

By: Williams
(Gallego, Hartnett, Aliseda, Zedler, Christian)

S.B. No. 1701

A BILL TO BE ENTITLED

AN ACT

relating to a criminal asset forfeiture hearing in which substitute
assets are forfeited under certain circumstances.

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

SECTION 1. Subsection (e), Article 59.05, Code of Criminal
Procedure, is amended to read as follows:

(e)(1) It is the intention of the legislature that asset
forfeiture is remedial in nature and not a form of punishment.

(2) If the court finds that all or any part of the
property is subject to forfeiture, the judge shall forfeit the
property to the state, with the attorney representing the state as
the agent for the state, except that if the court finds that the
nonforfeitable interest of an interest holder in the property is
valued in an amount greater than or substantially equal to the
present value of the property, the court shall order the property
released to the interest holder.

(3) If the court finds that the nonforfeitable
interest of an interest holder is valued in an amount substantially
less than the present value of the property and that the property is
subject to forfeiture, the court shall order the property forfeited
to the state with the attorney representing the state acting as the
agent of the state, and making necessary orders to protect the
nonforfeitable interest of the interest holder.

(4) The court may order the forfeiture of any other

1 property of a person that otherwise is not subject to forfeiture
2 under this article if the court finds that property of the person
3 that was originally ordered forfeited under this subsection, as a
4 result of an act or omission of the person:

5 (A) cannot be located on exercise of due
6 diligence;

7 (B) has been transferred, conveyed, or sold to or
8 deposited with a third party;

9 (C) has been placed beyond the jurisdiction of
10 the court;

11 (D) has been substantially diminished in value;
12 or

13 (E) has been commingled with other property and
14 cannot be separated without difficulty.

15 (5) In ordering the forfeiture of substitute assets
16 under Subdivision (4), the court may not order the forfeiture of
17 property with a value greater than the value of the property
18 originally ordered forfeited by the court.

19 (6) On final judgment of forfeiture, the attorney
20 representing the state shall dispose of the property in the manner
21 required by Article 59.06 of this code.

22 SECTION 2. The change in law made by this Act in amending
23 Subsection (e), Article 59.05, Code of Criminal Procedure,
24 authorizes a court to order the forfeiture of substitute assets for
25 any property originally ordered forfeited by the court, regardless
26 of whether the original order of forfeiture occurred before, on, or
27 after the effective date of this Act.

1 SECTION 3. This Act takes effect September 1, 2011.

COMMITTEE AMENDMENT NO. 1

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2 SECTION _____. Amend S.B. 1701 (Engrossed) by the following:
3 On page 2, lines 11, after the ";" insert "by the person whose
4 property was originally forfeited"

5 Hartnett