

By: Hinojosa

S.B. No. 793

A BILL TO BE ENTITLED

AN ACT

relating to criminal asset forfeiture proceedings and the seizure and forfeiture of certain property.

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

SECTION 1. Article 59.02, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by Subsection (a-1), property [Property] that is contraband is subject to seizure and forfeiture under this chapter.

(a-1) Property that is contraband is not subject to seizure and forfeiture under this chapter if:

(1) the property is not otherwise unlawful to possess;
and

(2) the admissibility of the property as evidence would be prohibited under Article 38.23 in the prosecution of the underlying offense.

SECTION 2. Article 59.021(d), Code of Criminal Procedure, is amended to read as follows:

(d) After seizure of the substitute property, the disposition shall proceed as other cases in this chapter except that the attorney representing the state must prove by clear and convincing [~~a preponderance of the~~] evidence:

(1) that the contraband described by Subsection (b)

1 was subject to seizure and forfeiture under this chapter;

2 (2) the highest fair market value of that contraband
3 during the period in which the owner of the substitute property
4 owned, or had an interest in, the contraband;

5 (3) the fair market value of the substitute property
6 at the time it was seized; and

7 (4) that the owner of the substitute property owned or
8 had an interest in contraband with an aggregate value of \$200,000 or
9 more in connection with the commission of an underlying offense
10 giving rise to the forfeiture.

11 SECTION 3. Article 59.05, Code of Criminal Procedure, is
12 amended by amending Subsection (b) and adding Subsection (b-1) to
13 read as follows:

14 (b) All cases under this chapter shall proceed to trial in
15 the same manner as in other civil cases. The state has the burden of
16 proving by clear and convincing [~~a preponderance of the~~] evidence
17 that property is subject to forfeiture.

18 (b-1) In a forfeiture proceeding under this chapter, the
19 attorney representing the state may only present evidence the
20 admissibility of which would not be prohibited under Article 38.23
21 in the prosecution of the underlying offense giving rise to the
22 forfeiture.

23 SECTION 4. Section 12.1106(d), Parks and Wildlife Code, is
24 amended to read as follows:

25 (d) The court shall order the seized property:

26 (1) forfeited to the department if the court
27 determines by clear and convincing [~~a preponderance of the~~]

1 evidence that:

2 (A) the seized property is contraband and a
3 person pleaded guilty or nolo contendere to, was convicted of, or
4 was placed on deferred adjudication for:

5 (i) an offense under Section 66.006,
6 Section 66.2011, or Subchapter G, Chapter 43, of this code; or

7 (ii) a second or subsequent offense under
8 Section 61.022, 62.003, 62.004, or 62.005 of this code; or

9 (B) the seized property is contraband and no
10 person was arrested for an offense immediately after the warden or
11 officer seized the property; or

12 (2) released to the owner if:

13 (A) the person charged with an offense under
14 Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of
15 this code or a second or subsequent offense under Section 61.022,
16 62.003, 62.004, or 62.005 of this code is acquitted or the charge is
17 dismissed; or

18 (B) the court determines that the seized property
19 is not contraband.

20 SECTION 5. Articles 59.02, 59.021, and 59.05, Code of
21 Criminal Procedure, and Section 12.1106, Parks and Wildlife Code,
22 as amended by this Act, apply only to a forfeiture proceeding that
23 begins on or after the effective date of this Act. A forfeiture
24 proceeding that begins before the effective date of this Act is
25 governed by the law in effect on the date the proceeding begins, and
26 the former law is continued in effect for that purpose.

27 SECTION 6. This Act takes effect September 1, 2023.