

By: Burton

S.B. No. 1863

A BILL TO BE ENTITLED

1 AN ACT

2 relating to repealing civil asset forfeiture provisions and  
3 establishing criminal asset forfeiture in this state.

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

5 SECTION 1. Title 1, Code of Criminal Procedure, is amended  
6 by adding Chapter 59A to read as follows:

7 CHAPTER 59A. CRIMINAL ASSET FORFEITURE

8 Art. 59A.001. DEFINITIONS. In this chapter:

9 (1) "Abandoned property" means personal property left  
10 by an owner who has intentionally relinquished all rights to its  
11 control.

12 (2) "Actual knowledge" means direct and clear  
13 awareness of information, facts, or conditions.

14 (3) "Constructive knowledge" means knowledge that is  
15 imputed to family or household members of the defendant if the  
16 defendant admitted guilt or was adjudicated guilty three or more  
17 times for the same or a similar offense in the 10 years preceding an  
18 alleged offense.

19 (4) "Contraband" means tangible or intangible goods,  
20 including scheduled drugs without a valid prescription, the  
21 importation, exportation, or possession of which is illegal.

22 (5) "Conveyance" means a device used for  
23 transportation. The term includes a motor vehicle, trailer,  
24 snowmobile, airplane, or vessel, and any attached equipment. The

1 term does not include stolen property.

2 (6) "Department" means the Department of Public  
3 Safety.

4 (7) "Instrumentality" means property that is  
5 otherwise lawful to possess and that is used in the furtherance or  
6 commission of an offense of a law subject to forfeiture. The term  
7 includes land, buildings, containers, conveyances, equipment,  
8 materials, products, computer hardware or software,  
9 telecommunications devices, firearms, ammunition, tools, and  
10 money, securities, negotiable instruments, or other means of  
11 exchange.

12 (8) "Law enforcement agency" means a law enforcement  
13 agency of this state or a political subdivision of this state that  
14 has authority under state law to engage in seizure and forfeiture.

15 (9) "Law subject to forfeiture" means a felony offense  
16 under state law, the punishment for which explicitly authorizes  
17 forfeiture.

18 Art. 59A.002. PURPOSE. The purpose of this chapter is to:

19 (1) deter criminal activity by reducing its economic  
20 incentives;

21 (2) increase the pecuniary loss from criminal  
22 activity;

23 (3) protect against the wrongful forfeiture of  
24 property; and

25 (4) ensure that only criminal forfeiture is allowed in  
26 this state.

27 Art. 59A.003. CRIMINAL ASSET FORFEITURE; PROPERTY SUBJECT

1 TO FORFEITURE. The convicting court may order a person convicted of  
2 violating a law subject to forfeiture to forfeit:

3           (1) property the person derived from the commission of  
4 the offense;

5           (2) property directly traceable to property derived  
6 from the commission of the offense; or

7           (3) instrumentalities the person used in the  
8 commission of the offense.

9           Art. 59A.004. EXEMPT PROPERTY. Property that is homestead  
10 property, a motor vehicle valued at less than \$10,000, and United  
11 States currency totaling \$200 or less are exempt from forfeiture.

12           Art. 59A.005. CONTRABAND. A person may not have a property  
13 right in contraband. Contraband is subject to seizure and must be  
14 disposed of in accordance with state law. Contraband is not subject  
15 to forfeiture under this chapter.

16           Art. 59A.006. CONVICTION REQUIRED; STANDARD OF PROOF. (a)  
17 Property may be forfeited under this chapter if:

18           (1) a person is convicted under a state law subject to  
19 forfeiture; and

20           (2) the state establishes by clear and convincing  
21 evidence that the applicable requirements of Articles  
22 59A.003-59A.005 are met.

23           (b) This chapter does not prevent property from being  
24 forfeited by plea agreement approved by the convicting court.

25           Art. 59A.007. SUBSTITUTION OF ASSETS. On the state's  
26 motion following conviction, the convicting court may order the  
27 forfeiture of substitute property owned by the defendant if the

1 state proves by a preponderance of the evidence that the defendant  
2 intentionally transferred, sold, or deposited property with a third  
3 party to avoid the court's jurisdiction. The value of substitute  
4 property forfeited may not exceed the value of the property  
5 transferred, sold, or deposited.

6 Art. 59A.008. NO ADDITIONAL REMEDIES. The state may not  
7 seek a personal money judgment against the defendant or any other  
8 remedy not provided by this chapter.

9 Art. 59A.009. NO JOINT AND SEVERAL LIABILITY. A defendant  
10 is not jointly and severally liable for forfeiture awards owed by  
11 other defendants. If ownership is unknown, the convicting court  
12 may order each defendant to forfeit property on a pro rata basis or  
13 by other equitable means.

14 Art. 59A.010. SEIZURE OF PERSONAL PROPERTY WITH PROCESS.  
15 At the request of the state made at any time, a court may issue an ex  
16 parte preliminary order to seize or secure personal property for  
17 which forfeiture is sought and to provide for its custody. The  
18 application for and the issuance, execution, and return of the  
19 order are governed by state law.

20 Art. 59A.011. SEIZURE OF PERSONAL PROPERTY WITHOUT PROCESS.  
21 Personal property subject to forfeiture may be seized at any time  
22 without a court order if:

23 (1) the seizure is incident to a lawful arrest or  
24 search;  
25 (2) the personal property has been the subject of a  
26 previous judgment in favor of the state; or  
27 (3) the law enforcement agency seizing the property

1 has probable cause to believe that the seizure is immediately  
2 necessary to prevent the removal or destruction of the personal  
3 property and that the personal property is forfeitable under this  
4 chapter.

5           Art. 59A.012. SEIZURE OF REAL PROPERTY WITH PROCESS. (a)  
6 Real property may be seized only under a court order. A court may  
7 issue an order to seize or secure real property for which forfeiture  
8 is sought only after the property owners are provided notice and an  
9 opportunity for a contested hearing to determine the sufficiency of  
10 probable cause for the seizure.

11           (b) This section does not prohibit the attorney  
12 representing the state from seeking a lis pendens or restraining  
13 order to prohibit the sale or destruction of the real property.

14           (c) The application for and the issuance, execution, and  
15 return of any order are governed by state law.

16           Art. 59A.013. RECEIPT. A law enforcement officer who  
17 seizes property shall give an itemized receipt to the person  
18 possessing the property, or in the absence of any person, leave a  
19 receipt in the place where the property was found, if reasonably  
20 possible.

21           Art. 59A.014. TITLE TO PROPERTY. (a) At the time of a  
22 seizure or the issuance of a restraining order, the state acquires  
23 provisional title to the seized property and is authorized to hold  
24 and protect the property.

25           (b) Title to the property vests with the state when the  
26 trier of fact renders a final forfeiture verdict and the vesting  
27 relates back to the time when the state acquired provisional title.

1 Title acquired under this subsection is subject to claims by third  
2 parties adjudicated as provided by this chapter.

3 Art. 59A.015. PRETRIAL HEARING REGARDING REPLEVIN. (a) In  
4 this article, "claimant" means a defendant or a third party  
5 claiming an ownership interest in property that has been seized.

6 (b) Following a seizure of property, a claimant has the  
7 right to a pretrial hearing to determine the validity of the  
8 seizure.

9 (c) The claimant may claim, at any time on or before the 60th  
10 day before the scheduled start of the trial of the related criminal  
11 offense, the right to possession of property by motion to the court  
12 to issue a writ of replevin.

13 (d) The claimant must file a motion establishing the  
14 validity of the alleged interest in the property.

15 (e) The court shall hear the motion not later than the 30th  
16 day after the date the motion is filed.

17 (f) The state must file an answer showing probable cause for  
18 the seizure or a cross motion not later than the 10th day before the  
19 hearing on the claimant's motion.

20 (g) The court shall grant the claimant's motion if the court  
21 finds that:

22 (1) the final judgment is likely to require the state  
23 to return the property to the claimant;

24 (2) the property is not reasonably required to be held  
25 for investigatory reasons; or

26 (3) the property is the only reasonable means for a  
27 defendant to pay for legal representation in the forfeiture

1 proceeding or in the prosecution of the related criminal offense.

2       (h) At the court's discretion under Subsection (g)(3), the  
3       court may order the return of funds or property sufficient to obtain  
4       legal counsel but less than the total amount seized, and may require  
5       an accounting for the use of the returned funds or property.

6       (i) Instead of ordering the issuance of the writ of  
7       replevin, the court may order the state to give security or written  
8       assurance for satisfaction of any judgment, including damages, that  
9       may be rendered in the action, or order other appropriate relief.

10       Art. 59A.016. FORFEITURE PROCEEDING. A proceeding for the  
11       forfeiture of property must be held following the trial of the  
12       related alleged offense. If the value of the property is less than  
13       \$10,000, the proceeding must be held before the judge only.

14       Art. 59A.017. PROPORTIONALITY HEARING. (a) At any time  
15       following determination of forfeiture by the trier of fact, the  
16       defendant may petition the court to determine whether the  
17       forfeiture is unconstitutionally excessive under the United States  
18       Constitution or the Texas Constitution.

19       (b) The defendant has the burden of establishing by a  
20       preponderance of the evidence that the forfeiture is grossly  
21       disproportional to the seriousness of the offense at a hearing  
22       conducted by the court without a jury.

23       (c) In determining whether the forfeiture of an  
24       instrumentality is unconstitutionally excessive, the court may  
25       consider all relevant factors, including:

26       (1) the seriousness of the offense and its impact on  
27       the community, including the duration of the activity and the harm

1       caused by the defendant;  
2                (2) the extent to which the defendant participated in  
3       the offense;  
4                (3) the extent to which the property was used in  
5       committing the offense;  
6                (4) the sentence imposed for the offense; and  
7                (5) whether the offense was completed or attempted.  
8        (d) In determining the value of the instrumentality subject  
9       to forfeiture, the court may consider all relevant factors,  
10       including:  
11                (1) the fair market value of the property;  
12                (2) the value of the property to the defendant,  
13       including hardship to the defendant if the property is ordered  
14       forfeited; and  
15                (3) the hardship from the loss of a primary residence,  
16       motor vehicle, or other property to the defendant's family members  
17       or others if the property is ordered forfeited.  
18       (e) The court may not consider the value of the  
19       instrumentality to the state in determining whether the forfeiture  
20       of an instrumentality is unconstitutionally excessive.  
21       Art. 59A.018. SECURITY INTEREST. A bona fide security  
22       interest is not subject to forfeiture unless the person claiming  
23       the security interest had actual knowledge that the property was  
24       subject to forfeiture at the time the property was seized or  
25       restrained under this chapter. A person claiming a security  
26       interest must establish the validity of the interest by a  
27       preponderance of the evidence.

1        Art. 59A.019. INNOCENT OWNER. (a) The property of an  
2        innocent owner may not be forfeited.

3        (b) A person who has an ownership interest in property  
4        subject to forfeiture existing at the time of the conduct giving  
5        rise to forfeiture and who claims to be an innocent owner must show  
6        that the person has a legal right, title, or interest in the  
7        property seized under this chapter. If the person shows legal  
8        right, title, or interest in the property, the state must prove by a  
9        preponderance of the evidence that the person had actual or  
10        constructive knowledge of the underlying offense giving rise to the  
11        forfeiture.

12        (c) A person who acquired an ownership interest in property  
13        subject to forfeiture after the commission of an offense giving  
14        rise to the forfeiture and who claims to be an innocent owner must  
15        show that the person has legal right, title, or interest in the  
16        property seized under this chapter. If the person shows legal  
17        right, title, or interest in the property, the state must prove by a  
18        preponderance of the evidence that at the time the person acquired  
19        the property, the person:

20        (1) had actual or constructive knowledge that the  
21        property was subject to forfeiture; or

22        (2) did not purchase the property for valuable  
23        consideration without notice of any defect in title.

24        (d) If the state fails to meet its burden in Subsection (b)  
25        or (c), the court shall find that the person is an innocent owner  
26        and shall order the state to relinquish all claims of title to the  
27        property.

1        Art. 59A.020. APPEAL. A party to forfeiture litigation may  
2        appeal the court's decision regarding the seizure, forfeiture, and  
3        distribution of property under this chapter.

4        Art. 59A.021. DISPOSITION OF PROPERTY AND PROCEEDS. (a) If  
5        abandoned property or contraband held for evidentiary purposes is  
6        no longer needed for that purpose, the court may order that it be:  
7                (1) delivered not later than the 30th day after the  
8        date of the order to the comptroller of public accounts; or  
9                (2) if the property is contraband, destroyed not later  
10        than the 30th day after the date of the order.

11        (b) If property is forfeited under this chapter, the court  
12        may order that the property be delivered not later than the 30th day  
13        after the date of the order to the comptroller.

14        (c) On the court's own motion or the motion of any party, the  
15        court may order that a portion of the currency seized or of the  
16        proceeds from the public auction of property be used to pay  
17        reasonable expenses for the seizure, storage, and maintenance or  
18        custody of any forfeited items, other than expenses for personnel.

19        (d) All abandoned property must be delivered to the  
20        comptroller.

21        (e) The comptroller shall dispose of all forfeited and  
22        abandoned property, other than currency, at public auction. The  
23        auction proceeds and forfeited currency shall first be used to pay  
24        all outstanding recorded liens on the forfeited property, and then  
25        to comply with any court order regarding the payment of expenses.  
26        The comptroller shall deposit all remaining money in the general  
27        revenue fund.

1        Art. 59A.022. PROHIBITION ON RETAINING PROPERTY; SALE

2        RESTRICTIONS. A law enforcement agency may not:

3                (1) retain forfeited or abandoned property for the  
4        agency's use; or

5                (2) sell forfeited or abandoned property directly or  
6        indirectly to:

7                    (A) an employee of the agency;

8                    (B) a person related to an employee by  
9        consanguinity or affinity; or

10                   (C) another law enforcement agency.

11        Art. 59A.023. REPORTING. (a) Not later than February 1 of

12        each year, each law enforcement agency shall report to the  
13        department the following information regarding forfeitures  
14        completed by the agency under state or federal forfeiture law  
15        during the previous calendar year:

16                (1) the total number of forfeitures of currency;

17                (2) the total number of forfeitures and the number of  
18        items of property forfeited according to categories specified by  
19        the department;

20                (3) the total market value of each category of  
21        property forfeited;

22                (4) the total number of occurrences of each type of  
23        offense underlying the forfeitures, including offenses involving  
24        controlled substances, driving while intoxicated, and other  
25        offenses; and

26                (5) any other information required by the department.

27        (b) The department shall prescribe a standardized form and

1 provide for electronic submission of a report required under  
2 Subsection (a).

3       (c) Each law enforcement agency shall file with the  
4 department the report required under Subsection (a) for the law  
5 enforcement agency and the corresponding attorney representing the  
6 state. A law enforcement agency shall file separate reports for  
7 forfeitures completed under state and federal forfeiture law. If a  
8 law enforcement agency did not engage in forfeitures during the  
9 reporting period, the agency must file a report indicating that  
10 fact.

11       (d) Not later than April 1 of each year, the department  
12 shall issue an aggregate report of all forfeitures in the state and  
13 make available on its website the reports submitted by law  
14 enforcement agencies and the department's aggregate report.

15       Art. 59A.024. RETURN OF PROPERTY; DAMAGES; COSTS. (a) A  
16 law enforcement agency that holds property under this chapter shall  
17 return the property to the owner not later than the fifth day after  
18 the date:

19        (1) the court finds that the owner had a bona fide  
20 security interest;

21        (2) the court finds that the owner was an innocent  
22 owner;

23        (3) the acquittal of the owner of the criminal charge  
24 against the owner that is the basis of the forfeiture proceeding; or

25        (4) the dismissal of the criminal charge against the  
26 owner that is the basis of the forfeiture proceeding.

27       (b) The law enforcement agency that holds the property is

1 responsible for any damages, storage fees, and related costs  
2 applicable to property returned under Subsection (a).

3 Art. 59A.025. TRANSFER OF FORFEITABLE PROPERTY TO FEDERAL  
4 GOVERNMENT. A law enforcement agency or attorney representing the  
5 state may not directly or indirectly transfer seized property to  
6 any federal law enforcement authority or other federal agency  
7 unless:

8 (1) the value of the seized property exceeds \$50,000,  
9 excluding the potential value of the sale of any contraband; and

10 (2) the attorney representing the state determines  
11 that:

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

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

17 SECTION 2. Section 72.051(a), Business & Commerce Code, is  
18 amended to read as follows:

19 (a) In this section, "law enforcement agency" means an  
20 agency of the state or an agency of a political subdivision of the  
21 state authorized by law to employ peace officers [has the meaning  
22 assigned by Article 59.01, Code of Criminal Procedure].

23 SECTION 3. Section 140.013, Civil Practice and Remedies  
24 Code, is amended to read as follows:

25 Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Notwithstanding  
26 another provision of this chapter, no remedies provided by this  
27 chapter may be assessed against proceeds, contraband, or other

1 property over which a law enforcement agency has previously  
2 asserted jurisdiction under Chapter 59A [~~59~~], Code of Criminal  
3 Procedure, at the time a suit under this chapter was filed.

4 SECTION 4. Article 18.01(g), Code of Criminal Procedure, is  
5 amended to read as follows:

6 (g) A search warrant may not be issued under [Subdivision  
7 ~~(12)~~] Article 18.02(a)(12) [~~18.02, of this code~~] unless the sworn  
8 affidavit required by Subsection (b) of this article sets forth  
9 sufficient facts to establish probable cause that a specific felony  
10 offense has been committed and that the specifically described  
11 property or items that are to be searched for or seized constitute  
12 contraband as defined in Article 59A.001 [~~59.01 of this code~~] and  
13 are located at or on the particular person, place, or thing to be  
14 searched.

15 SECTION 5. Article 18.02(a), Code of Criminal Procedure, is  
16 amended to read as follows:

17 (a) A search warrant may be issued to search for and seize:

18 (1) property acquired by theft or in any other manner  
19 which makes its acquisition a penal offense;

20 (2) property specially designed, made, or adapted for  
21 or commonly used in the commission of an offense;

22 (3) arms and munitions kept or prepared for the  
23 purposes of insurrection or riot;

24 (4) weapons prohibited by the Penal Code;

25 (5) gambling devices or equipment, altered gambling  
26 equipment, or gambling paraphernalia;

27 (6) obscene materials kept or prepared for commercial

1 distribution or exhibition, subject to the additional rules set  
2 forth by law;

3 (7) a drug, controlled substance, immediate  
4 precursor, chemical precursor, or other controlled substance  
5 property, including an apparatus or paraphernalia kept, prepared,  
6 or manufactured in violation of the laws of this state;

7 (8) any property the possession of which is prohibited  
8 by law;

9 (9) implements or instruments used in the commission  
10 of a crime;

11 (10) property or items, except the personal writings  
12 by the accused, constituting evidence of an offense or constituting  
13 evidence tending to show that a particular person committed an  
14 offense;

15 (11) persons;

16 (12) contraband subject to forfeiture under Chapter  
17 59A [~~59 of this code~~]; or

18 (13) electronic customer data held in electronic  
19 storage, including the contents of and records and other  
20 information related to a wire communication or electronic  
21 communication held in electronic storage.

22 SECTION 6. Articles [18.19\(c\)](#), (d-1), and (e), Code of  
23 Criminal Procedure, are amended to read as follows:

24 (c) If there is no prosecution or conviction for an offense  
25 involving the weapon seized, the magistrate to whom the seizure was  
26 reported shall, before the 61st day after the date the magistrate  
27 determines that there will be no prosecution or conviction, notify

1 in writing the person found in possession of the weapon that the  
2 person is entitled to the weapon upon written request to the  
3 magistrate. The magistrate shall order the weapon returned to the  
4 person found in possession before the 61st day after the date the  
5 magistrate receives a request from the person. If the weapon is not  
6 requested before the 61st day after the date of notification, the  
7 magistrate shall, before the 121st day after the date of  
8 notification, order the weapon destroyed, sold at public sale by  
9 the law enforcement agency holding the weapon or by an auctioneer  
10 licensed under Chapter 1802, Occupations Code, or forfeited to the  
11 state for use by the law enforcement agency holding the weapon or by  
12 a county forensic laboratory designated by the magistrate. If the  
13 magistrate does not order the return, destruction, sale, or  
14 forfeiture of the weapon within the applicable period prescribed by  
15 this subsection, the law enforcement agency holding the weapon may  
16 request an order of destruction, sale, or forfeiture of the weapon  
17 from the magistrate. Only a firearms dealer licensed under 18  
18 U.S.C. Section 923 may purchase a weapon at public sale under this  
19 subsection. Proceeds from the sale of a seized weapon under this  
20 subsection shall be transferred, after the deduction of court costs  
21 and ~~[to which a district court clerk is entitled under Article~~  
22 ~~59.05(f), followed by the deduction of]~~ auction costs, to the law  
23 enforcement agency holding the weapon.

24 (d-1) Only a firearms dealer licensed under 18 U.S.C.  
25 Section 923 may purchase a weapon at public sale under Subsection  
26 (d). Proceeds from the sale of a seized weapon under Subsection (d)  
27 shall be transferred, after the deduction of court costs and [to

1 ~~which a district court clerk is entitled under Article 59.05(f),~~  
2 ~~followed by the deduction of]~~ auction costs, to the law enforcement  
3 agency holding the weapon.

4 (e) If the person found in possession of a weapon is  
5 convicted of an offense involving the use of the weapon, before the  
6 61st day after the date of conviction the court entering judgment of  
7 conviction shall order destruction of the weapon, sale at public  
8 sale by the law enforcement agency holding the weapon or by an  
9 auctioneer licensed under Chapter 1802, Occupations Code, or  
10 forfeiture to the state for use by the law enforcement agency  
11 holding the weapon or by a county forensic laboratory designated by  
12 the court. If the court entering judgment of conviction does not  
13 order the destruction, sale, or forfeiture of the weapon within the  
14 period prescribed by this subsection, the law enforcement agency  
15 holding the weapon may request an order of destruction, sale, or  
16 forfeiture of the weapon from a magistrate. Only a firearms dealer  
17 licensed under 18 U.S.C. Section 923 may purchase a weapon at public  
18 sale under this subsection. Proceeds from the sale of a seized  
19 weapon under this subsection shall be transferred, after the  
20 deduction of court costs and ~~[to which a district court clerk is~~  
21 ~~entitled under Article 59.05(f), followed by the deduction of]~~  
22 auction costs, to the law enforcement agency holding the weapon.

23 SECTION 7. Section 157.317(a), Family Code, is amended to  
24 read as follows:

25 (a) A child support lien attaches to all real and personal  
26 property not exempt under the Texas Constitution or other law,  
27 including:

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11 SECTION 8. Section 392.303, Finance Code, is amended by  
12 amending Subsection (a) and adding Subsection (d) to read as  
13 follows:

14 (a) In debt collection, a debt collector may not use unfair  
15 or unconscionable means that employ the following practices:

16 (1) seeking or obtaining a written statement or  
17 acknowledgment in any form that specifies that a consumer's  
18 obligation is one incurred for necessities of life if the  
19 obligation was not incurred for those necessities;

20 (2) collecting or attempting to collect interest or a  
21 charge, fee, or expense incidental to the obligation unless the  
22 interest or incidental charge, fee, or expense is expressly  
23 authorized by the agreement creating the obligation or legally  
24 chargeable to the consumer; or

25 (3) collecting or attempting to collect an obligation  
26 under a check, draft, debit payment, or credit card payment, if:

27 (A) the check or draft was dishonored or the

1 debit payment or credit card payment was refused because the check  
2 or draft was not drawn or the payment was not made by a person  
3 authorized to use the applicable account;

4 (B) the debt collector has received written  
5 notice from a person authorized to use the account that the check,  
6 draft, or payment was unauthorized; and

7 (C) the person authorized to use the account has  
8 filed a report concerning the unauthorized check, draft, or payment  
9 with a law enforcement agency [~~, as defined by Article 59.01, Code~~  
10 ~~of Criminal Procedure,~~] and has provided the debt collector with a  
11 copy of the report.

12 (d) In this section, "law enforcement agency" means an  
13 agency of the state or an agency of a political subdivision of the  
14 state authorized by law to employ peace officers.

15 SECTION 9. Section 45.193(d), Government Code, is amended  
16 to read as follows:

17 (d) The county attorney has no power, duty, or privilege in  
18 Grimes County relating to criminal matters, including asset  
19 forfeitures under Chapter 59A [~~59~~], Code of Criminal Procedure,  
20 appearance bond forfeitures under Chapter 17, Code of Criminal  
21 Procedure, and habeas corpus related to criminal matters.

22 SECTION 10. Section 54.656(a), Government Code, is amended  
23 to read as follows:

24 (a) A judge may refer to a magistrate any criminal case for  
25 proceedings involving:

26 (1) a negotiated plea of guilty before the court;  
27 (2) a bond forfeiture;

- 1 (3) a pretrial motion;
- 2 (4) a postconviction writ of habeas corpus;
- 3 (5) an examining trial;
- 4 (6) an occupational driver's license;
- 5 (7) an agreed order of expunction under Chapter 55,
- 6 Code of Criminal Procedure;
- 7 (8) a [~~an asset~~] forfeiture hearing as provided by
- 8 Chapter 59A [~~59~~], Code of Criminal Procedure;
- 9 (9) an agreed order of nondisclosure provided by
- 10 Section 411.081;
- 11 (10) a hearing on a motion to revoke probation; and
- 12 (11) any other matter the judge considers necessary
- 13 and proper.

14 SECTION 11. Section 2007.003(b), Government Code, is  
15 amended to read as follows:

16 (b) This chapter does not apply to the following  
17 governmental actions:

18 (1) an action by a municipality except as provided by  
19 Subsection (a)(3):

20 (2) a lawful forfeiture or seizure of contraband as  
21 defined by Article 59A 001 [59 01] Code of Criminal Procedure.

22 (3) a lawful seizure of property as evidence of a crime  
23 or violation of law.

24 (4) an action, including an action of a political  
25 subdivision, that is reasonably taken to fulfill an obligation

26 mandated by federal law or an action of a political subdivision that  
27 is reasonably taken to fulfill an obligation mandated by state law;

4 (6) an action taken to prohibit or restrict a  
5 condition or use of private real property if the governmental  
6 entity proves that the condition or use constitutes a public or  
7 private nuisance as defined by background principles of nuisance  
8 and property law of this state;

12 (8) a formal exercise of the power of eminent domain;

13 (9) an action taken under a state mandate to prevent  
14 waste of oil and gas, protect correlative rights of owners of  
15 interests in oil or gas, or prevent pollution related to oil and gas  
16 activities;

17 (10) a rule or proclamation adopted for the purpose of  
18 regulating water safety, hunting, fishing, or control of  
19 nonindigenous or exotic aquatic resources;

20 (11) an action taken by a political subdivision:

21 (A) to regulate construction in an area  
22 designated under law as a floodplain;

23 (B) to regulate on-site sewage facilities;

24 (C) under the political subdivision's  
25 [subdivision's] statutory authority to prevent waste or protect  
26 rights of owners of interest in groundwater; or

27 (D) to prevent subsidence;

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(12) the appraisal of property for purposes of ad valorem taxation:

3 (13) an action that:

4 (A) is taken in response to a real and  
5 substantial threat to public health and safety;

6 (B) is designed to significantly advance the  
7 health and safety purpose; and

8 (C) does not impose a greater burden than is  
9 necessary to achieve the health and safety purpose; or

10 (14) an action or rulemaking undertaken by the Public  
11 Utility Commission of Texas to order or require the location or  
12 placement of telecommunications equipment owned by another party on  
13 the premises of a certificated local exchange company.

14 SECTION 12. Section 481.159(a), Health and Safety Code, is  
15 amended to read as follows:

16                   (a) If a district court orders the forfeiture of a  
17 controlled substance property or plant under Chapter 59A [59], Code  
18 of Criminal Procedure, or under this code, the court shall also  
19 order a law enforcement agency to:

20 (1) retain the property or plant for its official  
21 purposes, including use in the investigation of offenses under this  
22 code;

23 (2) deliver the property or plant to a government  
24 agency for official purposes;

25 (3) deliver the property or plant to a person  
26 authorized by the court to receive it;

(4) deliver the property or plant to a person

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1 authorized by the director to receive it for a purpose described by  
2 Section 481.065(a); or

3 (5) destroy the property or plant that is not  
4 otherwise disposed of in the manner prescribed by this subchapter.

5 SECTION 13. Section 481.160(a), Health and Safety Code, is  
6 amended to read as follows:

7 (a) If a controlled substance property or plant is forfeited  
8 under this code or under Chapter 59A [59], Code of Criminal  
9 Procedure, the law enforcement agency that seized the property or  
10 plant or to which the property or plant is forfeited may summarily  
11 destroy the property or plant without a court order before the  
12 disposition of a case arising out of the forfeiture if the agency  
13 ensures that:

14 (1) at least five random and representative samples  
15 are taken from the total amount of the property or plant and a  
16 sufficient quantity is preserved to provide for discovery by  
17 parties entitled to discovery;

18 (2) photographs are taken that reasonably depict the  
19 total amount of the property or plant; and

20 (3) the gross weight or liquid measure of the property  
21 or plant is determined, either by actually weighing or measuring  
22 the property or plant or by estimating its weight or measurement  
23 after making dimensional measurements of the total amount seized.

24 SECTION 14. Section 113.008(g), Local Government Code, is  
25 amended to read as follows:

26 (g) Subsections (b-1) and (f)(2) do not apply to a special  
27 fund administered by an attorney representing the state under

1 Chapter 18 or [~~or~~] 47, [~~or~~ 59] Code of Criminal Procedure.

2 SECTION 15. Section 1701.253(g), Occupations Code, is  
3 amended to read as follows:

4 (g) As part of the minimum curriculum requirements, the  
5 commission shall establish a statewide comprehensive education and  
6 training program on criminal asset forfeiture under Chapter 59A  
7 [~~59~~], Code of Criminal Procedure, for officers licensed under this  
8 chapter. An officer shall complete a program established under  
9 this subsection not later than the second anniversary of the date  
10 the officer is licensed under this chapter or the date the officer  
11 applies for an intermediate proficiency certificate, whichever  
12 date is earlier.

13 SECTION 16. Section 37.08(b), Penal Code, is amended to  
14 read as follows:

15 (b) In this section, "law enforcement agency" means an  
16 agency of the state or an agency of a political subdivision of the  
17 state authorized by law to employ peace officers [~~has the meaning~~  
18 ~~assigned by Article 59.01, Code of Criminal Procedure~~].

19 SECTION 17. Section 38.152(c)(3), Penal Code, is amended to  
20 read as follows:

21 (3) "Law enforcement agency" means an agency of the  
22 state or an agency of a political subdivision of the state  
23 authorized by law to employ peace officers [~~has the meaning~~  
24 ~~assigned by Article 59.01, Code of Criminal Procedure~~].

25 SECTION 18. Section 159.205(a), Tax Code, is amended to  
26 read as follows:

27 (a) The right of the comptroller to collect the tax imposed

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1 by this chapter, including applicable penalty and interest, is  
2 subordinate to the right of a federal, state, or local law  
3 enforcement authority to seize, forfeit, and retain property under  
4 Chapter 481, Health and Safety Code; Chapter 59A [59], Code of  
5 Criminal Procedure; or any other criminal forfeiture law of this  
6 state or of the United States. A lien filed by the comptroller as a  
7 result of the failure of a dealer to pay the tax, penalty, or  
8 interest due under this chapter is also subordinate to those  
9 rights.

10 SECTION 19. The following provisions are repealed:

11 (1) Section [140.004](#)(h), Civil Practice and Remedies  
12 Code, as added by Chapter 1066 (H.B. 3241), Acts of the 83rd  
13 Legislature, Regular Session, 2013;  
14 (2) Article [18.17](#), Code of Criminal Procedure;  
15 (3) Chapter 59, Code of Criminal Procedure;  
16 (4) Sections [24.377](#)(c) and [54.656](#)(b), Government  
17 Code;  
18 (5) Section [365.012](#)(i), Health and Safety Code; and  
19 (6) Sections [12.101](#)(1) and (2) and Section [12.1106](#),  
20 Parks and Wildlife Code.

21 SECTION 20. (a) Except as provided by Subsection (b) of  
22 this section, on the effective date of this Act, any property in the  
23 possession of a law enforcement agency, game warden, or attorney  
24 representing the state, that was seized under Chapter 59, Code of  
25 Criminal Procedure, or Section [12.1106](#), Parks and Wildlife Code,  
26 and that has not been ordered forfeited to the state by a court,  
27 must be returned to the person from whom the property was seized.

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5 SECTION 21. The repeal by this Act of Article 18.17, Code of  
6 Criminal Procedure, does not apply to abandoned or unclaimed  
7 property seized before the effective date of this Act, and the  
8 former Article 18.17 is continued in effect for the purposes of the  
9 disposition of property described by this section.

10 SECTION 22. This Act takes effect immediately if it  
11 receives a vote of two-thirds of all the members elected to each  
12 house, as provided by Section 39, Article III, Texas Constitution.  
13 If this Act does not receive the vote necessary for immediate  
14 effect, this Act takes effect September 1, 2015.