

By: Schaefer

H.B. No. 1441

A BILL TO BE ENTITLED

AN ACT

relating to the state's burden of proof in certain asset forfeiture proceedings under the Code of Criminal Procedure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 59.02, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder ~~[proves by a preponderance of the evidence that the owner or interest holder]~~ acquired and perfected the interest:

(1) before or during the act or omission giving rise to forfeiture, or if the property is real property, the owner or interest holder ~~[he]~~ acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g), ~~[of this code]~~ and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or

(2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

1 (A) was, at the time that the interest in the
2 property was acquired, an owner or interest holder for value; and

3 (B) was without reasonable cause to believe that
4 the property was contraband and did not purposefully avoid learning
5 that the property was contraband.

6 (c-1) The state has the burden of proving by clear and
7 convincing evidence that each of the circumstances described by
8 Subsection (c) do not apply to property that is subject to seizure
9 and forfeiture under this chapter.

10 SECTION 2. Article 59.02(h), Code of Criminal Procedure, is
11 amended by amending Subdivision (1) and adding Subdivision (1-a) to
12 read as follows:

13 (1) An owner or interest holder's interest in property
14 may not be forfeited under this chapter if [~~at the forfeiture~~
15 ~~hearing the owner or interest holder proves by a preponderance of~~
16 ~~the evidence that~~] the owner or interest holder was not a party to
17 the offense giving rise to the forfeiture and [~~that~~] the
18 contraband:

19 (A) was stolen from the owner or interest holder
20 before being used in the commission of the offense giving rise to
21 the forfeiture;

22 (B) was purchased with:

23 (i) money stolen from the owner or interest
24 holder; or

25 (ii) proceeds from the sale of property
26 stolen from the owner or interest holder; or

27 (C) was used or intended to be used without the

1 effective consent of the owner or interest holder in the commission
2 of the offense giving rise to the forfeiture.

3 (1-a) The state has the burden of proving by clear and
4 convincing evidence that the circumstances described by
5 Subdivision (1) do not apply to property that is subject to seizure
6 and forfeiture under this chapter.

7 SECTION 3. The change in law made by this Act applies only
8 to a forfeiture proceeding that begins on or after the effective
9 date of this Act. A forfeiture proceeding that begins before the
10 effective date of this Act is governed by the law in effect on the
11 date the proceeding begins, and the former law is continued in
12 effect for that purpose.

13 SECTION 4. This Act takes effect September 1, 2021.