

By: Pena

H.B. No. 4399

A BILL TO BE ENTITLED

AN ACT

relating to the criminal prosecution of racketeering; providing penalties.

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

SECTION 1. Title 7, Penal Code, is amended by adding Chapter 34A to read as follows:

CHAPTER 34A. RACKETEERING

Sec. 34A.001. DEFINITIONS. In this chapter:

(1) "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.

(2) "Racketeering" means an act committed by a person or enterprise, for financial gain, related to an offense described in the following list, including any preparatory or completed offense, that is chargeable or indictable under the laws of this state or another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice and that is punishable by imprisonment for more than one year under the jurisdiction in which the violation occurred:

(A) criminal homicide as described by Chapter 19;

(B) kidnapping or unlawful restraint as described by Chapter 20;

(C) trafficking of persons as described by Chapter 20A;

- 1 (D) a sexual offense as described by Chapter 21;
- 2 (E) an assaultive offense as described by Chapter
- 3 22;
- 4 (F) arson, criminal mischief, or other property
- 5 damage or destruction as described by Chapter 28;
- 6 (G) robbery as described by Chapter 29;
- 7 (H) theft as described by Chapter 31;
- 8 (I) fraud as described by Chapter 32;
- 9 (J) a computer crime as described by Chapter 33;
- 10 (K) money laundering as described by Chapter 34;
- 11 (L) bribery and corrupt influence as described by
- 12 Chapter 36;
- 13 (M) prostitution or obscenity as described by
- 14 Chapter 43;
- 15 (N) trafficking of explosive weapons, firearms,
- 16 or components of explosives as described by Chapter 46;
- 17 (O) gambling as described by Chapter 47;
- 18 (P) engaging in organized criminal activity as
- 19 described by Section 71.02;
- 20 (Q) manufacture or delivery of a controlled
- 21 substance or dangerous drug as described by Chapter 481 or 483; and
- 22 (R) intentional or reckless fraud in the purchase
- 23 or sale of securities as described by The Securities Act (Article
- 24 581-1 et seq., Vernon's Texas Civil Statutes).

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

- 26 (a) A person commits an offense if the person knowingly:
- 27 (1) through racketeering or its proceeds, acquires or

1 maintains, by investment or otherwise, control of an enterprise;
2 (2) is employed by or associated with an enterprise
3 and conducts any of the enterprise's affairs through racketeering;
4 (3) participates directly or indirectly in the conduct
5 of an enterprise that the person knows is being conducted, wholly or
6 partially, through racketeering; or
7 (4) hires, engages, or uses a minor for any conduct
8 preparatory to or in completion of an offense under Subdivision
9 (1), (2), or (3).

10 (b) An offense under Subsection (a)(1), (2), or (3) is a
11 felony of the third degree. An offense under Subsection (a)(4) is a
12 felony of the second degree.

13 SECTION 2. Subsection (a), Section 71.02, Penal Code, is
14 amended to read as follows:

15 (a) A person commits an offense if, with the intent to
16 establish, maintain, or participate in a combination or in the
17 profits of a combination or as a member of a criminal street gang,
18 the person ~~he~~ commits or conspires to commit one or more of the
19 following:

20 (1) murder, capital murder, arson, aggravated
21 robbery, robbery, burglary, theft, aggravated kidnapping,
22 kidnapping, aggravated assault, aggravated sexual assault, sexual
23 assault, forgery, deadly conduct, assault punishable as a Class A
24 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
25 motor vehicle;

26 (2) any gambling offense punishable as a Class A
27 misdemeanor;

1 (3) promotion of prostitution, aggravated promotion
2 of prostitution, or compelling prostitution;

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

5 (5) unlawful manufacture, delivery, dispensation, or
6 distribution of a controlled substance or dangerous drug, or
7 unlawful possession of a controlled substance or dangerous drug
8 through forgery, fraud, misrepresentation, or deception;

9 (6) any unlawful wholesale promotion or possession of
10 any obscene material or obscene device with the intent to wholesale
11 promote the same;

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

15 (8) any felony offense under Chapter 32;

16 (9) any offense under Chapter 36;

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

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

19 (12) any offense under Chapter 20A; ~~or~~

20 (13) any offense under Section 37.10; or

21 (14) any offense under Chapter 34A.

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

24 (1) "Attorney representing the state" means the
25 prosecutor with felony jurisdiction in the county in which a
26 forfeiture proceeding is held under this chapter or, in a
27 proceeding for forfeiture of contraband as defined under

1 Subdivision (2)(B)(v) of this article, the city attorney of a
2 municipality if the property is seized in that municipality by a
3 peace officer employed by that municipality and the governing body
4 of the municipality has approved procedures for the city attorney
5 acting in a forfeiture proceeding. In a proceeding for forfeiture
6 of contraband as defined under Subdivision (2)(B)(vii), (2)(B)(x),
7 (2)(F), or (2)(G) of this article, the term includes the attorney
8 general.

9 SECTION 4. Subdivision (2), Article 59.01, Code of Criminal
10 Procedure, as effective April 1, 2009, is amended to read as
11 follows:

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

14 (A) used in the commission of:

15 (i) any first or second degree felony under
16 the Penal Code;

17 (ii) any felony under Section 15.031(b),
18 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
19 31, 32, 33, 33A, or 35, Penal Code;

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

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

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

- 1 (i) any felony under Chapter 481, Health
2 and Safety Code (Texas Controlled Substances Act);
- 3 (ii) any felony under Chapter 483, Health
4 and Safety Code;
- 5 (iii) a felony under Chapter 153, Finance
6 Code;
- 7 (iv) any felony under Chapter 34, Penal
8 Code;
- 9 (v) a Class A misdemeanor under Subchapter
10 B, Chapter 365, Health and Safety Code, if the defendant has been
11 previously convicted twice of an offense under that subchapter;
- 12 (vi) any felony under Chapter 152, Finance
13 Code;
- 14 (vii) any felony under Chapter 32, Human
15 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
16 involves the state Medicaid program;
- 17 (viii) a Class B misdemeanor under Chapter
18 522, Business & Commerce Code; ~~[or]~~
- 19 (ix) a Class A misdemeanor under Section
20 35.153, Business & Commerce Code; or
- 21 (x) a violation of Chapter 34A, Penal Code;
- 22 (C) the proceeds gained from the commission of a
23 felony listed in Paragraph (A) or (B) of this subdivision, a
24 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
25 crime of violence;
- 26 (D) acquired with proceeds gained from the
27 commission of a felony listed in Paragraph (A) or (B) of this

1 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
2 subdivision, or a crime of violence; [~~or~~]

3 (E) used to facilitate or intended to be used to
4 facilitate the commission of a felony under Section 15.031 or
5 43.25, Penal Code;

6 (F) used to facilitate or intended to be used to
7 facilitate the commission of a violation of Chapter 34A, Penal
8 Code; or

9 (G) the proceeds of or acquired with the proceeds
10 of the commission of a violation of Chapter 34A, Penal Code.

11 SECTION 5. (a) The changes in law made by Chapter 34A,
12 Penal Code, as added by this Act, and by Subsection (a), Section
13 71.02, Penal Code, and Subdivisions (1) and (2), Article 59.01,
14 Code of Criminal Procedure, as amended by this Act, apply only to an
15 offense committed on or after the effective date of this Act. For
16 purposes of this section, an offense was committed before the
17 effective date of this Act if any element of the offense occurred
18 before that date.

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

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