

1-1 By: Williams, Van de Putte S.B. No. 1065
1-2 (In the Senate - Filed February 23, 2009; March 13, 2009, read
1-3 first time and referred to Committee on State Affairs; May 1, 2009,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 6, Nays 2; May 1, 2009, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1065 By: Van de Putte

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to civil racketeering; providing civil penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Title 6, Civil Practice and Remedies Code, is
1-12 amended by adding Chapter 140 to read as follows:

1-13 CHAPTER 140. CIVIL RACKETEERING

1-14 Sec. 140.001. LEGISLATIVE PURPOSE AND INTENT. (a) The
1-15 legislature finds that law enforcement authorities at the local
1-16 level, including district attorneys and county attorneys with
1-17 felony criminal jurisdiction, are experienced and capable in the
1-18 investigation, prosecution, and eradication of crime.

1-19 (b) The legislature further finds that certain crimes are
1-20 increasingly committed by organized enterprises that have the
1-21 capability of operating throughout the state, the United States,
1-22 and, in some instances, internationally.

1-23 (c) The legislature further finds that the
1-24 transjurisdictional nature and scope of these organized
1-25 enterprises can present challenges to the investigation,
1-26 prosecution, and eradication of some of their activities.

1-27 (d) The legislature further finds that the
1-28 transjurisdictional nature and scope of these organized
1-29 enterprises requires that the State of Texas, at a statewide level,
1-30 become more involved in addressing the ability of these enterprises
1-31 to operate in and throughout this state.

1-32 (e) It is the intent of the legislature that the efforts of
1-33 the State of Texas under this chapter will assist local law
1-34 enforcement agencies in the shared mission of disabling the
1-35 organized activity referenced in this chapter and protecting the
1-36 health, safety, and welfare of the people of Texas.

1-37 Sec. 140.002. DEFINITIONS. In this chapter:

1-38 (1) "Acquire" means an act:

1-39 (A) to possess property;

1-40 (B) to prevent another person from using that
1-41 person's property or to dictate the terms of use of the property;

1-42 (C) to bring about or receive the transfer of any
1-43 interest in property, whether to oneself or to another person; or

1-44 (D) to secure performance of a service.

1-45 (2) "Enterprise" means any legal entity, or any group
1-46 of persons associated in fact although not a legal entity, or any
1-47 combination of such groups or entities.

1-48 (3) "Gain" means a benefit, an interest, or property
1-49 of any kind, without reduction for expenses incurred in acquiring
1-50 or maintaining the benefit, interest, or property or incurred for
1-51 any other reason.

1-52 (4) "Proceeds" means an interest in property of any
1-53 kind acquired or derived from, produced or realized through, or
1-54 caused by, directly or indirectly, an act or omission, and any
1-55 fruits of the interest, in whatever form.

1-56 (5) "Racketeering" means an act described by Section
1-57 140.003.

1-58 Sec. 140.003. CIVIL RACKETEERING. (a) A person commits
1-59 racketeering if:

1-60 (1) for financial gain, the person knowingly engages
1-61 in an enterprise that commits, facilitates, or promotes:

1-62 (A) any gambling offense punishable at least as a
1-63 Class A misdemeanor;

(B) the promotion of prostitution, as described by Section 43.03, Penal Code;

(C) compelling prostitution, as described by Section 43.05, Penal Code;

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

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

(F) any offense under Subchapter B, Chapter 43, Penal Code, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(G) trafficking of persons, as described by Chapter 20A, Penal Code;

(H) bigamy, as described by Section 25.01, Penal Code; or

(I) fraudulent use or possession of identifying information, as described by Chapter 32, Penal Code; and

(2) the event, omission, transaction, or occurrence, or the series of events, omissions, transactions, or occurrences, relating to the act that meets the requirements of Subdivision (1):

(A) takes place or occurs in more than one county in Texas; or

(B) is perpetuated by use of the United States mail, electronic mail, telephone, facsimile, or a wireless communication from one county to another.

Sec. 140.004. SUIT TO ABATE RACKETEERING. (a) The attorney general may bring suit under this chapter in the name of the state against any person or enterprise who engages in a pattern or practice of racketeering and may seek to recover civil penalties, costs of suit, including reasonable attorney's fees, and any appropriate injunctive relief. The reasonable attorney's fees that the attorney general recovers in a suit brought under this chapter shall be determined and awarded pursuant to Section 2107.006, Government Code.

(b) This chapter does not authorize suit by a person or enterprise that sustains injury as a result of racketeering.

(c) A suit under this chapter must be brought in a district court in a county in which all or part of the alleged racketeering activity giving rise to the suit occurred.

Sec. 140.005. INJUNCTIVE RELIEF; OTHER REMEDIES. (a) A 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 creation of a receivership, the enforcement of a constructive trust in connection with any property or other interest, prejudgment writs of attachment under Chapter 61 for the purpose of the freezing, preserving, and disgorging of assets, orders to repatriate property beyond the jurisdiction of the court, 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 activity, 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;

(5) ordering payment of an amount equal to:

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

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

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

(7) ordering payment of damages for racketeering shown to have materially damaged the state; and

(8) ordering that property attached under Chapter 61 be used to satisfy any award of the court, including awards for damages, penalties, costs, or fees.

(c) If any property attached under Chapter 61 is not necessary to satisfy an award of the court, and after a finding of liability for racketeering of the person or enterprise having an interest in such property, the court may order that the property be disgorged to the state to the extent of the person's or enterprise's interest, if it is proven that the property is one or more of the following:

(1) property or an interest in property acquired or maintained by the person or enterprise through racketeering;

(2) any interest, security, claim, or any other form of property, office, title, license, or contractual right that affords a source of influence over any enterprise that conducted or participated in racketeering; or

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

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

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

(2) the duration of the racketeering activity.

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

(1) loss of tax revenue to the state;

(2) unpaid state unemployment taxes;

(3) unpaid state licensing and regulatory fees;

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

(5) any other damages suffered by the state due to the racketeering.

(f) Unless otherwise provided by this chapter, remedies and awards ordered by a court under this chapter, including costs and reasonable attorney's fees, may be assessed against and paid from money or property awarded under this chapter.

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

(h) Notwithstanding any other provision of this chapter, the court shall order that any awards issued under this chapter shall, after taking into account any costs of suit, including reasonable attorney's fees and court costs, be paid in accordance with Section 140.012.

(i) Notwithstanding any other provision of this chapter, the provisions of Articles 59.13 and 59.14, Code of Criminal Procedure, shall apply to any remedy under this section, and in no event shall the remedies herein result in the impairment of a security interest in property subject to a bona fide lien.

Sec. 140.006. CONSTRUCTIVE TRUST. (a) A person or enterprise that, through racketeering, acquires any property or

prevents another person from receiving property that by law is required to be transferred or paid to that person is an involuntary trustee. An involuntary trustee or any other person or enterprise, except a bona fide purchaser or lien holder for value as described under Subsection (b), holds the property and its proceeds in constructive trust for the benefit of persons entitled to remedies under this chapter.

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

Sec. 140.007. EVIDENCE. (a) In a proceeding under this chapter, the state bears the burden of proof by a preponderance of the evidence.

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

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

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

(e) A bank or savings and loan association insured by the Federal Deposit Insurance Corporation, a credit union insured by the National Credit Union Administration, or a holder of a money transmission license under Chapter 151, Finance Code, may not be held liable in damages or for other relief under this chapter unless the finder of fact, by a preponderance of the evidence, finds that the board of directors performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct.

Sec. 140.008. LIMITATIONS PERIOD. No proceeding may be commenced under this chapter unless the proceeding is filed not later than seven years after the date of the alleged act of racketeering. This provision supersedes any conflicting limitations provision creating a shorter period.

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

Sec. 140.010. NOTIFICATION TO LOCAL PROSECUTOR. (a) If the attorney general investigates racketeering activity under this chapter, then the attorney general shall use reasonable efforts to provide notice to the district attorney or county attorney with felony criminal jurisdiction in each county where the attorney general determines the racketeering activity occurs or occurred. If the attorney general intends to file suit under this chapter, the attorney general shall provide notice of this intention to the district attorney or county attorney with felony criminal jurisdiction in the county where the attorney general intends to

5-1 file suit.

5-2 (b) The notices described in this section must describe or
 5-3 otherwise identify the defendant or defendants of the suit or
 5-4 investigation.

5-5 Sec. 140.011. COOPERATION WITH LOCAL AUTHORITIES. (a) A
 5-6 district attorney or county attorney with felony criminal
 5-7 jurisdiction that receives notice under Section 140.010 may notify
 5-8 the attorney general of any pending criminal investigation or
 5-9 prosecution relating to the subject matter of the racketeering
 5-10 action.

5-11 (b) Upon receipt of a notice from a district attorney or
 5-12 county attorney with felony criminal jurisdiction under Subsection
 5-13 (a), the attorney general shall coordinate and cooperate with the
 5-14 district attorney or county attorney with felony criminal
 5-15 jurisdiction to ensure that the filing or prosecution of a suit
 5-16 under this chapter does not interfere with any ongoing criminal
 5-17 investigation or prosecution. The attorney general shall update
 5-18 each such district attorney or county attorney with felony criminal
 5-19 jurisdiction on matters affecting the suit or the investigation.

5-20 (c) If the district attorney or county attorney with felony
 5-21 criminal jurisdiction in the county determines that a suit brought
 5-22 under this chapter will interfere with an ongoing criminal
 5-23 investigation or prosecution, the district attorney or county
 5-24 attorney with felony criminal jurisdiction in the county may ask
 5-25 the attorney general, in writing, to abate the suit. If the
 5-26 attorney general determines that it is necessary for the suit to
 5-27 continue, then the attorney general may ask the court for
 5-28 permission to proceed, and shall provide notice of the request to
 5-29 the district attorney or county attorney with felony criminal
 5-30 jurisdiction who made the request to the attorney general. The
 5-31 court may hold a hearing to determine this issue, with the burden of
 5-32 persuasion being upon the attorney general. A hearing held under
 5-33 this subsection may, at the request of either party, be conducted in
 5-34 camera to protect the integrity of the ongoing investigation or
 5-35 prosecution, as well as the identity of any person or enterprise
 5-36 then under investigation or prosecution.

5-37 Sec. 140.012. DISPOSITION AND SHARING OF ASSETS. (a) Any
 5-38 awards issued in an action brought under this chapter shall, by
 5-39 court order, be paid in accordance with this section.

5-40 (b) The court shall order that 80 percent of any award
 5-41 issued under this chapter be paid to the State of Texas. The
 5-42 remaining 20 percent of the award shall be shared, on a pro rata
 5-43 basis, by and among any law enforcement agencies determined by the
 5-44 court to have assisted in the investigation and furtherance of the
 5-45 suit.

5-46 (c) The first \$10 million that is paid to the state under
 5-47 this chapter in any given fiscal year, after taking into account any
 5-48 costs of suit, including reasonable attorney's fees and court
 5-49 costs, shall be dedicated to the compensation to victims of crime
 5-50 fund established under Subchapter B, Chapter 56, Code of Criminal
 5-51 Procedure.

5-52 Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Notwithstanding
 5-53 any other provision of this chapter, no remedies provided by this
 5-54 chapter may be assessed against, and the attorney general may not
 5-55 claim or pursue in a suit brought under this chapter, any proceeds,
 5-56 contraband, or other property of any kind over which a law
 5-57 enforcement authority has previously asserted jurisdiction under
 5-58 Chapter 59, Code of Criminal Procedure, at the time a suit under
 5-59 this chapter was filed.

5-60 SECTION 2. (a) The changes in law made by Chapter 140,
 5-61 Civil Practice and Remedies Code, as added by this Act, apply only
 5-62 to an offense committed on or after the effective date of this Act.
 5-63 For purposes of this section, an offense was committed before the
 5-64 effective date of this Act if any element of the offense occurred
 5-65 before that date.

5-66 (b) An offense committed before the effective date of this
 5-67 Act is covered by the law in effect when the offense was committed,
 5-68 and the former law is continued in effect for that purpose.

5-69 SECTION 3. This Act takes effect immediately if it receives

6-1 a vote of two-thirds of all the members elected to each house, as
6-2 provided by Section 39, Article III, Texas Constitution. If this
6-3 Act does not receive the vote necessary for immediate effect, this
6-4 Act takes effect September 1, 2009.

6-5

* * * * *