

By: Lozano

H.B. No. 2291

A BILL TO BE ENTITLED

AN ACT

relating to correcting references in statute to forfeiture of property resulting from violations of offenses involving money transmission or currency exchange.

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

SECTION 1. Articles 59.01(1) and (2), Code of Criminal Procedure, are amended to read as follows:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vi) [~~(2)(B)(vii)~~] of this article, the term includes the attorney general.

(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, or Chapter 43, 20A, 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 and Safety Code (Texas Controlled Substances Act);

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

(iii) a felony under Chapter 151 [~~153~~], Finance Code;

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

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

(vi) [~~any felony under Chapter 152, Finance Code,~~

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

1                    (vii) [~~(viii)~~] a Class B misdemeanor under  
2 Chapter 522, Business & Commerce Code;

3                    (viii) [~~(ix)~~] a Class A misdemeanor under  
4 Section 306.051, Business & Commerce Code;

5                    (ix) [~~(x)~~] any offense under Section 42.10,  
6 Penal Code;

7                    (x) [~~(xi)~~] any offense under Section  
8 46.06(a)(1) or 46.14, Penal Code;

9                    (xi) [~~(xii)~~] any offense under Chapter 71,  
10 Penal Code; or

11                    (xii) [~~(xiii)~~] any offense under Section  
12 20.05, Penal Code;

13                    (C) the proceeds gained from the commission of a  
14 felony listed in Paragraph (A) or (B) of this subdivision, a  
15 misdemeanor listed in Paragraph (B)(vii), (ix) [~~(B)(viii)~~], (x), or  
16 (xi) [~~, or (xii)~~] of this subdivision, or a crime of violence;

17                    (D) acquired with proceeds gained from the  
18 commission of a felony listed in Paragraph (A) or (B) of this  
19 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix)  
20 [~~(B)(viii)~~], (x), or (xi) [~~, or (xii)~~] of this subdivision, or a  
21 crime of violence;

22                    (E) used to facilitate or intended to be used to  
23 facilitate the commission of a felony under Section 15.031 or  
24 43.25, Penal Code; or

25                    (F) used to facilitate or intended to be used to  
26 facilitate the commission of a felony under Section 20A.02 or  
27 Chapter 43, Penal Code.

SECTION 2. Article 59.011, Code of Criminal Procedure, is amended to read as follows:

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If property described by Article 59.01(2)(B)(ix), (x), or [59.01(2)(B)(x)], (xi)[~~, or (xii)~~] is subject to forfeiture under this chapter and Article 18.18, the attorney representing the state may proceed under either this chapter or that article.

SECTION 3. Article 59.06(p), Code of Criminal Procedure, is amended to read as follows:

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the commission may otherwise be entitled by law, the attorney representing the state shall transfer to the Health and Human Services Commission all forfeited property defined as contraband under Article 59.01(2)(B)(vi) [~~59.01(2)(B)(vii)~~]. If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

SECTION 4. This Act is nonsubstantive in nature and renumbers outdated references in Chapter 59, Code of Criminal Procedure, to the former Chapters 152 and 153, Finance Code. Chapters 152 and 153, Finance Code, were repealed by Chapter 1099

H.B. No. 2291

1 (H.B. 2218), Acts of the 79th Legislature, 2005. The offenses in  
2 former Chapters 152 and 153, Finance Code, that were a basis for  
3 criminal asset forfeiture were transferred by H.B. 2218 to Chapter  
4 151, Finance Code, and this Act corrects the references  
5 accordingly.

6 SECTION 5. This Act takes effect September 1, 2013.