

Amend CSHB 1320 by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Subsection (d), Article 59.03, Code of Criminal Procedure, is amended to read as follows:

(d) A person in the possession of property at the time a peace officer seizes the property under this chapter may at the time of seizure assert the person's interest in or right to the property. Any peace officer, including the [A] peace officer who seizes the property, ~~[under this chapter]~~ may not ~~[at the time of seizure]~~ request, require, or in any manner induce any person, including a person who asserts an interest in or right to the property ~~[seized]~~, to execute a document purporting to waive the person's interest in or rights to ~~[the]~~ property seized under this chapter.

SECTION ____ . Article 59.03, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) At any time before notice is filed under Article 59.04(b), an attorney representing the state may not request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

SECTION ____ . Article 59.06, Code of Criminal Procedure, is amended by adding Subsections (c-1), (d-1), and (d-2) and amending Subsections (d) and (g) to read as follows:

(c-1) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or

prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter [article]. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement [the] agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) [~~the existence of an award to~~] increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state [~~or agency~~] who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the

increase [expenditure].

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the [such] proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must [shall] be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to [the comptroller's office and] the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general

shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2) [~~this subdivision~~], the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

SECTION ____ . Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.061 and 59.062 to read as follows:

Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state auditor may at any time perform an audit or conduct an investigation, in accordance with this article and Chapter 321, Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property received under this chapter.

(b) The state auditor is entitled at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article 59.06, except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) If the results of an audit or investigation under this article indicate that a law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition

of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

Art. 59.062. ENFORCEMENT. (a) In the name of the state, the attorney general may institute in a district court in Travis County or in a county served by the law enforcement agency or attorney representing the state, as applicable, a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of an audit or investigation under Article 59.061 indicate that the law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b) On application for injunctive relief and a finding that the law enforcement agency or attorney representing the state is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the district court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c) A law enforcement agency or attorney representing the state who knowingly commits a violation described by Subsection (a) is liable to the state for a civil penalty in an amount not to exceed \$100,000 as determined by the district court to be appropriate for the nature and seriousness of the violation. In determining an appropriate penalty for the violation, the court shall consider:

(1) any previous violations committed by the agency or attorney;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the agency or attorney; and

(4) the amount necessary to deter future violations.

(d) If the attorney general brings a suit under this article and an injunction is granted or a civil penalty is imposed, the attorney general may recover reasonable expenses, court costs,

investigative costs, and attorney's fees.

(e) Notwithstanding any other provision of this article, a law enforcement agency or attorney representing the state ordered to pay a civil penalty, expense, cost, or fee under this article shall make the payment out of money available in any fund established by the agency or attorney, as applicable, for the purpose of administering proceeds or property received under this chapter. If sufficient money is not available to make payment in full at the time the court enters an order requiring payment, the agency or attorney shall continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(f) A civil penalty collected under this article shall be deposited to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469, Health and Safety Code.

(g) A law enforcement agency or attorney representing the state is immune from liability under this article if the agency or attorney reasonably relied on:

(1) the advice, consent, or approval of an entity that conducts an audit of the agency or attorney under this chapter; or

(2) a written opinion of the attorney general relating to:

(A) the statute or other provision of law the agency or attorney is alleged to have knowingly violated; or

(B) a fact situation that is substantially similar to the fact situation in which the agency or attorney is involved.

SECTION _____. The changes in law made by this Act in amending Article 59.03, Code of Criminal Procedure, apply only to property seized on or after the effective date of this Act. Property seized before the effective date of this Act is covered by the law in effect when the property was seized, and the former law is continued in effect for that purpose. For purposes of this section, property was seized before the effective date of this Act if any portion of the property was seized before that date.

SECTION _____. (a) Except as provided by Subsection (b) of

this section, the changes in law made by this Act in amending Article 59.06, Code of Criminal Procedure, apply to the disposition or use, on or after the effective date of this Act, of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective date of this Act.

(b) The changes in law made by this Act in amending Subsection (g), Article 59.06, Code of Criminal Procedure, and adding Articles 59.061 and 59.062, Code of Criminal Procedure, apply to any audit performed on or after the effective date of this Act.