

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 Cannabis Control Act is amended by
5 changing Section 12 as follows:

6 (720 ILCS 550/12) (from Ch. 56 1/2, par. 712)

7 Sec. 12. (a) The following are subject to forfeiture:

8 (1) all substances containing cannabis which have
9 been produced, manufactured, delivered, or possessed in
10 violation of this Act;

11 (2) all raw materials, products and equipment of
12 any kind which are produced, delivered, or possessed in
13 connection with any substance containing cannabis in
14 violation of this Act;

15 (3) all conveyances, including aircraft, vehicles
16 or vessels, which are used, or intended for use, to
17 transport, or in any manner to facilitate the
18 transportation, sale, receipt, possession, or concealment
19 of property described in paragraph (1) or (2) that
20 constitutes a felony violation of the Act, but:

21 (i) no conveyance used by any person as a
22 common carrier in the transaction of business as a
23 common carrier is subject to forfeiture under this
24 Section unless it appears that the owner or other
25 person in charge of the conveyance is a consenting
26 party or privy to a violation of this Act;

27 (ii) no conveyance is subject to forfeiture
28 under this Section by reason of any act or omission
29 which the owner proves to have been committed or
30 omitted without his knowledge or consent;

31 (iii) a forfeiture of a conveyance encumbered

1 by a bona fide security interest is subject to the
2 interest of the secured party if he neither had
3 knowledge of nor consented to the act or omission;

4 (4) all money, things of value, books, records, and
5 research products and materials including formulas,
6 microfilm, tapes, and data which are used, or intended
7 for use in a felony violation of this Act;

8 (5) everything of value furnished or intended to be
9 furnished by any person in exchange for a substance in
10 violation of this Act, all proceeds traceable to such an
11 exchange, and all moneys, negotiable instruments, and
12 securities used, or intended to be used, to commit or in
13 any manner to facilitate any felony violation of this
14 Act.

15 (b) Property subject to forfeiture under this Act may be
16 seized by the Director or any peace officer upon process or
17 seizure warrant issued by any court having jurisdiction over
18 the property. Seizure by the Director or any peace officer
19 without process may be made:

20 (1) 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 Act or the Drug Asset
24 Forfeiture Procedure Act;

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

28 (3) if there is probable cause to believe that the
29 property is subject to forfeiture under this Act and the
30 property is seized under circumstances in which a
31 warrantless seizure or arrest would be reasonable; or

32 (4) in accordance with the Code of Criminal
33 Procedure of 1963.

34 (c) In the event of seizure pursuant to subsection (b),

1 forfeiture proceedings shall be instituted in accordance with
2 the Drug Asset Forfeiture Procedure Act.

3 (d) 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 Director 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 the Drug Asset Forfeiture Procedure Act. When
9 property is seized under this Act, the seizing agency shall
10 promptly conduct an inventory of the seized property,
11 estimate the property's value, and shall forward a copy of
12 the inventory of seized property and the estimate of the
13 property's value to the Director. Upon receiving notice of
14 seizure, the Director may:

- 15 (1) place the property under seal;
- 16 (2) remove the property to a place designated by
17 him;
- 18 (3) keep the property in the possession of the
19 seizing agency;
- 20 (4) 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 (5) place the property under constructive seizure
25 by posting notice of pending forfeiture on it, by giving
26 notice of pending forfeiture to its owners and interest
27 holders, or by filing notice of pending forfeiture in any
28 appropriate public record relating to the property; or
- 29 (6) provide for another agency or custodian,
30 including an owner, secured party, or lienholder, to take
31 custody of the property upon the terms and conditions set
32 by the Director.

33 (e) No disposition may be made of property under seal
34 until the time for taking an appeal has elapsed or until all

1 appeals have been concluded unless a court, upon application
2 therefor, orders the sale of perishable substances and the
3 deposit of the proceeds of the sale with the court.

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

22 (g) All moneys ~~moneys~~ and the sale proceeds of all other
23 property forfeited and seized under this Act shall be
24 distributed as follows:

25 (1) 65% shall be distributed to the metropolitan
26 enforcement group, local, municipal, county, or state law
27 enforcement agency or agencies which conducted or
28 participated in the investigation resulting in the
29 forfeiture. The distribution shall bear a reasonable
30 relationship to the degree of direct participation of the
31 law enforcement agency in the effort resulting in the
32 forfeiture, taking into account the total value of the
33 property forfeited and the total law enforcement effort
34 with respect to the violation of the law upon which the

1 forfeiture is based. Amounts distributed to the agency
2 or agencies shall be used for the enforcement of laws
3 governing cannabis and controlled substances and, in the
4 case of a municipality, for park district or municipal
5 recreational programs for youth at risk, except that
6 amounts distributed to the Secretary of State shall be
7 deposited into the Secretary of State Evidence Fund to be
8 used as provided in Section 2-115 of the Illinois Vehicle
9 Code.

10 (2)(i) 12.5% shall be distributed to the Office of
11 the State's Attorney of the county in which the
12 prosecution resulting in the forfeiture was
13 instituted, deposited in a special fund in the
14 county treasury and appropriated to the State's
15 Attorney for use in the enforcement of laws
16 governing cannabis and controlled substances. In
17 counties over 3,000,000 population, 25% will be
18 distributed to the Office of the State's Attorney
19 for use in the enforcement of laws governing
20 cannabis and controlled substances. If the
21 prosecution is undertaken solely by the Attorney
22 General, the portion provided hereunder shall be
23 distributed to the Attorney General for use in the
24 enforcement of laws governing cannabis and
25 controlled substances.

26 (ii) 12.5% shall be distributed to the Office
27 of the State's Attorneys Appellate Prosecutor and
28 deposited in the Narcotics Profit Forfeiture Fund of
29 that Office to be used for additional expenses
30 incurred in the investigation, prosecution and
31 appeal of cases arising under laws governing
32 cannabis and controlled substances. The Office of
33 the State's Attorneys Appellate Prosecutor shall not
34 receive distribution from cases brought in counties

1 with over 3,000,000 population.

2 (3) 10% shall be retained by the Department of
3 State Police for expenses related to the administration
4 and sale of seized and forfeited property.

5 (Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)

6 Section 10. The Illinois Controlled Substances Act is
7 amended by changing Section 505 as follows:

8 (720 ILCS 570/505) (from Ch. 56 1/2, par. 1505)

9 Sec. 505. (a) The following are subject to forfeiture:

10 (1) all substances which have been manufactured,
11 distributed, dispensed, or possessed in violation of this
12 Act;

13 (2) all raw materials, products and equipment of
14 any kind which are used, or intended for use in
15 manufacturing, distributing, dispensing, administering or
16 possessing any substance in violation of this Act;

17 (3) all conveyances, including aircraft, vehicles
18 or vessels, which are used, or intended for use, to
19 transport, or in any manner to facilitate the
20 transportation, sale, receipt, possession, or concealment
21 of property described in paragraphs (1) and (2), but:

22 (i) no conveyance used by any person as a
23 common carrier in the transaction of business as a
24 common carrier is subject to forfeiture under this
25 Section unless it appears that the owner or other
26 person in charge of the conveyance is a consenting
27 party or privy to a violation of this Act;

28 (ii) no conveyance is subject to forfeiture
29 under this Section by reason of any act or omission
30 which the owner proves to have been committed or
31 omitted without his knowledge or consent;

32 (iii) a forfeiture of a conveyance encumbered

1 by a bona fide security interest is subject to the
2 interest of the secured party if he neither had
3 knowledge of nor consented to the act or omission;

4 (4) all money, things of value, books, records, and
5 research products and materials including formulas,
6 microfilm, tapes, and data which are used, or intended to
7 be used in violation of this Act;

8 (5) everything of value furnished, or intended to
9 be furnished, in exchange for a substance in violation of
10 this Act, all proceeds traceable to such an exchange, and
11 all moneys, negotiable instruments, and securities used,
12 or intended to be used, to commit or in any manner to
13 facilitate any violation of this Act;

14 (6) all real property, including any right, title,
15 and interest (including, but not limited to, any
16 leasehold interest or the beneficial interest in a land
17 trust) in the whole of any lot or tract of land and any
18 appurtenances or improvements, which is used or intended
19 to be used, in any manner or part, to commit, or in any
20 manner to facilitate the commission of, any violation or
21 act that constitutes a violation of Section 401 or 405 of
22 this Act or that is the proceeds of any violation or act
23 that constitutes a violation of Section 401 or 405 of
24 this Act.

25 (b) Property subject to forfeiture under this Act may be
26 seized by the Director or any peace officer upon process or
27 seizure warrant issued by any court having jurisdiction over
28 the property. Seizure by the Director or any peace officer
29 without process may be made:

30 (1) if the seizure is incident to inspection under
31 an administrative inspection warrant;

32 (2) if the property subject to seizure has been the
33 subject of a prior judgment in favor of the State in a
34 criminal proceeding, or in an injunction or forfeiture

1 proceeding based upon this Act or the Drug Asset
2 Forfeiture Procedure Act;

3 (3) if there is probable cause to believe that the
4 property is directly or indirectly dangerous to health or
5 safety;

6 (4) if there is probable cause to believe that the
7 property is subject to forfeiture under this Act and the
8 property is seized under circumstances in which a
9 warrantless seizure or arrest would be reasonable; or

10 (5) in accordance with the Code of Criminal
11 Procedure of 1963.

12 (c) In the event of seizure pursuant to subsection (b),
13 forfeiture proceedings shall be instituted in accordance with
14 the Drug Asset Forfeiture Procedure Act.

15 (d) Property taken or detained under this Section shall
16 not be subject to replevin, but is deemed to be in the
17 custody of the Director subject only to the order and
18 judgments of the circuit court having jurisdiction over the
19 forfeiture proceedings and the decisions of the State's
20 Attorney under the Drug Asset Forfeiture Procedure Act. When
21 property is seized under this Act, the seizing agency shall
22 promptly conduct an inventory of the seized property and
23 estimate the property's value, and shall forward a copy of
24 the inventory of seized property and the estimate of the
25 property's value to the Director. Upon receiving notice of
26 seizure, the Director may:

27 (1) place the property under seal;

28 (2) remove the property to a place designated by
29 the Director;

30 (3) keep the property in the possession of the
31 seizing agency;

32 (4) remove the property to a storage area for
33 safekeeping or, if the property is a negotiable
34 instrument or money and is not needed for evidentiary

1 purposes, deposit it in an interest bearing account;

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

7 (6) provide for another agency or custodian,
8 including an owner, secured party, or lienholder, to take
9 custody of the property upon the terms and conditions set
10 by the Director.

11 (e) If the Department of Professional Regulation
12 suspends or revokes a registration, all controlled substances
13 owned or possessed by the registrant at the time of
14 suspension or the effective date of the revocation order may
15 be placed under seal. No disposition may be made of
16 substances under seal until the time for taking an appeal has
17 elapsed or until all appeals have been concluded unless a
18 court, upon application therefor, orders the sale of
19 perishable substances and the deposit of the proceeds of the
20 sale with the court. Upon a revocation rule becoming final,
21 all substances may be forfeited to the Department of
22 Professional Regulation.

23 (f) When property is forfeited under this Act the
24 Director shall sell all such property unless such property is
25 required by law to be destroyed or is harmful to the public,
26 and shall distribute the proceeds of the sale, together with
27 any moneys forfeited or seized, in accordance with subsection
28 (g). However, upon the application of the seizing agency or
29 prosecutor who was responsible for the investigation, arrest
30 or arrests and prosecution which lead to the forfeiture, the
31 Director may return any item of forfeited property to the
32 seizing agency or prosecutor for official use in the
33 enforcement of laws relating to cannabis or controlled
34 substances, if the agency or prosecutor can demonstrate that

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

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

10 (1) 65% shall be distributed to the metropolitan
11 enforcement group, local, municipal, county, or state law
12 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 the
16 law enforcement agency in the effort resulting in the
17 forfeiture, taking into account the total value of the
18 property forfeited and the total law enforcement effort
19 with respect to the violation of the law upon which the
20 forfeiture is based. Amounts distributed to the agency or
21 agencies shall be used for the enforcement of laws
22 governing cannabis and controlled substances and, in the
23 case of a municipality, for park district or municipal
24 recreational programs for youth at risk, except that
25 amounts distributed to the Secretary of State shall be
26 deposited into the Secretary of State Evidence Fund to be
27 used as provided in Section 2-115 of the Illinois Vehicle
28 Code.

29 (2) (i) 12.5% shall be distributed to the Office of
30 the State's Attorney of the county in which the
31 prosecution resulting in the forfeiture was instituted,
32 deposited in a special fund in the county treasury and
33 appropriated to the State's Attorney for use in the
34 enforcement of laws governing cannabis and controlled

1 substances. In counties over 3,000,000 population, 25%
2 will be distributed to the Office of the State's Attorney
3 for use in the enforcement of laws governing cannabis and
4 controlled substances. If the prosecution is undertaken
5 solely by the Attorney General, the portion provided
6 hereunder shall be distributed to the Attorney General
7 for use in the enforcement of laws governing cannabis and
8 controlled substances.

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

18 (3) 10% shall be retained by the Department of
19 State Police for expenses related to the administration
20 and sale of seized and forfeited property.

21 (h) Species of plants from which controlled substances
22 in Schedules I and II may be derived which have been planted
23 or cultivated in violation of this Act, or of which the
24 owners or cultivators are unknown, or which are wild growths,
25 may be seized and summarily forfeited to the State. The
26 failure, upon demand by the Director or any peace officer, of
27 the person in occupancy or in control of land or premises
28 upon which the species of plants are growing or being stored,
29 to produce registration, or proof that he is the holder
30 thereof, constitutes authority for the seizure and forfeiture
31 of the plants.

32 (Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)

33 Section 15. The Narcotics Profit Forfeiture Act is

1 amended by changing Section 5.2 as follows:

2 (725 ILCS 175/5.2) (from Ch. 56 1/2, par. 1655.2)

3 Sec. 5.2. (a) Twelve and one-half percent of all amounts
4 collected as fines pursuant to the provisions of this Act
5 shall be paid into the Youth Drug Abuse Prevention Fund,
6 which is hereby created in the State treasury, to be used by
7 the Department of Human Services for the funding of programs
8 and services for drug-abuse treatment, and prevention and
9 education services, for juveniles.

10 (b) Eighty-seven and one-half percent of the proceeds of
11 all fines received under the provisions of this Act shall be
12 transmitted to and deposited in the treasurer's office at the
13 level of government as follows:

14 (1) If such seizure was made by a combination of
15 law enforcement personnel representing differing units of
16 local government, the court levying the fine shall
17 equitably allocate 50% of the fine among these units of
18 local government and shall allocate 37 1/2% to the county
19 general corporate fund. In the event that the seizure was
20 made by law enforcement personnel representing a unit of
21 local government from a municipality where the number of
22 inhabitants exceeds 2 million in population, the court
23 levying the fine shall allocate 87 1/2% of the fine to
24 that unit of local government. If the seizure was made
25 by a combination of law enforcement personnel
26 representing differing units of local government, and at
27 least one of those units represents a municipality where
28 the number of inhabitants exceeds 2 million in
29 population, the court shall equitably allocate 87 1/2% of
30 the proceeds of the fines received among the differing
31 units of local government.

32 (2) If such seizure was made by State law
33 enforcement personnel, then the court shall allocate 37

1 1/2% to the State treasury and 50% to the county general
2 corporate fund.

3 (3) If a State law enforcement agency in
4 combination with a law enforcement agency or agencies of
5 a unit or units of local government conducted the
6 seizure, the court shall equitably allocate 37 1/2% of
7 the fines to or among the law enforcement agency or
8 agencies of the unit or units of local government which
9 conducted the seizure and shall allocate 50% to the
10 county general corporate fund.

11 (c) The proceeds of all fines allocated to the law
12 enforcement agency or agencies of the unit or units of local
13 government pursuant to subsection (b) shall be made available
14 to that law enforcement agency as expendable receipts for use
15 in the enforcement of laws regulating controlled substances
16 and cannabis and, in the case of a municipality, for park
17 district or municipal recreational programs for youth at
18 risk. The proceeds of fines awarded to the State treasury
19 shall be deposited in a special fund known as the Drug
20 Traffic Prevention Fund. Monies from this fund may be used by
21 the Department of State Police for use in the enforcement of
22 laws regulating controlled substances and cannabis; to
23 satisfy funding provisions of the Intergovernmental Drug Laws
24 Enforcement Act; to defray costs and expenses associated with
25 returning violators of the Cannabis Control Act and the
26 Illinois Controlled Substances Act only, as provided in those
27 Acts, when punishment of the crime shall be confinement of
28 the criminal in the penitentiary; and all other monies shall
29 be paid into the general revenue fund in the State treasury.

30 (Source: P.A. 89-507, eff. 7-1-97.)

31 Section 99. Effective date. This Act takes effect upon
32 becoming law.