

By: Hinojosa

S.B. No. 1451

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of money laundering and to the forfeiture of certain contraband.

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

SECTION 1. Subdivisions (1) and (2), Article 59.01, 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),

1 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
2 35, Penal Code;

3 (iii) any felony under The Securities Act
4 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

5 (iv) any offense under Chapter 49, Penal
6 Code, that is punishable as a felony of the third degree or state
7 jail felony, if the defendant has been previously convicted three
8 times of an offense under that chapter;

9 (B) used or intended to be used in the commission
10 of:

11 (i) any felony under Chapter 481, Health
12 and Safety Code (Texas Controlled Substances Act);

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

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

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

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

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

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

27 (vii) [~~(viii)~~] a Class B misdemeanor under

1 Chapter 522, Business & Commerce Code;
2 (viii) [~~(ix)~~] a Class A misdemeanor under
3 Section 306.051, Business & Commerce Code;
4 (ix) [~~(x)~~] any offense under Section 42.10,
5 Penal Code;
6 (x) [~~(xi)~~] any offense under Section
7 46.06(a)(1) or 46.14, Penal Code;
8 (xi) [~~(xii)~~] any offense under Chapter 71,
9 Penal Code; or
10 (xii) [~~(xiii)~~] any offense under Section
11 20.05, Penal Code;
12 (C) the proceeds gained from the commission of a
13 felony listed in Paragraph (A) or (B) of this subdivision, a
14 misdemeanor listed in Paragraph (B)(vii), (ix) [~~(B)(viii)~~], (x), or
15 (xi) [~~, or (xii)~~] of this subdivision, or a crime of violence;
16 (D) acquired with proceeds gained from the
17 commission of a felony listed in Paragraph (A) or (B) of this
18 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix)
19 [~~(B)(viii)~~], (x), or (xi) [~~, or (xii)~~] of this subdivision, or a
20 crime of violence;
21 (E) used to facilitate or intended to be used to
22 facilitate the commission of a felony under Section 15.031 or
23 43.25, Penal Code; or
24 (F) used to facilitate or intended to be used to
25 facilitate the commission of a felony under Section 20A.02 or
26 Chapter 43, Penal Code.

27 SECTION 2. Article 59.011, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
3 property described by Article 59.01(2)(B)(ix), (x), or
4 ~~[59.01(2)(B)(x),]~~ (xi) ~~[, or (xii)]~~ is subject to forfeiture under
5 this chapter and Article 18.18, the attorney representing the state
6 may proceed under either this chapter or that article.

7 SECTION 3. Chapter 59, Code of Criminal Procedure, is
8 amended by adding Articles 59.021, 59.022, 59.023, and 59.024 to
9 read as follows:

10 Art. 59.021. FORFEITURE OF SUBSTITUTE PROPERTY. (a) In
11 this article, "substitute property" means property:

- 12 (1) that is not contraband; and
- 13 (2) that is owned by a person who is or was the owner
14 of, or has or had an interest in, contraband with an aggregate value
15 of \$200,000 or more.

16 (b) Substitute property may be seized under authority of a
17 search warrant issued under Subsection (c) if property that is
18 contraband:

- 19 (1) can no longer be located after the exercise of
20 reasonable diligence;
- 21 (2) has been transferred, conveyed, sold to, or
22 deposited with a person other than the owner or interest holder;
- 23 (3) is not within the jurisdiction of the court;
- 24 (4) has substantially diminished in value;
- 25 (5) has been commingled with other property and cannot
26 be readily distinguished or separated; or
- 27 (6) is proceeds described by Article 59.01(2)(C) and

1 was used to acquire other property that is not within the
2 jurisdiction of the court.

3 (c) A district court may issue a search warrant authorizing
4 a peace officer to seize substitute property if the officer submits
5 an affidavit that states:

6 (1) probable cause for the commission of an offense
7 giving rise to forfeiture of contraband;

8 (2) a description of the contraband involved and the
9 estimated current fair market value of the substitute property to
10 be seized;

11 (3) the reasons the contraband is unavailable for
12 forfeiture;

13 (4) probable cause to believe that the owner of the
14 substitute property owned or had an interest in contraband with an
15 aggregate value of \$200,000 or more in connection with the
16 commission of an underlying offense giving rise to the forfeiture;
17 and

18 (5) that due diligence has been exercised in
19 identifying the minimum amount of substitute property necessary to
20 approximate the estimated highest fair market value of the
21 contraband during the period in which the owner of the substitute
22 property owned, or had an interest in, the contraband.

23 (d) After seizure of the substitute property, the
24 disposition shall proceed as other cases in this chapter except
25 that the attorney representing the state must prove by a
26 preponderance of the evidence:

27 (1) that the contraband described by Subsection (b)

1 was subject to seizure and forfeiture under this chapter;

2 (2) the highest fair market value of that contraband
3 during the period in which the owner of the substitute property
4 owned, or had an interest in, the contraband;

5 (3) the fair market value of the substitute property
6 at the time it was seized; and

7 (4) that the owner of the substitute property owned or
8 had an interest in contraband with an aggregate value of \$200,000 or
9 more in connection with the commission of an underlying offense
10 giving rise to the forfeiture.

11 (e) For purposes of determining the aggregate value of
12 contraband under Subsection (c) or (d), the owner or interest
13 holder is not required to have simultaneously owned or had an
14 interest in all of the property constituting contraband.

15 (f) If the fair market value of the substitute property
16 seized exceeds the highest fair market value of the contraband
17 described by Subsection (b) during the period in which the owner of
18 the substitute property owned, or had an interest in, the
19 contraband, the court shall make appropriate orders to ensure that
20 property equal in value to the excess is returned to the person or
21 persons from whom the substitute property was seized.

22 Art. 59.022. PROPERTY REMOVED FROM THIS STATE. (a) This
23 article applies to contraband, other than real property, that is
24 determined to be located outside of this state.

25 (b) A peace officer who identifies contraband described by
26 Subsection (a) shall provide the attorney representing the state a
27 sworn statement that identifies the contraband and the reasons the

1 contraband is subject to seizure. On receiving the sworn
2 statement, the attorney representing the state may file, in the
3 name of the state, a notice of intended forfeiture in a district
4 court in:

5 (1) the county in which the contraband, or proceeds
6 used to acquire the contraband, was known to be situated before its
7 removal out of this state;

8 (2) the county in which any owner or possessor of the
9 contraband was prosecuted for an underlying offense for which the
10 property is subject to forfeiture;

11 (3) the county in which venue existed for prosecution
12 of an underlying offense for which the property is subject to
13 forfeiture; or

14 (4) Travis County.

15 (c) The attorney representing the state shall request that
16 citation be served on any person who owns or is in possession or
17 control of the contraband to which this article applies and, on
18 service in accordance with the Texas Rules of Civil Procedure, may
19 move to have the court order that the contraband be:

20 (1) returned or brought to the jurisdiction of the
21 court; or

22 (2) delivered to an agent of this state for
23 transportation to the jurisdiction of the court.

24 (d) The attorney representing the state is entitled to all
25 reasonable discovery in accordance with the Texas Rules of Civil
26 Procedure to assist in identifying and locating contraband
27 described by Subsection (a).

1 (e) If the court orders the return of contraband under this
2 article, the contraband, after return, is subject to seizure and
3 forfeiture as otherwise provided by this chapter.

4 (f) If it is found that any person after being served with a
5 citation under Subsection (c) has transported, concealed, disposed
6 of, or otherwise acted to prevent the seizure and forfeiture of
7 contraband described by Subsection (a), the court may:

8 (1) order the payment to the attorney representing the
9 state of costs incurred in investigating and identifying the
10 location of the contraband, including discovery costs, reasonable
11 attorney's fees, expert fees, other professional fees incurred by
12 the attorney, and travel expenses;

13 (2) enter a judgment for civil contempt and impose:

14 (A) a fine of not more than \$10,000 or less than
15 \$1,000;

16 (B) confinement in jail for a term of not more
17 than 30 days or less than 10 days; or

18 (C) both fine and confinement;

19 (3) enter a judgment of forfeiture of the person's
20 interest in the contraband;

21 (4) enter a judgment in the amount of the fair market
22 value of the contraband;

23 (5) impose a civil penalty of not more than \$25,000 or
24 less than \$1,000 for each item of contraband, or each separate fund,
25 of which the person transported, concealed, disposed, or otherwise
26 acted to prevent the seizure and forfeiture; or

27 (6) order any combination of Subdivisions (1) through

1 (5).

2 Art. 59.023. SUIT FOR PROCEEDS. (a) A peace officer who
3 identifies proceeds that are gained from the commission of an
4 offense listed in Article 59.01(2)(A) or (B) shall provide the
5 attorney representing the state with an affidavit that identifies
6 the amount of the proceeds and that states probable cause that the
7 proceeds are contraband subject to forfeiture. On receiving the
8 affidavit, the attorney representing the state may file for a
9 judgment in the amount of the proceeds in a district court in:

10 (1) the county in which the proceeds were gained;

11 (2) the county in which any owner or possessor of the
12 property was prosecuted for an underlying offense for which the
13 property is subject to forfeiture;

14 (3) the county in which venue existed for prosecution
15 of an underlying offense for which the property is subject to
16 forfeiture;

17 (4) the county in which the proceeds were seized; or

18 (5) Travis County.

19 (b) If the court determines that, based on an examination of
20 the affidavit described by Subsection (a), probable cause exists
21 for the suit to proceed, the court shall order that citation be
22 served on all defendants named in the suit in accordance with the
23 Texas Rules of Civil Procedure.

24 (c) Each person who is shown to have been a party to an
25 underlying offense for which the proceeds are subject to forfeiture
26 is jointly and severally liable in a suit under this article,
27 regardless of whether the person has been charged for the offense.

1 Art. 59.024. MULTIPLE RECOVERY PROHIBITED. The attorney
2 representing the state may proceed under Article 59.02, 59.021,
3 59.022, or 59.023, or any combination of those articles. If
4 property or proceeds are awarded or forfeited to the state under
5 this chapter for an underlying offense, a court may not award or
6 forfeit additional property or proceeds that would exceed the
7 highest fair market value of the contraband subject to forfeiture
8 for that offense. For purposes of this article, the highest fair
9 market value may be calculated at any time during the period in
10 which the applicable person owned, possessed, or had an interest in
11 the contraband.

12 SECTION 4. Subsection (p), Article 59.06, Code of Criminal
13 Procedure, is amended to read as follows:

14 (p) Notwithstanding Subsection (a), and to the extent
15 necessary to protect the commission's ability to recover amounts
16 wrongfully obtained by the owner of the property and associated
17 damages and penalties to which the commission may otherwise be
18 entitled by law, the attorney representing the state shall transfer
19 to the Health and Human Services Commission all forfeited property
20 defined as contraband under Article 59.01(2)(B)(vi)
21 [~~59.01(2)(B)(vii)~~]. If the forfeited property consists of property
22 other than money or negotiable instruments, the attorney
23 representing the state may, if approved by the commission, sell the
24 property and deliver to the commission the proceeds from the sale,
25 minus costs attributable to the sale. The sale must be conducted in
26 a manner that is reasonably expected to result in receiving the fair
27 market value for the property.

1 SECTION 5. Subdivision (4), Section 34.01, Penal Code, is
2 amended to read as follows:

3 (4) "Proceeds" means funds acquired or derived
4 directly or indirectly from, produced through, [~~or~~] realized
5 through, or used in the commission of:

6 (A) an act; or

7 (B) conduct that constitutes an offense under
8 Section 151.7032, Tax Code.

9 SECTION 6. (a) The change in law made by this Act to
10 Chapter 59, Code of Criminal Procedure, applies only to the
11 forfeiture of property in relation to an offense committed on or
12 after the effective date of this Act. Forfeiture of property in
13 relation to an offense committed before the effective date of this
14 Act is governed by the law in effect when the offense was committed,
15 and the former law is continued in effect for that purpose.

16 (b) The change in law made by this Act to Section 34.01,
17 Penal Code, applies only to an offense committed on or after the
18 effective date of this Act. An offense committed before the
19 effective date of this Act is governed by the law in effect on the
20 date the offense was committed, and the former law is continued in
21 effect for that purpose.

22 (c) For purposes of this section, an offense was committed
23 before the effective date of this Act if any element of the offense
24 occurred before that date.

25 SECTION 7. This Act takes effect September 1, 2013.