

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1701
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Transportation & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1701 affects asset forfeiture cases. If a court cannot locate the property to be forfeited or the person in question has taken some measure to hide the asset, the court may order the forfeiture of substitute assets for the property originally ordered forfeited.

C.S.S.B. 1701 amends current law relating to a criminal asset forfeiture hearing in which substitute assets are forfeited under certain circumstances.

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 59.05(e), Code of Criminal Procedure, as follows:

(e)(1) Provides that it is the intention of the legislature that asset forfeiture is remedial in nature and not a form of punishment.

(2) Requires the judge, if the court finds that all or any part of the property is subject to forfeiture, to forfeit the property to the state, with the attorney representing the state as the agent for the state, except that if the court finds that the nonforfeitable interest of an interest holder in the property is valued in an amount greater than or substantially equal to the present value of the property, the court is required to order the property released to the interest holder.

(3) Requires the court, if the court finds that the nonforfeitable interest of an interest holder is valued in an amount substantially less than the present value of the property and that the property is subject to forfeiture, to order the property forfeited to the state with the attorney representing the state acting as the agent of the state, and making necessary orders to protect the nonforfeitable interest of the interest holder.

(4) Authorizes the court to order the forfeiture of any other property of a person that otherwise is not subject to forfeiture under this article if the court finds that property of the person that has been forfeited under this subsection, as a result of an act or omission of the person:

- (A) cannot be located on exercise of due diligence;
- (B) has been transferred, conveyed, or sold to or deposited with a third party;
- (C) has been placed beyond the jurisdiction of the court;
- (D) has been substantially diminished in value; or

(E) has been commingled with other property and cannot be separated without difficulty.

(5) Prohibits the court, in ordering the forfeiture of substitute assets under Subdivision (4), from ordering the forfeiture of property with a value greater than the value of the property originally ordered forfeited by the court.

(6) Requires the attorney representing the state, on final judgment of forfeiture, to dispose of the property in the manner required by Article 59.06 (Disposition of Forfeited Property) of this code.

SECTION 2. Provides that the change in law made by this Act in amending Article 59.05(e), Code of Criminal Procedure, authorizes a court to order the forfeiture of substitute assets for any property originally ordered forfeited by the court, regardless of whether the original order of forfeiture occurred before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2011.