



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1620

Introduced 2/22/2007, by Rep. Linda Chapa LaVia

SYNOPSIS AS INTRODUCED:

725 ILCS 5/Art. 108C heading new
725 ILCS 5/108C-5 new
725 ILCS 5/108C-10 new
725 ILCS 5/108C-15 new
725 ILCS 5/108C-20 new

Amends the Code of Criminal Procedure of 1963. Provides that the State's Attorney may request the issuance of a property preservation warrant authorizing the seizure of property in the same manner as provided for in a search warrant or in a seizure warrant. Provides that the court shall issue the order if the court determines that there is probable cause to believe that the property to be seized is: (i) the proceeds of specified criminal activity, or (ii) assets or other property traceable therefrom, or (iii) profits realized therefrom. Provides that upon conviction, the court may order that the property seized be used to pay restitution to the victim; pay fines, fees and costs; or reimburse the prosecuting agency for costs incurred as a result of investigation and trial. Effective immediately.

LRB095 06776 RLC 31905 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 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Article 108C as follows:

6 (725 ILCS 5/Art. 108C heading new)

7 ARTICLE 108C. PROPERTY PRESERVATION WARRANTS

8 (725 ILCS 5/108C-5 new)

9 Sec. 108C-5. Application for a property preservation
10 warrant.

11 (a) (1) In order to preserve property unlawfully taken from
12 a victim, and to prevent, to the fullest extent possible, the
13 dissipation, secretion or the laundering of: (i) the proceeds
14 of the criminal activity, or (ii) assets or other property
15 traceable therefrom, or (iii) profits realized therefrom, the
16 State's Attorney may request the issuance of an order
17 authorizing the seizure of such property in the same manner as
18 provided for in a search warrant or in a seizure warrant.

19 (2) If the court determines that there is probable cause to
20 believe that the property to be seized is: (i) the proceeds of
21 specified criminal activity, or (ii) assets or other property
22 traceable therefrom, or (iii) profits realized therefrom, the

1 court shall issue a property preservation warrant authorizing
2 the seizure of such property.

3 (3) Property subject to seizure under this Section may be
4 seized by any peace officer upon receipt of the property
5 preservation warrant issued by the court.

6 (4) A copy of the property preservation warrant shall be
7 provided by personal service or by registered mail to every
8 person who may be reasonably believed to have an interest in
9 the property subject to seizure.

10 (5) If the property to be seized is real property, the
11 State shall cause to be recorded, at or as near as is practical
12 to the time of the issuance of the property preservation
13 warrant, a lis pendens in each county in which the real
14 property is situated which specifically identifies the
15 property by legal description, the name of the owner of record
16 as shown on the latest equalized assessment roll, and the
17 assessor's parcel number.

18 (6) If the property to be seized are assets presently in
19 the possession of, or under the control of, or have at any time
20 been in the possession of, or under the control of a banking or
21 financial institution, the property preservation warrant may
22 direct the banking or financial institution to immediately:

23 (i) deliver said assets to the State's Attorney;

24 (ii) disclose the location, nature and value of any of
25 the assets of the accused that are held by the banking or
26 financial institution that are not identified in the

1 property preservation warrant, and freeze the assets for 3
2 business days; and

3 (iii) where previously in control or possession of the
4 property, disclose the present location, nature and value
5 of any of the above described property to the State's
6 Attorney.

7 (b) The property shall remain in the custody of the State's
8 Attorney until further order of a court.

9 (725 ILCS 5/108C-10 new)

10 Sec. 108C-10. Claimant proceedings.

11 (a) Petition. Any person claiming an interest in the
12 preserved property may, at any time within 30 days from the
13 date of the seizure, or within 30 days after receipt of actual
14 notice, file with the court, and provide to the State's
15 Attorney who caused the seizure, a written, verified petition
16 stating the nature and amount of his or her interest in the
17 property or assets and request for specified relief from the
18 property preservation warrant.

19 (b) Time for hearing. The defendant, or a person who has
20 filed a verified claim to the property shall have the right to
21 have the court conduct a hearing in order to determine whether
22 he or she is entitled to relief from the property preservation
23 warrant. Within 30 days of the service of the request for
24 hearing upon the State's Attorney, or upon a showing of good
25 cause, the hearing shall be held within 10 days of the service

1 of the request for hearing upon the State's Attorney.

2 (c) Evidence. In determining whether or not a claimant is
3 entitled to relief from the property preservation warrant, the
4 court has the discretion to consider any matter that it deems
5 relevant, reliable and appropriate, including hearsay
6 statements, in order to reach a just and equitable decision.

7 (d) Relevant factors. The court shall give significant
8 weight to the following factors:

9 (1) the public interest in preserving the property or
10 assets pendente lite;

11 (2) the difficulty of preserving the property or assets
12 pendente lite where the underlying alleged crimes involve
13 issues of fraud and moral turpitude;

14 (3) the fact that the requested relief is being sought
15 by the State's Attorney on behalf of financial crime
16 victims; and

17 (4) the significant public interest involved in
18 compensating the victims of financial crime and paying
19 court imposed restitution, fines, fees, and costs.

20 (e) Orders. The court shall weigh the relative likelihood
21 of success on the merits and the consequences to each of the
22 parties. If court finds that the State is more likely than not
23 to prevail on the merits and the risk of the dissipation of
24 assets outweighs the potential harm to the defendants and the
25 interested parties, the court shall deny relief to the
26 petitioner.

1 (725 ILCS 5/108C-15 new)

2 Sec. 108C-15. Alternative remedies.

3 (a) The court, in crafting its order, shall seek to protect
4 the interests of any innocent third persons, including an
5 innocent spouse, who were not involved in the commission of any
6 criminal activity.

7 (b) In addition to, or in lieu of granting or denying
8 relief under a petition filed under this Section, the court may
9 also order any other form of relief that it determines, in its
10 discretion, may further the interests of justice, including,
11 but not limited to:

12 (1) the issuance of an injunction to restrain any
13 person from transferring, encumbering, hypothecating, or
14 otherwise disposing of property;

15 (2) the appointment of a receiver to take possession
16 of, care for, manage, and operate the assets and properties
17 so that the property may be maintained and preserved. The
18 court may order that a receiver appointed pursuant to this
19 Section shall be compensated for all reasonable
20 expenditures made or incurred by him or her in connection
21 with the possession, care, management, and operation of any
22 property or assets that are subject to the provisions of
23 this Section; or

24 (3) the posting of a bond or other undertaking, in lieu
25 of other orders, of a value sufficient to ensure the

1 satisfaction of restitution and fines imposed pursuant to
2 this Section.

3 (725 ILCS 5/108C-20 new)

4 Sec. 108C-20. Final disposition of property. Upon
5 conviction, the court may order that the property seized
6 pursuant this Section be used to pay restitution to the victim;
7 pay fines, fees and costs; or reimburse the prosecuting agency
8 for costs incurred as a result of investigation and trial.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.