



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5773

by Rep. John D. Cavaletto

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7

from Ch. 116, par. 207

Creates the Asset Forfeiture Process and Private Property Protection Act. Provides that this Act sets out the exclusive process governing forfeitures in this State and supersedes any conflicting or inconsistent provisions under State law. Provides that forfeiture will be applicable to any State law that carries a felony sanction which explicitly includes forfeiture as a punishment for the offense. Provides that a person will only be subject to forfeit proceeds and property the person derived directly from the commission of the crime, proceeds and property directly traceable to proceeds and property derived directly from the commission of the crime, and instrumentalities the person used in the commission of the crime only if the person is convicted of violating a State law subject to forfeiture. Provides that there will be no civil asset forfeiture. Makes a corresponding change in the Freedom of Information Act.

LRB099 19669 SLF 44066 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 1. Short title. This Act may be cited as the Asset
5 Forfeiture Process and Private Property Protection Act.

6 Section 5. Legislative intent. This Act intends to (i)
7 deter criminal activity by reducing its economic incentives;
8 (ii) increase the pecuniary loss from criminal activity; and
9 (iii) protect against the wrongful forfeiture of property.

10 Section 10. Definitions. In this Act:

11 "Contraband" means goods that are unlawful to import,
12 export or possess.

13 "Conveyance" means a device used for transportation and
14 includes a motor vehicle, trailer, snowmobile, airplane, and
15 vessel and any equipment attached to it. The term does not
16 include property that is stolen or taken in violation of the
17 law.

18 "Instrumentality" means property otherwise lawful to
19 possess that is used in an offense. An "instrumentality"
20 includes a tool, a firearm, a conveyance, a computer, computer
21 software, a telecommunications device, money, and other means
22 of exchange.

1 A "law subject to forfeiture" is a State law that carries a
2 felony penalty and that explicitly includes forfeiture as a
3 punishment or sanction for the offense in the provision
4 creating the offense in a prior law that created forfeiture
5 provisions.

6 Section 15. Exclusivity. This Act sets out the exclusive
7 process governing forfeitures in this State and supersedes any
8 conflicting or inconsistent provisions under State law.

9 Section 20. Criminal asset forfeiture. When a person is
10 convicted of violating a law subject to forfeiture, the court,
11 consistent with this Act, shall order the person to forfeit:

12 (1) proceeds and property the person derived directly
13 from the commission of the crime;

14 (2) proceeds and property directly traceable to
15 proceeds and property derived directly from the commission
16 of the crime; and

17 (3) instrumentalities the person used in the
18 commission of the crime.

19 Section 25. Conviction required; standard of proof.

20 (a) Property used in or derived from the violation of a law
21 is subject to forfeiture only if:

22 (1) the violation is of a law subject to forfeiture;
23 and

1 (2) the violation is established by proof of a criminal
2 conviction.

3 (b) The State shall establish that seized property is
4 forfeitable under Section 20 by clear and convincing evidence.

5 Section 30. No civil asset forfeiture. There is no civil
6 asset forfeiture.

7 Section 35. Rule of lenity. The court shall resolve any
8 ambiguity under this Act relating to the State taking property
9 through asset forfeiture in favor of the property owner.

10 Section 40. Court-appointed counsel. If a court determines
11 that a person opposing forfeiture is financially unable to
12 obtain representation by counsel, the court, at the request of
13 the person, shall insure that the person is represented by an
14 attorney at the State's expense. The attorney shall submit a
15 statement of reasonable fees and costs to the court in a manner
16 directed by the court.

17 Section 45. Authorization to use forfeiture.

18 (a) Except for federal forfeitures consistent with Section
19 195, forfeiture may occur only pursuant to an explicit grant of
20 authority in State law. An ordinance enacted by a county,
21 municipality, or other unit of government authorizing
22 forfeiture is not valid.

1 (b) A prosecutor having jurisdiction over a law subject to
2 forfeiture has authority to pursue forfeiture.

3 Section 50. Property subject to forfeiture; contraband.

4 (a) Property subject to forfeiture is limited to:

5 (1) land, buildings, containers, conveyances,
6 equipment, materials, products, money, securities, and
7 negotiable instruments; and

8 (2) ammunition, firearms, and ammunition-and-firearm
9 accessories used in the furtherance or commission of, or
10 obtained from the proceeds of, a violation of a law subject
11 to forfeiture.

12 (b) No property right exists in contraband, including
13 scheduled drugs without a valid prescription. Contraband is
14 subject to seizure and must be disposed of according to State
15 law. Contraband is not subject to forfeiture under this Act.

16 Section 55. Substitution of assets for unreachable
17 property. Upon the State's motion following conviction, the
18 court may order the forfeiture of substitute property owned
19 fully by the defendant up to the value of unreachable property
20 only if the State proves by a preponderance of the evidence
21 that the defendant intentionally transferred, sold, or
22 deposited property with a third party to avoid the court's
23 jurisdiction.

1 Section 60. No additional remedies. Except as otherwise
2 provided in this Act, the State may not seek additional
3 remedies including but not limited to personal money judgments.

4 Section 65. No Joint-and-several liability; pro rata
5 forfeitures.

6 (a) A defendant is not jointly and severally liable for
7 forfeiture awards owed by other defendants.

8 (b) When ownership is unclear, a court may order each
9 defendant to forfeit property on a pro rata basis proportional
10 to the proceeds that each defendant personally received.

11 Section 70. Designating property subject to forfeiture.

12 (a) Property subject to forfeiture must be identified by
13 the State in an indictment of a grand jury or by information in
14 the court in any related criminal proceeding in which a person
15 with an interest in the property has been simultaneously
16 charged with a violation of a law subject to forfeiture.

17 (b) The indictment or information must specify the time and
18 place of the violation, identify the property, and particularly
19 describe its use in the commission of the crime or derivation
20 from the commission of the crime.

21 (c) At any time prior to trial, the State, with the consent
22 of the court and any defendant with an interest in the
23 property, may file an ancillary charge alleging that property
24 is subject to forfeiture.

1 Section 75. Seizure with process. At the request of the
2 State, a court may issue an ex parte preliminary order to seize
3 or secure property for which forfeiture is sought and to
4 provide for its custody. Application, issuance, execution, and
5 return are subject to State law.

6 Section 80. Seizure without process. Property subject to
7 forfeiture may be seized without a court order if:

8 (1) the seizure is incident to a lawful arrest or a
9 lawful search;

10 (2) the property subject to seizure has been the
11 subject of a prior judgment in favor of the State; or

12 (3) the State has probable cause to believe that the
13 delay occasioned by the necessity to obtain process would
14 result in the removal or destruction of the property and
15 that the property is forfeitable under Section 20.

16 Section 85. Receipt for seized property. When property is
17 seized, the law enforcement officer shall give an itemized
18 receipt to the person in possession of the property; or in the
19 absence of any person, leave a receipt in the place where the
20 property was found, if reasonably possible.

21 Section 90. Bill of particulars. A motion for a bill of
22 particulars may be made before arraignment, within 90 days

1 after arraignment, or at any later time that the court permits.
2 A bill of particulars may be amended at any time subject to
3 conditions that justice requires.

4 Section 95. Title.

5 (a) At the time of seizure or entry of a restraining order,
6 the State acquires provisional title to the seized property.
7 Provisional title authorizes the State to hold and protect the
8 property.

9 (b) Title to the property vests with the State when the
10 trier of fact renders a final forfeiture verdict and relates
11 back to the time when the State acquired provisional title.
12 However, this title is subject to claims by third parties
13 adjudicated under this Act.

14 Section 100. Storage. When property is seized, the State
15 shall use reasonable diligence to secure the property and
16 prevent waste.

17 Section 105. Records.

18 (a) A State entity having custody of seized property that
19 is subject to forfeiture shall maintain the following records:

20 (1) the exact kinds, quantities, and forms of the
21 property;

22 (2) the date and from whom it received the property;

23 (3) the violation of law that subjected the property to

1 seizure;

2 (4) the liens against the seized property;

3 (5) the make, model, and serial number of each seized
4 firearm;

5 (6) to whom and when the notice of forfeiture was
6 given;

7 (7) to whom it delivered the property; and (8) the date
8 and manner of destruction or disposition of the property.

9 (b) The records required under subsection (a) are subject
10 to Section 7 of the Freedom of Information Act.

11 Section 110. Bond by Owner for possession.

12 (a) If the owner of property that has been seized seeks its
13 possession before the criminal trial, the owner may post bond
14 or give substitute property in an amount equal to the fair
15 market value of the seized property at the time the bond amount
16 is determined.

17 (b) On the posting of bond or the giving of substitute
18 property, the State shall return the seized property to the
19 owner within a reasonable period of time not to exceed 3
20 business days. The forfeiture action may then proceed against
21 the bond or substitute property as if it were the seized
22 property.

23 (c) This Section does not apply to property reasonably held
24 for investigatory purposes.

1 Section 115. Petition for remission or mitigation. Prior to
2 the entry of a court's order disposing of the forfeiture
3 action, any person who has an interest in seized property may
4 file with the state's attorney general a petition for remission
5 or mitigation of the forfeiture. The Attorney General shall
6 remit or mitigate the forfeiture upon terms and conditions the
7 attorney general deems reasonable if the attorney general finds
8 that:

9 (1) the petitioner did not intend to violate the law
10 or;

11 (2) extenuating circumstances justify the remission or
12 mitigation of the forfeiture.

13 Section 120. Pretrial replevin hearing.

14 (a) Following the seizure of property under this Act, a
15 defendant or third-party has a right to a pretrial hearing to
16 determine the validity of the seizure.

17 (b) The claimant may claim at any time prior to 60 days
18 before trial of the related criminal violation the right to
19 possession of property by motion to the court to issue a writ
20 of replevin.

21 (c) The claimant shall file a motion establishing the
22 validity of the alleged right, title, or interest in the
23 property.

24 (d) The court shall hear the motion no more than 30 days
25 after the motion is filed.

1 (e) The State shall file an answer showing probable cause
2 for the seizure, or cross-motions at least 10 days before the
3 hearing.

4 (f) The court shall grant the motion if it finds that:

5 (1) it is likely the final judgment will be that the
6 State must return the property to the claimant, or

7 (2) the property is the only reasonable means for a
8 defendant to pay for legal representation in the forfeiture
9 or criminal proceeding.

10 (g) In lieu of ordering the issuance of the writ, the court
11 may order the State to give security for satisfaction of any
12 judgment, including damages, that may be rendered in the
13 action, or order other relief as may be just.

14 Section 125. Discovery. Discovery is subject to the Code of
15 Criminal Procedure of 1963.

16 Section 130. Right to trial by jury. Any party to a
17 forfeiture action has a right to trial by jury.

18 Section 135. Trial proceedings.

19 (a) A trial related to the forfeiture of property must be
20 held in a single proceeding together with the trial of the
21 related alleged crime unless the defendant moves to bifurcate
22 the trial.

23 (b) The court, upon motion of a defendant, shall separate

1 the trial of the criminal matter against the defendant from the
2 matter related to the forfeiture of property.

3 (c) The court, upon motion of a defendant, shall allow a
4 defendant to waive the right to trial by jury related to the
5 forfeiture of property while preserving the right to trial by
6 jury of any crime alleged.

7 (d) If the court bifurcates the jury trial, the court shall
8 first instruct and submit to the jury the issue of the guilt or
9 innocence of the defendant to be determined by proof beyond a
10 reasonable doubt and shall restrict argument of counsel to
11 those issues.

12 (e) If the court bifurcates the jury trial, each party may
13 introduce evidence in the forfeiture phase that was not
14 introduced in the criminal phase.

15 (f) If the jury finds a defendant guilty of the related
16 criminal offense and the defendant did not waive the right to
17 trial by jury related to the forfeiture, the court shall
18 instruct and submit to the jury the issue of the forfeiture.
19 The court may use interrogatories to address the forfeiture
20 issue.

21 Section 140. Proportionality.

22 (a) Following determination by the trier of fact, the owner
23 may petition the court to determine whether the forfeiture is
24 unconstitutionally excessive under the State or U.S.
25 Constitution.

1 (b) The owner has the burden of establishing that the
2 forfeiture is grossly disproportional to the seriousness of the
3 offense by a preponderance of the evidence at a hearing
4 conducted by the court without a jury.

5 (c) In determining whether the forfeiture of an
6 instrumentality is constitutionally excessive, the court shall
7 consider all relevant factors, including, but not limited to:

8 (1) the seriousness of the offense and its impact on
9 the community, including the duration of the activity and
10 the harm caused by the person whose property is subject to
11 forfeiture;

12 (2) the extent to which the person whose property is
13 subject to forfeiture participated in the offense;

14 (3) the extent to which the property was used in
15 committing the offense;

16 (4) the sentence imposed for committing the crime
17 subject to forfeiture; and

18 (5) whether the offense was completed or attempted.

19 (d) In determining the value of the instrumentality subject
20 to forfeiture, the court shall consider relevant factors,
21 including, but not limited to:

22 (1) the fair market value of the property;

23 (2) the value of the property to the person whose
24 property is subject to forfeiture including hardship to the
25 owner if the forfeiture is realized; and

26 (3) the hardship from the loss of a motor vehicle or

1 other property to family members or others if the property
2 is forfeited assets.

3 (e) The court may not consider the value of the
4 instrumentality to the State in determining whether the
5 forfeiture of an instrumentality is constitutionally
6 excessive.

7 Section 145. Secured interest.

8 (a) A bona fide security interest is not subject to
9 forfeiture unless the person claiming a security interest had
10 actual knowledge that the property was subject to forfeiture at
11 the time of the property was seized or restrained under this
12 Act.

13 (b) A person claiming a security interest bears the burden
14 of establishing that the validity of the interest by a
15 preponderance of the evidence.

16 Section 150. Ancillary hearing of third-party interests.

17 (a) A person not charged in the indictment or information
18 but who has an interest in property subject to forfeiture may
19 not intervene after the criminal trial has begun.

20 (b) Following the entry of a verdict of forfeiture of
21 property pursuant to this Act or the entry of a guilty plea in
22 court on the record, the State shall exercise reasonable
23 diligence to identify persons with a potential interest in the
24 property and make reasonable efforts to give notice to

1 potential claimants. The State shall provide written notice of
2 its intent to dispose of the property to any person known or
3 alleged to have an interest in the property exempted from
4 forfeiture under this Act, including any person potentially
5 making claims for:

6 (1) court-ordered child support;

7 (2) employment-related compensation; or

8 (3) payment of unsecured debts. The notice must also be
9 made by publication in a reasonable geographic area.

10 (c) A person other than the defendant asserting a legal
11 interest in the property, within 60 days of the date of the
12 notice, may petition the court for a hearing to adjudicate the
13 validity of the alleged interest in the property. The request
14 for the hearing must be signed by the petitioner under penalty
15 of perjury and state the nature and extent of the petitioner's
16 right, title, or interest in the property; the time and
17 circumstances of the petitioner's acquisition of the right,
18 title, or interest; and any additional facts supporting the
19 petitioner's claim and the relief sought.

20 (d) Upon the filing of a petition, the court shall schedule
21 the hearing as soon as practicable but in no event later than 6
22 months after the sentencing of any defendant convicted upon the
23 same indictment. The court shall issue or amend a final order
24 of forfeiture in accordance with its determination if, after
25 the hearing, the court determines that:

26 (1) the petitioner has a legal right, title, or

1 interest in the property, and such right, title or interest
2 renders the order of forfeiture invalid in whole or in part
3 because the right, title or interest was vested in the
4 petitioner rather the defendant or was superior to any
5 right, title or interest of the defendant at the time of
6 the property was seized or restrained under this Act; or

7 (2) the petitioner is a bona fide purchaser for value
8 of the right, title, or interest in the property and was at
9 the time of purchase without cause to believe that the
10 property was subject to forfeiture under this Act. The
11 State has the burden of proof with respect to the issue of
12 whether the petitioner was without cause to believe that
13 the property was subject to forfeiture at the time of
14 purchase or other acquisition of value.

15 (e) A qualified indigent who wishes to contest the
16 forfeiture of property and appears to have an exempt interest
17 has a right to court-appointed counsel as provided in Section
18 40. In addition, the court shall waive the person's court fees.

19 Section 155. Innocent partial or joint owner.

20 (a) The property of an innocent partial or joint owner may
21 not be forfeited under any forfeiture statute. The process for
22 determining whether a person is an innocent partial or joint
23 owner is set out in this Section.

24 (b) A person who has any form of partial or joint interest,
25 including joint tenancy, tenancy in common, or tenancy by the

1 entirety, in property subject to forfeiture existing at the
2 time the illegal conduct giving rise to forfeiture occurred and
3 who claims to be an innocent partial or joint owner shall make
4 a prima facie case that the person has a legal right, title, or
5 interest in the property seized or restrained under this Act.

6 (c) If subsection (b) is satisfied and the State seeks to
7 proceed with the forfeiture against the person's ownership
8 interest, the State shall prove by a preponderance of the
9 evidence that the person had actual knowledge of the underlying
10 crime giving rise to the forfeiture or was willfully blind to
11 its commission.

12 (d) If subsection (c) is satisfied and the person seeks to
13 establish the person's innocent owner status, the person shall
14 show by a preponderance of the evidence that the person did all
15 that reasonably could be expected under the circumstances to
16 prohibit, abate, or terminate the illegal use of the property.
17 The person may show that the person did all that reasonably
18 could be expected by demonstrating, among other things, that
19 the person, to the extent permitted by law:

20 (1) gave timely notice to an appropriate law
21 enforcement agency of information that led the person to
22 know the conduct giving rise to a forfeiture would occur or
23 had occurred; or

24 (2) in a timely fashion revoked or made a good-faith
25 attempt to revoke permission for those engaging in the
26 illegal conduct to use the property or took reasonable

1 actions in consultation with a law enforcement agency to
2 discourage or prevent the illegal use of the property.

3 (3) A person is not required under this Section to take
4 steps that the person reasonably believes would be likely
5 to subject the person to physical danger.

6 (e) If subsection (d) is satisfied, the court shall find
7 that the claimant was not a party to the crime and is an
8 innocent partial or joint owner.

9 (f) A person who acquired an ownership interest in property
10 after the commission of a crime giving rise to the forfeiture
11 has occurred and who claims to be an innocent partial or joint
12 owner, shall make a prima facie case that the person legal
13 right, title, or interest in the property seized or restrained
14 under this Act.

15 (g) If subsection (f) is satisfied and the State seeks to
16 proceed with the forfeiture against the person's ownership
17 interest, the State shall prove by a preponderance of the
18 evidence that at the time the person acquired the property
19 interest the person had actual knowledge that the property was
20 subject to forfeiture or was willfully blind to the commission
21 of the crime that subjected the property to forfeiture.

22 (h) If the State fails to meet its burden in subsection
23 (g), the court shall find that the person was not a party to
24 the crime and is an innocent partial or joint owner.

25 (i) An otherwise valid claim under subsection (f) may not
26 be denied on the grounds that the person gave nothing of value

1 in exchange for the property if:

2 (1) the property is the person's primary residence;

3 (2) depriving the person of the property would deprive
4 the person of the means to maintain reasonable shelter in
5 the community for the person and all dependents residing
6 with the person;

7 (3) the property is not, and is not traceable to, the
8 proceeds of any criminal offense; and

9 (4) the person acquired interest in the property
10 through marriage, divorce, or legal separation, or the
11 person was the spouse or legal dependent of someone whose
12 death resulted in the transfer of the property to the
13 person through inheritance or probate, except that the
14 court shall limit the value of any real property interest
15 for which innocent ownership is recognized under this
16 Section to the value necessary to maintain reasonable
17 shelter in the community for the person and all dependents
18 residing with the person.

19 (j) If the innocent joint or partial owner's claim is
20 established under this Section, the State shall relinquish all
21 claims of title to the property that may have vested with it.

22 (k) If the court determines that an innocent joint or
23 partial owner has any form of partial or joint interest in a
24 conveyance subject to forfeiture related to operating a
25 conveyance while impaired, the court may order that the
26 innocent joint or partial owner participate in the ignition

1 interlock device program under State law as a condition of
2 ordering the device be returned to the innocent owner.

3 (1) If the court determines that an innocent joint or
4 partial owner has any form of partial or joint interest in
5 property, other than property described in subsection (k), the
6 court shall enter an appropriate order reflecting the innocent
7 owner's preference for:

8 (1) severing the property;

9 (2) transferring the property to the State with a
10 provision that the State compensate the innocent owner to
11 the extent of the owner's ownership interest once a final
12 order of forfeiture has been entered and the property has
13 been reduced to liquid assets; or

14 (3) permitting the innocent owner to retain the
15 property subject to a lien in favor of the State to the
16 extent of the forfeitable interest in the property.

17 Section 160. Sale of property. If a trier of fact finds
18 that property is to be forfeited, the court shall order the
19 State to:

20 (1) return stolen property to its owner;

21 (2) sell all other firearms, ammunition and firearm
22 accessories to licensed firearms dealers in a commercially
23 reasonable manner;

24 (3) sell other property in a commercially reasonable
25 manner.

1 Section 165. Prohibition on retaining property; sale
2 restrictions. The law enforcement agency that seized property
3 forfeited under this Act may not retain it for its own use or
4 sell it directly or indirectly to any employee of the agency,
5 to a person related to an employee by blood or marriage, or to
6 another law enforcement agency.

7 Section 170. Disposition of proceeds.

8 (a) Proceeds seized and proceeds from the sale of forfeited
9 assets may be distributed only following a court order. The
10 court shall order the funds be used to pay, in order of
11 priority, for the following purposes:

12 (1) storage and sale expenses;

13 (2) satisfaction of valid liens against the property;

14 (3) restitution ordered to the victim of the criminal
15 offense;

16 (4) reimbursement of investigation costs excluding
17 salaries that the law enforcement agency incurred in the
18 seizure of the assets subject to the forfeiture action;

19 (5) court-ordered child support obligations;

20 (6) claims for compensation by the defendant's
21 employees; and

22 (7) claims for compensation by defendant's unsecured
23 creditors.

24 (b) All remaining funds must be deposited into the State's

1 treasury and credited to the general fund.

2 Section 175. Reporting.

3 (a) For each forfeiture action occurring in the State
4 regardless of the authority for it, the participating law
5 enforcement agency and prosecutor shall provide a written
6 record of the forfeiture incident to the State reporting
7 agency.

8 (b) The record must include the amount forfeited, the
9 underlying crime or conduct, its date, and whether the property
10 had a lien against it. The record must also list the number of
11 firearms forfeited and the make, model, and serial number of
12 each firearm forfeited. The record must indicate how the
13 property was disposed.

14 (c) The law enforcement agency and the prosecutor shall
15 report to the State reporting agency all instances in which
16 property seized for forfeiture is returned to its owner either
17 because forfeiture is not pursued or for any other reason.

18 (d) For forfeitures resulting from the activities of
19 multi-jurisdictional law enforcement entities, each entity on
20 its own behalf shall report the information required in this
21 Section.

22 (e) The State reporting agency may require information not
23 specified in this Section to be reported as well.

24 (f) Reports must be made on a monthly basis in a manner
25 prescribed by the State reporting agency.

1 (g) The State reporting agency shall report annually to the
2 legislature and the public on the nature and extent of
3 forfeitures.

4 (h) The State reporting agency shall include in its report
5 required under subsection (g) recommended changes to forfeiture
6 law to better ensure that forfeiture proceedings are handled in
7 a manner that is fair to innocent property owners, secured
8 interest holders, citizens, and taxpayers.

9 (i) The State reporting agency shall include in its report
10 required under subsection (g) information on law enforcement
11 agencies and prosecutorial offices not in compliance with this
12 Section and shall order the State to withhold payment of any
13 funds to those agencies and offices until compliance is
14 achieved.

15 Section 180. Disposing of property of a person deported.

16 (a) This Section covers procedures for disposing of
17 property when the owner is deported from the United States to a
18 foreign country.

19 (b) If the owner of property is deported after

20 (1) being convicted of a violation of a state law that
21 is subject to forfeiture; and

22 (2) the property is found to be an instrumentality or
23 proceeds of the violation of that state law, the court
24 shall enter an order disposing of the property in
25 accordance with Sections 160, 165, and 170.

1 (c) If the owner of property is deported but

2 (1) the owner is not convicted of violating a state law
3 that is subject to forfeiture; or

4 (2) the property is not found to be an instrumentality
5 or proceeds from the violation of a state law subject to
6 forfeiture for which the owner of the property is
7 convicted, the property shall be returned to the next of
8 kin of the person deported.

9 (d) If the next of kin is not known or refuses the
10 property, the State shall exercise reasonable diligence to
11 identify persons with a potential interest in the property and
12 make reasonable efforts to give notice to potential claimants.
13 The State shall provide written notice to persons known or
14 alleged to have an interest in the property including other
15 family members and any person potentially making claims for
16 court-ordered child support, employment-related compensation,
17 or payment of debts. The notice must also be made by
18 publication in a reasonable geographic area.

19 (e) If no claim is made within 60 days of the notice's
20 publication date, the court shall enter an order disposing of
21 the property in accordance with Sections 160, 165, and 170.

22 (f) A person wanting to assert a legal claim to the
23 property shall, within 60 days of the date of the applicable
24 notice in (D), petition the court for a hearing to adjudicate
25 the validity of the alleged interest in the property. The
26 petition for the hearing must be signed by the claimant under

1 penalty of perjury. It must state the nature and extent of the
2 claimant's right, title, or interest in the property; the time
3 and circumstances of the claimant's acquisition of the right,
4 title, or interest; and any additional facts supporting the
5 claim and the relief sought.

6 (g) The court shall schedule a hearing as soon as
7 practicable to determine if the claimant has a legal right,
8 title or interest in the property or is a bona fide purchaser
9 for value of the legal right, title or interest in the
10 property.

11 Section 185. Return of property, damages, and costs.

12 (a) The State shall return property to the owner within a
13 reasonable period of time not to exceed 3 business days after a
14 court finds that:

- 15 (1) the owner had a bona fide security interest;
16 (2) the owner was an innocent owner;
17 (3) charges against the owner were dismissed; or
18 (4) the owner was found not guilty of the criminal
19 charge that is the basis for the forfeiture action.

20 (b) If property returned under subsection (a) has been
21 damaged, the owner may make a claim in small claims court or
22 court for the damages to the seized property against the agency
23 that seized the property.

24 (c) The State is responsible for any storage fees and
25 related costs applicable to property returned under subsection

1 (a).

2 Section 190. Penalty for violations.

3 (a) Any person acting under color of law, official title,
4 or position who takes any action intending to conceal,
5 transfer, withhold, retain, divert, or otherwise prevent any
6 proceeds, conveyances, real property, or any things of value
7 forfeited under the law of the State or the United States from
8 being applied, deposited, used, or returned to the owner in
9 accordance with this Act is subject to a civil penalty in an
10 amount of three times the value of the forfeited property
11 concealed, transferred, withheld, retained, or diverted.

12 (b) Any taxpayer to the State has standing to challenge in
13 court any action contrary to this Act.

14 Section 195. Interaction with Federal Government.

15 (a) No unit of State government may transfer a criminal
16 investigation or proceeding to the federal government to
17 circumvent State forfeiture law.

18 (b) For a State government unit to transfer a criminal
19 investigation or proceeding that includes forfeiture to the
20 federal government, a State court shall affirmatively find
21 that:

22 (1) the suspected criminal activity giving rise to the
23 forfeiture is interstate in nature and sufficiently
24 complex to justify the transfer; or

1 (2) the seized property is forfeitable only as a
2 violation of federal law.

3 (c) All funds paid by the federal government must be
4 deposited into the State's treasury. The State shall credit:

5 (1) the State government unit involved with the federal
6 government sufficiently to reimburse it for investigation
7 costs, excluding salaries, that the State government unit
8 incurred related to the seizure of the assets subject to
9 the forfeiture action; and

10 (2) the remainder to the general fund.

11 (d) No unit of State government may accept from the federal
12 government any instrumentality or payment of proceeds not
13 permitted by subsection (c).

14 (e) The State government unit shall report all transfers to
15 the federal government of an investigation or criminal
16 proceeding that involves forfeiture per the reporting
17 requirements in Section 175.

18 (f) Any taxpayer has standing to challenge in court the
19 receipt of any proceeds or instrumentality by a State
20 government unit from the federal government contrary to
21 subsections (c) and (d).

22 Section 200. Attorneys' fees. In any forfeiture proceeding
23 under this Act in which the claimant prevails, the State is
24 liable for:

25 (1) reasonable attorney fees and other litigation

1 costs reasonably incurred by the claimant;

2 (2) post judgment interest; and

3 (3) in cases involving currency, other negotiable
4 instruments, or the proceeds of an interlocutory sale:

5 (A) interest actually paid to the State from the
6 date of seizure of the property that resulted from the
7 investment of the property in an interest-bearing
8 account or instrument; and

9 (B) an imputed amount of interest that the
10 currency, instruments, or proceeds would have earned
11 at the rate applicable to the 30-day U.S. Treasury
12 Bill, for any period during which no interest was paid
13 (not including any period when the property reasonably
14 was in use as evidence in an official proceeding or in
15 conducting scientific tests for the purpose of
16 collecting evidence), commencing 15 days after the
17 property was seized by a law enforcement agency.

18 Section 1005. The Freedom of Information Act is amended by
19 changing Section 7 as follows:

20 (5 ILCS 140/7) (from Ch. 116, par. 207)

21 Sec. 7. Exemptions.

22 (1) When a request is made to inspect or copy a public
23 record that contains information that is exempt from disclosure
24 under this Section, but also contains information that is not

1 exempt from disclosure, the public body may elect to redact the
2 information that is exempt. The public body shall make the
3 remaining information available for inspection and copying.
4 Subject to this requirement, the following shall be exempt from
5 inspection and copying:

6 (a) Information specifically prohibited from
7 disclosure by federal or State law or rules and regulations
8 implementing federal or State law.

9 (b) Private information, unless disclosure is required
10 by another provision of this Act, a State or federal law or
11 a court order.

12 (b-5) Files, documents, and other data or databases
13 maintained by one or more law enforcement agencies and
14 specifically designed to provide information to one or more
15 law enforcement agencies regarding the physical or mental
16 status of one or more individual subjects.

17 (c) Personal information contained within public
18 records, the disclosure of which would constitute a clearly
19 unwarranted invasion of personal privacy, unless the
20 disclosure is consented to in writing by the individual
21 subjects of the information. "Unwarranted invasion of
22 personal privacy" means the disclosure of information that
23 is highly personal or objectionable to a reasonable person
24 and in which the subject's right to privacy outweighs any
25 legitimate public interest in obtaining the information.
26 The disclosure of information that bears on the public

1 duties of public employees and officials shall not be
2 considered an invasion of personal privacy.

3 (d) Records in the possession of any public body
4 created in the course of administrative enforcement
5 proceedings, and any law enforcement or correctional
6 agency for law enforcement purposes, but only to the extent
7 that disclosure would:

8 (i) interfere with pending or actually and
9 reasonably contemplated law enforcement proceedings
10 conducted by any law enforcement or correctional
11 agency that is the recipient of the request;

12 (ii) interfere with active administrative
13 enforcement proceedings conducted by the public body
14 that is the recipient of the request;

15 (iii) create a substantial likelihood that a
16 person will be deprived of a fair trial or an impartial
17 hearing;

18 (iv) unavoidably disclose the identity of a
19 confidential source, confidential information
20 furnished only by the confidential source, or persons
21 who file complaints with or provide information to
22 administrative, investigative, law enforcement, or
23 penal agencies; except that the identities of
24 witnesses to traffic accidents, traffic accident
25 reports, and rescue reports shall be provided by
26 agencies of local government, except when disclosure

1 would interfere with an active criminal investigation
2 conducted by the agency that is the recipient of the
3 request;

4 (v) disclose unique or specialized investigative
5 techniques other than those generally used and known or
6 disclose internal documents of correctional agencies
7 related to detection, observation or investigation of
8 incidents of crime or misconduct, and disclosure would
9 result in demonstrable harm to the agency or public
10 body that is the recipient of the request;

11 (vi) endanger the life or physical safety of law
12 enforcement personnel or any other person; or

13 (vii) obstruct an ongoing criminal investigation
14 by the agency that is the recipient of the request.

15 (d-5) A law enforcement record created for law
16 enforcement purposes and contained in a shared electronic
17 record management system if the law enforcement agency that
18 is the recipient of the request did not create the record,
19 did not participate in or have a role in any of the events
20 which are the subject of the record, and only has access to
21 the record through the shared electronic record management
22 system.

23 (e) Records that relate to or affect the security of
24 correctional institutions and detention facilities.

25 (e-5) Records requested by persons committed to the
26 Department of Corrections if those materials are available

1 in the library of the correctional facility where the
2 inmate is confined.

3 (e-6) Records requested by persons committed to the
4 Department of Corrections if those materials include
5 records from staff members' personnel files, staff
6 rosters, or other staffing assignment information.

7 (e-7) Records requested by persons committed to the
8 Department of Corrections if those materials are available
9 through an administrative request to the Department of
10 Corrections.

11 (f) Preliminary drafts, notes, recommendations,
12 memoranda and other records in which opinions are
13 expressed, or policies or actions are formulated, except
14 that a specific record or relevant portion of a record
15 shall not be exempt when the record is publicly cited and
16 identified by the head of the public body. The exemption
17 provided in this paragraph (f) extends to all those records
18 of officers and agencies of the General Assembly that
19 pertain to the preparation of legislative documents.

20 (g) Trade secrets and commercial or financial
21 information obtained from a person or business where the
22 trade secrets or commercial or financial information are
23 furnished under a claim that they are proprietary,
24 privileged or confidential, and that disclosure of the
25 trade secrets or commercial or financial information would
26 cause competitive harm to the person or business, and only

1 insofar as the claim directly applies to the records
2 requested.

3 The information included under this exemption includes
4 all trade secrets and commercial or financial information
5 obtained by a public body, including a public pension fund,
6 from a private equity fund or a privately held company
7 within the investment portfolio of a private equity fund as
8 a result of either investing or evaluating a potential
9 investment of public funds in a private equity fund. The
10 exemption contained in this item does not apply to the
11 aggregate financial performance information of a private
12 equity fund, nor to the identity of the fund's managers or
13 general partners. The exemption contained in this item does
14 not apply to the identity of a privately held company
15 within the investment portfolio of a private equity fund,
16 unless the disclosure of the identity of a privately held
17 company may cause competitive harm.

18 Nothing contained in this paragraph (g) shall be
19 construed to prevent a person or business from consenting
20 to disclosure.

21 (h) Proposals and bids for any contract, grant, or
22 agreement, including information which if it were
23 disclosed would frustrate procurement or give an advantage
24 to any person proposing to enter into a contractor
25 agreement with the body, until an award or final selection
26 is made. Information prepared by or for the body in

1 preparation of a bid solicitation shall be exempt until an
2 award or final selection is made.

3 (i) Valuable formulae, computer geographic systems,
4 designs, drawings and research data obtained or produced by
5 any public body when disclosure could reasonably be
6 expected to produce private gain or public loss. The
7 exemption for "computer geographic systems" provided in
8 this paragraph (i) does not extend to requests made by news
9 media as defined in Section 2 of this Act when the
10 requested information is not otherwise exempt and the only
11 purpose of the request is to access and disseminate
12 information regarding the health, safety, welfare, or
13 legal rights of the general public.

14 (j) The following information pertaining to
15 educational matters:

16 (i) test questions, scoring keys and other
17 examination data used to administer an academic
18 examination;

19 (ii) information received by a primary or
20 secondary school, college, or university under its
21 procedures for the evaluation of faculty members by
22 their academic peers;

23 (iii) information concerning a school or
24 university's adjudication of student disciplinary
25 cases, but only to the extent that disclosure would
26 unavoidably reveal the identity of the student; and

1 (iv) course materials or research materials used
2 by faculty members.

3 (k) Architects' plans, engineers' technical
4 submissions, and other construction related technical
5 documents for projects not constructed or developed in
6 whole or in part with public funds and the same for
7 projects constructed or developed with public funds,
8 including but not limited to power generating and
9 distribution stations and other transmission and
10 distribution facilities, water treatment facilities,
11 airport facilities, sport stadiums, convention centers,
12 and all government owned, operated, or occupied buildings,
13 but only to the extent that disclosure would compromise
14 security.

15 (l) Minutes of meetings of public bodies closed to the
16 public as provided in the Open Meetings Act until the
17 public body makes the minutes available to the public under
18 Section 2.06 of the Open Meetings Act.

19 (m) Communications between a public body and an
20 attorney or auditor representing the public body that would
21 not be subject to discovery in litigation, and materials
22 prepared or compiled by or for a public body in
23 anticipation of a criminal, civil or administrative
24 proceeding upon the request of an attorney advising the
25 public body, and materials prepared or compiled with
26 respect to internal audits of public bodies.

1 (n) Records relating to a public body's adjudication of
2 employee grievances or disciplinary cases; however, this
3 exemption shall not extend to the final outcome of cases in
4 which discipline is imposed.

5 (o) Administrative or technical information associated
6 with automated data processing operations, including but
7 not limited to software, operating protocols, computer
8 program abstracts, file layouts, source listings, object
9 modules, load modules, user guides, documentation
10 pertaining to all logical and physical design of
11 computerized systems, employee manuals, and any other
12 information that, if disclosed, would jeopardize the
13 security of the system or its data or the security of
14 materials exempt under this Section.

15 (p) Records relating to collective negotiating matters
16 between public bodies and their employees or
17 representatives, except that any final contract or
18 agreement shall be subject to inspection and copying.

19 (q) Test questions, scoring keys, and other
20 examination data used to determine the qualifications of an
21 applicant for a license or employment.

22 (r) The records, documents, and information relating
23 to real estate purchase negotiations until those
24 negotiations have been completed or otherwise terminated.
25 With regard to a parcel involved in a pending or actually
26 and reasonably contemplated eminent domain proceeding

1 under the Eminent Domain Act, records, documents and
2 information relating to that parcel shall be exempt except
3 as may be allowed under discovery rules adopted by the
4 Illinois Supreme Court. The records, documents and
5 information relating to a real estate sale shall be exempt
6 until a sale is consummated.

7 (s) Any and all proprietary information and records
8 related to the operation of an intergovernmental risk
9 management association or self-insurance pool or jointly
10 self-administered health and accident cooperative or pool.
11 Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

15 (t) Information contained in or related to
16 examination, operating, or condition reports prepared by,
17 on behalf of, or for the use of a public body responsible
18 for the regulation or supervision of financial
19 institutions or insurance companies, unless disclosure is
20 otherwise required by State law.

21 (u) Information that would disclose or might lead to
22 the disclosure of secret or confidential information,
23 codes, algorithms, programs, or private keys intended to be
24 used to create electronic or digital signatures under the
25 Electronic Commerce Security Act.

26 (v) Vulnerability assessments, security measures, and

1 response policies or plans that are designed to identify,
2 prevent, or respond to potential attacks upon a community's
3 population or systems, facilities, or installations, the
4 destruction or contamination of which would constitute a
5 clear and present danger to the health or safety of the
6 community, but only to the extent that disclosure could
7 reasonably be expected to jeopardize the effectiveness of
8 the measures or the safety of the personnel who implement
9 them or the public. Information exempt under this item may
10 include such things as details pertaining to the
11 mobilization or deployment of personnel or equipment, to
12 the operation of communication systems or protocols, or to
13 tactical operations.

14 (w) (Blank).

15 (x) Maps and other records regarding the location or
16 security of generation, transmission, distribution,
17 storage, gathering, treatment, or switching facilities
18 owned by a utility, by a power generator, or by the
19 Illinois Power Agency.

20 (y) Information contained in or related to proposals,
21 bids, or negotiations related to electric power
22 procurement under Section 1-75 of the Illinois Power Agency
23 Act and Section 16-111.5 of the Public Utilities Act that
24 is determined to be confidential and proprietary by the
25 Illinois Power Agency or by the Illinois Commerce
26 Commission.

1 (z) Information about students exempted from
2 disclosure under Sections 10-20.38 or 34-18.29 of the
3 School Code, and information about undergraduate students
4 enrolled at an institution of higher education exempted
5 from disclosure under Section 25 of the Illinois Credit
6 Card Marketing Act of 2009.

7 (aa) Information the disclosure of which is exempted
8 under the Viatical Settlements Act of 2009.

9 (bb) Records and information provided to a mortality
10 review team and records maintained by a mortality review
11 team appointed under the Department of Juvenile Justice
12 Mortality Review Team Act.

13 (cc) Information regarding interments, entombments, or
14 inurnments of human remains that are submitted to the
15 Cemetery Oversight Database under the Cemetery Care Act or
16 the Cemetery Oversight Act, whichever is applicable.

17 (dd) Correspondence and records (i) that may not be
18 disclosed under Section 11-9 of the Public Aid Code or (ii)
19 that pertain to appeals under Section 11-8 of the Public
20 Aid Code.

21 (ee) The names, addresses, or other personal
22 information of persons who are minors and are also
23 participants and registrants in programs of park
24 districts, forest preserve districts, conservation
25 districts, recreation agencies, and special recreation
26 associations.

1 (ff) The names, addresses, or other personal
2 information of participants and registrants in programs of
3 park districts, forest preserve districts, conservation
4 districts, recreation agencies, and special recreation
5 associations where such programs are targeted primarily to
6 minors.

7 (gg) Confidential information described in Section
8 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

9 (hh) The report submitted to the State Board of
10 Education by the School Security and Standards Task Force
11 under item (8) of subsection (d) of Section 2-3.160 of the
12 School Code and any information contained in that report.

13 (ii) Records requested by persons committed to or
14 detained by the Department of Human Services under the
15 Sexually Violent Persons Commitment Act or committed to the
16 Department of Corrections under the Sexually Dangerous
17 Persons Act if those materials: (i) are available in the
18 library of the facility where the individual is confined;
19 (ii) include records from staff members' personnel files,
20 staff rosters, or other staffing assignment information;
21 or (iii) are available through an administrative request to
22 the Department of Human Services or the Department of
23 Corrections.

24 (jj) ~~(ii)~~ Confidential information described in
25 Section 5-535 of the Civil Administrative Code of Illinois.

26 (kk) Records maintained under Section 105 of the Asset

1 Forfeiture Process and Private Property Protection Act.

2 (1.5) Any information exempt from disclosure under the
3 Judicial Privacy Act shall be redacted from public records
4 prior to disclosure under this Act.

5 (2) A public record that is not in the possession of a
6 public body but is in the possession of a party with whom the
7 agency has contracted to perform a governmental function on
8 behalf of the public body, and that directly relates to the
9 governmental function and is not otherwise exempt under this
10 Act, shall be considered a public record of the public body,
11 for purposes of this Act.

12 (3) This Section does not authorize withholding of
13 information or limit the availability of records to the public,
14 except as stated in this Section or otherwise provided in this
15 Act.

16 (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
17 98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;
18 revised 1-11-16.)