



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3434

Introduced 2/14/2014, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 2012. Provides for the seizure and forfeiture of a watercraft used with the knowledge and consent of the owner in the commission of specified offenses. Provides for the seizure and forfeiture of a watercraft when a person operating the watercraft was (1) under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof under the Boat Registration and Safety Act during a period in which his or her privileges to operate a watercraft are revoked or suspended and the revocation or suspension was for operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof; (2) operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof and has been previously convicted of reckless homicide or a similar provision of a law in another state relating to reckless homicide in which the person was determined to have been under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof as an element of the offense or the person has previously been convicted of committing a violation of operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof and was involved in an accident that resulted in death, great bodily harm, or permanent disability or disfigurement to another, when the violation was a proximate cause of the death or injuries; or (3) the person committed a violation of operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof under the Boat Registration and Safety Act or a similar provision for the third or subsequent time.

LRB098 17721 RLC 52837 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 36-1, 36-1a, 36-2, 36-3, and 36-4 as follows:

6 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

7 Sec. 36-1. Seizure. Any vessel or watercraft, vehicle or
8 aircraft used with the knowledge and consent of the owner in
9 the commission of, or in the attempt to commit as defined in
10 Section 8-4 of this Code, an offense prohibited by (a) Section
11 9-1, 9-3, 10-2, 11-1.20, 11-1.30, 11-1.40, 11-6, 11-14.4 except
12 for keeping a place of juvenile prostitution, 11-15.1, 11-19.1,
13 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-4.1, 12-4.2, 12-4.2-5,
14 12-4.3, 12-4.6, 12-7.3, 12-7.4, 12-13, 12-14, 16-1 if the theft
15 is of precious metal or of scrap metal, 18-2, 19-1, 19-2, 19-3,
16 20-1, 20-2, 24-1.2, 24-1.2-5, 24-1.5, 28-1, or 29D-15.2 of this
17 Code, subdivision (a) (1), (a) (2), (a) (4), (b) (1), (e) (1),
18 (e) (2), (e) (3), (e) (4), (e) (5), (e) (6), or (e) (7) of Section
19 12-3.05, paragraph (a) of Section 12-4 of this Code, paragraph
20 (a) of Section 11-1.50, paragraph (a) of Section 12-15,
21 paragraph (a), (c), or (d) of Section 11-1.60, or paragraphs
22 (a), (c) or (d) of Section 12-16 of this Code, or paragraph
23 (a) (6) or (a) (7) of Section 24-1 of this Code; (b) Section 21,

1 22, 23, 24 or 26 of the Cigarette Tax Act if the vessel or
2 watercraft, vehicle or aircraft contains more than 10 cartons
3 of such cigarettes; (c) Section 28, 29 or 30 of the Cigarette
4 Use Tax Act if the vessel or watercraft, vehicle or aircraft
5 contains more than 10 cartons of such cigarettes; (d) Section
6 44 of the Environmental Protection Act; (e) 11-204.1 of the
7 Illinois Vehicle Code; (f) (1) driving under the influence of
8 alcohol or other drug or drugs, intoxicating compound or
9 compounds or any combination thereof under Section 11-501 of
10 the Illinois Vehicle Code during a period in which his or her
11 driving privileges are revoked or suspended where the
12 revocation or suspension was for driving under the influence of
13 alcohol or other drug or drugs, intoxicating compound or
14 compounds or any combination thereof, Section 11-501.1,
15 paragraph (b) of Section 11-401, or for reckless homicide as
16 defined in Section 9-3 of the Criminal Code of 1961 or the
17 Criminal Code of 2012; (2) driving while under the influence of
18 alcohol, other drug or drugs, intoxicating compound or
19 compounds or any combination thereof and has been previously
20 convicted of reckless homicide or a similar provision of a law
21 of another state relating to reckless homicide in which the
22 person was determined to have been under the influence of
23 alcohol, other drug or drugs, or intoxicating compound or
24 compounds as an element of the offense or the person has
25 previously been convicted of committing a violation of driving
26 under the influence of alcohol or other drug or drugs,

1 intoxicating compound or compounds or any combination thereof
2 and was involved in a motor vehicle accident that resulted in
3 death, great bodily harm, or permanent disability or
4 disfigurement to another, when the violation was a proximate
5 cause of the death or injuries; (3) the person committed a
6 violation of driving under the influence of alcohol or other
7 drug or drugs, intoxicating compound or compounds or any
8 combination thereof under Section 11-501 of the Illinois
9 Vehicle Code or a similar provision for the third or subsequent
10 time; (4) the person committed the violation while he or she
11 did not possess a driver's license or permit or a restricted
12 driving permit or a judicial driving permit or a monitoring
13 device driving permit; or (5) the person committed the
14 violation while he or she knew or should have known that the
15 vehicle he or she was driving was not covered by a liability
16 insurance policy; (g) an offense described in subsection (g) of
17 Section 6-303 of the Illinois Vehicle Code; ~~or~~ (h) an offense
18 described in subsection (e) of Section 6-101 of the Illinois
19 Vehicle Code; or (i) (1) operating a watercraft under the
20 influence of alcohol, other drug or drugs, intoxicating
21 compound or compounds, or combination thereof under Section
22 5-16 of the Boat Registration and Safety Act during a period in
23 which his or her privileges to operate a watercraft are revoked
24 or suspended and the revocation or suspension was for operating
25 a watercraft under the influence of alcohol, other drug or
26 drugs, intoxicating compound or compounds, or combination

1 thereof; (2) operating a watercraft under the influence of
2 alcohol, other drug or drugs, intoxicating compound or
3 compounds, or combination thereof and has been previously
4 convicted of reckless homicide or a similar provision of a law
5 in another state relating to reckless homicide in which the
6 person was determined to have been under the influence of
7 alcohol, other drug or drugs, intoxicating compound or
8 compounds, or combination thereof as an element of the offense
9 or the person has previously been convicted of committing a
10 violation of operating a watercraft under the influence of
11 alcohol, other drug or drugs, intoxicating compound or
12 compounds, or combination thereof and was involved in an
13 accident that resulted in death, great bodily harm, or
14 permanent disability or disfigurement to another, when the
15 violation was a proximate cause of the death or injuries; or
16 (3) the person committed a violation of operating a watercraft
17 under the influence of alcohol, other drug or drugs,
18 intoxicating compound or compounds, or combination thereof
19 under Section 5-16 of the Boat Registration and Safety Act or a
20 similar provision for the third or subsequent time; may be
21 seized and delivered forthwith to the sheriff of the county of
22 seizure.

23 Within 15 days after such delivery the sheriff shall give
24 notice of seizure to each person according to the following
25 method: Upon each such person whose right, title or interest is
26 of record in the office of the Secretary of State, the

1 Secretary of Transportation, the Administrator of the Federal
2 Aviation Agency, or any other Department of this State, or any
3 other state of the United States if such vessel or watercraft,
4 vehicle or aircraft is required to be so registered, as the
5 case may be, by mailing a copy of the notice by certified mail
6 to the address as given upon the records of the Secretary of
7 State, the Department of Aeronautics, Department of Public
8 Works and Buildings or any other Department of this State or
9 the United States if such vessel or watercraft, vehicle or
10 aircraft is required to be so registered. Within that 15 day
11 period the sheriff shall also notify the State's Attorney of
12 the county of seizure about the seizure.

13 In addition, any mobile or portable equipment used in the
14 commission of an act which is in violation of Section 7g of the
15 Metropolitan Water Reclamation District Act shall be subject to
16 seizure and forfeiture under the same procedures provided in
17 this Article for the seizure and forfeiture of vessels or
18 watercraft, vehicles and aircraft, and any such equipment shall
19 be deemed a vessel or watercraft, vehicle or aircraft for
20 purposes of this Article.

21 When a person discharges a firearm at another individual
22 from a vehicle with the knowledge and consent of the owner of
23 the vehicle and with the intent to cause death or great bodily
24 harm to that individual and as a result causes death or great
25 bodily harm to that individual, the vehicle shall be subject to
26 seizure and forfeiture under the same procedures provided in

1 this Article for the seizure and forfeiture of vehicles used in
2 violations of clauses (a), (b), (c), or (d) of this Section.

3 If the spouse of the owner of a vehicle seized for an
4 offense described in subsection (g) of Section 6-303 of the
5 Illinois Vehicle Code, a violation of subdivision (d)(1)(A),
6 (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section
7 11-501 of the Illinois Vehicle Code, or Section 9-3 of this
8 Code makes a showing that the seized vehicle is the only source
9 of transportation and it is determined that the financial
10 hardship to the family as a result of the seizure outweighs the
11 benefit to the State from the seizure, the vehicle may be
12 forfeited to the spouse or family member and the title to the
13 vehicle shall be transferred to the spouse or family member who
14 is properly licensed and who requires the use of the vehicle
15 for employment or family transportation purposes. A written
16 declaration of forfeiture of a vehicle under this Section shall
17 be sufficient cause for the title to be transferred to the
18 spouse or family member. The provisions of this paragraph shall
19 apply only to one forfeiture per vehicle. If the vehicle is the
20 subject of a subsequent forfeiture proceeding by virtue of a
21 subsequent conviction of either spouse or the family member,
22 the spouse or family member to whom the vehicle was forfeited
23 under the first forfeiture proceeding may not utilize the
24 provisions of this paragraph in another forfeiture proceeding.
25 If the owner of the vehicle seized owns more than one vehicle,
26 the procedure set out in this paragraph may be used for only

1 one vehicle.

2 Property declared contraband under Section 40 of the
3 Illinois Streetgang Terrorism Omnibus Prevention Act may be
4 seized and forfeited under this Article.

5 (Source: P.A. 96-313, eff. 1-1-10; 96-710, eff. 1-1-10;
6 96-1000, eff. 7-2-10; 96-1267, eff. 7-26-10; 96-1289, eff.
7 1-1-11; 96-1551, Article 1, Section 960, eff. 7-1-11; 96-1551,
8 Article 2, Section 1035, eff. 7-1-11; 97-333, eff. 8-12-11;
9 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

10 (720 ILCS 5/36-1a) (from Ch. 38, par. 36-1a)

11 Sec. 36-1a. Rights of lienholders and secured parties. The
12 State's Attorney shall promptly release a vessel or watercraft,
13 vehicle or aircraft seized under the provisions of this Article
14 to any lienholder or secured party whose right, title or
15 interest is of record as described in Section 36-1 if such
16 lienholder or secured party shows to the State's Attorney that
17 his lien or secured interest is bona fide and was created
18 without actual knowledge that such vessel or watercraft,
19 vehicle or aircraft was used or to be used in the commission of
20 the offense charged.

21 (Source: Laws 1965, p. 2868.)

22 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

23 Sec. 36-2. Action for forfeiture.

24 (a) The State's Attorney in the county in which such

1 seizure occurs if he finds that such forfeiture was incurred
2 without willful negligence or without any intention on the part
3 of the owner of the vessel or watercraft, vehicle or aircraft
4 or any person whose right, title or interest is of record as
5 described in Section 36-1, to violate the law, or finds the
6 existence of such mitigating circumstances as to justify
7 remission of the forfeiture, may cause the sheriff to remit the
8 same upon such terms and conditions as the State's Attorney
9 deems reasonable and just. The State's Attorney shall exercise
10 his discretion under the foregoing provision of this Section
11 36-2(a) promptly after notice is given in accordance with
12 Section 36-1. If the State's Attorney does not cause the
13 forfeiture to be remitted he shall forthwith bring an action
14 for forfeiture in the Circuit Court within whose jurisdiction
15 the seizure and confiscation has taken place. The State's
16 Attorney shall give notice of the forfeiture proceeding by
17 mailing a copy of the Complaint in the forfeiture proceeding to
18 the persons, and upon the manner, set forth in Section 36-1.
19 The owner of the seized vessel or watercraft, vehicle or
20 aircraft or any person whose right, title, or interest is of
21 record as described in Section 36-1, may within 20 days after
22 the mailing of such notice file a verified answer to the
23 Complaint and may appear at the hearing on the action for
24 forfeiture. The State shall show at such hearing by a
25 preponderance of the evidence, that such vessel or watercraft,
26 vehicle or aircraft was used in the commission of an offense

1 described in Section 36-1. The owner of such vessel or
2 watercraft, vehicle or aircraft or any person whose right,
3 title, or interest is of record as described in Section 36-1,
4 may show by a preponderance of the evidence that he did not
5 know, and did not have reason to know, that the vessel or
6 watercraft, vehicle or aircraft was to be used in the
7 commission of such an offense or that any of the exceptions set
8 forth in Section 36-3 are applicable. Unless the State shall
9 make such showing, the Court shall order such vessel or
10 watercraft, vehicle or aircraft released to the owner. Where
11 the State has made such showing, the Court may order the vessel
12 or watercraft, vehicle or aircraft destroyed; may order it
13 delivered to any local, municipal or county law enforcement
14 agency, or the Department of State Police or the Department of
15 Revenue of the State of Illinois; or may order it sold at
16 public auction.

17 (b) A copy of the order shall be filed with the sheriff of
18 the county in which the seizure occurs and with each Federal or
19 State office or agency with which such vessel or watercraft,
20 vehicle or aircraft is required to be registered. Such order,
21 when filed, constitutes authority for the issuance of clear
22 title to such vehicle, aircraft, or boat to the department or
23 agency to whom it is delivered or any purchaser thereof. The
24 sheriff shall comply promptly with instructions to remit
25 received from the State's Attorney or Attorney General in
26 accordance with Sections 36-2(a) or 36-3.

1 (c) The proceeds of any sale at public auction pursuant to
2 Section 36-2 of this Act, after payment of all liens and
3 deduction of the reasonable charges and expenses incurred by
4 the sheriff in storing and selling such vehicle, shall be paid
5 into the general fund of the county of seizure.

6 (Source: P.A. 84-25.)

7 (720 ILCS 5/36-3) (from Ch. 38, par. 36-3)

8 Sec. 36-3. Exceptions to forfeiture.

9 (a) No vessel or watercraft, vehicle, or aircraft used by
10 any person as a common carrier in the transaction of business
11 as such common carrier may be forfeited under the provisions of
12 Section 36-2 unless it appears that (1) in the case of a
13 railway car or engine, the owner, or (2) in the case of any
14 other such vessel or watercraft, vehicle or aircraft, the owner
15 or the master of such vessel or watercraft or the owner or
16 conductor, driver, pilot, or other person in charge of such
17 vehicle or aircraft was at the time of the alleged illegal act
18 a consenting party or privy thereto.

19 (b) No vessel or watercraft, vehicle, or aircraft shall be
20 forfeited under the provisions of Section 36-2 by reason of any
21 act or omission established by the owner thereof to have been
22 committed or omitted by any person other than such owner while
23 such vessel or watercraft, vehicle, or aircraft was unlawfully
24 in the possession of a person who acquired possession thereof
25 in violation of the criminal laws of the United States, or of

1 any state.

2 (Source: Laws 1965, p. 2868.)

3 (720 ILCS 5/36-4) (from Ch. 38, par. 36-4)

4 Sec. 36-4. Remission by Attorney General. Whenever any
5 owner of, or other person interested in, a vessel or
6 watercraft, vehicle, or aircraft seized under the provisions of
7 this Act files with the Attorney General before the sale or
8 destruction of such vessel or watercraft, vehicle, or aircraft,
9 a petition for the remission of such forfeiture the Attorney
10 General if he finds that such forfeiture was incurred without
11 willful negligence or without any intention on the part of the
12 owner or any person whose right, title or interest is of record
13 as described in Section 36-1, to violate the law, or finds the
14 existence of such mitigating circumstances as to justify the
15 remission of forfeiture, may cause the same to be remitted upon
16 such terms and conditions as he deems reasonable and just, or
17 order discontinuance of any forfeiture proceeding relating
18 thereto.

19 (Source: Laws 1965, p. 2868.)

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 5/36-1 from Ch. 38, par. 36-1

4 720 ILCS 5/36-1a from Ch. 38, par. 36-1a

5 720 ILCS 5/36-2 from Ch. 38, par. 36-2

6 720 ILCS 5/36-3 from Ch. 38, par. 36-3

7 720 ILCS 5/36-4 from Ch. 38, par. 36-4