

By: Burton

S.B. No. 1863

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 59A. CRIMINAL ASSET FORFEITURE

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

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

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

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

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

(5) "Conveyance" means a device used for
transportation. The term includes a motor vehicle, trailer,
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:

- 1 (1) an account in a financial institution;
- 2 (2) a retirement plan, including an individual
3 retirement account;
- 4 (3) the proceeds of an insurance policy, including the
5 proceeds from a life insurance policy or annuity contract and the
6 proceeds from the sale or assignment of life insurance or annuity
7 benefits, a claim for compensation, or a settlement or award for the
8 claim for compensation, due to or owned by the obligor; and
- 9 (4) property seized and subject to forfeiture under
10 Chapter 59A [~~59~~], Code of Criminal Procedure.

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;

1 (5) the discontinuance or modification of a program or
2 regulation that provides a unilateral expectation that does not
3 rise to the level of a recognized interest in private real property;

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;

9 (7) an action taken out of a reasonable good faith
10 belief that the action is necessary to prevent a grave and immediate
11 threat to life or property;

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 [~~subdivisions's~~] statutory authority to prevent waste or protect
26 rights of owners of interest in groundwater; or

27 (D) to prevent subsidence;

1 (12) the appraisal of property for purposes of ad
2 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;

27 (4) deliver the property or plant to a person

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 [7] 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

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.

1 (b) Property that is evidence in the investigation or
2 prosecution of a criminal offense is not required to be returned
3 under Subsection (a) of this section until the disposition of all
4 charges relating to the offense.

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.