

By: Huffman

S.B. No. 401

A BILL TO BE ENTITLED

AN ACT

relating to the seizure of property by a peace officer.

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

SECTION 1. Article 59.03, Code of Criminal Procedure, is amended by adding Subsections (b-1) and (c-1) and amending Subsection (c) to read as follows:

(b-1) If property is seized under this chapter without a warrant, the peace officer making such seizure shall without unnecessary delay, but not later than 48 hours after the seizure, make application for a warrant pursuant to Article 18.01 setting forth sufficient facts that such seizure was made in accordance with Subsection (b). If no warrant is issued, the law enforcement agency whose officer made the seizure shall return the property to the owner or to the person found to be in possession of the property at the time of the seizure or to another person who demonstrates an interest in the property, as appropriate. If a proceeding is commenced pursuant to Article 59.04, upon motion by an owner or interest holder in the property and prior to final hearing, the court shall determine whether the seizure of the property was made in accordance with Subsection (b). If the court determines that the seizure was not made in accordance with Subsection (b), the court shall dismiss the proceeding and order the return of the property to the owner or to the person found to be in possession of the property at the time of the seizure or to another person who demonstrates an

interest in the property, as appropriate. Any order of return of the property shall be stayed upon notice and perfection of an appeal by the attorney representing the state of the determination by the court.

(c) A peace officer who seizes property under this chapter has custody of the property, subject only to replevy under Article 59.02 of this code or an order of a court. A peace officer who has custody of property shall provide the attorney representing the state with a copy of the warrant authorizing the seizure along with ~~[sworn statement that contains]~~ a schedule of the property seized and~~[7]~~ an acknowledgment that the officer has seized the property~~[7 and a list of the officer's reasons for the seizure]~~. Not later than 72 hours after the seizure, the peace officer shall:

- (1) place the property under seal;
- (2) remove the property to a place ordered by the court; or
- (3) require a law enforcement agency of the state or a political subdivision to take custody of the property and move it to a proper location.

(c-1) A law enforcement agency in custody of property seized shall be liable for all associated storage costs.

SECTION 2. Article 59.04(b), Code of Criminal Procedure, is amended to read as follows:

(b) A forfeiture proceeding commences under this chapter when the attorney representing the state files a notice of the seizure and intended forfeiture in the name of the state with the clerk of the district court in the county in which the seizure is

made. The attorney representing the state must attach to the notice the warrant authorizing the seizure pursuant to ~~[peace officer's sworn statement under]~~ Article 59.03 of this code or, if the property has been seized under Article 59.12(b), the statement of the terms and amount of the depository account or inventory of assets provided by the regulated financial institution to the peace officer executing the warrant in the manner described by Article 59.12(b). Except as provided by Subsection (c) of this article, the attorney representing the state shall cause certified copies of the notice to be served on the following persons in the same manner as provided for the service of process by citation in civil cases:

- (1) the owner of the property; and
- (2) any interest holder in the property.

SECTION 3. Article 59.05, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (h) 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 proving by clear and convincing ~~[a preponderance of the]~~ evidence that property is subject to forfeiture.

(h) Upon dismissal of a proceeding under this chapter or a determination by the court that the property or an interest in the property is not forfeitable, the court may order the attorney representing the state to pay court costs, including deposition fees and reasonable attorney's fees, to an owner or interest holder who makes a claim to the property in the proceeding.

SECTION 4. Articles 59.06(d-3) and (d-4), Code of Criminal

Procedure, are amended to read as follows:

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) witness-related costs, including travel and security; ~~and~~

(9) audit costs and fees, including audit preparation and professional fees; and

1 (10) storage costs pursuant to Article 59.03(c-1).

2 (d-4) Except as otherwise provided by this article, an
3 expenditure of proceeds or property received under this chapter is
4 considered to be for an official purpose of an attorney's office if
5 the expenditure is made for an activity of an attorney or office of
6 an attorney representing the state that relates to the
7 preservation, enforcement, or administration of the laws of this
8 state, including an expenditure made for:

9 (1) equipment, including vehicles, computers, visual
10 aid equipment for litigation, firearms, body armor, furniture,
11 software, and uniforms;

12 (2) supplies, including office supplies, legal
13 library supplies and access fees, mobile phone and data account
14 fees for employees, and Internet services;

15 (3) prosecution and training-related travel expenses,
16 including payment for hotel rooms, airfare, meals, rental of and
17 fuel for a motor vehicle, and parking;

18 (4) conferences and training expenses, including fees
19 and materials;

20 (5) investigative costs, including payments to
21 informants and lab expenses;

22 (6) crime prevention and treatment programs;

23 (7) facility costs, including building purchase,
24 lease payments, remodeling and renovating, maintenance, and
25 utilities;

26 (8) legal fees, including court costs, witness fees,
27 and related costs, including travel and security, audit costs, and

1 professional fees; ~~and~~

2 (9) state bar and legal association dues; and

3 (10) payment of costs and attorney's fees ordered to be
4 paid pursuant to Article 59.05(h).

5 SECTION 5. The changes in law made by this Act apply only to
6 a seizure of property that occurs on or after the effective date of
7 this Act. A seizure of property occurring before that date is
8 governed by the law in effect on the date the seizure was made, and
9 the former law is continued in effect for that purpose.

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