

By: Riddle, Keel, Cook of Navarro, Anchia

H.B. No. 840

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the forfeiture of contraband used to facilitate or  
3 intended to be used to facilitate the commission of certain  
4 criminal offenses.

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

6 SECTION 1. Article 59.01(1), Code of Criminal Procedure, is  
7 amended to read as follows:

8 (1) "Attorney representing the state" means the  
9 prosecutor with felony jurisdiction in the county in which a  
10 forfeiture proceeding is held under this chapter or, in a  
11 proceeding for forfeiture of contraband as defined under  
12 Subdivision (2)(B)(v) [~~(2)(B)(iv)~~] of this article, the city  
13 attorney of a municipality if the property is seized in that  
14 municipality by a peace officer employed by that municipality and  
15 the governing body of the municipality has approved procedures for  
16 the city attorney acting in a forfeiture proceeding. In a  
17 proceeding for forfeiture of contraband as defined under  
18 Subdivision (2)(B)(vii) of this article, the term includes the  
19 attorney general.

20 SECTION 2. Article 59.01(2), Code of Criminal Procedure, as  
21 amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and  
22 Section 3, Chapter 649, Acts of the 78th Legislature, Regular  
23 Session, 2003, is reenacted and amended to read as follows:

24 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under  
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),  
6 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32,  
7 33, 33A, or 35, Penal Code; ~~or~~

8 (iii) any felony under The Securities Act  
9 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

10 (iv) a misdemeanor under Section  
11 43.02(a)(2), Penal Code, except that for the purpose of this  
12 subparagraph only, the property that constitutes contraband is a  
13 motor vehicle used in the commission of the offense;

14 (B) used or intended to be used in the commission  
15 of:

16 (i) any felony under Chapter 481, Health  
17 and Safety Code (Texas Controlled Substances Act);

18 (ii) any felony under Chapter 483, Health  
19 and Safety Code;

20 (iii) a felony under Chapter 153, Finance  
21 Code;

22 (iv) any felony under Chapter 34, Penal  
23 Code;

24 (v) a Class A misdemeanor under Subchapter  
25 B, Chapter 365, Health and Safety Code, if the defendant has been  
26 previously convicted twice of an offense under that subchapter;

27 (vi) any felony under Chapter 152, Finance

1 Code; ~~[or]~~

2 (vii) any felony under Chapter 31, 32, or  
3 37, Penal Code, that involves the state Medicaid program, or any  
4 felony under Chapter 36, Human Resources Code; or

5 (viii) [~~(vii)~~] a Class B misdemeanor under  
6 Section 35.58, Business & Commerce Code;

7 (C) the proceeds gained from the commission of a  
8 felony listed in Paragraph (A) or (B) of this subdivision, a  
9 misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this  
10 subdivision, or a crime of violence; ~~[or]~~

11 (D) acquired with proceeds gained from the  
12 commission of a felony listed in Paragraph (A) or (B) of this  
13 subdivision, a misdemeanor listed in Paragraph (B)(viii)  
14 [~~(B)(vii)~~] of this subdivision, or a crime of violence; or

15 (E) used to facilitate or intended to be used to  
16 facilitate the commission of a felony under Section 15.031 or  
17 43.25, Penal Code.

18 SECTION 3. Article 59.02, Code of Criminal Procedure, is  
19 amended by adding Subsection (j) to read as follows:

20 (j) Notwithstanding any other provision of this chapter,  
21 community property, property that is jointly owned, or property  
22 that was loaned by the owner or interest holder to another person  
23 for a reason other than to facilitate the commission of an offense  
24 is not subject to forfeiture if the spouse, joint owner, or owner or  
25 interest holder establishes by a preponderance of the evidence  
26 that:

27 (1) the spouse, joint owner, or owner or interest

1 holder was not a party to the offense; and  
2 (2) the actor in the criminal offense used or intended  
3 to use the property without the effective consent of the spouse or  
4 joint owner or used or intended to use the property in a manner not  
5 reasonably foreseen by the person loaning the property.

6 SECTION 4. The change in law made by this Act in adding  
7 Article 59.01(2)(A)(iv), Code of Criminal Procedure, applies only  
8 to the forfeiture of contraband used in the commission of an offense  
9 under Section 43.02(a)(2), Penal Code, committed on or after the  
10 effective date of this Act. Forfeiture of contraband used in the  
11 commission of an offense under Section 43.02(a)(2), Penal Code,  
12 committed before the effective date of this Act is covered by the  
13 law in effect when the offense was committed, and the former law is  
14 continued in effect for that purpose. For purposes of this section,  
15 an offense is committed before the effective date of this Act if any  
16 element of the offense occurs before that date.

17 SECTION 5. The change in law made by this Act in adding  
18 Article 59.01(2)(E), Code of Criminal Procedure, applies only to  
19 the forfeiture of contraband used to facilitate or intended to be  
20 used to facilitate the commission of an offense under Section  
21 15.031 or 43.25, Penal Code, committed on or after the effective  
22 date of this Act. Forfeiture of contraband used to facilitate or  
23 intended to be used to facilitate the commission of an offense under  
24 Section 15.031 or 43.25, Penal Code, committed before the effective  
25 date of this Act is covered by the law in effect when the offense was  
26 committed, and the former law is continued in effect for that  
27 purpose.

1 SECTION 6. This Act takes effect September 1, 2005.