

BILL ANALYSIS

H.B. 3241
By: Thompson, Senfronia
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas is a major hub for human trafficking crimes, due to the large number of major national highways that run through the state. Organized criminal enterprises have taken advantage of this situation, as evidenced by a human trafficking prevention task force report noting that nearly one out of every five human trafficking victims are trafficked through Texas on Interstate Highway 10. While Texas has been at the forefront of fighting trafficking through legislative action increasing penalties for traffickers, critics assert that additional efforts are necessary to impact the financial gains the traffickers are experiencing through the exploitation of trafficking victims. H.B. 3241 seeks to address this concern by authorizing the state to bring suit against a person or enterprise who, for a financial gain, commits trafficking of persons or continuous trafficking of persons under certain circumstances for racketeering related to human trafficking and to seek civil penalties, costs, attorney's fees, and appropriate injunctive relief.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3241 amends the Civil Practice and Remedies Code to establish that a person or enterprise commits racketeering under the bill's provisions if, for financial gain, the person or enterprise commits an offense of trafficking of persons or continuous trafficking of persons, and the offense or an element of the offense occurs in more than one Texas county or is facilitated by the use of U.S. mail, e-mail, telephone, facsimile, or a wireless communication from one Texas county to another. The bill authorizes the attorney general to bring suit in the name of the state against a person or enterprise for racketeering and to seek civil penalties, costs, reasonable attorney's fees, and appropriate injunctive relief. The bill clarifies that its provisions do not authorize suit by a person or enterprise that sustains injury as a result of racketeering and requires a suit to abate racketeering to be brought in a district court in a county in which all or part of the alleged racketeering offense giving rise to the suit occurred.

H.B. 3241 authorizes a court in which the attorney general brings a civil racketeering proceeding to prevent, restrain, and remedy racketeering by issuing appropriate orders, including a temporary restraining order, a temporary or permanent injunction, the creation of a receivership, and the enforcement of a constructive trust in connection with any property or other interest, prejudgment writs of attachment for the purposes of freezing, preserving, and disgorging assets, or another order for a remedy or restraint the court considers proper.

H.B. 3241 authorizes a court to issue an appropriate order following a final determination of liability in a civil racketeering proceeding, including an order that requires a person to divest any direct or indirect interest in an enterprise; that imposes reasonable restrictions on the future activities or investments of a person that affect state laws to the extent permitted by the Texas and U.S. Constitutions; that requires the dissolution or reorganization of an enterprise involved

in the suit; that orders the recovery of reasonable fees, expenses, and costs incurred in obtaining injunctive relief or civil remedies or in conducting investigations under the bill's provisions; that orders payment to the state of an amount equal to the gain acquired or maintained through racketeering or the amount for which a person is liable under the bill's provisions; that orders payment to the state 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; that orders payment of damages to the state for racketeering shown to have materially damaged the state; or that orders attached property to be used to satisfy an award of the court.

H.B. 3241 requires the court to consider certain specified factors in determining the amount of a civil penalty or the amount of damages ordered paid to the state. The bill authorizes the court, if any attached property is not necessary to satisfy an award of the court after a finding of liability for racketeering of the person or enterprise having an interest in the property, to order that the property be disgorged to the state to the extent of the person's or enterprise's interest, under the condition that the person or enterprise acquired or maintained the property through racketeering.

H.B. 3241 authorizes remedies and awards ordered by a court, including costs and reasonable attorney's fees, to be assessed against and paid from money or property awarded under the bill's provisions. The bill specifies that its provisions are not intended to provide the exclusive remedy for civil racketeering relating to human trafficking and authorizes a civil racketeering proceeding to be brought in addition to or in the alternative of any other civil or criminal action available under state law. The bill makes specified provisions of the Code of Criminal Procedure regarding disclosure and notice to financial institution regulators applicable to a remedy under the bill's provisions. The bill prohibits a civil racketeering remedy from impairing a security interest in property subject to a bona fide lien.

H.B. 3241 designates as an involuntary trustee a person or enterprise that, through racketeering, acquires property or prevents another person from receiving property that by law is required to be transferred or paid to that person. The bill establishes that the involuntary trustee or any other person or enterprise, other than a bona fide purchaser for value, holds the property and the proceeds of the property in constructive trust for the benefit of any person entitled to remedies under the bill's provisions. The bill specifies that 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 and is not subject to such a constructive trust.

H.B. 3241 establishes that the state bears the burden of proof by a preponderance of the evidence in a civil racketeering proceeding. The bill precludes a person convicted in a criminal proceeding from subsequently denying in a civil racketeering proceeding the essential allegations of the criminal offense of which the person was convicted and specifies that a verdict or a plea, including a plea of nolo contendere, is considered a conviction.

H.B. 3241 limits the conditions under which an individual may be held liable under the bill's provisions based on the conduct of another person, the conditions under which an enterprise may be held liable under the bill's provisions based on the conduct of an agent, and the conditions under which 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 the holder of a money transmission license may be held liable in damages or for other relief under the bill's provisions.

H.B. 3241 authorizes a civil racketeering proceeding to be commenced only if the proceeding is filed on or before the seventh anniversary of the date on which the racketeering offense was actually discovered and establishes that the provision setting that limitations period supersedes any conflicting statutory provision establishing a shorter period of limitations for the same conduct.

H.B. 3241 authorizes the attorney general to file with the clerk of the district court in which a

civil racketeering proceeding is brought a certificate stating that the case is of special public importance. The bill requires the clerk to immediately furnish a copy of the certificate to the administrative judge of the district court of the county in which the proceeding is pending and requires the judge, on receiving the copy, to immediately designate a judge to hear and determine the proceeding. The bill requires the designated judge to promptly assign the proceeding for hearing, participate in hearings, make determinations, and cause the action to be expedited.

H.B. 3241 requires the attorney general, in a reasonable time before initiating suit or on initiating an investigation on racketeering, to provide notice to the district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction that appears to have primary jurisdiction over the criminal prosecution of any target of a racketeering investigation at the time of the notice concerning the attorney general's intent to file suit or investigate racketeering, as applicable. The bill requires these notices to describe or otherwise identify the defendant to the suit or the suspect, as applicable. The bill authorizes an attorney that receives such notice from the attorney general to notify the attorney general of a related pending criminal investigation or prosecution. The bill requires the attorney general, on receipt of that notice, to coordinate and cooperate with the attorney who sent the notice to ensure that the filing of a civil racketeering suit does not interfere with an ongoing criminal investigation or prosecution. The bill requires the attorney general to update the attorney on matters affecting the suit or investigation.

H.B. 3241 authorizes a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction to request, in writing, that the attorney general abate a civil racketeering suit if the attorney determines that the suit would interfere with an ongoing criminal investigation or prosecution after giving notice of the investigation or prosecution to the attorney general. The bill requires the attorney general to abate the suit on receipt of the request and authorizes the attorney general to request permission for the suit to proceed from a district court in a county in which all or part of the alleged racketeering offense giving rise to the suit occurred. The bill requires the attorney general to provide notice of the request to proceed to the attorneys who requested the abatement of the suit. The bill authorizes a court to hold a hearing to determine whether to grant the attorney general's request to proceed and sets out provisions relating to the evidentiary proof requirements and the conduct of the hearing.

H.B. 3241 requires 80 percent of the amount of an award issued in a civil racketeering action that remains after deducting any costs of suit, including reasonable attorney's fees and court costs, to be paid to the state and requires the remaining 20 percent to be paid, on a pro rata basis, to each law enforcement agency found by the court to have assisted in the suit. The bill requires the first \$10 million, after any costs of suit, that is paid to the state in a fiscal year from such awards to be dedicated to the compensation to victims of crime fund. The bill prohibits the assessment of remedies under the bill's provisions against proceeds, contraband, or other property over which a law enforcement agency has previously asserted jurisdiction at the time a civil racketeering suit was filed.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.