost bond, in the form of a cashier's  
14 check payable to the clerk of the court, in the sum of 10  
15 percent of the reasonable value of the property as alleged  
16 by the State's Attorney or the sum of \$100, whichever is  
17 greater, upon condition that, in the case of forfeiture,  
18 the claimant must pay all costs and expenses of forfeiture  
19 proceedings, then the State's Attorney shall institute  
20 judicial in rem forfeiture proceedings and deposit the cost  
21 bond with the clerk of the court as described in Section 9  
22 of this Act within 45 days after receipt of the claim and  
23 cost bond. In lieu of a cost bond, a person claiming  
24 interest in the seized property may file, under penalty of  
25 perjury, an indigency affidavit.

26 (3) If none of the seized property is forfeited in the

1           judicial in rem proceeding, the clerk of the court shall  
2           return to the claimant, unless the court orders otherwise,  
3           90% of the sum which has been deposited and shall retain as  
4           costs 10% of the money deposited. If any of the seized  
5           property is forfeited under the judicial forfeiture  
6           proceeding, the clerk of the court shall transfer 90% of  
7           the sum which has been deposited to the State's Attorney  
8           prosecuting the civil forfeiture to be applied to the costs  
9           of prosecution and the clerk shall retain as costs 10% of  
10          the sum deposited.

11          (D) If no claim is filed or bond given within the 45 day  
12          period as described in subsection (C) of Section 6 of this Act,  
13          the State's Attorney shall declare the property forfeited and  
14          shall promptly notify the owner and all known interest holders  
15          of the property and the Director of the Illinois Department of  
16          State Police of the declaration of forfeiture and the Director  
17          shall dispose of the property in accordance with law.

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