

By: Hinojosa

S.B. No. 451

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the forfeiture of contraband used in or derived from
3 alleged criminal activity.

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

5 SECTION 1. Articles 59.02(a), (b), and (c), Code of
6 Criminal Procedure, are amended to read as follows:

7 (a) Property that is contraband is subject to seizure and
8 forfeiture under this chapter. Property in the possession of a
9 person is presumed to be that person's property.

10 (b) Any property that is contraband other than property held
11 as evidence in a criminal investigation or a pending criminal case,
12 money, a negotiable instrument, or a security that is seized under
13 this chapter may be replevied by the owner or interest holder of the
14 property, on execution of a good and valid bond with sufficient
15 surety in a sum equal to the appraised value of the property
16 replevied. The bond may be approved as to form and substance by the
17 court after the court gives notice of the bond to the authority
18 holding the seized property. The bond must be conditioned[+]

19 [~~(1)~~] on return of the property to the custody of the
20 state on the day of hearing of the forfeiture proceedings[~~, and~~

21 [~~(2) that the interest holder or owner of the property~~
22 ~~will abide by the decision that may be made in the cause].~~

23 (c) An owner or interest holder's interest in property may
24 not be forfeited under this chapter unless the attorney

1 representing the state proves [~~if the owner or interest holder~~
2 ~~proves~~] by a preponderance of the evidence that the owner or
3 interest holder acquired and perfected the interest:

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

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

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

19 (B) had [~~was without~~] reasonable cause to believe
20 that the property was contraband or [~~and did not~~] purposefully
21 avoided [~~avoid~~] learning that the property was contraband.

22 SECTION 2. (a) The change in law made by this Act applies
23 only to the forfeiture of contraband arising from an offense
24 committed on or after the effective date of this Act. For purposes
25 of this section, an offense is committed before the effective date
26 of this Act if any element of the offense occurs before the
27 effective date.

1 (b) The forfeiture of contraband arising from an offense
2 committed before the effective date of this Act is covered by the
3 law in effect when the offense was committed, and the former law is
4 continued in effect for that purpose.

5 SECTION 3. This Act takes effect September 1, 2003.