

By: Pena

H.B. No. 1618

A BILL TO BE ENTITLED

AN ACT

relating to the civil and criminal prosecution of racketeering;  
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is  
amended by adding Chapter 140 to read as follows:

CHAPTER 140. CIVIL RACKETEERING

Sec. 140.001. DEFINITIONS. In this chapter:

(1) "Acquire" means an act:

(A) to possess property;

(B) to prevent another person from using that  
person's property or to dictate the terms of use of the property;

(C) to bring about or receive the transfer of any  
interest in property, whether to oneself or to another person; or

(D) to secure performance of a service.

(2) "Enterprise" means a corporation, partnership,  
association, labor union, or other legal entity, or any group of  
persons associated in fact although not a legal entity.

(3) "Gain" means a benefit, an interest, or property  
of any kind, without reduction for expenses incurred in acquiring  
or maintaining the benefit, interest, or property or incurred for  
any other reason.

(4) "Proceeds" means an interest in property of any  
kind acquired or derived from, produced or realized through, or

1 caused by, directly or indirectly, an act or omission, and any  
2 fruits of the interest, in whatever form.

3 (5) "Racketeering" or "racketeering offense" means an  
4 act described by Section 140.002.

5 Sec. 140.002. CIVIL RACKETEERING. A person or enterprise  
6 commits racketeering if, for financial gain, the person or  
7 enterprise commits an offense described in the following list,  
8 including any preparatory or completed offense, that is chargeable  
9 or indictable under the laws of this state or another state, federal  
10 law, the laws of a foreign country, or the Uniform Code of Military  
11 Justice and that is punishable by imprisonment for more than one  
12 year under the jurisdiction in which the violation occurred:

13 (1) criminal homicide as described by Chapter 19,  
14 Penal Code;

15 (2) kidnapping or unlawful restraint as described by  
16 Chapter 20, Penal Code;

17 (3) trafficking of persons as described by Chapter  
18 20A, Penal Code;

19 (4) a sexual offense as described by Chapter 21, Penal  
20 Code;

21 (5) an assaultive offense as described by Chapter 22,  
22 Penal Code;

23 (6) arson, criminal mischief, or other property damage  
24 or destruction as described by Chapter 28, Penal Code;

25 (7) robbery as described by Chapter 29, Penal Code;

26 (8) theft as described by Chapter 31, Penal Code;

27 (9) fraud as described by Chapter 32, Penal Code;

1           (10) a computer crime as described by Chapter 33,  
2 Penal Code;  
3           (11) money laundering as described by Chapter 34,  
4 Penal Code;  
5           (12) bribery and corrupt influence as described by  
6 Chapter 36, Penal Code;  
7           (13) prostitution or obscenity as described by Chapter  
8 43, Penal Code;  
9           (14) trafficking of explosive weapons, firearms, or  
10 components of explosives as described by Chapter 46, Penal Code;  
11           (15) gambling as described by Chapter 47, Penal Code;  
12           (16) engaging in organized criminal activity as  
13 described by Section 71.02, Penal Code;  
14           (17) manufacture or delivery of a controlled substance  
15 or dangerous drug as described by Chapter 481 or 483, Health and  
16 Safety Code; and  
17           (18) intentional or reckless fraud in the purchase or  
18 sale of securities as described by The Securities Act (Article  
19 581-1 et seq., Vernon's Texas Civil Statutes).  
20       Sec. 140.003. SUIT TO ABATE RACKETEERING. (a) The  
21 attorney general may bring suit in the name of the state against any  
22 person or enterprise for racketeering under this chapter and may  
23 seek to recover civil penalties, costs of suit, including  
24 reasonable attorney's fees, and any appropriate injunctive relief.  
25       (b) This chapter does not authorize suit by a person or  
26 enterprise that sustains injury as a result of racketeering.  
27       (c) A suit under this chapter must be brought in a district

1 court in a county in which all or part of the alleged racketeering  
2 offense giving rise to the suit occurred, or in a district court in  
3 Travis County.

4 Sec. 140.004. ACTION IN REM. (a) In addition to bringing  
5 suit against a person or enterprise under Section 140.003, the  
6 attorney general may pursue an in rem action under Chapter 59, Code  
7 of Criminal Procedure, for forfeiture of:

8 (1) any property or interest in property acquired or  
9 maintained by the person or enterprise in violation of Chapter 34A,  
10 Penal Code, or Section 71.02(a)(14), Penal Code;

11 (2) any interest, security, claim, or any other form  
12 of property, office, title, license, or contractual right that  
13 affords a source of influence over any enterprise that conducted or  
14 participated in conduct in violation of Chapter 34A, Penal Code, or  
15 Section 71.02(a)(14), Penal Code; and

16 (3) all proceeds traceable to a racketeering offense  
17 and all money, negotiable instruments, securities, and other  
18 property used or intended to be used in any manner, or in any part,  
19 to facilitate the commission of the offense.

20 (b) An in rem forfeiture action under this chapter must be  
21 brought in a district court in a county in which all or part of the  
22 alleged racketeering offense giving rise to the action occurred, or  
23 in a district court in Travis County. This provision supersedes any  
24 conflicting venue provision, including venue provisions under  
25 Chapter 59, Code of Criminal Procedure.

26 Sec. 140.005. INJUNCTIVE RELIEF; OTHER REMEDIES. (a) A  
27 court in which a proceeding is brought under this chapter may

prevent, restrain, and remedy racketeering by issuing appropriate orders. The orders may include, but are not limited to, a temporary restraining order, a temporary or permanent injunction, the requirement of a satisfactory performance bond, the creation of a receivership, and the enforcement of a constructive trust in connection with any property or other interest, including property or interest subject to seizure and forfeiture under Chapter 59, Code of Criminal Procedure, or other remedies or restraints the court considers proper.

(b) Following a final determination of liability under this chapter, the court may issue an order that includes, but is not limited to:

(1) requiring any person to divest any interest, direct or indirect, in any enterprise;

(2) imposing reasonable restrictions on the future activities or investments of any person that affect the laws of this state, including prohibiting any person from engaging in the type of endeavor or enterprise that gave rise to the racketeering offense, to the extent the constitutions of the United States and this state permit;

(3) requiring the dissolution or reorganization of any enterprise involved in the suit;

(4) ordering the recovery of reasonable fees, expenses, and costs incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, attorney's fees, witness fees, and deposition fees;

1           (5) ordering payment to the general revenue fund of  
2 the state treasury of an amount equal to:

3                   (A) the gain acquired or maintained through  
4 racketeering; or

5                   (B) the amount for which any person is liable  
6 under this chapter;

7           (6) ordering payment to the state of a civil penalty by  
8 a person or enterprise found liable for racketeering, in an amount  
9 not to exceed \$250,000 for each separately alleged and proven  
10 racketeering act; and

11           (7) ordering payment of damages to the state for  
12 racketeering shown to have materially damaged the state.

13           (c) In determining the amount of a civil penalty ordered  
14 under Subsection (b)(6), the court shall consider:

15                   (1) the seriousness of the racketeering offense and  
16 the consequent harm, financial or personal, to the state and to any  
17 identified victim or victims; and

18                   (2) the duration of the racketeering activity.

19           (d) In determining the amount of damages ordered under  
20 Subsection (b)(7), the court shall consider:

21                   (1) loss of tax revenue to the state;

22                   (2) unpaid state unemployment taxes;

23                   (3) unpaid state licensing and regulatory fees;

24                   (4) medical and counseling costs incurred by the state  
25 on behalf of any victim of the racketeering; and

26                   (5) any other material damage caused to the state by  
27 the racketeering.

1       (e) Remedies and awards ordered by a court under this  
2 chapter, including costs and reasonable attorney's fees, may be  
3 assessed against and paid from money or property awarded under a  
4 forfeiture action under Chapter 59, Code of Criminal Procedure, or  
5 against property alleged to have been contraband, as defined by  
6 Article 59.01, Code of Criminal Procedure, from the underlying  
7 activity.

8       (f) This chapter is not intended to provide the exclusive  
9 remedy for unlawful activity addressed by this chapter. A  
10 proceeding under this chapter may be in addition to or in the  
11 alternative of any other action, civil or criminal, available under  
12 the laws of this state.

13       Sec. 140.006. CONSTRUCTIVE TRUST. (a) A person or  
14 enterprise that, through racketeering, acquires any property or  
15 prevents another person from receiving property that by law is  
16 required to be transferred or paid to that person is an involuntary  
17 trustee. An involuntary trustee or any other person or enterprise,  
18 except a bona fide purchaser for value as described under  
19 Subsection (b), holds the property and its proceeds in constructive  
20 trust for the benefit of persons entitled to remedies under this  
21 chapter.

22       (b) A bona fide purchaser for value who was reasonably  
23 without notice of unlawful conduct and who did not knowingly take  
24 part in an illegal transaction is not an involuntary trustee under  
25 Subsection (a) and is not subject to a constructive trust imposed  
26 under this chapter.

27       Sec. 140.007. EVIDENCE. (a) In a proceeding under this

1 chapter, the state bears the burden of proof by a preponderance of  
2 the evidence.

3 (b) A person convicted in a criminal proceeding is  
4 precluded, in a proceeding under this chapter, from subsequently  
5 denying the essential allegations of the criminal offense of which  
6 the person was convicted. For purposes of this subsection, a  
7 verdict or a plea, including a no contest plea, is considered a  
8 conviction.

9 (c) An individual may not be held liable in damages or for  
10 other relief under this chapter based on the conduct of another  
11 unless the finder of fact, by a preponderance of the evidence, finds  
12 that the individual authorized, requested, commanded, participated  
13 in, ratified, or recklessly tolerated the unlawful conduct of the  
14 other.

15 (d) An enterprise may not be held liable in damages or for  
16 other relief under this chapter based on the conduct of an agent  
17 unless the finder of fact, by a preponderance of the evidence, finds  
18 that a director or high managerial agent performed, authorized,  
19 requested, commanded, participated in, ratified, or recklessly  
20 tolerated the unlawful conduct of the agent.

21 (e) A bank or savings and loan association insured by the  
22 Federal Deposit Insurance Corporation or a credit union insured by  
23 the National Credit Union Administration may not be held liable in  
24 damages or for other relief under this chapter for conduct  
25 proscribed by Chapter 34, Penal Code, based on acquiring or  
26 maintaining an interest in or transporting, transacting,  
27 transferring, or receiving funds belonging to a person other than

1 the person presenting the funds, unless the finder of fact, by a  
2 preponderance of the evidence, finds that the person or agent  
3 acquiring or maintaining an interest in or transporting,  
4 transacting, transferring, or receiving the funds on behalf of  
5 another did so knowing that the funds were the proceeds of an  
6 offense and that a director or high managerial agent performed,  
7 authorized, requested, commanded, participated in, ratified, or  
8 recklessly tolerated the unlawful conduct of the person.

9 Sec. 140.008. LIMITATIONS PERIOD. No proceeding may be  
10 commenced under this chapter unless the proceeding is filed not  
11 later than seven years after actual discovery of the racketeering  
12 offense. This provision supersedes any conflicting limitations  
13 provision creating a shorter period.

14 Sec. 140.009. SPECIAL DOCKETING PROCEDURES. The attorney  
15 general may file with the clerk of the district court in which a  
16 proceeding is brought under this chapter a certificate stating that  
17 the case is of special public importance. The clerk must  
18 immediately furnish a copy of the certificate to the administrative  
19 judge of the district court of the county in which the proceeding is  
20 pending. On receiving the copy of the certificate, the  
21 administrative judge shall immediately designate a judge to hear  
22 and determine the proceeding. The designated judge shall promptly  
23 assign the proceeding for hearing, participate in hearings, make  
24 determinations, and cause the action to be expedited.

25 SECTION 2. Title 7, Penal Code, is amended by adding Chapter  
26 34A to read as follows:

1                    CHAPTER 34A. RACKETEERING

2            Sec. 34A.001. DEFINITIONS. In this chapter, "enterprise"  
3 and "racketeering" have the meanings assigned by Section 140.001,  
4 Civil Practice and Remedies Code.

5            Sec. 34A.002. ILLEGAL CONTROL OR CONDUCT OF ENTERPRISE.

6    (a) A person commits an offense if the person knowingly:

7                    (1) through racketeering or its proceeds, acquires or  
8 maintains, by investment or otherwise, control of an enterprise;

9                    (2) is employed by or associated with an enterprise  
10 and conducts any of the enterprise's affairs through racketeering;

11                    (3) participates directly or indirectly in the conduct  
12 of an enterprise that the person knows is being conducted, wholly or  
13 partially, through racketeering; or

14                    (4) hires, engages, or uses a minor for any conduct  
15 preparatory to or in completion of an offense under Subdivision  
16 (1), (2), or (3).

17            (b) An offense under Subsection (a)(1), (2), or (3) is a  
18 felony of the third degree. An offense under Subsection (a)(4) is a  
19 felony of the second degree.

20            SECTION 3. Subsection (a), Section 71.02, Penal Code, is  
21 amended to read as follows:

22            (a) A person commits an offense if, with the intent to  
23 establish, maintain, or participate in a combination or in the  
24 profits of a combination or as a member of a criminal street gang,  
25 the person ~~he~~ commits or conspires to commit one or more of the  
26 following:

27                    (1) murder, capital murder, arson, aggravated

1 robbery, robbery, burglary, theft, aggravated kidnapping,  
2 kidnapping, aggravated assault, aggravated sexual assault, sexual  
3 assault, forgery, deadly conduct, assault punishable as a Class A  
4 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
5 motor vehicle;

6 (2) any gambling offense punishable as a Class A  
7 misdemeanor;

8 (3) promotion of prostitution, aggravated promotion  
9 of prostitution, or compelling prostitution;

10 (4) unlawful manufacture, transportation, repair, or  
11 sale of firearms or prohibited weapons;

12 (5) unlawful manufacture, delivery, dispensation, or  
13 distribution of a controlled substance or dangerous drug, or  
14 unlawful possession of a controlled substance or dangerous drug  
15 through forgery, fraud, misrepresentation, or deception;

16 (6) any unlawful wholesale promotion or possession of  
17 any obscene material or obscene device with the intent to wholesale  
18 promote the same;

19 (7) any offense under Subchapter B, Chapter 43,  
20 depicting or involving conduct by or directed toward a child  
21 younger than 18 years of age;

22 (8) any felony offense under Chapter 32;

23 (9) any offense under Chapter 36;

24 (10) any offense under Chapter 34 or 35;

25 (11) any offense under Section 37.11(a);

26 (12) any offense under Chapter 20A; [~~or~~]

27 (13) any offense under Section 37.10; or

1           (14) any offense under Chapter 34A.

2           SECTION 4. Subdivision (1), Article 59.01, Code of Criminal  
3 Procedure, is amended to read as follows:

4           (1) "Attorney representing the state" means the  
5 prosecutor with felony jurisdiction in the county in which a  
6 forfeiture proceeding is held under this chapter or, in a  
7 proceeding for forfeiture of contraband as defined under  
8 Subdivision (2)(B)(v) of this article, the city attorney of a  
9 municipality if the property is seized in that municipality by a  
10 peace officer employed by that municipality and the governing body  
11 of the municipality has approved procedures for the city attorney  
12 acting in a forfeiture proceeding. In a proceeding for forfeiture  
13 of contraband as defined under Subdivision (2)(B)(vii) of this  
14 article, the term includes the attorney general. In a proceeding  
15 for forfeiture of contraband as defined under Subdivision (2)(A)(v)  
16 or (vi) of this article, the term includes the attorney general if a  
17 suit to abate racketeering has been instituted and maintained under  
18 Chapter 140, Civil Practice and Remedies Code.

19           SECTION 5. Subdivision (2), Article 59.01, Code of Criminal  
20 Procedure, as effective April 1, 2009, is amended to read as  
21 follows:

22           (2) "Contraband" means property of any nature,  
23 including real, personal, tangible, or intangible, that is:

24                   (A) used in the commission of:

25                           (i) any first or second degree felony under  
26 the Penal Code;

27                           (ii) any felony under Section 15.031(b),

20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act  
(Article 581-1 et seq., Vernon's Texas Civil Statutes); ~~[or]~~

(iv) any offense under Chapter 49, Penal  
Code, that is punishable as a felony of the third degree or state  
jail felony, if the defendant has been previously convicted three  
times of an offense under that chapter;

(v) any unlawful activity that constitutes  
racketeering under Chapter 140, Civil Practice and Remedies Code;  
or

(vi) any felony under Chapter 34A, Penal  
Code;

(B) used or intended to be used in the commission  
of:

(i) any felony under Chapter 481, Health  
and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health  
and Safety Code;

(iii) a felony under Chapter 153, Finance  
Code;

(iv) any felony under Chapter 34, Penal  
Code;

(v) a Class A misdemeanor under Subchapter  
B, Chapter 365, Health and Safety Code, if the defendant has been  
previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance

Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; or

(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 6. (a) The changes in law made by Chapter 140, Civil Practice and Remedies Code, and Chapter 34A, Penal Code, as added by this Act, and by Subsection (a), Section 71.02, Penal Code, and Subdivisions (1) and (2), Article 59.01, Code of Criminal Procedure, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

1           (b) An offense committed before the effective date of this  
2 Act is covered by the law in effect when the offense was committed,  
3 and the former law is continued in effect for that purpose.

4           SECTION 7. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2009.