

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1065  
By: Williams, Van de Putte  
State Affairs  
4/30/2009  
Committee Report (Substituted)

### **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."

C.S.S.B. 1065 relates to civil racketeering and provides civil 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. **LEGISLATIVE PURPOSE AND INTENT.** (a) Provides that the legislature finds that law enforcement authorities at the local level, including district attorneys and county attorneys with felony criminal jurisdiction, are experienced and capable in the investigation, prosecution, and eradication of crime.

(b) Provides that the legislature further finds that certain crimes are increasingly committed by organized enterprises that have the capability of operating throughout the state, the United States, and in some instances, internationally.

(c) Provides that the legislature further finds that the transjurisdictional nature and scope of these organized enterprises can present challenges to the investigation, prosecution, and eradication of some of their activities.

(d) Provides that the legislature further finds that the transjurisdictional nature and scope of these organized enterprises requires that the State of Texas, at a statewide level, become more involved in addressing the ability of these enterprises to operate in and throughout this state.

(e) Provides that it is the intent of the legislature that the efforts of the State of Texas under this chapter will assist local law enforcement agencies in the shared mission of disabling the organized activity referenced in this chapter and protecting the health, safety, and welfare of the people of Texas.

Sec. 140.002. DEFINITIONS. Defines "acquire," "enterprise," "gain," "proceeds," and "racketeering" in this chapter.

Sec. 140.003. CIVIL RACKETEERING. (a) Provides that a person commits racketeering if:

(1) for financial gain, the person knowingly engages in an enterprise that commits, facilitates, or promotes any gambling offense punishable at least as a Class A misdemeanor; the promotion of prostitution, as described by Section 43.03 (Promotion of Prostitution), Penal Code; compelling prostitution, as described by Section 43.05 (Compelling Prostitution), Penal Code; unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons; unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception; any offense under Subchapter B (Obscenity), Chapter 43 (Public Indecency), Penal Code, depicting or involving conduct by or directed toward a child younger than 18 years of age; trafficking of persons, as described by Chapter 20A (Trafficking of Persons), Penal Code; bigamy, as described by Section 25.01 (Bigamy), Penal Code; or fraudulent use or possession of identifying information, as described by Chapter 32 (Fraud), Penal Code; and

(2) the event, omission, transaction, or occurrence, or the series of events, omissions, transactions, or occurrences, relating to the act that meets the requirements of Subdivision (1) takes place or occurs in more than one county in Texas or is perpetuated by use of the United States mail, electronic mail, telephone, facsimile, or a wireless communication from one county to another.

Sec. 140.004. SUIT TO ABATE RACKETEERING. (a) Authorizes the attorney general to bring suit under this chapter in the name of the state against any person or enterprise who engages in a pattern or practice of racketeering and authorizes the attorney general to seek to recover civil penalties, costs of suit, including reasonable attorney's fees, and any appropriate injunctive relief. Requires that the reasonable attorney's fees that the attorney general recovers in a suit brought under this chapter be determined and awarded pursuant to Section 2107.006 (Attorney Fees and Costs), Government Code.

(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 activity giving rise to the suit occurred.

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

creation of a receivership, the enforcement of a constructive trust in connection with any property or other interest, prejudgment writs of attachment under Chapter 61 (Attachment) for the purpose of the freezing, preserving, and disgorging of assets, orders to repatriate property beyond the jurisdiction of the court, 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 activity, 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 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 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;

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

(8) ordering that property attached under Chapter 61 be used to satisfy any award of the court, including awards for damages, penalties, costs, or fees.

(c) Authorizes the court, if any property attached under Chapter 61 is not necessary to satisfy an award of the court, and after a finding of liability for racketeering of the person or enterprise having an interest in such property, to order that the property be disgorged to the state to the extent of the person's or enterprise's interest, if it is proven that the property is one or more of property or an interest in property acquired or maintained by the person or enterprise through racketeering; 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 racketeering; or proceeds traceable to racketeering activity 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 racketeering.

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

(e) 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 damages suffered by the state due to the racketeering.

(f) Authorizes remedies and awards ordered by a court under this chapter, including costs and reasonable attorney's fees, unless otherwise provided by this chapter, to 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 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.

(h) Requires the court, notwithstanding any other provision of this chapter, to order that any awards issued under this chapter, after taking into account any costs of suit, including reasonable attorney's fees and court costs, is required to be paid in accordance with Section 140.012.

(i) Requires that the provisions of this chapter, the provisions of 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 Regulators), Code of Criminal Procedure, notwithstanding any other provision of this chapter, apply to any remedy under this section, and in no event require that the remedies herein result in the impairment of a security interest in property subject to a bona fide lien.

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 or lien holder 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 of the enterprise 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, a credit union insured by the National Credit Union Administration, or a holder of a money transmission license under 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, by a preponderance of the evidence, finds that the board of directors performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct.

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 the date of the alleged act of racketeering. 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.

Sec. 140.010. NOTIFICATION TO LOCAL PROSECUTOR. (a) Requires the attorney general, if the attorney general investigates racketeering activity under this chapter, to use reasonable efforts to provide notice to the district attorney or county attorney with felony criminal jurisdiction in each county where the attorney general determines the racketeering activity occurs or occurred. Requires the attorney general, if the attorney general intends to file suit under this chapter, to provide notice of this intention to the district attorney or county attorney with felony criminal jurisdiction in the county where the attorney general intends to file suit.

(b) Requires that the notices described in this section describe or otherwise identify the defendant or defendants of the suit or investigation.

Sec. 140.011. COOPERATION WITH LOCAL AUTHORITIES. (a) Authorizes a district attorney or county attorney with felony criminal jurisdiction that receives notice under Section 140.010 to notify the attorney general of any pending criminal investigation or prosecution relating to the subject matter of the racketeering action.

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

(c) Authorizes the district attorney or county attorney with felony criminal jurisdiction in the county to ask the attorney general, in writing to abate the suit if the district attorney or county attorney with felony jurisdiction in the county determines that a suit brought under this chapter will interfere with an ongoing criminal investigation or prosecution. Authorizes the attorney general, if the attorney general determines that it is necessary for the suit to continue, to ask the court for permission to proceed, and is required to provide notice of the request to the district attorney or county attorney with felony criminal jurisdiction who made the request to the attorney general. Authorizes the court to hold a hearing to determine this issue, with the burden of persuasion being upon the attorney general. Authorizes a hearing held under this subsection, at the request of either

party, to be conducted in camera to protect the integrity of the ongoing investigation or prosecution, as well as the identity of any person or enterprise then under investigation or prosecution.

Sec. 140.012. DISPOSITION AND SHARING OF ASSETS. (a) Requires that any awards issued in action brought under this chapter, by court order, be paid in accordance with this section.

(b) Requires the court to order that 80 percent of any award issued under this chapter be paid to the State of Texas. Requires that the remaining 20 percent of the award be shared, on a pro rata basis, by and among any law enforcement agencies determined by the court to have assisted in the investigation and furtherance of the suit.

(c) Requires that the first \$10 million that is paid to the state under this chapter in any given fiscal year, after taking into account any cost of suit, including reasonable attorney's fees and court costs, be dedicated to the compensation to victims of crime fund established under Subchapter B (Crime Victims' Compensation), Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure.

Sec. 140.013. PREVIOUSLY SEIZED ASSETS. Provides that notwithstanding any other provision of this chapter, no remedies provided by this chapter may be assessed against, and the attorney general may not claim or pursue in a suit brought under this chapter, any proceeds, contraband, or other property of any kind over which a law enforcement authority has previously asserted jurisdiction under Chapter 59, Code of Criminal Procedure, at the time a suit under this chapter was filed.

SECTION 2. (a) Provides that the changes in law made by Chapter 140, Civil Practice and Remedies Code, as added 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 3. Effective date: upon passage or September 1, 2009.