

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, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (e) 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, including the peace officer who seizes the 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.

(e) At any time before notice is filed under Article 59.04(b), 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 property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

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

1 amended by adding Subsections (c-2), (c-3), (c-4), (d-1), and (d-2)
2 and amending 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 (c-3) Notwithstanding Subsection (a), with respect to
9 forfeited property seized in connection with a violation of Chapter
10 481, Health and Safety Code (Texas Controlled Substances Act), by a
11 peace officer employed by the Department of Public Safety, in a
12 proceeding under Article 59.05 in which a default judgment is
13 rendered in favor of the state, the attorney representing the state
14 shall enter into a local agreement with the department that allows
15 the attorney representing the state either to:

16 (1) transfer forfeited property to the department to
17 maintain, repair, use, and operate for official purposes in the
18 manner provided by Subsection (b); or

19 (2) allocate proceeds from the sale of forfeited
20 property described by Subsection (c), after the deduction of court
21 costs as described by that subsection, in the following
22 proportions:

23 (A) 40 percent to a special fund in the
24 department to be used solely for law enforcement purposes;

25 (B) 30 percent to a special fund in the county
26 treasury for the benefit of the office of the attorney representing
27 the state, to be used by the attorney solely for the official

1 purposes of the attorney's office; and

2 (C) 30 percent to the general revenue fund.

3 (c-4) Notwithstanding Subsections (a) and (c-3), with
4 respect to forfeited property seized in connection with a
5 violation of Chapter 481, Health and Safety Code (Texas Controlled
6 Substances Act), by the Department of Public Safety concurrently
7 with any other law enforcement agency, in a proceeding under
8 Article 59.05 in which a default judgment is rendered in favor of
9 the state, the attorney representing the state may allocate
10 property or proceeds in accordance with a memorandum of
11 understanding between the law enforcement agencies and the
12 attorney representing the state.

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

27 (d-1) The head of a law enforcement [~~the~~] agency or an

1 attorney representing the state may not use proceeds or property
2 received under this chapter to:

3 (1) contribute to a political campaign;

4 (2) make a donation to any entity, except as provided
5 by Subsection (d-2);

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

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

12 (5) purchase alcoholic beverages;

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

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

21 (B) during the person's current term of office,
22 the person was a candidate in a primary, general, or runoff election
23 for reelection to that office and was not the prevailing candidate
24 in that election; or

25 (7) [~~the existence of an award to~~] increase a salary,
26 expense, or allowance for an employee of the law enforcement agency
27 or attorney representing the state [~~or agency~~] who is budgeted by

1 the commissioners court or governing body of the municipality
2 unless the commissioners court or governing body first approves the
3 increase [expenditure].

4 (d-2) The head of a law enforcement agency or an attorney
5 representing the state may use as an official purpose of the agency
6 or attorney proceeds or property received under this chapter to
7 make a donation to an entity that assists in:

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

9 (A) criminal offenses; or

10 (B) instances of abuse, as defined by Section
11 261.001, Family Code;

12 (2) the provision of:

13 (A) mental health, drug, or rehabilitation
14 services; or

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

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

19 (g)(1) All law enforcement agencies and attorneys
20 representing the state who receive proceeds or property under this
21 chapter shall account for the seizure, forfeiture, receipt, and
22 specific expenditure of all the [such] proceeds and property in an
23 audit, which is to be performed annually by the commissioners court
24 or governing body of a municipality, as appropriate. The annual
25 period of the audit for a law enforcement agency is the fiscal year
26 of the appropriate county or municipality and the annual period for
27 an attorney representing the state is the state fiscal year. The

1 audit must [~~shall~~] be completed on a form provided by the attorney
2 general and must include a detailed report and explanation of all
3 expenditures, including salaries and overtime pay, officer
4 training, investigative equipment and supplies, and other items.
5 Certified copies of the audit shall be delivered by the law
6 enforcement agency or attorney representing the state to [~~the~~
7 ~~comptroller's office and~~] the attorney general not later than the
8 60th day after the date on which the annual period that is the
9 subject of the audit ends.

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

24 (3) On notice under Subdivision (2) [~~this~~
25 ~~subdivision~~], the comptroller shall perform the audit otherwise
26 required by Subdivision (1). At the conclusion of the audit, the
27 comptroller shall forward a copy of the audit to the attorney

1 general. The law enforcement agency or attorney representing the
2 state is liable to the comptroller for the costs of the comptroller
3 in performing the audit.

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

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

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

19 (c) If the results of an audit or investigation under this
20 article indicate that a law enforcement agency or attorney
21 representing the state has knowingly violated or is knowingly
22 violating a provision of this chapter relating to the disposition
23 of proceeds or property received under this chapter, the state
24 auditor shall promptly notify the attorney general for the purpose
25 of initiating appropriate enforcement proceedings under Article
26 59.062.

27 (d) The law enforcement agency or attorney representing the

1 state shall reimburse the state auditor for costs incurred by the
2 state auditor in performing an audit under this article.

3 Art. 59.062. ENFORCEMENT. (a) In the name of the state,
4 the attorney general may institute in a district court in Travis
5 County or in a county served by the law enforcement agency or
6 attorney representing the state, as applicable, a suit for
7 injunctive relief, to recover a civil penalty, or for both
8 injunctive relief and a civil penalty if the results of an audit or
9 investigation under Article 59.061 indicate that the law
10 enforcement agency or attorney representing the state has knowingly
11 violated or is knowingly violating a provision of this chapter
12 relating to the disposition of proceeds or property received under
13 this chapter.

14 (b) On application for injunctive relief and a finding that
15 the law enforcement agency or attorney representing the state is
16 knowingly violating a provision of this chapter relating to the
17 disposition of proceeds or property received under this chapter,
18 the district court shall grant the injunctive relief the facts may
19 warrant, without requirement for bond.

20 (c) A law enforcement agency or attorney representing the
21 state who knowingly commits a violation described by Subsection (a)
22 is liable to the state for a civil penalty in an amount not to exceed
23 \$100,000 as determined by the district court to be appropriate for
24 the nature and seriousness of the violation. In determining an
25 appropriate penalty for the violation, the court shall consider:

26 (1) any previous violations committed by the agency or
27 attorney;

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

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

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

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

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

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

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

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

3 (2) a written opinion of the attorney general relating
4 to:

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

7 (B) a fact situation that is substantially
8 similar to the fact situation in which the agency or attorney is
9 involved.

10 SECTION 4. Section 24.377, Government Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) In addition to the requirements under Article 59.06,
13 Code of Criminal Procedure, the district attorney for the 198th
14 Judicial District may use proceeds from the sale of forfeited
15 property, after the deduction of amounts described by Article
16 59.06(a), Code of Criminal Procedure, for the official purposes of
17 the office of the district attorney only on the approval of:

18 (1) the commissioners court of each county in the
19 judicial district; or

20 (2) a regional review committee composed of three
21 members who are a county judge, a county attorney, a county
22 commissioner or a county sheriff, each appointed by the member of
23 the house of representatives of this state who represents the
24 largest number of counties in the judicial district.

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

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

6 SECTION 6. The changes in law made by this Act in adding
7 Subsections (c-2), (d-1), and (d-2), Article 59.06, Code of
8 Criminal Procedure, and amending Subsection (d), Article 59.06,
9 Code of Criminal Procedure, apply to the disposition or use, on or
10 after the effective date of this Act, of proceeds or property
11 received by a law enforcement agency or attorney representing the
12 state under Chapter 59, Code of Criminal Procedure, regardless of
13 whether the receipt of the proceeds or property occurred before,
14 on, or after the effective date of this Act.

15 SECTION 7. Subsection (c-3), Article 59.06, Code of
16 Criminal Procedure, as added by this Act, applies to property
17 seized or taken into custody on or after the effective date of this
18 Act. Property seized or taken into custody before the effective
19 date of this Act is governed by the law in effect on the date the
20 property is seized or taken into custody, and the former law is
21 continued in effect for that purpose.

22 SECTION 8. The changes in law made by this Act in amending
23 Subsection (g), Article 59.06, Code of Criminal Procedure, and
24 adding Articles 59.061 and 59.062, Code of Criminal Procedure,
25 apply to any audit performed on or after the effective date of this
26 Act.

27 SECTION 9. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 316 passed the Senate on March 17, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 316 passed the House, with amendments, on May 12, 2011, by the following vote: Yeas 116, Nays 18, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor