

CHAPTER 828

S.B. No. 1285

AN ACT

relating to the regulation of litter disposal in certain counties and the forfeiture of certain property used in violations of the Texas Litter Abatement Act.

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

SECTION 1. Subdivisions (1) and (2), Article 59.01, Code of Criminal Procedure, are amended to read as follows:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter *or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(iv) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding.*

(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; or
- (iv) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

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

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

SECTION 2. Article 59.02, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) The forfeiture provisions of this chapter apply to contraband as defined by Article 59.01(2)(B)(iv) of this code only in a municipality with a population of 250,000 or more.

SECTION 3. Section 365.012, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

SECTION 4. Subchapter B, Chapter 365, Health and Safety Code, is amended by adding Section 365.017 to read as follows:

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a) The commissioners court of a county with a population of one million or more may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

SECTION 5. (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 that 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 that purpose.

SECTION 6. This Act takes effect September 1, 1993.

SECTION 7. 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 the Senate on April 29, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 26, 1993, by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.