

1-1 By: Thompson of Harris, et al. H.B. No. 3241
1-2 (Senate Sponsor - Whitmire)
1-3 (In the Senate - Received from the House May 6, 2013;
1-4 May 7, 2013, read first time and referred to Committee on Criminal
1-5 Justice; May 15, 2013, reported favorably by the following vote:
1-6 Yeas 6, Nays 0; May 15, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Carona		X	
1-12	Hinojosa	X		
1-13	Patrick	X		
1-14	Rodriguez	X		
1-15	Schwertner	X		

1-16 A BILL TO BE ENTITLED
1-17 AN ACT

1-18 relating to the civil prosecution of racketeering related to
1-19 trafficking of persons; providing penalties.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Title 6, Civil Practice and Remedies Code, is
1-22 amended by adding Chapter 140 to read as follows:

1-23 CHAPTER 140. CIVIL RACKETEERING RELATED TO TRAFFICKING OF PERSONS

1-24 Sec. 140.001. DEFINITIONS. In this chapter:

1-25 (1) "Acquire" means an act to:

1-26 (A) possess property;

1-27 (B) prevent another person from using that
1-28 person's property or dictate the terms of use of that property;

1-29 (C) bring about or receive the transfer of any
1-30 interest in property, whether to oneself or to another person; or

1-31 (D) secure performance of a service.

1-32 (2) "Enterprise" means a legal entity, a group of
1-33 individuals associated in fact, or a combination of entities and
1-34 individuals.

1-35 (3) "Gain" means a benefit, an interest, or property,
1-36 without reduction for expenses incurred in acquiring or maintaining
1-37 the benefit, interest, or property or incurred for any other
1-38 reason.

1-39 (4) "Proceeds" means an interest in property acquired
1-40 or derived from, produced or realized through, or directly or
1-41 indirectly caused by an act or omission, and the fruits of the
1-42 interest, in any form.

1-43 (5) "Racketeering" means an act described by Section
1-44 140.002.

1-45 Sec. 140.002. CIVIL RACKETEERING. A person or enterprise
1-46 commits racketeering if, for financial gain, the person or
1-47 enterprise commits an offense under Chapter 20A, Penal Code
1-48 (trafficking of persons), and the offense or an element of the
1-49 offense:

1-50 (1) occurs in more than one county in this state; or

1-51 (2) is facilitated by the use of United States mail,
1-52 e-mail, telephone, facsimile, or a wireless communication from one
1-53 county in this state to another.

1-54 Sec. 140.003. SUIT TO ABATE RACKETEERING. (a) The attorney
1-55 general may bring suit in the name of the state against a person or
1-56 enterprise for racketeering and may seek civil penalties, costs,
1-57 reasonable attorney's fees, and appropriate injunctive relief.

1-58 (b) This chapter does not authorize suit by a person or
1-59 enterprise that sustains injury as a result of racketeering.

1-60 (c) A suit under this chapter must be brought in a district
1-61 court in a county in which all or part of the alleged racketeering

2-1 offense giving rise to the suit occurred.

2-2 Sec. 140.004. INJUNCTIVE RELIEF; OTHER REMEDIES. (a) A
 2-3 court in which a proceeding is brought under this chapter may
 2-4 prevent, restrain, and remedy racketeering by issuing appropriate
 2-5 orders. The orders may include a temporary restraining order, a
 2-6 temporary or permanent injunction, the creation of a receivership,
 2-7 and the enforcement of a constructive trust in connection with any
 2-8 property or other interest, prejudgment writs of attachment under
 2-9 Chapter 61 for the purposes of freezing, preserving, and disgorging
 2-10 assets, or another order for a remedy or restraint the court
 2-11 considers proper.

2-12 (b) Following a final determination of liability under this
 2-13 chapter, the court may issue an appropriate order, including an
 2-14 order that:

2-15 (1) requires a person to divest any direct or indirect
 2-16 interest in an enterprise;

2-17 (2) imposes reasonable restrictions on the future
 2-18 activities or investments of a person that affect the laws of this
 2-19 state, including prohibiting a person from engaging in the type of
 2-20 endeavor or enterprise that gave rise to the racketeering offense,
 2-21 to the extent permitted by the constitutions of this state and the
 2-22 United States;

2-23 (3) requires the dissolution or reorganization of an
 2-24 enterprise involved in the suit;

2-25 (4) orders the recovery of reasonable fees, expenses,
 2-26 and costs incurred in obtaining injunctive relief or civil remedies
 2-27 or in conducting investigations under this chapter, including court
 2-28 costs, attorney's fees, witness fees, and deposition fees;

2-29 (5) orders payment to the state of an amount equal to:

2-30 (A) the gain acquired or maintained through
 2-31 racketeering; or

2-32 (B) the amount for which a person is liable under
 2-33 this chapter;

2-34 (6) orders payment to the state of a civil penalty by a
 2-35 person or enterprise found liable for racketeering, in an amount
 2-36 not to exceed \$250,000 for each separately alleged and proven act of
 2-37 racketeering;

2-38 (7) orders payment of damages to the state for
 2-39 racketeering shown to have materially damaged the state; or

2-40 (8) orders that property attached under Chapter 61 be
 2-41 used to satisfy an award of the court, including damages,
 2-42 penalties, costs, and fees.

2-43 (c) In determining the amount of a civil penalty ordered
 2-44 under Subsection (b)(6), the court shall consider:

2-45 (1) the seriousness of the racketeering offense and
 2-46 the consequent financial or personal harm to the state or to any
 2-47 identified victim; and

2-48 (2) the duration of the racketeering activity.

2-49 (d) If any property attached under Chapter 61 is not
 2-50 necessary to satisfy an award of the court after a finding of
 2-51 liability for racketeering of the person or enterprise having an
 2-52 interest in the property, the court may order that the property be
 2-53 disgorged to the state to the extent of the person's or enterprise's
 2-54 interest. To be disgorged, the property must be acquired or
 2-55 maintained by the person or enterprise through racketeering.

2-56 (e) In determining the amount of damages ordered under
 2-57 Subsection (b)(7), the court shall consider:

2-58 (1) loss of tax revenue to the state;

2-59 (2) unpaid state unemployment taxes;

2-60 (3) unpaid state licensing and regulatory fees;

2-61 (4) medical and counseling costs incurred by the state
 2-62 on behalf of any victim of the racketeering; and

2-63 (5) other material damage caused to the state by the
 2-64 racketeering.

2-65 (f) Except as otherwise provided by this chapter, remedies
 2-66 and awards ordered by a court under this chapter, including costs
 2-67 and reasonable attorney's fees, may be assessed against and paid
 2-68 from money or property awarded under this chapter.

2-69 (g) This chapter is not intended to provide the exclusive

3-1 remedy for the activity addressed by this chapter. A proceeding
3-2 under this chapter may be brought in addition to or in the
3-3 alternative of any other civil or criminal action available under
3-4 the laws of this state.

3-5 (h) Notwithstanding any other provision in this chapter,
3-6 Articles 59.13 and 59.14, Code of Criminal Procedure, apply to a
3-7 remedy under this section.

3-8 (i) A remedy under this section may not impair a security
3-9 interest in property subject to a bona fide lien.

3-10 Sec. 140.005. CONSTRUCTIVE TRUST. (a) A person or
3-11 enterprise that, through racketeering, acquires property or
3-12 prevents another person from receiving property that by law is
3-13 required to be transferred or paid to that person is an involuntary
3-14 trustee. The involuntary trustee or any other person or
3-15 enterprise, other than a bona fide purchaser for value as described
3-16 by Subsection (b), holds the property and the proceeds of the
3-17 property in constructive trust for the benefit of any person
3-18 entitled to remedies under this chapter.

3-19 (b) A bona fide purchaser for value who was reasonably
3-20 without notice of unlawful conduct and who did not knowingly take
3-21 part in an illegal transaction is not an involuntary trustee under
3-22 Subsection (a) and is not subject to a constructive trust imposed
3-23 under this chapter.

3-24 Sec. 140.006. EVIDENCE. (a) In a proceeding under this
3-25 chapter, the state bears the burden of proof by a preponderance of
3-26 the evidence.

3-27 (b) A person convicted in a criminal proceeding is
3-28 precluded, in a proceeding under this chapter, from subsequently
3-29 denying the essential allegations of the criminal offense of which
3-30 the person was convicted. For purposes of this subsection, a
3-31 verdict or a plea, including a plea of nolo contendere, is
3-32 considered a conviction.

3-33 (c) An individual may not be held liable under this chapter
3-34 based on the conduct of another person unless the finder of fact
3-35 finds by a preponderance of the evidence that the individual
3-36 authorized, requested, commanded, participated in, ratified, or
3-37 recklessly tolerated the unlawful conduct of the other person.

3-38 (d) An enterprise may not be held liable under this chapter
3-39 based on the conduct of an agent unless the finder of fact finds by a
3-40 preponderance of the evidence that a director or high managerial
3-41 agent performed, authorized, requested, commanded, participated
3-42 in, ratified, or recklessly tolerated the unlawful conduct of the
3-43 agent.

3-44 (e) A bank or savings and loan association insured by the
3-45 Federal Deposit Insurance Corporation, a credit union insured by
3-46 the National Credit Union Administration, or the holder of a money
3-47 transmission license as defined by Chapter 151, Finance Code, may
3-48 not be held liable in damages or for other relief under this
3-49 chapter, unless the finder of fact finds by a preponderance of the
3-50 evidence that the person or agent acquiring or maintaining an
3-51 interest in or transporting, transacting, transferring, or
3-52 receiving the funds on behalf of another did so knowing that the
3-53 funds were the proceeds of an offense and that a director or high
3-54 managerial agent performed, authorized, requested, commanded,
3-55 participated in, ratified, or recklessly tolerated the unlawful
3-56 conduct of the person or agent.

3-57 Sec. 140.007. LIMITATIONS PERIOD. A proceeding may be
3-58 commenced under this chapter only if the proceeding is filed on or
3-59 before the seventh anniversary of the date on which the
3-60 racketeering offense was actually discovered. This section
3-61 supersedes any conflicting provision establishing a shorter period
3-62 of limitations for the same conduct.

3-63 Sec. 140.008. SPECIAL DOCKETING PROCEDURES. The attorney
3-64 general may file with the clerk of the district court in which a
3-65 proceeding is brought under this chapter a certificate stating that
3-66 the case is of special public importance. The clerk must
3-67 immediately furnish a copy of the certificate to the administrative
3-68 judge of the district court of the county in which the proceeding is
3-69 pending. On receiving the copy of the certificate, the

4-1 administrative judge shall immediately designate a judge to hear
4-2 and determine the proceeding. The designated judge shall promptly
4-3 assign the proceeding for hearing, participate in hearings, make
4-4 determinations, and cause the action to be expedited.

4-5 Sec. 140.009. NOTICE TO LOCAL PROSECUTOR. (a) In a
4-6 reasonable time before initiating suit or on initiating an
4-7 investigation on racketeering, the attorney general shall provide
4-8 notice to the district attorney, criminal district attorney, or
4-9 county attorney with felony criminal jurisdiction that appears to
4-10 have primary jurisdiction over the criminal prosecution of any
4-11 target of an investigation under this chapter at the time of the
4-12 notice concerning the attorney general's intent to file suit under
4-13 this chapter or investigate racketeering, as applicable.

4-14 (b) The notices described by Subsection (a) must describe or
4-15 otherwise identify the defendant to the suit or the suspect, as
4-16 applicable.

4-17 Sec. 140.010. COOPERATION WITH LOCAL PROSECUTOR. (a) A
4-18 district attorney, criminal district attorney, or county attorney
4-19 with felony criminal jurisdiction that receives notice under
4-20 Section 140.009 may notify the attorney general of a related
4-21 pending criminal investigation or prosecution.

4-22 (b) On receipt of notice described by Subsection (a), the
4-23 attorney general shall coordinate and cooperate with the district
4-24 attorney, criminal district attorney, or county attorney with
4-25 felony criminal jurisdiction to ensure that the filing of a suit
4-26 under this chapter does not interfere with an ongoing criminal
4-27 investigation or prosecution. The attorney general shall update
4-28 the district attorney, criminal district attorney, or county
4-29 attorney with felony criminal jurisdiction on matters affecting the
4-30 suit or the investigation.

4-31 Sec. 140.011. ABATEMENT OF SUIT. If the district attorney,
4-32 criminal district attorney, or county attorney with felony criminal
4-33 jurisdiction determines that a suit brought under this chapter
4-34 would interfere with an ongoing criminal investigation or
4-35 prosecution after notifying the attorney general of the
4-36 investigation or prosecution under Section 140.010, the district
4-37 attorney, criminal district attorney, or county attorney with
4-38 felony criminal jurisdiction may request, in writing, that the
4-39 attorney general abate the suit. On receipt of this request, the
4-40 attorney general shall abate the suit.

4-41 Sec. 140.012. DISPOSITION OF ASSETS. (a) An award issued
4-42 in an action brought under this chapter must be paid in accordance
4-43 with this section.

4-44 (b) After a deduction of any costs of suit, including
4-45 reasonable attorney's fees and court costs, 80 percent of the
4-46 amount of the award remaining must be paid to the state, and the
4-47 remaining 20 percent must be paid, on a pro rata basis, to each law
4-48 enforcement agency, district attorney's office, criminal district
4-49 attorney's office, and office of a county attorney with felony
4-50 criminal jurisdiction found by the court to have assisted in the
4-51 suit.

4-52 (c) The first \$10 million, after any costs of suit described
4-53 by Subsection (b), that is paid to the state under this chapter in a
4-54 fiscal year shall be dedicated to the compensation to victims of
4-55 crime fund described by Article 56.54, Code of Criminal Procedure.

4-56 Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Notwithstanding
4-57 another provision of this chapter, no remedies provided by this
4-58 chapter may be assessed against proceeds, contraband, or other
4-59 property over which a law enforcement agency has previously
4-60 asserted jurisdiction under Chapter 59, Code of Criminal Procedure,
4-61 at the time a suit under this chapter was filed.

4-62 SECTION 2. Chapter 140, Civil Practice and Remedies Code,
4-63 as added by this Act, applies only to a civil action based on an
4-64 offense under Chapter 20A, Penal Code, committed on or after the
4-65 effective date of this Act. A civil action based on an offense
4-66 committed before the effective date of this Act is governed by the
4-67 law in effect when the offense was committed, and that law continues
4-68 in effect for that purpose. For the purposes of this section, an
4-69 offense was committed before the effective date of this Act if any

5-1 element of the offense occurred before that date.
5-2 SECTION 3. This Act takes effect immediately if it receives
5-3 a vote of two-thirds of all the members elected to each house, as
5-4 provided by Section 39, Article III, Texas Constitution. If this
5-5 Act does not receive the vote necessary for immediate effect, this
5-6 Act takes effect September 1, 2013.

5-7 * * * * *