

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

1 date of the final judgment of forfeiture at public auction under the  
2 direction of the county sheriff, after notice of public auction as  
3 provided by law for other sheriff's sales. The proceeds of the sale  
4 shall be distributed as follows:

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

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

12 (3) the balance, if any, after the deduction of court  
13 costs to which a district court clerk is entitled under Article  
14 59.05(f) and, after that deduction, the deduction of storage and  
15 disposal costs, to be deposited not later than the 30th day after  
16 the date of the sale as follows:

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

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

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

27 (d) Proceeds awarded under this chapter to ~~a law~~

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

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

- 17 (1) contribute to a political campaign;
- 18 (2) make a donation to any entity, except as provided  
19 by Subsection (d-2);
- 20 (3) pay expenses related to the training or education  
21 of any member of the judiciary;
- 22 (4) pay any travel expenses related to attendance at  
23 training or education seminars if the expenses violate generally  
24 applicable restrictions established by the commissioners court or  
25 governing body of the municipality, as applicable;
- 26 (5) purchase alcoholic beverages;
- 27 (6) make any expenditure not approved by the

1 commissioners court or governing body of the municipality, as  
2 applicable, if the [~~head of a law enforcement agency or~~] attorney  
3 representing the state holds an elective office and:

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

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

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

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

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

22 (A) criminal offenses; or

23 (B) instances of abuse, as defined by Section  
24 [261.001](#), Family Code;

25 (2) the provision of:

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

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

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

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

23 (2) If a copy of the audit is not delivered to the  
24 attorney general within the period required by Subdivision (1),  
25 within five days after the end of the period the attorney general  
26 shall notify the [~~law enforcement agency or the~~] attorney  
27 representing the state of that fact. On a showing of good cause, the

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

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

17 (1) An [~~A law enforcement agency that, or an~~] attorney  
18 representing the state who [~~7~~] does not receive proceeds or  
19 property under this chapter during a state fiscal year [~~an annual~~  
20 ~~period~~] as described by Subsection (g) shall, not later than the  
21 30th day after the date on which the state fiscal year [~~annual~~  
22 ~~period~~] ends, report to the attorney general that the [~~agency or~~  
23 attorney representing the state [~~7 as appropriate,~~] did not receive  
24 proceeds or property under this chapter during that fiscal year  
25 [~~the annual period~~].

26 (s) Not later than April 30 of each year, the attorney  
27 general shall develop a report based on information submitted by

1 ~~[law enforcement agencies and]~~ attorneys representing the state  
2 under Subsection (g) detailing the total amount of funds forfeited,  
3 or credited after the sale of forfeited property, in this state in  
4 the preceding calendar year. The attorney general shall maintain  
5 in a prominent location on the attorney general's publicly  
6 accessible Internet website a link to the most recent annual report  
7 developed under this subsection.

8 (t)(1) This subsection applies only to contraband for which  
9 forfeiture is authorized with respect to an offense under Section  
10 20.05, 20.06, 20.07, 43.04, or 43.05 or Chapter 20A, Penal Code.

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

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

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

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

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

3 (c) If the results of an audit or investigation under this  
4 article indicate that an [~~a law enforcement agency or~~] attorney  
5 representing the state has knowingly violated or is knowingly  
6 violating a provision of this chapter relating to the disposition  
7 of proceeds or property received under this chapter, the state  
8 auditor shall promptly notify the attorney general for the purpose  
9 of initiating appropriate enforcement proceedings under Article  
10 59.062.

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

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

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

26 (b) On application for injunctive relief and a finding that  
27 the [~~law enforcement agency or~~] attorney representing the state is



1 knowingly violating a provision of this chapter relating to the  
2 disposition of proceeds or property received under this chapter,  
3 the district court shall grant the injunctive relief the facts may  
4 warrant, without requirement for bond.

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

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

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

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

18 (4) the amount necessary to deter future violations.

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

1 available in any fund described by this subsection until the  
2 payment is made in full.

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

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

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

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

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

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

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

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