

1 AMENDMENT TO HOUSE BILL 5794

2 AMENDMENT NO. _____. Amend House Bill 5794 as follows:

3 by inserting after the enacting clause the following:

4 "Section 2. The Cannabis Control Act is amended by
5 changing 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
9 been produced, manufactured, delivered, or possessed in
10 violation of this Act;

11 (2) all raw materials, products and equipment of
12 any 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
16 or vessels, which are used, or intended for use, to
17 transport, or in any manner to facilitate the
18 transportation, sale, receipt, possession, or concealment
19 of property described in paragraph (1) or (2) that
20 constitutes a felony violation of the Act, but:

21 (i) no conveyance used by any person as a

1 common carrier in the transaction of business as a
2 common carrier is subject to forfeiture under this
3 Section unless it appears that the owner or other
4 person in charge of the conveyance is a consenting
5 party or privy to a violation of this Act;

6 (ii) no conveyance is subject to forfeiture
7 under this Section by reason of any act or omission
8 which the owner proves to have been committed or
9 omitted without his knowledge or consent;

10 (iii) a forfeiture of a conveyance encumbered
11 by a bona fide security interest is subject to the
12 interest of the secured party if he neither had
13 knowledge of nor consented to the act or omission;

14 (4) all money, things of value, books, records, and
15 research products and materials including formulas,
16 microfilm, tapes, and data which are used, or intended
17 for use in a felony violation of this Act;

18 (5) everything of value furnished or intended to be
19 furnished by any person in exchange for a substance in
20 violation of this Act, all proceeds traceable to such an
21 exchange, and all moneys, negotiable instruments, and
22 securities used, or intended to be used, to commit or in
23 any manner to facilitate any felony violation of this
24 Act.

25 (b) Property subject to forfeiture under this Act may be
26 seized by the Director or any peace officer upon process or
27 seizure warrant issued by any court having jurisdiction over
28 the property. Seizure by the Director or any peace officer
29 without process may be made:

30 (1) if the property subject to seizure has been the
31 subject of a prior judgment in favor of the State in a
32 criminal proceeding or in an injunction or forfeiture
33 proceeding based upon this Act or the Drug Asset
34 Forfeiture Procedure Act;

1 (2) if there is probable cause to believe that the
2 property is directly or indirectly dangerous to health or
3 safety;

4 (3) if there is probable cause to believe that the
5 property is subject to forfeiture under this Act and the
6 property is seized under circumstances in which a
7 warrantless seizure or arrest would be reasonable; or

8 (4) in accordance with the Code of Criminal
9 Procedure of 1963.

10 (c) In the event of seizure pursuant to subsection (b),
11 forfeiture proceedings shall be instituted in accordance with
12 the Drug Asset Forfeiture Procedure Act.

13 (d) Property taken or detained under this Section shall
14 not be subject to replevin, but is deemed to be in the
15 custody of the Director subject only to the order and
16 judgments of the circuit court having jurisdiction over the
17 forfeiture proceedings and the decisions of the State's
18 Attorney under the Drug Asset Forfeiture Procedure Act. When
19 property is seized under this Act, the seizing agency shall
20 promptly conduct an inventory of the seized property,
21 estimate the property's value, and shall forward a copy of
22 the inventory of seized property and the estimate of the
23 property's value to the Director. Upon receiving notice of
24 seizure, the Director may:

25 (1) place the property under seal;

26 (2) remove the property to a place designated by
27 him;

28 (3) keep the property in the possession of the
29 seizing agency;

30 (4) remove the property to a storage area for
31 safekeeping or, if the property is a negotiable
32 instrument or money and is not needed for evidentiary
33 purposes, deposit it in an interest bearing account;

34 (5) place the property under constructive seizure

1 by posting notice of pending forfeiture on it, by giving
2 notice of pending forfeiture to its owners and interest
3 holders, or by filing notice of pending forfeiture in any
4 appropriate public record relating to the property; or

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

9 (e) No disposition may be made of property under seal
10 until the time for taking an appeal has elapsed or until all
11 appeals have been concluded unless a court, upon application
12 therefor, orders the sale of perishable substances and the
13 deposit of the proceeds of the sale with the court.

14 (f) When property is forfeited under this Act the
15 Director shall sell all such property unless such property is
16 required by law to be destroyed or is harmful to the public,
17 and shall distribute the proceeds of the sale, together with
18 any moneys forfeited or seized, in accordance with
19 subsections ~~subsectien~~ (g) and (g-5). However, upon the
20 application of the seizing agency or prosecutor who was
21 responsible for the investigation, arrest or arrests and
22 prosecution which lead to the forfeiture, the Director may
23 return any item of forfeited property to the seizing agency
24 or prosecutor for official use in the enforcement of laws
25 relating to cannabis or controlled substances, if the agency
26 or prosecutor can demonstrate that the item requested would
27 be useful to the agency or prosecutor in their enforcement
28 efforts. When any real property returned to the seizing
29 agency is sold by the agency or its unit of government, the
30 proceeds of the sale shall be delivered to the Director and
31 distributed in accordance with subsections ~~subsectien~~ (g) and
32 (g-5).

33 (g) Except otherwise provided in subsection (g-5), all
34 monies and the sale proceeds of all other property forfeited

1 and seized under this Act shall be distributed as 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
13 or 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
20 the State's Attorney of the county in which the
21 prosecution resulting in the forfeiture was
22 instituted, deposited in a special fund in the
23 county treasury and appropriated to the State's
24 Attorney for use in the enforcement of laws
25 governing cannabis and controlled substances. In
26 counties over 3,000,000 population, 25% will be
27 distributed to the Office of the State's Attorney
28 for use in the enforcement of laws governing
29 cannabis and controlled substances. If the
30 prosecution is undertaken solely by the Attorney
31 General, the portion provided hereunder shall be
32 distributed to the Attorney General for use in the
33 enforcement of laws governing cannabis and
34 controlled substances.

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

11 (3) 10% shall be retained by the Department of
12 State Police for expenses related to the administration
13 and sale of seized and forfeited property.

14 (g-5) All moneys and the sale proceeds of all other
15 property forfeited and seized as a direct result of
16 enforcement efforts of the Illinois Conservation Police may
17 be used by the Department of Natural Resources Office of Law
18 Enforcement for use in enforcing laws regulating controlled
19 substances and cannabis on Department of Natural Resources
20 regulated lands and waterways.

21 (Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)

22 Section 3. The Illinois Controlled Substances Act is
23 amended by changing Section 505 as follows:

24 (720 ILCS 570/505) (from Ch. 56 1/2, par. 1505)

25 Sec. 505. (a) The following are subject to forfeiture:

26 (1) all substances which have been manufactured,
27 distributed, dispensed, or possessed in violation of this
28 Act;

29 (2) all raw materials, products and equipment of
30 any kind which are used, or intended for use in
31 manufacturing, distributing, dispensing, administering or
32 possessing any substance in violation of this Act;

1 (3) all conveyances, including aircraft, vehicles
2 or vessels, which are used, or intended for use, to
3 transport, or in any manner to facilitate the
4 transportation, sale, receipt, possession, or concealment
5 of property described in paragraphs (1) and (2), but:

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

12 (ii) no conveyance is subject to forfeiture
13 under this Section by reason of any act or omission
14 which the owner proves to have been committed or
15 omitted without his knowledge or consent;

16 (iii) a forfeiture of a conveyance encumbered
17 by a bona fide security interest is subject to the
18 interest of the secured party if he neither had
19 knowledge of nor consented to the act or omission;

20 (4) all money, things of value, books, records, and
21 research products and materials including formulas,
22 microfilm, tapes, and data which are used, or intended to
23 be used in violation of this Act;

24 (5) everything of value furnished, or intended to
25 be furnished, in exchange for a substance in violation of
26 this Act, all proceeds traceable to such an exchange, and
27 all moneys, negotiable instruments, and securities used,
28 or intended to be used, to commit or in any manner to
29 facilitate any violation of this Act;

30 (6) all real property, including any right, title,
31 and interest (including, but not limited to, any
32 leasehold interest or the beneficial interest in a land
33 trust) in the whole of any lot or tract of land and any
34 appurtenances or improvements, which is used or intended

1 to be used, in any manner or part, to commit, or in any
2 manner to facilitate the commission of, any violation or
3 act that constitutes a violation of Section 401 or 405 of
4 this Act or that is the proceeds of any violation or act
5 that constitutes a violation of Section 401 or 405 of
6 this Act.

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

12 (1) if the seizure is incident to inspection under
13 an administrative inspection warrant;

14 (2) if the property subject to seizure has been the
15 subject of a prior judgment in favor of the State in a
16 criminal proceeding, or in an injunction or forfeiture
17 proceeding based upon this Act or the Drug Asset
18 Forfeiture Procedure Act;

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

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

26 (5) in accordance with the Code of Criminal
27 Procedure of 1963.

28 (c) In the event of seizure pursuant to subsection (b),
29 forfeiture proceedings shall be instituted in accordance with
30 the Drug Asset Forfeiture Procedure Act.

31 (d) Property taken or detained under this Section shall
32 not be subject to replevin, but is deemed to be in the
33 custody of the Director subject only to the order and
34 judgments of the circuit court having jurisdiction over the

1 forfeiture proceedings and the decisions of the State's
2 Attorney under the Drug Asset Forfeiture Procedure Act. When
3 property is seized under this Act, the seizing agency shall
4 promptly conduct an inventory of the seized property and
5 estimate the property's value, and shall forward a copy of
6 the inventory of seized property and the estimate of the
7 property's value to the Director. Upon receiving notice of
8 seizure, the Director may:

9 (1) place the property under seal;

10 (2) remove the property to a place designated by
11 the Director;

12 (3) keep the property in the possession of the
13 seizing agency;

14 (4) remove the property to a storage area for
15 safekeeping or, if the property is a negotiable
16 instrument or money and is not needed for evidentiary
17 purposes, deposit it in an interest bearing account;

18 (5) place the property under constructive seizure
19 by posting notice of pending forfeiture on it, by giving
20 notice of pending forfeiture to its owners and interest
21 holders, or by filing notice of pending forfeiture in any
22 appropriate public record relating to the property; or

23 (6) provide for another agency or custodian,
24 including an owner, secured party, or lienholder, to take
25 custody of the property upon the terms and conditions set
26 by the Director.

27 (e) If the Department of Professional Regulation
28 suspends or revokes a registration, all controlled substances
29 owned or possessed by the registrant at the time of
30 suspension or the effective date of the revocation order may
31 be placed under seal. No disposition may be made of
32 substances under seal until the time for taking an appeal has
33 elapsed or until all appeals have been concluded unless a
34 court, upon application therefor, orders the sale of

1 perishable substances and the deposit of the proceeds of the
2 sale with the court. Upon a revocation rule becoming final,
3 all substances may be forfeited to the Department of
4 Professional Regulation.

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

24 (g) Except as otherwise provided in subsection (g-5),
25 all monies and the sale proceeds of all other property
26 forfeited and seized under this Act shall be distributed as
27 follows:

28 (1) 65% shall be distributed to the metropolitan
29 enforcement group, local, municipal, county, or state law
30 enforcement agency or agencies which conducted or
31 participated in the investigation resulting in the
32 forfeiture. The distribution shall bear a reasonable
33 relationship to the degree of direct participation of the
34 law enforcement agency in the effort resulting in the

1 forfeiture, taking into account the total value of the
2 property forfeited and the total law enforcement effort
3 with respect to the violation of the law upon which the
4 forfeiture is based. Amounts distributed to the agency or
5 agencies shall be used for the enforcement of laws
6 governing cannabis and controlled substances, except that
7 amounts distributed to the Secretary of State shall be
8 deposited into the Secretary of State Evidence Fund to be
9 used as provided in Section 2-115 of the Illinois Vehicle
10 Code.

11 (2) (i) 12.5% shall be distributed to the Office of
12 the State's Attorney of the county in which the
13 prosecution resulting in the forfeiture was instituted,
14 deposited in a special fund in the county treasury and
15 appropriated to the State's Attorney for use in the
16 enforcement of laws governing cannabis and controlled
17 substances. In counties over 3,000,000 population, 25%
18 will be distributed to the Office of the State's Attorney
19 for use in the enforcement of laws governing cannabis and
20 controlled substances. If the prosecution is undertaken
21 solely by the Attorney General, the portion provided
22 hereunder shall be distributed to the Attorney General
23 for use in the enforcement of laws governing cannabis and
24 controlled substances.

25 (ii) 12.5% shall be distributed to the Office of
26 the State's Attorneys Appellate Prosecutor and deposited
27 in the Narcotics Profit Forfeiture Fund of that office to
28 be used for additional expenses incurred in the
29 investigation, prosecution and appeal of cases arising
30 under laws governing cannabis and controlled substances.
31 The Office of the State's Attorneys Appellate Prosecutor
32 shall not receive distribution from cases brought in
33 counties with over 3,000,000 population.

34 (3) 10% shall be retained by the Department of

1 State Police for expenses related to the administration
2 and sale of seized and forfeited property.

3 (g-5) All moneys and the sale proceeds of all other
4 property forfeited and seized as a direct result of
5 enforcement efforts of the Illinois Conservation Police may
6 be used by the Department of Natural Resources Office of Law
7 Enforcement for use in enforcing laws regulating controlled
8 substances and cannabis on Department of Natural Resources
9 regulated lands and waterways.

10 (h) Species of plants from which controlled substances
11 in Schedules I and II may be derived which have been planted
12 or cultivated in violation of this Act, or of which the
13 owners or cultivators are unknown, or which are wild growths,
14 may be seized and summarily forfeited to the State. The
15 failure, upon demand by the Director or any peace officer, of
16 the person in occupancy or in control of land or premises
17 upon which the species of plants are growing or being stored,
18 to produce registration, or proof that he is the holder
19 thereof, constitutes authority for the seizure and forfeiture
20 of the plants.

21 (Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)".