



Sen. Patricia Van Pelt

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LRB099 03364 SLF 47539 a

1 AMENDMENT TO SENATE BILL 194

2 AMENDMENT NO. _____. Amend Senate Bill 194 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Drug Asset Forfeiture Procedure Act is
5 amended by changing Section 9 as follows:

6 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

7 Sec. 9. Judicial in rem procedures. If property seized
8 under the provisions of the Illinois Controlled Substances Act,
9 the Cannabis Control Act, or the Methamphetamine Control and
10 Community Protection Act is non-real property that exceeds
11 \$20,000 in value excluding the value of any conveyance, or is
12 real property, or a claimant has filed a claim and a cost bond
13 under subsection (C) of Section 6 of this Act, the following
14 judicial in rem procedures shall apply:

15 (A) If, after a review of the facts surrounding the
16 seizure, the State's Attorney is of the opinion that the seized

1 property is subject to forfeiture, then within 45 days of the
2 receipt of notice of seizure by the seizing agency or the
3 filing of the claim and cost bond, whichever is later, the
4 State's Attorney shall institute judicial forfeiture
5 proceedings by filing a verified complaint for forfeiture and,
6 if the claimant has filed a claim and cost bond, by depositing
7 the cost bond with the clerk of the court. When authorized by
8 law, a forfeiture must be ordered by a court on an action in
9 rem brought by a State's Attorney under a verified complaint
10 for forfeiture.

11 (B) During the ~~probable cause portion of the~~ judicial in
12 rem proceeding wherein the State presents its case-in-chief,
13 the court must receive and consider, among other things, all
14 relevant hearsay evidence and information. The laws of evidence
15 relating to civil actions shall apply to all other portions of
16 the judicial in rem proceeding.

17 (C) Only an owner of or interest holder in the property may
18 file an answer asserting a claim against the property in the
19 action in rem. For purposes of this Section, the owner or
20 interest holder shall be referred to as claimant.

21 (D) The answer must be signed by the owner or interest
22 holder under penalty of perjury and must set forth:

23 (i) the caption of the proceedings as set forth on the
24 notice of pending forfeiture and the name of the claimant;

25 (ii) the address at which the claimant will accept
26 mail;

1 (iii) the nature and extent of the claimant's interest
2 in the property;

3 (iv) the date, identity of transferor, and
4 circumstances of the claimant's acquisition of the
5 interest in the property;

6 (v) the name and address of all other persons known to
7 have an interest in the property;

8 (vi) the specific provisions of Section 8 of this Act
9 relied on in asserting it is not subject to forfeiture;

10 (vii) all essential facts supporting each assertion;
11 and

12 (viii) the precise relief sought.

13 (E) The answer must be filed with the court within 45 days
14 after service of the civil in rem complaint.

15 (F) The hearing must be held within 60 days after filing of
16 the answer unless continued for good cause.

17 (G) The State shall show the existence of clear and
18 convincing evidence ~~probable cause~~ for forfeiture of the
19 property. If the State shows clear and convincing evidence
20 ~~probable cause~~, the claimant has the burden of showing by a
21 preponderance of the evidence that the claimant's interest in
22 the property is not subject to forfeiture.

23 (H) If the State does not show existence of clear and
24 convincing evidence ~~probable cause~~ or a claimant has
25 established by a preponderance of evidence that the claimant
26 has an interest that is exempt under Section 8 of this Act, the

1 court shall order the interest in the property returned or
2 conveyed to the claimant and shall order all other property
3 forfeited to the State. If the State does show existence of
4 clear and convincing evidence ~~probable cause~~ and the claimant
5 does not establish by a preponderance of evidence that the
6 claimant has an interest that is exempt under Section 8 of this
7 Act, the court shall order all property forfeited to the State.

8 (I) A defendant convicted in any criminal proceeding is
9 precluded from later denying the essential allegations of the
10 criminal offense of which the defendant was convicted in any
11 proceeding under this Act regardless of the pendency of an
12 appeal from that conviction. However, evidence of the pendency
13 of an appeal is admissible.

14 (J) An acquittal or dismissal in a criminal proceeding
15 shall not preclude civil proceedings under this Act; however,
16 for good cause shown, on a motion by the State's Attorney, the
17 court may stay civil forfeiture proceedings during the criminal
18 trial for a related criminal indictment or information alleging
19 a violation of the Illinois Controlled Substances Act, the
20 Cannabis Control Act, or the Methamphetamine Control and
21 Community Protection Act. Such a stay shall not be available
22 pending an appeal. Property subject to forfeiture under the
23 Illinois Controlled Substances Act, the Cannabis Control Act,
24 or the Methamphetamine Control and Community Protection Act
25 shall not be subject to return or release by a court exercising
26 jurisdiction over a criminal case involving the seizure of such

1 property unless such return or release is consented to by the
2 State's Attorney.

3 (K) All property declared forfeited under this Act vests in
4 this State on the commission of the conduct giving rise to
5 forfeiture together with the proceeds of the property after
6 that time. Any such property or proceeds subsequently
7 transferred to any person remain subject to forfeiture and
8 thereafter shall be ordered forfeited unless the transferee
9 claims and establishes in a hearing under the provisions of
10 this Act that the transferee's interest is exempt under Section
11 8 of this Act.

12 (L) A civil action under this Act must be commenced within
13 5 years after the last conduct giving rise to forfeiture became
14 known or should have become known or 5 years after the
15 forfeitable property is discovered, whichever is later,
16 excluding any time during which either the property or claimant
17 is out of the State or in confinement or during which criminal
18 proceedings relating to the same conduct are in progress.

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