

- SUBJECT:** Procedures for forfeiture of vehicles of repeat intoxication offenders
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Keel, Riddle, Denny, Pena, Raymond, Reyna
0 nays
3 absent — Escobar, Hodge, P. Moreno
- WITNESSES:** For — Clifford C. Herberg, Bexar County District Attorney's Office;
Karen L. Morris, Harris County District Attorney's Office
Against — None
- BACKGROUND:** Transportation Code, ch. 704, provides rules for the forfeiture of motor vehicles owned by certain offenders convicted of repeat driving while intoxicated or other intoxication offenses. In general, it makes a vehicle subject to forfeiture under two circumstances:
- if it is owned and operated at the time of certain intoxication offenses by someone who when arrested was serving probation for specified intoxication offense; or
 - if the person has three previous convictions for specified intoxication offenses, including driving while intoxicated.
- Code of Criminal Procedure, ch. 59, establishes procedures and rules for the forfeiture of contraband.
- Penal Code, ch. 49, includes several intoxication and alcoholic beverage offenses, such as driving while intoxicated and intoxication manslaughter.
- DIGEST:** HB 2275 would authorize, under ch. 59 of the Code of Criminal Procedure, the forfeiture of property used in the commission of third-degree or state jail felonies involving intoxication and alcoholic beverage offenses if the defendant had three previous convictions of such offenses under Penal Code, ch. 49.

The bill would repeal Chapter 704 of the Transportation Code.

HB 2275 would take effect September 1, 2005, and apply to the forfeiture of contraband used in offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2275 would move the state's laws on forfeiting vehicles of repeat DWI and other alcohol offenders to the general statutes on forfeiture of contraband used in criminal offenses. This would allow the laws to be used more successfully and give innocent people who may have an interest in the vehicle of an offender the protections afforded by the Code of Criminal Procedure. HB 2275 would not change Texas' well established policy allowing the forfeiture of vehicles for certain crimes.

The procedures under Transportation Code, ch. 704, for forfeiting vehicles of those who commit repeat DWI or other alcohol offenses are unwieldy and difficult to use. For example, Chapter 704 requires some procedures to occur in civil courts and some in criminal courts. Chapter 704 also provides no protections for innocent lien holders or family members of the owners of the vehicles. The problems with Chapter 704 are so serious that few, if any, vehicles are forfeited under the statute.

HB 2275 would move the authorization for these forfeitures to the more general provisions on forfeiture of contraband in the Code of Criminal Procedure, ch. 59. This would allow judges, prosecutors, and defendants to operate under standard, well known, and successful procedures used when other property is forfeited. These procedures are used for vehicles forfeited for involvement in criminal offenses, such as evading arrest or drug crimes.

Placing authorization for these forfeitures in Chapter 59 of the Code of Criminal Procedure also would give innocent family members of offenders, lien holders, or other people not involved in the crime the protections of the well established procedures for challenging the forfeiture as an innocent party. These procedures help innocent people who may need a vehicle for school or work regain possession of a vehicle subject to forfeiture and help lien holders protect their property interest in the vehicle. These procedures are not burdensome and can be as simple as signing an affidavit for the prosecutor.

By facilitating the forfeiture of the vehicles of drunk drivers, HB 2275 would add to the state's tools for deterring and punishing these offenses.

The offenders who no longer would qualify for forfeiture of their vehicles under HB 2275 are few and they are not now forfeiting their vehicles because of the problems with current law. These offenders still would be subject to the full range of penalties in Texas law, such as incarceration, fines, and license revocation. HB 2275 would allow Texas to focus its efforts on the most egregious offenders, those with at least three offenses.

OPPONENTS
SAY:

HB 2275 would narrow the reach of the forfeiture statute by eliminating the authority of prosecutors to seek forfeiture of vehicles by some people who commit alcohol offenses while on probation for other alcohol-related offenses. These are repeat offenders who also should be subject to the range of sanctions allowed for other repeat offenders.

OTHER
OPPONENTS
SAY:

HB 2275 would continue an unfair and unproductive policy of taking away automobiles and other vehicle from people who need treatment and recovery. Under the forfeiture procedures in Chapter 59 of the Code of Criminal Procedure, family members of offenders who may need a vehicle for school or work most likely would have to go to jump through procedural hoops to keep the vehicle from being forfeited. This policy could be unproductive because the potential to have a vehicle seized most likely is little deterrent for those who have committed four offenses.

NOTES:

The companion bill, SB 992 by Ellis, has been referred to the Senate Criminal Justice Committee.