

By: Martinez Fischer

H.B. No. 4400

A BILL TO BE ENTITLED

AN ACT

relating to the forfeiture of certain contraband.

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

SECTION 1. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

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

(A) used in the commission of:

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

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

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

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

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

(i) any felony under Chapter 481, Health

1 and Safety Code (Texas Controlled Substances Act);

2 (ii) any felony under Chapter 483, Health
3 and Safety Code;

4 (iii) a felony under Chapter 153, Finance
5 Code;

6 (iv) any felony under Chapter 34, Penal
7 Code;

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

11 (vi) any felony under Chapter 152, Finance
12 Code;

13 (vii) any felony under Chapter 32, Human
14 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
15 involves the state Medicaid program;

16 (viii) a Class B misdemeanor under Chapter
17 522, Business & Commerce Code; ~~or~~

18 (ix) a Class A misdemeanor under Section
19 35.153, Business & Commerce Code; or

20 (x) any offense under Section 545.420,
21 Transportation Code;

22 (C) the proceeds gained from the commission of a
23 felony listed in Paragraph (A) or (B) of this subdivision, a
24 misdemeanor listed in Paragraph (B)(viii) or (x) of this
25 subdivision, or a crime of violence;

26 (D) acquired with proceeds gained from the
27 commission of a felony listed in Paragraph (A) or (B) of this

1 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
2 this subdivision, or a crime of violence; or

3 (E) used to facilitate or intended to be used to
4 facilitate the commission of a felony under Section 15.031 or
5 43.25, Penal Code.

6 SECTION 2. Chapter 59, Code of Criminal Procedure, is
7 amended by adding Article 59.011 to read as follows:

8 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
9 property described by Article 59.01(2)(B)(x) is subject to
10 forfeiture under this chapter and Article 18.18, the attorney
11 representing the state may proceed under either provision.

12 SECTION 3. Article 59.12(c), Code of Criminal Procedure, is
13 amended to read as follows:

14 (c) Immediately on service of the seizure warrant, the
15 regulated financial institution shall take action as necessary to
16 segregate the account or assets and shall provide evidence,
17 certified by an officer of the institution, of the terms and amount
18 of the account or a detailed inventory of the assets to the peace
19 officer serving the warrant. Except as otherwise provided by this
20 article, a transaction involving an account or assets, other than
21 the deposit or reinvestment of interest, dividends, or other
22 normally recurring payments on the account or assets that do not
23 involve distribution of proceeds to the owner, is not authorized
24 unless approved by:

25 (1) the court that issued the seizure warrant; or

26 (2) [7] if a forfeiture action has been instituted,
27 the court in which the forfeiture [~~that~~] action is pending.

1 SECTION 4. The change in law made by this Act in amending
2 Article 59.01(2), Code of Criminal Procedure, and adding Article
3 59.011, Code of Criminal Procedure, applies only to the forfeiture
4 of property in relation to an offense committed on or after the
5 effective date of this Act. Forfeiture of property in relation to
6 an offense committed before the effective date of this Act is
7 governed by the law in effect when the offense was committed, and
8 the former law is continued in effect for that purpose. For
9 purposes of this section, an offense was committed before the
10 effective date of this Act if any element of the offense occurred
11 before that date.

12 SECTION 5. This Act takes effect September 1, 2009.