

House Bill 4635
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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

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SECTION 1. This Act shall be known as the Texas Racketeering Act.

SECTION 2. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 140B to read as follows:

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SUBCHAPTER A. GENERAL PROVISIONS

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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) "Money" means funds as defined by Section 34.01, Penal Code.

(7) "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

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was filed.

SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

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

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

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

(3) "Product of discovery" means:

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

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

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

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

(5) "Racketeering violation" means conduct constituting an

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offense under Section 72.02, 72.03, or 72.04, Penal Code.

Sec. 140B.052. CIVIL INVESTIGATIVE DEMAND. 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, the attorney general or local prosecutor may, before beginning a civil proceeding under this chapter, 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) A civil investigative demand issued under Section 140B.052 must:

- (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) A demand for production of documentary material must:
- (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.

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- (1) produce any of the documentary material for inspection and copying;
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 - (2) state each statute the activity violates; and
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(c) A demand for answers to written interrogatories must:
(1) propound the interrogatories with definiteness and certainty;
(2) prescribe a date by which answers to the interrogatories must be submitted; and
(3) identify the individual to whom the answers should be submitted.
(d) Each demand for the giving of oral testimony must:
(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) Service of any civil investigative demand or petition filed under Section 140B.055 or 140B.060 may 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) Service of any demand or petition filed under Section 140B.055 or 140B.060 may 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) 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. In the case of service by registered or certified mail, the return must be accompanied by the return post office receipt of delivery of the demand or petition.
Sec. 140B.055. PETITION FOR ORDER MODIFYING OR

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(c) A demand for answers to written interrogatories must:
(1) propound the interrogatories with definiteness and certainty;
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SETTING ASIDE DEMAND. (a) 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, 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, may 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. The petition must specify each ground upon which the petitioner relies in seeking the relief sought. The petition may 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) The petitioner shall serve a copy of the petition on the attorney general or local prosecutor, as applicable, in accordance with Section 140B.054. The attorney general or local prosecutor may submit an answer to the petition.

(c) In ruling on the petition under this section, the court shall 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) A person on whom a civil investigative demand is served under this subchapter shall comply with the terms of the demand unless otherwise provided by court order.

(b) 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 shall comply with any portions of the demand not sought to be modified or set aside.

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Sec. 140B.057. DOCUMENTARY MATERIAL. (a) Any person on whom any civil investigative demand for the production of documentary material has been duly served under this subchapter shall 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 otherwise may be agreed on by the person and the attorney general or local prosecutor. The attorney general or local prosecutor shall bear the expense of any copying. The person may substitute copies for originals of all or part of the requested documents if the originals are made available for inspection. The attorney general or local prosecutor may elect to obtain or review information in an electronic format. The person shall indicate in writing which, if any, of the documents produced contain trade secrets or confidential information.

(b) The production of documentary material in response to any demand must 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) Each interrogatory in any civil investigative demand duly served must be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection shall be set forth in lieu of an answer. The person shall indicate in writing which, if any, of the answers contain trade secrets or confidential information.

(b) Answers to interrogatories must be submitted under a

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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) The examination of any person pursuant to a civil investigative demand for oral testimony duly served must be taken before any person authorized to administer oaths and affirmations under the laws of this state or the United States. The person before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally or by someone acting under the person's direction and in the person's presence record the witness's testimony. At the expense of the attorney general or local prosecutor, and except as provided by this subsection, the testimony must be taken stenographically and may be transcribed. The attorney general or local prosecutor may 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) The oral testimony of any person taken pursuant to a demand served must 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) Any person compelled to appear under a demand for oral testimony may be accompanied, represented, and advised by counsel. Counsel may 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

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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.

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examination.

(d) The individual conducting the examination on behalf of the attorney general or local prosecutor shall 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) During the examination, the person being examined or the person's counsel may object on the record to any question in accordance with Rule 199.5(e), Texas Rules of Civil Procedure. An objection may 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. Neither that person nor the person's counsel may otherwise object to or refuse to answer any question or interrupt the oral examination. If the person refuses to answer any question, the attorney general or local prosecutor may petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(f) After the testimony has been fully transcribed, the person before whom the testimony was taken shall promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general or local prosecutor. The witness must 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. The witness shall then sign and return the transcript. If the witness does not return the transcript to the person before

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whom the testimony was taken not later than the 20th day after the date the transcript was provided to the witness, the witness may be deemed to have waived the right to make changes. The officer shall 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) On request, the attorney general or local prosecutor shall furnish a copy of the certified transcript to the witness.

(h) The attorney general or local prosecutor may 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. If a person fails to comply with a civil investigative demand duly served on the person, the attorney general or local prosecutor may 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 may serve on the person a petition for an order of the court for enforcement. 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, the petition must be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed on by the person and the attorney general or local prosecutor.

Sec. 140B.061. CRIMINAL OFFENSE: DELIBERATE NONCOMPLIANCE. (a) 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,

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whom the testimony was taken not later than the 20th day after the date the transcript was provided to the witness, the witness may be deemed to have waived the right to make changes. The officer shall 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.

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destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information.

(b) 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) 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, 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) The attorney general or local prosecutor may not release or disclose 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

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destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information.

(b) An offense under this section is a **Class A** misdemeanor.

Sec. 140B.062. DISCLOSURE AND USE OF MATERIAL AND INFORMATION. (a) 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, 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) The attorney general or local prosecutor may not release or disclose 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

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prosecutor to receive the information.

(c) The attorney general or local prosecutor may 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. 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. Any final order is subject to appeal. 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. 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.

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;

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(c) The attorney general or local prosecutor may 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.

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(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;
(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) On entry of a final judgment of forfeiture in favor of the

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(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
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(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;
(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) On entry of a final judgment of forfeiture in favor of the

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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

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(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.

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(1) enter final judgment against the person named in the lien notice or the defendant in the relevant civil action or criminal

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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

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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.

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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, LOCAL PROSECUTOR, OR STATE AGENCY. (a) 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, may institute civil actions under this subchapter. The attorney general or a state agency may 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) 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

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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, LOCAL PROSECUTOR, OR STATE AGENCY. (a) 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, may institute civil actions under this subchapter. The attorney general or a state agency may 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) 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.

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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. 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.110. 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.111. 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.

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(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.112. INTERVENTION BY ATTORNEY GENERAL. The attorney general may, on timely application, 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. In the action, the state is entitled to the same relief as if the attorney general had instituted the action.

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(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.110. NOTICE TO LOCAL PROSECUTOR. (a) In a reasonable time before bringing an action or on initiating an investigation on racketeering, the attorney general shall provide notice to the local prosecutor who appears to have primary jurisdiction over the criminal prosecution of any target of an investigation under this chapter at the time of the notice concerning the attorney general's intent to bring an action under this chapter or investigate racketeering, as applicable.

(b) The notices described by Subsection (a) must describe or otherwise identify the defendant to the action or the suspect, as applicable.

Sec. 140B.111. COOPERATION WITH LOCAL

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PROSECUTOR. (a) A local prosecutor who receives notice under Section 140B.110 may notify the attorney general of a related pending criminal investigation or prosecution.

(b) Notification to the attorney general under Subsection (a) must be in writing and describe or otherwise identify the defendant or suspect in the criminal investigation or proceeding.

(c) On receipt of notice described by Subsection (a), the attorney general shall coordinate and cooperate with the local prosecutor to ensure that the filing of an action under this chapter does not interfere with an ongoing criminal investigation or prosecution. The attorney general shall update the local prosecutor on matters affecting the action or the investigation.

Sec. 140B.112. ABATEMENT OF ACTION. If the local prosecutor determines that an action brought under this chapter would interfere with an ongoing criminal investigation or prosecution after notifying the attorney general of the investigation or prosecution under Section 140B.111, the local prosecutor may request, in writing, that the attorney general abate the action. On receipt of this request, the attorney general shall abate the action.

Sec. 140B.113. 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

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(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

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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 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.

Sec. 140B.114. 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

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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.109 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.114. 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.

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- (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

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person appointed by the court as receiver pending litigation.
(c) If the attorney general brought the forfeiture action, restitution shall be distributed through 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.

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(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.

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(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;

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(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;

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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

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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 3. Same as House version.

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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;

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- (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

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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

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SECTION 4. Same as House version.

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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:

No equivalent provision.

SECTION 5. Same as House version.

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- (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);

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- (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) "Money" means funds as defined by Section 34.01.
- (3) "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.
- (4) "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.
- (5) "Racketeering" means to commit, to attempt to commit, to

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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) "Money" means funds as defined by Section 34.01.
- (3) "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.
- (4) "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.
- (5) "Racketeering" means to commit, to attempt to commit, to

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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 Section 20.03 (kidnapping);

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

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

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

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

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

(H) an offense under Chapter 43 (public indecency); or

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

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

(7) "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.

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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 Section 20.03 (kidnapping);

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

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

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

(F) a felony offense under Section 38.03 (resisting arrest, search, or transportation);

(G) a felony offense under Section 38.05 (hindering apprehension or prosecution);

(H) a felony offense under Chapter 43 (public indecency); or

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

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

(7) "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.

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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

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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.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

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.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

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

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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

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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.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

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. Same as House version.

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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 by an investigative agency of a civil action brought under Chapter 140B, Civil Practice and Remedies Code, 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. The attorney general must receive the consent of the applicable local prosecutor before filing a RICO lien.

(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

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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:

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(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

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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.

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(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

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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

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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

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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

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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

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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

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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) Section 71.02, Penal Code, as amended by this Act, applies 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

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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. 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. This Act takes effect September 1, 2023.

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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. Same as House version.

SECTION 10. Same as House version.

CONFERENCE