

## **BILL ANALYSIS**

Senate Research Center

H.B. 3241  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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 authorizes the state, through the Office of the Attorney General, 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.

The bill amends the Civil Practice and Remedies Code to provide that the Office of the Attorney General may bring suit against a person for racketeering and may seek civil penalties, costs, attorney's fees, and injunctive relief. The bill provides that 80 percent of assets awarded will be paid to the state and 20 percent to local law enforcement agencies. The bill also provides that the first \$10 million paid to the state will be dedicated to the Compensation to Victims of Crime Account No 469.

H.B. 3241 amends current law relating to the civil prosecution of racketeering related to trafficking of persons, and provides penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140, as follows:

#### CHAPTER 140. CIVIL RACKETEERING RELATED TO TRAFFICKING OF PERSONS

Sec. 140.001. DEFINITIONS. Defines "acquire," "enterprise," "gain," "proceeds," and "racketeering" in this chapter.

Sec. 140.002. CIVIL RACKETEERING. Provides that a person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense under Chapter 20A (Trafficking of Persons), Penal Code, and the offense or an element of the offense:

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

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

Sec. 140.003. SUIT TO ABATE RACKETEERING. (a) 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.

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

(c) Requires that a suit under this chapter 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.

Sec. 140.004. INJUNCTIVE RELIEF; OTHER REMEDIES. (a) Authorizes a court in which a proceeding is brought under this chapter to prevent, restrain, and remedy racketeering by issuing appropriate orders. Authorizes the orders to include 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 under Chapter 61 (Attachment) for the purposes of freezing, preserving, and disgorging assets, or another order for a remedy or restraint the court considers proper.

(b) Authorizes the court, following a final determination of liability under this chapter, to issue an appropriate order, including an order that:

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

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

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

(4) orders 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) 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 this chapter;

(6) 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;

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

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

(c) Requires the court, in determining the amount of a civil penalty ordered under Subsection (b)(6), to consider:

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

(2) the duration of the racketeering activity.

(d) Authorizes the court to order that the property be disgorged to the state to the extent of the person's or enterprise's interest if any property attached under Chapter 61 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. Requires that the property, to be disgorged, be acquired or maintained by the person or enterprise through racketeering.

(e) Requires the court, in determining the amount of damages ordered under Subsection (b)(7), to 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) other material damage caused to the state by the racketeering.

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

(g) Provides that this chapter is not intended to provide the exclusive remedy for the activity addressed by this chapter. Authorizes that a proceeding under this chapter be brought in addition to or in the alternative of any other civil or criminal action available under the laws of this state.

(h) Provides that notwithstanding any other provision in this chapter, Articles 59.13 (Disclosure of Information Relating to Accounts and Assets at Regulated Financial Institution) and 59.14 (Notice to Primary State and Federal Financial Institution), Code of Criminal Procedure, apply to a remedy under this section.

(i) Prohibits a remedy under this section from impairing a security interest in property subject to a bona fide lien.

Sec. 140.005. CONSTRUCTIVE TRUST. (a) Provides that 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 is an involuntary trustee. Provides that the involuntary trustee or any other person or enterprise, other than a bona fide purchaser for value as described by Subsection (b), holds the property and the proceeds of the property in constructive trust for the benefit of any person entitled to remedies under this chapter.

(b) Provides 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 under Subsection (a) and is not subject to a constructive trust imposed under this chapter.

Sec. 140.006. EVIDENCE. (a) Provides that in a proceeding under this chapter, the state bears the burden of proof by a preponderance of the evidence.

(b) Provides that 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. Provides that for purposes of this subsection, a verdict or a plea, including a plea of nolo contendere, is considered a conviction.

(c) Prohibits an individual from being held liable under this chapter based on the conduct of another person unless the finder of fact finds by a preponderance of the evidence that the individual authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the other person.

(d) Prohibits an enterprise from being held liable under this chapter based on the conduct of an agent unless the finder of fact finds by a preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the agent.

(e) Prohibits 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 as defined by Chapter 151 (Regulation of Money Services Businesses), Finance Code, from being held liable in damages or for other relief under this chapter, unless the finder of fact finds by a preponderance of the evidence that the person or agent acquiring or maintaining an interest in or transporting, transacting, transferring, or receiving the funds on behalf of another did so knowing that the funds were the proceeds of an offense and that a director or high managerial agent performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the person or agent.

Sec. 140.007. **LIMITATIONS PERIOD.** Authorizes that a proceeding be commenced under this chapter only if the proceeding is filed on or before the seventh anniversary of the date on which the racketeering offense was actually discovered. Provides that this section supersedes any conflicting provision establishing a shorter period of limitations for the same conduct.

Sec. 140.008. **SPECIAL DOCKETING PROCEDURES.** Authorizes the attorney general to 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. 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. Requires the administrative judge, on receiving the copy of the certificate, to immediately designate a judge to hear and determine the proceeding. Requires the designated judge to promptly assign the proceeding for hearing, participate in hearings, make determinations, and cause the action to be expedited.

Sec. 140.009. **NOTICE TO LOCAL PROSECUTOR.** (a) 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 an investigation under this chapter at the time of the notice concerning the attorney general's intent to file suit under this chapter or investigate racketeering, as applicable.

(b) Requires that the notices described by Subsection (a) describe or otherwise identify the defendant to the suit or the suspect, as applicable.

Sec. 140.010. **COOPERATION WITH LOCAL PROSECUTOR.** (a) Authorizes a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction that receives notice under Section 140.009 to notify the attorney general of a related pending criminal investigation or prosecution.

(b) Requires the attorney general, on receipt of notice described by Subsection (a), to coordinate and cooperate with the district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction to ensure that the filing of a suit under this chapter does not interfere with an ongoing criminal investigation or prosecution. Requires the attorney general to update the district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction on matters affecting the suit or the investigation.

Sec. 140.011. ABATEMENT OF SUIT. Authorizes the district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction to request, in writing, that the attorney general abate the suit if the district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction determines that a suit brought under this chapter would interfere with an ongoing criminal investigation or prosecution after notifying the attorney general of the investigation or prosecution under Section 140.010. Requires the attorney general, on receipt of this request, to abate the suit.

Sec. 140.012. DISPOSITION OF ASSETS. (a) Requires that an award issued in an action brought under this chapter be paid in accordance with this section.

(b) Requires that 80 percent of the amount of the award remaining after a deduction of any costs of suit, including reasonable attorney's fees and court costs, be paid to the state, and the remaining 20 percent be paid, on a pro rata basis, to each law enforcement agency, district attorney's office, criminal district attorney's office, and office of a county attorney with felony criminal jurisdiction found by the court to have assisted in the suit.

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

Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Authorizes that no remedies provided by this chapter, notwithstanding another provision of this chapter, be assessed against proceeds, contraband, or other property over which a law enforcement agency has previously asserted jurisdiction under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, at the time a suit under this chapter was filed.

SECTION 2. Makes application of Chapter 140, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2013.