

**SUBJECT:** Creating offenses related to racketeering and unlawful debt collection

**COMMITTEE:** Judiciary & Civil Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Leach, Flores, Murr, Schofield, Slawson, Vasut  
2 nays — Julie Johnson, Moody  
1 absent — Davis

**WITNESSES:** For — Mitch Landry, Texas Municipal Police Association (*Registered, but did not testify*; James Parnell, Dallas Police Association; Joe Morris, Game Warden Peace Officer's Association; Ray Hunt, Houston Police Officers' Union; AJ Louderback, Texas Sheriff's Regional Alliance)  
Against — None  
On — Josh Reno, Office of the Texas Attorney General (*Registered, but did not testify*; Shannon Edmonds, Texas District and County Attorneys Association)

**BACKGROUND:** Some have suggested that providing for certain civil actions, remedies, and enforcement for racketeering and unlawful debt collection could help law enforcement in targeting organized crime.

**DIGEST:** CSHB 4635 would establish provisions relating to civil actions and remedies for organized crime, racketeering, or unlawful debt collection offenses and the filing of racketeer-influenced and corrupt organization (RICO) liens with respect to such offenses.

**Definitions.** Under Penal Code, "racketeering" would be defined as committing, attempting to commit, conspiring to commit, soliciting, coercing, or intimidating another person to commit any of the following offenses:

- a felony offense under The Securities Act;
- kidnapping or aggravated kidnapping;

- operation of a stash house;
- perjury and other falsification offenses;
- resisting arrest, search, or transportation of a person;
- hindering apprehension or prosecution of a person;
- a public indecency offense; or
- engaging in organized criminal activity.

Under Civil Practice and Remedies Code, "investigative agency" would mean the Department of Public Safety, the Office of the Attorney General, or a local prosecutor.

**Racketeering and unlawful debt collection offenses.** CSHB 4635 would create felony offenses for certain acts related to racketeering and unlawful debt collection.

*Felony offenses.* The bill would create a second-degree felony offense (two to 20 years in prison and an optional fine of up to \$10,000) for:

- the use of proceeds derived from racketeering or unlawful debt collection in acquiring title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- the acquisition of an interest in property or control of an enterprise through racketeering or unlawful debt collection; and
- employment by or association with an enterprise and knowingly conducting or participating in that enterprise through racketeering or unlawful debt collection.

The bill would authorize a court to impose a fine on a person convicted of a felony offense under the bill's provisions through which the person derived value or caused personal injury, property damage, or other loss, capped at certain amounts related to the gross value gained or lost as a result of the offense and incurred costs of the investigation and prosecution.

The bill would lower the minimum number of people that constituted a criminal street gang from three to two and expand the conditions for

conduct that constituted the offense of engaging in organized criminal activity to include unlawfully possessing or conspiring to unlawfully possess a controlled substance or dangerous drug with intent to deliver the substance or drug.

*Statute of limitations.* A felony indictment for an offense under the bill would have to be presented within five years of the date the offense was committed. If the attorney general or local prosecutor brought an action under the bill's provisions during that limitations period, the limitations period would be suspended while the action was pending and extended for two years.

These provisions would apply only to an offense committed on or after the bill's effective date.

**Civil remedies and enforcement related to racketeering and unlawful debt collection.** CSHB 4635 would establish the authority to serve certain persons thought to be connected to a civil racketeering investigation with civil investigative demands for information, materials, or evidence.

*Civil investigative authority.* If the attorney general or a local prosecutor had reason to believe that a person could be in possession, custody, or control of any documentary material or evidence or could have information relevant to a civil racketeering investigation, the attorney general or local prosecutor could, before beginning a civil proceeding under the bill, issue in writing and serve on the person a civil investigative demand requiring the person to:

- produce any of the documentary material for inspection and copying;
- answer in writing any written interrogatories;
- give oral testimony; or
- provide any combination of civil investigative demands for such material, interrogatories, or testimony.

The bill would establish the required contents of each civil investigative

demand and would provide for service and proof of service of the demand on a natural or non-natural person. The bill also would establish terms of compliance for a person on whom a civil investigative demand for production of documentary material, written interrogatories, or oral testimony was served.

Any production of documentary material or answers to interrogatories in response to a demand would have to be made or submitted under a sworn certificate by a natural person who knew that all of the requested material possessed by the person to whom the demand was directed had been produced or set forth fully and accurately. Any person compelled to appear under a demand for oral testimony could be accompanied, represented, and advised by counsel in confidence, either on the person's request or on the counsel's own initiative, with respect to any question that arose in connection with the examination.

*Noncompliance.* If a person failed to comply with a civil investigative demand, the attorney general or local prosecutor could file in the appropriate district court and could serve the person with a petition for a court order for enforcement. A person would commit an offense if the person, with intent to avoid, evade, or prevent compliance with a civil investigative demand, knowingly removed, concealed, destroyed, or by any other means falsified any documentary material or otherwise provided inaccurate information. The offense would be a misdemeanor punishable by up to one year in jail and/or a maximum fine of \$5,000.

The bill would establish a process through which a person who had been served could file a petition for an order modifying or setting aside the demand. The petition would be required to specify grounds upon which the petitioner was seeking relief and could be based on any failure of the demand to comply with the bill's provisions or on any legal right of the petitioner.

*Disclosure.* A civil investigative demand issued by the attorney general or local prosecutor and any information or material obtained in response to the demand or during an investigation from the information would not be

subject to disclosure, discovery, subpoena, or any other means of legal compulsion for its release. The bill would establish certain disclosure exceptions for a demand requested by a court, state agency, employee of the attorney general or local prosecutor, the person who provided the information under the demand, or a political subdivision.

The attorney general or local prosecutor could use information obtained in response to a demand as necessary in the enforcement of the bill, including presentation before court.

*Jurisdiction.* The bill would grant jurisdiction to the district court in any county in which a petition was filed to hear and determine the matter presented and to enter any order required to implement the bill's provisions. Any final order would be subject to appeal and failure to comply with any final order would be punishable by the court as contempt of the order.

*Other provisions.* The bill would allow the attorney general or local prosecutor to file with the clerk of the appropriate district court a certificate that stated that the case was of special public importance. The clerk would be required to immediately provide a copy of the certificate to the administrative judge of the appropriate district court. On receiving the copy of the certificate, the administrative judge would immediately designate a judge to hear and determine the action. The designated judge would promptly assign the action for hearing, participate in hearings, make determinations, and cause the action to be expedited.

A remedy provided by the bill could not be assessed against, nor could the attorney general claim or pursue in an action brought under the bill, any proceeds, contraband, or other property of any kind over which a law enforcement authority had previously asserted jurisdiction at the time an action under the bill was filed.

The bill's provisions relating to civil remedies and enforcement related to racketeering and unlawful debt collection would apply only to a cause of action that accrued on or after the bill's effective date.

**Civil remedies.** CSHB 4635 would authorize a district court, after making due provision for the rights of innocent persons, to enjoin conduct constituting an offense created by the bill by issuing appropriate orders and judgements, including:

- ordering a defendant to divest of any interest in any enterprise, including real property;
- imposing reasonable restrictions on the future activities or investments of a defendant;
- ordering the dissolution or reorganization of an enterprise;
- ordering the suspension or revocation of a license, permit, or approval previously granted to an enterprise by any state agency; or
- ordering the forfeiture of the charter of a corporation organized under the laws of this state, or the revocation of a certificate allowing a foreign corporation to conduct business within this state, upon certain findings.

*Forfeiture of property.* The bill would make all property, real or personal, including money, used or intended for use in the course of or realized through conduct that constituted an offense under the bill, subject to civil forfeiture to the state. The bill would establish a process through which an investigative agency, on behalf of the state, could bring a civil action for forfeiture. On entry of a final judgement of forfeiture in favor of the state, in cases of real property or a beneficial interest, the title of the state to the forfeited property would need to relate back to the date of either the filing of a RICO lien notice, the filing of a notice of lis pendens, or the date of recording of the final judgement of forfeiture in the county where the property or interest was located. In cases of personal property, the title of the state to the forfeited property would need to relate back to the date the personal property was seized by the investigative agency.

The bill would authorize an investigative agency on behalf of the state, if property subject to forfeiture was diminished in value or otherwise rendered unavailable for forfeiture, to bring an action in any district court against the person named in the RICO lien notice or the defendant in the

relevant civil action or criminal proceeding. If a civil action was pending, the action would be filed only in the court where the civil action was pending. The court would be required to either enter final judgement against the person named in the lien notice or the defendant in the relevant civil action or proceeding, or they would be required to order the forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

The bill would require the state to dispose of all forfeited property as soon as commercially feasible. All forfeitures or dispositions under the bill's provisions would be made with due provision for the rights of innocent persons and the state would promptly distribute the proceeds realized from the forfeiture and disposition of property.

*Distribution of funds obtained through forfeiture actions.* The bill would require the court to distribute the funds from the forfeiture and disposition of property in the following priority order:

- statutory fees to which the clerk of the court could be entitled;
- claims against the property by persons who had previously been judicially determined to be innocent and whose interests were preserved from forfeiture by the court and not otherwise satisfied; and
- claims for restitution by victims of the racketeering activity.

A claim against the property by persons who had previously been judicially determined to be innocent could include a claim by a person appointed by the court as receiver pending litigation. If the attorney general brought the forfeiture action, restitution would be distributed through the compensation to victims of crime fund. If the attorney general did not bring the forfeiture action, restitution would be distributed by the clerk of the court.

Deposit of any remaining money obtained in a forfeiture proceeding would be distributed amongst the trust funds of the attorney general and local prosecutor, the applicable law enforcement trust fund, and the

general revenue fund.

With respect to a forfeiture action filed by the attorney general or a local prosecutor or the contributive efforts of multiple investigative agencies toward a forfeiture, the bill would require the court that entered the judgment of forfeiture to make a pro rata apportionment among such agencies of the money available for distribution.

The bill would require any money distributed to an investigative agency to be deposited in the applicable law enforcement fund or account and expended in the manner authorized for that fund or account. The bill also would authorize the use of any money distributed to an investigative agency or obtained by a district or county attorney in a forfeiture action filed by the attorney to pay the costs of investigations under the bill's provisions.

The bill would also provide for the deposit of any money obtained by the attorney general through a forfeiture action to an escrow account for satisfying judgements to a victim of a crime for damages. The money could be transferred to the compensation to victims of crime fund as authorized by state law.

The bill would allow a court, pending the final distribution of the cash or cash proceeds arising from a settlement or from the sale of property obtained in a settlement, to authorize the cash or cash proceeds to be deposited in the court registry or in a qualified public depository.

*Seizure of property.* The bill would allow property subject to forfeiture under the bill's provisions to be seized by a law enforcement officer on court process and would establish certain limits on seizure without court process. An investigative agency would be required to promptly commence a forfeiture action for a seizure conducted under these provisions.

*Civil action.* The bill would authorize the attorney general, a local prosecutor, or a state agency having jurisdiction over a felony offense



created by the bill to institute a civil action under the bill's provisions. The district court would need to proceed as soon as practicable to the hearing and determination for such an action.

The bill would authorize an aggrieved person to bring an action for civil remedies under the bill's provisions. The bill would require the court in the action to grant relief in conformity with according principles. As an exception, the bill expressly would not require a showing of special or irreparable damage to the aggrieved person. The bill would authorize the court, on the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, to issue a temporary restraining order and a preliminary injunction in the action before a final determination on the merits.

*Recovery.* Under the bill, a prevailing claimant in an action other than the state or a political subdivision would have a right or claim to forfeited property or proceeds derived from the property superior to any right or claim the state or political subdivision had in the same property or proceeds.

*Final judgement.* A final judgement rendered in favor of the state in a criminal proceeding under state law would prevent the defendant from asserting in any subsequent civil action brought under the bill's provisions any matter as to which that judgement would contradict previous action between the parties.

The attorney general could bring an action against a person who engaged in conduct that constituted an offense under the bill to obtain injunctive relief, a civil penalty, and reasonable attorney's fees and reasonably incurred costs of investigations or litigations. A defendant in such an action would be subject to a civil penalty of less than \$100,000, if the defendant was an individual, or \$1 million, if the defendant was not an individual.

The bill would require the attorney general to deposit the civil penalty into the general revenue fund and to deposit attorney's fees and costs into the attorney general law enforcement account, which could be used to

investigate and enforce the bill's provisions. The bill would authorize any party to an action brought by the attorney general to petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement would have to specify the alleged violations, the future obligations of the parties, the relief agreed on, and the reasons for entering into the consent decree or settlement agreement.

*Intervention.* The attorney general, on timely application, could intervene in such a civil action if the attorney general certified that the action was of general public importance. The state would be entitled to the same relief as if the attorney general had instituted the action.

*Limitations.* A civil action would have to be brought within five years of the later of the date the conduct relevant to the action terminated or the date the cause of the action accrued. If an indictment for a felony offense created by the bill was presented or a civil action was brought or intervened in, for purposes of punishing, preventing, or restraining conduct that constituted such an offense, the statute of limitations for a cause of action brought by an aggrieved person or the attorney general that was wholly or partly based on a matter complained of in the indictment or pleadings would be suspended for the duration of the action's prosecution or litigation. The bill would extend the statute of limitations period for the cause of action by two years following the termination of the action.

The bill would establish that the application of one civil remedy under the bill would not preclude the application of any other remedy, civil or criminal, under the bill or any other law. The bill would establish that civil remedies under its provisions were supplemental and not mutually exclusive.

**RICO liens.** CSHB 4635 would authorize an investigative agency on the institution of a civil action brought under the bill's provisions, then or at any time during the pendency of the action, to file a RICO lien notice in the official records of one or more counties. The attorney general would be required to receive the consent of the applicable local prosecutor before

filing a RICO lien. A filing fee or other charge could not be required as a condition for filing the RICO lien notice, and the clerk of the district court, on the presentation of a RICO lien notice, would immediately record it in the official records.

The bill also would authorize the attorney general or local prosecutor to apply ex parte to a district court and, on petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property on a showing of probable cause to believe that the property was used or intended for use in the course of, derived from, or realized through conduct constituting a felony offense under the bill. If the RICO lien notice authorization was granted, the attorney general or local prosecutor would immediately provide notice to the owner of the property. The owner of the property could move the court to discharge the lien and that motion would have to be set for hearing at the earliest possible time. The bill also would establish conditions under which a court would be required to discharge a lien.

The bill would establish that testimony presented by the property owner at the hearing was not admissible against the property owner in any criminal proceeding except in cases for perjury or false statement and would not constitute a waiver of the property owner's constitutional right against self-incrimination. A RICO lien notice secured under the bill's provisions would be valid for 90 days from the date the court granted authorization and could be extended for an additional 90 days by the court. However, if a civil action was instituted for civil remedies under the bill, and a RICO lien notice was filed under the bill's provisions authorizing the notice, the term of the lien notice would be governed by the provisions authorizing the notice. The bill would establish that the filing of a RICO lien notice constituted notice to the owner and knowledge by the owner that the property was used or intended for use in the course of, derived from, or realized through conduct constituting a felony offense created by the bill. Lack of notice and knowledge would not be a defense in any subsequent civil action for civil remedies under the bill or a subsequent criminal proceeding under the felony offenses created by the bill.

The bill would establish the necessary format, form, and contents of a RICO lien notice. A RICO lien notice would apply only to one person and, to the extent applicable, any other aliases or names of that person, including the names of corporations, partnerships, or other entities. A separate notice would have to be filed for each person against whom the investigative agency desired to file a RICO lien notice. The bill would provide for service of the notice to the person named in the notice. The failure of the investigative agency to provide a copy of the notice would not invalidate or otherwise affect the notice.

The bill would establish other provisions related to the filing of a RICO lien notice, including to which properties the notice would apply, when the lien would commence, and over whose interests the lien would prevail. The bill would allow an investigative agency to file a notice of lis pendens without prior court order in any county. In conjunction with a civil action brought under the bill's provisions, if a RICO lien notice had been filed, an investigative agency could name as a defendant, in addition to the person named in the notice, any person who acquired an interest in the real property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture was entered in the action in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice would be subject to the notice and judgment of forfeiture.

A trustee who knew that a RICO lien notice or a civil action had been filed against a person for whom the trustee held legal or record title to real property would be required to immediately supply the appropriate investigative agency with the relevant information. Failure to supply the information would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

*Liability.* The bill would establish liability to the state for trustees who conveyed title to real property for which a RICO lien notice had been filed in the county where the real property was situated.

If a trustee conveyed the real property and held the proceeds that would

otherwise be paid to the beneficiary or the beneficiary's designee, the trustee's liability would not exceed the amount of the proceeds held for so long as the proceeds were held by the trustee. The bill would authorize an investigative agency to bring a civil action against a trustee to recover the amount for which the trustee was liable and would entitle an investigative agency to recover investigative costs and attorney's fees incurred by the agency.

The filing of a RICO lien notice would not:

- constitute a lien on the record title to real property as owned by a trustee except if the trustee was named in the notice; or
- affect the use to which real property or a beneficial interest owned by the person named in the notice could be put or the right of the person to receive any proceeds that resulted from the use and ownership, but not the sale, of the property until a judgment of forfeiture was entered.

The bill would name certain conveyances to which RICO liens provisions would not apply, with exceptions. The bill would require all forfeitures or dispositions under the bill's RICO liens provisions to be made with due provision for the rights of innocent persons. A RICO lien notice would expire six years from the date of filing or the date of renewal. An investigative agency could renew a RICO lien notice only once. A RICO lien notice could be released wholly or partly on the investigative agency's own terms. The bill also would establish circumstances under which a RICO lien notice would be terminated and its filing voided.

The bill would take effect September 1, 2023.

**NOTES:**

According to the Legislative Budget Board, the fiscal implications of the bill cannot be determined because the number of criminal cases and civil actions and the amount of revenues resulting from criminal offenses and seizures cannot be estimated.