

1-1 By: Hinojosa S.B. No. 1451
1-2 (In the Senate - Filed March 7, 2013; March 18, 2013, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 29, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 29, 2013,
1-6 sent to printer.)

1-7	COMMITTEE VOTE			
1-8		Yea	Nay	Absent
1-9	Whitmire	X		PNV
1-10	Huffman	X		
1-11	Carona			X
1-12	Hinojosa			X
1-13	Patrick	X		
1-14	Rodriguez	X		
1-15	Schwertner	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1451 By: Hinojosa

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the prosecution of the offense of money laundering and
1-20 to the forfeiture of certain contraband.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subdivisions (1) and (2), Article 59.01, Code of
1-23 Criminal Procedure, are amended to read as follows:

1-24 (1) "Attorney representing the state" means the
1-25 prosecutor with felony jurisdiction in the county in which a
1-26 forfeiture proceeding is held under this chapter or, in a
1-27 proceeding for forfeiture of contraband as defined under
1-28 Subdivision (2)(B)(v) of this article, the city attorney of a
1-29 municipality if the property is seized in that municipality by a
1-30 peace officer employed by that municipality and the governing body
1-31 of the municipality has approved procedures for the city attorney
1-32 acting in a forfeiture proceeding. In a proceeding for forfeiture
1-33 of contraband as defined under Subdivision (2)(B)(vi)
1-34 [~~(2)(B)(vii)~~] of this article, the term includes the attorney
1-35 general.

1-36 (2) "Contraband" means property of any nature,
1-37 including real, personal, tangible, or intangible, that is:

1-38 (A) used in the commission of:

1-39 (i) any first or second degree felony under
1-40 the Penal Code;

1-41 (ii) any felony under Section 15.031(b),
1-42 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
1-43 35, Penal Code;

1-44 (iii) any felony under The Securities Act
1-45 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

1-46 (iv) any offense under Chapter 49, Penal
1-47 Code, that is punishable as a felony of the third degree or state
1-48 jail felony, if the defendant has been previously convicted three
1-49 times of an offense under that chapter;

1-50 (B) used or intended to be used in the commission
1-51 of:

1-52 (i) any felony under Chapter 481, Health
1-53 and Safety Code (Texas Controlled Substances Act);

1-54 (ii) any felony under Chapter 483, Health
1-55 and Safety Code;

1-56 (iii) a felony under Chapter 151 [~~153~~],
1-57 Finance Code;

1-58 (iv) any felony under Chapter 34, Penal
1-59 Code;

1-60 (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;

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

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

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

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

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

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

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

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

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

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or 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) ~~[(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. Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.021, 59.022, 59.023, and 59.024 to read as follows:

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

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

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

(1) can no longer be located after the exercise of reasonable diligence;
(2) has been transferred, conveyed, sold to, or deposited with a person other than the owner or interest holder;
(3) is not within the jurisdiction of the court;
(4) has substantially diminished in value;
(5) has been commingled with other property and cannot be readily distinguished or separated; or
(6) is proceeds described by Article 59.01(2)(C) and was used to acquire other property that is not within the jurisdiction of the court.

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

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

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

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

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

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

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

(1) that the contraband described by Subsection (b) was subject to seizure and forfeiture under this chapter;

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

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

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

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

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

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

(b) A peace officer who identifies contraband described by Subsection (a) shall provide the attorney representing the state a sworn statement that identifies the contraband and the reasons the contraband is subject to seizure. On receiving the sworn statement, the attorney representing the state may file, in the name of the state, a notice of intended forfeiture in a district court in:

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

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

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

(4) Travis County.

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

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

(2) delivered to an agent of this state for

transportation to the jurisdiction of the court.

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

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

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

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

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

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

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

(C) both fine and confinement;

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

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

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

(6) order any combination of Subdivisions (1) through (5).

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

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

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

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

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

(5) Travis County.

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

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

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

5-1 the contraband.

5-2 SECTION 4. Subsection (p), Article 59.06, Code of Criminal
5-3 Procedure, is amended to read as follows:

5-4 (p) Notwithstanding Subsection (a), and to the extent
5-5 necessary to protect the commission's ability to recover amounts
5-6 wrongfully obtained by the owner of the property and associated
5-7 damages and penalties to which the commission may otherwise be
5-8 entitled by law, the attorney representing the state shall transfer
5-9 to the Health and Human Services Commission all forfeited property
5-10 defined as contraband under Article 59.01(2)(B)(vi)
5-11 [~~59.01(2)(B)(vii)~~]. If the forfeited property consists of property
5-12 other than money or negotiable instruments, the attorney
5-13 representing the state may, if approved by the commission, sell the
5-14 property and deliver to the commission the proceeds from the sale,
5-15 minus costs attributable to the sale. The sale must be conducted in
5-16 a manner that is reasonably expected to result in receiving the fair
5-17 market value for the property.

5-18 SECTION 5. Subdivision (4), Section 34.01, Penal Code, is
5-19 amended to read as follows:

5-20 (4) "Proceeds" means funds acquired or derived
5-21 directly or indirectly from, produced through, [~~or~~] realized
5-22 through, or used in the commission of:

5-23 (A) an act; or

5-24 (B) conduct that constitutes an offense under
5-25 Section 151.7032, Tax Code.

5-26 SECTION 6. (a) The change in law made by this Act to
5-27 Chapter 59, Code of Criminal Procedure, applies only to the
5-28 forfeiture of property in relation to an offense committed on or
5-29 after the effective date of this Act. Forfeiture of property in
5-30 relation to an offense committed before the effective date of this
5-31 Act is governed by the law in effect when the offense was committed,
5-32 and the former law is continued in effect for that purpose.

5-33 (b) The change in law made by this Act to Section 34.01,
5-34 Penal Code, applies only to an offense committed on or after the
5-35 effective date of this Act. An offense committed before the
5-36 effective date of this Act is governed by the law in effect on the
5-37 date the offense was committed, and the former law is continued in
5-38 effect for that purpose.

5-39 (c) For purposes of this section, an offense was committed
5-40 before the effective date of this Act if any element of the offense
5-41 occurred before that date.

5-42 SECTION 7. This Act takes effect September 1, 2013.

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