

By: Canales

H.B. No. 344

Substitute the following for H.B. No. 344:

By: Moody

C.S.H.B. No. 344

A BILL TO BE ENTITLED

AN ACT

relating to criminal asset forfeiture proceedings.

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

SECTION 1. Article 59.021(d), Code of Criminal Procedure, is amended to read as follows:

(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 clear and convincing [~~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.

SECTION 2. Article 59.05(b), Code of Criminal Procedure, is amended to read as follows:

(b) All cases under this chapter shall proceed to trial in the same manner as in other civil cases. The state has the burden of

1 proving by clear and convincing [~~a preponderance of the~~] evidence  
2 that property is subject to forfeiture.

3 SECTION 3. Chapter 59, Code of Criminal Procedure, is  
4 amended by adding Articles 59.15 and 59.16 to read as follows:

5 Art. 59.15. TRANSFER OF FORFEITABLE PROPERTY TO FEDERAL  
6 GOVERNMENT. A law enforcement agency or attorney representing the  
7 state may not directly or indirectly transfer seized property to  
8 any federal law enforcement authority or other federal agency and  
9 may not coordinate with the authority or agency regarding seized  
10 property unless:

11 (1) the value of the seized property exceeds \$50,000,  
12 excluding the value of any controlled substance; and

13 (2) the attorney representing the state determines  
14 that:

15 (A) the activity giving rise to the applicable  
16 investigation or seizure is interstate in nature and sufficiently  
17 complex to justify the transfer; or

18 (B) the seized property may only be forfeited  
19 under federal law.

20 Art. 59.16. COOPERATION IN FEDERAL FORFEITURE ACTION. A  
21 law enforcement agency or the Texas National Guard, when operating  
22 in a nonmilitary role, may not participate, assist, or cooperate in  
23 a forfeiture action brought by the federal government unless the  
24 value of the seized property subject to forfeiture exceeds \$50,000,  
25 excluding the value of any controlled substance.

26 SECTION 4. Section 12.1106(d), Parks and Wildlife Code, is  
27 amended to read as follows:

1 (d) The court shall order the seized property:

2 (1) forfeited to the department if the court  
3 determines by clear and convincing [~~a preponderance of the~~]  
4 evidence that:

5 (A) the seized property is contraband and a  
6 person pleaded guilty or nolo contendere to, was convicted of, or  
7 was placed on deferred adjudication for:

8 (i) an offense under Section 66.006,  
9 Section 66.2011, or Subchapter G, Chapter 43, of this code; or

10 (ii) a second or subsequent offense under  
11 Section 61.022, 62.003, 62.004, or 62.005 of this code; or

12 (B) the seized property is contraband and no  
13 person was arrested for an offense immediately after the warden or  
14 officer seized the property; or

15 (2) released to the owner if:

16 (A) the person charged with an offense under  
17 Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of  
18 this code or a second or subsequent offense under Section 61.022,  
19 62.003, 62.004, or 62.005 of this code is acquitted or the charge is  
20 dismissed; or

21 (B) the court determines that the seized property  
22 is not contraband.

23 SECTION 5. (a) Articles 59.15 and 59.16, Code of Criminal  
24 Procedure, as added by this Act, apply only to property seized on or  
25 after the effective date of this Act. Property seized before the  
26 effective date of this Act is governed by the law in effect on the  
27 date the property was seized, and the former law is continued in

1 effect for that purpose.

2 (b) Articles 59.021 and 59.05, Code of Criminal Procedure,  
3 and Section 12.1106, Parks and Wildlife Code, as amended by this  
4 Act, apply only to a forfeiture proceeding that begins on or after  
5 the effective date of this Act. A forfeiture proceeding that begins  
6 before the effective date of this Act is governed by the law in  
7 effect on the date the proceeding begins, and the former law is  
8 continued in effect for that purpose.

9 SECTION 6. This Act takes effect September 1, 2017.