

By: Miklos

H.B. No. 3548

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the forfeiture of certain contraband and an affirmative  
3 defense to that forfeiture.

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

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

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

18 SECTION 2. Article 59.01(2), Code of Criminal Procedure, as  
19 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.  
20 2278), Acts of the 80th Legislature, Regular Session, 2007, is  
21 reenacted and amended to read as follows:

22 (2) "Contraband" means property of any nature,  
23 including real, personal, tangible, or intangible, that is:

24 (A) used in the commission of:

1 (i) any first or second degree felony under  
2 the Penal Code;

3 (ii) any felony under Section 15.031(b),  
4 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 20A, 29,  
5 30, 31, 32, 33, 33A, or 35, Penal Code;

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

8 (iv) any offense under Chapter 49, Penal  
9 Code, that is punishable as a felony of the third degree or state  
10 jail felony, if the defendant has been previously convicted three  
11 times of an offense under that chapter;

12 (B) used or intended to be used in the commission  
13 of:

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

16 (ii) any felony under Chapter 483, Health  
17 and Safety Code;

18 (iii) a felony under Chapter 153, Finance  
19 Code;

20 (iv) any felony under Chapter 34, Penal  
21 Code;

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

25 (vi) any felony under Chapter 152, Finance  
26 Code;

27 (vii) any felony under Chapter 32, Human

1 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
2 involves the state Medicaid program;

3 (viii) a Class B misdemeanor under Chapter  
4 522, Business & Commerce Code; or

5 (ix) a Class A misdemeanor under Section  
6 35.153, 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) of this subdivision, or a  
10 crime of violence;

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) of this  
14 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; or

18 (F) used to facilitate or intended to be used to  
19 facilitate the commission of an offense under Section 20A.02,  
20 43.02, 43.03, or 43.04, Penal Code.

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

23 (j) A community property interest in a motor vehicle defined  
24 as contraband under Article 59.01(2)(F) may not be forfeited under  
25 this chapter if at the forfeiture hearing the spouse proves by a  
26 preponderance of the evidence that the spouse was not a party to the  
27 offense giving rise to the forfeiture and that:

1           (1) the forfeiture of the motor vehicle will result in  
2 an unusual economic hardship for the spouse; or

3           (2) the use of the motor vehicle is necessary because  
4 of the illness of a member of the spouse's family.

5           SECTION 4. Article 59.06, Code of Criminal Procedure, is  
6 amended by amending Subsection (a) and adding Subsection (r) to  
7 read as follows:

8           (a) Except as provided by Subsection (k) or (r), all  
9 forfeited property shall be administered by the attorney  
10 representing the state, acting as the agent of the state, in  
11 accordance with accepted accounting practices and with the  
12 provisions of any local agreement entered into between the attorney  
13 representing the state and law enforcement agencies. If a local  
14 agreement has not been executed, the property shall be sold on the  
15 75th day after the date of the final judgment of forfeiture at  
16 public auction under the direction of the county sheriff, after  
17 notice of public auction as provided by law for other sheriff's  
18 sales. The proceeds of the sale shall be distributed as follows:

19           (1) to any interest holder to the extent of the  
20 interest holder's nonforfeitable interest; and

21           (2) the balance, if any, after the deduction of court  
22 costs to which a district court clerk is entitled under Article  
23 59.05(f) and, after that deduction, the deduction of storage and  
24 disposal costs, to be deposited not later than the 30th day after  
25 the date of the sale in the state treasury to the credit of the  
26 general revenue fund.

27           (r) Regardless of whether a local agreement exists between

1 the attorney representing the state and law enforcement agencies,  
2 if the forfeited property is used in the commission of an offense  
3 under Chapter 20A, Penal Code, or is defined as contraband under  
4 Article 59.01(2)(F), the attorney representing the state shall sell  
5 the forfeited property and deliver to the comptroller the proceeds  
6 from the sale, minus any amount owed to an interest holder to the  
7 extent of the holder's nonforfeitable interest and any costs  
8 attributable to the sale. The attorney representing the state  
9 shall conduct the sale in a manner that is reasonably expected to  
10 result in receiving the fair market value for the property. The  
11 comptroller shall deposit all amounts received under this  
12 subsection in the sexual assault program fund created under Section  
13 420.008, Government Code.

14 SECTION 5. Article 59.06, Code of Criminal Procedure, as  
15 amended by this Act, applies to personal property seized or taken  
16 into custody on or after the effective date of this Act. Personal  
17 property seized or taken into custody before the effective date of  
18 this Act is governed by the law in effect on the date the property is  
19 seized or taken into custody, and the former law is continued in  
20 effect for that purpose.

21 SECTION 6. The change in law made by this Act applies only  
22 to an offense committed on or after the effective date of this Act.  
23 An offense committed before the effective date of this Act is  
24 covered by the law in effect when the offense was committed, and the  
25 former law is continued in effect for that purpose. For purposes of  
26 this section, an offense was committed before the effective date of  
27 this Act if any element of the offense was committed before that

1 date.

2 SECTION 7. This Act takes effect September 1, 2009.