

SUBJECT: Prohibiting forfeiture of property from certain property owners

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Keel, Talton, Garcia, Shields
0 nays
4 absent — Dunnam, Green, Kitchen, Martinez Fischer

SENATE VOTE: On final passage, March 12 — voice vote

WITNESSES: For — None

Against — Tom Keever for Bruce Isaacks, Criminal District Attorney,
Denton County

On — Brian Johnson, Texas Office of the Attorney General

BACKGROUND: Code of Criminal Procedure, ch. 59 details the handling of property related to criminal offenses and under some circumstances makes it subject to forfeiture. An owner or interest holder's interest may not be forfeited if they prove that they acquired and perfected an interest in the property before or during the crime or had acquired an ownership interest, security interest, or lien interest before the prosecutor filed notice of the state's interest in the property *and* that at the time they acquired the interest they did not know or reasonably should not have known of the crime or that it was likely to occur before acquiring and perfecting their interest.

DIGEST: SB 563 would prohibit an owner or interest holder's interest in property from being forfeited as contraband if at the forfeiture hearing the owners proved by a preponderance of the evidence that they were not a party to the offense and that the contraband:

- ! was stolen from them before being used in the offense;
- ! was purchased with money stolen from the owner or interest holder; or

! was used or intended to be used without the consent of the owner or interest holder in the commission of the offense.

Prosecutors who had a reasonable belief that property subject to forfeiture met one of these criteria and who had a reasonable belief as to the property's rightful owner or interest holder would have to notify the owner or interest holder of any forfeiture proceedings. Prosecutors would not be liable for damages for performing this duty. The exclusive remedy for failing to provide notice as required by SB 563 would be the submission of the failure as a ground for a new trial.

SB 563 would take effect September 1, 2001, and would apply to all property for which a final judgment had not been reached on that date.

**SUPPORTERS
SAY:**

SB 563 is necessary because current law does not adequately ensure that property used in a crime but owned by a person who was truly innocent of the crime will be returned to its owners in all situations. Although current law has an "innocent persons" defense, situations have occurred in which stolen property was sold, the assets purchased with the money were seized as contraband, but the original property owner could not recover the assets.

SB 563 would not confuse current law but would ensure that in the limited situations covered by the bill, owners of stolen property could recover their property or assets purchased by the sale of that property. Property owners would have to prove at the forfeiture hearing that they were not a party to the offense and that the contraband was used in the crime without their permission.

SB 563 would ensure that prosecutors would be protected from liability from acts relating to requirements of the bill.

**OPPONENTS
SAY:**

SB 563 is unnecessary because of current-law provisions that prohibit the forfeiture of property from owners who are innocent of a crime. Prosecutors do not pursue forfeiture of property if they know the owner was not a part of the crime. SB 563 would make the law more confusing by having two statutes dealing with the same thing.

NOTES:

Rep. Hinojosa plans to offer an amendment to SB 563 to incorporate portions of HB 2696, which would prohibit peace officers seizing property from requesting or requiring property owners to execute a document purporting to waive the owner's interest in or rights to the property, would allow the comptroller to audit seized and forfeited property if an annual audit was not done by a county commissioners court or other governmental body as required by the Code of Criminal Procedure, and would require peace officer and police chief training to include programs on asset forfeiture. HB 2696 passed the House on the May 5 Local, Consent, and Resolutions Calendar and is pending in the Senate Criminal Justice Committee.