

By: Whitmire

S.B. No. 1529

A BILL TO BE ENTITLED

AN ACT

relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.

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

SECTION 1. Article 59.03(d), 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. A peace officer ~~[who seizes 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 2. Article 59.03, Code of Criminal Procedure, is amended to add subsection (e) to read as follows:

(e) 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 the property seized, to execute a document purporting to waive the person's interest in or rights to property seized under this chapter prior to notice being filed in accordance with Article 59.04, Code of Criminal Procedure.

1 SECTION 3. Article 59.06, Code of Criminal Procedure, is
2 amended by amending Subsections (d) and (g) and adding Subsections
3 (c-1) and (d-1) to read as follows:

4 (c-1) Any post-judgment interest from money, proceeds, or
5 other things of value that are deposited in an interest-bearing
6 bank account under Subsection (c) shall be used for the same purpose
7 as the principal.

8 (d) Proceeds awarded under this chapter to a law enforcement
9 agency or to the attorney representing the state may be spent by the
10 agency or the attorney after a budget for the expenditure of the
11 proceeds has been submitted to the commissioners court or governing
12 body of the municipality. The budget must be detailed and clearly
13 list and define the categories of expenditures, but may not list
14 details that would endanger the security of an investigation or
15 prosecution. Expenditures are subject to the audit and enforcement
16 provisions established under this chapter [article]. A
17 commissioners court or governing body of a municipality may not use
18 the existence of an award to offset or decrease total salaries,
19 expenses, and allowances that the agency or the attorney receives
20 from the commissioners court or governing body at or after the time
21 the proceeds are awarded.

22 (d-1) The head of a law enforcement [the] agency or an
23 attorney representing the state may not use proceeds or property
24 under this chapter for: [the existence of an award to increase a
25 salary, expense, or allowance for an employee of the attorney or
26 agency who is budgeted by the commissioners court or governing body
27 unless the commissioners court or governing body first approves the

1 expenditure].

2 (1) political campaigns;

3 (2) donations to entities that do not assist in:

4 (A) the detection, investigation, or prosecution
5 of criminal offenses or abuse, as that term is defined by Section
6 261.001, Family Code;

7 (B) the provision of services to victims or
8 witnesses of criminal offenses or abuse, as that term is defined by
9 Section 261.001, Family Code;

10 (C) the provision of mental health, drug, or
11 alcohol rehabilitation services; or

12 (D) training or education related to the
13 functions described by Subdivisions (A)-(C), subject to travel
14 regulations established by the commissioners court or governing
15 body of the municipality;

16 (3) training or education of members of the judiciary;

17 (4) the purchase of alcoholic beverages;

18 (5) by an official upon retirement from or loss of an
19 election for that office, any expense not previously approved by
20 the commissioners court or governing body in a budget submitted for
21 the applicable cycle; or

22 (6) the existence of an award to increase a salary,
23 expense, or allowance for an employee of the attorney or agency who
24 is budgeted by the commissioners court or governing body unless the
25 commissioners court or governing body first approves the
26 expenditure. Awards are not to be used to supplant local funds
27 appropriated for these purposes.

1 (g)(1) All law enforcement agencies and attorneys
2 representing the state who receive proceeds or property under this
3 chapter shall account for the seizure, forfeiture, receipt, and
4 specific expenditure of all the [~~such~~] proceeds and property in an
5 audit, which is to be performed annually by the auditing entity of
6 the commissioners court or governing body of a municipality, as
7 appropriate. The annual period of the audit for a law enforcement
8 agency is the fiscal year of the appropriate county or municipality
9 and the annual period for an attorney representing the state is the
10 state fiscal year. The audit must [~~shall~~] be completed on a form
11 provided by the attorney general and must include a detailed report
12 and explanation of all expenditures, including salaries and
13 overtime pay, training, equipment and supplies, and other items.
14 Certified copies of the audit shall be delivered by the law
15 enforcement agency or attorney representing the state to [~~the~~
16 ~~comptroller's office and~~] the attorney general not later than the
17 60th day after the date on which the annual period that is the
18 subject of the audit ends.

19 (2) If a copy of the audit is not delivered to the
20 attorney general within the period required by Subdivision (1),
21 within five days after the end of the period the attorney general
22 shall notify the law enforcement agency or the attorney
23 representing the state of that fact. On a showing of good cause,
24 the attorney general may grant an extension permitting the agency
25 or attorney to deliver a copy of the audit after the period required
26 by Subdivision (1) and before the 76th day after the date on which
27 the annual period that is the subject of the audit ends. If the law

1 enforcement agency or the attorney representing the state fails to
2 establish good cause for not delivering the copy of the audit within
3 the period required by Subdivision (1) or fails to deliver a copy of
4 an audit within the extension period, the attorney general shall
5 notify the comptroller of that fact.

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

13 SECTION 4. Chapter 59, Code of Criminal Procedure, is
14 amended by adding Articles 59.061 and 59.062 to read as follows:

15 Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state
16 auditor may at any time perform an audit or conduct an
17 investigation, in accordance with this article and Chapter 321,
18 Government Code, related to the seizure, forfeiture, receipt, and
19 specific expenditure of proceeds and property received under this
20 chapter. The state auditor is not required to perform an audit
21 under this subsection if the comptroller performs the audit under
22 Article 59.06(g)(3).

23 (b) The state auditor is entitled at any time to access any
24 book, account, voucher, confidential or nonconfidential report, or
25 other record of information, including electronic data, maintained
26 under Article 59.06, except that if the release of the applicable
27 information is restricted under state or federal law, the state

1 auditor may access the information only with the approval of a court
2 or federal administrative agency, as appropriate.

3 (c) If the results of an audit or investigation under this
4 article indicate that a law enforcement agency or attorney
5 representing the state violated a provision of this chapter
6 relating to the disposition of proceeds or property received under
7 this chapter, the state auditor shall promptly notify the attorney
8 general for the purpose of initiating appropriate enforcement
9 proceedings under Article 59.062.

10 Art. 59.062. ENFORCEMENT. (a) The attorney general may
11 institute a suit in the name of the state in a district court in a
12 county in which the law enforcement agency or attorney representing
13 the state is located or in a Travis County district court for
14 injunctive relief, to recover a civil penalty, or for both
15 injunctive relief and a civil penalty, if the results of an audit or
16 investigation under this chapter indicate that a law enforcement
17 agency or attorney representing the state violated a provision of
18 this chapter relating to the disposition of proceeds or property
19 received under this chapter.

20 (b) On application for injunctive relief and after a finding
21 that a law enforcement agency or attorney representing the state
22 violated a provision of this chapter relating to the disposition of
23 proceeds or property received under this chapter, the district
24 court shall grant the injunctive relief the facts may warrant,
25 without requirement for bond.

26 (c) A law enforcement agency or attorney representing the
27 state who commits a violation described by Subsection (a) is liable

1 to the state for a civil penalty in an amount not to exceed \$100,000
2 as determined by the district court to be appropriate for the nature
3 and seriousness of the violation. In determining an appropriate
4 penalty for the violation, the court shall consider:

5 (1) any previous violations committed by the law
6 enforcement agency or attorney representing the state;

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

9 (3) the demonstrated good faith of the law enforcement
10 agency or attorney representing the state; and

11 (4) the amount necessary to deter future violations.

12 (d) If the attorney general brings a suit under this article
13 and an injunction is granted or a civil penalty is imposed, the
14 attorney general may recover reasonable expenses, court costs,
15 investigative costs, and attorney's fees.

16 (e) Any penalty, cost, fee, or other expense awarded under
17 this article is payable solely from the special fund created under
18 Article 59.06(c) by the law enforcement agency or attorney
19 representing the state for the administration of forfeiture funds.

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

24 SECTION 5. The changes in law made by this Act to Article
25 59.03, Code of Criminal Procedure, apply only to property seized on
26 or after the effective date of this Act. Property seized before the
27 effective date of this Act is covered by the law in effect when the

1 property was seized, and the former law is continued in effect for
2 that purpose. For purposes of this section, property was seized
3 before the effective date of this Act if any portion of the property
4 was seized before that date.

5 SECTION 6. The changes in law made by this Act to Articles
6 59.06, 59.061, and 59.062, Code of Criminal Procedure, apply to the
7 disposition or use on or after the effective date of this Act of
8 proceeds or property received by a law enforcement agency or
9 attorney representing the state under Chapter 59, Code of Criminal
10 Procedure, regardless of whether the seizure of the proceeds or
11 property occurred before, on, or after the effective date of this
12 Act.

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