



Rep. Michael J. Zalewski

Filed: 4/14/2015

09900HB1120ham002

LRB099 04981 RLC 33981 a

1 AMENDMENT TO HOUSE BILL 1120

2 AMENDMENT NO. _____. Amend House Bill 1120 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by
5 changing 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7 (Section scheduled to be repealed on June 11, 2017)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,

1 including money, obtained, directly or indirectly, by a
2 violation of this Article;

3 (2) imposing reasonable restrictions on the future
4 activities or investments of any person or enterprise,
5 including prohibiting any person or enterprise from
6 engaging in the same type of endeavor as the person or
7 enterprise engaged in, that violated this Article; or

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

11 (b) Protective orders.

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

17 (A) upon the filing of an indictment, information,
18 or complaint charging a violation of this Article for
19 which forfeiture may be ordered under this Article and
20 alleging that the property with respect to which the
21 order is sought would be subject to forfeiture under
22 this Article; or

23 (B) prior to the filing of an indictment,
24 information, or complaint described in subparagraph
25 (A) of this paragraph (1), if, after notice to persons
26 appearing to have an interest in the property and

1 opportunity for a hearing, the court determines that:

2 (i) there is probable cause to believe the
3 State will prevail on the issue of forfeiture and
4 that failure to enter the order will result in the
5 property being destroyed, removed from the
6 jurisdiction of the court, or otherwise made
7 unavailable for forfeiture; and

8 (ii) the need to preserve the availability of
9 the property through the entry of the requested
10 order outweighs the hardship on any party against
11 whom the order is to be entered. Provided, however,
12 that an order entered under this subparagraph (B)
13 shall be effective for not more than 90 days,
14 unless extended by the court for good cause shown
15 or unless an indictment, information, complaint,
16 or administrative notice has been filed.

17 (2) A temporary restraining order under this
18 subsection (b) may be entered upon application of the State
19 without notice or opportunity for a hearing when an
20 indictment, information, complaint, or administrative
21 notice has not yet been filed with respect to the property,
22 if the State demonstrates that there is probable cause to
23 believe that the property with respect to which the order
24 is sought would, in the event of a conviction, be subject
25 to forfeiture under this Section and that provision of
26 notice will jeopardize the integrity of the investigation,

1 the safety of any persons, or the availability of the
2 property for forfeiture. The temporary order shall expire
3 not more than 30 days after the date on which it is
4 entered, unless extended for good cause shown or unless the
5 party against whom it is entered consents to an extension
6 for a longer period. A hearing requested concerning an
7 order entered under this paragraph shall be held at the
8 earliest possible time and prior to the expiration of the
9 temporary order.

10 (3) The court may receive and consider, at a hearing
11 held under this subsection (b), evidence and information
12 that would be inadmissible under the Illinois Rules of
13 Evidence.

14 (4) Order to repatriate and deposit.

15 (A) Under its authority to enter a pretrial
16 restraining order under this Section, the court may
17 order a defendant to repatriate any property that may
18 be seized and forfeited and to deposit that property
19 pending trial with the State's Attorney or another
20 designated law enforcement agency.

21 (B) Failure to comply with an order under this
22 subsection (b) is punishable as a civil or criminal
23 contempt of court.

24 (c) Forfeiture.

25 (1) The following are subject to forfeiture:

26 (A) any property, real or personal, constituting,

1 derived from, or traceable to any proceeds the person
2 obtained directly or indirectly, as a result of a
3 violation of this Article;

4 (B) any of the person's property used, or intended
5 to be used, in any manner or part, to commit, or to
6 facilitate the commission of, a violation of this
7 Article;

8 (C) all conveyances, including aircraft, vehicles,
9 or vessels, which are used, or intended for use, to
10 transport, or in any manner to facilitate the
11 transportation, sale, receipt, possession, or
12 concealment of property described in subparagraphs (A)
13 and (B), but:

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

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

24 (iii) a forfeiture of a conveyance encumbered
25 by a bona fide security interest is subject to the
26 interest of the secured party if he or she neither

1 had knowledge of nor consented to the act or
2 omission;

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

13 (2) Property subject to forfeiture under this Article
14 may be seized by the sheriff, or his or her agent, upon
15 process or seizure warrant issued by any court having
16 jurisdiction over the property. Seizure by the sheriff or
17 his or her agent without process may be made:

18 (A) if the seizure is incident to a seizure
19 warrant;

20 (B) if the property subject to seizure has been the
21 subject of a prior judgment in favor of the State in a
22 criminal proceeding, or in an injunction or forfeiture
23 proceeding based upon this Article;

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

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

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

7 (3) After seizure under paragraph (2), forfeiture
8 proceedings shall be instituted in accordance with
9 subsections (i) through (r) of Section 29B-1 of this Code.

10 (4) Property taken or detained under this Section shall
11 not be subject to replevin, but is deemed to be in the
12 custody of the sheriff subject only to the order and
13 judgments of the circuit court having jurisdiction over the
14 forfeiture proceedings and the decisions of the State's
15 Attorney under this Article. When property is seized under
16 this Article, the seizing agency shall promptly conduct an
17 inventory of the seized property and estimate the
18 property's value and shall forward a copy of the inventory
19 of seized property and the estimate of the property's value
20 to the sheriff. Upon receiving notice of seizure, the
21 sheriff may:

22 (A) place the property under seal;

23 (B) remove the property to a place designated by
24 the sheriff;

25 (C) keep the property in the possession of the
26 seizing agency;

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

5 (E) place the property under constructive seizure
6 by posting notice of pending forfeiture on it, by
7 giving notice of pending forfeiture to its owners and
8 interest holders, or by filing notice of pending
9 forfeiture in any appropriate public record relating
10 to the property; or

11 (F) provide for another agency or custodian,
12 including an owner, secured party, or lienholder, to
13 take custody of the property upon the terms and
14 conditions set by the sheriff.

15 (5) When property is forfeited under this Article, the
16 State's Attorney shall sell all the property unless the
17 property is required by law to be destroyed or is harmful
18 to the public, and shall distribute the proceeds of the
19 sale, together with any moneys forfeited or seized, in
20 accordance with paragraph (6). However, upon the
21 application of the seizing agency or prosecutor who was
22 responsible for the investigation, arrest, or arrests and
23 prosecution which lead to the forfeiture, the State's
24 Attorney may return any item of forfeited property to the
25 seizing agency or prosecutor for official use in the
26 enforcement of laws, if the agency or prosecutor can

1 demonstrate that the item requested would be useful to the
2 agency or prosecutor in its enforcement efforts. When any
3 real property returned to the seizing agency is sold by the
4 agency or its unit of government, the proceeds of the sale
5 shall be delivered to the State's Attorney and distributed
6 in accordance with paragraph (6).

7 (6) All moneys and the sale proceeds of all other
8 property forfeited and seized under this Article shall be
9 distributed as follows:

10 (A) 75% shall be distributed to the metropolitan
11 enforcement group, local, municipal, county, or State
12 law enforcement agency or agencies which conducted or
13 participated in the investigation resulting in the
14 forfeiture. The distribution shall bear a reasonable
15 relationship to the degree of direct participation of
16 the law enforcement agency in the effort resulting in
17 the forfeiture, taking into account the total value of
18 the property forfeited and the total law enforcement
19 effort with respect to the violation of the law upon
20 which the forfeiture is based. Amounts distributed to
21 the agency or agencies shall be used for the
22 enforcement of laws.

23 (B) (i) 12.5% shall be retained by the Office of the
24 State's Attorney of the county in which the prosecution
25 resulting in the forfeiture was instituted, deposited
26 in a special fund in the county treasury and

1 appropriated to the State's Attorney for use in the
2 enforcement of laws. In counties over 3,000,000
3 population, 25% shall be retained by the Office of the
4 State's Attorney for use in the enforcement of laws. If
5 the prosecution is undertaken solely by the Attorney
6 General, 25% shall be distributed to the Attorney
7 General for use in the enforcement of laws.

8 (ii) 12.5% shall be distributed to the Office of
9 the State's Attorneys Appellate Prosecutor and
10 deposited in the Narcotics Profit Forfeiture Fund of
11 that office to be used for additional expenses incurred
12 in the investigation, prosecution and appeal of cases
13 arising under laws. However, the Office of the State's
14 Attorneys Appellate Prosecutor shall not receive
15 distribution from cases brought in counties with over
16 3,000,000 population or cases brought solely by the
17 Attorney General.

18 (d) ~~(b)~~ Any violation of this Article is subject to the
19 remedies, procedures, and forfeiture as set forth in
20 subsections (g) and (i) ~~(f)~~ through (s) of Section 29B-1 of
21 this Code.

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

23 (720 ILCS 5/33G-9)

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

25 Sec. 33G-9. Repeal. This Article is repealed on June 11,

1 2020 ~~5 years after it becomes law.~~

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