

By: Thompson of Harris

H.B. No. 1364

A BILL TO BE ENTITLED

AN ACT

relating to repealing civil asset forfeiture provisions and
establishing criminal asset forfeiture in this state.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended
by adding Chapter 59A to read as follows:

CHAPTER 59A. CRIMINAL ASSET FORFEITURE

Art. 59A.001. DEFINITIONS. In this chapter:

(1) "Abandoned property" means personal property left
by an owner who has intentionally relinquished all rights to
control of the property.

(2) "Actual knowledge" means direct and clear
awareness of information, facts, or conditions.

(3) "Contraband" means tangible or intangible goods
that are illegal to import, export, or possess, including a
scheduled drug without a valid prescription.

(4) "Conveyance" means a device or structure used for
transportation. The term includes a motor vehicle, trailer,
snowmobile, airplane, or vessel, and any attached equipment.

(5) "Department" means the Department of Public
Safety.

(6) "Instrumentality" means property that is
otherwise lawful to possess and that is used in the furtherance or
commission of an offense subject to forfeiture. The term includes

land, buildings, containers, conveyances, equipment, materials, products, computer hardware or software, telecommunications devices, firearms, ammunition, tools, and money, securities, negotiable instruments, or other means of exchange. The term does not include stolen property.

(7) "Law enforcement agency" means a law enforcement agency of this state or a political subdivision of this state that has authority under state law to engage in seizure and forfeiture.

(8) "Offense subject to forfeiture" means:

(A) a first or second degree felony under the Penal Code;

(B) a third degree or state jail felony under Chapter 49, Penal Code, if the defendant has been previously convicted three times of an offense under that chapter;

(C) a felony under:

(i) Chapter 151, Finance Code;

(ii) Chapter 481 or 483, Health and Safety Code;

(iii) Chapter 32, Human Resources Code, or Chapter 35A or 37, Penal Code, that involves the state Medicaid program;

(iv) Section 15.031, 21.11, or 38.04, Penal Code;

(v) Chapter 20A, 29, 30, 31, 32, 33, 33A, 34, 35, or 43, Penal Code; or

(vi) The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(D) a Class A misdemeanor under:

(i) Section 306.051, Business & Commerce Code; or

(ii) Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted two times of an offense under that subchapter;

(E) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(F) an offense under:

(i) Section 326.002, Business & Commerce Code;

(ii) Section 20.05, 20.06, 42.10, 46.06(a)(1), or 46.14, Penal Code;

(iii) Chapter 71, Penal Code; or

(iv) Section 550.021, Transportation Code;

or

(G) any other offense that results in a personal injury to a victim and that is provided under:

(i) the Penal Code; or

(ii) a federal criminal law.

Art. 59A.002. PURPOSE. The purpose of this chapter is to:

(1) deter criminal activity by reducing the economic incentives;

(2) increase the pecuniary loss that results from engaging in criminal activity;

(3) protect against the wrongful forfeiture of property; and

1 (4) except as provided by Article 59A.026, ensure that
2 only criminal forfeiture is allowed in this state.

3 Art. 59A.003. CRIMINAL ASSET FORFEITURE; PROPERTY SUBJECT
4 TO FORFEITURE. (a) The convicting court may order a person
5 convicted of an offense subject to forfeiture to forfeit any:

6 (1) property the person derived from the commission of
7 the offense;

8 (2) property directly traceable to property derived
9 from the commission of the offense; or

10 (3) instrumentality the person used in the commission
11 of the offense.

12 (b) For purposes of this chapter, a person is considered
13 convicted if:

14 (1) a sentence is imposed on the person; or

15 (2) the person receives community supervision,
16 including deferred adjudication community supervision.

17 Art. 59A.004. EXEMPT PROPERTY. The following are exempt
18 from forfeiture:

19 (1) property that is homestead property;

20 (2) a motor vehicle valued at less than \$10,000; and

21 (3) United States currency totaling \$200 or less.

22 Art. 59A.005. CONTRABAND. A person may not have a property
23 interest in contraband. Contraband is subject to seizure and shall
24 be disposed of in accordance with state law. Contraband is not
25 subject to forfeiture under this chapter.

26 Art. 59A.006. CONVICTION REQUIRED; STANDARD OF PROOF. (a)
27 Property may be forfeited under this chapter only if:

1 (1) a person is convicted of an offense subject to
2 forfeiture; and

3 (2) the state establishes by clear and convincing
4 evidence that the applicable requirements of Articles
5 59A.003-59A.005 are met.

6 (b) This chapter does not prevent property from being
7 forfeited by plea agreement approved by the convicting court.

8 Art. 59A.007. SUBSTITUTION OF ASSETS. On the state's
9 motion following conviction, the convicting court may order the
10 forfeiture of substitute property owned by the defendant if the
11 state proves by a preponderance of the evidence that the defendant
12 intentionally transferred, sold, or deposited property with a third
13 party to avoid the court's jurisdiction. The value of substitute
14 property forfeited may not exceed the value of the property
15 transferred, sold, or deposited.

16 Art. 59A.008. NO ADDITIONAL REMEDIES. The state may not
17 seek a money judgment against the defendant or any other remedy not
18 provided by this chapter.

19 Art. 59A.009. NO JOINT AND SEVERAL LIABILITY. A defendant
20 convicted of an offense subject to forfeiture is not jointly and
21 severally liable for a forfeiture award owed by any other
22 defendant. If ownership is unknown, the convicting court may order
23 each defendant to forfeit property on a pro rata basis or by other
24 equitable means.

25 Art. 59A.010. SEIZURE OF PERSONAL PROPERTY WITH PROCESS.
26 At the request of the state made at any time, a court may issue an ex
27 parte preliminary order to seize or secure personal property for

1 which forfeiture is sought and to provide for its custody.

2 Art. 59A.011. SEIZURE OF PERSONAL PROPERTY WITHOUT PROCESS.

3 Personal property subject to forfeiture may be seized at any time
4 without a court order if:

5 (1) the seizure is incident to a lawful arrest or
6 search;

7 (2) the personal property has been the subject of a
8 previous judgment in favor of the state; or

9 (3) the law enforcement agency seizing the property
10 has probable cause to believe that:

11 (A) the seizure is immediately necessary to
12 prevent the removal or destruction of the personal property; and

13 (B) the personal property is forfeitable under
14 this chapter.

15 Art. 59A.012. SEIZURE OF REAL PROPERTY WITH PROCESS. (a)
16 Real property may be seized only under a court order. A court may
17 issue an order to seize or secure real property for which forfeiture
18 is sought only after the property owners are provided notice and an
19 opportunity for a contested hearing to determine the sufficiency of
20 the probable cause for the seizure.

21 (b) This article does not prohibit the attorney
22 representing the state from seeking a lis pendens or restraining
23 order to prohibit the sale or destruction of the real property.

24 Art. 59A.013. RECEIPT. A law enforcement officer who
25 seizes property shall give an itemized receipt to the person
26 possessing the property, or in the absence of any person, leave a
27 receipt in the place where the property was found, if reasonably

1 possible.

2 Art. 59A.014. TITLE TO PROPERTY. (a) At the time of a
3 seizure or the issuance of a lis pendens or restraining order, the
4 state acquires provisional title to the seized property and may
5 hold and protect the property.

6 (b) Title to the property vests with the state on the date
7 the court orders the property to be forfeited and the vesting
8 relates back to the date the state acquired provisional title.
9 Title acquired under this subsection is subject to a claim by a
10 third party that is adjudicated as provided by this chapter.

11 Art. 59A.015. PRETRIAL HEARING REGARDING REPLEVIN. (a) In
12 this article, "claimant" means a person claiming an ownership
13 interest in property that has been seized under this chapter.

14 (b) Following a seizure of property subject to forfeiture, a
15 claimant has the right to a pretrial hearing to determine the
16 validity of the seizure.

17 (c) The claimant may claim, at any time on or before the 60th
18 day before the scheduled start of the trial of the related criminal
19 offense or as soon as otherwise practicable, the right to
20 possession of property by motion to the court to issue a writ of
21 replevin.

22 (d) The claimant must file a motion establishing the
23 validity of the alleged interest in the property.

24 (e) The court shall hear the motion not later than the 30th
25 day after the date the motion is filed.

26 (f) The state must file an answer showing probable cause for
27 the seizure or a cross motion not later than the 10th day before the

1 hearing on the claimant's motion.

2 (g) The court shall grant the claimant's motion if the court
3 finds that:

4 (1) the final judgment is likely to require the state
5 to return the property to the claimant;

6 (2) the property is not reasonably required to be held
7 for investigatory reasons; or

8 (3) the property is the only reasonable means for a
9 defendant to pay for legal representation in the forfeiture
10 proceeding or in the prosecution of the related criminal offense.

11 (h) At the court's discretion under Subsection (g)(3), the
12 court may order the return of funds or property sufficient for the
13 defendant to obtain legal counsel but less than the total amount
14 seized, and may require an accounting for the use of the returned
15 funds or property.

16 (i) Instead of ordering the issuance of the writ of
17 replevin, the court may order the state to give security or written
18 assurance for satisfaction of any judgment, including damages, that
19 may be rendered in the action or may order other appropriate relief.

20 Art. 59A.016. FORFEITURE PROCEEDING. A proceeding for the
21 forfeiture of property shall be held following the trial of the
22 related alleged offense. If the value of the property is less than
23 \$10,000, the proceeding must be held before the judge only.

24 Art. 59A.017. PROPORTIONALITY HEARING. (a) At any time
25 following a determination of forfeiture by the trier of fact, the
26 defendant may petition the court to determine whether the
27 forfeiture is unconstitutionally excessive under the United States

1 Constitution or the Texas Constitution.

2 (b) The defendant has the burden of establishing by a
3 preponderance of the evidence that the forfeiture is grossly
4 disproportional to the seriousness of the offense. The hearing
5 must be held before the judge only.

6 (c) In determining whether the forfeiture of property is
7 unconstitutionally excessive, the court may consider all relevant
8 factors, including:

9 (1) the seriousness of the offense and its impact on
10 the community, including the duration of the activity and the harm
11 caused by the defendant;

12 (2) the extent to which the defendant participated in
13 the offense;

14 (3) the extent to which the property was used in
15 committing the offense;

16 (4) the sentence imposed for the offense; and

17 (5) whether the offense was completed or attempted.

18 (d) In determining the value of the property subject to
19 forfeiture, the court may consider all relevant factors, including:

20 (1) the fair market value of the property;

21 (2) the value of the property to the defendant,
22 including hardship to the defendant if the court orders the
23 property to be forfeited; and

24 (3) the hardship to a defendant's family member or
25 other person from the loss of a primary residence, motor vehicle, or
26 other property if the court orders the property to be forfeited.

27 (e) The court may not consider the value of the property to

1 the state in determining whether the forfeiture of property is
2 unconstitutionally excessive.

3 Art. 59A.018. SECURITY INTEREST. A bona fide security
4 interest is not subject to forfeiture unless the person claiming
5 the security interest had actual knowledge that the property was
6 subject to forfeiture at the time the property was seized under this
7 chapter. A person claiming a security interest must establish the
8 validity of the interest by a preponderance of the evidence.

9 Art. 59A.019. INNOCENT OWNER. (a) The property of an
10 innocent owner may not be forfeited.

11 (b) A person who has an ownership interest in property
12 subject to forfeiture that existed at the time of the conduct giving
13 rise to the forfeiture and who claims to be an innocent owner must
14 show that the person has a legal right, title, or interest in the
15 property seized under this chapter. If the person shows legal
16 right, title, or interest in the property, the state must prove by a
17 preponderance of the evidence that the person had actual or
18 constructive knowledge of the underlying offense giving rise to the
19 forfeiture. A person is presumed to have constructive knowledge of
20 the underlying offense if the person is a family or household member
21 of the defendant alleged to have committed or convicted of the
22 underlying offense and if the defendant, during the 10 years
23 preceding the underlying offense, was convicted three or more times
24 for the same or a similar offense.

25 (c) A person who, after the commission of an offense giving
26 rise to the forfeiture, acquired an ownership interest in property
27 subject to forfeiture and who claims to be an innocent owner must

show that the person has legal right, title, or interest in the property seized under this chapter. If the person shows legal right, title, or interest in the property, the state must prove by a preponderance of the evidence that at the time the person acquired the property, the person:

(1) had actual or constructive knowledge that the property was subject to forfeiture; or

(2) did not purchase the property for valuable consideration without notice of any defect in title.

(d) A person is presumed to have constructive knowledge that the property was subject to forfeiture if:

(1) the person:

(A) acquired the property from the defendant alleged to have committed or convicted of the underlying offense; and

(B) is a family or household member of the defendant; and

(2) the defendant, during the 10 years preceding the underlying offense, was convicted three or more times for the same or a similar offense.

(e) If the state fails to meet its burden in Subsection (b) or (c), the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the property.

Art. 59A.020. APPEAL. A party to forfeiture litigation may appeal the court's decision regarding the seizure, forfeiture, and distribution of property under this chapter.

1 Art. 59A.021. DISPOSITION OF PROPERTY AND PROCEEDS. (a) If
2 abandoned property held for evidentiary purposes is no longer
3 needed for that purpose, the court may order that the property be
4 delivered, not later than the 30th day after the date of the order,
5 to the county treasurer in the county in which the property was
6 abandoned.

7 (b) If contraband held for evidentiary purposes is no longer
8 needed for that purpose, the court may order that the contraband be
9 destroyed not later than the 30th day after the date of the order.

10 (c) If property is forfeited under this chapter, the court
11 may order that the property be delivered, not later than the 30th
12 day after the date of the order, to the county treasurer in the
13 county in which the property was seized.

14 (d) All abandoned property shall be delivered to the county
15 treasurer in the county in which the property was abandoned.

16 (e) A county treasurer who receives forfeited or abandoned
17 property under this article shall dispose of the property, other
18 than currency, at public auction. The auction proceeds and
19 forfeited currency first shall be used to pay all outstanding
20 recorded liens on the forfeited property, and then shall be used to
21 comply with any court order regarding the payment of expenses.

22 (f) On the court's own motion or on the motion of any party,
23 the court may order that a portion of the currency seized or of the
24 proceeds from the public auction of property be used to pay
25 reasonable expenses for the seizure, storage, and maintenance or
26 custody of any forfeited items, other than expenses for personnel.

27 (g) The county treasurer shall, after making payments

1 required by Subsections (e) and (f), deposit any remaining money
2 into the general fund of the county.

3 Art. 59A.022. PROHIBITION ON RETAINING PROPERTY; SALE
4 RESTRICTIONS. A law enforcement agency may not:

5 (1) retain forfeited or abandoned property for the
6 agency's use; or

7 (2) sell forfeited or abandoned property directly or
8 indirectly to:

9 (A) an employee of the agency;

10 (B) a person related to an employee by
11 consanguinity or affinity; or

12 (C) another law enforcement agency.

13 Art. 59A.023. REPORTING. (a) Not later than February 1 of
14 each year, each law enforcement agency shall report to the
15 department the following information regarding seizures by the
16 agency for which, during the preceding calendar year, a forfeiture
17 order was issued under this chapter or the property was otherwise
18 forfeited under applicable federal law:

19 (1) the total number of forfeitures of currency;

20 (2) the total number of forfeitures and the number of
21 items of property forfeited according to categories specified by
22 the department;

23 (3) the total market value of each category of
24 property forfeited;

25 (4) the total number of occurrences of each type of
26 offense underlying the forfeitures, including offenses involving
27 controlled substances and driving while intoxicated; and

1 (5) any other information required by the department.

2 (b) The department shall prescribe a standardized form and
3 provide for electronic submission of the report required under
4 Subsection (a).

5 (c) A law enforcement agency shall file with the department
6 separate reports for forfeitures completed under this chapter and
7 federal law. If a law enforcement agency did not engage in a
8 seizure that resulted in forfeiture during the reporting period,
9 the agency shall file a report indicating that fact.

10 (d) Not later than April 1 of each year, the department
11 shall:

12 (1) issue an aggregate report of all forfeitures in
13 the state; and

14 (2) make the reports submitted by law enforcement
15 agencies and the department's aggregate report available on the
16 department's Internet website.

17 Art. 59A.024. RETURN OF PROPERTY; DAMAGES; COSTS. (a) A
18 law enforcement agency that holds property under this chapter shall
19 return the property to the owner not later than the fifth day after
20 the date:

21 (1) the court finds that the owner had a bona fide
22 security interest;

23 (2) the court finds that the owner was an innocent
24 owner;

25 (3) the owner is acquitted of the offense that is the
26 basis of the forfeiture proceeding; or

27 (4) the criminal charge against the owner that is the

basis of the forfeiture proceeding is dismissed.

(b) The law enforcement agency that holds the property is responsible for all damages, storage fees, and related costs applicable to property returned under Subsection (a).

Art. 59A.025. EFFECT OF OVERTURNED CONVICTION; PAYMENT TO DEFENDANT. (a) If a defendant's conviction for an offense underlying a forfeiture under this chapter is reversed, set aside, or vacated on appeal, the defendant is entitled to recover any money deposited in the county's general fund under Article 59A.021(g) as a result of the disposition of the defendant's forfeited property. The county shall pay to the defendant the deposited amount on the 91st day after the applicable date as follows:

(1) the date the conviction is reversed, set aside, or vacated, if the attorney representing the state does not file:

(A) an appeal of the ruling that reversed, set aside, or vacated the conviction; or

(B) a written notice with the court of the attorney's intention to proceed with a new trial;

(2) the date a ruling described by Subdivision (1)(A) is affirmed on appeal; or

(3) the date the attorney representing the state files the notice described by Subdivision (1)(B), if the new trial has not commenced.

(b) For purposes of this chapter, the outcome of a new trial shall be treated in the same manner as any other conviction.

Art. 59A.026. CIVIL FORFEITURE FOR CERTAIN PROPERTY. (a) Notwithstanding any other provision of this chapter, property is

subject to forfeiture under this article, regardless of whether a person has been convicted of an offense subject to forfeiture in connection with the property, if:

(1) the property was:

(A) seized with probable cause that it was involved in the commission of a felony; or

(B) obtained, directly or indirectly, through the commission of a felony; and

(2) the property owner:

(A) has not claimed the property or asserted any interest in the property; or

(B) is unavailable.

(b) For purposes of Subsection (a)(2)(B), a property owner is unavailable if the owner is deceased or, after the owner is indicted for the felony offense or after a warrant has been issued for the arrest of the owner in connection with the offense, the owner is:

(1) outside the state and unable to be extradited to this state for prosecution; or

(2) unable to be located after reasonable efforts by law enforcement authorities.

(c) The attorney representing the state may bring a forfeiture proceeding under this article by filing a complaint in a district court in the county in which the property was seized. The complaint must state facts that show the property is subject to forfeiture under Subsection (a).

(d) A forfeiture proceeding under this article shall

1 proceed to trial in the same manner as in other civil cases. The
2 state has the burden of proving by a preponderance of the evidence
3 that property is subject to forfeiture under Subsection (a).

4 Art. 59A.027. TRANSFER OF FORFEITABLE PROPERTY TO FEDERAL
5 GOVERNMENT. A law enforcement agency or attorney representing the
6 state may not directly or indirectly transfer seized property to
7 any federal law enforcement authority or other federal agency
8 unless:

9 (1) the value of the seized property exceeds \$50,000;
10 and

11 (2) the attorney representing the state determines
12 that:

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

16 (B) the seized property may only be forfeited
17 under federal law.

18 SECTION 2. Section 72.051(a), Business & Commerce Code, is
19 amended to read as follows:

20 (a) In this section, "law enforcement agency" means an
21 agency of the state or an agency of a political subdivision of the
22 state authorized by law to employ peace officers ~~[has the meaning~~
23 ~~assigned by Article 59.01, Code of Criminal Procedure].~~

24 SECTION 3. Section 140A.013, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 140A.013. PREVIOUSLY SEIZED ASSETS. Notwithstanding
27 another provision of this chapter, no remedies provided by this

chapter may be assessed against proceeds~~[, contraband,]~~ or ~~[other]~~ property over which a law enforcement agency has previously asserted jurisdiction under Chapter 59A [59], Code of Criminal Procedure, at the time a suit under this chapter was filed.

SECTION 4. Article 18.01(g), Code of Criminal Procedure, is amended to read as follows:

(g) A search warrant may not be issued under ~~[Subdivision (12),]~~ Article 18.02(a)(12) [~~18.02, of this code~~] unless the sworn affidavit required by Subsection (b) ~~[of this article]~~ sets forth sufficient facts to establish probable cause that a specific felony offense has been committed and that the specifically described property or items that are to be searched for or seized are subject to forfeiture under Chapter 59A ~~[constitute contraband as defined in Article 59.01 of this code]~~ and are located at or on the particular person, place, or thing to be searched.

SECTION 5. Article 18.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A search warrant may be issued to search for and seize:

- (1) property acquired by theft or in any other manner which makes its acquisition a penal offense;
- (2) property specially designed, made, or adapted for or commonly used in the commission of an offense;
- (3) arms and munitions kept or prepared for the purposes of insurrection or riot;
- (4) weapons prohibited by the Penal Code;
- (5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

1 (6) obscene materials kept or prepared for commercial
2 distribution or exhibition, subject to the additional rules set
3 forth by law;

4 (7) a drug, controlled substance, immediate
5 precursor, chemical precursor, or other controlled substance
6 property, including an apparatus or paraphernalia kept, prepared,
7 or manufactured in violation of the laws of this state;

8 (8) any property the possession of which is prohibited
9 by law;

10 (9) implements or instruments used in the commission
11 of a crime;

12 (10) property or items, except the personal writings
13 by the accused, constituting evidence of an offense or constituting
14 evidence tending to show that a particular person committed an
15 offense;

16 (11) persons;

17 (12) property [~~contraband~~] subject to forfeiture
18 under Chapter 59A [~~59 of this code~~];

19 (13) electronic customer data held in electronic
20 storage, including the contents of and records and other
21 information related to a wire communication or electronic
22 communication held in electronic storage; or

23 (14) a cellular telephone or other wireless
24 communications device, subject to Article [18.0215](#).

25 SECTION 6. Articles [18.19\(c\)](#), (d-1), and (e), Code of
26 Criminal Procedure, are amended to read as follows:

27 (c) If there is no prosecution or conviction for an offense

1 involving the weapon seized, the magistrate to whom the seizure was
2 reported shall, before the 61st day after the date the magistrate
3 determines that there will be no prosecution or conviction, notify
4 in writing the person found in possession of the weapon that the
5 person is entitled to the weapon upon written request to the
6 magistrate. The magistrate shall order the weapon returned to the
7 person found in possession before the 61st day after the date the
8 magistrate receives a request from the person. If the weapon is not
9 requested before the 61st day after the date of notification, the
10 magistrate shall, before the 121st day after the date of
11 notification, order the weapon destroyed, sold at public sale by
12 the law enforcement agency holding the weapon or by an auctioneer
13 licensed under Chapter 1802, Occupations Code, or forfeited to the
14 state for use by the law enforcement agency holding the weapon or by
15 a county forensic laboratory designated by the magistrate. If the
16 magistrate does not order the return, destruction, sale, or
17 forfeiture of the weapon within the applicable period prescribed by
18 this subsection, the law enforcement agency holding the weapon may
19 request an order of destruction, sale, or forfeiture of the weapon
20 from the magistrate. Only a firearms dealer licensed under 18
21 U.S.C. Section 923 may purchase a weapon at public sale under this
22 subsection. Proceeds from the sale of a seized weapon under this
23 subsection shall be transferred, after the deduction of court costs
24 and ~~[to which a district court clerk is entitled under Article~~
25 ~~59.05(f), followed by the deduction of]~~ auction costs, to the law
26 enforcement agency holding the weapon.

27 (d-1) Only a firearms dealer licensed under 18 U.S.C.

1 Section 923 may purchase a weapon at public sale under Subsection
2 (d). Proceeds from the sale of a seized weapon under Subsection (d)
3 shall be transferred, after the deduction of court costs and ~~[to~~
4 ~~which a district court clerk is entitled under Article 59.05(f),~~
5 ~~followed by the deduction of]~~ auction costs, to the law enforcement
6 agency holding the weapon.

7 (e) If the person found in possession of a weapon is
8 convicted of an offense involving the use of the weapon, before the
9 61st day after the date of conviction the court entering judgment of
10 conviction shall order destruction of the weapon, sale at public
11 sale by the law enforcement agency holding the weapon or by an
12 auctioneer licensed under Chapter 1802, Occupations Code, or
13 forfeiture to the state for use by the law enforcement agency
14 holding the weapon or by a county forensic laboratory designated by
15 the court. If the court entering judgment of conviction does not
16 order the destruction, sale, or forfeiture of the weapon within the
17 period prescribed by this subsection, the law enforcement agency
18 holding the weapon may request an order of destruction, sale, or
19 forfeiture of the weapon from a magistrate. Only a firearms dealer
20 licensed under 18 U.S.C. Section 923 may purchase a weapon at public
21 sale under this subsection. Proceeds from the sale of a seized
22 weapon under this subsection shall be transferred, after the
23 deduction of court costs and ~~[to which a district court clerk is~~
24 ~~entitled under Article 59.05(f), followed by the deduction of]~~
25 auction costs, to the law enforcement agency holding the weapon.

26 SECTION 7. Article 47.01a(b), Code of Criminal Procedure,
27 is amended to read as follows:

1 (b) If it is shown in a hearing that probable cause exists to
2 believe that the property was acquired by theft or by another manner
3 that makes its acquisition an offense and that the identity of the
4 actual owner of the property cannot be determined, the court shall
5 order the peace officer to:

6 (1) deliver the property to a government agency for
7 official purposes;

8 (2) deliver the property to the county treasurer of
9 the county in which the property was seized for disposition under [a
10 person authorized by] Article 59A.021 [~~18.17 of this code to~~
11 ~~receive and dispose of the property~~]; or

12 (3) destroy the property.

13 SECTION 8. Article 47.06, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 47.06. DISPOSITION OF PROPERTY [SOLD]. If the
16 property is not claimed before the end of the 30-day period
17 following [~~within 30 days from~~] the conviction of the person
18 accused of illegally acquiring the property [it], the property
19 shall be delivered to the county treasurer of the county in which
20 the property was seized for disposition under Article 59A.021 [same
21 ~~procedure for its disposition as set out in Article 18.17 of this~~
22 ~~Code shall be followed]~~.

23 SECTION 9. Article 47.07, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 47.07. OWNER MAY RECOVER. The real owner of the
26 property disposed of [sold] under the provisions of Article 47.06
27 may file a claim with the commissioners court of the county to

1 recover any money attributable to the property and deposited in the
 2 county's general fund under Article 59A.021(g) [~~such property under~~
 3 ~~the same terms as prescribed in Subsection (e) of Article 18.17 of~~
 4 ~~this Code~~]. A claim by the real owner must be filed not later than
 5 the 30th day after the date of disposition. If the claim is allowed
 6 by the commissioners court, the county treasurer shall pay the
 7 owner the amount deposited. If the claim is denied by the
 8 commissioners court or if the court fails to act on the claim before
 9 the 91st day after the date the claim was filed, the claimant may
 10 sue the county treasurer in a court of competent jurisdiction in the
 11 county, and on sufficient proof of ownership, recover judgment
 12 against the county for the amount deposited.

13 SECTION 10. Section 157.317(a), Family Code, is amended to
 14 read as follows:

15 (a) A child support lien attaches to all real and personal
 16 property not exempt under the Texas Constitution or other law,
 17 including:

- 18 (1) an account in a financial institution;
- 19 (2) a retirement plan, including an individual
 20 retirement account;
- 21 (3) the proceeds of an insurance policy, including the
 22 proceeds from a life insurance policy or annuity contract and the
 23 proceeds from the sale or assignment of life insurance or annuity
 24 benefits, a claim for compensation, or a settlement or award for the
 25 claim for compensation, due to or owned by the obligor; and
- 26 (4) property seized and subject to forfeiture under
 27 Chapter 59A [59], Code of Criminal Procedure.

SECTION 11. Section 392.303, Finance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In debt collection, a debt collector may not use unfair or unconscionable means that employ the following practices:

(1) seeking or obtaining a written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life if the obligation was not incurred for those necessities;

(2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer; or

(3) collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment, if:

(A) the check or draft was dishonored or the debit payment or credit card payment was refused because the check or draft was not drawn or the payment was not made by a person authorized to use the applicable account;

(B) the debt collector has received written notice from a person authorized to use the account that the check, draft, or payment was unauthorized; and

(C) the person authorized to use the account has filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency [~~as defined by Article 59.01, Code of Criminal Procedure,~~] and has provided the debt collector with a

copy of the report.

(d) In this section, "law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

SECTION 12. Section 45.193(d), Government Code, is amended to read as follows:

(d) The county attorney has no power, duty, or privilege in Grimes County relating to criminal matters, including asset forfeitures under Chapter 59A [59], Code of Criminal Procedure, appearance bond forfeitures under Chapter 17, Code of Criminal Procedure, and habeas corpus related to criminal matters.

SECTION 13. Section 54.656(a), Government Code, is amended to read as follows:

(a) A judge may refer to a magistrate any criminal case for proceedings involving:

- (1) a negotiated plea of guilty before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a postconviction writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an agreed order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) a [an-asset] forfeiture proceeding [hearing] as provided by Chapter 59A [59], Code of Criminal Procedure;
- (9) an agreed order of nondisclosure of criminal history record information or an order of nondisclosure of criminal

1 history record information that does not require a petition
2 provided by Subchapter E-1, Chapter 411;

3 (10) a hearing on a motion to revoke probation; and

4 (11) any other matter the judge considers necessary
5 and proper.

6 SECTION 14. Section 2007.003(b), Government Code, is
7 amended to read as follows:

8 (b) This chapter does not apply to the following
9 governmental actions:

10 (1) an action by a municipality except as provided by
11 Subsection (a)(3);

12 (2) a lawful forfeiture or seizure of property under
13 Chapter 59A [~~contraband as defined by Article 59.01~~], Code of
14 Criminal Procedure;

15 (3) a lawful seizure of property as evidence of a crime
16 or violation of law;

17 (4) an action, including an action of a political
18 subdivision, that is reasonably taken to fulfill an obligation
19 mandated by federal law or an action of a political subdivision that
20 is reasonably taken to fulfill an obligation mandated by state law;

21 (5) the discontinuance or modification of a program or
22 regulation that provides a unilateral expectation that does not
23 rise to the level of a recognized interest in private real property;

24 (6) an action taken to prohibit or restrict a
25 condition or use of private real property if the governmental
26 entity proves that the condition or use constitutes a public or
27 private nuisance as defined by background principles of nuisance

1 and property law of this state;

2 (7) an action taken out of a reasonable good faith
3 belief that the action is necessary to prevent a grave and immediate
4 threat to life or property;

5 (8) a formal exercise of the power of eminent domain;

6 (9) an action taken under a state mandate to prevent
7 waste of oil and gas, protect correlative rights of owners of
8 interests in oil or gas, or prevent pollution related to oil and gas
9 activities;

10 (10) a rule or proclamation adopted for the purpose of
11 regulating water safety, hunting, fishing, or control of
12 nonindigenous or exotic aquatic resources;

13 (11) an action taken by a political subdivision:

14 (A) to regulate construction in an area
15 designated under law as a floodplain;

16 (B) to regulate on-site sewage facilities;

17 (C) under the political subdivision's
18 ~~[subdivisions's]~~ statutory authority to prevent waste or protect
19 rights of owners of interest in groundwater; or

20 (D) to prevent subsidence;

21 (12) the appraisal of property for purposes of ad
22 valorem taxation;

23 (13) an action that:

24 (A) is taken in response to a real and
25 substantial threat to public health and safety;

26 (B) is designed to significantly advance the
27 health and safety purpose; and

1 (C) does not impose a greater burden than is
2 necessary to achieve the health and safety purpose; or

3 (14) an action or rulemaking undertaken by the Public
4 Utility Commission of Texas to order or require the location or
5 placement of telecommunications equipment owned by another party on
6 the premises of a certificated local exchange company.

7 SECTION 15. Section 481.159(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) If a district court orders the forfeiture of a
10 controlled substance property or plant under the [~~Chapter 59,~~] Code
11 of Criminal Procedure[~~7~~] or under this code, the court shall also
12 order a law enforcement agency to:

13 (1) retain the property or plant for its official
14 purposes, including use in the investigation of offenses under this
15 code;

16 (2) deliver the property or plant to a government
17 agency for official purposes;

18 (3) deliver the property or plant to a person
19 authorized by the court to receive it;

20 (4) deliver the property or plant to a person
21 authorized by the director to receive it; or

22 (5) destroy the property or plant that is not
23 otherwise disposed of in the manner prescribed by this subchapter.

24 SECTION 16. Section 481.160(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) If a controlled substance property or plant is forfeited
27 under this code or under the [~~Chapter 59,~~] Code of Criminal

1 Procedure, the law enforcement agency that seized the property or
2 plant or to which the property or plant is forfeited may summarily
3 destroy the property or plant without a court order before the
4 disposition of a case arising out of the forfeiture if the agency
5 ensures that:

6 (1) at least five random and representative samples
7 are taken from the total amount of the property or plant and a
8 sufficient quantity is preserved to provide for discovery by
9 parties entitled to discovery;

10 (2) photographs are taken that reasonably depict the
11 total amount of the property or plant; and

12 (3) the gross weight or liquid measure of the property
13 or plant is determined, either by actually weighing or measuring
14 the property or plant or by estimating its weight or measurement
15 after making dimensional measurements of the total amount seized.

16 SECTION 17. Section 113.008(g), Local Government Code, is
17 amended to read as follows:

18 (g) Subsections (b-1) and (f)(2) do not apply to a special
19 fund administered by an attorney representing the state under
20 Chapter 18 or ~~[7]~~ 47, ~~[or 59]~~ Code of Criminal Procedure.

21 SECTION 18. Section 1701.253(g), Occupations Code, is
22 amended to read as follows:

23 (g) As part of the minimum curriculum requirements, the
24 commission shall establish a statewide comprehensive education and
25 training program on criminal asset forfeiture under Chapter 59A
26 ~~[59]~~, Code of Criminal Procedure, for officers licensed under this
27 chapter. An officer shall complete a program established under

1 this subsection not later than the second anniversary of the date
2 the officer is licensed under this chapter or the date the officer
3 applies for an intermediate proficiency certificate, whichever
4 date is earlier.

5 SECTION 19. Section 37.08(b), Penal Code, is amended to
6 read as follows:

7 (b) In this section, "law enforcement agency" means an
8 agency of the state or an agency of a political subdivision of the
9 state authorized by law to employ peace officers ~~[has the meaning~~
10 ~~assigned by Article 59.01, Code of Criminal Procedure]~~.

11 SECTION 20. Section 38.152(c)(3), Penal Code, is amended to
12 read as follows:

13 (3) "Law enforcement agency" means an agency of the
14 state or an agency of a political subdivision of the state
15 authorized by law to employ peace officers ~~[has the meaning~~
16 ~~assigned by Article 59.01, Code of Criminal Procedure]~~.

17 SECTION 21. The following provisions are repealed:

18 (1) Section 140A.004(h), Civil Practice and Remedies
19 Code;

20 (2) Article 18.17, Code of Criminal Procedure;

21 (3) Chapter 59, Code of Criminal Procedure;

22 (4) Sections 24.377(c) and 54.656(b), Government
23 Code;

24 (5) Section 365.012(i), Health and Safety Code; and

25 (6) Sections 12.101(1) and (2), 12.1106, 61.0221, and
26 62.017, Parks and Wildlife Code.

27 SECTION 22. (a) Except as provided by Subsection (b) of

1 this section, on the effective date of this Act, any property in the
2 possession of a law enforcement agency, game warden, or attorney
3 representing the state, that was seized under Chapter 59, Code of
4 Criminal Procedure, or Sections 12.1106, 61.0221, or 62.017, Parks
5 and Wildlife Code, and that has not been ordered forfeited to the
6 state by a court, must be returned to the person from whom the
7 property was seized.

8 (b) Property that is evidence in the investigation or
9 prosecution of a criminal offense is not required to be returned
10 under Subsection (a) of this section until the disposition of all
11 charges relating to the offense.

12 SECTION 23. The repeal by this Act of Article 18.17, Code of
13 Criminal Procedure, does not apply to abandoned or unclaimed
14 property seized before the effective date of this Act, and the
15 former Article 18.17 is continued in effect for the purposes of the
16 disposition of property described by this section.

17 SECTION 24. This Act takes effect September 1, 2017.