



Sen. Antonio Munoz

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09400SB2869sam002

LRB094 17675 RLC 55995 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:

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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.)".