

BILL ANALYSIS

Senate Research Center
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H.B. 4635
By: Guillen (Flores)
Border Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Transnational gangs and criminal enterprises have proliferated in this state through highly sophisticated, diversified, and widespread criminal activity. This criminal activity annually consumes millions of dollars locally and billions of dollars nationally through unlawful conduct and the illegal use of force, fraud, and corruption through various criminal elements. All of this harms the State of Texas and its citizens.

The federal government uses the federal Racketeer Influenced and Corrupt Organizations Act (RICO) for criminal prosecution of gangs and criminal enterprises. There are also 32 states that have their own version of RICO laws. The State of Texas has a variety of laws that address criminal activity, including organized crime statutes. However, law enforcement entities lack statutory authority to target the lifeblood of criminal enterprises, their financial assets.

H.B. 4635 seeks to strengthen the legal tools in the evidence-gathering process, by establishing new penal prohibitions and providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

H.B. 4635 amends current law relating to organized crime, racketeering activities, and collection of unlawful debts, provides a civil penalty, and creates criminal offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140B, as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 140B.001. DEFINITIONS. Defines "beneficial interest," "cash or cash proceeds," "enterprise," "investigative agency," "local prosecutor," "money," and "real property."

Sec. 140B.002. SPECIAL DOCKETING PROCEDURES. Authorizes the attorney general or local prosecutor to file with the clerk of the district court in which an action is brought under this chapter a certificate stating that the case is of special public importance. Requires the clerk to immediately furnish a copy of the certificate to the administrative judge of the district court of the county in which the action is pending. Requires the administrative judge, on receiving the copy of the certificate, to immediately designate a judge to hear and determine the action. Requires the designated judge to promptly assign the action for hearing, participate in hearings, make determinations, and cause the action to be expedited.

Sec. 140B.003. PREVIOUSLY SEIZED ASSETS. Prohibits a remedy provided by this chapter from being assessed against, and prohibits the attorney general from claiming or pursuing in an action brought under this chapter, any proceeds, contraband, or other property of any kind over which a law enforcement authority has previously asserted jurisdiction under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, at the time an action under this chapter was filed, notwithstanding any other provision of this chapter.

SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

Sec. 140B.051. DEFINITIONS. Defines "civil investigative demand," "documentary material," "product of discovery," "racketeering investigation," and "racketeering violation."

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

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

Sec. 140B.053. CONTENTS OF DEMAND. (a) Requires that a civil investigative demand issued under Section 140B.052:

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

(b) Requires that a demand for production of documentary material:

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

(c) Requires that a demand for answers to written interrogatories:

- (1) propound the interrogatories with definiteness and certainty;
- (2) prescribe a date by which answers to the interrogatories are required to be submitted; and
- (3) identify the individual to whom the answers should be submitted.

(d) Requires that each demand for the giving of oral testimony:

- (1) prescribe a reasonable date, time, and place at which the testimony will begin; and
- (2) identify the individual who will conduct the examination.

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

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

(c) Provides that a verified return by the individual serving any demand or petition filed under Section 140B.055 or 140B.060 setting forth the manner of service is proof of service. Requires the return to be accompanied by the return post office receipt of delivery of the demand or petition in the case of service by registered or certified mail.

Sec. 140B.055. PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND. (a) Authorizes the person who has been served, and in the case of a demand for a product of discovery the person from whom the discovery was obtained, to file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or a district court of Travis County at any time before the return date specified in a civil investigative demand or not later than the 30th day after the date the demand was served, whichever period is shorter. Requires that the petition specify each ground upon which the petitioner relies in seeking the relief sought. Authorizes the petition to be based on any failure of a demand to comply with the provisions of this subchapter or on any constitutional or other legal right or privilege of the petitioner.

(b) Requires the petitioner to serve a copy of the petition on the attorney general or local prosecutor, as applicable, in accordance with Section 140B.054. Authorizes the attorney general or local prosecutor to submit an answer to the petition.

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

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

(b) Provides that the time for compliance with the demand wholly or partly does not run during the pendency of any petition filed under Section 140B.055, provided that the petitioner is required to comply with any portions of the demand not sought to be modified or set aside.

Sec. 140B.057. DOCUMENTARY MATERIAL. (a) Requires any person on whom any civil investigative demand for the production of documentary material has been duly served under this subchapter to make the material available to the attorney general or

local prosecutor, as applicable, for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business or as is otherwise authorized to be agreed on by the person and the attorney general or local prosecutor. Requires the attorney general or local prosecutor to bear the expense of any copying. Authorizes the person to substitute copies for originals of all or part of the requested documents if the originals are made available for inspection. Authorizes the attorney general or local prosecutor to elect to obtain or review information in an electronic format. Requires the person to indicate in writing which, if any, of the documents produced contain trade secrets or confidential information.

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

Sec. 140B.058. INTERROGATORIES. (a) Requires each interrogatory in any civil investigative demand duly served to be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection to be set forth in lieu of an answer. Requires the person to indicate in writing which, if any, of the answers contain trade secrets or confidential information.

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

Sec. 140B.059. ORAL EXAMINATION. (a) Requires the examination of any person pursuant to a civil investigative demand for oral testimony duly served to be taken before any person authorized to administer oaths and affirmations under the laws of this state or the United States. Requires the person before whom the testimony is to be taken to put the witness on oath or affirmation and to personally or by someone acting under the person's direction and in the person's presence record the witness's testimony. Provides that testimony is required to be taken stenographically and is authorized to be transcribed at the expense of the attorney general or local prosecutor, and except as provided by this section. Authorizes the attorney general or local prosecutor to take audio and video recordings of the testimony by providing notice to the person to be examined not later than the seventh day before the day the person is to be examined.

(b) Requires that the oral testimony of any person taken pursuant to a demand served be taken within 100 miles of the county where the person resides, is found, or transacts business or in any other place agreed on by the person and the attorney general or local prosecutor.

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

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

(e) Authorizes the person being examined or the person's counsel, during the examination, to object on the record to any question in accordance with Rule 199.5(e), Texas Rules of Civil Procedure. Authorizes an objection to properly be made, received, and entered on the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other privilege, including the privilege against self-incrimination. Authorizes neither that person nor the person's counsel to otherwise object to or refuse to answer any question or interrupt the oral examination. Authorizes the attorney general or local prosecutor to petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question, if the person refuses to answer any question.

(f) Requires the person before whom the testimony was taken to promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general or local prosecutor after the testimony has been fully transcribed. Requires the witness to have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for the changes. Requires the witness to then sign and return the transcript. Authorizes the witness to be deemed to have waived the right to make changes if the witness does not return the transcript to the person before whom the testimony was taken not later than the 20th day after the date the transcript was provided to the witness. Requires the officer to then certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general or local prosecutor.

(g) Requires the attorney general or local prosecutor to furnish a copy of the certified transcript to the witness on request.

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

Sec. 140B.060. **FAILURE TO COMPLY WITH DEMAND PETITION FOR ENFORCEMENT.** Authorizes the attorney general or local prosecutor, if a person fails to comply with a civil investigative demand duly served on the person, to file in the district court in the county in which the person resides, is found, or transacts business or in a district court of Travis County and to serve on the person a petition for an order of the court for enforcement. Requires that the petition be filed in the county of the person's principal office or place of business in the state or in any other county as authorized to be agreed on by the person and the attorney general or local prosecutor if the person transacts business in more than one county and the attorney general or local prosecutor elects not to file the petition in Travis County.

Sec. 140B.061. **CRIMINAL OFFENSE: DELIBERATE NONCOMPLIANCE.** (a) Provides that a person commits an offense if the person, with intent to avoid, evade, or prevent compliance with a civil investigative demand issued under this subchapter, knowingly removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information.

(b) Provides that an offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$5,000;
- (2) confinement in a county jail for not more than one year; or
- (3) both a fine and confinement.

Sec. 140B.062. DISCLOSURE AND USE OF MATERIAL AND INFORMATION. (a) Provides that the civil investigative demand issued by the attorney general or local prosecutor, any information obtained, maintained, or created in response to the demand, or any documentary material, product of discovery, or other record derived or created during an investigation from the information, is not subject to disclosure under Chapter 552 (Public Information), Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for the release, except as described in Subsections (b) and (c).

(b) Prohibits the attorney general or local prosecutor from releasing or disclosing information that is obtained in response to a demand or any documentary material, product of discovery, or other record derived from the information except:

(1) by court order for good cause shown;

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

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

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

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

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

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

Sec. 140B.063. JURISDICTION. Provides that, if a petition is filed in the district court in any county, the court has jurisdiction to hear and determine the matter presented and to enter any order required to implement this chapter. Provides that any final order is subject to appeal. Provides that failure to comply with any final order entered by a court under this chapter is punishable by the court as contempt of the order.

Sec. 140B.064. NONEXCLUSIVE PROCEDURES. Provides that nothing in this chapter precludes the attorney general or local prosecutor from using any procedure not specified in this chapter in conducting a racketeering investigation.

CHAPTER C. CIVIL REMEDIES

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

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

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

- (3) ordering the dissolution or reorganization of an enterprise;
- (4) ordering the suspension or revocation of a license, permit, or approval previously granted to an enterprise by any state agency; or
- (5) 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, on finding that:
 - (A) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code; and
 - (B) for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

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

(b) Authorizes an investigative agency, on behalf of this state, to bring a civil action for forfeiture:

- (1) in the district court for the judicial district in which real or personal tangible property described by Subsection (a) is located;
- (2) in a district court in this state regarding intangible property described by Subsection (a); and
- (3) in the county in which real or personal tangible property described by Subsection (a) was seized.

(c) Requires that the title of the state to the forfeited property, on entry of a final judgment of forfeiture in favor of the state, relate back:

- (1) in the case of real property or a beneficial interest:
 - (A) to the date of filing of a lien notice under Chapter 68, Property Code, in the official records of the county where the real property or beneficial trust is located;
 - (B) if no lien notice is filed, to the date of the filing of any notice of lis pendens under Section 68.056(a), Property Code, in the official records of the county where the real property or beneficial interest is located; or
 - (C) if no lien notice or notice of lis pendens is filed, to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located; or
- (2) in the case of personal property, to the date the personal property was seized by the investigative agency.

(d) Provides that a beneficial interest, for purposes of this section, is considered to be located where real property owned by the trustee is located.

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

(b) Requires that the court in an action brought under Subsection (a):

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

(A) the fair market value of the property; and

(B) the investigative costs and attorney fees incurred by the investigative agency in the action; or

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

Sec. 140B.104. DISPOSITION OF FORFEITED PROPERTY. (a) Requires the state to dispose of all forfeited property as soon as commercially feasible. Authorizes the state to destroy or otherwise dispose of the property if property is not exercisable or transferable for value by the state.

(b) Requires that all forfeitures or dispositions under this subchapter be made with due provision for the rights of innocent persons.

(c) Requires the state to promptly distribute the proceeds realized from the forfeiture and disposition of property under this section in accordance with Subchapter D.

Sec. 140B.105. SEIZURE OF PROPERTY. (a) Authorizes property subject to forfeiture under this subchapter to be seized by a law enforcement officer on court process. Authorizes seizure without process to be made if:

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

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

(b) Requires an investigative agency, for a seizure conducted under this section, to promptly commence a forfeiture action under Section 140B.102.

Sec. 140B.106. STORAGE OF SEIZED PROPERTY PENDING FORFEITURE ACTION. Provides that property taken or detained under this subchapter is not subject to replevin but is considered to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court. Authorizes the law enforcement officer, when property is seized under this subchapter, pending forfeiture and final disposition, to:

(1) place the property under seal;

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

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

Sec. 140B.107. CIVIL ACTION BROUGHT BY ATTORNEY GENERAL, LOCAL PROSECUTOR, OR STATE AGENCY. (a) Authorizes the Office of the Attorney General, a local prosecutor, or a state agency having jurisdiction over conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, to institute civil actions under this subchapter. Authorizes the attorney general or a state agency to institute an action under Section 140B.101 or 140B.102 only if the attorney general or agency receives the consent of the applicable local prosecutor to bring the action.

(b) Requires the district court, in an action brought under this subchapter, to proceed as soon as practicable to the hearing and determination. Authorizes the district court to at any time enter injunctions, prohibitions, or restraining orders, or take actions, including the acceptance of satisfactory performance bonds, the court considers proper, pending final determination.

Sec. 140B.108. CIVIL ACTION BROUGHT BY AGGRIEVED PERSON. (a) Authorizes an aggrieved person to bring an action under Section 140B.101.

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

(c) Authorizes a 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.

Sec. 140B.109. RECOVERY FROM FORFEITED PROPERTY. Requires a prevailing claimant in an action under this subchapter other than the state or a political subdivision to 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 has in the same property or proceeds.

Sec. 140B.110. EFFECT OF FINAL JUDGMENT OR DECREE. Provides that a final judgment or decree rendered in favor of this state in a criminal proceeding under state law prevents the defendant from asserting in any subsequent civil action brought under this chapter any matter as to which that judgment or decree would be an estoppel as between the parties.

Sec. 140B.111. OTHER RELIEF AVAILABLE TO ATTORNEY GENERAL. (a) Authorizes the attorney general to bring an action against a person who engages in conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, to obtain:

(1) injunctive relief;

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

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

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

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

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

(c) Requires the attorney general to deposit a civil penalty collected under this section to the credit of the general revenue fund. Requires the attorney general to deposit attorney's fees and costs collected under this section into the attorney general law enforcement account, which is authorized to be used to investigate and enforce this chapter.

(d) Authorizes any party to an action brought under this section to petition the court for entry of a consent decree or for approval of a settlement agreement. Requires that the proposed decree or settlement 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.

Sec. 140B.112. INTERVENTION BY ATTORNEY GENERAL. Authorizes the attorney general, on timely application, to intervene in a civil action brought under Section 140B.108 if the attorney general certifies that, in the attorney general's opinion, the action is of general public importance. Provides that in the action, the state is entitled to the same relief as if the attorney general had instituted the action.

Sec. 140B.113. LIMITATIONS; TOLLING. (a) Requires a person, notwithstanding any other law, to bring an action under this chapter not later than the fifth anniversary of the later of:

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

(2) the date the cause of action accrues.

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

Sec. 140B.114. MULTIPLE REMEDIES ALLOWED. Provides that the application of one civil remedy under a provision of this chapter does not preclude the application of any other remedy, civil or criminal, under this chapter or any other law. Provides that civil remedies under this chapter are supplemental and not mutually exclusive.

SUBCHAPTER D. DISPOSITION OF FUNDS OBTAINED THROUGH FORFEITURE ACTIONS

Sec. 140B.151. INITIAL DISTRIBUTION. (a) Provides that a court entering a judgment of forfeiture in an action brought under Subchapter C retains jurisdiction to direct the distribution of any cash or cash proceeds realized from the forfeiture and disposition of the property. Requires the court to direct the distribution of the funds in the following order of priority:

(1) statutory fees to which the clerk of the court is authorized to be entitled;

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

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

(b) Authorizes a claim under Subsection (a)(2) to include a claim by a person appointed by the court as receiver pending litigation.

(c) Requires that restitution be distributed through the compensation to victims of crime fund if the attorney general brought the forfeiture action. Requires that restitution be distributed by the clerk of the court if the attorney general did not bring the forfeiture action.

Sec. 140B.152. DISTRIBUTION OF REMAINING MONEY. (a) Requires that the remaining money obtained in the forfeiture proceeding, following satisfaction of all valid claims under Section 140B.151, be deposited as follows:

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

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

(3) 50 percent into the general revenue fund.

(b) Requires the court entering the judgment of forfeiture, taking into account the overall effort and contribution to the investigation and forfeiture action by the agencies that filed the action, to make a pro rata apportionment among those agencies of the money available for distribution to those agencies as provided by this subchapter, if a forfeiture action is filed by the attorney general or a local prosecutor. Requires the court that entered the judgment of forfeiture, taking into account the overall effort and contribution of the agencies to the investigation and forfeiture action, to make a pro rata apportionment among those investigative agencies of the money available for distribution to the investigative agencies as provided by this subchapter, if multiple investigative agencies have contributed to the forfeiture of the property.

(c) Provides that any money obtained by the attorney general under this section is required to be deposited in the same manner described by Article 59.06(k)(3) (relating to requiring the attorney general deposit the money or proceeds from the sale of the property into an escrow account), Code of Criminal Procedure, and is authorized to be expended for the purposes and in the manner authorized by that section, if a forfeiture action is filed by the attorney general.

(d) Authorizes any money obtained by the district or county attorney's office under this section to be used to pay the costs of investigations under Subchapter B and the resulting criminal prosecutions and civil actions if a forfeiture action is filed by a district or county attorney. Authorizes such costs to include:

(1) all taxable costs;

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

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

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

(e) Requires that any money distributed to an investigative agency under Subsection (a) be deposited in the applicable law enforcement fund or account established for that agency and expended for the purposes and in the manner authorized for that fund or account. Authorizes any money distributed to an investigative agency under this section, in addition, to be used to pay the costs of investigations under Subchapter B and the resulting criminal prosecutions and civil actions. Authorizes such costs to include:

- (1) all taxable costs;
- (2) costs of protecting, maintaining, and forfeiting the property;
- (3) employees' base salaries and compensation for overtime; and
- (4) other costs directly attributable to the investigation, prosecution, or civil action.

Sec. 140B.153. EFFECT ON SETTLEMENTS. (a) Prohibits this subchapter from being construed to limit the authority of an entity that files a forfeiture action under Subchapter C to settle a claim for forfeiture.

(b) Requires that any proceeds arising from a settlement or from the sale of property obtained in a settlement be distributed in the manner described by Sections 140B.151 and 140B.152.

Sec. 140B.154. TEMPORARY DEPOSIT IN COURT REGISTRY. Authorizes the court to authorize the cash or cash proceeds to be deposited in the court registry or in a qualified public depository, pending the final distribution of the cash or cash proceeds under this subchapter.

SECTION 2. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments to be presented within certain limits, and not afterward, except as provided in Articles 12.015 and 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity). Makes a nonsubstantive change.

SECTION 3. Amends Chapter 12, Code of Criminal Procedure, by adding Article 12.015, as follows:

Art. 12.015. RACKETEERING AND UNLAWFUL DEBT COLLECTION. (a) Requires that a felony indictment for an offense under Section 72.02, 72.03, or 72.04, Penal Code, be presented not later than five years from the date of the commission of the offense, except as provided by Subsection (b).

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

SECTION 4. Amends Section 71.01(d), Penal Code, to redefine "criminal street gang."

SECTION 5. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a

criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(5-a) makes no changes to these subdivisions;

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

(6)-(19) makes no changes to these subdivisions.

SECTION 6. Amends Title 11, Penal Code, by adding Chapter 72, as follows:

CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

Sec. 72.01. DEFINITIONS. Defines "enterprise," "money," "pattern of racketeering," "pecuniary value," "racketeering," "real property," and "unlawful debt."

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

(b) Provides that an offense under this section is a felony of the second degree.

Sec. 72.03. ACQUISITION OF INTEREST IN PROPERTY OR CONTROL OF ENTERPRISE THROUGH RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) Provides that a person commits an offense if the person, knowingly through a pattern of racketeering or through the collection of an unlawful debt, acquires or maintains, directly or indirectly, any interest in or control of any enterprise or real property.

(b) Provides that an offense under this section is a felony of the second degree.

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

(b) Provides that an offense under this section is a felony of the second degree.

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

(1) the greater of:

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

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

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

SECTION 7. Amends Subtitle B, Title 5, Property Code, by adding Chapter 68, as follows:

CHAPTER 68. RICO LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. Defines "beneficial interest," "investigative agency," "local prosecutor," "real property," "RICO lien notice," and "trustee."

SUBCHAPTER B. RICO LIEN NOTICE

Sec. 68.051. GENERAL RICO LIEN NOTICE. (a) Authorizes an investigative agency, on the institution by an investigative agency of a civil action brought under Chapter 140B, Civil Practice and Remedies Code, then or at any time during the pendency of the action, to file a RICO lien notice in the official records of any one or more counties. Requires the attorney general to receive the consent of the applicable local prosecutor before filing a RICO lien.

(b) Prohibits a filing fee or other charge from being 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, is required to immediately record it in the official records.

Sec. 68.052. ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN NOTICE. (a) Authorizes the attorney general or a local prosecutor, in addition to the authority to file a RICO lien notice under Section 68.051, 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 in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(b) Requires the attorney general or local prosecutor, if the RICO lien notice authorization is granted, after filing the notice, to immediately provide notice to the owner of the property by:

- (1) serving the notice in the manner provided by law for the service of process;
- (2) mailing the notice, postage prepaid, by certified mail to the owner at the owner's last known address and obtaining evidence of the delivery; or
- (3) if service by a method described by Subdivision (1) or (2) cannot be accomplished, posting the notice on the premises.

(c) Authorizes the owner of the property to move the court to discharge the lien, and requires that motion to be set for hearing at the earliest possible time.

(d) Requires the court to discharge the lien if the court finds that:

- (1) there is no probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code; or
- (2) the owner of the property neither knew nor reasonably should have known that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(e) Provides that testimony presented by the property owner at the hearing is not admissible against the property owner in any criminal proceeding except in a

criminal prosecution for perjury or false statement and does not constitute a waiver of the property owner's constitutional right against self-incrimination.

(f) Provides that a RICO lien notice secured under this section is valid for a period of 90 days from the date the court granted authorization and is authorized to be extended for an additional 90 days by the court for good cause shown, except as provided by Subsection (g).

(g) Provides that if a civil action is instituted under Chapter 140B, Civil Practice and Remedies Code, and a RICO lien notice is filed under this subchapter, the term of the lien notice is governed by this subchapter.

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

Sec. 68.053. FORMAT OF NOTICE. (a) Requires that a RICO lien notice be signed by the attorney general or the attorney general's designee or by a local prosecutor or the local prosecutor's designee.

(b) Requires that a RICO lien notice be in the form prescribed by the attorney general and include:

(1) the name of the person against whom a civil action has been brought under Chapter 140B, Civil Practice and Remedies Code, and at the discretion of the investigative agency is authorized also to include any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person;

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

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

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

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

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

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

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

(c) Requires that a RICO lien notice apply only to one person and, to the extent applicable, any other aliases, names, or fictitious names of that person, including the names of corporations, partnerships, or other entities, to the extent permitted by Subsection (b)(1). Requires that a separate notice be filed for each person

against whom the investigative agency desires to file a RICO lien notice under this subchapter.

Sec. 68.054. SERVICE OF NOTICE. (a) Requires an investigative agency, as soon as practicable after the filing of each RICO lien notice, to provide to the person named in the notice:

(1) a copy of the recorded notice; or

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

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

Sec. 68.055. CREATION AND PRIORITY OF RICO LIEN. (a) Provides that filing a RICO lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

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

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

(b) Requires that the lien commence and attach as of the time of filing of a RICO lien notice and to continue thereafter until expiration, termination, or release of the notice under this subchapter. Provides that the lien created in favor of the state is superior to the interest of any other person in the real property or beneficial interest if the interest is acquired subsequent to the filing of the notice.

(c) Provides that a beneficial interest, for purposes of this section, is considered to be located where real property owned by the trustee is located.

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

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

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

- (1) the name and address of the person, as known to the trustee;
- (2) the name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real property; and
- (3) if requested by the investigative agency, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(b) Provides that a trustee who violates this section commits an offense. Provides that an offense under this subsection is a Class B misdemeanor.

Sec. 68.058. LIABILITY OF TRUSTEE FOR CONVEYANCE OF TITLE. (a) Provides that a trustee who conveys title to real property for which, at the time of the conveyance, a RICO lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real property is situated is liable to the state for the greatest of:

- (1) the amount of proceeds received directly by the person named in the notice as a result of the conveyance;
- (2) the amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the notice; or
- (3) the fair market value of the interest of the person named in the notice in the real property conveyed.

(b) Provides that if a trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or the beneficiary's designee, the trustee's liability does not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee, notwithstanding Subsection (a)(3).

(c) Provides that an investigative agency is authorized to bring a civil action in any district court against a trustee to recover from the trustee the amount described by Subsection (a) and is entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

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

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

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

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

- (1) required under the terms of the trust agreement that is a matter of public record before the filing of the lien notice; or

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

Sec. 68.061. **RIGHTS OF INNOCENT PERSONS.** Requires that all forfeitures or dispositions under this chapter be made with due provision for the rights of innocent persons.

Sec. 68.062. **EXPIRATION, RENEWAL, AND RELEASE OF RICO LIEN NOTICE.**

(a) Provides that a RICO lien notice expires on the sixth anniversary of the date it was filed, unless renewed by the investigative agency. Provides that the notice expires on the sixth anniversary of the date it was renewed if the investigative agency renews the notice. Authorizes the investigative agency to renew the notice only once.

(b) Authorizes the investigative agency filing a RICO lien notice to wholly or partly release the notice or to release any specific real property or beneficial interest from the notice on the investigative agency's own terms. Authorizes a release of the notice to be filed in the official records of any county. Prohibits a charge or fee from being imposed for the filing of the release.

Sec. 68.063. **EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE.** Provides that the acquittal in a criminal proceeding brought under Chapter 72, Penal Code, of the person named in the notice or the dismissal of the criminal proceeding terminates the notice and, in such case, the filing of the notice is void if a civil action has not been brought by an investigative agency seeking a forfeiture of any property owned by the person named in the RICO lien notice. Provides that the notice continues for the duration of a civil action brought under Chapter 140B, Civil Practice and Remedies Code, if the criminal proceeding has been dismissed or the person named in the notice has been acquitted in the criminal proceeding.

Sec. 68.064. **TERMINATION OR RELEASE OF RICO LIEN NOTICE BY COURT.**

(a) Authorizes a person to bring an action in the county where the notice has been filed against the investigative agency that filed the notice seeking a release or extinguishment of the notice if a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is not pending against the person named in a RICO lien notice.

(b) Requires the court, in an action brought under this section, on the motion of the person named in the RICO lien notice, to immediately enter an order setting a date for hearing that is not earlier than the fifth day and not later than the 10th day after the date the action is filed, and the order and a copy of the complaint are required to be served on the investigative agency, not later than the third day after the date the action is filed.

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

(d) Requires the court to enter a judgment terminating the notice or releasing the real property or beneficial interest from the notice if, at the hearing under Subsection (b), the person named in the RICO lien notice shows by a preponderance of the evidence that the notice is not applicable to the person or that any real property or beneficial interest owned by the person is not subject to forfeiture under Chapter 140B, Civil Practice and Remedies Code,

(e) Requires a court to immediately enter its order releasing from a RICO lien notice any specific real property or beneficial interest if a sale of that real property or beneficial interest is pending and the filing of the notice prevents the sale of the property or interest. Requires that proceeds resulting from the sale of that real property or beneficial interest be deposited into the registry of the court, subject to the further order of the court.

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

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

SECTION 8. (a) Makes application of Chapter 140B, Civil Practice and Remedies Code, as added by this Act, prospective.

(b) Makes application of Sections 71.01 and 71.02, Penal Code, as amended by this Act, prospective.

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

SECTION 10. Effective date: September 1, 2023.