

## **BILL ANALYSIS**

H.B. 69  
By: Schaefer  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under Chapter 59 of the Code of Criminal Procedure, the target of a civil asset forfeiture proceeding is property, not an individual. The statute provides that a forfeiture can take place even in the absence of the property owner, interest holder, or possessor. The state must establish that the property meets the definition of contraband having a nexus to certain criminal activities. However, there is no requirement that criminal charges ever be filed. Additionally, the state must meet its burden of proof in the forfeiture case by a preponderance of evidence. This is a lower standard of proof than is required to obtain a conviction for the underlying criminal activity, which is beyond a reasonable doubt. Raising the standard of proof required in an asset forfeiture case to the clear and convincing standard would provide protections to innocent owners and ensure that the standard of proof reflects the serious nature of forfeiting a person's private property.

Furthermore, there is an "innocent owner" defense which provides an owner's interest in property may not be forfeited if the owner acquired and perfected their interest before or during the act giving rise to the forfeiture and the owner did not know or should not have reasonably known of the act giving rise to the forfeiture, or that it was likely to occur at or before the time of acquiring and perfecting the interest. Given that the claimant making the innocent owner defense has the burden to prove it, this often requires the innocent owner to prove a negative. Shifting the burden of proof to the state is appropriate in cases where a citizen can lose their private property.

H.B. 69 seeks to address these issues by raising the standard of proof that must be met in order to forfeit property in certain civil asset forfeiture cases and by shifting the burden of proof from the property owner to the state when an "innocent owner" defense is raised.

### **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**

H.B. 69 amends the Code of Criminal Procedure to revise certain asset forfeiture proceedings under statutory provisions governing property that is subject to seizure and forfeiture as contraband by doing the following:

- raising the evidentiary standard in those proceedings from a preponderance of the evidence to clear and convincing evidence; and
- shifting the burden of proof from the applicable property owner or interest holder to the state.

With respect to an owner or interest holder who asserts that they acquired and perfected the interest in the property under certain circumstances or that they were not a party to the offense giving rise to the forfeiture, the bill requires the state to prove that circumstances rendering an owner's or interest holder's interest in certain property exempt from civil asset forfeiture do not apply to property that is subject to statutory provisions governing civil asset forfeiture.

H.B. 69 applies only to a forfeiture proceeding that begins on or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.