

By: Hinojosa

S.B. No. 95

A BILL TO BE ENTITLED

AN ACT

relating to the state's burden of proof in certain criminal asset forfeiture proceedings.

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

SECTION 1. 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) was subject to seizure and forfeiture under this chapter;

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

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

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

SECTION 2. Article 59.05(b), Code of Criminal Procedure, is amended to read as follows:

(b) All cases under this chapter shall proceed to trial in

1 the same manner as in other civil cases. The state has the burden of
2 proving by clear and convincing [~~a preponderance of the~~] evidence
3 that property is subject to forfeiture.

4 SECTION 3. Section 12.1106(d), Parks and Wildlife Code, is
5 amended to read as follows:

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

7 (1) forfeited to the department if the court
8 determines by clear and convincing [~~a preponderance of the~~]
9 evidence that:

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

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

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

17 (B) the seized property is contraband and no
18 person was arrested for an offense immediately after the warden or
19 officer seized the property; or

20 (2) released to the owner if:

21 (A) the person charged with an offense under
22 Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of
23 this code or a second or subsequent offense under Section 61.022,
24 62.003, 62.004, or 62.005 of this code is acquitted or the charge is
25 dismissed; or

26 (B) the court determines that the seized property
27 is not contraband.

1 SECTION 4. The change in law made by this Act applies only
2 to a forfeiture proceeding that begins on or after the effective
3 date of this Act. A forfeiture proceeding that begins before the
4 effective date of this Act is governed by the law in effect on the
5 date the proceeding begins, and the former law is continued in
6 effect for that purpose.

7 SECTION 5. This Act takes effect September 1, 2015.