SUBJECT: Forfeiture of property related to crimes and held by financial institutions

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 6 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Menendez

0 nays

3 absent — Marchant, Pitts, Wise

WITNESSES: For — Clifford C. Herberg, Jr., Bexar County District Attorney's Office; Margaret Harris, Harris County District Attorney; Michael Bernard, District Attorney Susan Reed, Bexar County, Texas; Karen Neeley, Independent Bankers Association of Texas; John Heasley, Texas Bankers Association; E. Powell Thompson, James S. Moore, Rick Hightower, American Bank of Commerce; Kenneth R. Hendrix; Joyce Hendrix

Against — None

On — Randall S. James, Texas Department of Banking; Kevin Hamby, Texas Credit Union League; *Registered but did not testify:* Sarah Shirley, Texas Department of Banking

BACKGROUND: Code of Criminal Procedure, ch. 59 details the handling of property related to criminal offenses and under some circumstances makes it subject to forfeiture. An owner or interest holder's interest may not be forfeited if they prove that they acquired and perfected an interest in the property before or during the crime or had acquired an ownership interest, security interest, or lien interest before the prosecutor filed notice of the state's interest in the property *and* that at the time they acquired the interest they did not know or should not reasonably have known of the crime or that it was likely to occur before acquiring and perfecting their interest.

DIGEST: CSHB 1522 would establish preponderance of the evidence as the standard for owners or interest holders of contraband property to prove that they had acquired and perfected the interest in the property for it not to be forfeited.

CSHB 1522 also would establish a new option for owners or interest holders to demonstrate that contraband property should not be forfeited. They could prove that after a crime had occurred, but before property had been seized, that they were, at the time the interest was acquired, an owner or interest holder for value and did not have reasonable cause to believe that the property was contraband and did not purposefully avoid learning that it was contraband.

If property were seized, owners and interest holder's rights would remain effect while forfeiture proceedings were pending as if their property had remained with the owner or interest holder.

Peace officers would not be able to use search warrants to seize accounts and assets at financial institutions as they can for all other types of property subject to forfeiture. Immediately upon being served a seizure warrant, the institution would have to segregate the account or assets and provide evidence of the terms and amount of the account or a detailed inventory of the assets to the peace officer serving the warrant. A transaction involving an account or assets other than the deposit or reinvestment of interest, dividends, or similar payments would not be authorized unless approved by a court.

When seizure warrants were served on a financial institution for property consisting of a depository account or assets, the institution could pay an account or tender assets held as security for an obligation owed at the time of the warrant or could transfer the depository account or assets to a segregated interest-bearing account with the prosecutor's name as trustee until the time has expired for an appeal of a court decision about the forfeiture of the assets.

If an institution failed to take either of these actions and as a result could not comply with a court's forfeiture order, courts would be required to order the institution and its culpable officers, agents, or employees to pay actual damages, attorney's fees, and court costs incurred because of the failure and could find the culpable officials in contempt of court. Institutions that complied with the CSHB 1522's requirements would not be liable for damages.

Before taking action implicating a potentially culpable officer or director of an institution, prosecutors would have to notify the banking commissioner, who would have to notify state or federal regulators. Regulators would have to keep confidential any information they received from prosecutors and would commit an offense punishable by a jail term of up to 30 days and a fine of up to $500, or both, if they disclosed confidential information.

CSHB 1522 would not impair the right of the state to obtain possession of physical evidence or to seize a depository account or other assets for purposes other than forfeiture.

Prosecutors would be able to disclose information to state and federal financial institution regulators, including grand jury information or otherwise confidential information, about actions involving depository accounts or other assets held as security for a loan. Regulators would have to keep confidential information they received from prosecutors, and it would be an offense punishable by a jail term of up to 30 days and a fine of up to $500, or both, to disclose confidential information.

When forfeiture proceedings began, prosecutors would have to attach to the peace officers' statement used when contraband was seized a statement of the terms and amount of the depository account or the inventory of assets provided by the financial institution to the peace officer executing the warrant.

Peace officers who intentionally subjected another to a seizure that the officer knew was unlawful could be criminally liable for the Penal Code offense of official oppression or another law.

CSHB 1522 would take effect September 1, 2001, and would apply only to seizures occurring after that date.

NOTES:

The committee substitute made numerous changes in the original bill, including adding provisions that prohibit the forfeiture of property under certain circumstance, stating that peace officers could be liable under the official oppression statute for subjecting another to an unlawful seizure, allowing institutions to pay accounts or tender assets or transfer accounts or assets to interest-bearing accounts upon being served and to immediately

segregate the account or assets, to require, instead of authorize, courts to order institution officials to pay damages, and to add penalties for disclosing confidential information.

The companion bill, SB 626 by Duncan, passed the Senate by voice vote on March 21, and was reported favorably, as substituted by the House Financial Institutions Committee on April 5, making it eligible to be considered in lieu of HB 1522.