

BILL ANALYSIS

C.S.H.B. 344
By: Canales
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the low burden of proof required for certain asset forfeiture cases allows some law enforcement agencies to abuse the forfeiture process. C.S.H.B. 344 seeks to mitigate abuse of this process by changing the burden of proof in certain forfeiture proceedings and by prohibiting certain transfers of seized property.

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

C.S.H.B. 344 amends the Code of Criminal Procedure to change the state's burden of proof in a proceeding for forfeiture of contraband or substitute property from a burden of proof by a preponderance of the evidence to a burden of proof by clear and convincing evidence. The bill prohibits a law enforcement agency or attorney representing the state from directly or indirectly transferring seized property to any federal law enforcement authority or other federal agency and from coordinating with the authority or agency regarding seized property unless the value of the seized property exceeds \$50,000, excluding the value of any controlled substance, and the attorney representing the state determines that the activity giving rise to the applicable investigation or seizure is interstate in nature and sufficiently complex to justify the transfer or determines that the seized property may only be forfeited under federal law. The bill prohibits a law enforcement agency or the Texas National Guard, when operating in a nonmilitary role, from participating, assisting, or cooperating in a forfeiture action brought by the federal government unless the value of the seized property subject to forfeiture exceeds \$50,000, excluding the value of any controlled substance.

C.S.H.B. 344 amends the Parks and Wildlife Code to change the court's burden of proof when determining that certain seized property is contraband and required to be forfeited to the Parks and Wildlife Department from a burden of proof by a preponderance of the evidence to a burden of proof by clear and convincing evidence.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 344 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 59.021(d), Code of Criminal Procedure, is amended.

SECTION 2. Article 59.05(b), Code of Criminal Procedure, is amended.

No equivalent provision.

SECTION 3. Section 12.1106(d), Parks and Wildlife Code, is amended.

SECTION 4.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.15 and 59.16 to read as follows:

Art. 59.15. TRANSFER OF FORFEITABLE PROPERTY TO FEDERAL GOVERNMENT. A law

enforcement agency or attorney representing the state may not directly or indirectly transfer seized property to any federal law enforcement authority or other federal agency and may not coordinate with the authority or agency regarding seized property unless:

(1) the value of the seized property exceeds \$50,000, excluding the value of any controlled substance; and

(2) the attorney representing the state determines that:

(A) the activity giving rise to the applicable investigation or seizure is interstate in nature and sufficiently complex to justify the transfer; or

(B) the seized property may only be forfeited under federal law.

Art. 59.16. COOPERATION IN FEDERAL FORFEITURE ACTION. A law enforcement agency or the Texas National Guard, when operating in a nonmilitary role, may not participate, assist, or cooperate in a forfeiture action brought by the federal government unless the value of the seized property subject to forfeiture exceeds \$50,000, excluding the value of any controlled substance.

SECTION 4. Same as introduced version.

SECTION 5. (a) Articles 59.15 and 59.16, Code of Criminal Procedure, as added by this Act, apply only to property seized on or

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

SECTION 5. This Act takes effect September 1, 2017.

after the effective date of this Act. Property seized before the effective date of this Act is governed by the law in effect on the date the property was seized, and the former law is continued in effect for that purpose.

(b) Articles 59.021 and 59.05, Code of Criminal Procedure, and Section 12.1106, Parks and Wildlife Code, as amended by this Act, apply only to a forfeiture proceeding that begins on or after the effective date of this Act. A forfeiture proceeding that begins before the effective date of this Act is governed by the law in effect on the date the proceeding begins, and the former law is continued in effect for that purpose.

SECTION 6. Same as introduced version.