



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3157

Introduced 2/24/2011, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

720 ILCS 5/36-1.5 new

725 ILCS 150/3.5 new

725 ILCS 150/6

from Ch. 56 1/2, par. 1676

Amends the Criminal Code of 1963 and the Drug Asset Forfeiture Procedure Act. Provides that within 14 days of seizure, the State shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture. Provides that, upon making a finding of probable cause, the circuit court shall enter a restraining order or injunction or take other appropriate action to ensure that the property is not removed from the court's jurisdiction and is not concealed, destroyed, or otherwise disposed of by the property owner or interest holder before a forfeiture hearing is conducted. Provides that judicial in rem forfeiture proceedings may be instituted if the value of the non-real property exceeds \$150,000 (rather than \$20,000), excluding the value of any conveyance.

LRB097 08722 RLC 48851 b

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 adding
5 Section 36-1.5 as follows:

6 (720 ILCS 5/36-1.5 new)

7 Sec. 36-1.5. Preliminary Review.

8 (a) Within 14 days of the seizure, the State shall seek a
9 preliminary determination from the circuit court as to whether
10 there is probable cause that the property may be subject to
11 forfeiture.

12 (b) The rules of evidence shall not apply to any proceeding
13 conducted under this Section.

14 (c) The court may conduct the review under subsection (a)
15 simultaneously with a proceeding pursuant to Section 109-1 of
16 the Code of Criminal Procedure of 1963 for a related criminal
17 offense of a prosecution is commenced by information or
18 complaint.

19 (d) The court may accept a finding of probable cause at a
20 preliminary hearing following the filing of an information or
21 complaint charging a related criminal offense or following the
22 return of indictment by a grand jury charging the related
23 offense as sufficient evidence of probable cause as required

1 under subsection (a).

2 (e) Upon making a finding of probable cause as required
3 under this Section, the circuit court shall enter a restraining
4 order or injunction, or take other appropriate action, as
5 necessary to ensure that the property is not removed from the
6 court's jurisdiction and is not concealed, destroyed, or
7 otherwise disposed of by the property owner or interest holder
8 before a forfeiture hearing is conducted.

9 Section 10. The Drug Asset Forfeiture Procedure Act is
10 amended by changing Section 6 and by adding Section 3.5 as
11 follows:

12 (725 ILCS 150/3.5 new)

13 Sec. 3.5. Preliminary Review.

14 (a) Within 14 days of the seizure, the State shall seek a
15 preliminary determination from the circuit court as to whether
16 there is probable cause that the property may be subject to
17 forfeiture.

18 (b) The rules of evidence shall not apply to any proceeding
19 conducted under this Section.

20 (c) The court may conduct the review under subsection (a)
21 simultaneously with a proceeding pursuant to Section 109-1 of
22 the Code of Criminal Procedure of 1963 for a related criminal
23 offense of a prosecution is commenced by information or
24 complaint.

1 (d) The court may accept a finding of probable cause at a
2 preliminary hearing following the filing of an information or
3 complaint charging a related criminal offense or following the
4 return of indictment by a grand jury charging the related
5 offense as sufficient evidence of probable cause as required
6 under subsection (a).

7 (e) Upon making a finding of probable cause as required
8 under this Section, the circuit court shall enter a restraining
9 order or injunction, or take other appropriate action, as
10 necessary to ensure that the property is not removed from the
11 court's jurisdiction and is not concealed, destroyed, or
12 otherwise disposed of by the property owner or interest holder
13 before a forfeiture hearing is conducted.

14 (725 ILCS 150/6) (from Ch. 56 1/2, par. 1676)

15 Sec. 6. Non-Judicial Forfeiture. If non-real property that
16 exceeds \$150,000 ~~\$20,000~~ in value excluding the value of any
17 conveyance, or if real property is seized under the provisions
18 of the Illinois Controlled Substances Act, the Cannabis Control
19 Act, or the Methamphetamine Control and Community Protection
20 Act, the State's Attorney shall institute judicial in rem
21 forfeiture proceedings as described in Section 9 of this Act
22 within 45 days from receipt of notice of seizure from the
23 seizing agency under Section 5 of this Act. However, if
24 non-real property that does not exceed \$150,000 ~~\$20,000~~ in
25 value excluding the value of any conveyance is seized, the

1 following procedure shall be used:

2 (A) If, after review of the facts surrounding the seizure,
3 the State's Attorney is of the opinion that the seized property
4 is subject to forfeiture, then within 45 days of the receipt of
5 notice of seizure from the seizing agency, the State's Attorney
6 shall cause notice of pending forfeiture to be given to the
7 owner of the property and all known interest holders of the
8 property in accordance with Section 4 of this Act.

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

15 (C) (1) Any person claiming an interest in property which
16 is the subject of notice under subsection (A) of Section 6
17 of this Act, may, within 45 days after the effective date
18 of notice as described in Section 4 of this Act, file a
19 verified claim with the State's Attorney expressing his or
20 her interest in the property. The claim must set forth:

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

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

26 (iii) the nature and extent of the claimant's

1 interest in the property;

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

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

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

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

11 (viii) the relief sought.

12 (2) If a claimant files the claim and deposits with the
13 State's Attorney a cost bond, in the form of a cashier's
14 check payable to the clerk of the court, in the sum of 10
15 percent of the reasonable value of the property as alleged
16 by the State's Attorney or the sum of \$100, whichever is
17 greater, upon condition that, in the case of forfeiture,
18 the claimant must pay all costs and expenses of forfeiture
19 proceedings, then the State's Attorney shall institute
20 judicial in rem forfeiture proceedings and deposit the cost
21 bond with the clerk of the court as described in Section 9
22 of this Act within 45 days after receipt of the claim and
23 cost bond. In lieu of a cost bond, a person claiming
24 interest in the seized property may file, under penalty of
25 perjury, an indigency affidavit.

26 (3) 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 (D) If no claim is filed or bond given within the 45 day
12 period as described in subsection (C) of Section 6 of this Act,
13 the State's Attorney shall declare the property forfeited and
14 shall promptly notify the owner and all known interest holders
15 of the property and the Director of the Illinois Department of
16 State Police of the declaration of forfeiture and the Director
17 shall dispose of the property in accordance with law.

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