

CHAPTER 157

S.B. No. 191

AN ACT

relating to the disposition of property involved in a criminal offense.

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

SECTION 1. Article 18.17, Code of Criminal Procedure, is amended to read as follows:

Art. 18.17. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY. (a) All unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 of this code and whiskey, wine and beer, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for disposition [sale] to a person designated by the municipality or the purchasing agent of the [municipality or] county in which the property was seized. If a peace officer of a municipality

seizes the property, the peace officer shall deliver the property to *a person designated by* ~~[the purchasing agent of]~~ the municipality. If any other peace officer seizes the property, the peace officer shall deliver the property to the purchasing agent of the county. If the county has no purchasing agent, then such property shall be *disposed of* ~~[sold]~~ by the sheriff of the county.

(b) The ~~[municipal or]~~ county purchasing agent, *the person designated by the municipality*, or the sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within 90 days ~~[six months]~~ from the date of the notice such property will be *disposed of* ~~[sold]~~ and the proceeds ~~[of such sale]~~, after deducting the reasonable expense of keeping such property and the costs of the *disposition* ~~[sale]~~, placed in the treasury of the municipality or county giving the notice.

(c) If the owner of such property is unknown or if the address of the owner is unknown, then *the person designated by the municipality*, ~~the [municipal or]~~ county purchasing agent, or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the municipality or county a notice containing a *general* description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within 90 days ~~[six months]~~ from the date of the publication such property will be *disposed of* ~~[sold]~~ and the proceeds ~~[of such sale]~~, after deducting the reasonable expense of keeping such property and the costs of the *disposition* ~~[sale]~~, placed in the treasury of the municipality or county *disposing of* ~~[selling]~~ the property.

(d) The sale of any property hereunder shall be preceded by a notice published once at least 14 days ~~[three weeks]~~ prior to the date of such sale in a newspaper of general circulation in the municipality or county where the sale is to take place, stating the *general* description of the property, the names of the owner if known, and the date and place that such sale will occur. If the *person designated by the municipality*, ~~[municipal or]~~ county purchasing agent, or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer such property for sale. *This article does not require disposition by sale.*

(e) The real owner of any property *disposed of* ~~[sold]~~ shall have the right to file a claim to the proceeds ~~[of such sale]~~ with the commissioners court of the county or with the governing body of the municipality in which the *disposition* ~~[sale]~~ took place. *A claim by the real owner must be filed not later than the 30th day after the date of disposition.* If the claim is allowed by the commissioners court or the governing body of the municipality, the municipal or county treasurer shall pay the owner such funds as were paid into the treasury of the municipality or county as proceeds of the *disposition* ~~[sale]~~. If the claim is denied by the commissioners court or the governing body or if said court or body fails to act upon such claim within 90 days, the claimant may sue the municipal or county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such municipality or county for the recovery of the proceeds of the *disposition* ~~[sale]~~.

(f) For the purposes of this article:

(1) "*Person designated by a municipality*" means an officer or employee of a municipality who is designated by the municipality to be primarily responsible for the disposition of property under this article.

(2) "*Property held as evidence*" means property related to a charge that has been filed or to a matter that is being investigated for the filing of a charge, ~~"purchasing agent of the municipality" means the person who is primarily responsible for making purchases on behalf of a municipality.~~

(g) If the provisions of this section have been met and the property is scheduled for *disposition* ~~[sale]~~, the municipal or county law enforcement agency that originally seized the property may request and have the property converted to agency use. The agency at any time may transfer the property to another municipal or county law enforcement agency for the use of that agency. The agency last using the property shall return the property to the

person designated by the municipality, county purchasing agent, or sheriff, as the case may be, for disposition [sale] when the agency has completed the intended use of the property.

*(h) If the abandoned or unclaimed personal property is money, the person designated by the municipality or county purchasing agent, or the sheriff of the county, as appropriate, may, after giving notice under Subsection (b) or (c) of this article, deposit the money in the treasury of the municipality or county giving notice without conducting the sale as required by Subsection (d) of this article.*

SECTION 2. Subsections (a) and (b), Article 18.18, Code of Criminal Procedure, are amended to read as follows:

(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material be destroyed or forfeited to the state. *Not later than the 30th day after [Following] the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction on its own motion, on the motion of the prosecuting attorney in the case, or on the motion of the law enforcement agency initiating the complaint on notice to the prosecuting attorney in the case if the prosecutor fails to move for the order shall order that the prohibited weapon be destroyed or forfeited to the [state or to a political subdivision of the state for use by] law enforcement agency that initiated the complaint. If the court fails to enter the order within the time required by this subsection, any magistrate in the county in which the offense occurred may enter the order [agencies].* Following the final conviction of a person for an offense involving dog fighting, the court entering the judgment of conviction shall order that any dog-fighting equipment be destroyed or forfeited to the state. Destruction of dogs, if necessary, must be carried out by a veterinarian licensed in this state or, if one is not available, by trained personnel of a humane society or an animal shelter. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, criminal instrument, or dog-fighting equipment to show cause why the property seized should not be destroyed or the proceeds forfeited. *The magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, shall order the weapon destroyed or forfeited to the law enforcement agency seizing the weapon, unless a person shows cause as to why the prohibited weapon should not be destroyed or forfeited. A law enforcement agency shall make a motion under this section in a timely manner after the time at which the agency is informed in writing by the attorney representing the state that no prosecution will arise from the seizure.*

SECTION 3. Subsection (d), Article 18.19, Code of Criminal Procedure, is amended to read as follows:

(d) A person *either convicted or receiving deferred adjudication* under Penal Code Chapter 46 is entitled to the weapon seized upon request to the law enforcement agency holding the weapon. However, the court entering the judgment of conviction shall order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon if:

- (1) the person does not request the weapon within 60 days after the date of the judgment of conviction;
- (2) the person has been previously convicted under Penal Code Chapter 46; [or]
- (3) the weapon is one defined as a prohibited weapon under Penal Code Chapter 46; or

*(4) the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.*

SECTION 4. This Act takes effect September 1, 1993, and applies to all property involved in a criminal offense that is in the possession of a law enforcement agency on or after that date.

SECTION 5. 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 March 11, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 7, 1993, by a viva-voce vote; passed the House, with amendments, on May 4, 1993, by a non-record vote.

Approved May 16, 1993.

Effective Sept. 1, 1993.