

- SUBJECT:** Allowing civil suits for racketeering related to human trafficking
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Hernandez Luna, K. King, Raymond, S. Thompson
- 0 nays
- 2 absent — Gooden, Hunter
- WITNESSES:** For — Dennis Mark, Redeemed Ministries; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference of Bishops; Lon Craft, Texas Municipal Police Association; Chris Kaiser, Texas Association Against Sexual Assault; Jason Sabo, Children at Risk; Barbara Waldon, Refuge of Light; Patricia Macy)
- Against — None
- On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Geoff Barr, Office of the Texas Attorney General)
- BACKGROUND:** Penal Code ch. 20A makes the trafficking of persons a crime with penalties for specific offenses being first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) or second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000).
- DIGEST:** HB 3241 would authorize the attorney general to bring civil lawsuits against persons or enterprises for racketeering related to human trafficking and would allow the attorney general to seek civil penalties, costs, attorney's fees, and injunctive relief in these cases. Enterprises would be defined as legal entities, groups of associated individuals, or a combination of entities and individuals.
- Persons or enterprises would commit racketeering if, for financial gain, they committed a human trafficking offense under Penal Code ch. 20A and the offense or any element of it occurred in more than one Texas

county or was facilitated by U.S. mail, e-mail, telephone, facsimile, or wireless communication from one Texas county to another. The state would bear the burden of proof by a preponderance of the evidence for proceedings under the bill.

Courts would be able to issue appropriate orders to prevent, restrain, and remedy racketeering. After a final determination of liability, courts could issue appropriate orders. These could include payments to the state equal to the gain acquired through racketeering or the amount that the person was liable for under the bill and payments to the state for civil penalties up to \$250,000 for each separate act of racketeering. The bill would outline criteria that courts would have to consider in determining the amount of damages that could be ordered. HB 3241 would establish the criteria under which persons, enterprises, and financial institutions could be held liable based on the conduct of another.

The bill would establish special procedures for expediting the placement of placing racketeering cases on the court dockets and would require proceedings to be filed within seven years of a racketeering offense.

The attorney general would have to notify the local prosecutor within a reasonable amount of time before initiating a suit or on initiating an investigation on racketeering. Local prosecutors would be authorized to notify the attorney general of related, pending criminal investigations or prosecutions. The attorney general would be required to coordinate and cooperate with prosecutors to ensure that a suit under HB 3241 would not interfere with a criminal investigation or prosecution.

Prosecutors would be able to request that the attorney general abate a racketeering suit if they determined that the suit would interfere with a criminal investigation or prosecution. If requested, the attorney general would have to abate the suit. The attorney general could ask a district court for permission to proceed with a suit and would have to notify prosecutors of the request. Courts could hold hearings on the request, and the attorney general would have to prove by a preponderance of the evidence that abatement would unduly burden the suit.

HB 3241 would establish the priority for distribution of awards for racketeering suits. After costs, including attorney's fees and court costs, 80 percent of an award would go to the state and 20 percent would be paid pro rata to law enforcement agencies that assisted in the suit. The first \$10

million, after costs, paid to the state each year would have to go to the crime victims' compensation fund.

Remedies in the bill could not be assessed against proceeds, contraband, or other property that law enforcement authorities had previously asserted jurisdiction over under the Penal Code, ch. 59 provisions dealing with the forfeiture of contraband.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. It would apply only to civil suits based on offenses committed on or after that date.

**SUPPORTERS  
SAY:**

HB 3241 would give the state another tool to continue its efforts to combat the horrific crime of human trafficking. Texas has been identified as a hub for international human trafficking, and in response the state has enacted numerous laws to combat these crimes, including laws to punish traffickers, protect victims, and establish the state's Human Trafficking Prevention Task Force.

HB 3241 would continue these efforts by allowing civil lawsuits against those who commit human trafficking. Human trafficking can be a complex, organized enterprise, and establishing a civil cause of action would allow the state to go after the assets of those who exploit children, women, and men. These civil suits would work both as a punishment and a deterrent.

A civil cause of action crafted specifically to deal with human trafficking would allow the state to get at these enterprises from all angles and with one action, instead of the more singular approach allowed under various current laws. For example, while current law governing nuisance abatement suits might allow civil action against one particular property and contraband forfeiture laws might allow authorities to go after specific property used in trafficking, HB 3241 would allow the attorney general to attack traffickers' income, property, and other assets.

Allowing civil suits in cases in which perhaps no criminal conviction had yet occurred would broaden the reach of the state to combat trafficking. These cases would have to be decided by a court and proved by the state by a preponderance of the evidence, ensuring fair treatment for plaintiffs.

HB 3241 would allow suits only when trafficking occurred across county lines and only by the attorney general. This appropriately would place the attorney general in a trans-jurisdictional role with these civil suits while local authorities continued to handle crimes that occurred in one county. Allowing prosecutors to file civil suits could blur lines between criminal and civil actions in these trafficking cases.

The bill would allow enforcement actions, remedies, and orders typically used in other types of civil suits, including fines, penalties, damages, attaching property, and other orders. The bill would carefully carve out liability so only those involved in the crime of trafficking could be held liable.

The bill would respect the role of law enforcement authorities to handle criminal offenses related to human trafficking and ensure that a civil suit would not interfere with these cases. It would establish procedures for notification, cooperation, and coordination between the attorney general and local prosecutors. It would require the attorney general to abate a suit upon request of a prosecutor. The author plans to offer a floor amendment that would address concerns about the attorney general overriding the abatement decisions of prosecutors.

The bill would ensure that assets awarded in a case were fairly distributed, with a portion going to the state and a portion to local law enforcement authorities who assisted in the suit. Of the state funds, the first \$10 million would go to the crime victims' compensation fund so that victims of trafficking could benefit.

OPPONENTS  
SAY:

Current law may be broad enough to allow authorities to go after the assets of human traffickers. For example, Code of Criminal Procedure, ch. 59 defines contraband as any property used in the commission of certain felonies.

HB 3241 should include authority for local prosecutors to file civil racketeering suits, especially since some have expertise in this area. Some local prosecutors have both criminal and civil jurisdiction and, just like the attorney general, they should be given all possible tools to combat human trafficking.

OTHER  
OPPONENTS

The attorney general should not be able to override the abatement of suits with court orders. Criminal investigations should take precedence over

SAY: these civil cases.

NOTES: Rep. Thompson plans to offer an amendment which would eliminate the authority for the attorney general to request and for courts to grant permission for civil suits to proceed after a prosecutor had requested abatement. The amendment also would add local prosecutors to the list with law enforcement agencies of those who would receive a portion of the 20 percent of proceeds awarded to the state under a suit.