88R12506 SCL-F

By:  Guillen 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 shareholder in a corporation or the interest of a partner in either a general partnership or a limited partnership.

(2)  "Cash or cash proceeds" includes:

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

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

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

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

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

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

(6)  "Real property" means any real property or any interest in real property, including any lease of or mortgage on real property.

Sec. 140B.002.  SPECIAL DOCKETING PROCEDURES. The attorney general or local prosecutor may 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. The clerk must immediately furnish a copy of the certificate to the administrative judge of the district court of the county in which the action is pending. On receiving the copy of the certificate, the administrative judge shall immediately designate a judge to hear and determine the action. The designated judge shall promptly assign the action for hearing, participate in hearings, make determinations, and cause the action to be expedited.

Sec. 140B.003.  PREVIOUSLY SEIZED ASSETS. Notwithstanding any other provision of this chapter, a remedy provided by this chapter may not be assessed against, and the attorney general may not claim or pursue 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, Code of Criminal Procedure, at the time an action under this chapter was filed.

SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

Sec. 140B.051.  AUTHORITY TO INVESTIGATE. If, in connection with civil enforcement authority provided under Subchapter C, an investigative agency has reason to believe that a person or enterprise has engaged in, or is engaging in, conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, the investigative agency may administer oaths, subpoena witnesses or material, and collect evidence.

Sec. 140B.052.  SUBPOENAS. (a) A subpoena issued under this subchapter is confidential until the 120th day after the date of its issuance. The subpoenaed person may not disclose the existence of the subpoena to any person other than the subpoenaed person's attorney during the 120-day period.

(b)  A subpoena issued under this subchapter must include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any other person except the subpoenaed person's attorney is prohibited.

(c)  The investigative agency may apply ex parte to the district court for the district in which the subpoenaed person resides, is found, or transacts business for an order directing that the subpoenaed person not disclose the existence of the subpoena to any other person except the subpoenaed person's attorney for an additional period of time for good cause shown by the investigative agency.

(d)  An order under Subsection (c) shall be served on the subpoenaed person with the subpoena, and the subpoena must include a reference to the order and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any other person in violation of the order may subject the subpoenaed person to punishment for contempt of court.

(e)  An order under Subsection (c) may be granted by the court only on a showing:

(1)  of sufficient factual grounds to reasonably indicate conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code;

(2)  that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and

(3)  of facts that reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or would result in a flight from prosecution for an offense described by Subdivision (1).

Sec. 140B.053.  SUBPOENA FOR MATTER OUTSIDE STATE. If a matter that an investigative agency seeks to obtain by a subpoena issued under this subchapter is located outside this state, the subpoenaed person may make that matter available to the investigative agency or its representative for examination at the place where the matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

Sec. 140B.054.  FAILURE TO OBEY SUBPOENA. On failure of a person, without lawful excuse, to obey a subpoena issued under this chapter, and after reasonable notice to that person, an investigative agency may apply for an order compelling compliance to:

(1)  the district court in which a civil action for which the subpoena is issued is pending; or

(2)  if no civil action is pending, the district court for the judicial district in which the person resides, is found, or transacts business.

Sec. 140B.055.  USE OF TESTIMONY OR MATERIAL SUBJECT TO SELF-INCRIMINATION PRIVILEGE. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or material after asserting a privilege against self-incrimination to which the individual is entitled by law may not have the testimony or material so provided, or evidence derived from the testimony or material, received against the individual in any criminal investigation or proceeding.

Sec. 140B.056.  CONTEMPT OF COURT. A person who fails to obey a court order entered under this subchapter may be punished for contempt of court.

Sec. 140B.057.  PROTECTIVE ORDERS. The investigative agency may stipulate to protective orders with respect to documents and information submitted in response to a subpoena issued under this subchapter.

Sec. 140B.058.  CONFIDENTIAL INFORMATION. (a) Information held by an investigative agency related to an investigation of conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, is confidential and exempt from disclosure under Chapter 552, Government Code.

(b)  Information made confidential and exempt under Subsection (a) may be disclosed by an investigative agency to:

(1)  a governmental entity in the performance of its official duties; or

(2)  a court or tribunal.

(c)  Information made confidential and exempt under Subsection (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d)  For purposes of this section, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

SUBCHAPTER C. CIVIL REMEDIES

Sec. 140B.101.  CIVIL REMEDIES. A district court may, 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) 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)  An investigative agency, on behalf of this state, may 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; and

(2)  in a district court in this state regarding intangible property described by Subsection (a).

(c)  On entry of a final judgment of forfeiture in favor of the state, the title of the state to the forfeited property shall 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)  For purposes of this section, a beneficial interest is considered to be located where real property owned by the trustee is located.

Sec. 140B.103.  CONVEYANCE OF PROPERTY SUBJECT TO FORFEITURE. (a) If property subject to forfeiture is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture, the investigative agency may, on behalf of the state, 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 a civil action is pending, the action shall be filed only in the court where the civil action is pending.

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

(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) The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, the state may destroy or otherwise dispose of the property.

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

(c)  The state shall 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) Property subject to forfeiture under this subchapter may be seized by a law enforcement officer on court process. Seizure without process may be made if:

(1)  the seizure is incident to a lawful arrest or search conducted under a warrant issued under Chapter 18, 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)  For a seizure conducted under this section, an investigative agency shall promptly commence a forfeiture action under Section 140B.102.

Sec. 140B.106.  STORAGE OF SEIZED PROPERTY PENDING FORFEITURE ACTION. 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. When property is seized under this subchapter, pending forfeiture and final disposition, the law enforcement officer may:

(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 OR LOCAL PROSECUTOR. (a) The office of the attorney general, a district attorney, or a state agency having jurisdiction over conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, may institute civil actions under this subchapter.

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

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

(b)  In an action brought as described by Subsection (a), a court shall 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.

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

Sec. 140B.109.  OTHER CIVIL ACTIONS BROUGHT BY GOVERNMENTAL CLAIMANTS. (a) The state, a state agency, or a political subdivision may bring an action against a person who engages in conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, as provided by this section.

(b)  A claimant in an action brought under this section:

(1)  must prove by clear and convincing evidence the claimant is injured as a result of the conduct that is the basis for the action;

(2)  may recover:

(A)  three times the claimant's actual damages; and

(B)  reasonable attorney's fees and reasonably incurred costs of investigation and litigation; and

(3)  may not recover exemplary damages.

(c)  The defendant is entitled to recover reasonable attorney's fees and court costs in an action brought under this section on a finding that the claimant raised a claim that was without substantial factual or legal support.

(d)  Either party may demand a trial by jury in an action brought under this section.

Sec. 140B.110.  RECOVERY FROM FORFEITED PROPERTY. A prevailing claimant in an action under this subchapter other than the state or a political subdivision shall 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.111.  EFFECT OF FINAL JUDGMENT OR DECREE. 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.112.  OTHER RELIEF AVAILABLE TO ATTORNEY GENERAL. (a) The attorney general may 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)  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)  The attorney general shall deposit a civil penalty collected under this section to the credit of the general revenue fund. The attorney general shall deposit attorney's fees and costs collected under this section into the attorney general law enforcement account, which may be used to investigate and enforce this chapter.

(d)  Any party to an action brought under this section may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement must 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.113.  INTERVENTION BY ATTORNEY GENERAL. The attorney general may, on timely application, intervene in a civil action brought under Section 140B.108 or 140B.109 if the attorney general certifies that, in the attorney general's opinion, the action is of general public importance. In the action, the state is entitled to the same relief as if the attorney general had instituted the action.

Sec. 140B.114.  LIMITATIONS; TOLLING. (a) Notwithstanding any other law, a person must 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)  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, the running of the period of limitations prescribed by this section with respect to any cause of action arising under Section 140B.108, 140B.109, or 140B.112 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.

Sec. 140B.115.  MULTIPLE REMEDIES ALLOWED. 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. 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) 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. The court shall direct the distribution of the funds in the following order of priority:

(1)  statutory fees to which the clerk of the court may 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)  A claim under Subsection (a)(2) may include a claim by a person appointed by the court as receiver pending litigation.

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

Sec. 140B.152.  DISTRIBUTION OF REMAINING MONEY. (a) Following satisfaction of all valid claims under Section 140B.151, the remaining money obtained in the forfeiture proceeding shall 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)  If a forfeiture action is filed by the attorney general or a local prosecutor, the court entering the judgment of forfeiture shall, taking into account the overall effort and contribution to the investigation and forfeiture action by the agencies that filed the action, make a pro rata apportionment among those agencies of the money available for distribution to those agencies as provided by this subchapter. If multiple investigative agencies have contributed to the forfeiture of the property, the court that entered the judgment of forfeiture shall, taking into account the overall effort and contribution of the agencies to the investigation and forfeiture action, make a pro rata apportionment among those investigative agencies of the money available for distribution to the investigative agencies as provided by this subchapter.

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

(d)  If a forfeiture action is filed by a district or county attorney, any money obtained by the district or county attorney's office under this section may be used to pay the costs of investigations under Subchapter B and the resulting criminal prosecutions and civil actions. Such costs may 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)  Any money distributed to an investigative agency under Subsection (a) shall 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. In addition, any money distributed to an investigative agency under this section may be used to pay the costs of investigations under Subchapter B and the resulting criminal prosecutions and civil actions. Such costs may 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) This subchapter may not be construed to limit the authority of an entity that files a forfeiture action under Subchapter C to settle a claim for forfeiture.

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

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

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

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

(1)  no limitation:

(A)  murder and manslaughter;

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

(C)  sexual assault, if:

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

(a)  has not yet been subjected to forensic DNA testing; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F)  arson;

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

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

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

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

(B)  fraudulent securing of document execution;

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

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

(E)  money laundering;

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

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

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

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

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

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

(A)  theft or robbery;

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

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

(D)  abandoning or endangering a child; or

(E)  insurance fraud;

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

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

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

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

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

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

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

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

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

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

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

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

(b)  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. If a limitations period is suspended under this subsection, the limitations period is extended for two years.

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

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

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

(a)  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)  murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

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

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

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

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

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

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

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

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

(8)  any felony offense under Chapter 32;

(9)  any offense under Chapter 36;

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

(11)  any offense under Section 37.11(a);

(12)  any offense under Chapter 20A;

(13)  any offense under Section 37.10;

(14)  any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15)  any offense under Section 42.10;

(16)  any offense under Section 46.06(a)(1) or 46.14;

(17)  any offense under Section 20.05 or 20.06;

(18)  any offense under Section 16.02; or

(19)  any offense classified as a felony under the Tax Code.

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

CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

Sec. 72.01.  DEFINITIONS. In this chapter:

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

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

(3)  "Pecuniary value" means:

(A)  anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

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

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

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

(B)  an offense under Chapter 20A (trafficking of persons);

(C)  a felony offense under Chapter 37 (perjury and other falsification);

(D)  an offense under Section 38.03 (resisting arrest, search, or transportation);

(E)  an offense under Section 38.05 (hindering apprehension or prosecution); or

(F)  an offense under Section 71.02 (engaging in organized criminal activity).

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

(6)  "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is wholly or partly legally unenforceable in this state because the debt was incurred or contracted:

(A)  in violation of:

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

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

(iii)  Chapter 47, relating to gambling; or

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

Sec. 72.02.  USE OF PROCEEDS DERIVED FROM RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) 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)  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) 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)  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) 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)  An offense under this section is a felony of the second degree.

Sec. 72.05.  ALTERNATIVE FINE. Notwithstanding any other law, a court, after a hearing, may 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.  Subtitle B, Title 5, Property Code, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. RICO LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001.  DEFINITIONS. In this chapter:

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

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

(3)  "Trustee":

(A)  means:

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

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

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

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

SUBCHAPTER B. RICO LIEN NOTICE

Sec. 68.051.  GENERAL RICO LIEN NOTICE. (a) On the institution of a civil action, the investigative agency, then or at any time during the pendency of the action, may file a RICO lien notice in the official records of any one or more counties.

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

Sec. 68.052.  ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN NOTICE. (a) In addition to the authority to file a RICO lien notice under Section 68.051, the attorney general or a local prosecutor may 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)  If the RICO lien notice authorization is granted, the attorney general or local prosecutor shall, after filing the notice, 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)  The owner of the property may move the court to discharge the lien, and that motion shall be set for hearing at the earliest possible time.

(d)  The court shall 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)  Testimony presented by the property owner at the hearing:

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

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

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

(g)  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)  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) A RICO lien notice must be signed by the attorney general or the attorney general's designee or by a local prosecutor or the local prosecutor's designee.

(b)  A RICO lien notice must be in the form prescribed by the attorney general and must 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 may also 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)  A RICO lien notice must 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). A separate notice must 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) An investigative agency shall, as soon as practicable after the filing of each RICO lien notice, 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)  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) 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)  The lien shall commence and attach as of the time of filing of a RICO lien notice and shall continue thereafter until expiration, termination, or release of the notice under this subchapter. 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)  For purposes of this section, a beneficial interest 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) In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, an investigative agency may file without prior court order in any county a notice of lis pendens under Section 12.007. In such case, 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, shall take the interest subject to the civil action and any subsequent judgment of forfeiture.

(b)  In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, if a RICO lien notice has been filed, an investigative agency may 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. If a judgment of forfeiture is entered in the action in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

Sec. 68.057.  DUTIES OF TRUSTEE; CRIMINAL OFFENSE. (a) 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 shall 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)  A trustee who violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

Sec. 68.058.  LIABILITY OF TRUSTEE FOR CONVEYANCE OF TITLE. (a) 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)  Notwithstanding Subsection (a)(3), 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.

(c)  An investigative agency may 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) 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)  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 may 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)  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)  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, this subchapter 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. All forfeitures or dispositions under this chapter must be made with due provision for the rights of innocent persons.

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

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

Sec. 68.063.  EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE. 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, 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 the criminal proceeding has been dismissed or the person named in the notice has been acquitted in the criminal proceeding, the notice continues for the duration of a civil action brought under Chapter 140B, Civil Practice and Remedies Code.

Sec. 68.064.  TERMINATION OR RELEASE OF RICO LIEN NOTICE BY COURT. (a) If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is not pending against a person named in a RICO lien notice, the person may 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.

(b)  In an action brought under this section, the court shall, on the motion of the person named in the RICO lien notice, 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 shall be served on the investigative agency not later than the third day after the date the action is filed.

(c)  At the hearing set under Subsection (b), the court shall 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)  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, the court shall enter a judgment terminating the notice or releasing the real property or beneficial interest from the notice.

(e)  A court shall 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. Proceeds resulting from the sale of that real property or beneficial interest shall be deposited into the registry of the court, subject to the further order of the court.

(f)  At the hearing under Subsection (b), the court may 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)  If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is pending against a person named in a RICO lien notice, the court on motion by the person may grant the relief described by this section.

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

(b)  Sections 71.01 and 71.02, Penal Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 9.  This Act takes effect September 1, 2023.