

## CHAPTER 980

## S.B. No. 1115

## AN ACT

relating to seizure and disposition of certain weapons seized in connection with an offense.

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

SECTION 1. Subsection (a), Article 18.18, Code of Criminal Procedure, is 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, ~~[or for an offense involving a prohibited weapon,]~~ the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material ~~[or weapon]~~ be destroyed or forfeited to the state. *Following the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction 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 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.

SECTION 2. Article 18.19, Code of Criminal Procedure, is amended to read as follows:

Art. 18.19. DISPOSITION OF *SEIZED* ~~[CERTAIN]~~ WEAPONS. (a) Weapons seized in connection with an offense involving the use of a ~~[deadly]~~ weapon or an offense under Penal Code Chapter 46 shall be held by the law enforcement agency making the seizure, subject to the following provisions, unless:

(1) the weapon is a prohibited weapon identified in Penal Code Chapter 46, in which event Article 18.18 of this code applies; or

(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall notify in writing the person found in possession that he is entitled to the weapon upon request to the court in which he was convicted. If the weapon is not requested within 60 days after notification, the magistrate *shall* ~~[may]~~ order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon.

(d) A person convicted 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* ~~[may]~~ 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 ~~[his release from jail or]~~ the date of the judgment of conviction ~~[if he was not imprisoned]; [or]~~

(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.

(e) If the person found in possession of a weapon is convicted of an offense involving the use of *the weapon* [~~a deadly weapon or under Penal Code Chapter 46~~], the court entering judgment of conviction *shall* [~~may~~] order destruction of the weapon or forfeiture to the state for use by the law enforcement agency holding the weapon.

SECTION 3. This Act takes effect September 1, 1987, and the change in law made by this Act only applies to the disposition of weapons seized on or after the effective date of this Act. The disposition of a weapon seized before the effective date of this Act is covered by the law in effect when the weapon was seized, and the former law is continued in effect for this purpose.

SECTION 4. 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 May 12, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.