

By: Thompson of Harris

H.B. No. 3241

A BILL TO BE ENTITLED

AN ACT

relating to the civil prosecution of racketeering related to trafficking of persons; 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 RELATED TO TRAFFICKING OF PERSONS

Sec. 140.001. DEFINITIONS. In this chapter:

(1) "Acquire" means an act to:

(A) possess property;

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

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

(D) secure performance of a service.

(2) "Enterprise" means a legal entity, a group of individuals associated in fact, or a combination of entities and individuals.

(3) "Gain" means a benefit, an interest, or property, 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 acquired or derived from, produced or realized through, or directly or

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

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

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 under Chapter 20A, Penal Code
8 (trafficking of persons), and the offense or an element of the
9 offense:

10 (1) occurs in more than one county in this state; or

11 (2) is facilitated by the use of United States mail,
12 e-mail, telephone, facsimile, or a wireless communication from one
13 county in this state to another.

14 Sec. 140.003. SUIT TO ABATE RACKETEERING. (a) The attorney
15 general may bring suit in the name of the state against a person or
16 enterprise for racketeering and may seek civil penalties, costs,
17 reasonable attorney's fees, and appropriate injunctive relief.

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

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

23 Sec. 140.004. INJUNCTIVE RELIEF; OTHER REMEDIES. (a) A
24 court in which a proceeding is brought under this chapter may
25 prevent, restrain, and remedy racketeering by issuing appropriate
26 orders. The orders may include a temporary restraining order, a
27 temporary or permanent injunction, the creation of a receivership,

1 and the enforcement of a constructive trust in connection with any
2 property or other interest, prejudgment writs of attachment under
3 Chapter 61 for the purposes of freezing, preserving, and disgorging
4 assets, or another order for a remedy or restraint the court
5 considers proper.

6 (b) Following a final determination of liability under this
7 chapter, the court may issue an appropriate order, including an
8 order that:

9 (1) requires a person to divest any direct or indirect
10 interest in an enterprise;

11 (2) imposes reasonable restrictions on the future
12 activities or investments of a person that affect the laws of this
13 state, including prohibiting a person from engaging in the type of
14 endeavor or enterprise that gave rise to the racketeering offense,
15 to the extent permitted by the constitutions of this state and the
16 United States;

17 (3) requires the dissolution or reorganization of an
18 enterprise involved in the suit;

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

23 (5) orders payment to the state of an amount equal to:

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

26 (B) the amount for which a person is liable under
27 this chapter;

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

5 (7) orders payment of damages to the state for
6 racketeering shown to have materially damaged the state; or

7 (8) orders that property attached under Chapter 61 be
8 used to satisfy an award of the court, including damages,
9 penalties, costs, and fees.

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

12 (1) the seriousness of the racketeering offense and
13 the consequent financial or personal harm to the state or to any
14 identified victim; and

15 (2) the duration of the racketeering activity.

16 (d) If any property attached under Chapter 61 is not
17 necessary to satisfy an award of the court after a finding of
18 liability for racketeering of the person or enterprise having an
19 interest in the property, the court may order that the property be
20 disgorged to the state to the extent of the person's or enterprise's
21 interest. To be disgorged, the property must be acquired or
22 maintained by the person or enterprise through racketeering.

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

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

26 (2) unpaid state unemployment taxes;

27 (3) unpaid state licensing and regulatory fees;

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

3 (5) other material damage caused to the state by the
4 racketeering.

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

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

14 (h) Notwithstanding any other provision in this chapter,
15 Articles 59.13 and 59.14, Code of Criminal Procedure, apply to a
16 remedy under this section.

17 (i) A remedy under this section may not impair a security
18 interest in property subject to a bona fide lien.

19 Sec. 140.005. CONSTRUCTIVE TRUST. (a) A person or
20 enterprise that, through racketeering, acquires property or
21 prevents another person from receiving property that by law is
22 required to be transferred or paid to that person is an involuntary
23 trustee. The involuntary trustee or any other person or
24 enterprise, other than a bona fide purchaser for value as described
25 by Subsection (b), holds the property and the proceeds of the
26 property in constructive trust for the benefit of any person
27 entitled to remedies under this chapter.

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

6 Sec. 140.006. EVIDENCE. (a) In a proceeding under this
7 chapter, the state bears the burden of proof by a preponderance of
8 the evidence.

9 (b) A person convicted in a criminal proceeding is
10 precluded, in a proceeding under this chapter, from subsequently
11 denying the essential allegations of the criminal offense of which
12 the person was convicted. For purposes of this subsection, a
13 verdict or a plea, including a plea of nolo contendere, is
14 considered a conviction.

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

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

26 (e) A bank or savings and loan association insured by the
27 Federal Deposit Insurance Corporation, a credit union insured by

1 the National Credit Union Administration, or the holder of a money
2 transmission license as defined by Chapter 151, Finance Code, may
3 not be held liable in damages or for other relief under this
4 chapter, unless the finder of fact finds by a preponderance of the
5 evidence that the person or agent acquiring or maintaining an
6 interest in or transporting, transacting, transferring, or
7 receiving the funds on behalf of another did so knowing that the
8 funds were the proceeds of an offense and that a director or high
9 managerial agent performed, authorized, requested, commanded,
10 participated in, ratified, or recklessly tolerated the unlawful
11 conduct of the person or agent.

12 Sec. 140.007. LIMITATIONS PERIOD. A proceeding may be
13 commenced under this chapter only if the proceeding is filed on or
14 before the seventh anniversary of the date on which the
15 racketeering offense was actually discovered. This section
16 supersedes any conflicting provision establishing a shorter period
17 of limitations for the same conduct.

18 Sec. 140.008. SPECIAL DOCKETING PROCEDURES. The attorney
19 general may file with the clerk of the district court in which a
20 proceeding is brought under this chapter a certificate stating that
21 the case is of special public importance. The clerk must
22 immediately furnish a copy of the certificate to the administrative
23 judge of the district court of the county in which the proceeding is
24 pending. On receiving the copy of the certificate, the
25 administrative judge shall immediately designate a judge to hear
26 and determine the proceeding. The designated judge shall promptly
27 assign the proceeding for hearing, participate in hearings, make

1 determinations, and cause the action to be expedited.

2 Sec. 140.009. NOTICE TO LOCAL PROSECUTOR. (a) In a
3 reasonable time before initiating suit or on initiating an
4 investigation on racketeering, the attorney general shall provide
5 notice to the district attorney, criminal district attorney, or
6 county attorney with felony criminal jurisdiction that appears to
7 have primary jurisdiction over the criminal prosecution of any
8 target of an investigation under this chapter at the time of the
9 notice concerning the attorney general's intent to file suit under
10 this chapter or investigate racketeering, as applicable.

11 (b) The notices described by Subsection (a) must describe or
12 otherwise identify the defendant to the suit or the suspect, as
13 applicable.

14 Sec. 140.010. COOPERATION WITH LOCAL PROSECUTOR. (a) A
15 district attorney, criminal district attorney, or county attorney
16 with felony criminal jurisdiction that receives notice under
17 Section 140.009 may notify the attorney general of a related
18 pending criminal investigation or prosecution.

19 (b) On receipt of notice described by Subsection (a), the
20 attorney general shall coordinate and cooperate with the district
21 attorney, criminal district attorney, or county attorney with
22 felony criminal jurisdiction to ensure that the filing of a suit
23 under this chapter does not interfere with an ongoing criminal
24 investigation or prosecution. The attorney general shall update
25 the district attorney, criminal district attorney, or county
26 attorney with felony criminal jurisdiction on matters affecting the
27 suit or the investigation.

1 Sec. 140.011. ABATEMENT OF SUIT. (a) If the district
2 attorney, criminal district attorney, or county attorney with
3 felony criminal jurisdiction determines that a suit brought under
4 this chapter would interfere with an ongoing criminal investigation
5 or prosecution after notifying the attorney general of the
6 investigation or prosecution under Section 140.010, the district
7 attorney, criminal district attorney, or county attorney with
8 felony criminal jurisdiction may request, in writing, that the
9 attorney general abate the suit. On receipt of this request, the
10 attorney general shall abate the suit.

11 (b) If the attorney general determines that it is necessary
12 for the suit to proceed, the attorney general may request for
13 permission to proceed from a district court described by Section
14 140.003. The attorney general shall provide notice of the request
15 to proceed to the district attorney, criminal district attorney, or
16 county attorney with felony criminal jurisdiction described by
17 Subsection (a).

18 (c) The court may hold a hearing to determine whether to
19 grant a request from the attorney general under Subsection (b). The
20 attorney general must provide proof by a preponderance of the
21 evidence that abatement of a suit brought under this chapter would
22 unduly burden the suit. On the request of a party, a hearing under
23 this subsection may be conducted in camera to protect the ongoing
24 investigation or prosecution, or the identity of the person or
25 enterprise under investigation or prosecution.

26 Sec. 140.012. DISPOSITION OF ASSETS. (a) An award issued
27 in an action brought under this chapter must be paid in accordance

1 with this section.

2 (b) After a deduction of any costs of suit, including
3 reasonable attorney's fees and court costs, 80 percent of the
4 amount of the award remaining must be paid to the state, and the
5 remaining 20 percent must be paid, on a pro rata basis, to each law
6 enforcement agency found by the court to have assisted in the suit.

7 (c) The first \$10 million, after any costs of suit described
8 by Subsection (b), that is paid to the state under this chapter in a
9 fiscal year shall be dedicated to the compensation to victims of
10 crime fund described by Article 56.54, Code of Criminal Procedure.

11 Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Notwithstanding
12 another provision of this chapter, no remedies provided by this
13 chapter may be assessed against proceeds, contraband, or other
14 property over which a law enforcement agency has previously
15 asserted jurisdiction under Chapter 59, Code of Criminal Procedure,
16 at the time a suit under this chapter was filed.

17 SECTION 2. Chapter 140, Civil Practice and Remedies Code,
18 as added by this Act, applies only to a civil action based on an
19 offense under Chapter 20A, Penal Code, committed on or after the
20 effective date of this Act. A civil action based on an offense
21 committed before the effective date of this Act is governed by the
22 law in effect when the offense was committed, and that law continues
23 in effect for that purpose. For the purposes of this section, an
24 offense was committed before the effective date of this Act if any
25 element of the offense occurred before that date.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2013.