



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5715

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

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

Amends the Criminal Code of 2012 concerning the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law. Extends the date of repeal of the Law from June 11, 2017 to June 11, 2022. Establishes specific forfeiture and protective order provisions for violations of the Law (rather than the provisions in the money laundering statute). Provides for distribution of moneys and the sale proceeds of all other property forfeited and seized under the Law to various units of government. Effective immediately.

LRB099 17060 SLF 41418 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7 (Section scheduled to be repealed on June 11, 2017)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) Protective orders.

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

10 (A) upon the filing of an indictment, information,
11 or complaint charging a violation of this Article for
12 which forfeiture may be ordered under this Article and
13 alleging that the property with respect to which the
14 order is sought would be subject to forfeiture under
15 this Article; or

16 (B) prior to the filing of an indictment,
17 information, or complaint described in subparagraph
18 (A) of this paragraph (1), if, after notice to persons
19 appearing to have an interest in the property and
20 opportunity for a hearing, the court determines that:

21 (i) there is probable cause to believe the
22 State will prevail on the issue of forfeiture and
23 that failure to enter the order will result in the
24 property being destroyed, removed from the
25 jurisdiction of the court, or otherwise made
26 unavailable for forfeiture; and

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

10 (2) A temporary restraining order under this
11 subsection (b) may be entered upon application of the State
12 without notice or opportunity for a hearing when an
13 indictment, information, complaint, or administrative
14 notice has not yet been filed with respect to the property,
15 if the State demonstrates that there is probable cause to
16 believe that the property with respect to which the order
17 is sought would, in the event of a conviction, be subject
18 to forfeiture under this Section and that provision of
19 notice will jeopardize the integrity of the investigation,
20 the safety of any persons, or the availability of the
21 property for forfeiture. The temporary order shall expire
22 not more than 30 days after the date on which it is
23 entered, unless extended for good cause shown or unless the
24 party against whom it is entered consents to an extension
25 for a longer period. A hearing requested concerning an
26 order entered under this paragraph shall be held at the

1 earliest possible time and prior to the expiration of the
2 temporary order.

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

7 (4) Order to repatriate and deposit.

8 (A) Under its authority to enter a pretrial
9 restraining order under this Section, the court may
10 order a defendant to repatriate any property that may
11 be seized and forfeited and to deposit that property
12 pending trial with the State's Attorney or another
13 designated law enforcement agency.

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

17 (c) Forfeiture.

18 (1) The following are subject to forfeiture:

19 (A) any property, real or personal, constituting,
20 derived from, or traceable to any proceeds the person
21 obtained directly or indirectly, as a result of a
22 violation of this Article;

23 (B) any of the person's property used, or intended
24 to be used, in any manner or part, to commit, or to
25 facilitate the commission of, a violation of this
26 Article;

1 (C) all conveyances, including aircraft, vehicles
2 or vessels, which are used, or intended for use, to
3 transport, or in any manner to facilitate the
4 transportation, sale, receipt, possession, or
5 concealment of property described in subparagraphs (A)
6 and (B), but:

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

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

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

22 (D) all real property, including any right, title,
23 and interest (including, but not limited to, any
24 leasehold interest or the beneficial interest in a land
25 trust) in the whole of any lot or tract of land and any
26 appurtenances or improvements, which is used or

1 intended to be used, in any manner or part, to commit,
2 or in any manner to facilitate the commission of, any
3 violation of this Article or that is the proceeds of
4 any violation or act that constitutes a violation of
5 this Article.

6 (2) Property subject to forfeiture under this Article
7 may be seized by the sheriff, or his or her agent, upon
8 process or seizure warrant issued by any court having
9 jurisdiction over the property. Seizure by the sheriff or
10 his or her agent without process may be made:

11 (A) if the seizure is incident to a seizure
12 warrant;

13 (B) if the property subject to seizure has been the
14 subject of a prior judgment in favor of the State in a
15 criminal proceeding, or in an injunction or forfeiture
16 proceeding based upon this Article;

17 (C) if there is probable cause to believe that the
18 property is directly or indirectly dangerous to health
19 or safety;

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

24 (E) in accordance with the Code of Criminal
25 Procedure of 1963.

26 (3) After seizure under paragraph (2), forfeiture

1 proceedings shall be instituted in accordance with
2 subsections (i) through (r) of Section 29B-1 of this Code.

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

15 (A) place the property under seal;

16 (B) remove the property to a place designated by
17 the sheriff;

18 (C) keep the property in the possession of the
19 seizing agency;

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

24 (E) place the property under constructive seizure
25 by posting notice of pending forfeiture on it, by
26 giving notice of pending forfeiture to its owners and

1 interest holders, or by filing notice of pending
2 forfeiture in any appropriate public record relating
3 to the property; or

4 (F) provide for another agency or custodian,
5 including an owner, secured party, or lienholder, to
6 take custody of the property upon the terms and
7 conditions set by the sheriff.

8 (5) When property is forfeited under this Article, the
9 State's Attorney shall sell all the property unless the
10 property is required by law to be destroyed or is harmful
11 to the public, and shall distribute the proceeds of the
12 sale, together with any moneys forfeited or seized, in
13 accordance with paragraph (6). However, upon the
14 application of the seizing agency or prosecutor who was
15 responsible for the investigation, arrest or arrests and
16 prosecution which lead to the forfeiture, the State's
17 Attorney may return any item of forfeited property to the
18 seizing agency or prosecutor for official use in the
19 enforcement of laws, if the agency or prosecutor can
20 demonstrate that the item requested would be useful to the
21 agency or prosecutor in its enforcement efforts. When any
22 real property returned to the seizing agency is sold by the
23 agency or its unit of government, the proceeds of the sale
24 shall be delivered to the State's Attorney and distributed
25 in accordance with paragraph (6).

26 (6) All moneys and the sale proceeds of all other

1 property forfeited and seized under this Article shall be
2 distributed as follows:

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

16 (B) (i) 12.5% shall be retained by the Office of the
17 State's Attorney of the county in which the prosecution
18 resulting in the forfeiture was instituted, deposited
19 in a special fund in the county treasury and
20 appropriated to the State's Attorney for use in the
21 enforcement of laws. In counties over 3,000,000
22 population, 25% shall be retained by the Office of the
23 State's Attorney for use in the enforcement of laws. If
24 the prosecution is undertaken solely by the Attorney
25 General, 25% shall be distributed to the Attorney
26 General for use in the enforcement of laws.

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

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

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

16 (720 ILCS 5/33G-9)

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

18 Sec. 33G-9. Repeal. This Article is repealed on June 11,
19 2022 ~~5 years after it becomes law.~~

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.