

By: Gallego

H.B. No. 2856

A BILL TO BE ENTITLED

AN ACT

1
2 relating to criminal asset forfeiture, the disposition of proceeds
3 and property from criminal asset forfeiture, and accountability for
4 that disposition; providing civil penalties.

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

6 SECTION 1. Article 59.03, Code of Criminal Procedure, is
7 amended by amending Subsection (d) and adding Subsection (e) to
8 read as follows:

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

18 (e) At any time before notice is filed under Article
19 59.04(b), an attorney representing the state may not request,
20 require, or in any manner induce any person, including a person who
21 asserts an interest in or right to property seized under this
22 chapter, to execute a document purporting to waive the person's
23 interest in or rights to the property.

24 SECTION 2. Article 59.06, Code of Criminal Procedure, is

1 amended by adding Subsections (c-2), (d-1), and (d-2) and amending
2 Subsections (d) and (g) to read as follows:

3 (c-2) Any postjudgment interest from money, securities,
4 negotiable instruments, stocks or bonds, or things of value, or
5 proceeds from the sale of those items, that are deposited in an
6 interest-bearing bank account under Subsection (c) shall be used
7 for the same purpose 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 received under this chapter to:

- 25 (1) contribute to a political campaign;
26 (2) make a donation to any entity, except as provided
27 by Subsection (d-2);

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

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

7 (5) purchase alcoholic beverages;

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

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

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

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

26 (d-2) The head of a law enforcement agency or an attorney
27 representing the state may use as an official purpose of the agency

1 or attorney proceeds or property received under this chapter to
2 make a donation to an entity that assists in:

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

4 (A) criminal offenses; or

5 (B) instances of abuse, as defined by Section
6 261.001, Family Code;

7 (2) the provision of:

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

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

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

14 (g)(1) All law enforcement agencies and attorneys
15 representing the state who receive proceeds or property under this
16 chapter shall account for the seizure, forfeiture, receipt, and
17 specific expenditure of all the ~~such~~ proceeds and property in an
18 audit, which is to be performed annually by the commissioners court
19 or governing body of a municipality, as appropriate. The annual
20 period of the audit for a law enforcement agency is the fiscal year
21 of the appropriate county or municipality and the annual period for
22 an attorney representing the state is the state fiscal year. The
23 audit must ~~shall~~ be completed on a form provided by the attorney
24 general and must include a detailed report and explanation of all
25 expenditures, including salaries and overtime pay, officer
26 training, investigative equipment and supplies, and other items.

27 Certified copies of the audit shall be delivered by the law

1 enforcement agency or attorney representing the state to [~~the~~
2 ~~comptroller's office and~~] the attorney general not later than the
3 60th day after the date on which the annual period that is the
4 subject of the audit ends.

5 (2) If a copy of the audit is not delivered to the
6 attorney general within the period required by Subdivision (1),
7 within five days after the end of the period the attorney general
8 shall notify the law enforcement agency or the attorney
9 representing the state of that fact. On a showing of good cause,
10 the attorney general may grant an extension permitting the agency
11 or attorney to deliver a copy of the audit after the period required
12 by Subdivision (1) and before the 76th day after the date on which
13 the annual period that is the subject of the audit ends. If the law
14 enforcement agency or the attorney representing the state fails to
15 establish good cause for not delivering the copy of the audit within
16 the period required by Subdivision (1) or fails to deliver a copy of
17 an audit within the extension period, the attorney general shall
18 notify the comptroller of that fact.

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

26 SECTION 3. Chapter 59, Code of Criminal Procedure, is
27 amended by adding Articles 59.061 and 59.062 to read as follows:

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

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

14 (c) If the results of an audit or investigation under this
15 article indicate that a law enforcement agency or attorney
16 representing the state has knowingly violated or is knowingly
17 violating a provision of this chapter relating to the disposition
18 of proceeds or property received under this chapter, the state
19 auditor shall promptly notify the attorney general for the purpose
20 of initiating appropriate enforcement proceedings under Article
21 59.062.

22 Art. 59.062. ENFORCEMENT. (a) In the name of the state,
23 the attorney general may institute in a district court in Travis
24 County or in a county served by the law enforcement agency or
25 attorney representing the state, as applicable, a suit for
26 injunctive relief, to recover a civil penalty, or for both
27 injunctive relief and a civil penalty if the results of an audit or

1 investigation under Article 59.061 indicate that the law
2 enforcement agency or attorney representing the state has knowingly
3 violated or is knowingly violating a provision of this chapter
4 relating to the disposition of proceeds or property received under
5 this chapter.

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

12 (c) A law enforcement agency or attorney representing the
13 state who knowingly commits a violation described by Subsection (a)
14 is liable to the state for a civil penalty in an amount not to exceed
15 \$100,000 as determined by the district court to be appropriate for
16 the nature and seriousness of the violation. In determining an
17 appropriate penalty for the violation, the court shall consider:

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

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

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

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

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

1 investigative costs, and attorney's fees.

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

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

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

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

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

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

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

1 involved.

2 SECTION 4. The changes in law made by this Act in amending
3 Article 59.03, Code of Criminal Procedure, apply only to property
4 seized on or after the effective date of this Act. Property seized
5 before the effective date of this Act is covered by the law in
6 effect when the property was seized, and the former law is continued
7 in effect for that purpose. For purposes of this section, property
8 was seized before the effective date of this Act if any portion of
9 the property was seized before that date.

10 SECTION 5. Except as provided by Section 6 of this Act, the
11 changes in law made by this Act in amending Article 59.06, Code of
12 Criminal Procedure, apply to the disposition or use, on or after the
13 effective date of this Act, of proceeds or property received by a
14 law enforcement agency or attorney representing the state under
15 Chapter 59, Code of Criminal Procedure, regardless of whether the
16 receipt of the proceeds or property occurred before, on, or after
17 the effective date of this Act.

18 SECTION 6. The changes in law made by this Act in amending
19 Article 59.06(g), Code of Criminal Procedure, and adding Articles
20 59.061 and 59.062, Code of Criminal Procedure, apply to any audit
21 performed on or after the effective date of this Act.

22 SECTION 7. This Act takes effect September 1, 2011.