SUBJECT: Forfeiture of contraband property held by financial institutions

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Menendez, Wise

0 nays

2 absent — Marchant, Pitts

SENATE VOTE: On final passage, (March 21) — voice vote

WITNESSES: For — John M. Heasley, Texas Bankers Association; *Registered but did not testify:* Karen Neeley, Independent Bankers Association of Texas; Steve Scurlock, IBAT

Against — None

BACKGROUND: Code of Criminal Procedure, ch. 59 governs the handling of property related to criminal offenses (contraband property) and makes it subject to forfeiture under some circumstances. An owner's 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, security, 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: CSSB 626 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 to avoid forfeiture.

The bill 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 the property had been seized, 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 holders' rights would remain in effect while forfeiture proceedings were pending as if the property had remained with the owner or interest holder.

Peace officers could not 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 a seizure warrant was served on a financial institution for property consisting of a depository account or assets, the institution could pay an account or could 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 had 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, the court would have 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 the court could find the culpable officials in contempt of court. Institutions that complied with the bill's requirements would not be liable for damages.

CSSB 626 would not impair the state's right to obtain possession of physical evidence or to seize a depository account or other assets for purposes other than forfeiture.

Before taking action implicating a potentially culpable officer or director of an institution, a prosecutor would have to notify the banking commissioner, who would have to notify the appropriate state or federal regulator.

Regulators would have to keep confidential any information they received from prosecutors, and they 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.

Prosecutors could 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 this information confidential and would commit an offense punishable by a jail term of up to 30 days and a fine of up to $500, or both, by disclosing confidential information.

CSSB 626 would take effect September 1, 2001, and would apply only to seizures occurring after that date.

SUPPORTERS SAY:

CSSB 626 would revise the current laws on forfeiture of criminal assets to make them fairer to banks and other lending institutions that are used by criminals but are themselves innocent of any crime. In general, under current law, banks have to prove that they perfected an interest in property before a crime and did not know that the crime was likely to occur if they are to be exempt from the criminal-asset forfeiture laws.

Problems have occurred when criminals have deposited money in banks that was obtained illegally and prosecutors later have tried to take possession of the asset. For example, a criminal used money swindled from elderly Texans to buy certificates of deposit that he used for collateral for loans for property such as cars. Prosecutors demanded that the assets be relinquished under the asset-forfeiture laws because the funds were placed in financial institutions after the fraud had been committed. In this case, the institutions had no knowledge of the wrongdoing.

CSSB 626 would help solve this problem by allowing financial institutions to prove that, at the time they acquired interest in an asset, they did not have reasonable cause to believe that it was contraband. The bill would enable banks to prove to prosecutors and judges, if necessary, that an asset should not be considered contraband, rather than automatically having to relinquish those assets.

The bill also would establish uniform procedures for paying or segregating assets until it was clear whether they were contraband. This would solve another problem that can arise if prosecutors demand that assets be withdrawn immediately, possibly jeopardizing an institution's liquidity.

CSSB 626 would ensure that institutions would follow these guidelines by allowing an institution's officials to be held liable. A court would make this decision, giving officials adequate opportunity to defend themselves, if necessary.

OPPONENTS SAY:

No apparent opposition.

NOTES:

Among other changes to the Senate engrossed version, the committee substitute deleted a provision that would have allowed peace officers who intentionally subjected another person to a seizure that the officer knew was unlawful to be held criminally liable for the Penal Code offense of official oppression or another law. The substitute also changed a reference in the forfeiture statues to cite correctly Health and Safety Code provisions for illegal dumping in counties with populations of 250,000 or more.

The companion bill, HB 1522 by Averitt, was placed on the House's General State Calendar for May 7.