

BILL ANALYSIS

Senate Research Center

S.B. 1065
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Transnational gangs and criminal enterprises like the Texas Mexican Mafia, the Barrio Aztecas, Tango Blast, MS-13, and others have proliferated in this state. They engage in human trafficking, drug trafficking, firearms trafficking, and violent crime.

Unfortunately, their criminal activity is not limited to Mexico or the border regions of Texas. According to the 2009 National Gang Threat Assessment Report, published by the National Gang Intelligence Center, gangs are responsible for as much as 60 percent of the crime in some communities of the Southwest United States, including Texas. Harris County alone has at least 10,000 gang members according to the report.

Texas has a variety of laws in the Penal Code that addresses criminal activity including organized crime statutes. However, law enforcement entities lack statutory authority to target the life blood of criminal enterprises, their financial assets.

The Texas Racketeering and Corruption Act, or TexRAC, will provide law enforcement with another tool to combat the growing trans-national gang problem. TexRAC has two parts, a criminal element and a civil element. First, TexRAC creates a criminal racketeering offense with the resulting penalty being a second or a third degree felony. Second, TexRAC statutorily creates a civil cause of action for racketeering, with only the attorney general having the ability to pursue a civil racketeering cause. TexRAC targets the money and property supporting the criminal enterprise by granting the attorney general authority to file a suit in civil court to recover civil penalties, costs related to the lawsuit, and injunctive relief. The attorney general is also authorized to bring an "action in rem."

As proposed, S.B. 1065 relates to the civil and criminal prosecution of racketeering 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

Sec. 140.001. Defines "acquire," "enterprise," "gain," "proceeds," and "racketeering," or "racketeering offense."

Sec. 140.002. CIVIL RACKETEERING. Provides that a person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense described in the following list, including any preparatory or completed offense, that is chargeable or indictable under the laws of this state or another state, federal law, the laws of a foreign county, or the Uniform Code of Military Justice and that is punishable by imprisonment for more than one year under the jurisdiction in which the violation occurred:

- (1) criminal homicide as described by Chapter 19 (Criminal Homicide), Penal Code;
- (2) kidnapping or unlawful restraint as described by Chapter 20 (Kidnapping and Unlawful Restraint), Penal Code;
- (3) trafficking of persons as described by Chapter 20A (Trafficking of Persons), Penal Code;
- (4) a sexual offense as described by Chapter 21 (Sexual Offenses), Penal Code;
- (5) an assaultive offense as described by Chapter 22 (Assaultive Offenses), Penal Code;
- (6) arson, criminal mischief, or other property damage or destruction as described by Chapter 28 (Arson, Criminal Mischief, and Other Property Damage or Destruction), Penal Code;
- (7) robbery as described by Chapter 29 (Robbery), Penal Code;
- (8) theft as described by Chapter 31 (Theft), Penal Code;
- (9) fraud as described by Chapter 32 (Fraud), Penal Code;
- (10) a computer crime as described by Chapter 33 (Computer Crimes), Penal Code;
- (11) money laundering as described by Chapter 34 (Money Laundering), Penal Code;
- (12) bribery and corrupt influence as described by Chapter 36 (Bribery and Corrupt Influence), Penal Code;
- (13) prostitution or obscenity as described by Chapter 43 (Public Indecency), Penal Code;
- (14) trafficking of explosive weapons, firearms, or components of explosives as described by Chapter 46 (Weapons), Penal Code;
- (15) gambling as described by Chapter 47 (Gambling), Penal Code;
- (16) engaging in organized criminal activity as described by Section 71.02 (Engaging in Organized Criminal Activity), Penal Code;
- (17) manufacture or delivery of a controlled substance or dangerous drug as described by Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs), Health and Safety Code; and
- (18) international or reckless fraud in the purchase or sale of securities as described by the Securities Act (Article 581-1 et seq., V.T.C.S.).

Sec. 140.003. SUIT TO ABATE RACKETEERING. (a) Authorizes the attorney general to bring suit in the name of the state against any person or enterprise for racketeering under this chapter and authorizes the attorney general to seek to recover civil penalties, costs of suit, including reasonable attorney's fees, and any 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, or in a district court in Travis County.

Sec. 140.004. ACTION IN REM. (a) Authorizes the attorney general, in addition to bringing suit against a person or enterprise under Section 140.003, to pursue an in rem action under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, for forfeiture of any property or interest in property acquired or maintained by the person or enterprise in violation of Chapter 34A, Penal Code, or Section 71.02(a)(14), Penal Code; any interest, security, claim, or any other form of property, office, title, license, or contractual right that affords a source of influence over any enterprise that conducted or participated in conduct in violation of Chapter 34A, Penal Code, or Section 71.02(a)(14), Penal Code; and all proceeds traceable to a racketeering offense and all money, negotiable instruments, securities, and other property used or intended to be used in any manner or in any part to facilitate the commission of the offense.

(b) Requires an in rem forfeiture action under this chapter to be brought in a district court in a county in which all or part of the alleged racketeering offense giving rise to the action occurred, or in a district court in Travis County. Provides that this provision supersedes any conflicting venue provision, including venue provisions under Chapter 59, Code of Criminal Procedure.

Sec. 140.005. 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. Provides that the orders may include, but are not limited to, a temporary restraining order, a temporary or permanent injunction, the requirement of a satisfactory performance bond, the creation of a receivership, and the enforcement of a constructive trust in connection with any property or other interest, including property or interest subject to seizure and forfeiture under Chapter 59, Code of Criminal Procedure, or other remedies or restraints the court considers proper.

(b) Authorizes the court, following a final determination of liability under this chapter, to issue an order that includes, but is not limited to:

(1) requiring any person to divest any interest, direct or indirect, in any enterprise;

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

(3) requiring the dissolution or reorganization of any enterprise involved in the suit;

(4) ordering 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) ordering payment to the general revenue fund of the state treasury of an amount equal to the gain acquired or maintained through racketeering, or the amount for which any person is liable under this chapter;

(6) ordering 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 racketeering act; and

(7) ordering payment of damages to the state for racketeering shown to have materially damaged the state.

(c) Requires the court, in determining the amount of a civil penalty ordered under Subsection (b)(6), to consider the seriousness of the racketeering offense and the consequent harm, financial or personal, to the state and to any identified victim or victims; and the duration of the racketeering activity.

(d) Requires the court, in determining the amount of damages ordered under Subsection (b)(7), to consider loss of tax revenue to the state; unpaid state unemployment taxes; unpaid state licensing and regulatory fees; medical and counseling costs incurred by the state on behalf of any victim of the racketeering; and any other material damage caused to the state by the racketeering.

(e) Authorizes remedies and awards ordered by a court under this chapter, including costs and reasonable attorney's fees, to be assessed against and paid from money or property awarded under a forfeiture action under Chapter 59, Code of Criminal Procedure, or against property alleged to have been contraband, as defined by Article 59.01 (Definitions), Code of Criminal Procedure, from the underlying activity.

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

Sec. 140.006. CONSTRUCTIVE TRUST. (a) Provides that a person or enterprise that, through racketeering, acquires any 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 an involuntary trustee or any other person or enterprise, except a bona fide purchaser for value as described under Subsection (b), holds the property and its proceeds in constructive trust for the benefit of persons 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. 140.007. 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 plea, including a no contest plea, is considered a conviction.

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

(d) Prohibits an enterprise from being held liable in damages or for other relief under this chapter based on the conduct of an agent unless the finder of the fact, by a preponderance of the evidence, finds that a director or high managerial agent preformed, 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 or a credit union insured by the National Credit Union Administration from being held liable in damages or for other relief under

this chapter for conduct proscribed by Chapter 34, Penal Code, based on acquiring or maintaining an interest in or transporting, transacting, transferring, or receiving funds belonging to a person other than the person presenting the funds, unless the finder of fact, by a preponderance of the evidence, finds that the person or agent acquiring or maintaining an interest in or transporting, transacting, or 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.

Sec. 140.008. LIMITATIONS PERIOD. Prohibits any proceeding from being commenced under this chapter unless the proceeding is filed not later than seven years after actual discovery of the racketeering offense. Provides that this provision supersedes any conflicting limitations provision creating a shorter period.

Sec. 140.009. 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.

SECTION 2. Amends Title 7, Penal Code, by adding Chapter 34A, as follows:

CHAPTER 34A. RACKETEERING

Sec. 34A.001. DEFINITIONS. Defines "enterprise" and "racketeering."

Sec. 34A.002. ILLEGAL CONTROL OR CONDUCT OF ENTERPRISE. (a) Provides that a person commits an offense if the person knowingly:

- (1) through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of an enterprise;
- (2) is employed by or associated with an enterprise and conducts any of the enterprise's affairs through racketeering;
- (3) participates directly or indirectly in the conduct of an enterprise that the person knows is being conducted, wholly or partially, through racketeering; or
- (4) hires, engages, or uses a minor for any conduct preparatory to or in completion of an offense under Subdivision (1), (2), or (3).

(b) Provides that an offense under Subsection (a)(1), (2), or (3) is a felony of the third degree. Provides that an offense under Subsection (a)(4) is a felony of the second degree.

SECTION 3. Amends Section 71.02(a), Penal Code, to provide that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person, rather than he, commits or conspires to commit one or more of certain offenses, including any offense under Chapter 34A.

SECTION 4. Amends Subdivision (1), Article 59.01, Code of Criminal Procedure, to redefine "attorney representing the state."

SECTION 5. Amends Subdivision (2), Article 59.01, Code of Criminal Procedure, as effective April 1, 2009, to redefine "contraband."

SECTION 6. (a) Provides that the changes in law made by Chapter 140, Civil Practice and Remedies Code, and Chapter 34A, Penal Code, as added by this Act, and by Section 71.02(a), Penal Code, and Subdivisions (1) and (2), Article 59.01, Code of Criminal Procedure, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2009.