

By: Huffines

S.B. No. 663

A BILL TO BE ENTITLED

1 AN ACT
2 relating to disposition of proceeds and property from asset
3 forfeiture proceedings under the Code of Criminal Procedure.

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

5 SECTION 1. Article 59.05(e), Code of Criminal Procedure, is
6 amended to read as follows:

7 (e) It is the intention of the legislature that asset
8 forfeiture is remedial in nature and not a form of punishment. If
9 the court finds that all or any part of the property is subject to
10 forfeiture, the judge shall forfeit the property to the state, with
11 the attorney representing the state as the agent for the state,
12 except that if the court finds that the nonforfeitable interest of
13 an interest holder in the property is valued in an amount greater
14 than or substantially equal to the present value of the property,
15 the court shall order the property released to the interest holder.
16 If the court finds that the nonforfeitable interest of an interest
17 holder is valued in an amount substantially less than the present
18 value of the property and that the property is subject to
19 forfeiture, the court shall order the property forfeited to the
20 state with the attorney representing the state acting as the agent
21 of the state, and making necessary orders to protect the
22 nonforfeitable interest of the interest holder. On final judgment
23 of forfeiture, [~~the attorney representing the state shall dispose~~
24 ~~of~~] the property shall be disposed of in the manner required by

1 Article 59.06 [~~of this code~~].

2 SECTION 2. Articles 59.06(a), (c), (e), and (l), Code of
3 Criminal Procedure, are amended to read as follows:

4 (a) Except as provided by Subsection (c) [~~(k)~~], the attorney
5 representing the state shall transfer all forfeited property to the
6 comptroller. The comptroller shall dispose of [~~shall be~~
7 ~~administered by the attorney representing the state, acting as the~~
8 ~~agent of the state, in accordance with accepted accounting~~
9 ~~practices and with the provisions of any local agreement entered~~
10 ~~into between the attorney representing the state and law~~
11 ~~enforcement agencies. If a local agreement has not been executed,~~
12 the property at public auction [~~shall be sold~~] on the 75th day after
13 the date of the final judgment of forfeiture [~~at public auction~~
14 ~~under the direction of the county sheriff, after notice of public~~
15 ~~auction as provided by law for other sheriff's sales~~]. The
16 comptroller shall distribute the proceeds of the sale [~~shall be~~
17 ~~distributed~~] as follows:

18 (1) to any interest holder to the extent of the
19 interest holder's nonforfeitable interest;

20 (2) after any distributions under Subdivision (1), if
21 the Title IV-D agency has filed a child support lien in the
22 forfeiture proceeding, to the Title IV-D agency in an amount not to
23 exceed the amount of child support arrearages identified in the
24 lien; and

25 (3) the balance, if any, after the deduction of court
26 costs to which a district court clerk is entitled under Article
27 59.05(f) and, after that deduction, the deduction of storage and

1 disposal costs, to be deposited not later than the 30th day after
2 the date of the sale in the compensation to victims of crime fund
3 [~~state treasury to the credit of the general revenue fund~~].

4 (c) All [~~If a local agreement exists between the attorney~~
5 ~~representing the state and law enforcement agencies, all~~] money,
6 securities, negotiable instruments, or stocks or bonds shall be
7 transferred to the comptroller. The comptroller shall sell any
8 item that is not money and shall deposit any money received under
9 this article and the proceeds of any sale [~~, or things of value, or~~
10 ~~proceeds from the sale of those items, shall be deposited~~], after
11 the deduction of court costs to which a district court clerk is
12 entitled under Article 59.05(f), in the compensation to victims of
13 crime fund [~~according to the terms of the agreement into one or more~~
14 ~~of the following funds:~~

15 [~~(1) a special fund in the county treasury for the~~
16 ~~benefit of the office of the attorney representing the state, to be~~
17 ~~used by the attorney solely for the official purposes of his office,~~

18 [~~(2) a special fund in the municipal treasury if~~
19 ~~distributed to a municipal law enforcement agency, to be used~~
20 ~~solely for law enforcement purposes,~~

21 [~~(3) a special fund in the county treasury if~~
22 ~~distributed to a county law enforcement agency, to be used solely~~
23 ~~for law enforcement purposes, or~~

24 [~~(4) a special fund in the state law enforcement~~
25 ~~agency if distributed to a state law enforcement agency, to be used~~
26 ~~solely for law enforcement purposes]~~.

27 (e) On the sale of contraband under this article, the

1 comptroller [~~appropriate state agency~~] shall issue a certificate of
2 title to the recipient if a certificate of title is required for the
3 property by other law.

4 (1) A law enforcement agency that [~~, or an attorney~~
5 ~~representing the state who,~~] does not seize property under this
6 chapter during an annual period described by Subsection (g), and an
7 attorney representing the state who does not receive or transfer
8 proceeds or property under this chapter during an annual period
9 [~~as~~] described by Subsection (g), shall, not later than the 30th day
10 after the date on which the annual period ends, report to the
11 attorney general that the agency or attorney, as appropriate, did
12 not seize property or receive or transfer proceeds or property
13 under this chapter during the annual period.

14 SECTION 3. Article 59.06(g)(1), Code of Criminal Procedure,
15 is amended to read as follows:

16 (1) All law enforcement agencies that seize [~~and~~
17 ~~attorneys representing the state who receive proceeds or~~] property
18 under this chapter shall account for the seizure in an audit. All
19 attorneys representing the state who appear in forfeiture
20 proceedings under this chapter shall account for the [~~, forfeiture,~~]
21 receipt[~~,~~] and transfer [~~specific expenditure~~] of all forfeited
22 [~~the~~] proceeds and property in an audit. The audits required by
23 this subsection must [~~, which is to~~] be performed annually by the
24 commissioners court or governing body of a municipality, as
25 appropriate. The annual period of the audit for a law enforcement
26 agency is the fiscal year of the appropriate county or municipality
27 and the annual period for an attorney representing the state is the

1 state fiscal year. The audit must be completed on a form provided
2 by the attorney general [~~and must include a detailed report and~~
3 ~~explanation of all expenditures, including salaries and overtime~~
4 ~~pay, officer training, investigative equipment and supplies, and~~
5 ~~other items~~]. Certified copies of the audit shall be delivered by
6 the law enforcement agency or attorney representing the state to
7 the attorney general not later than the 60th day after the date on
8 which the annual period that is the subject of the audit ends.

9 SECTION 4. Article 59.061(a), Code of Criminal Procedure,
10 is amended to read as follows:

11 (a) The state auditor may at any time perform an audit or
12 conduct an investigation, in accordance with this article and
13 Chapter 321, Government Code, related to the seizure, forfeiture,
14 receipt, and transfer [~~specific expenditure~~] of proceeds and
15 property received under this chapter.

16 SECTION 5. Article 59.08(b), Code of Criminal Procedure, is
17 amended to read as follows:

18 (b) If a final judgment is rendered concerning contraband,
19 money that has been placed in an interest-bearing bank account
20 under Subsection (a) of this article shall be distributed in the
21 same manner as proceeds are distributed under Article 59.06 [~~of~~
22 ~~this code~~], with any interest being distributed in the same manner
23 [~~and used for the same purpose as the principal~~].

24 SECTION 6. The following provisions are repealed:

25 (1) Articles 59.06(b), (b-1), (b-2), (c-1), (c-2),
26 (c-3), (c-4), (d), (d-1), (d-2), (d-3), (d-4), (h), (i), (j), (k),
27 (m), (n), (o), (p), (q), and (r), 59.062(e), and 59.11, Code of

1 Criminal Procedure; and

2 (2) Section 24.377(c), Government Code.

3 SECTION 7. Articles 59.06(a) and (c), Code of Criminal
4 Procedure, as amended by this Act, apply to the disposition, on or
5 after the effective date of this Act, of proceeds or property
6 received by a law enforcement agency or attorney representing the
7 state under Chapter 59, Code of Criminal Procedure, regardless of
8 whether the receipt of the proceeds or property occurred before,
9 on, or after the effective date of this Act.

10 SECTION 8. Article 59.06(g), Code of Criminal Procedure, as
11 amended by this Act, applies to an audit performed on or after the
12 effective date of this Act in which all property is seized on or
13 after the effective date of this Act. An audit in which any
14 property was seized before the effective date of this Act is
15 governed by the law in effect on the date the property was seized,
16 and the former law is continued in effect for that purpose.

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