

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, and after taking into account the  
4 respective interests of all known claimants to the property  
5 including the State, the circuit court shall enter a  
6 restraining order or injunction, or take other appropriate  
7 action, as necessary to ensure that the property is not removed  
8 from the court's jurisdiction and is not concealed, destroyed,  
9 or otherwise disposed of by the property owner or interest  
10 holder before a forfeiture hearing is conducted.

11 Section 6. The Cannabis Control Act is amended by changing  
12 Section 12 as follows:

13 (720 ILCS 550/12) (from Ch. 56 1/2, par. 712)

14 Sec. 12. (a) The following are subject to forfeiture:

15 (1) all substances containing cannabis which have been  
16 produced, manufactured, delivered, or possessed in  
17 violation of this Act;

18 (2) all raw materials, products and equipment of any  
19 kind which are produced, delivered, or possessed in  
20 connection with any substance containing cannabis in  
21 violation of this Act;

22 (3) all conveyances, including aircraft, vehicles or  
23 vessels, which are used, or intended for use, to transport,  
24 or in any manner to facilitate the transportation, sale,

1 receipt, possession, or concealment of property described  
2 in paragraph (1) or (2) that constitutes a felony violation  
3 of the Act, but:

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

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

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

18 (4) all money, things of value, books, records, and  
19 research products and materials including formulas,  
20 microfilm, tapes, and data which are used, or intended for  
21 use in a felony violation of this Act;

22 (5) everything of value furnished or intended to be  
23 furnished by any person in exchange for a substance in  
24 violation of this Act, all proceeds traceable to such an  
25 exchange, and all moneys, negotiable instruments, and  
26 securities used, or intended to be used, to commit or in

1 any manner to facilitate any felony violation of this Act;

2 (6) all real property, including any right, title, and  
3 interest including, but not limited to, any leasehold  
4 interest or the beneficial interest to a land trust, in the  
5 whole of any lot or tract of land and any appurtenances or  
6 improvements, that is used or intended to be used to  
7 facilitate the manufacture, distribution, sale, receipt,  
8 or concealment of property described in paragraph (1) or  
9 (2) of this subsection (a) that constitutes a felony  
10 violation of more than 2,000 grams of a substance  
11 containing cannabis or that is the proceeds of any felony  
12 violation of this Act.

13 (b) Property subject to forfeiture under this Act may be  
14 seized by the Director or any peace officer upon process or  
15 seizure warrant issued by any court having jurisdiction over  
16 the property. Seizure by the Director or any peace officer  
17 without process may be made:

18 (1) if the property subject to seizure has been the  
19 subject of a prior judgment in favor of the State in a  
20 criminal proceeding or in an injunction or forfeiture  
21 proceeding based upon this Act or the Drug Asset Forfeiture  
22 Procedure Act;

23 (2) if there is probable cause to believe that the  
24 property is directly or indirectly dangerous to health or  
25 safety;

26 (3) if there is probable cause to believe that the

1 property is subject to forfeiture under this Act and the  
2 property is seized under circumstances in which a  
3 warrantless seizure or arrest would be reasonable; or

4 (4) in accordance with the Code of Criminal Procedure  
5 of 1963.

6 (c) In the event of seizure pursuant to subsection (b),  
7 notice shall be given forthwith to all known interest holders  
8 that forfeiture proceedings, including a preliminary review,  
9 shall be instituted in accordance with the Drug Asset  
10 Forfeiture Procedure Act and such proceedings shall thereafter  
11 be instituted in accordance with that Act. Upon a showing of  
12 good cause, the notice required for a preliminary review under  
13 this Section may be postponed.

14 (c-1) In the event the State's Attorney is of the opinion  
15 that real property is subject to forfeiture under this Act,  
16 forfeiture proceedings shall be instituted in accordance with  
17 the Drug Asset Forfeiture Procedure Act. The exemptions from  
18 forfeiture provisions of Section 8 of the Drug Asset Forfeiture  
19 Procedure Act are applicable.

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

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

5 (1) place the property under seal;

6 (2) remove the property to a place designated by him;

7 (3) keep the property in the possession of the seizing  
8 agency;

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

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

18 (6) provide for another agency or custodian, including  
19 an owner, secured party, or lienholder, to take custody of  
20 the property upon the terms and conditions set by the  
21 Director.

22 (e) No disposition may be made of property under seal until  
23 the time for taking an appeal has elapsed or until all appeals  
24 have been concluded unless a court, upon application therefor,  
25 orders the sale of perishable substances and the deposit of the  
26 proceeds of the sale with the court.

1           (f) When property is forfeited under this Act the Director  
2 shall sell all such property unless such property is required  
3 by law to be destroyed or is harmful to the public, and shall  
4 distribute the proceeds of the sale, together with any moneys  
5 forfeited or seized, in accordance with subsection (g).  
6 However, upon the application of the seizing agency or  
7 prosecutor who was responsible for the investigation, arrest or  
8 arrests and prosecution which lead to the forfeiture, the  
9 Director may return any item of forfeited property to the  
10 seizing agency or prosecutor for official use in the  
11 enforcement of laws relating to cannabis or controlled  
12 substances, if the agency or prosecutor can demonstrate that  
13 the item requested would be useful to the agency or prosecutor  
14 in their enforcement efforts. When any forfeited conveyance,  
15 including an aircraft, vehicle, or vessel, is returned to the  
16 seizing agency or prosecutor, the conveyance may be used  
17 immediately in the enforcement of the criminal laws of this  
18 State. Upon disposal, all proceeds from the sale of the  
19 conveyance must be used for drug enforcement purposes. When any  
20 real property returned to the seizing agency is sold by the  
21 agency or its unit of government, the proceeds of the sale  
22 shall be delivered to the Director and distributed in  
23 accordance with subsection (g).

24           (g) All monies and the sale proceeds of all other property  
25 forfeited and seized under this Act shall be distributed as  
26 follows:

1           (1) 65% shall be distributed to the metropolitan  
2 enforcement group, local, municipal, county, or state law  
3 enforcement agency or agencies which conducted or  
4 participated in the investigation resulting in the  
5 forfeiture. The distribution shall bear a reasonable  
6 relationship to the degree of direct participation of the  
7 law enforcement agency in the effort resulting in the  
8 forfeiture, taking into account the total value of the  
9 property forfeited and the total law enforcement effort  
10 with respect to the violation of the law upon which the  
11 forfeiture is based. Amounts distributed to the agency or  
12 agencies shall be used for the enforcement of laws  
13 governing cannabis and controlled substances or for  
14 security cameras used for the prevention or detection of  
15 violence, except that amounts distributed to the Secretary  
16 of State shall be deposited into the Secretary of State  
17 Evidence Fund to be used as provided in Section 2-115 of  
18 the Illinois Vehicle Code.

19           (2) (i) 12.5% shall be distributed to the Office of the  
20 State's Attorney of the county in which the prosecution  
21 resulting in the forfeiture was instituted, deposited in a  
22 special fund in the county treasury and appropriated to the  
23 State's Attorney for use in the enforcement of laws  
24 governing cannabis and controlled substances. In counties  
25 over 3,000,000 population, 25% will be distributed to the  
26 Office of the State's Attorney for use in the enforcement



1 of laws governing cannabis and controlled substances. If  
2 the prosecution is undertaken solely by the Attorney  
3 General, the portion provided hereunder shall be  
4 distributed to the Attorney General for use in the  
5 enforcement of laws governing cannabis and controlled  
6 substances.

7 (ii) 12.5% shall be distributed to the Office of the  
8 State's Attorneys Appellate Prosecutor and deposited in  
9 the Narcotics Profit Forfeiture Fund of that Office to be  
10 used for additional expenses incurred in the  
11 investigation, prosecution and appeal of cases arising  
12 under laws governing cannabis and controlled substances.  
13 The Office of the State's Attorneys Appellate Prosecutor  
14 shall not receive distribution from cases brought in  
15 counties with over 3,000,000 population.

16 (3) 10% shall be retained by the Department of State  
17 Police for expenses related to the administration and sale  
18 of seized and forfeited property.

19 (Source: P.A. 94-1004, eff. 7-3-06; 95-989, eff. 10-3-08.)

20 Section 7. The Illinois Controlled Substances Act is  
21 amended by changing Section 505 as follows:

22 (720 ILCS 570/505) (from Ch. 56 1/2, par. 1505)

23 Sec. 505. (a) The following are subject to forfeiture:

24 (1) all substances which have been manufactured,

1 distributed, dispensed, or possessed in violation of this  
2 Act;

3 (2) all raw materials, products and equipment of any  
4 kind which are used, or intended for use in manufacturing,  
5 distributing, dispensing, administering or possessing any  
6 substance in violation of this Act;

7 (3) all conveyances, including aircraft, vehicles or  
8 vessels, which are used, or intended for use, to transport,  
9 or in any manner to facilitate the transportation, sale,  
10 receipt, possession, or concealment of property described  
11 in paragraphs (1) and (2), but:

12 (i) no conveyance used by any person as a common  
13 carrier in the transaction of business as a common  
14 carrier is subject to forfeiture under this Section  
15 unless it appears that the owner or other person in  
16 charge of the conveyance is a consenting party or privy  
17 to a violation of this Act;

18 (ii) no conveyance is subject to forfeiture under  
19 this Section by reason of any act or omission which the  
20 owner proves to have been committed or omitted without  
21 his knowledge or consent;

22 (iii) a forfeiture of a conveyance encumbered by a  
23 bona fide security interest is subject to the interest  
24 of the secured party if he neither had knowledge of nor  
25 consented to the act or omission;

26 (4) all money, things of value, books, records, and

1 research products and materials including formulas,  
2 microfilm, tapes, and data which are used, or intended to  
3 be used in violation of this Act;

4 (5) everything of value furnished, or intended to be  
5 furnished, in exchange for a substance in violation of this  
6 Act, all proceeds traceable to such an exchange, and all  
7 moneys, negotiable instruments, and securities used, or  
8 intended to be used, to commit or in any manner to  
9 facilitate any violation of this Act;

10 (6) all real property, including any right, title, and  
11 interest (including, but not limited to, any leasehold  
12 interest or the beneficial interest in a land trust) in the  
13 whole of any lot or tract of land and any appurtenances or  
14 improvements, which is used or intended to be used, in any  
15 manner or part, to commit, or in any manner to facilitate  
16 the commission of, any violation or act that constitutes a  
17 violation of Section 401 or 405 of this Act or that is the  
18 proceeds of any violation or act that constitutes a  
19 violation of Section 401 or 405 of this Act.

20 (b) Property subject to forfeiture under this Act may be  
21 seized by the Director or any peace officer upon process or  
22 seizure warrant issued by any court having jurisdiction over  
23 the property. Seizure by the Director or any peace officer  
24 without process may be made:

25 (1) if the seizure is incident to inspection under an  
26 administrative inspection warrant;

1           (2) if the property subject to seizure has been the  
2           subject of a prior judgment in favor of the State in a  
3           criminal proceeding, or in an injunction or forfeiture  
4           proceeding based upon this Act or the Drug Asset Forfeiture  
5           Procedure Act;

6           (3) if there is probable cause to believe that the  
7           property is directly or indirectly dangerous to health or  
8           safety;

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

13          (5) in accordance with the Code of Criminal Procedure  
14          of 1963.

15          (c) In the event of seizure pursuant to subsection (b),  
16          notice shall be given forthwith to all known interest holders  
17          that forfeiture proceedings, including a preliminary review,  
18          shall be instituted in accordance with the Drug Asset  
19          Forfeiture Procedure Act and such proceedings shall thereafter  
20          be instituted in accordance with that Act. Upon a showing of  
21          good cause, the notice required for a preliminary review under  
22          this Section may be postponed.

23          (d) Property taken or detained under this Section shall not  
24          be subject to replevin, but is deemed to be in the custody of  
25          the Director subject only to the order and judgments of the  
26          circuit court having jurisdiction over the forfeiture

1 proceedings and the decisions of the State's Attorney under the  
2 Drug Asset Forfeiture Procedure Act. When property is seized  
3 under this Act, the seizing agency shall promptly conduct an  
4 inventory of the seized property and estimate the property's  
5 value, and shall forward a copy of the inventory of seized  
6 property and the estimate of the property's value to the  
7 Director. Upon receiving notice of seizure, the Director may:

8 (1) place the property under seal;

9 (2) remove the property to a place designated by the  
10 Director;

11 (3) keep the property in the possession of the seizing  
12 agency;

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

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

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

26 (e) If the Department of Professional Regulation suspends

1 or revokes a registration, all controlled substances owned or  
2 possessed by the registrant at the time of suspension or the  
3 effective date of the revocation order may be placed under  
4 seal. No disposition may be made of substances under seal until  
5 the time for taking an appeal has elapsed or until all appeals  
6 have been concluded unless a court, upon application therefor,  
7 orders the sale of perishable substances and the deposit of the  
8 proceeds of the sale with the court. Upon a revocation rule  
9 becoming final, all substances may be forfeited to the  
10 Department of Professional Regulation.

11 (f) When property is forfeited under this Act the Director  
12 shall sell all such property unless such property is required  
13 by law to be destroyed or is harmful to the public, and shall  
14 distribute the proceeds of the sale, together with any moneys  
15 forfeited or seized, in accordance with subsection (g).  
16 However, upon the application of the seizing agency or  
17 prosecutor who was responsible for the investigation, arrest or  
18 arrests and prosecution which lead to the forfeiture, the  
19 Director may return any item of forfeited property to the  
20 seizing agency or prosecutor for official use in the  
21 enforcement of laws relating to cannabis or controlled  
22 substances, if the agency or prosecutor can demonstrate that  
23 the item requested would be useful to the agency or prosecutor  
24 in their enforcement efforts. When any forfeited conveyance,  
25 including an aircraft, vehicle, or vessel, is returned to the  
26 seizing agency or prosecutor, the conveyance may be used

1 immediately in the enforcement of the criminal laws of this  
2 State. Upon disposal, all proceeds from the sale of the  
3 conveyance must be used for drug enforcement purposes. When any  
4 real property returned to the seizing agency is sold by the  
5 agency or its unit of government, the proceeds of the sale  
6 shall be delivered to the Director and distributed in  
7 accordance with subsection (g).

8 (g) All monies and the sale proceeds of all other property  
9 forfeited and seized under this Act shall be distributed as  
10 follows:

11 (1) 65% shall be distributed to the metropolitan  
12 enforcement group, local, municipal, county, or state law  
13 enforcement agency or agencies which conducted or  
14 participated in the investigation resulting in the  
15 forfeiture. The distribution shall bear a reasonable  
16 relationship to the degree of direct participation of the  
17 law enforcement agency in the effort resulting in the  
18 forfeiture, taking into account the total value of the  
19 property forfeited and the total law enforcement effort  
20 with respect to the violation of the law upon which the  
21 forfeiture is based. Amounts distributed to the agency or  
22 agencies shall be used for the enforcement of laws  
23 governing cannabis and controlled substances or for  
24 security cameras used for the prevention or detection of  
25 violence, except that amounts distributed to the Secretary  
26 of State shall be deposited into the Secretary of State

1 Evidence Fund to be used as provided in Section 2-115 of  
2 the Illinois Vehicle Code.

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

17 (ii) 12.5% shall be distributed to the Office of the  
18 State's Attorneys Appellate Prosecutor and deposited in  
19 the Narcotics Profit Forfeiture Fund of that office to be  
20 used for additional expenses incurred in the  
21 investigation, prosecution and appeal of cases arising  
22 under laws governing cannabis and controlled substances.  
23 The Office of the State's Attorneys Appellate Prosecutor  
24 shall not receive distribution from cases brought in  
25 counties with over 3,000,000 population.

26 (3) 10% shall be retained by the Department of State



1 Police for expenses related to the administration and sale  
2 of seized and forfeited property.

3 (h) Species of plants from which controlled substances in  
4 Schedules I and II may be derived which have been planted or  
5 cultivated in violation of this Act, or of which the owners or  
6 cultivators are unknown, or which are wild growths, may be  
7 seized and summarily forfeited to the State. The failure, upon  
8 demand by the Director or any peace officer, of the person in  
9 occupancy or in control of land or premises upon which the  
10 species of plants are growing or being stored, to produce  
11 registration, or proof that he is the holder thereof,  
12 constitutes authority for the seizure and forfeiture of the  
13 plants.

14 (Source: P.A. 94-1004, eff. 7-3-06.)

15 Section 8. The Methamphetamine Control and Community  
16 Protection Act is amended by changing Section 85 as follows:

17 (720 ILCS 646/85)

18 Sec. 85. Forfeiture.

19 (a) The following are subject to forfeiture:

20 (1) all substances containing methamphetamine which  
21 have been produced, manufactured, delivered, or possessed  
22 in violation of this Act;

23 (2) all methamphetamine manufacturing materials which  
24 have been produced, delivered, or possessed in connection

1 with any substance containing methamphetamine in violation  
2 of this Act;

3 (3) all conveyances, including aircraft, vehicles or  
4 vessels, which are used, or intended for use, to transport,  
5 or in any manner to facilitate the transportation, sale,  
6 receipt, possession, or concealment of property described  
7 in paragraph (1) or (2) that constitutes a felony violation  
8 of the Act, but:

9 (i) no conveyance used by any person as a common  
10 carrier in the transaction of business as a common  
11 carrier is subject to forfeiture under this Section  
12 unless it appears that the owner or other person in  
13 charge of the conveyance is a consenting party or privy  
14 to a violation of this Act;

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

19 (iii) a forfeiture of a conveyance encumbered by a  
20 bona fide security interest is subject to the interest  
21 of the secured party if he or she neither had knowledge  
22 of nor consented to the act or omission;

23 (4) all money, things of value, books, records, and  
24 research products and materials including formulas,  
25 microfilm, tapes, and data which are used, or intended for  
26 use in a felony violation of this Act;

1           (5) everything of value furnished or intended to be  
2 furnished by any person in exchange for a substance in  
3 violation of this Act, all proceeds traceable to such an  
4 exchange, and all moneys, negotiable instruments, and  
5 securities used, or intended to be used, to commit or in  
6 any manner to facilitate any felony violation of this Act.

7           (6) all real property, including any right, title, and  
8 interest (including, but not limited to, any leasehold  
9 interest or the beneficial interest in a land trust) in the  
10 whole of any lot or tract of land and any appurtenances or  
11 improvements, which is used, or intended to be used, in any  
12 manner or part, to commit, or in any manner to facilitate  
13 the commission of, any violation or act that constitutes a  
14 violation of this Act or that is the proceeds of any  
15 violation or act that constitutes a violation of this Act.

16           (b) Property subject to forfeiture under this Act may be  
17 seized by the Director or any peace officer upon process or  
18 seizure warrant issued by any court having jurisdiction over  
19 the property. Seizure by the Director or any peace officer  
20 without process may be made:

21           (1) if the property subject to seizure has been the  
22 subject of a prior judgment in favor of the State in a  
23 criminal proceeding or in an injunction or forfeiture  
24 proceeding based upon this Act or the Drug Asset Forfeiture  
25 Procedure Act;

26           (2) if there is probable cause to believe that the

1 property is directly or indirectly dangerous to health or  
2 safety;

3 (3) if there is probable cause to believe that the  
4 property is subject to forfeiture under this Act and the  
5 property is seized under circumstances in which a  
6 warrantless seizure or arrest would be reasonable; or

7 (4) in accordance with the Code of Criminal Procedure  
8 of 1963.

9 (c) In the event of seizure pursuant to subsection (b),  
10 notice shall be given forthwith to all known interest holders  
11 that forfeiture proceedings, including a preliminary review,  
12 shall be instituted in accordance with the Drug Asset  
13 Forfeiture Procedure Act and such proceedings shall thereafter  
14 be instituted in accordance with that Act. Upon a showing of  
15 good cause, the notice required for a preliminary review under  
16 this Section may be postponed.

17 (d) Property taken or detained under this Section is not  
18 subject to replevin, but is deemed to be in the custody of the  
19 Director subject only to the order and judgments of the circuit  
20 court having jurisdiction over the forfeiture proceedings and  
21 the decisions of the State's Attorney under the Drug Asset  
22 Forfeiture Procedure Act. When property is seized under this  
23 Act, the seizing agency shall promptly conduct an inventory of  
24 the seized property, estimate the property's value, and forward  
25 a copy of the inventory of seized property and the estimate of  
26 the property's value to the Director. Upon receiving notice of

1 seizure, the Director may:

2 (1) place the property under seal;

3 (2) remove the property to a place designated by him or  
4 her;

5 (3) keep the property in the possession of the seizing  
6 agency;

7 (4) remove the property to a storage area for  
8 safekeeping or, if the property is a negotiable instrument  
9 or money and is not needed for evidentiary purposes,  
10 deposit it in an interest bearing account;

11 (5) place the property under constructive seizure by  
12 posting notice of pending forfeiture on it, by giving  
13 notice of pending forfeiture to its owners and interest  
14 holders, or by filing notice of pending forfeiture in any  
15 appropriate public record relating to the property; or

16 (6) provide for another agency or custodian, including  
17 an owner, secured party, or lienholder, to take custody of  
18 the property upon the terms and conditions set by the  
19 Director.

20 (e) No disposition may be made of property under seal until  
21 the time for taking an appeal has elapsed or until all appeals  
22 have been concluded unless a court, upon application therefor,  
23 orders the sale of perishable substances and the deposit of the  
24 proceeds of the sale with the court.

25 (f) When property is forfeited under this Act, the Director  
26 shall sell the property unless the property is required by law

1 to be destroyed or is harmful to the public, and shall  
2 distribute the proceeds of the sale, together with any moneys  
3 forfeited or seized, in accordance with subsection (g).  
4 However, upon the application of the seizing agency or  
5 prosecutor who was responsible for the investigation, arrest or  
6 arrests and prosecution which lead to the forfeiture, the  
7 Director may return any item of forfeited property to the  
8 seizing agency or prosecutor for official use in the  
9 enforcement of laws relating to methamphetamine, cannabis, or  
10 controlled substances, if the agency or prosecutor  
11 demonstrates that the item requested would be useful to the  
12 agency or prosecutor in their enforcement efforts. When any  
13 forfeited conveyance, including an aircraft, vehicle, or  
14 vessel, is returned to the seizing agency or prosecutor, the  
15 conveyance may be used immediately in the enforcement of the  
16 criminal laws of this State. Upon disposal, all proceeds from  
17 the sale of the conveyance must be used for drug enforcement  
18 purposes. When any real property returned to the seizing agency  
19 is sold by the agency or its unit of government, the proceeds  
20 of the sale shall be delivered to the Director and distributed  
21 in accordance with subsection (g).

22 (g) All moneys and the sale proceeds of all other property  
23 forfeited and seized under this Act shall be distributed as  
24 follows:

25 (1) 65% shall be distributed to the metropolitan  
26 enforcement group, local, municipal, county, or State law

1 enforcement agency or agencies which conducted or  
2 participated in the investigation resulting in the  
3 forfeiture. The distribution shall bear a reasonable  
4 relationship to the degree of direct participation of the  
5 law enforcement agency in the effort resulting in the  
6 forfeiture, taking into account the total value of the  
7 property forfeited and the total law enforcement effort  
8 with respect to the violation of the law upon which the  
9 forfeiture is based. Amounts distributed to the agency or  
10 agencies shall be used for the enforcement of laws  
11 governing methamphetamine, cannabis, and controlled  
12 substances or for security cameras used for the prevention  
13 or detection of violence, except that amounts distributed  
14 to the Secretary of State shall be deposited into the  
15 Secretary of State Evidence Fund to be used as provided in  
16 Section 2-115 of the Illinois Vehicle Code.

17 (2) (i) 12.5% shall be distributed to the Office of the  
18 State's Attorney of the county in which the prosecution  
19 resulting in the forfeiture was instituted, deposited in a  
20 special fund in the county treasury and appropriated to the  
21 State's Attorney for use in the enforcement of laws  
22 governing methamphetamine, cannabis, and controlled  
23 substances. In counties with a population over 3,000,000,  
24 25% shall be distributed to the Office of the State's  
25 Attorney for use in the enforcement of laws governing  
26 methamphetamine, cannabis, and controlled substances. If

1 the prosecution is undertaken solely by the Attorney  
2 General, the portion provided hereunder shall be  
3 distributed to the Attorney General for use in the  
4 enforcement of laws governing methamphetamine, cannabis,  
5 and controlled substances.

6 (ii) 12.5% shall be distributed to the Office of the  
7 State's Attorneys Appellate Prosecutor and deposited in  
8 the Narcotics Profit Forfeiture Fund of that Office to be  
9 used for additional expenses incurred in the  
10 investigation, prosecution and appeal of cases arising  
11 under laws governing methamphetamine, cannabis, and  
12 controlled substances. The Office of the State's Attorneys  
13 Appellate Prosecutor shall not receive distribution from  
14 cases brought in counties with a population over 3,000,000.

15 (3) 10% shall be retained by the Department of State  
16 Police for expenses related to the administration and sale  
17 of seized and forfeited property.

18 (Source: P.A. 94-556, eff. 9-11-05; 94-1004, eff. 7-3-06.)

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

22 (725 ILCS 150/3.5 new)

23 Sec. 3.5. Preliminary Review.

24 (a) Within 14 days of the seizure, the State shall seek a



1 preliminary determination from the circuit court as to whether  
2 there is probable cause that the property may be subject to  
3 forfeiture.

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

6 (c) The court may conduct the review under subsection (a)  
7 simultaneously with a proceeding pursuant to Section 109-1 of  
8 the Code of Criminal Procedure of 1963 for a related criminal  
9 offense if a prosecution is commenced by information or  
10 complaint.

11 (d) The court may accept a finding of probable cause at a  
12 preliminary hearing following the filing of an information or  
13 complaint charging a related criminal offense or following the  
14 return of indictment by a grand jury charging the related  
15 offense as sufficient evidence of probable cause as required  
16 under subsection (a).

17 (e) Upon making a finding of probable cause as required  
18 under this Section, and after taking into account the  
19 respective interests of all known claimants to the property  
20 including the State, the circuit court shall enter a  
21 restraining order or injunction, or take other appropriate  
22 action, as necessary to ensure that the property is not removed  
23 from the court's jurisdiction and is not concealed, destroyed,  
24 or otherwise disposed of by the property owner or interest  
25 holder before a forfeiture hearing is conducted.

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

2 Sec. 6. Non-Judicial Forfeiture. If non-real property that  
3 exceeds \$150,000 ~~\$20,000~~ in value excluding the value of any  
4 conveyance, or if real property is seized under the provisions  
5 of the Illinois Controlled Substances Act, the Cannabis Control  
6 Act, or the Methamphetamine Control and Community Protection  
7 Act, the State's Attorney shall institute judicial in rem  
8 forfeiture proceedings as described in Section 9 of this Act  
9 within 45 days from receipt of notice of seizure from the  
10 seizing agency under Section 5 of this Act. However, if  
11 non-real property that does not exceed \$150,000 ~~\$20,000~~ in  
12 value excluding the value of any conveyance is seized, the  
13 following procedure shall be used:

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

21 (B) The notice of pending forfeiture must include a  
22 description of the property, the estimated value of the  
23 property, the date and place of seizure, the conduct giving  
24 rise to forfeiture or the violation of law alleged, and a  
25 summary of procedures and procedural rights applicable to the  
26 forfeiture action.

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

7 (i) the caption of the proceedings as set forth on  
8 the notice of pending forfeiture and the name of the  
9 claimant;

10 (ii) the address at which the claimant will accept  
11 mail;

12 (iii) the nature and extent of the claimant's  
13 interest in the property;

14 (iv) the date, identity of the transferor, and  
15 circumstances of the claimant's acquisition of the  
16 interest in the property;

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

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

21 (vii) all essential facts supporting each  
22 assertion; and

23 (viii) the relief sought.

24 (2) If a claimant files the claim and deposits with the  
25 State's Attorney a cost bond, in the form of a cashier's  
26 check payable to the clerk of the court, in the sum of 10

1 percent of the reasonable value of the property as alleged  
2 by the State's Attorney or the sum of \$100, whichever is  
3 greater, upon condition that, in the case of forfeiture,  
4 the claimant must pay all costs and expenses of forfeiture  
5 proceedings, then the State's Attorney shall institute  
6 judicial in rem forfeiture proceedings and deposit the cost  
7 bond with the clerk of the court as described in Section 9  
8 of this Act within 45 days after receipt of the claim and  
9 cost bond. In lieu of a cost bond, a person claiming  
10 interest in the seized property may file, under penalty of  
11 perjury, an indigency affidavit.

12 (3) If none of the seized property is forfeited in the  
13 judicial in rem proceeding, the clerk of the court shall  
14 return to the claimant, unless the court orders otherwise,  
15 90% of the sum which has been deposited and shall retain as  
16 costs 10% of the money deposited. If any of the seized  
17 property is forfeited under the judicial forfeiture  
18 proceeding, the clerk of the court shall transfer 90% of  
19 the sum which has been deposited to the State's Attorney  
20 prosecuting the civil forfeiture to be applied to the costs  
21 of prosecution and the clerk shall retain as costs 10% of  
22 the sum deposited.

23 (D) If no claim is filed or bond given within the 45 day  
24 period as described in subsection (C) of Section 6 of this Act,  
25 the State's Attorney shall declare the property forfeited and  
26 shall promptly notify the owner and all known interest holders

1 of the property and the Director of the Illinois Department of  
2 State Police of the declaration of forfeiture and the Director  
3 shall dispose of the property in accordance with law.

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