

BILL ANALYSIS

C.S.H.B. 1441
By: Schaefer
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under the Texas Code of Criminal Procedure, property used in, or the proceeds from criminal activity, is subject to seizure and forfeiture in a civil proceeding. In all proceedings under these provisions, the standard of proof is preponderance of the evidence, the lowest evidentiary standard in civil proceedings. There is no requirement that the person accused in the criminal activity resulting in the forfeiture be convicted, or charged, with a crime. Additionally, an owner or interest holder can claim "innocent owner" defenses, which provides an owner's interest in property may not be forfeited if certain conditions are met. It is a defense to forfeiture if the owner or interest holder acquired and perfected their interest before or during the act giving rise to the forfeiture and did not know or should not reasonably have known of that act or that the act was likely to occur at or before the time of acquiring and perfecting the interest. After criminal activity occurred and that activity led to an owner's or interest holder's property being seized, the owner or interest holder can claim an "innocent owner" defense if the property or interest in the property for value was obtained before the property was seized, and the owner or interest holder did not have reason to believe or did not intentionally avoid finding out the property was contraband to prevent the property from being forfeited.

It is also a defense to forfeiture if the owner or interest holder proves by a preponderance of the evidence that they were not a party to the criminal offense resulting in the property being forfeited and the property was stolen, purchased with stolen money, or used with proceeds from the sale of stolen property from the owner or interest holder or used without the consent of the owner or interest holder. Under current law, the individual claiming the "innocent owner" defense has the burden of proof. To reflect the gravity of seizing and forfeiting property from a person, C.S.H.B. 1441 raises the standard of proof that must be met in order to forfeit property in all cases where a defense is applicable under these provisions of law to clear and convincing evidence. In situations where the owner or interest holder of the seized property raises an "innocent owner" defense, C.S.H.B. 1441 shifts the burden of proof from the property owner to the state.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1441 amends the Code of Criminal Procedure to raise the standard of proof from preponderance of the evidence to clear and convincing evidence in certain asset forfeiture

proceedings under provisions governing property that may be subject to seizure and forfeiture as contraband. The bill shifts the burden of proof from the owner or interest holder to the state in certain asset forfeiture proceedings by removing the requirement that the owner or interest holder prove certain facts relating to the circumstances giving rise to the forfeiture in which the property would be exempt from such forfeiture. The bill instead requires the state to prove that the circumstances rendering an owner's or interest holder's interest in certain property exempt from civil asset forfeiture do not apply to property that may be subject to seizure and forfeiture as contraband.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1441 differs from the original in minor or nonsubstantive ways by conforming to certain bill drafting conventions.