

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Cannabis Control Act is amended by changing
Section 12 as follows:

(720 ILCS 550/12) (from Ch. 56 1/2, par. 712)

Sec. 12. (a) The following are subject to forfeiture:

(1) all substances containing cannabis which have been produced, manufactured, delivered, or possessed in violation of this Act;

(2) all raw materials, products and equipment of any kind which are produced, delivered, or possessed in connection with any substance containing cannabis in violation of this Act;

(3) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) that constitutes a felony violation of the Act, but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section

unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

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

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

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

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

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

facilitate the manufacture, distribution, sale, receipt, or concealment of property described in paragraph (1) or (2) of this subsection (a) that constitutes a felony violation of more than 2,000 grams of a substance containing cannabis or that is the proceeds of any felony violation of this Act.

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

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

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

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

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

(c) In the event of seizure pursuant to subsection (b),

forfeiture proceedings shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act.

(c-1) In the event the State's Attorney is of the opinion that real property is subject to forfeiture under this Act, forfeiture proceedings shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act. The exemptions from forfeiture provisions of Section 8 of the Drug Asset Forfeiture Procedure Act are applicable.

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

- (1) place the property under seal;
- (2) remove the property to a place designated by him;
- (3) keep the property in the possession of the seizing agency;
- (4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes,

deposit it in an interest bearing account;

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

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

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

(f) When property is forfeited under this Act the Director shall sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (g). However, upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests and prosecution which lead to the forfeiture, the Director may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws relating to cannabis or controlled

substances, if the agency or prosecutor can demonstrate that the item requested would be useful to the agency or prosecutor in their enforcement efforts. When any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, the conveyance may be used immediately in the enforcement of the criminal laws of this State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. When any real property returned to the seizing agency is sold by the agency or its unit of government, the proceeds of the sale shall be delivered to the Director and distributed in accordance with subsection (g).

(g) All monies and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or state law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or

agencies shall be used for the enforcement of laws governing cannabis and controlled substances or for security cameras used for the prevention or detection of violence, except that amounts distributed to the Secretary of State shall be deposited into the Secretary of State Evidence Fund to be used as provided in Section 2-115 of the Illinois Vehicle Code.

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

(ii) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in the Narcotics Profit Forfeiture Fund of that Office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases arising

under laws governing cannabis and controlled substances. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

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

(Source: P.A. 94-1004, eff. 7-3-06.)

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