



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### HB5767

by Rep. Dennis M. Reboletti - Sandra M. Pihos

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/33G-6  
720 ILCS 5/33G-9

Amends the Criminal Code of 2012. Deletes provision that any violation of the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law is subject to the remedies, procedures, and forfeiture as set forth in the statute concerning money laundering. Provides that the United States, another state, or this State, or any political subdivision, department, agency, or instrumentality of the United States, another state, or this State, or any person subject to a substantially equal involvement defense or the person's estate, injured in his or her person, business, or property by a violation, directly or indirectly, of the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law may sue in any appropriate court and shall recover threefold any damages sustained and the costs of the suit, including a reasonable attorney's fee at the trial and appellate level, and any equitable remedy justice requires, including injunctions, declaratory judgments, divestiture, accounting, or disgorgement. Provides that the court shall order civil or criminal forfeiture of property derived or maintained from a violation of this Law. Provides that the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law is repealed on June 11, 2022 (rather than June 11, 2017).

LRB098 18676 RLC 53819 b

FISCAL NOTE ACT  
MAY APPLY

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 2012 is amended by changing  
5 Sections 33G-6 and 33G-9 as follows:

6 (720 ILCS 5/33G-6)

7 (Section scheduled to be repealed on June 11, 2017)

8 Sec. 33G-6. Remedial proceedings, procedures, and  
9 forfeiture. Under this Article:

10 (a) The circuit court shall have jurisdiction to prevent  
11 and restrain violations of this Article by issuing appropriate  
12 orders, including:

13 (1) ordering any person to disgorge illicit proceeds  
14 obtained by a violation of this Article or divest himself  
15 or herself of any interest, direct or indirect, in any  
16 enterprise or real or personal property of any character,  
17 including money, obtained, directly or indirectly, by a  
18 violation of this Article;

19 (2) imposing reasonable restrictions on the future  
20 activities or investments of any person or enterprise,  
21 including prohibiting any person or enterprise from  
22 engaging in the same type of endeavor as the person or  
23 enterprise engaged in, that violated this Article; or

1           (3) ordering dissolution or reorganization of any  
2           enterprise, making due provision for the rights of innocent  
3           persons.

4           (b) The United States, another state, or this State, or any  
5 political subdivision, department, agency, or instrumentality  
6 of the United States, another state, or this State, or any  
7 person subject to a substantially equal involvement defense or  
8 the person's estate, injured in his or her person, business, or  
9 property by a violation, directly or indirectly, of this  
10 Article, may sue in any appropriate court and shall recover  
11 threefold any damages sustained and the costs of the suit,  
12 including a reasonable attorney's fee at the trial and  
13 appellate level, and any equitable remedy justice requires,  
14 including injunctions, declaratory judgments, divestiture,  
15 accounting, or disgorgement. Pending final determination of  
16 the case, the court may at any time enter any restraining  
17 orders or prohibitions, or take any other actions, including  
18 the acceptance of satisfactory performance bonds, as it shall  
19 deem proper. Satisfactory performance bonds shall not be  
20 required of the United States, another state, or this State, or  
21 any political subdivision, department, agency, or  
22 instrumentality of the United States, another state, or this  
23 State. The existence of a criminal conviction or investigation  
24 for the alleged violation of this Article is not a prerequisite  
25 to any proceeding under this subsection; but a final judgment  
26 entered in favor of the State in any criminal proceeding

1 brought under this Article shall estop the defendant in the  
2 criminal case from denying the material allegations of the  
3 criminal violation in any subsequent civil or administrative  
4 proceeding brought under this Article.

5 (c) Notwithstanding any other provision of law, the court  
6 shall, for any violation of this Article, order criminal or  
7 civil forfeiture, in personam or in rem, jointly and severally,  
8 of any interest or property the person has acquired or  
9 maintained in violation of this Article, or any interest in,  
10 security of, or claim against, or property or contractual right  
11 of any kind affording a source of influence of any degree over,  
12 any enterprise that the person has established, operated,  
13 controlled, conducted, or participated in, in violation of this  
14 Article, and any property constituting, or derived from, any  
15 proceeds, including money, that the person obtained, directly  
16 or indirectly, from predicate activity or unlawful debt  
17 collection in violation of this Article. Any court, in imposing  
18 sentence on the person, shall order, in addition to any other  
19 sentence imposed under this Article, that the person forfeit to  
20 the State all property described in this subsection (c). The  
21 property and interests subject to criminal or civil forfeiture  
22 under this Article include any real property, including things  
23 growing on, affixed to, and found in land, and any tangible and  
24 intangible personal property, including rights, privileges,  
25 interests, claims, and securities. All right, title, and  
26 interest in property described in this Article vests in the

1 State upon the inception of the illicit agreement or commission  
2 of any act otherwise giving rise to forfeiture under this  
3 Article. The court shall further order the criminal or civil  
4 forfeiture of any other property of the defendant up to the  
5 value of the property described in this subsection (c) if, as a  
6 result of any act or omission of the defendant, the property  
7 subject to forfeiture:

8 (1) cannot be located upon the exercise of due  
9 diligence;

10 (2) has been transferred or sold to, or deposited with,  
11 a third party;

12 (3) has been placed beyond the jurisdiction of the  
13 court;

14 (4) has been substantially diminished in value; or

15 (5) has been commingled with other property that cannot  
16 be divided without difficulty.

17 (d) Any property subject to criminal or civil forfeiture  
18 under this Article that is subsequently transferred to a person  
19 other than a defendant may be the subject of a special verdict  
20 of forfeiture and thereafter shall be ordered forfeited to the  
21 State, unless the transferee petitions the court and  
22 establishes in a hearing before the court, without a jury, that  
23 he or she is a bona fide purchaser for value of the property  
24 who at the time of purchase was reasonably without cause to  
25 believe that the property was subject to forfeiture under this  
26 Article. The petition shall be signed by the petitioner under

1 penalty of perjury and shall set forth the nature and extent of  
2 the petitioner's right, title, or interest in the property, the  
3 time and circumstances of the petitioner's acquisition of the  
4 right, title, or interest in the property, any additional facts  
5 supporting the petitioner's claim, and the relief sought. The  
6 hearing on the petition shall, to the extent practicable and  
7 consistent with the interests of justice, be held as soon as  
8 possible after completion of the criminal proceedings, if any,  
9 under this Article. The court may consolidate the hearing on  
10 the petition with a hearing on any other petition filed by a  
11 person other than the defendant under this Article. Following  
12 the court's disposition of all petitions filed under this  
13 Article, or if no petitions are filed then within 90 days of  
14 the completion of criminal or civil proceedings under this  
15 Article, the State shall have clear title to property that is  
16 the subject of the order of forfeiture and may warrant good  
17 title to any subsequent purchaser or transferee. In addition to  
18 testimony and evidence presented at the hearing, the court  
19 shall consider the relevant portions of the record of any  
20 criminal case that resulted in, or relates to, the order of  
21 forfeiture. After the hearing, the court shall amend the order  
22 of forfeiture if the court determines that the petitioner has  
23 established by a preponderance of the evidence that:

24 (1) the petitioner has a legal right, title, or  
25 interest in the property, and the right, title, or interest  
26 renders the order of forfeiture invalid in whole or in part

1 because the right, title, or interest was vested in the  
2 petitioner rather than the defendant or was superior to any  
3 right, title, or interest of the defendant at the time of  
4 the commission of the acts that gave rise to the forfeiture  
5 of the property under this Article; or

6 (2) the petitioner is a bona fide purchaser for value  
7 of the right, title, or interest in the property and was at  
8 the time of purchase reasonably without cause to believe  
9 that the property was subject to forfeiture under this  
10 Article.

11 (e) Upon application of a prosecutor, the court may enter a  
12 restraining order or injunction, require the execution of a  
13 satisfactory performance bond, or take any other action to  
14 preserve the availability of property described in this Section  
15 for forfeiture under this Article:

16 (1) upon the filing of an indictment or information  
17 charging a violation of this Article and alleging that the  
18 property with respect to which the order is sought would,  
19 in the event of conviction, be subject to forfeiture under  
20 this Article; or

21 (2) prior to the filing of an indictment or  
22 information, if, after notice to persons appearing to have  
23 an interest in the property and opportunity for a hearing,  
24 the court determines that:

25 (A) there is a substantial probability that the  
26 State's Attorney will prevail on the issue of

1       forfeiture and that failure to enter the order will  
2       result in the property being destroyed, removed from  
3       the jurisdiction of the court, or otherwise made  
4       unavailable for forfeiture; and

5               (B) the need to preserve the availability of the  
6       property through the entry of the requested order  
7       outweighs the hardship on any party against whom the  
8       order is to be entered; provided that any order entered  
9       shall be effective for not more than 90 days, unless  
10       extended by the court for good cause shown or unless an  
11       indictment or information described in this Section  
12       has been filed.

13       A temporary restraining order under this Article may be  
14       entered upon application of the State's Attorney without notice  
15       or opportunity for a hearing when an information or indictment  
16       has not yet been filed with respect to the property, if the  
17       State's Attorney demonstrates that there is probable cause to  
18       believe that the property with respect to which the order is  
19       sought would, in the event of conviction, be subject to  
20       forfeiture under this Article and that provision of notice will  
21       jeopardize the integrity of an investigation, the safety of any  
22       persons, or the availability of the property for forfeiture. A  
23       temporary order shall expire not more than 10 days after the  
24       date on which it is entered, unless extended for good cause  
25       shown or unless the party against whom it is entered consents  
26       to an extension for a longer period. A hearing requested



1 concerning an order entered under this Article shall be held at  
2 the earliest possible time and prior to the expiration of the  
3 temporary order. The court may receive and consider, at a  
4 hearing held under this Article, evidence and information that  
5 would be otherwise inadmissible under the rules of evidence,  
6 and a hearing shall be held by the court without a jury.

7 (f) Upon conviction of a person under this Article or upon  
8 the completion of appropriate civil proceedings under this  
9 Article, the court shall enter a judgment of forfeiture of the  
10 property to the State and shall authorize the State's Attorney  
11 or his or her agent to seize all property ordered forfeited  
12 upon the terms and conditions as the court shall deem proper.  
13 Following the entry of an order declaring the property  
14 forfeited, the court may, upon application of the State's  
15 Attorney, enter the appropriate restraining orders or  
16 injunctions, require the execution of satisfactory performance  
17 bonds, appoint receivers, conservators, appraisers,  
18 accountants, or trustees, or take any other action to protect  
19 the interest of the State in the property ordered forfeited.  
20 Any income accruing to, or derived from, an enterprise or an  
21 interest in an enterprise that has been ordered forfeited under  
22 this Article may be used to offset ordinary and necessary  
23 expenses to the enterprise which are required by law, or which  
24 are necessary to protect the interests of the State or third  
25 parties.

26 (g) Following the seizure of property ordered forfeited

1 under this Article, the State's Attorney or his or her agent  
2 shall direct the disposition of the property by sale or any  
3 other commercially feasible means, making due provision for the  
4 rights of any innocent persons. Any property right or interest  
5 not exercisable by, or transferable for value to, the State  
6 shall expire and shall not revert to the defendant, nor shall  
7 the defendant or any person acting in concert with or on behalf  
8 of the defendant be eligible to purchase forfeited property at  
9 any sale held by the State's Attorney or his or her agent. Upon  
10 application of a person, other than the defendant or a person  
11 acting in concert with or on behalf of the defendant, the court  
12 may restrain or stay the sale or disposition of the property  
13 pending the conclusion of any appeal of the criminal case  
14 giving rise to the forfeiture, if the applicant demonstrates  
15 that proceeding with the sale or disposition of the property  
16 will result in irreparable injury, harm, or loss to him or her.  
17 At the direction of the court, the proceeds of any sale or  
18 other disposition of property forfeited under this Article and  
19 any moneys forfeited shall be used to pay all proper expenses  
20 consisting of the costs of the investigation, the prosecution,  
21 and any related remedial proceedings under this Article, and  
22 for the forfeiture and sale, including any expenses of seizure,  
23 maintenance, or custody of the property pending its  
24 disposition, advertising and court costs. The State's Attorney  
25 shall deposit in the treasury of the State 75% of any amounts  
26 of the proceeds or moneys remaining after the payment of the

1 proper expenses, which money or proceeds shall thereafter be  
2 disposed of as prescribed by law, and the State's Attorney  
3 shall retain directly the final 25% of the proceeds or moneys  
4 for the general purposes of fulfilling the duties of his or her  
5 office, or for equitable sharing, as directed by the State's  
6 Attorney, among those law enforcement agencies participating  
7 in the investigation, the prosecution, and any related remedial  
8 proceedings under this Article.

9 (h) With respect to property ordered forfeited under this  
10 Article, the court is authorized to:

11 (1) grant petitions for mitigation or remission of  
12 forfeiture, restore forfeited property to victims of a  
13 violation of this Article, or take any other action to  
14 protect the rights of innocent persons that is in the  
15 interest of justice and that is not inconsistent with the  
16 provisions of this Article;

17 (2) compromise claims arising under this Article;

18 (3) award compensation to persons providing  
19 information resulting in a forfeiture under this Article;

20 (4) direct the disposition by public sale by the  
21 State's Attorney or his or her agent of all property  
22 ordered forfeited under this Article or direct any other  
23 commercially feasible means, making due provision for the  
24 rights of innocent persons; and

25 (5) take appropriate measures necessary to safeguard  
26 and maintain property ordered forfeited under this Article

1 pending its disposition.

2 (i) Except as provided in this Section, no party claiming  
3 an interest in property subject to forfeiture under this  
4 Article may:

5 (1) intervene in any trial or appeal of a criminal case  
6 involving the forfeiture of the property under this  
7 Article; or

8 (2) commence an action at law or equity against the  
9 this State, or against any State's Attorney or law  
10 enforcement agency, concerning the actions taken under  
11 this Article or concerning the validity of an alleged  
12 interest in the property subsequent to the filing of an  
13 indictment or information alleging that the property is  
14 subject to forfeiture under this Article.

15 (j) In order to facilitate the identification or location  
16 of property declared forfeited and to facilitate the  
17 disposition of petitions for remission or mitigation of  
18 forfeiture, and the entry of an order declaring property  
19 forfeited to the State, the court may, upon application of the  
20 State's Attorney, order that the testimony of any witness  
21 relating to the property forfeited be taken by deposition and  
22 that any designated book, paper, document, record, recording,  
23 or other material not privileged be produced at the same time  
24 and place, in the same manner as provided for the taking of  
25 depositions in civil proceedings under the laws of this State.  
26 Any violation of this Article is subject to the remedies,

1 ~~procedures, and forfeiture as set forth in subsections (f)~~  
2 ~~through (s) of Section 29B-1 of this Code.~~

3 (Source: P.A. 97-686, eff. 6-11-12.)

4 (720 ILCS 5/33G-9)

5 (Section scheduled to be repealed on June 11, 2017)

6 Sec. 33G-9. Repeal. This Article is repealed on June 11,  
7 2022 ~~5 years after it becomes law.~~

8 (Source: P.A. 97-686, eff. 6-11-12.)