

By: Perry

S.B. No. 1125

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of certain controlled substance property and plants seized by or forfeited to a law enforcement agency.

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

SECTION 1. Section 481.151, Health and Safety Code, is amended by adding Subdivisions (2-a) and (2-b) to read as follows:

(2-a) "Crime laboratory" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(2-b) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code, and includes a local government corporation described by Section 411.0011 of that code.

SECTION 2. The heading to Section 481.152, Health and Safety Code, is amended to read as follows:

Sec. 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS.

SECTION 3. Section 481.152(d), Health and Safety Code, is amended to read as follows:

(d) If a controlled substance plant is seized and forfeited under this section, a court may order the disposition of the plant under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

1 SECTION 4. The heading to Section 481.153, Health and
2 Safety Code, is amended to read as follows:

3 Sec. 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY
4 DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY.

5 SECTION 5. Section 481.153(b), Health and Safety Code, is
6 amended to read as follows:

7 (b) If an item of controlled substance property is seized
8 and forfeited under this section, a court may order the disposition
9 of the property under Section 481.159, or the department, a
10 criminal justice agency, or a peace officer may summarily destroy
11 the property under the rules of the department or dispose of the
12 property in lieu of destruction as provided by Section 481.161.

13 SECTION 6. Sections 481.159(a) and (i), Health and Safety
14 Code, are amended to read as follows:

15 (a) If a district court orders the forfeiture of a
16 controlled substance property or plant under Chapter 59, Code of
17 Criminal Procedure, or under this code, the court shall also order a
18 law enforcement agency or a criminal justice agency to which the law
19 enforcement agency transferred the property or plant for analysis
20 and storage to:

21 (1) retain the property or plant for [~~its~~] official
22 law enforcement purposes, including use in the investigation of
23 offenses under this code;

24 (2) deliver the property or plant to a government
25 agency for official purposes;

26 (3) deliver the property or plant to a person
27 authorized by the court to receive it;

1 (4) deliver the property or plant to a person
2 authorized by the director to receive it; or

3 (5) destroy the property or plant that is not
4 otherwise disposed of in the manner prescribed by this subchapter.

5 (i) If a controlled substance property or plant seized under
6 this chapter was forfeited to an agency for the purpose of
7 destruction or disposition under Section 481.161 in lieu of
8 destruction or for any purpose other than investigation, the
9 property or plant may not be used in an investigation unless a
10 district court orders disposition under this section and permits
11 the use of the property or plant in the investigation.

12 SECTION 7. The heading to Section 481.160, Health and
13 Safety Code, is amended to read as follows:

14 Sec. 481.160. DISPOSITION [~~DESTRUCTION~~] OF EXCESS
15 QUANTITIES.

16 SECTION 8. Sections 481.160(a), (c), and (d), Health and
17 Safety Code, are amended to read as follows:

18 (a) If a controlled substance property or plant is forfeited
19 under this code or under Chapter 59, Code of Criminal Procedure, the
20 law enforcement agency that seized the property or plant or to which
21 the property or plant is forfeited or a criminal justice agency to
22 which the law enforcement agency transferred the property or plant
23 for analysis and storage may summarily destroy the property or
24 plant without a court order, or otherwise dispose of the property or
25 plant in lieu of destruction in accordance with Section 481.161,
26 before the disposition of a case arising out of the forfeiture if
27 the agency ensures that:

1 (1) at least five random and representative samples
2 are taken from the total amount of the property or plant and a
3 sufficient quantity is preserved to provide for discovery by
4 parties entitled to discovery;

5 (2) photographs are taken that reasonably depict the
6 total amount of the property or plant; and

7 (3) the gross weight or liquid measure of the property
8 or plant is determined, either by actually weighing or measuring
9 the property or plant or by estimating its weight or measurement
10 after making dimensional measurements of the total amount seized.

11 (c) A representative sample, photograph, or record made
12 under this section is admissible in civil or criminal proceedings
13 in the same manner and to the same extent as if the total quantity of
14 the suspected controlled substance property or plant was offered in
15 evidence, regardless of whether the remainder of the property or
16 plant has been destroyed or otherwise disposed of. An inference or
17 presumption of spoliation does not apply to a property or plant
18 destroyed or otherwise disposed of under this section.

19 (d) If hazardous waste, residuals, contaminated glassware,
20 associated equipment, or by-products from illicit chemical
21 laboratories or similar operations that create a health or
22 environmental hazard or are not capable of being safely stored are
23 forfeited, those items may be disposed of under Subsection (a) or
24 may be seized by and summarily forfeited to a law enforcement agency
25 and destroyed by the [~~a~~] law enforcement agency or by a criminal
26 justice agency to which the law enforcement agency transferred the
27 items for analysis and storage without a court order before the

1 disposition of a case arising out of the forfeiture if current
2 environmental protection standards are followed.

3 SECTION 9. Subchapter E, Chapter 481, Health and Safety
4 Code, is amended by adding Section 481.161 to read as follows:

5 Sec. 481.161. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY
6 OR PLANT IN LIEU OF DESTRUCTION. (a) Controlled substance property
7 or plants subject to summary destruction or ordered destroyed by a
8 court may be disposed of in accordance with this section.

9 (b) A law enforcement agency or criminal justice agency may
10 transfer the controlled substance property or plants to a crime
11 laboratory to be used for the purposes of laboratory research,
12 testing results validation, and training of analysts.

13 (c) The crime laboratory to which the controlled substance
14 property or plants are transferred under Subsection (b) shall
15 destroy or otherwise properly dispose of any unused quantities of
16 the controlled substance property or plants.

17 (d) This section does not apply to evidence described by
18 Section 481.160(d).

19 (e) The director may adopt rules to implement this section.

20 SECTION 10. The change in law made by this Act applies to
21 the disposition of evidence on or after the effective date of this
22 Act, regardless of whether the evidence was seized or forfeited
23 before, on, or after that date.

24 SECTION 11. This Act takes effect September 1, 2021.