



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2353

Introduced 2/19/2009, by Rep. Kevin Joyce

SYNOPSIS AS INTRODUCED:

720 ILCS 5/29B-1

from Ch. 38, par. 29B-1

Amends the Criminal Code of 1961 relating to the offense of money laundering. Changes the definition of "criminally derived property" to: (1) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law; or (2) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law (rather than a violation of the Criminal Code of 1961, the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act). Establishes penalties for laundering of property by transporting, transmitting, or transferring, or attempting to transport, transmit, or transfer a monetary instrument knowing, or having reason to know, that the financial transaction is designed in whole or in part to avoid a transaction reporting requirement under State law. Effective immediately.

LRB096 08518 RLC 18638 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 Criminal Code of 1961 is amended by changing
5 Section 29B-1 as follows:

6 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

7 Sec. 29B-1. (a) A person commits the offense of money
8 laundering:

9 (1) when, knowing that the property involved in a
10 financial transaction represents the proceeds of some form
11 of unlawful activity, he or she conducts or attempts to
12 conduct such a financial transaction which in fact involves
13 criminally derived property:

14 (A) with the intent to promote the carrying on of
15 the unlawful activity from which the criminally
16 derived property was obtained; or

17 (B) where he or she knows or reasonably should know
18 that the financial transaction is designed in whole or
19 in part:

20 (i) to conceal or disguise the nature, the
21 location, the source, the ownership or the control
22 of the criminally derived property; or

23 (ii) to avoid a transaction reporting

1 requirement under State law; or

2 (1.5) when he or she transports, transmits, or
3 transfers, or attempts to transport, transmit, or transfer
4 a monetary instrument:

5 (A) with the intent to promote the carrying on of
6 the unlawful activity from which the criminally
7 derived property was obtained; or

8 (B) knowing, or having reason to know, that the
9 financial transaction is designed in whole or in part:

10 (i) to conceal or disguise the nature, the
11 location, the source, the ownership or the control
12 of the criminally derived property; or

13 (ii) to avoid a transaction reporting
14 requirement under State law; or

15 (2) when, with the intent to:

16 (A) promote the carrying on of a specified criminal
17 activity as defined in this Article; or

18 (B) conceal or disguise the nature, location,
19 source, ownership, or control of property believed to
20 be the proceeds of a specified criminal activity as
21 defined by subdivision (b) (6); or

22 (C) avoid a transaction reporting requirement
23 under State law,

24 he or she conducts or attempts to conduct a financial
25 transaction involving property he or she believes to be the
26 proceeds of specified criminal activity as defined by

1 subdivision (b) (6) or property used to conduct or
2 facilitate specified criminal activity as defined by
3 subdivision (b) (6).

4 (b) As used in this Section:

5 (0.5) "Knowing that the property involved in a
6 financial transaction represents the proceeds of some form
7 of unlawful activity" means that the person knew the
8 property involved in the transaction represented proceeds
9 from some form, though not necessarily which form, of
10 activity that constitutes a felony under State, federal, or
11 foreign law, ~~regardless of whether or not such activity is~~
12 ~~specified in subdivision (b) (4).~~

13 (1) "Financial transaction" means a purchase, sale,
14 loan, pledge, gift, transfer, delivery or other
15 disposition utilizing criminally derived property, and
16 with respect to financial institutions, includes a
17 deposit, withdrawal, transfer between accounts, exchange
18 of currency, loan, extension of credit, purchase or sale of
19 any stock, bond, certificate of deposit or other monetary
20 instrument, use of safe deposit box, or any other payment,
21 transfer or delivery by, through, or to a financial
22 institution. For purposes of clause (a) (2) of this Section,
23 the term "financial transaction" also means a transaction
24 which without regard to whether the funds, monetary
25 instruments, or real or personal property involved in the
26 transaction are criminally derived, any transaction which

1 in any way or degree: (1) involves the movement of funds by
2 wire or any other means; (2) involves one or more monetary
3 instruments; or (3) the transfer of title to any real or
4 personal property. The receipt by an attorney of bona fide
5 fees for the purpose of legal representation is not a
6 financial transaction for purposes of this Section.

7 (2) "Financial institution" means any bank; saving and
8 loan association; trust company; agency or branch of a
9 foreign bank in the United States; currency exchange;
10 credit union, mortgage banking institution; pawnbroker;
11 loan or finance company; operator of a credit card system;
12 issuer, redeemer or cashier of travelers checks, checks or
13 money orders; dealer in precious metals, stones or jewels;
14 broker or dealer in securities or commodities; investment
15 banker; or investment company.

16 (3) "Monetary instrument" means United States coins
17 and currency; coins and currency of a foreign country;
18 travelers checks; personal checks, bank checks, and money
19 orders; investment securities; bearer negotiable
20 instruments; bearer investment securities; or bearer
21 securities and certificates of stock in such form that
22 title thereto passes upon delivery.

23 (4) "Criminally derived property" means: (A) any
24 property, real or personal, constituting or derived from
25 proceeds obtained, directly or indirectly, from activity
26 that constitutes a felony under State, federal, or foreign

1 ~~law pursuant to a violation of the Criminal Code of 1961,~~
2 ~~the Illinois Controlled Substances Act, the Cannabis~~
3 ~~Control Act, or the Methamphetamine Control and Community~~
4 ~~Protection Act; or (B) any property represented to be~~
5 ~~property constituting or derived from proceeds obtained,~~
6 ~~directly or indirectly, from activity that constitutes a~~
7 ~~felony under State, federal, or foreign law pursuant to a~~
8 ~~violation of this Code, the Illinois Controlled Substances~~
9 ~~Act, the Cannabis Control Act, or the Methamphetamine~~
10 ~~Control and Community Protection Act.~~

11 (5) "Conduct" or "conducts" includes, in addition to
12 its ordinary meaning, initiating, concluding, or
13 participating in initiating or concluding a transaction.

14 (6) "Specified criminal activity" means any violation
15 of Section 20.5-5 (720 ILCS 5/20.5-5) and any violation of
16 Article 29D of this Code.

17 (7) "Director" means the Director of State Police or
18 his or her designated agents.

19 (8) "Department" means the Department of State Police
20 of the State of Illinois or its successor agency.

21 (9) "Transaction reporting requirement under State
22 law" means any violation as defined under the Currency
23 Reporting Act.

24 (c) Sentence.

25 (1) Laundering of criminally derived property of a
26 value not exceeding \$10,000 is a Class 3 felony;

1 (2) Laundering of criminally derived property of a
2 value exceeding \$10,000 but not exceeding \$100,000 is a
3 Class 2 felony;

4 (3) Laundering of criminally derived property of a
5 value exceeding \$100,000 but not exceeding \$500,000 is a
6 Class 1 felony;

7 (4) Money laundering in violation of subsection (a) (2)
8 of this Section is a Class X felony;

9 (5) Laundering of criminally derived property of a
10 value exceeding \$500,000 is a Class 1 non-probationable
11 felony.

12 (6) In a prosecution under clause (a) (1.5) (B) (ii) of
13 this Section, the sentences is as follows:

14 (A) Laundering of property of a value not exceeding
15 \$10,000 is a Class 3 felony;

16 (B) Laundering of property of a value exceeding
17 \$10,000 but not exceeding \$100,000 is a Class 2 felony;

18 (C) Laundering of property of a value exceeding
19 \$100,000 but not exceeding \$500,000 is a Class 1
20 felony;

21 (D) Laundering of property of a value exceeding
22 \$500,000 is a Class 1 non-probationable felony.

23 (d) Evidence. In a prosecution under this Article, either
24 party may introduce the following evidence pertaining to the
25 issue of whether the property or proceeds were known to be some
26 form of criminally derived property or from some form of

1 unlawful activity:

2 (1) A financial transaction was conducted or
3 structured or attempted in violation of the reporting
4 requirements of any State or federal law; or

5 (2) A financial transaction was conducted or attempted
6 with the use of a false or fictitious name or a forged
7 instrument; or

8 (3) A falsely altered or completed written instrument
9 or a written instrument that contains any materially false
10 personal identifying information was made, used, offered
11 or presented, whether accepted or not, in connection with a
12 financial transaction; or

13 (4) A financial transaction was structured or
14 attempted to be structured so as to falsely report the
15 actual consideration or value of the transaction; or

16 (5) A money transmitter, a person engaged in a trade or
17 business or any employee of a money transmitter or a person
18 engaged in a trade or business, knows or reasonably should
19 know that false personal identifying information has been
20 presented and incorporates the false personal identifying
21 information into any report or record; or

22 (6) The criminally derived property is transported or
23 possessed in a fashion inconsistent with the ordinary or
24 usual means of transportation or possession of such
25 property and where the property is discovered in the
26 absence of any documentation or other indicia of legitimate

1 origin or right to such property; or

2 (7) A person pays or receives substantially less than
3 face value for one or more monetary instruments; or

4 (8) A person engages in a transaction involving one or
5 more monetary instruments, where the physical condition or
6 form of the monetary instrument or instruments makes it
7 apparent that they are not the product of bona fide
8 business or financial transactions.

9 (e) Duty to enforce this Article.

10 (1) It is the duty of the Department of State Police,
11 and its agents, officers, and investigators, to enforce all
12 provisions of this Article, except those specifically
13 delegated, and to cooperate with all agencies charged with
14 the enforcement of the laws of the United States, or of any
15 state, relating to money laundering. Only an agent,
16 officer, or investigator designated by the Director may be
17 authorized in accordance with this Section to serve seizure
18 notices, warrants, subpoenas, and summonses under the
19 authority of this State.

20 (2) Any agent, officer, investigator, or peace officer
21 designated by the Director may: (A) make seizure of
22 property pursuant to the provisions of this Article; and
23 (B) perform such other law enforcement duties as the
24 Director designates. It is the duty of all State's
25 Attorneys to prosecute violations of this Article and
26 institute legal proceedings as authorized under this

1 Article.

2 (f) Protective orders.

3 (1) Upon application of the State, the court may enter
4 a restraining order or injunction, require the execution of
5 a satisfactory performance bond, or take any other action
6 to preserve the availability of property described in
7 subsection (h) for forfeiture under this Article:

8 (A) upon the filing of an indictment, information,
9 or complaint charging a violation of this Article for
10 which forfeiture may be ordered under this Article and
11 alleging that the property with respect to which the
12 order is sought would be subject to forfeiture under
13 this Article; or

14 (B) prior to the filing of such an indictment,
15 information, or complaint, if, after notice to persons
16 appearing to have an interest in the property and
17 opportunity for a hearing, the court determines that:

18 (i) there is probable cause to believe that the
19 State will prevail on the issue of forfeiture and
20 that failure to enter the order will result in the
21 property being destroyed, removed from the
22 jurisdiction of the court, or otherwise made
23 unavailable for forfeiture; and

24 (ii) the need to preserve the availability of
25 the property through the entry of the requested
26 order outweighs the hardship on any party against

1 whom the order is to be entered.

2 Provided, however, that an order entered pursuant
3 to subparagraph (B) shall be effective for not more
4 than 90 days, unless extended by the court for good
5 cause shown or unless an indictment, information,
6 complaint, or administrative notice has been filed.

7 (2) A temporary restraining order under this
8 subsection may be entered upon application of the State
9 without notice or opportunity for a hearing when an
10 indictment, information, complaint, or administrative
11 notice has not yet been filed with respect to the property,
12 if the State demonstrates that there is probable cause to
13 believe that the property with respect to which the order
14 is sought would be subject to forfeiture under this Section
15 and that provision of notice will jeopardize the
16 availability of the property for forfeiture. Such a
17 temporary order shall expire not more than 30 days after
18 the date on which it is entered, unless extended for good
19 cause shown or unless the party against whom it is entered
20 consents to an extension for a longer period. A hearing
21 requested concerning an order entered under this paragraph
22 shall be held at the earliest possible time and prior to
23 the expiration of the temporary order.

24 (3) The court may receive and consider, at a hearing
25 held pursuant to this subsection (f), evidence and
26 information that would be inadmissible under the Illinois

1 rules of evidence.

2 (4) Order to repatriate and deposit.

3 (A) In general. Pursuant to its authority to enter
4 a pretrial restraining order under this Section, the
5 court may order a defendant to repatriate any property
6 that may be seized and forfeited and to deposit that
7 property pending trial with the Illinois State Police
8 or another law enforcement agency designated by the
9 Illinois State Police.

10 (B) Failure to comply. Failure to comply with an
11 order under this subsection (f) is punishable as a
12 civil or criminal contempt of court.

13 (g) Warrant of seizure. The State may request the issuance
14 of a warrant authorizing the seizure of property described in
15 subsection (h) in the same manner as provided for a search
16 warrant. If the court determines that there is probable cause
17 to believe that the property to be seized would be subject to
18 forfeiture, the court shall issue a warrant authorizing the
19 seizure of such property.

20 (h) Forfeiture.

21 (1) The following are subject to forfeiture:

22 (A) any property, real or personal, constituting,
23 derived from, or traceable to any proceeds the person
24 obtained directly or indirectly, as a result of a
25 violation of this Article;

26 (B) any of the person's property used, or intended

1 to be used, in any manner or part, to commit, or to
2 facilitate the commission of, a violation of this
3 Article;

4 (C) all conveyances, including aircraft, vehicles
5 or vessels, which are used, or intended for use, to
6 transport, or in any manner to facilitate the
7 transportation, sale, receipt, possession, or
8 concealment of property described in subparagraphs (A)
9 and (B), but:

10 (i) no conveyance used by any person as a
11 common carrier in the transaction of business as a
12 common carrier is subject to forfeiture under this
13 Section unless it appears that the owner or other
14 person in charge of the conveyance is a consenting
15 party or privy to a violation of this Article;

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

20 (iii) a forfeiture of a conveyance encumbered
21 by a bona fide security interest is subject to the
22 interest of the secured party if he or she neither
23 had knowledge of nor consented to the act or
24 omission;

25 (D) all real property, including any right, title,
26 and interest (including, but not limited to, any

1 leasehold interest or the beneficial interest in a land
2 trust) in the whole of any lot or tract of land and any
3 appurtenances or improvements, which is used or
4 intended to be used, in any manner or part, to commit,
5 or in any manner to facilitate the commission of, any
6 violation of this Article or that is the proceeds of
7 any violation or act that constitutes a violation of
8 this Article.

9 (2) Property subject to forfeiture under this Article
10 may be seized by the Director or any peace officer upon
11 process or seizure warrant issued by any court having
12 jurisdiction over the property. Seizure by the Director or
13 any peace officer without process may be made:

14 (A) if the seizure is incident to a seizure
15 warrant;

16 (B) if the property subject to seizure has been the
17 subject of a prior judgment in favor of the State in a
18 criminal proceeding, or in an injunction or forfeiture
19 proceeding based upon this Article;

20 (C) if there is probable cause to believe that the
21 property is directly or indirectly dangerous to health
22 or safety;

23 (D) if there is probable cause to believe that the
24 property is subject to forfeiture under this Article
25 and the property is seized under circumstances in which
26 a warrantless seizure or arrest would be reasonable; or

1 (E) in accordance with the Code of Criminal
2 Procedure of 1963.

3 (3) In the event of seizure pursuant to paragraph (2),
4 forfeiture proceedings shall be instituted in accordance
5 with subsections (i) through (r).

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

18 (A) place the property under seal;

19 (B) remove the property to a place designated by
20 the Director;

21 (C) keep the property in the possession of the
22 seizing agency;

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

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

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

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

1 distributed in accordance with paragraph (6).

2 (6) All monies and the sale proceeds of all other
3 property forfeited and seized under this Article shall be
4 distributed as follows:

5 (A) 65% shall be distributed to the metropolitan
6 enforcement group, local, municipal, county, or State
7 law enforcement agency or agencies which conducted or
8 participated in the investigation resulting in the
9 forfeiture. The distribution shall bear a reasonable
10 relationship to the degree of direct participation of
11 the law enforcement agency in the effort resulting in
12 the forfeiture, taking into account the total value of
13 the property forfeited and the total law enforcement
14 effort with respect to the violation of the law upon
15 which the forfeiture is based. Amounts distributed to
16 the agency or agencies shall be used for the
17 enforcement of laws.

18 (B) (i) 12.5% shall be distributed to the Office of
19 the State's Attorney of the county in which the
20 prosecution resulting in the forfeiture was
21 instituted, deposited in a special fund in the county
22 treasury and appropriated to the State's Attorney for
23 use in the enforcement of laws. In counties over
24 3,000,000 population, 25% shall be distributed to the
25 Office of the State's Attorney for use in the
26 enforcement of laws. If the prosecution is undertaken

1 solely by the Attorney General, the portion provided
2 hereunder shall be distributed to the Attorney General
3 for use in the enforcement of laws.

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

13 (C) 10% shall be retained by the Department of
14 State Police for expenses related to the
15 administration and sale of seized and forfeited
16 property.

17 (i) Notice to owner or interest holder.

18 (1) Whenever notice of pending forfeiture or service of
19 an in rem complaint is required under the provisions of
20 this Article, such notice or service shall be given as
21 follows:

22 (A) If the owner's or interest holder's name and
23 current address are known, then by either personal
24 service or mailing a copy of the notice by certified
25 mail, return receipt requested, to that address. For
26 purposes of notice under this Section, if a person has

1 been arrested for the conduct giving rise to the
2 forfeiture, then the address provided to the arresting
3 agency at the time of arrest shall be deemed to be that
4 person's known address. Provided, however, if an owner
5 or interest holder's address changes prior to the
6 effective date of the notice of pending forfeiture, the
7 owner or interest holder shall promptly notify the
8 seizing agency of the change in address or, if the
9 owner or interest holder's address changes subsequent
10 to the effective date of the notice of pending
11 forfeiture, the owner or interest holder shall
12 promptly notify the State's Attorney of the change in
13 address; or

14 (B) If the property seized is a conveyance, to the
15 address reflected in the office of the agency or
16 official in which title or interest to the conveyance
17 is required by law to be recorded, then by mailing a
18 copy of the notice by certified mail, return receipt
19 requested, to that address; or

20 (C) If the owner's or interest holder's address is
21 not known, and is not on record as provided in
22 paragraph (B), then by publication for 3 successive
23 weeks in a newspaper of general circulation in the
24 county in which the seizure occurred.

25 (2) Notice served under this Article is effective upon
26 personal service, the last date of publication, or the

1 mailing of written notice, whichever is earlier.

2 (j) Notice to State's Attorney. The law enforcement agency
3 seizing property for forfeiture under this Article shall,
4 within 90 days after seizure, notify the State's Attorney for
5 the county, either where an act or omission giving rise to the
6 forfeiture occurred or where the property was seized, of the
7 seizure of the property and the facts and circumstances giving
8 rise to the seizure and shall provide the State's Attorney with
9 the inventory of the property and its estimated value. When the
10 property seized for forfeiture is a vehicle, the law
11 enforcement agency seizing the property shall immediately
12 notify the Secretary of State that forfeiture proceedings are
13 pending regarding such vehicle.

14 (k) Non-judicial forfeiture. If non-real property that
15 exceeds \$20,000 in value excluding the value of any conveyance,
16 or if real property is seized under the provisions of this
17 Article, the State's Attorney shall institute judicial in rem
18 forfeiture proceedings as described in subsection (l) of this
19 Section within 45 days from receipt of notice of seizure from
20 the seizing agency under subsection (j) of this Section.
21 However, if non-real property that does not exceed \$20,000 in
22 value excluding the value of any conveyance is seized, the
23 following procedure shall be used:

24 (1) If, after review of the facts surrounding the
25 seizure, the State's Attorney is of the opinion that the
26 seized property is subject to forfeiture, then within 45

1 days after the receipt of notice of seizure from the
2 seizing agency, the State's Attorney shall cause notice of
3 pending forfeiture to be given to the owner of the property
4 and all known interest holders of the property in
5 accordance with subsection (i) of this Section.

6 (2) The notice of pending forfeiture must include a
7 description of the property, the estimated value of the
8 property, the date and place of seizure, the conduct giving
9 rise to forfeiture or the violation of law alleged, and a
10 summary of procedures and procedural rights applicable to
11 the forfeiture action.

12 (3) (A) Any person claiming an interest in property
13 which is the subject of notice under paragraph (1) of this
14 subsection (k), must, in order to preserve any rights or
15 claims to the property, within 45 days after the effective
16 date of notice as described in subsection (i) of this
17 Section, file a verified claim with the State's Attorney
18 expressing his or her interest in the property. The claim
19 must set forth:

20 (i) the caption of the proceedings as set forth on
21 the notice of pending forfeiture and the name of the
22 claimant;

23 (ii) the address at which the claimant will accept
24 mail;

25 (iii) the nature and extent of the claimant's
26 interest in the property;

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

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

6 (vi) the specific provision of law relied on in
7 asserting the property is not subject to forfeiture;

8 (vii) all essential facts supporting each
9 assertion; and

10 (viii) the relief sought.

11 (B) If a claimant files the claim and deposits with the
12 State's Attorney a cost bond, in the form of a cashier's
13 check payable to the clerk of the court, in the sum of 10%
14 of the reasonable value of the property as alleged by the
15 State's Attorney or the sum of \$100, whichever is greater,
16 upon condition that, in the case of forfeiture, the
17 claimant must pay all costs and expenses of forfeiture
18 proceedings, then the State's Attorney shall institute
19 judicial in rem forfeiture proceedings and deposit the cost
20 bond with the clerk of the court as described in subsection
21 (1) of this Section within 45 days after receipt of the
22 claim and cost bond. In lieu of a cost bond, a person
23 claiming interest in the seized property may file, under
24 penalty of perjury, an indigency affidavit which has been
25 approved by a circuit court judge.

26 (C) If none of the seized property is forfeited in the

1 judicial in rem proceeding, the clerk of the court shall
2 return to the claimant, unless the court orders otherwise,
3 90% of the sum which has been deposited and shall retain as
4 costs 10% of the money deposited. If any of the seized
5 property is forfeited under the judicial forfeiture
6 proceeding, the clerk of the court shall transfer 90% of
7 the sum which has been deposited to the State's Attorney
8 prosecuting the civil forfeiture to be applied to the costs
9 of prosecution and the clerk shall retain as costs 10% of
10 the sum deposited.

11 (4) If no claim is filed or bond given within the 45
12 day period as described in paragraph (3) of this subsection
13 (k), the State's Attorney shall declare the property
14 forfeited and shall promptly notify the owner and all known
15 interest holders of the property and the Director of State
16 Police of the declaration of forfeiture and the Director
17 shall dispose of the property in accordance with law.

18 (1) Judicial in rem procedures. If property seized under
19 the provisions of this Article is non-real property that
20 exceeds \$20,000 in value excluding the value of any conveyance,
21 or is real property, or a claimant has filed a claim and a cost
22 bond under paragraph (3) of subsection (k) of this Section, the
23 following judicial in rem procedures shall apply:

24 (1) If, after a review of the facts surrounding the
25 seizure, the State's Attorney is of the opinion that the
26 seized property is subject to forfeiture, then within 45

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

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

17 (3) Only an owner of or interest holder in the property
18 may file an answer asserting a claim against the property
19 in the action in rem. For purposes of this Section, the
20 owner or interest holder shall be referred to as claimant.
21 Upon motion of the State, the court shall first hold a
22 hearing, wherein any claimant must establish by a
23 preponderance of the evidence, that he or she has a lawful,
24 legitimate ownership interest in the property and that it
25 was obtained through a lawful source.

26 (4) The answer must be signed by the owner or interest

1 holder under penalty of perjury and must set forth:

2 (A) the caption of the proceedings as set forth on
3 the notice of pending forfeiture and the name of the
4 claimant;

5 (B) the address at which the claimant will accept
6 mail;

7 (C) the nature and extent of the claimant's
8 interest in the property;

9 (D) the date, identity of transferor, and
10 circumstances of the claimant's acquisition of the
11 interest in the property;

12 (E) the name and address of all other persons known
13 to have an interest in the property;

14 (F) all essential facts supporting each assertion;
15 and

16 (G) the precise relief sought.

17 (5) The answer must be filed with the court within 45
18 days after service of the civil in rem complaint.

19 (6) The hearing must be held within 60 days after
20 filing of the answer unless continued for good cause.

21 (7) The State shall show the existence of probable
22 cause for forfeiture of the property. If the State shows
23 probable cause, the claimant has the burden of showing by a
24 preponderance of the evidence that the claimant's interest
25 in the property is not subject to forfeiture.

26 (8) If the State does not show existence of probable

1 cause, the court shall order the interest in the property
2 returned or conveyed to the claimant and shall order all
3 other property forfeited to the State. If the State does
4 show existence of probable cause, the court shall order all
5 property forfeited to the State.

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

12 (10) An acquittal or dismissal in a criminal proceeding
13 does not preclude civil proceedings under this Article;
14 however, for good cause shown, on a motion by the State's
15 Attorney, the court may stay civil forfeiture proceedings
16 during the criminal trial for a related criminal indictment
17 or information alleging a money laundering violation. Such
18 a stay shall not be available pending an appeal. Property
19 subject to forfeiture under this Article shall not be
20 subject to return or release by a court exercising
21 jurisdiction over a criminal case involving the seizure of
22 such property unless such return or release is consented to
23 by the State's Attorney.

24 (11) All property declared forfeited under this
25 Article vests in this State on the commission of the
26 conduct giving rise to forfeiture together with the

1 proceeds of the property after that time. Any such property
2 or proceeds subsequently transferred to any person remain
3 subject to forfeiture and thereafter shall be ordered
4 forfeited.

5 (12) A civil action under this Article must be
6 commenced within 5 years after the last conduct giving rise
7 to forfeiture became known or should have become known or 5
8 years after the forfeitable property is discovered,
9 whichever is later, excluding any time during which either
10 the property or claimant is out of the State or in
11 confinement or during which criminal proceedings relating
12 to the same conduct are in progress.

13 (m) Stay of time periods. If property is seized for
14 evidence and for forfeiture, the time periods for instituting
15 judicial and non-judicial forfeiture proceedings shall not
16 begin until the property is no longer necessary for evidence.

17 (n) Settlement of claims. Notwithstanding other provisions
18 of this Article, the State's Attorney and a claimant of seized
19 property may enter into an agreed-upon settlement concerning
20 the seized property in such an amount and upon such terms as
21 are set out in writing in a settlement agreement.

22 (o) Property constituting attorney fees. Nothing in this
23 Article applies to property which constitutes reasonable bona
24 fide attorney's fees paid to an attorney for services rendered
25 or to be rendered in the forfeiture proceeding or criminal
26 proceeding relating directly thereto where such property was

1 paid before its seizure, before the issuance of any seizure
2 warrant or court order prohibiting transfer of the property and
3 where the attorney, at the time he or she received the property
4 did not know that it was property subject to forfeiture under
5 this Article.

6 (p) Construction. It is the intent of the General Assembly
7 that the forfeiture provisions of this Article be liberally
8 construed so as to effect their remedial purpose. The
9 forfeiture of property and other remedies hereunder shall be
10 considered to be in addition to, and not exclusive of, any
11 sentence or other remedy provided by law.

12 (q) Judicial review. If property has been declared
13 forfeited under subsection (k) of this Section, any person who
14 has an interest in the property declared forfeited may, within
15 30 days after the effective date of the notice of the
16 declaration of forfeiture, file a claim and cost bond as
17 described in paragraph (3) of subsection (k) of this Section.
18 If a claim and cost bond is filed under this Section, then the
19 procedures described in subsection (l) of this Section apply.

20 (r) Burden of proof of exemption or exception. It is not
21 necessary for the State to negate any exemption or exception in
22 this Article in any complaint, information, indictment or other
23 pleading or in any trial, hearing, or other proceeding under
24 this Article. The burden of proof of any exemption or exception
25 is upon the person claiming it.

26 (s) Review of administrative decisions. All administrative

1 findings, rulings, final determinations, findings, and
2 conclusions of the State's Attorney's Office under this Article
3 are final and conclusive decisions of the matters involved. Any
4 person aggrieved by the decision may obtain review of the
5 decision pursuant to the provisions of the Administrative
6 Review Law and the rules adopted pursuant to that Law. Pending
7 final decision on such review, the administrative acts, orders,
8 and rulings of the State's Attorney's Office remain in full
9 force and effect unless modified or suspended by order of court
10 pending final judicial decision. Pending final decision on such
11 review, the acts, orders, and rulings of the State's Attorney's
12 Office remain in full force and effect, unless stayed by order
13 of court. However, no stay of any decision of the
14 administrative agency shall issue unless the person aggrieved
15 by the decision establishes by a preponderance of the evidence
16 that good cause exists for the stay. In determining good cause,
17 the court shall find that the aggrieved party has established a
18 substantial likelihood of prevailing on the merits and that
19 granting the stay will not have an injurious effect on the
20 general public.

21 (Source: P.A. 93-520, eff. 8-6-03; 94-364, eff. 7-29-05;
22 94-556, eff. 9-11-05; 94-955, eff. 6-27-06.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.