

IC 34-24-2

Chapter 2. Civil Remedies for Racketeering Activity

IC 34-24-2-1

Injunctive relief from corrupt business influence; action by prosecuting attorney

Sec. 1. The prosecuting attorney in a county in which the violation occurs may bring an action under this section to enjoin a violation of IC 35-45-6-2 (corrupt business influence). An action under this section may be brought in any circuit or superior court in a county in which the violation occurs. If the court finds by a preponderance of the evidence that a violation of IC 35-45-6-2 has occurred, the court may:

- (1) order a defendant to divest the defendant of any interest in any enterprise or property;
- (2) impose reasonable restrictions upon the future activities or investments of a defendant, including prohibiting a defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of IC 35-45-6-2;
- (3) order the dissolution or reorganization of any enterprise;
- (4) order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state;
- (5) order the forfeiture of the charter of a corporation organized under the laws of Indiana, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that:
 - (A) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of IC 35-45-6-2; and
 - (B) for the prevention of future criminal activity, the public interest requires the charter of the corporation be forfeited and the corporation dissolved or the certificate revoked;
- (6) make any other order or judgment that the court considers appropriate.

In any order or judgment made by the court under this section, the judge shall make due provision for the rights of innocent persons, including a person having any rights, title, or interest of record in any of the property.

As added by P.L.1-1998, SEC.19.

IC 34-24-2-2

Action for forfeiture of property incident to corrupt business influence

Sec. 2. (a) The prosecuting attorney in a county in which any of the property is located may bring an action for the forfeiture of any property:

- (1) used in the course of;
- (2) intended for use in the course of;

(3) derived from; or
(4) realized through;
conduct in violation of IC 35-45-6-2.

(b) The inspector general may bring an action for forfeiture in accordance with IC 4-2-7-6 in a county where property that is:

(1) derived from; or
(2) realized through;
misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state is located.

(c) An action for forfeiture may be brought in any circuit or superior court in a county in which any of the property is located.

(d) Upon a showing by a preponderance of the evidence that:

(1) property described in subsection (a) was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of IC 35-45-6-2; or
(2) property described in subsection (b) was derived from or realized through conduct described in subsection (b);

the court shall, subject to the right, title, or interest of record of any other party in the property determined under section 4 of this chapter, order the property forfeited to the state and specify the manner of disposition of the property, including the manner of disposition if the property is not transferable for value.

(e) The court shall order forfeitures and dispositions under this section:

(1) with due provision for the rights of innocent persons; and
(2) as provided under section 4 of this chapter.

As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005, SEC.40.

IC 34-24-2-3

Order to have property subject to forfeiture seized

Sec. 3. When an action is filed under section 2 of this chapter, the prosecuting attorney or the inspector general may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a showing of probable cause to believe that:

(1) a violation of IC 35-45-6-2, in the case of property described in section 2(a) of this chapter; or

(2) conduct described in section 2(b) of this chapter, in case of property described in section 2(b) of this chapter;

has occurred.

As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005, SEC.41.

IC 34-24-2-4

Seizure of property subject to forfeiture; requisites; custody; limitation of actions

Sec. 4. (a) Property subject to forfeiture under this chapter shall be seized by a law enforcement officer upon court order. Seizure may be

made without a court order only if:

- (1) the seizure is incident to a lawful arrest or search, or to an inspection under an administrative inspection warrant; or
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter (or IC 34-4-30.5 before its repeal).

(b) When property is seized under subsection (a), pending forfeiture and final disposition, the law enforcement officer making the seizure may:

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) is not subject to replevin, but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court. However, if a seizure of property is made in accordance with subsection (a), the prosecuting attorney or the inspector general shall bring an action for forfeiture under section 2 of this chapter within:

- (1) thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property; or
- (2) one hundred eighty (180) days after the property is seized;

whichever occurs first.

(d) If an action under subsection (c) is not filed within thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property, the claimant:

- (1) is entitled to file a complaint seeking:
 - (A) replevin;
 - (B) foreclosure; or
 - (C) other appropriate remedy; and
- (2) shall immediately obtain a hearing on the complaint as provided in subsection (f).

If an action is not filed within one hundred eighty (180) days after the date of the seizure, and the property has not been previously released to an innocent person under section 5 of this chapter (or IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose officer made the seizure shall return the property to its owner.

(e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) and the property is a vehicle or real property, the prosecuting attorney or the inspector general shall serve, within thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure upon each person whose right, title, or interest is of record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(f) The person whose right, title, or interest is of record may at any time file a complaint seeking:

- (1) replevin;
- (2) foreclosure; or

(3) another appropriate remedy;
to which the state may answer in forfeiture within the appropriate statutory period. The court shall promptly set the matter for a hearing, and in the case of replevin or foreclosure, the court shall set the hearing as provided by the applicable statutory provisions.

As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005, SEC.42.

IC 34-24-2-5

Rights of secured party in property subject to forfeiture

Sec. 5. (a) If a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract did not know the property was the object of corrupt business influence or conduct described in section 2(b) of this chapter, the court shall determine whether the secured interest is equal to or in excess of the appraised value of the property.

(b) Appraised value is to be determined as of the date of judgment on a wholesale basis by:

(1) agreement between the secured party and the prosecuting attorney; or

(2) the inheritance tax appraiser for the county in which the action is brought.

(c) If the amount due to the secured party is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party.

(d) If the amount due the secured party is less than the appraised value of the property, the holder of the interest may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the state or unit, or both, shall relinquish all claims to the property.

As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005, SEC.43.

IC 34-24-2-6

Action of aggrieved person for injunctive relief and damages from corrupt business influence; jury trial; right to forfeited property; state as aggrieved person

Sec. 6. (a) An aggrieved person may, in addition to proceeding under section 4 of this chapter, bring an action for injunctive relief from corrupt business influence in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located. If the court finds, through a preponderance of the evidence, that the aggrieved person is suffering from corrupt business influence, the court shall make an appropriate order for injunctive relief. This order must be made in accordance with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that a showing of special or irreparable damage to

the aggrieved person is not required. The court may order injunctive relief only after the execution of a bond by the aggrieved person for an injunction improvidently granted, in an amount established by the court. In addition, the court may order a temporary restraining order or a preliminary injunction, but only after a showing of immediate danger of significant loss or damage to the aggrieved person.

(b) An aggrieved person may bring an action against a person who has violated IC 35-45-6-2 in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located, for damages suffered as a result of corrupt business influence. Upon a showing by a preponderance of the evidence that the aggrieved person has been damaged by corrupt business influence, the court shall order the person causing the damage through a violation of IC 35-45-6-2 to pay to the aggrieved person:

- (1) an amount equal to three (3) times the person's actual damages;
- (2) the costs of the action;
- (3) a reasonable attorney's fee; and
- (4) any punitive damages awarded by the court and allowable under law.

(c) The defendant and the aggrieved person are entitled to a trial by jury in an action brought under this section (or IC 34-4-30.5-5 before its repeal).

(d) In addition to any rights provided under section 4 of this chapter, an aggrieved person has a right or claim to forfeited property or to the proceeds derived from forfeited property superior to any right or claim the state has in the same property or proceeds.

(e) If the state is an aggrieved person, the attorney general and the inspector general have concurrent jurisdiction with the prosecuting attorney to bring an action under this section.

As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005, SEC.44.

IC 34-24-2-7

Relitigation of issues determined in criminal proceeding barred by collateral estoppel

Sec. 7. In any action brought under this chapter (or IC 34-4-30 before its repeal), the principle of collateral estoppel operates to bar relitigation of the issues previously determined in a criminal proceeding under IC 35-45-6-2.

As added by P.L.1-1998, SEC.19.

IC 34-24-2-8

Retention of attorney to bring action

Sec. 8. (a) A prosecuting attorney or the inspector general may retain an attorney to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana.

*As added by P.L.1-1998, SEC.19. Amended by P.L.222-2005,
SEC.45.*