

By: Guillen

H.B. No. 4635

Substitute the following for H.B. No. 4635:

By: Murr

C.S.H.B. No. 4635

A BILL TO BE ENTITLED

AN ACT

relating to organized crime, racketeering activities, and collection of unlawful debts; providing a civil penalty; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 140B to read as follows:

CHAPTER 140B. CIVIL REMEDIES AND ENFORCEMENT RELATED TO RACKETEERING AND UNLAWFUL DEBT COLLECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 140B.001. DEFINITIONS. In this chapter:

(1) "Beneficial interest":

(A) means the interest of a person:

(i) as a beneficiary under a trust established under the Texas Trust Code (Subtitle B, Title 9, Property Code) in which the trustee for the trust holds legal or record title to real property;

(ii) as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the person; or

(iii) under any other form of express fiduciary arrangement under which any other person holds legal or record title to real property for the benefit of the person; and

(B) does not include the interest of a

1 shareholder in a corporation or the interest of a partner in either  
2 a general partnership or a limited partnership.

3 (2) "Cash or cash proceeds" includes:

4 (A) damages, penalties, or any other monetary  
5 payment;

6 (B) monetary proceeds from property forfeited to  
7 the state under Subchapter C; or

8 (C) any payment made by a defendant by reason of a  
9 decree or settlement in an action filed under Subchapter C.

10 (3) "Enterprise" means a legal entity, group of  
11 individuals associated in fact, or a combination of those entities  
12 and individuals.

13 (4) "Investigative agency" means the Department of  
14 Public Safety, the attorney general, or a local prosecutor.

15 (5) "Local prosecutor" means a district attorney,  
16 criminal district attorney, or county attorney with felony criminal  
17 jurisdiction.

18 (6) "Money" means funds as defined by Section 34.01,  
19 Penal Code.

20 (7) "Real property" means any real property or any  
21 interest in real property, including any lease of or mortgage on  
22 real property.

23 Sec. 140B.002. SPECIAL DOCKETING PROCEDURES. The attorney  
24 general or local prosecutor may file with the clerk of the district  
25 court in which an action is brought under this chapter a certificate  
26 stating that the case is of special public importance. The clerk  
27 must immediately furnish a copy of the certificate to the

1 administrative judge of the district court of the county in which  
2 the action is pending. On receiving the copy of the certificate,  
3 the administrative judge shall immediately designate a judge to  
4 hear and determine the action. The designated judge shall promptly  
5 assign the action for hearing, participate in hearings, make  
6 determinations, and cause the action to be expedited.

7 Sec. 140B.003. PREVIOUSLY SEIZED ASSETS. Notwithstanding  
8 any other provision of this chapter, a remedy provided by this  
9 chapter may not be assessed against, and the attorney general may  
10 not claim or pursue in an action brought under this chapter, any  
11 proceeds, contraband, or other property of any kind over which a law  
12 enforcement authority has previously asserted jurisdiction under  
13 Chapter 59, Code of Criminal Procedure, at the time an action under  
14 this chapter was filed.

15 SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

16 Sec. 140B.051. DEFINITIONS. In this subchapter:

17 (1) "Civil investigative demand" means any demand  
18 issued by the attorney general or a local prosecutor under this  
19 subchapter.

20 (2) "Documentary material" means the original or a  
21 copy of any paper, contract, agreement, book, booklet, brochure,  
22 pamphlet, catalog, magazine, notice, announcement, circular,  
23 bulletin, instruction, minutes, agenda, study, analysis, report,  
24 graph, map, chart, table, schedule, note, letter, telegram,  
25 telephone recordings, or data compilations stored in or accessible  
26 through computer or other information retrieval systems, together  
27 with instructions and all other materials necessary to use or

1 interpret the data compilations, and any product of discovery.

2 (3) "Product of discovery" means:

3 (A) the original or a copy of a deposition,  
4 interrogatory, document, thing, result of inspection of land or  
5 other property, examination, or admission that is obtained by any  
6 method of discovery in a judicial or administrative proceeding of  
7 an adversarial nature;

8 (B) a digest, analysis, selection, compilation,  
9 or derivation of any item listed in Paragraph (A); and

10 (C) an index, instruction, or other aid or means  
11 of access to any item listed in Paragraph (A).

12 (4) "Racketeering investigation" means any inquiry  
13 conducted by the attorney general or a local prosecutor for the  
14 purpose of ascertaining whether any person is or has been engaged in  
15 or is actively preparing to engage in activities that may  
16 constitute a racketeering violation.

17 (5) "Racketeering violation" means conduct  
18 constituting an offense under Section 72.02, 72.03, or 72.04, Penal  
19 Code.

20 Sec. 140B.052. CIVIL INVESTIGATIVE DEMAND. If the attorney  
21 general or a local prosecutor has reason to believe that a person  
22 may be in possession, custody, or control of any documentary  
23 material or other evidence or may have any information relevant to a  
24 civil racketeering investigation, the attorney general or local  
25 prosecutor may, before beginning a civil proceeding under this  
26 chapter, issue in writing and serve on the person a civil  
27 investigative demand requiring the person to:

- 1           (1) produce any of the documentary material for  
2 inspection and copying;
- 3           (2) answer in writing any written interrogatories;
- 4           (3) give oral testimony; or
- 5           (4) provide any combination of civil investigative  
6 demands under Subdivisions (1)-(3).

7           Sec. 140B.053. CONTENTS OF DEMAND. (a) A civil  
8 investigative demand issued under Section 140B.052 must:

- 9           (1) describe the nature of the activities that are the  
10 subject of the investigation;
- 11           (2) state each statute the activity violates; and
- 12           (3) advise the person on whom the demand is served that  
13 the person has the right to object to the demand as provided for in  
14 this subchapter.

15           (b) A demand for production of documentary material must:

- 16           (1) describe the class of material to be produced with  
17 reasonable specificity so that the material demanded is fairly  
18 identified;
- 19           (2) prescribe a return date that provides a reasonable  
20 period of time within which the material is to be produced; and
- 21           (3) identify the individual to whom the material is to  
22 be made available for inspection and copying.

23           (c) A demand for answers to written interrogatories must:

- 24           (1) propound the interrogatories with definiteness  
25 and certainty;
- 26           (2) prescribe a date by which answers to the  
27 interrogatories must be submitted; and

1           (3) identify the individual to whom the answers should  
2 be submitted.

3           (d) Each demand for the giving of oral testimony must:

4           (1) prescribe a reasonable date, time, and place at  
5 which the testimony will begin; and

6           (2) identify the individual who will conduct the  
7 examination.

8           Sec. 140B.054. SERVICE; PROOF OF SERVICE. (a) Service of  
9 any civil investigative demand or petition filed under Section  
10 140B.055 or 140B.060 may be made on any natural person by delivering  
11 a duly executed copy of the demand or petition to the person to be  
12 served or by mailing a copy by registered or certified mail, return  
13 receipt requested, to the person at the person's residence or  
14 principal office or place of business.

15           (b) Service of any demand or petition filed under Section  
16 140B.055 or 140B.060 may be made on any person other than a natural  
17 person by delivering a duly executed copy of the demand or petition  
18 to a person to whom delivery would be appropriate under state law if  
19 the demand or petition were process in a civil suit.

20           (c) A verified return by the individual serving any demand  
21 or petition filed under Section 140B.055 or 140B.060 setting forth  
22 the manner of service is proof of service. In the case of service by  
23 registered or certified mail, the return must be accompanied by the  
24 return post office receipt of delivery of the demand or petition.

25           Sec. 140B.055. PETITION FOR ORDER MODIFYING OR SETTING  
26 ASIDE DEMAND. (a) At any time before the return date specified in a  
27 civil investigative demand or not later than the 30th day after the

1 date the demand was served, whichever period is shorter, the person  
2 who has been served, and in the case of a demand for a product of  
3 discovery the person from whom the discovery was obtained, may file  
4 a petition for an order modifying or setting aside the demand in the  
5 district court in the county of the person's residence or principal  
6 office or place of business or a district court of Travis County.  
7 The petition must specify each ground upon which the petitioner  
8 relies in seeking the relief sought. The petition may be based on  
9 any failure of a demand to comply with the provisions of this  
10 subchapter or on any constitutional or other legal right or  
11 privilege of the petitioner.

12 (b) The petitioner shall serve a copy of the petition on the  
13 attorney general or local prosecutor, as applicable, in accordance  
14 with Section 140B.054. The attorney general or local prosecutor  
15 may submit an answer to the petition.

16 (c) In ruling on the petition under this section, the court  
17 shall presume absent evidence to the contrary that the attorney  
18 general or local prosecutor issued the demand in good faith and  
19 within the scope of the attorney general's or local prosecutor's  
20 authority.

21 Sec. 140B.056. COMPLIANCE WITH DEMAND. (a) A person on  
22 whom a civil investigative demand is served under this subchapter  
23 shall comply with the terms of the demand unless otherwise provided  
24 by court order.

25 (b) The time for compliance with the demand wholly or partly  
26 does not run during the pendency of any petition filed under Section  
27 140B.055, provided that the petitioner shall comply with any

1 portions of the demand not sought to be modified or set aside.

2 Sec. 140B.057. DOCUMENTARY MATERIAL. (a) Any person on  
3 whom any civil investigative demand for the production of  
4 documentary material has been duly served under this subchapter  
5 shall make the material available to the attorney general or local  
6 prosecutor, as applicable, for inspection and copying during normal  
7 business hours on the return date specified in the demand at the  
8 person's principal office or place of business or as otherwise may  
9 be agreed on by the person and the attorney general or local  
10 prosecutor. The attorney general or local prosecutor shall bear  
11 the expense of any copying. The person may substitute copies for  
12 originals of all or part of the requested documents if the originals  
13 are made available for inspection. The attorney general or local  
14 prosecutor may elect to obtain or review information in an  
15 electronic format. The person shall indicate in writing which, if  
16 any, of the documents produced contain trade secrets or  
17 confidential information.

18 (b) The production of documentary material in response to  
19 any demand must be made under a sworn certificate in the form the  
20 demand designates by a natural person having knowledge of the facts  
21 and circumstances relating to the production to the effect that all  
22 of the requested material in the possession, custody, or control of  
23 the person to whom the demand is directed has been produced.

24 Sec. 140B.058. INTERROGATORIES. (a) Each interrogatory in  
25 any civil investigative demand duly served must be answered  
26 separately and fully in writing, unless it is objected to, in which  
27 case the basis for the objection shall be set forth in lieu of an

1 answer. The person shall indicate in writing which, if any, of the  
2 answers contain trade secrets or confidential information.

3 (b) Answers to interrogatories must be submitted under a  
4 sworn certificate in the form the related demand designates by a  
5 natural person having knowledge of the facts and circumstances  
6 relating to the preparation of the answers to the effect that all of  
7 the requested information in the possession, custody, control, or  
8 knowledge of the person to whom the demand is directed has been set  
9 forth fully and accurately.

10 Sec. 140B.059. ORAL EXAMINATION. (a) The examination of  
11 any person pursuant to a civil investigative demand for oral  
12 testimony duly served must be taken before any person authorized to  
13 administer oaths and affirmations under the laws of this state or  
14 the United States. The person before whom the testimony is to be  
15 taken shall put the witness on oath or affirmation and shall  
16 personally or by someone acting under the person's direction and in  
17 the person's presence record the witness's testimony. At the  
18 expense of the attorney general or local prosecutor, and except as  
19 provided by this subsection, the testimony must be taken  
20 stenographically and may be transcribed. The attorney general or  
21 local prosecutor may take audio and video recordings of the  
22 testimony by providing notice to the person to be examined not later  
23 than the seventh day before the day the person is to be examined.

24 (b) The oral testimony of any person taken pursuant to a  
25 demand served must be taken within 100 miles of the county where the  
26 person resides, is found, or transacts business or in any other  
27 place agreed on by the person and the attorney general or local

1 prosecutor.

2 (c) Any person compelled to appear under a demand for oral  
3 testimony may be accompanied, represented, and advised by counsel.  
4 Counsel may advise the person in confidence, either on the request  
5 of the person or on the counsel's own initiative, with respect to  
6 any question arising in connection with the examination.

7 (d) The individual conducting the examination on behalf of  
8 the attorney general or local prosecutor shall exclude from the  
9 place of examination all other persons except the person being  
10 examined, the person's counsel, the counsel of the person to whom  
11 the demand has been issued, the person before whom the testimony is  
12 to be taken, any stenographer taking the testimony, audiographer,  
13 videographer, and any person assisting the individual conducting  
14 the examination.

15 (e) During the examination, the person being examined or the  
16 person's counsel may object on the record to any question in  
17 accordance with Rule 199.5(e), Texas Rules of Civil Procedure. An  
18 objection may properly be made, received, and entered on the record  
19 when it is claimed that the person is entitled to refuse to answer  
20 the question on grounds of any constitutional or other privilege,  
21 including the privilege against self-incrimination. Neither that  
22 person nor the person's counsel may otherwise object to or refuse to  
23 answer any question or interrupt the oral examination. If the  
24 person refuses to answer any question, the attorney general or  
25 local prosecutor may petition the district court in the county  
26 where the examination is being conducted for an order compelling  
27 the person to answer the question.

1       (f) After the testimony has been fully transcribed, the  
2 person before whom the testimony was taken shall promptly transmit  
3 the transcript of the testimony to the witness and a copy of the  
4 transcript to the attorney general or local prosecutor. The  
5 witness must have a reasonable opportunity to examine the  
6 transcript and make any changes in form or substance accompanied by  
7 a statement of the reasons for the changes. The witness shall then  
8 sign and return the transcript. If the witness does not return the  
9 transcript to the person before whom the testimony was taken not  
10 later than the 20th day after the date the transcript was provided  
11 to the witness, the witness may be deemed to have waived the right  
12 to make changes. The officer shall then certify on the transcript  
13 that the witness was duly sworn and that the transcript is a true  
14 record of the testimony given by the witness and promptly transmit a  
15 copy of the certified transcript to the attorney general or local  
16 prosecutor.

17       (g) On request, the attorney general or local prosecutor  
18 shall furnish a copy of the certified transcript to the witness.

19       (h) The attorney general or local prosecutor may provide the  
20 witness the same fees and mileage reimbursement that are paid to  
21 witnesses in the district courts of this state.

22       Sec. 140B.060. FAILURE TO COMPLY WITH DEMAND PETITION FOR  
23 ENFORCEMENT. If a person fails to comply with a civil investigative  
24 demand duly served on the person, the attorney general or local  
25 prosecutor may file in the district court in the county in which the  
26 person resides, is found, or transacts business or in a district  
27 court of Travis County and may serve on the person a petition for an

1 order of the court for enforcement. If the person transacts  
2 business in more than one county and the attorney general or local  
3 prosecutor elects not to file the petition in Travis County, the  
4 petition must be filed in the county of the person's principal  
5 office or place of business in the state or in any other county as  
6 may be agreed on by the person and the attorney general or local  
7 prosecutor.

8 Sec. 140B.061. CRIMINAL OFFENSE: DELIBERATE NONCOMPLIANCE.

9 (a) A person commits an offense if the person, with intent to  
10 avoid, evade, or prevent compliance with a civil investigative  
11 demand issued under this subchapter, knowingly removes from any  
12 place, conceals, withholds, destroys, mutilates, alters, or by any  
13 other means falsifies any documentary material or otherwise  
14 provides inaccurate information.

15 (b) An offense under this section is a misdemeanor  
16 punishable by:

17 (1) a fine of not more than \$5,000;

18 (2) confinement in a county jail for not more than one  
19 year; or

20 (3) both a fine and confinement.

21 Sec. 140B.062. DISCLOSURE AND USE OF MATERIAL AND

22 INFORMATION. (a) The civil investigative demand issued by the  
23 attorney general or local prosecutor, any information obtained,  
24 maintained, or created in response to the demand, or any  
25 documentary material, product of discovery, or other record derived  
26 or created during an investigation from the information, is not  
27 subject to disclosure under Chapter 552, Government Code, and is

1 not subject to disclosure, discovery, subpoena, or other means of  
2 legal compulsion for the release, except as described in  
3 Subsections (b) and (c).

4 (b) The attorney general or local prosecutor may not release  
5 or disclose information that is obtained in response to a demand or  
6 any documentary material, product of discovery, or other record  
7 derived from the information except:

8 (1) by court order for good cause shown;

9 (2) with the consent of the person who provided the  
10 information to the attorney general or local prosecutor;

11 (3) to an employee or other person under the direction  
12 of the attorney general or local prosecutor;

13 (4) to an agency of this state, the United States, or  
14 another state or foreign country;

15 (5) to a political subdivision of this state; or

16 (6) to a person authorized by the attorney general or  
17 local prosecutor to receive the information.

18 (c) The attorney general or local prosecutor may use  
19 information obtained in response to a demand, or any documentary  
20 material, product of discovery, or other record derived or created  
21 from the information as the attorney general or local prosecutor  
22 determines necessary in the enforcement of this chapter, including  
23 presentation before court.

24 Sec. 140B.063. JURISDICTION. If a petition is filed in the  
25 district court in any county, the court has jurisdiction to hear and  
26 determine the matter presented and to enter any order required to  
27 implement this chapter. Any final order is subject to appeal.

1 Failure to comply with any final order entered by a court under this  
2 chapter is punishable by the court as contempt of the order.

3 Sec. 140B.064. NONEXCLUSIVE PROCEDURES. Nothing in this  
4 chapter precludes the attorney general or local prosecutor from  
5 using any procedure not specified in this chapter in conducting a  
6 racketeering investigation.

7 SUBCHAPTER C. CIVIL REMEDIES

8 Sec. 140B.101. CIVIL REMEDIES. A district court may, after  
9 making due provision for the rights of innocent persons, enjoin  
10 conduct constituting an offense under Section 72.02, 72.03, or  
11 72.04, Penal Code, by issuing appropriate orders and judgments,  
12 including:

13 (1) ordering a defendant to divest of any interest in  
14 any enterprise, including real property;

15 (2) imposing reasonable restrictions on the future  
16 activities or investments of a defendant, including prohibiting a  
17 defendant from engaging in the same type of endeavor as the  
18 enterprise in which the defendant was engaged in conduct  
19 constituting an offense under Section 72.02, 72.03, or 72.04, Penal  
20 Code;

21 (3) ordering the dissolution or reorganization of an  
22 enterprise;

23 (4) ordering the suspension or revocation of a  
24 license, permit, or approval previously granted to an enterprise by  
25 any state agency; or

26 (5) ordering the forfeiture of the charter of a  
27 corporation organized under the laws of this state, or the

1 revocation of a certificate allowing a foreign corporation to  
2 conduct business within this state, on finding that:

3 (A) the board of directors or a managerial agent  
4 acting on behalf of the corporation, in conducting the affairs of  
5 the corporation, has authorized or engaged in conduct constituting  
6 an offense under Section 72.02, 72.03, or 72.04, Penal Code; and

7 (B) for the prevention of future criminal  
8 activity, the public interest requires the charter of the  
9 corporation forfeited and the corporation dissolved or the  
10 certificate revoked.

11 Sec. 140B.102. CIVIL FORFEITURE OF PROPERTY. (a) All  
12 property, real or personal, including money, used in the course of,  
13 intended for use in the course of, derived from, or realized through  
14 conduct constituting an offense under Section 72.02, 72.03, or  
15 72.04, Penal Code, is subject to civil forfeiture to the state.

16 (b) An investigative agency, on behalf of this state, may  
17 bring a civil action for forfeiture:

18 (1) in the district court for the judicial district in  
19 which real or personal tangible property described by Subsection  
20 (a) is located;

21 (2) in a district court in this state regarding  
22 intangible property described by Subsection (a); and

23 (3) in the county in which real or personal tangible  
24 property described by Subsection (a) was seized.

25 (c) On entry of a final judgment of forfeiture in favor of  
26 the state, the title of the state to the forfeited property shall  
27 relate back:

1           (1) in the case of real property or a beneficial  
2 interest:

3           (A) to the date of filing of a lien notice under  
4 Chapter 68, Property Code, in the official records of the county  
5 where the real property or beneficial trust is located;

6           (B) if no lien notice is filed, to the date of the  
7 filing of any notice of lis pendens under Section 68.056(a),  
8 Property Code, in the official records of the county where the real  
9 property or beneficial interest is located; or

10          (C) if no lien notice or notice of lis pendens is  
11 filed, to the date of recording of the final judgment of forfeiture  
12 in the official records of the county where the real property or  
13 beneficial interest is located; or

14          (2) in the case of personal property, to the date the  
15 personal property was seized by the investigative agency.

16          (d) For purposes of this section, a beneficial interest is  
17 considered to be located where real property owned by the trustee is  
18 located.

19          Sec. 140B.103. CONVEYANCE OF PROPERTY SUBJECT TO  
20 FORFEITURE. (a) If property subject to forfeiture is conveyed,  
21 alienated, disposed of, diminished in value, or otherwise rendered  
22 unavailable for forfeiture, the investigative agency may, on behalf  
23 of the state, bring an action in any district court against the  
24 person named in the lien notice under Chapter 68, Property Code, or  
25 the defendant in the relevant civil action or criminal proceeding.  
26 If a civil action is pending, the action shall be filed only in the  
27 court where the civil action is pending.

1       (b) The court in an action brought under Subsection (a)  
2 shall:

3           (1) enter final judgment against the person named in  
4 the lien notice or the defendant in the relevant civil action or  
5 criminal proceeding in an amount equal to:

6                   (A) the fair market value of the property; and  
7                   (B) the investigative costs and attorney fees  
8 incurred by the investigative agency in the action; or

9           (2) order the forfeiture of any other property of the  
10 defendant up to the value of the property subject to forfeiture.

11       Sec. 140B.104. DISPOSITION OF FORFEITED PROPERTY. (a) The  
12 state shall dispose of all forfeited property as soon as  
13 commercially feasible. If property is not exercisable or  
14 transferable for value by the state, the state may destroy or  
15 otherwise dispose of the property.

16       (b) All forfeitures or dispositions under this subchapter  
17 shall be made with due provision for the rights of innocent persons.

18       (c) The state shall promptly distribute the proceeds  
19 realized from the forfeiture and disposition of property under this  
20 section in accordance with Subchapter D.

21       Sec. 140B.105. SEIZURE OF PROPERTY. (a) Property subject  
22 to forfeiture under this subchapter may be seized by a law  
23 enforcement officer on court process. Seizure without process may  
24 be made if:

25           (1) the seizure is incident to a lawful arrest or  
26 search conducted under a warrant issued under Chapter 18, Code of  
27 Criminal Procedure; or

1           (2) the property subject to seizure has been the  
2 subject of a previous judgment in favor of the state in a forfeiture  
3 action brought under this subchapter.

4           (b) For a seizure conducted under this section, an  
5 investigative agency shall promptly commence a forfeiture action  
6 under Section 140B.102.

7           Sec. 140B.106. STORAGE OF SEIZED PROPERTY PENDING  
8 FORFEITURE ACTION. Property taken or detained under this  
9 subchapter is not subject to replevin but is considered to be in the  
10 custody of the law enforcement officer making the seizure, subject  
11 only to the order of the court. When property is seized under this  
12 subchapter, pending forfeiture and final disposition, the law  
13 enforcement officer may:

14                   (1) place the property under seal;

15                   (2) remove the property to a place designated by a  
16 court; or

17                   (3) require another agency authorized by law to take  
18 custody of the property and remove it to an appropriate location.

19           Sec. 140B.107. CIVIL ACTION BROUGHT BY ATTORNEY GENERAL,  
20 LOCAL PROSECUTOR, OR STATE AGENCY. (a) The office of the attorney  
21 general, a local prosecutor, or a state agency having jurisdiction  
22 over conduct constituting an offense under Section 72.02, 72.03, or  
23 72.04, Penal Code, may institute civil actions under this  
24 subchapter. The attorney general or a state agency may institute an  
25 action under Section 140B.101 or 140B.102 only if the attorney  
26 general or agency receives the consent of the applicable local  
27 prosecutor to bring the action.

1       (b) In an action brought under this subchapter, the district  
2 court shall proceed as soon as practicable to the hearing and  
3 determination. Pending final determination, the district court may  
4 at any time enter injunctions, prohibitions, or restraining orders,  
5 or take actions, including the acceptance of satisfactory  
6 performance bonds, the court considers proper.

7       Sec. 140B.108. CIVIL ACTION BROUGHT BY AGGRIEVED PERSON.

8       (a) An aggrieved person may bring an action under Section 140B.101.

9       (b) In an action brought as described by Subsection (a), a  
10 court shall grant relief in conformity with the principles that  
11 govern the granting of injunctive relief from threatened loss or  
12 damage in other civil cases, except that a showing of special or  
13 irreparable damage to the aggrieved person is not required.

14       (c) On the execution of proper bond against damages for an  
15 injunction improvidently granted and a showing of immediate danger  
16 of significant loss or damage, a court may issue a temporary  
17 restraining order and a preliminary injunction in the action before  
18 a final determination on the merits.

19       Sec. 140B.109. RECOVERY FROM FORFEITED PROPERTY. A  
20 prevailing claimant in an action under this subchapter other than  
21 the state or a political subdivision shall have a right or claim to  
22 forfeited property or proceeds derived from the property superior  
23 to any right or claim the state or political subdivision has in the  
24 same property or proceeds.

25       Sec. 140B.110. EFFECT OF FINAL JUDGMENT OR DECREE. A final  
26 judgment or decree rendered in favor of this state in a criminal  
27 proceeding under state law prevents the defendant from asserting in

1 any subsequent civil action brought under this chapter any matter  
2 as to which that judgment or decree would be an estoppel as between  
3 the parties.

4 Sec. 140B.111. OTHER RELIEF AVAILABLE TO ATTORNEY GENERAL.

5 (a) The attorney general may bring an action against a person who  
6 engages in conduct constituting an offense under Section 72.02,  
7 72.03, or 72.04, Penal Code, to obtain:

8 (1) injunctive relief;

9 (2) a civil penalty as provided by this section; and

10 (3) reasonable attorney's fees and reasonably incurred  
11 costs of investigation or litigation.

12 (b) A defendant in an action brought under this section is  
13 subject to a civil penalty not to exceed:

14 (1) \$100,000 if the defendant is an individual; or

15 (2) \$1 million if the defendant is not an individual.

16 (c) The attorney general shall deposit a civil penalty  
17 collected under this section to the credit of the general revenue  
18 fund. The attorney general shall deposit attorney's fees and costs  
19 collected under this section into the attorney general law  
20 enforcement account, which may be used to investigate and enforce  
21 this chapter.

22 (d) Any party to an action brought under this section may  
23 petition the court for entry of a consent decree or for approval of  
24 a settlement agreement. The proposed decree or settlement must  
25 specify the alleged violations, the future obligations of the  
26 parties, the relief agreed on, and the reasons for entering into the  
27 consent decree or settlement agreement.

1       Sec. 140B.112. INTERVENTION BY ATTORNEY GENERAL. The  
2 attorney general may, on timely application, intervene in a civil  
3 action brought under Section 140B.108 if the attorney general  
4 certifies that, in the attorney general's opinion, the action is of  
5 general public importance. In the action, the state is entitled to  
6 the same relief as if the attorney general had instituted the  
7 action.

8       Sec. 140B.113. LIMITATIONS; TOLLING. (a) Notwithstanding  
9 any other law, a person must bring an action under this chapter not  
10 later than the fifth anniversary of the later of:

11             (1) the date the conduct that is the basis for the  
12 action terminates; or

13             (2) the date the cause of action accrues.

14       (b) If an indictment for an offense under Section 72.02,  
15 72.03, or 72.04, Penal Code, is presented or a civil action is  
16 brought, or intervened in, to punish, prevent, or restrain conduct  
17 constituting an offense under Section 72.02, 72.03, or 72.04, Penal  
18 Code, the running of the period of limitations prescribed by this  
19 section with respect to any cause of action arising under Section  
20 140B.108 or 140B.111 that is wholly or partly based on a matter  
21 complained of in the indictment or the pleadings in the action, as  
22 applicable, is suspended during the pendency of the prosecution or  
23 litigation of the action, as applicable, and extended for two years  
24 following its termination.

25       Sec. 140B.114. MULTIPLE REMEDIES ALLOWED. The application  
26 of one civil remedy under a provision of this chapter does not  
27 preclude the application of any other remedy, civil or criminal,

1 under this chapter or any other law. Civil remedies under this  
2 chapter are supplemental and not mutually exclusive.

3 SUBCHAPTER D. DISPOSITION OF FUNDS OBTAINED THROUGH FORFEITURE

4 ACTIONS

5 Sec. 140B.151. INITIAL DISTRIBUTION. (a) A court entering  
6 a judgment of forfeiture in an action brought under Subchapter C  
7 retains jurisdiction to direct the distribution of any cash or cash  
8 proceeds realized from the forfeiture and disposition of the  
9 property. The court shall direct the distribution of the funds in  
10 the following order of priority:

11 (1) statutory fees to which the clerk of the court may  
12 be entitled;

13 (2) claims against the property by persons who have  
14 previously been judicially determined to be innocent persons and  
15 whose interests are preserved from forfeiture by the court and not  
16 otherwise satisfied; and

17 (3) subject to Subsection (c), claims for restitution  
18 by victims of the racketeering activity.

19 (b) A claim under Subsection (a)(2) may include a claim by a  
20 person appointed by the court as receiver pending litigation.

21 (c) If the attorney general brought the forfeiture action,  
22 restitution shall be distributed through the compensation to victims  
23 of crime fund. If the attorney general did not bring the forfeiture  
24 action, restitution shall be distributed by the clerk of the court.

25 Sec. 140B.152. DISTRIBUTION OF REMAINING MONEY. (a)  
26 Following satisfaction of all valid claims under Section 140B.151,  
27 the remaining money obtained in the forfeiture proceeding shall be

1 deposited as follows:

2 (1) 25 percent into the appropriate trust fund of the  
3 attorney general or local prosecutor's office that filed the civil  
4 forfeiture action as provided by Subsection (c);

5 (2) 25 percent into the applicable law enforcement  
6 trust fund of the investigative agency that conducted the  
7 investigation that resulted in or significantly contributed to the  
8 forfeiture of the property as provided by Subsection (d); and

9 (3) 50 percent into the general revenue fund.

10 (b) If a forfeiture action is filed by the attorney general  
11 or a local prosecutor, the court entering the judgment of  
12 forfeiture shall, taking into account the overall effort and  
13 contribution to the investigation and forfeiture action by the  
14 agencies that filed the action, make a pro rata apportionment among  
15 those agencies of the money available for distribution to those  
16 agencies as provided by this subchapter. If multiple investigative  
17 agencies have contributed to the forfeiture of the property, the  
18 court that entered the judgment of forfeiture shall, taking into  
19 account the overall effort and contribution of the agencies to the  
20 investigation and forfeiture action, make a pro rata apportionment  
21 among those investigative agencies of the money available for  
22 distribution to the investigative agencies as provided by this  
23 subchapter.

24 (c) If a forfeiture action is filed by the attorney general,  
25 any money obtained by the attorney general under this section shall  
26 be deposited in the same manner described by Article 59.06(k)(3),  
27 Code of Criminal Procedure, and may be expended for the purposes and

1 in the manner authorized by that section.

2 (d) If a forfeiture action is filed by a district or county  
3 attorney, any money obtained by the district or county attorney's  
4 office under this section may be used to pay the costs of  
5 investigations under Subchapter B and the resulting criminal  
6 prosecutions and civil actions. Such costs may include:

7 (1) all taxable costs;

8 (2) costs of protecting, maintaining, and forfeiting  
9 the property;

10 (3) employees' base salaries and compensation for  
11 overtime; and

12 (4) other costs that are directly attributable to the  
13 investigation, prosecution, or civil action.

14 (e) Any money distributed to an investigative agency under  
15 Subsection (a) shall be deposited in the applicable law enforcement  
16 fund or account established for that agency and expended for the  
17 purposes and in the manner authorized for that fund or account. In  
18 addition, any money distributed to an investigative agency under  
19 this section may be used to pay the costs of investigations under  
20 Subchapter B and the resulting criminal prosecutions and civil  
21 actions. Such costs may include:

22 (1) all taxable costs;

23 (2) costs of protecting, maintaining, and forfeiting  
24 the property;

25 (3) employees' base salaries and compensation for  
26 overtime; and

27 (4) other costs directly attributable to the

1 investigation, prosecution, or civil action.

2 Sec. 140B.153. EFFECT ON SETTLEMENTS. (a) This subchapter  
3 may not be construed to limit the authority of an entity that files  
4 a forfeiture action under Subchapter C to settle a claim for  
5 forfeiture.

6 (b) Any proceeds arising from a settlement or from the sale  
7 of property obtained in a settlement shall be distributed in the  
8 manner described by Sections 140B.151 and 140B.152.

9 Sec. 140B.154. TEMPORARY DEPOSIT IN COURT REGISTRY.  
10 Pending the final distribution of the cash or cash proceeds under  
11 this subchapter, the court may authorize the cash or cash proceeds  
12 to be deposited in the court registry or in a qualified public  
13 depository.

14 SECTION 2. Article 12.01, Code of Criminal Procedure, is  
15 amended to read as follows:

16 Art. 12.01. FELONIES. Except as provided in Articles  
17 12.015 and [Article] 12.03, felony indictments may be presented  
18 within these limits, and not afterward:

19 (1) no limitation:

20 (A) murder and manslaughter;

21 (B) sexual assault under Section 22.011(a)(2),  
22 Penal Code, or aggravated sexual assault under Section  
23 22.021(a)(1)(B), Penal Code;

24 (C) sexual assault, if:

25 (i) during the investigation of the offense  
26 biological matter is collected and the matter:

27 (a) has not yet been subjected to

1 forensic DNA testing; or

2 (b) has been subjected to forensic DNA  
3 testing and the testing results show that the matter does not match  
4 the victim or any other person whose identity is readily  
5 ascertained; or

6 (ii) probable cause exists to believe that  
7 the defendant has committed the same or a similar sex offense  
8 against five or more victims;

9 (D) continuous sexual abuse of young child or  
10 disabled individual under Section 21.02, Penal Code;

11 (E) indecency with a child under Section 21.11,  
12 Penal Code;

13 (F) an offense involving leaving the scene of an  
14 accident under Section 550.021, Transportation Code, if the  
15 accident resulted in the death of a person;

16 (G) trafficking of persons under Section  
17 20A.02(a)(7) or (8), Penal Code;

18 (H) continuous trafficking of persons under  
19 Section 20A.03, Penal Code; or

20 (I) compelling prostitution under Section  
21 43.05(a)(2), Penal Code;

22 (2) ten years from the date of the commission of the  
23 offense:

24 (A) theft of any estate, real, personal or mixed,  
25 by an executor, administrator, guardian or trustee, with intent to  
26 defraud any creditor, heir, legatee, ward, distributee,  
27 beneficiary or settlor of a trust interested in such estate;

1 (B) theft by a public servant of government  
2 property over which the public servant exercises control in the  
3 public servant's official capacity;

4 (C) forgery or the uttering, using, or passing of  
5 forged instruments;

6 (D) injury to an elderly or disabled individual  
7 punishable as a felony of the first degree under Section 22.04,  
8 Penal Code;

9 (E) sexual assault, except as provided by  
10 Subdivision (1) or (7);

11 (F) arson;

12 (G) trafficking of persons under Section  
13 20A.02(a)(1), (2), (3), or (4), Penal Code; or

14 (H) compelling prostitution under Section  
15 43.05(a)(1), Penal Code;

16 (3) seven years from the date of the commission of the  
17 offense:

18 (A) misapplication of fiduciary property or  
19 property of a financial institution;

20 (B) fraudulent securing of document execution;

21 (C) a felony violation under Chapter 162, Tax  
22 Code;

23 (D) false statement to obtain property or credit  
24 under Section 32.32, Penal Code;

25 (E) money laundering;

26 (F) credit card or debit card abuse under Section  
27 32.31, Penal Code;

1 (G) fraudulent use or possession of identifying  
2 information under Section 32.51, Penal Code;

3 (H) exploitation of a child, elderly individual,  
4 or disabled individual under Section 32.53, Penal Code;

5 (I) health care fraud under Section 35A.02, Penal  
6 Code; or

7 (J) bigamy under Section 25.01, Penal Code,  
8 except as provided by Subdivision (6);

9 (4) five years from the date of the commission of the  
10 offense:

11 (A) theft or robbery;

12 (B) except as provided by Subdivision (5),  
13 kidnapping or burglary;

14 (C) injury to an elderly or disabled individual  
15 that is not punishable as a felony of the first degree under Section  
16 22.04, Penal Code;

17 (D) abandoning or endangering a child; or

18 (E) insurance fraud;

19 (5) if the investigation of the offense shows that the  
20 victim is younger than 17 years of age at the time the offense is  
21 committed, 20 years from the 18th birthday of the victim of one of  
22 the following offenses:

23 (A) sexual performance by a child under Section  
24 43.25, Penal Code;

25 (B) aggravated kidnapping under Section  
26 20.04(a)(4), Penal Code, if the defendant committed the offense  
27 with the intent to violate or abuse the victim sexually; or

1 (C) burglary under Section 30.02, Penal Code, if  
2 the offense is punishable under Subsection (d) of that section and  
3 the defendant committed the offense with the intent to commit an  
4 offense described by Subdivision (1)(B) or (D) of this article or  
5 Paragraph (B) of this subdivision;

6 (6) ten years from the 18th birthday of the victim of  
7 the offense:

8 (A) trafficking of persons under Section  
9 20A.02(a)(5) or (6), Penal Code;

10 (B) injury to a child under Section 22.04, Penal  
11 Code; or

12 (C) bigamy under Section 25.01, Penal Code, if  
13 the investigation of the offense shows that the person, other than  
14 the legal spouse of the defendant, whom the defendant marries or  
15 purports to marry or with whom the defendant lives under the  
16 appearance of being married is younger than 18 years of age at the  
17 time the offense is committed;

18 (7) two years from the date the offense was  
19 discovered: sexual assault punishable as a state jail felony under  
20 Section 22.011(f)(2), Penal Code; or

21 (8) three years from the date of the commission of the  
22 offense: all other felonies.

23 SECTION 3. Chapter 12, Code of Criminal Procedure, is  
24 amended by adding Article 12.015 to read as follows:

25 Art. 12.015. RACKETEERING AND UNLAWFUL DEBT COLLECTION.

26 (a) Except as provided by Subsection (b), a felony indictment for  
27 an offense under Section 72.02, 72.03, or 72.04, Penal Code, must be

1 presented not later than five years from the date of the commission  
2 of the offense.

3 (b) If the attorney general or a local prosecutor, as  
4 defined by Section 140B.001, Civil Practice and Remedies Code,  
5 brings an action in the name of the state under Chapter 140B, Civil  
6 Practice and Remedies Code, during the limitations period described  
7 by Subsection (a), that limitations period is suspended while the  
8 attorney general's or local prosecutor's action is pending. If a  
9 limitations period is suspended under this subsection, the  
10 limitations period is extended for two years.

11 SECTION 4. Section 71.01(d), Penal Code, is amended to read  
12 as follows:

13 (d) "Criminal street gang" means two [~~three~~] or more persons  
14 having a common identifying sign or symbol or an identifiable  
15 leadership who continuously or regularly associate in the  
16 commission of criminal activities.

17 SECTION 5. Section 71.02(a), Penal Code, is amended to read  
18 as follows:

19 (a) A person commits an offense if, with the intent to  
20 establish, maintain, or participate in a combination or in the  
21 profits of a combination or as a member of a criminal street gang,  
22 the person commits or conspires to commit one or more of the  
23 following:

24 (1) murder, capital murder, arson, aggravated  
25 robbery, robbery, burglary, theft, aggravated kidnapping,  
26 kidnapping, aggravated assault, aggravated sexual assault, sexual  
27 assault, continuous sexual abuse of young child or disabled

1 individual, solicitation of a minor, forgery, deadly conduct,  
2 assault punishable as a Class A misdemeanor, burglary of a motor  
3 vehicle, or unauthorized use of a motor vehicle;

4 (2) any gambling offense punishable as a Class A  
5 misdemeanor;

6 (3) promotion of prostitution, aggravated promotion  
7 of prostitution, or compelling prostitution;

8 (4) unlawful manufacture, transportation, repair, or  
9 sale of firearms or prohibited weapons;

10 (5) unlawful manufacture, delivery, dispensation, or  
11 distribution of a controlled substance or dangerous drug, or  
12 unlawful possession of a controlled substance or dangerous drug  
13 through forgery, fraud, misrepresentation, or deception;

14 (5-a) causing the unlawful delivery, dispensation, or  
15 distribution of a controlled substance or dangerous drug in  
16 violation of Subtitle B, Title 3, Occupations Code;

17 (5-b) any unlawful possession with intent to deliver a  
18 controlled substance or dangerous drug;

19 (6) any unlawful wholesale promotion or possession of  
20 any obscene material or obscene device with the intent to wholesale  
21 promote the same;

22 (7) any offense under Subchapter B, Chapter 43,  
23 depicting or involving conduct by or directed toward a child  
24 younger than 18 years of age;

25 (8) any felony offense under Chapter 32;

26 (9) any offense under Chapter 36;

27 (10) any offense under Chapter 34, 35, or 35A;

- 1 (11) any offense under Section 37.11(a);
- 2 (12) any offense under Chapter 20A;
- 3 (13) any offense under Section 37.10;
- 4 (14) any offense under Section 38.06, 38.07, 38.09, or
- 5 38.11;
- 6 (15) any offense under Section 42.10;
- 7 (16) any offense under Section 46.06(a)(1) or 46.14;
- 8 (17) any offense under Section 20.05 or 20.06;
- 9 (18) any offense under Section 16.02; or
- 10 (19) any offense classified as a felony under the Tax
- 11 Code.

12 SECTION 6. Title 11, Penal Code, is amended by adding  
13 Chapter 72 to read as follows:

14 CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

15 Sec. 72.01. DEFINITIONS. In this chapter:

16 (1) "Enterprise" has the meaning assigned by Section  
17 140B.001, Civil Practice and Remedies Code.

18 (2) "Money" means funds as defined by Section 34.01.

19 (3) "Pattern of racketeering" means engaging in at  
20 least two incidents of racketeering conduct that have the same or  
21 similar intents, results, accomplices, victims, or methods of  
22 commission or that otherwise are interrelated by distinguishing  
23 characteristics and are not isolated incidents, the last of which  
24 occurred not later than the fifth anniversary of the date of a  
25 previous incident of racketeering conduct.

26 (4) "Pecuniary value" means:

27 (A) anything of value in the form of money, a

1 negotiable instrument, or a commercial interest or anything else  
2 the primary significance of which is economic advantage; or

3 (B) any other property or service that has a  
4 value in excess of \$100.

5 (5) "Racketeering" means to commit, to attempt to  
6 commit, to conspire to commit, or to solicit, coerce, or intimidate  
7 another person to commit:

8 (A) a felony offense under The Securities Act  
9 (Title 12, Government Code);

10 (B) an offense under Section 20.03 (kidnapping);

11 (C) an offense under Section 20.04 (aggravated  
12 kidnapping);

13 (D) an offense under Section 20.07 (operation of  
14 stash house);

15 (E) a felony offense under Chapter 37 (perjury  
16 and other falsification);

17 (F) an offense under Section 38.03 (resisting  
18 arrest, search, or transportation);

19 (G) an offense under Section 38.05 (hindering  
20 apprehension or prosecution);

21 (H) an offense under Chapter 43 (public  
22 indecentcy); or

23 (I) an offense under Section 71.02 (engaging in  
24 organized criminal activity).

25 (6) "Real property" has the meaning assigned by  
26 Section 140B.001, Civil Practice and Remedies Code.

27 (7) "Unlawful debt" means any money or other thing of

1 value constituting principal or interest of a debt that is wholly or  
2 partly legally unenforceable in this state because the debt was  
3 incurred or contracted:

4 (A) in violation of:

5 (i) the Texas Racing Act (Subtitle A-1,  
6 Title 13, Occupations Code, and Article 179e, Revised Civil  
7 Statutes);

8 (ii) Subtitle A, Title 4, Finance Code, or  
9 Section 11, Article 16, Texas Constitution, relating to interest  
10 and usury; or

11 (iii) Chapter 47, relating to gambling; or

12 (B) in gambling activity in violation of federal  
13 law or in the business of lending money at a rate usurious under  
14 state or federal law.

15 Sec. 72.02. USE OF PROCEEDS DERIVED FROM RACKETEERING OR  
16 UNLAWFUL DEBT COLLECTION. (a) A person commits an offense if the  
17 person intentionally uses or invests, whether directly or  
18 indirectly, any part of any proceeds knowingly derived, directly or  
19 indirectly, from a pattern of racketeering or through the  
20 collection of an unlawful debt, or the proceeds derived from the  
21 investment or use of those proceeds, in acquiring title to, or any  
22 right, interest, or equity in, real property or in the  
23 establishment or operation of any enterprise.

24 (b) An offense under this section is a felony of the second  
25 degree.

26 Sec. 72.03. ACQUISITION OF INTEREST IN PROPERTY OR CONTROL  
27 OF ENTERPRISE THROUGH RACKETEERING OR UNLAWFUL DEBT COLLECTION.

1 (a) A person commits an offense if the person, knowingly through a  
2 pattern of racketeering or through the collection of an unlawful  
3 debt, acquires or maintains, directly or indirectly, any interest  
4 in or control of any enterprise or real property.

5 (b) An offense under this section is a felony of the second  
6 degree.

7 Sec. 72.04. PARTICIPATION IN ENTERPRISE THROUGH  
8 RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) A person commits an  
9 offense if the person is employed by or associated with an  
10 enterprise and knowingly conducts or participates, directly or  
11 indirectly, in that enterprise through a pattern of racketeering or  
12 the collection of an unlawful debt.

13 (b) An offense under this section is a felony of the second  
14 degree.

15 Sec. 72.05. ALTERNATIVE FINE. Notwithstanding any other  
16 law, a court, after a hearing, may impose a fine, instead of an  
17 otherwise applicable fine, on a person convicted of an offense  
18 under Section 72.02, 72.03, or 72.04, through which the person  
19 derived pecuniary value or by which the person caused personal  
20 injury, property damage, or other loss, that does not exceed:

21 (1) the greater of:

22 (A) three times the gross value gained as a  
23 result of the offense; or

24 (B) three times the gross loss caused as a result  
25 of the offense; and

26 (2) the amount of the court costs and the reasonably  
27 incurred costs of investigation and prosecution.

1 SECTION 7. Subtitle B, Title 5, Property Code, is amended by  
2 adding Chapter 68 to read as follows:

3 CHAPTER 68. RICO LIENS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 68.001. DEFINITIONS. In this chapter:

6 (1) "Beneficial interest," "investigative agency,"  
7 "local prosecutor," and "real property" have the meanings assigned  
8 by Section 140B.001, Civil Practice and Remedies Code.

9 (2) "RICO lien notice" means a lien notice filed under  
10 Section 68.051 or 68.052.

11 (3) "Trustee":

12 (A) means:

13 (i) a person acting as trustee under a trust  
14 established under the Texas Trust Code (Subtitle B, Title 9,  
15 Property Code) in which the trustee holds legal or record title to  
16 real property;

17 (ii) a person who holds legal or record  
18 title to real property in which another person has a beneficial  
19 interest; or

20 (iii) a successor trustee to a person  
21 described by Subparagraph (i) or (ii); and

22 (B) does not include a person appointed or acting  
23 as a personal representative as defined by Section 22.031, Estates  
24 Code, or appointed or acting as a trustee of a testamentary trust or  
25 as a trustee of an indenture of trust under which any bonds have  
26 been or are to be issued.

1                   SUBCHAPTER B. RICO LIEN NOTICE

2           Sec. 68.051. GENERAL RICO LIEN NOTICE. (a) On the  
3 institution by an investigative agency of a civil action brought  
4 under Chapter 140B, Civil Practice and Remedies Code, the  
5 investigative agency, then or at any time during the pendency of the  
6 action, may file a RICO lien notice in the official records of any  
7 one or more counties. The attorney general must receive the consent  
8 of the applicable local prosecutor before filing a RICO lien.

9           (b) A filing fee or other charge may not be required as a  
10 condition for filing the RICO lien notice, and the clerk of the  
11 district court, on the presentation of a RICO lien notice, shall  
12 immediately record it in the official records.

13           Sec. 68.052. ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN  
14 NOTICE. (a) In addition to the authority to file a RICO lien notice  
15 under Section 68.051, the attorney general or a local prosecutor  
16 may apply ex parte to a district court and, on petition supported by  
17 sworn affidavit, obtain an order authorizing the filing of a RICO  
18 lien notice against real property on a showing of probable cause to  
19 believe that the property was used in the course of, intended for  
20 use in the course of, derived from, or realized through conduct  
21 constituting an offense under Section 72.02, 72.03, or 72.04, Penal  
22 Code.

23           (b) If the RICO lien notice authorization is granted, the  
24 attorney general or local prosecutor shall, after filing the  
25 notice, immediately provide notice to the owner of the property by:

26                   (1) serving the notice in the manner provided by law  
27 for the service of process;

1           (2) mailing the notice, postage prepaid, by certified  
2 mail to the owner at the owner's last known address and obtaining  
3 evidence of the delivery; or

4           (3) if service by a method described by Subdivision  
5 (1) or (2) cannot be accomplished, posting the notice on the  
6 premises.

7           (c) The owner of the property may move the court to  
8 discharge the lien, and that motion shall be set for hearing at the  
9 earliest possible time.

10           (d) The court shall discharge the lien if the court finds  
11 that:

12           (1) there is no probable cause to believe that the  
13 property was used in the course of, intended for use in the course  
14 of, derived from, or realized through conduct constituting an  
15 offense under Section 72.02, 72.03, or 72.04, Penal Code; or

16           (2) the owner of the property neither knew nor  
17 reasonably should have known that the property was used in the  
18 course of, intended for use in the course of, derived from, or  
19 realized through conduct constituting an offense under Section  
20 72.02, 72.03, or 72.04, Penal Code.

21           (e) Testimony presented by the property owner at the  
22 hearing:

23           (1) is not admissible against the property owner in  
24 any criminal proceeding except in a criminal prosecution for  
25 perjury or false statement; and

26           (2) does not constitute a waiver of the property  
27 owner's constitutional right against self-incrimination.

1       (f) Except as provided by Subsection (g), a RICO lien notice  
2 secured under this section is valid for a period of 90 days from the  
3 date the court granted authorization and may be extended for an  
4 additional 90 days by the court for good cause shown.

5       (g) If a civil action is instituted under Chapter 140B,  
6 Civil Practice and Remedies Code, and a RICO lien notice is filed  
7 under this subchapter, the term of the lien notice is governed by  
8 this subchapter.

9       (h) The filing of a RICO lien notice, regardless of whether  
10 subsequently discharged or otherwise lifted, constitutes notice to  
11 the owner and knowledge by the owner that the property was used in  
12 the course of, intended for use in the course of, derived from, or  
13 realized through conduct constituting an offense under Section  
14 72.02, 72.03, or 72.04, Penal Code, such that lack of such notice  
15 and knowledge is not a defense in any subsequent civil action under  
16 Chapter 140B, Civil Practice and Remedies Code, or a subsequent  
17 criminal proceeding under Chapter 72, Penal Code.

18       Sec. 68.053. FORMAT OF NOTICE. (a) A RICO lien notice must  
19 be signed by the attorney general or the attorney general's  
20 designee or by a local prosecutor or the local prosecutor's  
21 designee.

22       (b) A RICO lien notice must be in the form prescribed by the  
23 attorney general and must include:

24           (1) the name of the person against whom a civil action  
25 has been brought under Chapter 140B, Civil Practice and Remedies  
26 Code, and at the discretion of the investigative agency may also  
27 include any other aliases, names, or fictitious names under which

1 the person may be known and any corporation, partnership, or other  
2 entity that is either controlled or entirely owned by the person;

3 (2) if known to the investigative agency, the current  
4 residence and business addresses of the person named in the notice  
5 and of the other names included in the notice;

6 (3) a reference to an applicable civil action,  
7 stating:

8 (A) that an action under Chapter 140B, Civil  
9 Practice and Remedies Code, has been brought against the person  
10 named in the notice;

11 (B) the name of each county in which the action  
12 has been brought; and

13 (C) if known to the investigative agency at the  
14 time of filing the notice, the cause number of the action;

15 (4) a statement that the notice is being filed under  
16 this chapter; and

17 (5) the name and address of the investigative agency  
18 filing the notice and the name of the individual signing the notice.

19 (c) A RICO lien notice must apply only to one person and, to  
20 the extent applicable, any other aliases, names, or fictitious  
21 names of that person, including the names of corporations,  
22 partnerships, or other entities, to the extent permitted by  
23 Subsection (b)(1). A separate notice must be filed for each person  
24 against whom the investigative agency desires to file a RICO lien  
25 notice under this subchapter.

26 Sec. 68.054. SERVICE OF NOTICE. (a) An investigative  
27 agency shall, as soon as practicable after the filing of each RICO

1 lien notice, provide to the person named in the notice:

2 (1) a copy of the recorded notice; or

3 (2) a copy of the notice that states each county in  
4 which the notice has been recorded.

5 (b) The failure of the investigative agency to provide a  
6 copy of a RICO lien notice under this section does not invalidate or  
7 otherwise affect the notice.

8 Sec. 68.055. CREATION AND PRIORITY OF RICO LIEN. (a)

9 Filing a RICO lien notice creates, from the time of its filing, a  
10 lien in favor of the state on the following property of the person  
11 named in the notice and against any other names set forth in the  
12 notice:

13 (1) any real property situated in the county where the  
14 notice is filed then or thereafter owned by the person or under any  
15 of the names; and

16 (2) any beneficial interest situated in the county  
17 where the notice is filed then or thereafter owned by the person or  
18 under any of the names.

19 (b) The lien shall commence and attach as of the time of  
20 filing of a RICO lien notice and shall continue thereafter until  
21 expiration, termination, or release of the notice under this  
22 subchapter. The lien created in favor of the state is superior to  
23 the interest of any other person in the real property or beneficial  
24 interest if the interest is acquired subsequent to the filing of the  
25 notice.

26 (c) For purposes of this section, a beneficial interest is  
27 considered to be located where real property owned by the trustee is

1 located.

2 Sec. 68.056. LIS PENDENS; INTERESTS OF PERSONS ACQUIRING  
3 INTEREST IN PROPERTY. (a) In conjunction with a civil action  
4 brought under Chapter 140B, Civil Practice and Remedies Code, an  
5 investigative agency may file without prior court order in any  
6 county a notice of lis pendens under Section 12.007. In such case,  
7 a person acquiring an interest in the subject real property or  
8 beneficial interest, if the real property or beneficial interest is  
9 acquired subsequent to the filing of the notice of lis pendens,  
10 shall take the interest subject to the civil action and any  
11 subsequent judgment of forfeiture.

12 (b) In conjunction with a civil action brought under Chapter  
13 140B, Civil Practice and Remedies Code, if a RICO lien notice has  
14 been filed, an investigative agency may name as a defendant, in  
15 addition to the person named in the notice, any person acquiring an  
16 interest in the real property or beneficial interest subsequent to  
17 the filing of the notice. If a judgment of forfeiture is entered in  
18 the action in favor of the state, the interest of any person in the  
19 property that was acquired subsequent to the filing of the notice  
20 shall be subject to the notice and judgment of forfeiture.

21 Sec. 68.057. DUTIES OF TRUSTEE; CRIMINAL OFFENSE. (a) A  
22 trustee who acquires actual knowledge that a RICO lien notice or a  
23 civil action brought under Chapter 140B, Civil Practice and  
24 Remedies Code, or criminal proceeding brought under Chapter 72,  
25 Penal Code, has been filed against a person for whom the trustee  
26 holds legal or record title to real property shall immediately  
27 furnish to the appropriate investigative agency:

1           (1) the name and address of the person, as known to the  
2 trustee;

3           (2) the name and address, as known to the trustee, of  
4 each other person for whose benefit the trustee holds title to the  
5 real property; and

6           (3) if requested by the investigative agency, a copy  
7 of the trust agreement or other instrument under which the trustee  
8 holds legal or record title to the real property.

9           (b) A trustee who violates this section commits an offense.  
10 An offense under this subsection is a Class B misdemeanor.

11           Sec. 68.058. LIABILITY OF TRUSTEE FOR CONVEYANCE OF TITLE.

12           (a) A trustee who conveys title to real property for which, at the  
13 time of the conveyance, a RICO lien notice naming a person who, to  
14 the actual knowledge of the trustee, holds a beneficial interest in  
15 the trust has been filed in the county where the real property is  
16 situated is liable to the state for the greatest of:

17           (1) the amount of proceeds received directly by the  
18 person named in the notice as a result of the conveyance;

19           (2) the amount of proceeds received by the trustee as a  
20 result of the conveyance and distributed to the person named in the  
21 notice; or

22           (3) the fair market value of the interest of the person  
23 named in the notice in the real property conveyed.

24           (b) Notwithstanding Subsection (a)(3), if a trustee conveys  
25 the real property and holds the proceeds that would otherwise be  
26 paid or distributed to the beneficiary or at the direction of the  
27 beneficiary or the beneficiary's designee, the trustee's liability

1 does not exceed the amount of the proceeds held for so long as the  
2 proceeds are held by the trustee.

3 (c) An investigative agency may bring a civil action in any  
4 district court against a trustee to recover from the trustee the  
5 amount described by Subsection (a) and is entitled to recover  
6 investigative costs and attorney's fees incurred by the  
7 investigative agency.

8 Sec. 68.059. EFFECT ON TRUST OF RICO LIEN NOTICE. (a) The  
9 filing of a RICO lien notice does not constitute a lien on the  
10 record title to real property as owned by a trustee except to the  
11 extent that the trustee is named in the notice.

12 (b) The filing of a RICO lien notice does not affect the use  
13 to which real property or a beneficial interest owned by the person  
14 named in the notice may be put or the right of the person to receive  
15 any avails, rents, or other proceeds resulting from the use and  
16 ownership, but not the sale, of the property until a judgment of  
17 forfeiture is entered.

18 Sec. 68.060. TRUST EXCEPTIONS. (a) This chapter does not  
19 apply to a conveyance by a trustee under a court order, unless that  
20 court order is entered in an action between the trustee and the  
21 beneficiary.

22 (b) Unless the trustee has actual knowledge that a person  
23 owning a beneficial interest in the trust is named in a RICO lien  
24 notice or is otherwise a defendant in a civil action brought under  
25 Chapter 140B, Civil Practice and Remedies Code, this subchapter  
26 does not apply to a conveyance by the trustee:

27 (1) required under the terms of the trust agreement

1 that is a matter of public record before the filing of the lien  
2 notice; or

3 (2) to all of the persons who own beneficial interests  
4 in the trust.

5 Sec. 68.061. RIGHTS OF INNOCENT PERSONS. All forfeitures  
6 or dispositions under this chapter must be made with due provision  
7 for the rights of innocent persons.

8 Sec. 68.062. EXPIRATION, RENEWAL, AND RELEASE OF RICO LIEN  
9 NOTICE. (a) Unless renewed by the investigative agency, a RICO  
10 lien notice expires on the sixth anniversary of the date it was  
11 filed. If the investigative agency renews the notice, the notice  
12 expires on the sixth anniversary of the date it was renewed. The  
13 investigative agency may renew the notice only once.

14 (b) The investigative agency filing a RICO lien notice may  
15 wholly or partly release the notice or may release any specific real  
16 property or beneficial interest from the notice on the  
17 investigative agency's own terms. A release of the notice may be  
18 filed in the official records of any county. A charge or fee may not  
19 be imposed for the filing of the release.

20 Sec. 68.063. EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE.  
21 If a civil action has not been brought by an investigative agency  
22 seeking a forfeiture of any property owned by the person named in  
23 the RICO lien notice, the acquittal in a criminal proceeding  
24 brought under Chapter 72, Penal Code, of the person named in the  
25 notice or the dismissal of the criminal proceeding terminates the  
26 notice and, in such case, the filing of the notice is void. If the  
27 criminal proceeding has been dismissed or the person named in the

1 notice has been acquitted in the criminal proceeding, the notice  
2 continues for the duration of a civil action brought under Chapter  
3 140B, Civil Practice and Remedies Code.

4 Sec. 68.064. TERMINATION OR RELEASE OF RICO LIEN NOTICE BY  
5 COURT. (a) If a civil action brought under Chapter 140B, Civil  
6 Practice and Remedies Code, is not pending against a person named in  
7 a RICO lien notice, the person may bring an action in the county  
8 where the notice has been filed against the investigative agency  
9 that filed the notice seeking a release or extinguishment of the  
10 notice.

11 (b) In an action brought under this section, the court  
12 shall, on the motion of the person named in the RICO lien notice,  
13 immediately enter an order setting a date for hearing that is not  
14 earlier than the fifth day and not later than the 10th day after the  
15 date the action is filed, and the order and a copy of the complaint  
16 shall be served on the investigative agency not later than the third  
17 day after the date the action is filed.

18 (c) At the hearing set under Subsection (b), the court shall  
19 take evidence on the issue of whether any real property or  
20 beneficial interest owned by the person named in the RICO lien  
21 notice is covered by the notice or is otherwise subject to  
22 forfeiture under Chapter 140B, Civil Practice and Remedies Code.

23 (d) If, at the hearing under Subsection (b), the person  
24 named in the RICO lien notice shows by a preponderance of the  
25 evidence that the notice is not applicable to the person or that any  
26 real property or beneficial interest owned by the person is not  
27 subject to forfeiture under Chapter 140B, Civil Practice and

1 Remedies Code, the court shall enter a judgment terminating the  
2 notice or releasing the real property or beneficial interest from  
3 the notice.

4 (e) A court shall immediately enter its order releasing from  
5 a RICO lien notice any specific real property or beneficial  
6 interest if a sale of that real property or beneficial interest is  
7 pending and the filing of the notice prevents the sale of the  
8 property or interest. Proceeds resulting from the sale of that real  
9 property or beneficial interest shall be deposited into the  
10 registry of the court, subject to the further order of the court.

11 (f) At the hearing under Subsection (b), the court may  
12 release any real property or beneficial interest from the RICO lien  
13 notice, on the posting by the person named in the notice of security  
14 that is equal to the value of the real property or beneficial  
15 interest owned by the person.

16 (g) If a civil action brought under Chapter 140B, Civil  
17 Practice and Remedies Code, is pending against a person named in a  
18 RICO lien notice, the court on motion by the person may grant the  
19 relief described by this section.

20 SECTION 8. (a) Chapter 140B, Civil Practice and Remedies  
21 Code, as added by this Act, applies only to a cause of action that  
22 accrues on or after the effective date of this Act.

23 (b) Sections 71.01 and 71.02, Penal Code, as amended by this  
24 Act, apply only to an offense committed on or after the effective  
25 date of this Act. An offense committed before the effective date of  
26 this Act is governed by the law in effect when the offense was  
27 committed, and the former law is continued in effect for that

1 purpose. For purposes of this section, an offense was committed  
2 before the effective date of this Act if any element of the offense  
3 occurred before that date.

4 SECTION 9. To the extent of any conflict, this Act prevails  
5 over another Act of the 88th Legislature, Regular Session, 2023,  
6 relating to nonsubstantive additions to and corrections in enacted  
7 codes.

8 SECTION 10. This Act takes effect September 1, 2023.