

1-1 By: Smith of Tarrant (Senate Sponsor - Hegar) H.B. No. 796
1-2 (In the Senate - Received from the House May 4, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 20, 2009, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 20, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the disposition of property alleged to have been
1-9 illegally acquired and to the use of the photographic evidence of
1-10 that property in a criminal action.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 38.34, Code of Criminal Procedure, is
1-13 amended to read as follows:

1-14 Art. 38.34. PHOTOGRAPHIC EVIDENCE IN THEFT CASES. (a) In
1-15 this article ~~[As used herein], [the term]~~ "property" means any
1-16 tangible personal property [offered for sale or lease by a person
1-17 engaged in the business of selling goods or services to buyers].

1-18 (b) A photograph of property that ~~[which]~~ a person is
1-19 alleged to have unlawfully appropriated with the intent to deprive
1-20 the owner of the ~~[such]~~ property is admissible into evidence under
1-21 rules of law governing the admissibility of photographs. The ~~[and~~
1-22 ~~such]~~ photograph is as admissible in evidence as is the property
1-23 itself.

1-24 (c) The provisions of Article 18.16 ~~[of this code]~~
1-25 concerning the bringing of stolen property before a magistrate for
1-26 examination are complied with if a photograph of the stolen
1-27 property is brought before the magistrate.

1-28 (d) The defendant's rights of discovery and inspection of
1-29 tangible physical evidence are satisfied if a photograph of the
1-30 ~~[tangible]~~ property is made available to the defendant by the state
1-31 on ~~[upon]~~ order of any court having jurisdiction over the cause.

1-32 SECTION 2. Article 47.02, Code of Criminal Procedure, is
1-33 amended to read as follows:

1-34 Art. 47.02. RESTORED ON TRIAL. (a) On ~~[Upon]~~ the trial of
1-35 any criminal action for theft~~[,]~~ or ~~[for]~~ any other offense
1-36 involving the illegal acquisition of property ~~[which is by law a~~
1-37 ~~penal offense]~~, the court trying the case shall order the property
1-38 to be restored to the person appearing by the proof to be the owner
1-39 of the property ~~[same].~~

1-40 (b) On written consent of the prosecuting attorney, any
1-41 magistrate having jurisdiction in the county in which a ~~[Likewise,~~
1-42 ~~the judge of any court in which the trial of any]~~ criminal action
1-43 for theft or any other offense involving the illegal acquisition of
1-44 property ~~[which is by law a penal offense]~~ is pending may hold a
1-45 upon hearing to determine the right to possession of the property.
1-46 If ~~[, if]~~ it is proved to the satisfaction of the magistrate ~~[judge~~
1-47 ~~of said court]~~ that any person is a true owner of the property
1-48 alleged to have been stolen, and the property ~~[which]~~ is under the
1-49 control ~~[in possession]~~ of a peace officer, the magistrate may, by
1-50 written order, direct the property to be restored to that person
1-51 ~~[such owner].~~

1-52 ~~[As to property subject to the Certificate of Title Act~~
1-53 ~~(Chapter 501, Transportation Code), any magistrate having~~
1-54 ~~jurisdiction in the county in which the criminal action is pending~~
1-55 ~~may hold a hearing to determine the right to possession of the~~
1-56 ~~property, even if a criminal action is pending, upon written~~
1-57 ~~consent of the prosecuting attorney.]~~

1-58 SECTION 3. The changes in law made by this Act apply only to
1-59 a criminal action filed on or after the effective date of this Act
1-60 and to the admissibility of evidence in that action. A criminal
1-61 action filed before the effective date of this Act and the
1-62 admissibility of evidence in that action are covered by the law in
1-63 effect when the action was filed, and the former law is continued in
1-64 effect for that purpose.

2-1 SECTION 4. This Act takes effect September 1, 2009.

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