

SUBJECT: Barring recovery of damages sustained by criminals in the act of a crime

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — T. Hunter, Hilbert, Culberson, Hartnett, Moffat, Zbranek

0 nays

3 absent — Alvarado, Sadler, Tillery

WITNESSES: None

DIGEST: HB 692 would bar a convicted criminal from recovering any damages sustained in the commission of a crime if the injury would not have occurred but for the commission of the crime. Such a bar would apply to the commission of every felony or misdemeanor except traffic offenses. A convicted criminal would not be barred from recovering damages if the damages arose from an act not related to preventing the crime, apprehension of a criminal or a defect on the premises.

This bill would also bar any other person from recovering damages on behalf of the criminal if the criminal's action would have been barred. For purposes of this statute a convicted person would be any person who had a sentence imposed, received a fine, probation, or deferred adjudication.

If a criminal brought an action to recover damages that would be barred, the convicted criminal is liable to the defendant for any court costs and attorney's fees spent defending the action.

This bill would take immediate effect if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: Convicted criminals are increasingly gaining windfalls from crimes through the tort system. Whenever a criminal is stopped in the act or apprehended after committing a crime and is injured by the person stopping or apprehending the criminal, that criminal can sue that person to recovery for his injuries. What this means is that a Texan has the right under the criminal law to protect his property and life from a criminal, but under the

civil law, that right is substantially diminished because the person using such self-defense may be sued by the criminal. This bill would renew the right of Texans to defend themselves against crime without having to worry about being sued by a convicted criminal.

This bill would not limit the rights of any person other than *convicted* criminals. Persons who are acquitted or who are never charged will still have all their rights intact. What will be different after the passage of this law is that someone imprisoned will not have the right to sue for tort damages the person that caught them. Such a suit is a windfall for committing the crime.

This bill would not affect the open courts provision of the Texas Constitution (Art. 1, sec. 13), because the criminal may still bring the suit to court. This bill only bars the convicted criminal from recovering for any injuries sustained in the commission of the crime.

OPPONENTS
SAY:

There is no need for this legislation. Whenever a criminal pursues a civil action, it is made known to the jury that the criminal was in the process of committing a crime when the injury occurred. That alone should serve to stop the criminal from recovering; there is no need to go as far as this bill does and completely bar them from any hope of recovery.

This bill would indirectly violate the open courts provision of the Texas Constitution (Art. 1, sec. 13). It does not violate this provision directly because it only bars recovery, not the right to bring the action, but it provides if the action is brought, the plaintiff will be required to pay the defendant's costs and attorney's fees. Therefore, no convicted criminal would ever bring a suit.

No rational relationship exists between the commission of a criminal action and the ability to collect damages on a tort. While the two actions in some cases are factually related, there is no jurisprudential relationship between them. If someone commits a crime, he or she is punished by the criminal justice system. If a person is injured by the intentional acts or negligence of others, the tort system compensates them for those injuries. Both of these systems function independently of each other and should not be connected.

This legislation would open the door for people to use booby traps to stop criminals. Even though those booby traps might result in criminal liability, the criminal injured would not be able to recover civilly.

NOTES:

HB 774 by Culberson, an identical bill, was introduced in the 73rd Legislature. That bill was referred to the House State Affairs Committee but no action was taken by that committee.