

CHAPTER 780

H.B. No. 605

AN ACT

relating to the forfeiture of proceeds from the commission of certain offenses and to the compensation of crime victims.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 59.01, Code of Criminal Procedure, is amended to read as follows:

Art. 59.01. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Chapters 29, 30, 31, or 32, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code; or

(iii) a felony under Article 350, Revised Statutes;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision *or a crime of violence*; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision *or a crime of violence*.

(3) "*Crime of violence*" has the meaning assigned by Section 3, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes).

(4) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.

(5) [(4)] "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(6) [(5)] "Owner" means a person who claims an equitable or legal ownership interest in property.

(7) "Proceeds" includes income a person accused or convicted of a crime or the person's representative or assignee receives from a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, or live entertainment in which the crime was reenacted.

(8) [(6)] "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority.

SECTION 2. Article 59.05(d), Code of Criminal Procedure, is amended to read as follows:

(d) A final conviction for an underlying offense [~~felony~~] is not a requirement for forfeiture under this chapter. An owner or interest holder may present evidence of a dismissal or acquittal of an underlying offense [~~felony~~] in a forfeiture proceeding, and evidence of an acquittal raises a presumption that the property or interest that is the subject of the hearing is nonforfeitable. This presumption can be rebutted by evidence that the owner or interest holder knew or should have known that the property was contraband.

SECTION 3. Article 59.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) *Except as provided by Subsection (i), all [All] forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:*

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest; and

(2) the balance, if any, after deductions of all storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

SECTION 4. Article 59.06, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, or live entertainment in which a crime is reenacted to the attorney general. The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, "victim" has the meaning assigned by Section 3, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes).

SECTION 5. Section 16, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. Every firm, person, corporation, association, or other legal entity that contracts with a person who is accused or convicted of a crime in this state, or the representative or assignee of that person, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment, ~~or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime~~ shall submit a copy of the contract to the attorney general. The terms of the contract or agreement must be submitted to the attorney general before it can be finally executed. ~~[All money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives shall be paid to the attorney general. The attorney general shall deposit the money in an escrow account.]~~ Any action taken by any person, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Act is void as against public policy.

SECTION 6. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Section 19 to read as follows:

Sec. 19. Notwithstanding any provision of this Act or any other law, the victim of a crime shall be the first one compensated from any revenue collected from the perpetrator of the crime for that purpose.

SECTION 7. Sections 17 and 18, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), are repealed.

SECTION 8. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 9. This Act takes effect September 1, 1993.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1993, by a non-record vote; passed by the Senate on May 26, 1993: Yeas 30, Nays 0.

Approved June 17, 1993.

Effective Sept. 1, 1993.