

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 626
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Jurisprudence
3/13/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Under current Texas law, the holder of a bona fide security interest in property other than real property may lose that lien or security to forfeiture even though the lienholder is innocent, not knowing or having reason to suspect that the property constitutes contraband. C.S.S.B. 626 addresses several problems that may arise in the seizure of accounts held at banks and assets that have been pledged to secure loans made by banks.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 59.01, Code of Criminal Procedure, by adding Subdivisions (9)-(11), to define “depository account,” “primary state or federal financial institution regulator,” and “regulated financial institution.”

SECTION 2. Amends Articles 59.02(c)-(g), Code of Criminal Procedure, to prohibit an owner or interest holder’s interest in property from being forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that certain specific conditions were met, including that the owner or interest holder, after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder was, at the time that the interest in the property was acquired, an owner or interest holder for value, and was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband. Provides that if property is seized from the possession of an owner or interest holder who asserts an ownership interest, security interest, or lien interest in the property under applicable law, notwithstanding any other law, the owner or interest holder’s rights remain in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the owner or interest holder.

SECTION 3. Amends Article 59.03, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (d), to authorize property subject to forfeiture under this chapter, other than property described by Article 59.12 of this code, to be seized by any peace officer under authority of a search warrant. Authorizes a peace officer who intentionally subjects another to seizure that the peace officer knows is unlawful to be held criminally liable under Section 39.03 (Official Oppression), Penal Code, or any other law of this state.

SECTION 4. Amends Article 59.04(b), Code of Criminal Procedure, to require the attorney representing the state to attach to the notice the peace officer’s sworn statement under Article 59.03 of this code or, if the property has been seized under Article 59.12(b), the statement of the terms and amount of the depository account or inventory of assets provided by the regulated financial institution to the peace officer executing the warrant in the manner described by Article 59.12(b).

SECTION 5. Amends Chapter 59, Code of Criminal Procedure, by adding Articles 59.12-59.14, as follows:

Art. 59.12. SEIZURE OF ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) Provides that this article applies to property consisting of a depository account or assets in a regulated financial institution.

(b) Authorizes a regulated financial institution, at the time a seizure warrant issued under Chapter 18 is served on the institution, to take either of two enumerated actions.

(c) Requires the regulated financial institution, immediately on service of the seizure warrant, to take action as necessary to segregate the account or assets and to provide evidence, certified by an officer of the institution, of the terms and amount of the account or a detailed inventory of assets to the peace officer serving the warrant. Provides that a transaction involving an account or assets, other than the deposit or reinvestment of interest and except as otherwise provided by this article, or other normally recurring payments on the account or assets that do not involve distribution of proceeds to the owner is not authorized unless approved by the court that issued the seizure warrant or, if a forfeiture action has been instituted, the court in which that action is pending.

(d) Provides that any accrual to the value of the account or assets during the pendency of the forfeiture proceedings is subject to the procedures for the disbursement of interest under Article 59.08.

(e) Requires the court, if the regulated financial institution fails to release the depository account or assets to a peace officer pursuant to a seizure warrant or transfer the account or assets as required by Subsection (b), and as a result cannot comply with the court's forfeiture order, to order the regulated financial institution and its culpable officers, agents, or employees to pay actual damages, attorney's fees, and court costs incurred as a result of the institution's failure to comply, and authorizes the court to find the regulated financial institution and its culpable officers, agents, or employees in contempt.

(f) Provides that a regulated financial institution that complies with this article is not liable in damages because of the compliance.

(g) Provides that this article does 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 under this chapter, or waive criminal remedies available under other law.

Art. 59.13. DISCLOSURE OF INFORMATION RELATING TO ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) Authorizes the attorney representing the state to disclose information to the primary state or federal financial institution regulator, including grand jury information or otherwise confidential information, relating to any action contemplated or brought under this chapter that involves property consisting of a depository account in a regulated financial institution or assets held by a regulated financial institution as security for an obligation owed to a regulated financial institution. Provides that an attorney representing the state who discloses information as permitted by this subsection is not subject to contempt under Article 20.02 for that disclosure.

(b) Requires a primary state or federal financial institution regulator to keep confidential any information provided by the attorney representing the state under Subsection (a). Provides that the sharing of information under Subsection (a) by a representative of the state is not considered a waiver by the state of any privilege or claim of confidentiality.

(c) Provides that a regulator described by Subsection (b) commits an offense if the regulator knowingly discloses information in violation of this article. Provides that an offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

Art. 59.14. NOTICE TO PRIMARY STATE AND FEDERAL FINANCIAL INSTITUTION REGULATORS. (a) Requires the attorney representing the state, before taking any action under this chapter that implicates a potentially culpable officer or director of a regulated financial institution, to notify the banking commissioner, who is required to then notify the appropriate state or federal financial institution regulator.

(b) Requires a state or federal financial institution regulator to keep confidential any information provided by the attorney representing the state under Subsection (a).

(c) Provides that a regulator described by Subsection (b) commits an offense if the regulator knowingly discloses information in violation of this article. Provides that an offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

(d) Provides that the provision of notice under Subsection (a) is not considered a waiver of any privilege or claim of confidentiality.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from the original by amending the relating clause to include provisions for penalties.

SECTION 1. No change.

SECTION 2. Differs from the original by amending provisions pertaining to the prohibition, under certain conditions, of interest in property being forfeited. Amends previously proposed language regarding a lien interest during the pendency of proceedings.

SECTION 3. Differs from the original by adding Subsection (d) pertaining to a peace officer's potential criminal liability under Section 39.03 (Official Oppression), Penal Code.

SECTION 4. Differs from the original to replace a reference to certain documents received by the attorney representing the state with a reference to those documents received by the peace officer executing the warrant in a certain manner.

SECTION 5. Differs from the original by amending provisions pertaining to the procedures for seizure of accounts and assets at regulated financial institutions. Deletes previously proposed Subsection (d) pertaining to liquidation of assets without court action. Adds provisions pertaining to an attorney representing the state who discloses certain information not being subject to contempt for that disclosure. Adds provisions providing for an offense by a regulator if the regulator knowingly discloses information in violation of this article. Amends provisions pertaining to notification before certain actions are taken. Deletes previously proposed Subsection (b) pertaining to a limitation of the effect of an action. Adds provisions providing for an offense by a regulator knowingly discloses information in violation of this article.

Deletes previously proposed SECTION 6 which amended Section 34.03, Penal Code.

Redesignates previously proposed SECTIONS 7 and 8 as SECTION 6 and 7, as follows:

SECTION 6. Differs from the original by making the entire Act prospective.

SECTION 7. Effective date: No change.