

BILL ANALYSIS

Senate Research Center
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S.B. 626
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Jurisprudence
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DIGEST AND PURPOSE

Under current Texas law, the holder of a bona fide security interest in property other than real property may lose that lien or security to forfeiture even though the lienholder is innocent, not knowing or having reason to suspect that the property constitutes contraband. As proposed, S.B. 626 addresses several problems that may arise in the seizure of accounts held at banks and assets that have been pledged to secure loans made by banks.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 59.01, Code of Criminal Procedure, by adding Subdivisions (9)-(11), to define “depository account,” “primary state or federal financial institution regulator,” and “regulated financial institution.”

SECTION 2. Amends Articles 59.02(c)-(g), Code of Criminal Procedure, to prohibit an owner or interest holder’s interest in property from being forfeited under this chapter if the owner or interest holder met certain conditions, including having acquired and perfected the interest before the seizure or, if the property is real property, acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code. Deletes existing text pertaining to the act or omission giving rise to forfeiture. Provides that if property is seized from the possession of an interest holder who asserts a possessory lien interest in the property under applicable law, notwithstanding any other law, the interest holder’s lien remains in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the interest holder. Makes a nonsubstantive change.

SECTION 3. Amends Article 59.03(a), Code of Criminal Procedure, to authorize property subject to forfeiture under this chapter, other than property described by Article 59.12 of this code, to be seized by any peace officer under authority of a search warrant.

SECTION 4. Amends Article 59.04(b), Code of Criminal Procedure, to require the attorney representing the state to attach to the notice the peace officer’s sworn statement under Article 59.03 of this code or, if the property has been seized under Article 59.12 of this code, the statement of the terms and amount of the depository account or inventory of assets provided by the regulated financial institution to the attorney representing the state.

SECTION 5. Amends Chapter 59, Code of Criminal Procedure, by adding Articles 59.12-59.14, as follows:

Art. 59.12. SEIZURE OF ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) Provides that this article applies to property consisting of a depository

account in a regulated financial institution or assets held by a regulated financial institution as security for an obligation owed to the regulated financial institution.

(b) Provides that a regulated financial institution is not required to pay an account or tender assets held as security for an obligation owed to the institution until the time has expired for an appeal from a decision of the court relating to the forfeiture of accounts or assets under Article 59.05. Provides that the accounts or assets are constructively seized at the time a seizure warrant issued under Chapter 18 is served on the regulated financial institution. Requires the regulated financial institution to preserve and maintain the account or assets pending entry of a final judgement of forfeiture.

(c) Requires the regulated financial institution, immediately on service of the seizure warrant, to take action as necessary to freeze the account or assets and to provide evidence of the terms and amount of the account or a detailed inventory of assets to the attorney representing the state. Provides that a transaction involving an account or assets, other than the deposit or reinvestment of interest and except as otherwise provided by this article, or other normally recurring payments on the account or assets that do not involve distribution of proceeds to the owner is not authorized unless approved by the court that issued the seizure warrant or, if a forfeiture action has been instituted, the court in which that action is pending.

(d) Authorizes assets subject to diminution in value, notwithstanding any other provision of this chapter, to be liquidated without court action by agreement between the regulated financial institution and the attorney representing the state. Authorizes the court, if agreement cannot be reached, on motion, to order liquidation if liquidation is consistent with the terms of the security agreement between the regulated financial institution and the property owner.

(e) Provides that any accrual to the value of the account or assets during the pendency of the forfeiture proceedings is subject to the procedures for the disbursement of interest under Article 59.08.

(f) Authorizes the court, if the regulated financial institution fails to comply with the obligations imposed by this article to freeze and preserve the account or assets constructively seized, and as a result cannot comply with the court's forfeiture order, to order the regulated financial institution to pay damages in an amount not to exceed two times the actual loss caused by the regulated financial institution's failure to comply.

(g) Provides that a regulated financial institution that complies with this article is not liable in damages to the owner of a seized account or asset.

(h) Provides that this article does not impair the right of the state to obtain possession of physical evidence.

Art. 59.13. DISCLOSURE OF INFORMATION RELATING TO ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTIONS. (a) Authorizes the attorney representing the state to disclose information to the primary state or federal financial institution regulator, including grand jury information or otherwise confidential information, relating to any action contemplated or brought under this chapter that involves property consisting of a depository account in a regulated financial institution or assets held by a regulated financial institution as security for an obligation owed to a regulated financial institution.

(b) Requires a primary state or federal financial institution regulator to keep confidential any information provided by the attorney representing the state under Subsection (a). Provides the sharing of information under Subsection (a) is not considered a waiver of

any privilege or claim of confidentiality.

Art. 59.14. NOTICE TO PRIMARY STATE AND FEDERAL FINANCIAL INSTITUTION REGULATORS. (a) Requires the attorney representing the state to notify the primary state or federal financial institution regulator before taking any action under this chapter that may have a substantial adverse effect on a regulated financial institution.

(b) Authorizes an action to have a substantial adverse effect for purposes of Subsection (a) if the amount involved is the lesser of \$1 million or an amount equal to one-half percent of the regulated financial institution's total assets as determined by its most recently published quarterly report of condition.

(c) Requires a primary state or federal financial institution regulator to keep confidential any information provided by the attorney representing the state under Subsection (a)

(d) Provides that the provision of notice under Subsection (a) is not considered a waiver of any privilege or claim of confidentiality.

SECTION 6. Amends Section 34.02, Penal Code, by adding Subsection (f), to provide that it is an exception to the application of this section that the transaction was, under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, an assertion by an owner or interest holder of interest in seized property or opposition by an owner or interest holder to the nature of property as proceeds of criminal activity or contraband.

SECTION 7. (a) Makes application of Sections 1-5 of this Act prospective.

(b) Limits application of Section 6 of this Act only to an offense committed before the effective date of this Act.

(c) Effective date: September 1, 2001.