

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 27, 2023
Date

Honorable Dan Patrick
President of the Senate

Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 4635 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Peter P. Flores
Flores

Phil King
King

[Signature]
Blanco

Brian Birdwell
Birdwell

[Signature]
Hinojosa On the part of the Senate

[Signature]
Guillen

[Signature]
Leach

[Signature]
Lozano

[Signature]
Martinez

[Signature]
Meady On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 4635

A BILL TO BE ENTITLED

1 AN ACT
2 relating to organized crime, racketeering activities, and
3 collection of unlawful debts; providing a civil penalty; creating
4 criminal offenses.

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

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

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

10 CHAPTER 140B. CIVIL REMEDIES AND ENFORCEMENT RELATED TO

11 RACKETEERING AND UNLAWFUL DEBT COLLECTION

12 SUBCHAPTER A. GENERAL PROVISIONS

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

14 (1) "Beneficial interest":

15 (A) means the interest of a person:

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

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

23 (iii) under any other form of express
24 fiduciary arrangement under which any other person holds legal or

1 record title to real property for the benefit of the person; and

2 (B) does not include the interest of a
3 shareholder in a corporation or the interest of a partner in either
4 a general partnership or a limited partnership.

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

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

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

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

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

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

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

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

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

25 Sec. 140B.002. SPECIAL DOCKETING PROCEDURES. The attorney
26 general or local prosecutor may file with the clerk of the district
27 court in which an action is brought under this chapter a certificate

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

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

17 SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

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

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

22 (2) "Documentary material" means the original or a
23 copy of any paper, contract, agreement, book, booklet, brochure,
24 pamphlet, catalog, magazine, notice, announcement, circular,
25 bulletin, instruction, minutes, agenda, study, analysis, report,
26 graph, map, chart, table, schedule, note, letter, telegram,
27 telephone recordings, or data compilations stored in or accessible

1 through computer or other information retrieval systems, together
2 with instructions and all other materials necessary to use or
3 interpret the data compilations, and any product of discovery.

4 (3) "Product of discovery" means:

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

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

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

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

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

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

1 chapter, issue in writing and serve on the person a civil
2 investigative demand requiring the person to:

3 (1) produce any of the documentary material for
4 inspection and copying;

5 (2) answer in writing any written interrogatories;

6 (3) give oral testimony; or

7 (4) provide any combination of civil investigative
8 demands under Subdivisions (1)-(3).

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

11 (1) describe the nature of the activities that are the
12 subject of the investigation;

13 (2) state each statute the activity violates; and

14 (3) advise the person on whom the demand is served that
15 the person has the right to object to the demand as provided for in
16 this subchapter.

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

18 (1) describe the class of material to be produced with
19 reasonable specificity so that the material demanded is fairly
20 identified;

21 (2) prescribe a return date that provides a reasonable
22 period of time within which the material is to be produced; and

23 (3) identify the individual to whom the material is to
24 be made available for inspection and copying.

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

26 (1) propound the interrogatories with definiteness
27 and certainty;

1 (2) prescribe a date by which answers to the
2 interrogatories must be submitted; and

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

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

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

8 (2) identify the individual who will conduct the
9 examination.

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

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

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

27 Sec. 140B.055. PETITION FOR ORDER MODIFYING OR SETTING

1 ASIDE DEMAND. (a) At any time before the return date specified in a
2 civil investigative demand or not later than the 30th day after the
3 date the demand was served, whichever period is shorter, the person
4 who has been served, and in the case of a demand for a product of
5 discovery the person from whom the discovery was obtained, may file
6 a petition for an order modifying or setting aside the demand in the
7 district court in the county of the person's residence or principal
8 office or place of business or a district court of Travis County.
9 The petition must specify each ground upon which the petitioner
10 relies in seeking the relief sought. The petition may be based on
11 any failure of a demand to comply with the provisions of this
12 subchapter or on any constitutional or other legal right or
13 privilege of the petitioner.

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

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

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

27 (b) The time for compliance with the demand wholly or partly

1 does not run during the pendency of any petition filed under Section
2 140B.055, provided that the petitioner shall comply with any
3 portions of the demand not sought to be modified or set aside.

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

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

26 Sec. 140B.058. INTERROGATORIES. (a) Each interrogatory in
27 any civil investigative demand duly served must be answered

1 separately and fully in writing, unless it is objected to, in which
2 case the basis for the objection shall be set forth in lieu of an
3 answer. The person shall indicate in writing which, if any, of the
4 answers contain trade secrets or confidential information.

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

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

26 (b) The oral testimony of any person taken pursuant to a
27 demand served must be taken within 100 miles of the county where the

1 person resides, is found, or transacts business or in any other
2 place agreed on by the person and the attorney general or local
3 prosecutor.

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

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

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

1 where the examination is being conducted for an order compelling
2 the person to answer the question.

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

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

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

24 Sec. 140B.060. FAILURE TO COMPLY WITH DEMAND PETITION FOR
25 ENFORCEMENT. If a person fails to comply with a civil investigative
26 demand duly served on the person, the attorney general or local
27 prosecutor may file in the district court in the county in which the

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 140B.063. JURISDICTION. If a petition is filed in the
22 district court in any county, the court has jurisdiction to hear and
23 determine the matter presented and to enter any order required to
24 implement this chapter. Any final order is subject to appeal.
25 Failure to comply with any final order entered by a court under this
26 chapter is punishable by the court as contempt of the order.

27 Sec. 140B.064. NONEXCLUSIVE PROCEDURES. Nothing in this

1 chapter precludes the attorney general or local prosecutor from
2 using any procedure not specified in this chapter in conducting a
3 racketeering investigation.

4 SUBCHAPTER C. CIVIL REMEDIES

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

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

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

18 (3) ordering the dissolution or reorganization of an
19 enterprise;

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

23 (5) ordering the forfeiture of the charter of a
24 corporation organized under the laws of this state, or the
25 revocation of a certificate allowing a foreign corporation to
26 conduct business within this state, on finding that:

27 (A) the board of directors or a managerial agent

1 acting on behalf of the corporation, in conducting the affairs of
2 the corporation, has authorized or engaged in conduct constituting
3 an offense under Section 72.02, 72.03, or 72.04, Penal Code; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) the property subject to seizure has been the
27 subject of a previous judgment in favor of the state in a forfeiture

1 action brought under this subchapter.

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

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

12 (1) place the property under seal;

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

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

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

26 (b) In an action brought under this subchapter, the district
27 court shall proceed as soon as practicable to the hearing and

1 determination. Pending final determination, the district court may
2 at any time enter injunctions, prohibitions, or restraining orders,
3 or take actions, including the acceptance of satisfactory
4 performance bonds, the court considers proper.

5 Sec. 140B.108. EFFECT OF FINAL JUDGMENT OR DECREE. A final
6 judgment or decree rendered in favor of this state in a criminal
7 proceeding under state law prevents the defendant from asserting in
8 any subsequent civil action brought under this chapter any matter
9 as to which that judgment or decree would be an estoppel as between
10 the parties.

11 Sec. 140B.109. OTHER RELIEF AVAILABLE TO ATTORNEY GENERAL.
12 (a) The attorney general may bring an action against a person who
13 engages in conduct constituting an offense under Section 72.02,
14 72.03, or 72.04, Penal Code, to obtain:

15 (1) injunctive relief;
16 (2) a civil penalty as provided by this section; and
17 (3) reasonable attorney's fees and reasonably incurred
18 costs of investigation or litigation.

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

21 (1) \$100,000 if the defendant is an individual; or
22 (2) \$1 million if the defendant is not an individual.

23 (c) The attorney general shall deposit a civil penalty
24 collected under this section to the credit of the general revenue
25 fund. The attorney general shall deposit attorney's fees and costs
26 collected under this section into the attorney general law
27 enforcement account, which may be used to investigate and enforce

1 this chapter.

2 (d) Any party to an action brought under this section may
3 petition the court for entry of a consent decree or for approval of
4 a settlement agreement. The proposed decree or settlement must
5 specify the alleged violations, the future obligations of the
6 parties, the relief agreed on, and the reasons for entering into the
7 consent decree or settlement agreement.

8 Sec. 140B.110. NOTICE TO LOCAL PROSECUTOR. (a) In a
9 reasonable time before bringing an action or on initiating an
10 investigation on racketeering, the attorney general shall provide
11 notice to the local prosecutor who appears to have primary
12 jurisdiction over the criminal prosecution of any target of an
13 investigation under this chapter at the time of the notice
14 concerning the attorney general's intent to bring an action under
15 this chapter or investigate racketeering, as applicable.

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

19 Sec. 140B.111. COOPERATION WITH LOCAL PROSECUTOR. (a) A
20 local prosecutor who receives notice under Section 140B.110 may
21 notify the attorney general of a related pending criminal
22 investigation or prosecution.

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

26 (c) On receipt of notice described by Subsection (a), the
27 attorney general shall coordinate and cooperate with the local

1 prosecutor to ensure that the filing of an action under this chapter
2 does not interfere with an ongoing criminal investigation or
3 prosecution. The attorney general shall update the local
4 prosecutor on matters affecting the action or the investigation.

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

13 Sec. 140B.113. LIMITATIONS; TOLLING. (a) Notwithstanding
14 any other law, the attorney general or a local prosecutor must bring
15 an action under this chapter not later than the fifth anniversary of
16 the later of:

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

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

20 (b) If an indictment for an offense under Section 72.02,
21 72.03, or 72.04, Penal Code, is presented or a civil action is
22 brought, or intervened in, to punish, prevent, or restrain conduct
23 constituting an offense under Section 72.02, 72.03, or 72.04, Penal
24 Code, the running of the period of limitations prescribed by this
25 section with respect to any cause of action arising under Section
26 140B.109 that is wholly or partly based on a matter complained of in
27 the indictment or the pleadings in the action, as applicable, is

1 suspended during the pendency of the prosecution or litigation of
2 the action, as applicable, and extended for two years following its
3 termination.

4 Sec. 140B.114. MULTIPLE REMEDIES ALLOWED. The application
5 of one civil remedy under a provision of this chapter does not
6 preclude the application of any other remedy, civil or criminal,
7 under this chapter or any other law. Civil remedies under this
8 chapter are supplemental and not mutually exclusive.

9 SUBCHAPTER D. DISPOSITION OF FUNDS OBTAINED THROUGH FORFEITURE
10 ACTIONS

11 Sec. 140B.151. INITIAL DISTRIBUTION. (a) A court entering
12 a judgment of forfeiture in an action brought under Subchapter C
13 retains jurisdiction to direct the distribution of any cash or cash
14 proceeds realized from the forfeiture and disposition of the
15 property. The court shall direct the distribution of the funds in
16 the following order of priority:

17 (1) statutory fees to which the clerk of the court may
18 be entitled;

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

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

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

27 (c) If the attorney general brought the forfeiture action,

1 restitution shall be distributed though the compensation to victims
2 of crime fund. If the attorney general did not bring the forfeiture
3 action, restitution shall be distributed by the clerk of the court.

4 Sec. 140B.152. DISTRIBUTION OF REMAINING MONEY. (a)
5 Following satisfaction of all valid claims under Section 140B.151,
6 the remaining money obtained in the forfeiture proceeding shall be
7 deposited as follows:

8 (1) 25 percent into the appropriate trust fund of the
9 attorney general or local prosecutor's office that filed the civil
10 forfeiture action as provided by Subsection (c);

11 (2) 25 percent into the applicable law enforcement
12 trust fund of the investigative agency that conducted the
13 investigation that resulted in or significantly contributed to the
14 forfeiture of the property as provided by Subsection (d); and

15 (3) 50 percent into the general revenue fund.

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

1 distribution to the investigative agencies as provided by this
2 subchapter.

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

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

13 (1) all taxable costs;

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

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

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

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

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

8 Sec. 140B.153. EFFECT ON SETTLEMENTS. (a) This subchapter

9 may not be construed to limit the authority of an entity that files

10 a forfeiture action under Subchapter C to settle a claim for

11 forfeiture.

12 (b) Any proceeds arising from a settlement or from the sale

13 of property obtained in a settlement shall be distributed in the

14 manner described by Sections 140B.151 and 140B.152.

15 Sec. 140B.154. TEMPORARY DEPOSIT IN COURT REGISTRY.

16 Pending the final distribution of the cash or cash proceeds under

17 this subchapter, the court may authorize the cash or cash proceeds

18 to be deposited in the court registry or in a qualified public

19 depository.

20 SECTION 3. Article 12.01, Code of Criminal Procedure, is

21 amended to read as follows:

22 Art. 12.01. FELONIES. Except as provided in Articles

23 12.015 and [Article] 12.03, felony indictments may be presented

24 within these limits, and not afterward:

- 25 (1) no limitation:
 - 26 (A) murder and manslaughter;
 - 27 (B) sexual assault under Section 22.011(a)(2),

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

3 (C) sexual assault, if:

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

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

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

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

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

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

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

22 (G) trafficking of persons under Section
23 20A.02(a)(7) or (8), Penal Code;

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

26 (I) compelling prostitution under Section
27 43.05(a)(2), Penal Code;

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

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

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

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

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

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

17 (F) arson;

18 (G) trafficking of persons under Section
19 20A.02(a)(1), (2), (3), or (4), Penal Code; or

20 (H) compelling prostitution under Section
21 43.05(a)(1), Penal Code;

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

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

26 (B) fraudulent securing of document execution;

27 (C) a felony violation under Chapter 162, Tax

1 Code;

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

4 (E) money laundering;

5 (F) credit card or debit card abuse under Section
6 32.31, Penal Code;

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

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

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

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

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

17 (A) theft or robbery;

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

20 (C) injury to an elderly or disabled individual
21 that is not punishable as a felony of the first degree under Section
22 22.04, Penal Code;

23 (D) abandoning or endangering a child; or

24 (E) insurance fraud;

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

1 the following offenses:

2 (A) sexual performance by a child under Section
3 43.25, Penal Code;

4 (B) aggravated kidnapping under Section
5 20.04(a)(4), Penal Code, if the defendant committed the offense
6 with the intent to violate or abuse the victim sexually; or

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

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

14 (A) trafficking of persons under Section
15 20A.02(a)(5) or (6), Penal Code;

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

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

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

27 (8) three years from the date of the commission of the

1 offense: all other felonies.

2 SECTION 4. Chapter 12, Code of Criminal Procedure, is
3 amended by adding Article 12.015 to read as follows:

4 Art. 12.015. RACKETEERING AND UNLAWFUL DEBT COLLECTION.

5 (a) Except as provided by Subsection (b), a felony indictment for
6 an offense under Section 72.02, 72.03, or 72.04, Penal Code, must be
7 presented not later than five years from the date of the commission
8 of the offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (8) any felony offense under Chapter 32;

26 (9) any offense under Chapter 36;

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

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

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

14 CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

15 Sec. 72.01. DEFINITIONS. In this chapter:

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

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

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

26 (4) "Pecuniary value" means:

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

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

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

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

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

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

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

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

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

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

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

21 (H) a felony offense under Chapter 43 (public
22 indecent); or

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

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

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

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

4 (A) in violation of:

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

8 (ii) Subtitle A, Title 4, Finance Code, or
9 Section 11, Article XVI, Texas Constitution, relating to interest
10 and usury, if the usurious rate is at least twice the enforceable
11 rate; or

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

13 (B) in gambling activity in violation of federal
14 law or in the business of lending money at a rate usurious under
15 state law if the usurious rate is at least twice the enforceable
16 rate.

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

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

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

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

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

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

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

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

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

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

26 Sec. 72.05. ALTERNATIVE FINE. Notwithstanding any other
27 law, a court, after a hearing, may impose a fine, instead of an

1 otherwise applicable fine, on a person convicted of an offense
2 under Section 72.02, 72.03, or 72.04, through which the person
3 derived pecuniary value or by which the person caused personal
4 injury, property damage, or other loss, that does not exceed:

5 (1) the greater of:

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

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

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

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

14 CHAPTER 68. RICO LIENS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 68.001. DEFINITIONS. In this chapter:

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

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

22 (3) "Trustee":

23 (A) means:

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

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

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

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

11 SUBCHAPTER B. RICO LIEN NOTICE

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

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

23 Sec. 68.052. ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN
24 NOTICE. (a) In addition to the authority to file a RICO lien notice
25 under Section 68.051, the attorney general or a local prosecutor
26 may apply ex parte to a district court and, on petition supported by
27 sworn affidavit, obtain an order authorizing the filing of a RICO

1 lien notice against real property on a showing of probable cause to
2 believe that the property was used in the course of, intended for
3 use in the course of, derived from, or realized through conduct
4 constituting an offense under Section 72.02, 72.03, or 72.04, Penal
5 Code.

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

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

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

14 (3) if service by a method described by Subdivision
15 (1) or (2) cannot be accomplished, posting the notice on the
16 premises.

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

20 (d) The court shall discharge the lien if the court finds
21 that:

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

26 (2) the owner of the property neither knew nor
27 reasonably should have known that the property was used in the

1 course of, intended for use in the course of, derived from, or
2 realized through conduct constituting an offense under Section
3 72.02, 72.03, or 72.04, Penal Code.

4 (e) Testimony presented by the property owner at the
5 hearing:

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

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

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

15 (g) If a civil action is instituted under Chapter 140B,
16 Civil Practice and Remedies Code, and a RICO lien notice is filed
17 under this subchapter, the term of the lien notice is governed by
18 this subchapter.

19 (h) The filing of a RICO lien notice, regardless of whether
20 subsequently discharged or otherwise lifted, constitutes notice to
21 the owner and knowledge by the owner that the property was used in
22 the course of, intended for use in the course of, derived from, or
23 realized through conduct constituting an offense under Section
24 72.02, 72.03, or 72.04, Penal Code, such that lack of such notice
25 and knowledge is not a defense in any subsequent civil action under
26 Chapter 140B, Civil Practice and Remedies Code, or a subsequent
27 criminal proceeding under Chapter 72, Penal Code.

1 Sec. 68.053. FORMAT OF NOTICE. (a) A RICO lien notice must
2 be signed by the attorney general or the attorney general's
3 designee or by a local prosecutor or the local prosecutor's
4 designee.

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

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

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

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

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

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

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

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

27 (5) the name and address of the investigative agency

1 filing the notice and the name of the individual signing the notice.

2 (c) A RICO lien notice must apply only to one person and, to
3 the extent applicable, any other aliases, names, or fictitious
4 names of that person, including the names of corporations,
5 partnerships, or other entities, to the extent permitted by
6 Subsection (b)(1). A separate notice must be filed for each person
7 against whom the investigative agency desires to file a RICO lien
8 notice under this subchapter.

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

- 12 (1) a copy of the recorded notice; or
13 (2) a copy of the notice that states each county in
14 which the notice has been recorded.

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

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

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

- 26 (2) any beneficial interest situated in the county
27 where the notice is filed then or thereafter owned by the person or

1 under any of the names.

2 (b) The lien shall commence and attach as of the time of
3 filing of a RICO lien notice and shall continue thereafter until
4 expiration, termination, or release of the notice under this
5 subchapter. The lien created in favor of the state is superior to
6 the interest of any other person in the real property or beneficial
7 interest if the interest is acquired subsequent to the filing of the
8 notice.

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

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

22 (b) In conjunction with a civil action brought under Chapter
23 140B, Civil Practice and Remedies Code, if a RICO lien notice has
24 been filed, an investigative agency may name as a defendant, in
25 addition to the person named in the notice, any person acquiring an
26 interest in the real property or beneficial interest subsequent to
27 the filing of the notice. If a judgment of forfeiture is entered in

1 the action in favor of the state, the interest of any person in the
2 property that was acquired subsequent to the filing of the notice
3 shall be subject to the notice and judgment of forfeiture.

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

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

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

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

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

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

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

27 (1) the amount of proceeds received directly by the

1 person named in the notice as a result of the conveyance;

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

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

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

13 (c) An investigative agency may bring a civil action in any
14 district court against a trustee to recover from the trustee the
15 amount described by Subsection (a) and is entitled to recover
16 investigative costs and attorney's fees incurred by the
17 investigative agency.

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

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

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

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

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

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

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

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

24 (b) The investigative agency filing a RICO lien notice may
25 wholly or partly release the notice or may release any specific real
26 property or beneficial interest from the notice on the
27 investigative agency's own terms. A release of the notice may be

1 filed in the official records of any county. A charge or fee may not
2 be imposed for the filing of the release.

3 Sec. 68.063. EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE.

4 If a civil action has not been brought by an investigative agency
5 seeking a forfeiture of any property owned by the person named in
6 the RICO lien notice, the acquittal in a criminal proceeding
7 brought under Chapter 72, Penal Code, of the person named in the
8 notice or the dismissal of the criminal proceeding terminates the
9 notice and, in such case, the filing of the notice is void. If the
10 criminal proceeding has been dismissed or the person named in the
11 notice has been acquitted in the criminal proceeding, the notice
12 continues for the duration of a civil action brought under Chapter
13 140B, Civil Practice and Remedies Code.

14 Sec. 68.064. TERMINATION OR RELEASE OF RICO LIEN NOTICE BY

15 COURT. (a) If a civil action brought under Chapter 140B, Civil
16 Practice and Remedies Code, is not pending against a person named in
17 a RICO lien notice, the person may bring an action in the county
18 where the notice has been filed against the investigative agency
19 that filed the notice seeking a release or extinguishment of the
20 notice.

21 (b) In an action brought under this section, the court
22 shall, on the motion of the person named in the RICO lien notice,
23 immediately enter an order setting a date for hearing that is not
24 earlier than the fifth day and not later than the 10th day after the
25 date the action is filed, and the order and a copy of the complaint
26 shall be served on the investigative agency not later than the third
27 day after the date the action is filed.

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

6 (d) If, at the hearing under Subsection (b), the person
7 named in the RICO lien notice shows by a preponderance of the
8 evidence that the notice is not applicable to the person or that any
9 real property or beneficial interest owned by the person is not
10 subject to forfeiture under Chapter 140B, Civil Practice and
11 Remedies Code, the court shall enter a judgment terminating the
12 notice or releasing the real property or beneficial interest from
13 the notice.

14 (e) A court shall immediately enter its order releasing from
15 a RICO lien notice any specific real property or beneficial
16 interest if a sale of that real property or beneficial interest is
17 pending and the filing of the notice prevents the sale of the
18 property or interest. Proceeds resulting from the sale of that real
19 property or beneficial interest shall be deposited into the
20 registry of the court, subject to the further order of the court.

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

26 (g) If a civil action brought under Chapter 140B, Civil
27 Practice and Remedies Code, is pending against a person named in a

1 RICO lien notice, the court on motion by the person may grant the
2 relief described by this section.

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

6 (b) Section 71.02, Penal Code, as amended by this Act,
7 applies only to an offense committed on or after the effective date
8 of this Act. An offense committed before the effective date of this
9 Act is governed by the law in effect when the offense was committed,
10 and the former law is continued in effect for that purpose. For
11 purposes of this section, an offense was committed before the
12 effective date of this Act if any element of the offense occurred
13 before that date.

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

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

House Bill 4635
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HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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

SUBCHAPTER B. CIVIL INVESTIGATIVE AUTHORITY

Secs. 140B.051-140B.060.

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, 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;

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

SECTION 2. Same as House version except as follows:

CHAPTER 140B. Same heading as House version.

SUBCHAPTER A. Same as House version.

SUBCHAPTER B. Same heading as House version.

Secs. 140B.051-140B.060. Same as House version.

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, 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.*

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 1. Same as Senate version.

SECTION 2. Same as House version except as follows:

CHAPTER 140B. Same heading as House version.

SUBCHAPTER A. Same as House version.

SUBCHAPTER B. Same heading as House version.

Secs. 140B.051-140B.060. Same as House version.

Sec. 140B.061. Same as Senate version.

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(2) confinement in a county jail for not more than one year; or
(3) both a fine and confinement.

Secs. 140B.062-140B.064.

Secs. 140B.062-140B.064. Same as House version.

Secs. 140B.062-140B.064. Same as House version.

SUBCHAPTER C. CIVIL REMEDIES

SUBCHAPTER C. Same heading as House version.

SUBCHAPTER C. Same heading as House version.

Sec. 140B.101. CIVIL REMEDIES.

Sec. 140B.101. Same as House version.

Sec. 140B.101. Same as House version.

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.

Sec. 140B.102. Same as House version except as follows:
(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 **under this chapter.**

Sec. 140B.102. Same as Senate version.

(b)-(d).

(b)-(d). Same as House version.

Secs. 140B.103-140B.107.

Secs. 140B.103-140B.107. Same as House version.

Secs. 140B.103-140B.107. Same as House version.

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

No equivalent provision.

Same as Senate version.

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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. 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.

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

Sec. 140B.112. INTERVENTION BY ATTORNEY GENERAL. The attorney general may, on timely application, intervene in a civil action brought under Section

No equivalent provision.

Sec. 140B.108. Same as House version.

Sec. 140B.109. Same as House version.

No equivalent provision.

Same as Senate version.

Sec. 140B.108. Same as House version.

Sec. 140B.109. Same as House version.

Same as Senate version.

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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.

No equivalent provision.

No equivalent provision.

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 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

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Sec. 140B.110. Same as Senate version.

Sec. 140B.111. Same as Senate version.

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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.

No equivalent provision.

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.112. Same as Senate version.

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 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

Sec. 140B.113. LIMITATIONS; TOLLING. (a) Notwithstanding any other law, the attorney general or a local prosecutor 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

Sec. 140B.113. Same as Senate version.

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[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

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.

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.

Sec. 140B.114. Same as House version.

Sec. 140B.114. Same as House version.

SUBCHAPTER D. DISPOSITION OF FUNDS OBTAINED THROUGH FORFEITURE ACTIONS

SUBCHAPTER D. Same as House version.

SUBCHAPTER D. Same as House version.

SECTION 2. Article 12.01, Code of Criminal Procedure, is amended.

SECTION 3. Same as House version.

SECTION 3. Same as House version.

SECTION 3. Chapter 12, Code of Criminal Procedure, is amended by adding Article 12.015.

SECTION 4. Same as House version.

SECTION 4. Same as House version.

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

No equivalent provision.

Same as Senate version.

(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.

SECTION 5. Same as House version.

SECTION 5. Same as House version.

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

SECTION 6. Same as House version except as follows:

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 6. Same as House version except as follows:

CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

CHAPTER 72. Same heading as House version.

CHAPTER 72. Same heading as House version.

Sec. 72.01. DEFINITIONS. In this chapter:

Sec. 72.01. Same heading as House version.

Sec. 72.01. Same heading as House version.

- ...
- (5) "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 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).

- ...
- (5) "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 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).

- ...
- (5) Same as Senate version.

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...

(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.*

Sec. 72.02. USE OF PROCEEDS DERIVED FROM RACKETEERING OR UNLAWFUL DEBT COLLECTION.

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

Associated CCR Draft: 88R33014

...

(7) Same as House version.

Sec. 72.02. Same as House version except also adds Subsection (c) as follows:
(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. Same as House version except also adds Subsection (c) as follows:
(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor

8

(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 XVI, Texas Constitution, relating to interest and usury, **if the usurious rate is at least twice the enforceable rate;** 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 law if the usurious rate is at least twice the enforceable rate.*

Sec. 72.02. Same as Senate version.

Sec. 72.03. Same as Senate version.

23.146.215

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[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

may be prosecuted under this section, the other law, or both.

Sec. 72.04. PARTICIPATION IN ENTERPRISE THROUGH RACKETEERING OR UNLAWFUL DEBT COLLECTION.

Sec. 72.04. Same as House version except also adds Subsection (c) as follows:

Sec. 72.04. Same as Senate version.

(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.

Sec. 72.05. Same as House version.

Sec. 72.05. Same as House version.

SECTION 7. Subtitle B, Title 5, Property Code, is amended by adding Chapter 68.

SECTION 7. Same as House version.

SECTION 7. Same as House version.

SECTION 8. Transition provisions.

SECTION 8. Same as House version except makes a conforming change.

SECTION 8. Same as Senate version.

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 9. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Effective date.

SECTION 10. Same as House version.

SECTION 10. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 27, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4635 by Guillen (Relating to organized crime, racketeering activities, and collection of unlawful debts; providing a civil penalty; creating criminal offenses.), **Conference Committee Report**

The fiscal implications of the bill cannot be determined because the number of criminal cases and civil actions and the amount of revenues resulting from criminal offenses and seizures cannot be estimated.

Although this bill would not make an appropriation, it would establish the basis for an appropriation.

The bill would create civil remedies and enforcement actions related to racketeering and unlawful debt collection offenses created by the bill.

The bill would allow the Attorney General, the Department of Public Safety, or a local prosecutor to bring a civil action to enjoin, among other civil remedies, conduct constituting an offense under the bill. The bill would require the administrative judge of the district court of a county to assign a judge to hear and determine the civil action in an expedited manner. The bill would also allow a prosecutor to bring the proceedings in the county where the property was seized.

The bill would allow the Attorney General or prosecutor to make a civil investigative demand for certain evidence or information before filing a civil action or proceeding. The bill would provide certain procedures and requirements related to the investigation. The bill would also create a Class A misdemeanor offense resulting from a person's noncompliance of not more than \$4,000.

The bill would outline the distribution of proceeds resulting from the seizure of real property, or other benefits, acquired by entities involved in racketeering or unlawful debt collection. After distributions to courts that incurred fees, injured parties, and other claimants, 25.0 percent of the remaining amount would be allocated to the fund of the original filing office, 25.0 percent would be distributed to the law enforcement trust fund, and the remaining 50.0 percent would be allocated to General Revenue.

The bill would create a Class B misdemeanor for a trustee's failure to provide certain information to an investigative agency that has filed a Racketeer Influenced and Corrupt Organizations (RICO) lien notice, civil action, or criminal offense under the bill. Additionally, the bill would create three felony offenses related to the use of proceeds derived from racketeering or unlawful debt collection, the acquisition of an interest in property or control of an enterprise through racketeering or unlawful debt collection, or the participation in an enterprise through racketeering or unlawful debt collection. Each felony offense would be classified as a second-degree felony and would carry an alternative, optional fine under certain circumstances. The bill would establish a statute of limitation for filing a felony indictment for the offenses.

Based on the analysis of Office of Court Administration (OCA) and the Comptroller of Public Accounts, the amount of revenue collected from felony offenses and seizures cannot be determined.

Based on information provided by the OCA and the Office of the Attorney General, the number and complexity of cases that would be realized due to the civil actions and three new felony offenses that would be established

by the bill cannot be determined.

The impact on state correctional populations or on the demand for state correctional resources cannot be determined due to the lack of data to identify the number of cases that would qualify as an offense of engaging in organized criminal activity or to estimate the prevalence of the conduct constituting the new offenses related to racketeering and unlawful debt collection under the bill's provisions.

Local Government Impact

While the fiscal impact to units of local government cannot be determined, creating a new offenses and expanding the conduct constituting and modifying the penalty for an existing offense may result in additional demands upon local correctional resources due to a possible increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement. In addition, the amount of revenue collected as a result of the misdemeanor offense and from fines imposed and collected as a result of the bill cannot be determined.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: JMc, CMA, MW, JPa, SD, DDel, KDw

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order.

I certify that a copy of the conference committee report on 5-27-23 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before paper copies of the report were submitted to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Pat Gillet
(Signature)

5-27-23
(Date)