87R10122 AJZ-D

By:  Moody H.B. No. 3555

A BILL TO BE ENTITLED

AN ACT

relating to the disposition and use of proceeds and property from criminal asset forfeiture.

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

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

(f)  On forfeiture to the state of an amount greater than $2,500, the clerk of the court in which the forfeiture proceeding was held is entitled to court costs in that proceeding as in other civil proceedings unless the forfeiture violates federal requirements for multijurisdictional task force cases authorized under Chapter 362, Local Government Code. The procedure for collecting the costs is the procedure established under [~~Subsections (a) and (c),~~] Article 59.06(a) [~~59.06~~].

SECTION 2.  Article 59.06, Code of Criminal Procedure, is amended by amending Subsections (a), (d), (d-1), (d-2), (g), (l), (s), and (t) and adding Subsection (c-5) to read as follows:

(a)  Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices [~~and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies~~]. The [~~If a local agreement has not been executed, the~~] property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

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

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

(3)  the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale as follows:

(A)  50 percent of the funds in the state treasury to the credit of the general revenue fund; and

(B)  50 percent of the funds to the credit of a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office.

(c-5)  Notwithstanding any other provision of this chapter, forfeited property or the proceeds from the sale of forfeited property may not be transferred to a local or state law enforcement agency.

(d)  Proceeds awarded under this chapter to [~~a law enforcement agency or to~~] the attorney representing the state may be spent by [~~the agency or~~] the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that [~~the agency or~~] the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1)  An [~~The head of a law enforcement agency or an~~] attorney representing the state may not use proceeds or property received under this chapter to:

(1)  contribute to a political campaign;

(2)  make a donation to any entity, except as provided by Subsection (d-2);

(3)  pay expenses related to the training or education of any member of the judiciary;

(4)  pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5)  purchase alcoholic beverages;

(6)  make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the [~~head of a law enforcement agency or~~] attorney representing the state holds an elective office and:

(A)  the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B)  during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7)  increase a salary, expense, or allowance for an employee of the [~~law enforcement agency or~~] attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2)  An [~~The head of a law enforcement agency or an~~] attorney representing the state may use as an official purpose of the [~~agency or~~] attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1)  the detection, investigation, or prosecution of:

(A)  criminal offenses; or

(B)  instances of abuse, as defined by Section 261.001, Family Code;

(2)  the provision of:

(A)  mental health, drug, or rehabilitation services; or

(B)  services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3)  the provision of training or education related to duties or services described by Subdivision (1) or (2).

(g)(1)  All [~~law enforcement agencies and~~] attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for [~~a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for~~] an attorney representing the state is the state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, [~~officer~~] training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the [~~law enforcement agency or~~] attorney representing the state to the attorney general not later than the 60th day after the end of the state fiscal year [~~date on which the annual period that is the subject of the audit ends~~].

(2)  If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the [~~law enforcement agency or the~~] attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the [~~agency or~~] attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the end of the state fiscal year [~~date on which the annual period that is the subject of the audit ends~~]. If the [~~law enforcement agency or the~~] attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3)  On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The [~~law enforcement agency or~~] attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(l)  An [~~A law enforcement agency that, or an~~] attorney representing the state who [~~,~~] does not receive proceeds or property under this chapter during a state fiscal year [~~an annual period~~] as described by Subsection (g) shall, not later than the 30th day after the date on which the state fiscal year [~~annual period~~] ends, report to the attorney general that the [~~agency or~~] attorney representing the state [~~, as appropriate,~~] did not receive proceeds or property under this chapter during that fiscal year [~~the annual period~~].

(s)  Not later than April 30 of each year, the attorney general shall develop a report based on information submitted by [~~law enforcement agencies and~~] attorneys representing the state under Subsection (g) detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in this state in the preceding calendar year. The attorney general shall maintain in a prominent location on the attorney general's publicly accessible Internet website a link to the most recent annual report developed under this subsection.

(t)(1)  This subsection applies only to contraband for which forfeiture is authorized with respect to an offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05 or Chapter 20A, Penal Code.

(2)  Notwithstanding any other provision of this article, the gross amount credited to the special fund of the office of the attorney representing the state [~~or of a law enforcement agency under Subsection (c)~~] from the forfeiture of contraband described by Subdivision (1) shall be:

(A)  used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state [~~or of a law enforcement agency, as applicable~~]; or

(B)  used by the office of the attorney representing the state [~~or of the law enforcement agency~~] to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

(3)  An expenditure of money in the manner required by this subsection is considered to be for an official purpose of the office of the attorney representing the state [~~or for a law enforcement purpose, as applicable~~].

SECTION 3.  Articles 59.061(c) and (d), Code of Criminal Procedure, are amended to read as follows:

(c)  If the results of an audit or investigation under this article indicate that an [~~a law enforcement agency or~~] attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

(d)  The [~~law enforcement agency or~~] attorney representing the state shall reimburse the state auditor for costs incurred by the state auditor in performing an audit under this article.

SECTION 4.  Articles 59.062(a), (b), (c), (e), and (g), Code of Criminal Procedure, are amended to read as follows:

(a)  In the name of the state, the attorney general may institute in a district court in Travis County or in a county served by the [~~law enforcement agency or~~] attorney representing the state [~~, as applicable,~~] a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of an audit or investigation under Article 59.061 indicate that the [~~law enforcement agency or~~] attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b)  On application for injunctive relief and a finding that the [~~law enforcement agency or~~] attorney representing the state is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the district court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c)  An [~~A law enforcement agency or~~] attorney representing the state who knowingly commits a violation described by Subsection (a) is liable to the state for a civil penalty in an amount not to exceed $100,000 as determined by the district court to be appropriate for the nature and seriousness of the violation. In determining an appropriate penalty for the violation, the court shall consider:

(1)  any previous violations committed by the [~~agency or~~] attorney;

(2)  the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3)  the demonstrated good faith of the [~~agency or~~] attorney; and

(4)  the amount necessary to deter future violations.

(e)  Notwithstanding any other provision of this article, an [~~a law enforcement agency or~~] attorney representing the state ordered to pay a civil penalty, expense, cost, or fee under this article shall make the payment out of money available in any fund established by the [~~agency or~~] attorney [~~, as applicable,~~] for the purpose of administering proceeds or property received under this chapter. If sufficient money is not available to make payment in full at the time the court enters an order requiring payment, the [~~agency or~~] attorney shall continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(g)  An [~~A law enforcement agency or~~] attorney representing the state is immune from liability under this article if the [~~agency or~~] attorney reasonably relied on:

(1)  the advice, consent, or approval of an entity that conducts an audit of the [~~agency or~~] attorney under this chapter; or

(2)  a written opinion of the attorney general relating to:

(A)  the statute or other provision of law the [~~agency or~~] attorney is alleged to have knowingly violated; or

(B)  a fact situation that is substantially similar to the fact situation in which the [~~agency or~~] attorney is involved.

SECTION 5.  Articles 59.06(b), (b-1), (b-2), (c), (c-1), (c-2), (c-3), (c-4), (d-3), (h), (i), (j), (m), (n), (o), (q), and (r), Code of Criminal Procedure, are repealed.

SECTION 6.  The change in law made by this Act in amending Article 59.06, Code of Criminal Procedure, applies to the disposition or use, on or after the effective date of this Act, of forfeited property or proceeds from the sale of forfeited property under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the property or proceeds occurred before, on, or after the effective date of this Act.

SECTION 7.  This Act takes effect September 1, 2021.