



Sen. Antonio Munoz

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09400SB2869sam003

LRB094 17675 RLC 56203 a

1 AMENDMENT TO SENATE BILL 2869

2 AMENDMENT NO. _____. Amend Senate Bill 2869 on page 1, by
3 inserting immediately below line 3 the following:

4 "Section 3. The Cannabis Control Act is amended by changing
5 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 been
9 produced, manufactured, delivered, or possessed in
10 violation of this Act;

11 (2) all raw materials, products and equipment of any
12 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 or
16 vessels, which are used, or intended for use, to transport,
17 or in any manner to facilitate the transportation, sale,
18 receipt, possession, or concealment of property described
19 in paragraph (1) or (2) that constitutes a felony violation
20 of the Act, but:

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

1 charge of the conveyance is a consenting party or privy
2 to a violation of this Act;

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

7 (iii) a forfeiture of a conveyance encumbered by a
8 bona fide security interest is subject to the interest
9 of the secured party if he neither had knowledge of nor
10 consented to the act or omission;

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

15 (5) everything of value furnished or intended to be
16 furnished by any person in exchange for a substance in
17 violation of this Act, all proceeds traceable to such an
18 exchange, and all moneys, negotiable instruments, and
19 securities used, or intended to be used, to commit or in
20 any manner to facilitate any felony violation of this Act.

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

26 (1) if the property subject to seizure has been the
27 subject of a prior judgment in favor of the State in a
28 criminal proceeding or in an injunction or forfeiture
29 proceeding based upon this Act or the Drug Asset Forfeiture
30 Procedure Act;

31 (2) if there is probable cause to believe that the
32 property is directly or indirectly dangerous to health or
33 safety;

34 (3) if there is probable cause to believe that the

1 property is subject to forfeiture under this Act and the
2 property is seized under circumstances in which a
3 warrantless seizure or arrest would be reasonable; or

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

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

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

20 (1) place the property under seal;

21 (2) remove the property to a place designated by him;

22 (3) keep the property in the possession of the seizing
23 agency;

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

28 (5) place the property under constructive seizure by
29 posting notice of pending forfeiture on it, by giving
30 notice of pending forfeiture to its owners and interest
31 holders, or by filing notice of pending forfeiture in any
32 appropriate public record relating to the property; or

33 (6) provide for another agency or custodian, including
34 an owner, secured party, or lienholder, to take custody of

1 the property upon the terms and conditions set by the
2 Director.

3 (e) No disposition may be made of property under seal until
4 the time for taking an appeal has elapsed or until all appeals
5 have been concluded unless a court, upon application therefor,
6 orders the sale of perishable substances and the deposit of the
7 proceeds of the sale with the court.

8 (f) When property is forfeited under this Act the Director
9 shall sell all such property unless such property is required
10 by law to be destroyed or is harmful to the public, and shall
11 distribute the proceeds of the sale, together with any moneys
12 forfeited or seized, in accordance with subsection (g).
13 However, upon the application of the seizing agency or
14 prosecutor who was responsible for the investigation, arrest or
15 arrests and prosecution which lead to the forfeiture, the
16 Director may return any item of forfeited property to the
17 seizing agency or prosecutor for official use in the
18 enforcement of laws relating to cannabis or controlled
19 substances, if the agency or prosecutor can demonstrate that
20 the item requested would be useful to the agency or prosecutor
21 in their enforcement efforts. When any forfeited conveyance,
22 including an aircraft, vehicle, or vessel, is returned to the
23 seizing agency or prosecutor, the conveyance must be used for a
24 minimum of one year in the enforcement of laws relating to
25 cannabis or controlled substances. After one year, the
26 conveyance may be used for official use in the enforcement of
27 any law. Upon disposal, all proceeds from the sale of the
28 conveyance must be used for drug enforcement purposes. When any
29 real property returned to the seizing agency is sold by the
30 agency or its unit of government, the proceeds of the sale
31 shall be delivered to the Director and distributed in
32 accordance with subsection (g).

33 (g) All monies and the sale proceeds of all other property
34 forfeited and seized under this Act shall be distributed as

1 follows:

2 (1) 65% shall be distributed to the metropolitan
3 enforcement group, local, municipal, county, or state law
4 enforcement agency or agencies which conducted or
5 participated in the investigation resulting in the
6 forfeiture. The distribution shall bear a reasonable
7 relationship to the degree of direct participation of the
8 law enforcement agency in the effort resulting in the
9 forfeiture, taking into account the total value of the
10 property forfeited and the total law enforcement effort
11 with respect to the violation of the law upon which the
12 forfeiture is based. Amounts distributed to the agency or
13 agencies shall be used for the enforcement of laws
14 governing cannabis and controlled substances, except that
15 amounts distributed to the Secretary of State shall be
16 deposited into the Secretary of State Evidence Fund to be
17 used as provided in Section 2-115 of the Illinois Vehicle
18 Code.

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

33 (ii) 12.5% shall be distributed to the Office of
34 the State's Attorneys Appellate Prosecutor and

1 deposited in the Narcotics Profit Forfeiture Fund of
2 that Office to be used for additional expenses incurred
3 in the investigation, prosecution and appeal of cases
4 arising under laws governing cannabis and controlled
5 substances. The Office of the State's Attorneys
6 Appellate Prosecutor shall not receive distribution
7 from cases brought in counties with over 3,000,000
8 population.

9 (3) 10% shall be retained by the Department of State
10 Police for expenses related to the administration and sale
11 of seized and forfeited property.

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

14 on page 4, line 28, by changing "vessel" to "vessel,"; and

15 on page 6, by inserting immediately below line 24 the
16 following:

17 "Section 10. The Methamphetamine Control and Community
18 Protection Act is amended by changing Section 85 as follows:

19 (720 ILCS 646/85)

20 Sec. 85. Forfeiture.

21 (a) The following are subject to forfeiture:

22 (1) all substances containing methamphetamine which
23 have been produced, manufactured, delivered, or possessed
24 in violation of this Act;

25 (2) all methamphetamine manufacturing materials which
26 have been produced, delivered, or possessed in connection
27 with any substance containing methamphetamine in violation
28 of this Act;

29 (3) all conveyances, including aircraft, vehicles or
30 vessels, which are used, or intended for use, to transport,

1 or in any manner to facilitate the transportation, sale,
2 receipt, possession, or concealment of property described
3 in paragraph (1) or (2) that constitutes a felony violation
4 of the Act, but:

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

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

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

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

23 (5) everything of value furnished or intended to be
24 furnished by any person in exchange for a substance in
25 violation of this Act, all proceeds traceable to such an
26 exchange, and all moneys, negotiable instruments, and
27 securities used, or intended to be used, to commit or in
28 any manner to facilitate any felony violation of this Act.

29 (6) all real property, including any right, title, and
30 interest (including, but not limited to, any leasehold
31 interest or the beneficial interest in a land trust) in the
32 whole of any lot or tract of land and any appurtenances or
33 improvements, which is used, or intended to be used, in any
34 manner or part, to commit, or in any manner to facilitate

1 the commission of, any violation or act that constitutes a
2 violation of this Act or that is the proceeds of any
3 violation or act that constitutes a violation of this Act.

4 (b) Property subject to forfeiture under this Act may be
5 seized by the Director or any peace officer upon process or
6 seizure warrant issued by any court having jurisdiction over
7 the property. Seizure by the Director or any peace officer
8 without process may be made:

9 (1) if the property subject to seizure has been the
10 subject of a prior judgment in favor of the State in a
11 criminal proceeding or in an injunction or forfeiture
12 proceeding based upon this Act or the Drug Asset Forfeiture
13 Procedure Act;

14 (2) if there is probable cause to believe that the
15 property is directly or indirectly dangerous to health or
16 safety;

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

21 (4) in accordance with the Code of Criminal Procedure
22 of 1963.

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

26 (d) Property taken or detained under this Section is not
27 subject to replevin, but is deemed to be in the custody of the
28 Director subject only to the order and judgments of the circuit
29 court having jurisdiction over the forfeiture proceedings and
30 the decisions of the State's Attorney under the Drug Asset
31 Forfeiture Procedure Act. When property is seized under this
32 Act, the seizing agency shall promptly conduct an inventory of
33 the seized property, estimate the property's value, and forward
34 a copy of the inventory of seized property and the estimate of

1 the property's value to the Director. Upon receiving notice of
2 seizure, the Director may:

3 (1) place the property under seal;

4 (2) remove the property to a place designated by him or
5 her;

6 (3) keep the property in the possession of the seizing
7 agency;

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

12 (5) place the property under constructive seizure by
13 posting notice of pending forfeiture on it, by giving
14 notice of pending forfeiture to its owners and interest
15 holders, or by filing notice of pending forfeiture in any
16 appropriate public record relating to the property; or

17 (6) provide for another agency or custodian, including
18 an owner, secured party, or lienholder, to take custody of
19 the property upon the terms and conditions set by the
20 Director.

21 (e) No disposition may be made of property under seal until
22 the time for taking an appeal has elapsed or until all appeals
23 have been concluded unless a court, upon application therefor,
24 orders the sale of perishable substances and the deposit of the
25 proceeds of the sale with the court.

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

1 seizing agency or prosecutor for official use in the
2 enforcement of laws relating to methamphetamine, cannabis, or
3 controlled substances, if the agency or prosecutor
4 demonstrates that the item requested would be useful to the
5 agency or prosecutor in their enforcement efforts. When any
6 forfeited conveyance, including an aircraft, vehicle, or
7 vessel, is returned to the seizing agency or prosecutor, the
8 conveyance must be used for a minimum of one year in the
9 enforcement of laws relating to cannabis or controlled
10 substances. After one year, the conveyance may be used for
11 official use in the enforcement of any law. Upon disposal, all
12 proceeds from the sale of the conveyance must be used for drug
13 enforcement purposes. When any real property returned to the
14 seizing agency is sold by the agency or its unit of government,
15 the proceeds of the sale shall be delivered to the Director and
16 distributed in accordance with subsection (g).

17 (g) All moneys and the sale proceeds of all other property
18 forfeited and seized under this Act shall be distributed as
19 follows:

20 (1) 65% shall be distributed to the metropolitan
21 enforcement group, local, municipal, county, or State law
22 enforcement agency or agencies which conducted or
23 participated in the investigation resulting in the
24 forfeiture. The distribution shall bear a reasonable
25 relationship to the degree of direct participation of the
26 law enforcement agency in the effort resulting in the
27 forfeiture, taking into account the total value of the
28 property forfeited and the total law enforcement effort
29 with respect to the violation of the law upon which the
30 forfeiture is based. Amounts distributed to the agency or
31 agencies shall be used for the enforcement of laws
32 governing methamphetamine, cannabis, and controlled
33 substances, except that amounts distributed to the
34 Secretary of State shall be deposited into the Secretary of

1 State Evidence Fund to be used as provided in Section 2-115
2 of the Illinois Vehicle Code.

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

18 (ii) 12.5% shall be distributed to the Office of the
19 State's Attorneys Appellate Prosecutor and deposited in
20 the Narcotics Profit Forfeiture Fund of that Office to be
21 used for additional expenses incurred in the
22 investigation, prosecution and appeal of cases arising
23 under laws governing methamphetamine, cannabis, and
24 controlled substances. The Office of the State's Attorneys
25 Appellate Prosecutor shall not receive distribution from
26 cases brought in counties with a population over 3,000,000.

27 (3) 10% shall be retained by the Department of State
28 Police for expenses related to the administration and sale
29 of seized and forfeited property.

30 (Source: P.A. 94-556, eff. 9-11-05.)".