

1 SB234  
2 173998-1  
3 By Senator Orr  
4 RFD: Judiciary  
5 First Read: 16-FEB-16

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8 SYNOPSIS: This bill would create the Alabama RICO  
9 (Racketeer Influenced and Corrupt Organizations)  
10 Act to provide criminal penalties and other  
11 sanctions for those who engage in racketeering  
12 activity or patterns of racketeering activity.

13 This bill would prohibit a person, through a  
14 pattern of racketeering activity or proceeds  
15 derived therefrom, from acquiring or maintaining,  
16 directly or indirectly, any interest in or control  
17 of any enterprise, real property, or personal  
18 property of any nature, including money, and would  
19 prohibit a person employed by or associated with  
20 any enterprise to conduct or participate in,  
21 directly or indirectly, an enterprise through a  
22 pattern of racketeering activity.

23 This bill would allow courts to enjoin  
24 certain violations of the act to protect the rights  
25 of innocent persons and would provide that all  
26 property of every kind used or derived from a

1 pattern of racketeering activity is subject to  
2 forfeiture.

3 This bill would also provide for the  
4 enforcement of RICO judgments in other states and  
5 would allow investigative agencies to file liens on  
6 certain property or beneficial interests of persons  
7 engaged in violations of the act.

8 Amendment 621 of the Constitution of Alabama  
9 of 1901, now appearing as Section 111.05 of the  
10 Official Recompilation of the Constitution of  
11 Alabama of 1901, as amended, prohibits a general  
12 law whose purpose or effect would be to require a  
13 new or increased expenditure of local funds from  
14 becoming effective with regard to a local  
15 governmental entity without enactment by a 2/3 vote  
16 unless: it comes within one of a number of  
17 specified exceptions; it is approved by the  
18 affected entity; or the Legislature appropriates  
19 funds, or provides a local source of revenue, to  
20 the entity for the purpose.

21 The purpose or effect of this bill would be  
22 to require a new or increased expenditure of local  
23 funds within the meaning of the amendment. However,  
24 the bill does not require approval of a local  
25 governmental entity or enactment by a 2/3 vote to  
26 become effective because it comes within one of the  
27 specified exceptions contained in the amendment.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT

5  
6 Relating to racketeering; to provide criminal  
7 penalties and other sanctions for those who engage in  
8 racketeering activity or patterns of racketeering activity; to  
9 provide for criminal and civil penalties; to authorize courts  
10 to enjoin certain racketeering activities; to provide for the  
11 forfeiture of property used or derived from a pattern of  
12 racketeering activity; to provide for the enforcement of RICO  
13 judgments in other states; to allow investigative agencies to  
14 file liens on certain property or beneficial interests of  
15 persons engaged in violations of this act; to provide for the  
16 venue of criminal proceedings; and to create the Criminal  
17 Organized Activity/RICO Fund; and in connection therewith  
18 would have as its purpose or effect the requirement of a new  
19 or increased expenditure of local funds within the meaning of  
20 Amendment 621 of the Constitution of Alabama of 1901, now  
21 appearing as Section 111.05 of the Official Recompilation of  
22 the Constitution of Alabama of 1901, as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited  
25 as the Alabama RICO (Racketeer Influenced and Corrupt  
26 Organizations) Act.

1                   Section 2. The Legislature finds and declares the  
2 following:

3                   (1) A severe problem is posed in this state by the  
4 increasing sophistication of various criminal elements and the  
5 increasing extent to which the state and its citizens are  
6 harmed as a result of the activities of these elements.

7                   (2) The intent of this act is to impose sanctions  
8 against those who violate this act and to provide compensation  
9 to persons injured or aggrieved by such violations. It is not  
10 the intent of the Legislature that isolated incidents of  
11 misdemeanor conduct or acts of civil disobedience be  
12 prosecuted under this act. It is the intent of the  
13 Legislature, however, that this act apply to an interrelated  
14 pattern of criminal activity motivated by or the effect of  
15 which is pecuniary gain or economic or physical threat or  
16 injury. This act shall be liberally construed to effectuate  
17 the remedial purposes embodied in its operative provisions.

18                   Section 3. For the purposes of this act, the  
19 following terms shall have the following meanings:

20                   (1) BENEFICIAL INTEREST. The interest of a person as  
21 a beneficiary under any other trust arrangement pursuant to  
22 which a trustee holds legal or record title to real property  
23 for the benefit of such person or the interest of a person  
24 under any other form of express fiduciary arrangement pursuant  
25 to which any other person holds legal or record title to real  
26 property for the benefit of such person. The term does not  
27 include the interest of a stockholder in a corporation or the

1 interest of a partner in either a general partnership or  
2 limited partnership. A beneficial interest shall be deemed to  
3 be located where the real property owned by the trustee is  
4 located.

5 (2) CIVIL PROCEEDING. Any civil action commenced by  
6 an investigative agency under any provision of this act.

7 (3) CRIMINAL PROCEEDING. Any criminal prosecution  
8 commenced by an investigative agency under any provision of  
9 this act.

10 (4) DOCUMENTARY MATERIAL. Any book, paper, document,  
11 writing, drawing, graph, chart, photograph, phonorecord,  
12 magnetic tape, computer printout, or other data compilation  
13 from which information can be obtained or from which  
14 information can be translated into usable form or other  
15 tangible item.

16 (5) ENTERPRISE. Any person, sole proprietorship,  
17 partnership, corporation, business trust, union chartered  
18 under the laws of this state, or other legal entity; or any  
19 unchartered union, association, or group of individuals  
20 associated in fact although not a legal entity; and it  
21 includes illicit as well as licit enterprises and governmental  
22 as well as other entities.

23 (6) INVESTIGATIVE AGENCY. The Attorney General or  
24 the office of any district attorney.

25 (7) PATTERN OF RACKETEERING ACTIVITY. Any three or  
26 more persons engaging in either of the following:

1           a. At least two acts of racketeering activity in  
2 furtherance of one or more incidents, schemes, or transactions  
3 that have the same or similar intents, results, accomplices,  
4 victims, or methods of commission or otherwise are  
5 interrelated by distinguishing characteristics and are not  
6 isolated incidents, provided at least one of such acts  
7 occurred after July 1, 2016, and that the last of the acts  
8 occurred within four years, excluding any periods of  
9 imprisonment, after the commission of a prior act of  
10 racketeering activity.

11           b. Any one or more acts of domestic terrorism as  
12 described in subsection (a) of Section 10 or any criminal  
13 attempt, criminal solicitation, or criminal conspiracy related  
14 thereto.

15           (8) Any act or threat involving murder, kidnapping,  
16 gambling, arson, robbery, theft, receipt of stolen property,  
17 bribery, extortion, obstruction of justice, dealing in  
18 narcotic or dangerous drugs, or dealing in securities which is  
19 chargeable under the laws of the United States or any of the  
20 several states and which is punishable by imprisonment for  
21 more than one year or the commission, attempt to commit,  
22 solicitation, coercion, or intimidation of another person to  
23 commit the following crimes which are chargeable by indictment  
24 under the following laws of this state:

25           a. Offenses chargeable as a felony under Alabama  
26 law.

27           b. Theft of property.

1 c. Receipt of stolen property.

2 d. Promotion of gambling.

3 e. Promotion of prostitution.

4 f. Offenses defined in Alabama law relating to the  
5 security of state or county or juvenile correctional  
6 facilities.

7 g. Any criminal offense committed in violation of  
8 the laws of the United States or its territories, dominions,  
9 or possessions, any of the several states, or any foreign  
10 nation which, if committed in this state, would be considered  
11 criminal organized activity under this section.

12 (9) PERSON. Any natural person or any business  
13 entity.

14 (10) REAL PROPERTY. Any real property situated in  
15 this state or any interest in such real property, including,  
16 but not limited to, any lease of or mortgage upon such real  
17 property.

18 (11) RICO LIEN NOTICE. The notice described in  
19 Section 12.

20 (12) TRUSTEE. Any person who holds legal or record  
21 title to real property for which any other person has a  
22 beneficial interest or any successor trustee or trustees to  
23 any of the foregoing persons. The term does not include any  
24 person appointed or acting as a guardian or conservator under  
25 Title 26, Code of Alabama 1975, relating to guardian and ward,  
26 or personal representative under Chapter 2 of Title 43, Code  
27 of Alabama 1975, relating to the administration of estates,



1 and other provisions in such revised probate code relating to  
2 the administration of estates or any person appointed or  
3 acting as a trustee of any testamentary trust or as trustee of  
4 any indenture of trust under which any bonds are or are to be  
5 issued.

6 Section 4. (a) It is unlawful for any person,  
7 through a pattern of racketeering activity or proceeds derived  
8 therefrom, to acquire or maintain, directly or indirectly, any  
9 interest in or control of any enterprise, real property, or  
10 personal property of any nature, including money.

11 (b) It is unlawful for any person employed by or  
12 associated with any enterprise to conduct or participate in,  
13 directly or indirectly, such enterprise through a pattern of  
14 racketeering activity.

15 (c) It is unlawful for any person to conspire or  
16 attempt to violate any of the provisions of subsection (a) or  
17 (b).

18 Section 5. (a) Any person convicted of the offense  
19 of engaging in activity in violation of Section 4 is guilty of  
20 a Class A felony.

21 (b) In lieu of any fine otherwise authorized by law,  
22 any person convicted of the offense of engaging in conduct in  
23 violation of Section 4 shall be sentenced to pay a fine that  
24 does not exceed the greater of sixty thousand dollars  
25 (\$60,000) or three times the amount of any pecuniary value  
26 gained by him or her from the violation, with the funds being  
27 paid into the Criminal Organized Activity/RICO Fund. If an

1 adverse ruling is made in a forfeiture case against a person  
2 convicted of violating Section 4, the fine shall be offset by  
3 the amount of the forfeiture awarded to the plaintiff or  
4 plaintiffs.

5 (c) The court shall hold a hearing to determine the  
6 amount of the fine authorized by subsection (b).

7 (d) For the purposes of subsection (b), "pecuniary  
8 value" means either of the following:

9 (1) Anything of value in the form of money, a  
10 negotiable instrument, a commercial interest, or anything  
11 else, derived from the racketeering activity.

12 (2) Any other property or service that has a value  
13 in excess of one hundred dollars (\$100) derived from the  
14 racketeering activity.

15 Section 6. (a) Any circuit court, after making due  
16 provisions for the rights of innocent persons, may enjoin  
17 violations of Section 4 by issuing appropriate orders and  
18 judgments including, but not limited to, the following:

19 (1) Ordering any defendant to divest himself of any  
20 interest in any enterprise, real property, or personal  
21 property.

22 (2) Imposing reasonable restrictions upon the future  
23 activities or investments of any defendant including, but not  
24 limited to, prohibiting any defendant from engaging in the  
25 same type of endeavor as the enterprise in which he or she was  
26 engaged in violation of Section 4.

1           (3) Ordering the dissolution or reorganization of  
2 any enterprise.

3           (4) Ordering the suspension or revocation of any  
4 license, permit, or prior approval granted to any enterprise  
5 by any agency of the state.

6           (5) Ordering the forfeiture of the charter of a  
7 corporation organized under the laws of this state or the  
8 revocation of a certificate authorizing a foreign corporation  
9 to conduct business within this state upon a finding that the  
10 board of directors or a managerial agent acting on behalf of  
11 the corporation, in conducting affairs of the corporation, has  
12 authorized or engaged in conduct in violation of Section 4 and  
13 that, for the prevention of future criminal activity, the  
14 public interest requires that the charter of the corporation  
15 be forfeited and that the corporation be dissolved or the  
16 certificate be revoked.

17           (b) Any aggrieved person or the state may institute  
18 a proceeding under subsection (a). In the proceeding, relief  
19 shall be granted in conformity with the principles that govern  
20 the granting of injunctive relief from threatened loss or  
21 damage in other civil cases, provided that no showing of  
22 special or irreparable damage to the person shall have to be  
23 made. Upon the execution of proper bond against damages for an  
24 injunction improvidently granted and a showing of immediate  
25 danger of significant loss or damage, a temporary restraining  
26 order and a preliminary injunction may be issued in any such  
27 action before a final determination on the merits.

1           (c) Any person who is injured by reason of any  
2 violation of Section 4 shall have a cause of action for three  
3 times the actual damages sustained and, where appropriate,  
4 punitive damages. The person shall also recover attorneys'  
5 fees in the trial and appellate courts and costs of  
6 investigation and litigation reasonably incurred. The  
7 defendant or any injured person may demand a trial by jury in  
8 any civil action brought pursuant to this section.

9           (d) Any injured person shall have a right or claim  
10 to forfeited property or to the proceeds derived therefrom  
11 superior to any right or claim the state or the county, other  
12 than for costs, has in the same property or proceeds. To  
13 enforce such a claim, the injured person must intervene in the  
14 forfeiture proceeding prior to its final disposition.

15           (e) A conviction in any criminal proceeding under  
16 this act shall estop the defendant in any subsequent civil  
17 action or proceeding as to all matters proved in the criminal  
18 proceeding.

19           (f) If the court finds that an action brought under  
20 this section violates Rule 11(a) of the Alabama Rules of Civil  
21 Procedure, the court shall assess both parties' attorneys'  
22 fees to the offending party and may take further disciplinary  
23 action if necessary.

24           Section 7. (a) All property of every kind used or  
25 intended for use in the course of, derived from, or realized  
26 through a pattern of racketeering activity is subject to what  
27 shall be known as a RICO forfeiture to the state.

1           (b) Any property, whether real or personal, and any  
2 funds or monetary instruments for which the defendant  
3 transferred ownership interest in to another person, may be  
4 forfeited if the state proves by a preponderance of the  
5 evidence both of the following:

6           (1) The transfer occurred within the previous three  
7 years from any arrest for a violation of this act or the  
8 institution of forfeiture proceedings pursuant to this act,  
9 whichever occurs first.

10           (2) The defendant retained substantial access to,  
11 use of, or control over such property, funds, or instruments.

12           (c) A RICO forfeiture proceeding shall be governed  
13 by the Alabama Rules of Civil Procedure except to the extent  
14 that special rules of procedure are stated in this act.

15           (d) A RICO forfeiture proceeding shall be an in rem  
16 proceeding against the property.

17           (e) A RICO forfeiture proceeding shall be instituted  
18 by complaint and prosecuted by the Attorney General or the  
19 district attorney of the county in which the property is  
20 located or seized. The proceeding may be commenced before or  
21 after seizure of the property.

22           (f) (1) If the complaint is filed before seizure, it  
23 shall state what property is sought to be forfeited, that the  
24 property is within the jurisdiction of the court, the grounds  
25 for forfeiture, and the names of all persons known to have or  
26 claim an interest in the property.

1           (2) The court shall determine ex parte whether there  
2 is reasonable cause to believe that the property is subject to  
3 forfeiture and that notice to those persons having or claiming  
4 an interest in the property prior to seizure would cause the  
5 loss or destruction of the property.

6           (3) If the court finds that reasonable cause does  
7 not exist to believe the property is subject to forfeiture, it  
8 shall dismiss the complaint. If the court finds that  
9 reasonable cause exists to believe the property is subject to  
10 forfeiture but there is not reasonable cause to believe that  
11 prior notice would result in loss or destruction, it shall  
12 order service on all persons known to have or claim an  
13 interest in the property prior to a further hearing on whether  
14 a writ of seizure should issue.

15           (4) If the court finds that there is reasonable  
16 cause to believe that the property is subject to forfeiture  
17 and to believe that prior notice would cause loss or  
18 destruction, it shall, without any further hearing or notice,  
19 issue a writ of seizure directing the sheriff of the county  
20 where the property is found to seize it.

21           (g) Seizure may be effected by a law enforcement  
22 officer authorized to enforce the penal laws of this state  
23 prior to the filing of the complaint and without a writ of  
24 seizure if the seizure is incident to a lawful arrest, search,  
25 or inspection and the officer has probable cause to believe  
26 the property is subject to forfeiture and will be lost or  
27 destroyed if not seized. Within 10 days of the date of

1 seizure, the seizure shall be reported by the officer to the  
2 district attorney of the circuit in which the seizure is  
3 effected; and the district attorney, within a reasonable time  
4 after receiving notice of seizure, shall file a complaint for  
5 forfeiture. The complaint shall state, in addition to the  
6 information required in subsection (f), the date and location  
7 of the seizure.

8 (h) After the complaint is filed or the seizure  
9 effected, whichever is later, every person known to have or  
10 claim an interest in the property shall be served, if not  
11 previously served, with a copy of the complaint and a notice  
12 of seizure in the manner provided by the Alabama Rules of  
13 Civil Procedure. Service by publication may be ordered upon  
14 any party whose whereabouts cannot be determined.

15 (i) (1) Any person claiming an interest in the  
16 property may become a party to the action at any time prior to  
17 judgment whether named in the complaint or not. Any party  
18 claiming a substantial interest in the property may upon  
19 motion be allowed by the court to take possession of the  
20 property upon posting bond with good and sufficient security  
21 in double the amount of the property's value conditioned to  
22 pay the value of any interest in the property found to be  
23 subject to forfeiture or the value of any interest of another  
24 not subject to forfeiture. Such a party taking possession  
25 shall not remove the property from the territorial  
26 jurisdiction of the court without written permission from the  
27 court.

1           (2) The court, upon such terms and conditions as  
2 prescribed by it, may order that the property be sold by an  
3 innocent party who holds a lien on or security interest in the  
4 property at any time during the proceedings. Any proceeds from  
5 the sale over and above the amount necessary to satisfy the  
6 lien or security interest shall be paid into court pending  
7 final judgment in the forfeiture proceeding. No sale shall be  
8 ordered, however, unless the obligation upon which the lien or  
9 security interest is based is in default.

10           (3) Pending final judgment in the forfeiture  
11 proceeding, the court may make any other disposition of the  
12 property which is in the interest of substantial justice.

13           (j) After service of process, all further  
14 proceedings shall be as provided in the Alabama Rules of Civil  
15 Procedure, except that any party may bring one motion to  
16 dismiss at any time and such motion shall be heard and ruled  
17 on within 10 days.

18           (k) The interest of an innocent party in the  
19 property shall not be subject to forfeiture. An innocent party  
20 is one who did not have actual or constructive knowledge that  
21 the property was subject to forfeiture.

22           (1) Subject to the requirement of protecting the  
23 interest of all innocent parties, the court, after judgment of  
24 forfeiture, may make any of the following orders for  
25 disposition of the property:

26           (1) Destruction of contraband, the possession of  
27 which is illegal.



1           (2) Retention for official use by any agency of this  
2 state or any political subdivision thereof. When the agency or  
3 political subdivision no longer has use for the property, it  
4 shall be disposed of by judicial sale.

5           (3) Retention of the property by any innocent party  
6 having an interest therein, upon payment or approval of a plan  
7 for payment into court of the value of any forfeited interest  
8 in the property. The plan may include, in the case of an  
9 innocent party who holds a lien on or security interest in the  
10 property, the sale of the property by the innocent party under  
11 such terms and conditions as may be prescribed by the court  
12 and the payment into court of any proceeds from the sale over  
13 and above the amount necessary to satisfy the lien or security  
14 interest.

15           (4) Judicial sale of the property.

16           (5) Transfer of the property to any innocent party  
17 having an interest therein equal to or greater than the value  
18 of the property.

19           (6) Any other disposition of the property which is  
20 in the interest of substantial justice and adequately protects  
21 innocent parties.

22           (m) The net proceeds of any sale or disposition  
23 after satisfaction of the interest of any innocent party, less  
24 the greater of one-half thereof or the costs borne by the  
25 county in bringing the forfeiture action, shall be paid into  
26 the general fund of the State Treasury. The costs borne by the  
27 county or one-half of the net proceeds of sale or disposition,

1       whichever is greater, shall be paid into the treasury of the  
2       county where the forfeiture action is brought. Notwithstanding  
3       any other provision in this section, the court, after  
4       satisfaction of the interest of any innocent party, may make  
5       any other division of the proceeds among the state, county, or  
6       municipalities or agencies of the state, county, or  
7       municipalities, which is commensurate with the proportion of  
8       the assistance that each contributed to the underlying  
9       criminal action, forfeiture, or criminal action and  
10      forfeiture.

11               (n) (1) Upon the entry of a final judgment of  
12      forfeiture in favor of the state, the title of the state to  
13      the forfeited property shall:

14               a. In the case of real property or beneficial  
15      interest, relate back to the date of filing of the RICO lien  
16      notice in the official records of the county where the real  
17      property or beneficial trust is located and, if no RICO lien  
18      notice is filed, then to the date of the filing of any notice  
19      of lis pendens under Article 9 of Chapter 14 of Title 44, Code  
20      of Alabama 1975, in the official records of the county where  
21      the real property or beneficial interest is located and, if no  
22      RICO lien notice or notice of lis pendens is so filed, then to  
23      the date of recording of the final judgment of forfeiture in  
24      the official records of the county where the real property or  
25      beneficial interest is located.

1           b. In the case of personal property, relate back to  
2 the date the personal property was seized by the investigating  
3 agency.

4           (2) If property subject to forfeiture is conveyed,  
5 alienated, disposed of, or otherwise rendered unavailable for  
6 forfeiture after the filing of a RICO lien notice or after the  
7 filing of a civil proceeding or criminal proceeding, whichever  
8 is earlier, the investigative agency, on behalf of the state,  
9 may institute an action in the appropriate circuit court  
10 against the person named in the RICO lien notice or the  
11 defendant in the civil proceeding or criminal proceeding; and  
12 the court shall enter final judgment against the person named  
13 in the RICO lien notice or the defendant in the civil  
14 proceeding or criminal proceeding in an amount equal to the  
15 fair market value of the property, together with investigative  
16 costs and attorney's fees incurred by the investigative agency  
17 in the action. If a civil proceeding is pending, the action  
18 shall be filed only in the court where the civil proceeding is  
19 pending.

20           (o) Unless by other agreement of the primary law  
21 enforcement agency and the prosecutorial entity, the proceeds  
22 from any forfeiture shall be used, first, for payment of all  
23 proper expenses of the proceedings for forfeiture and sale,  
24 including expenses of seizure, maintenance of or custody,  
25 advertising, prosecution, and court costs. The remaining  
26 proceeds from the sale or distribution shall be awarded by the  
27 court pursuant to recommendation of the prosecutorial entity

1 on a pro rata share to the participating law enforcement  
2 agencies, the prosecutorial entity that pursued the action,  
3 and as payment of restitution to any victims of the underlying  
4 offense. Any proceeds from sales authorized by this section  
5 awarded by the court to a county or municipal law enforcement  
6 agency shall be deposited into the respective county or  
7 municipal general fund and made available to the appropriate  
8 law enforcement agency upon requisition of the chief law  
9 enforcement official of the agency. Any monies or proceeds  
10 authorized by this act and ordered by the court to be  
11 distributed to the district attorney shall be deposited into  
12 the district attorney's solicitor's fund to be expended for  
13 lawful law enforcement purposes.

14 (p) Upon motion of any party, a proceeding  
15 instituted under this act shall be stayed pending the  
16 disposition of the underlying criminal action.

17 Section 8. Notwithstanding any other provision of  
18 law, a criminal or civil action or proceeding under this act  
19 may be commenced up until five years after the conduct in  
20 violation of a provision of this act terminates or the cause  
21 of action accrues. If a criminal prosecution or civil action  
22 is brought by the state to punish or prevent any violation of  
23 this act, then the running of this period of limitations, with  
24 respect to any cause of action arising under subsection (b) or  
25 (c) of Section 6 which is based upon any matter complained of  
26 in the prosecution or action by the state, shall be suspended

1 during the pendency of the prosecution or action by the state  
2 and for two years thereafter.

3 Section 9. The application of one civil remedy under  
4 this act shall not preclude the application of any other  
5 remedy, civil or criminal, under this act or any other  
6 provision of law. Civil remedies under this act are  
7 supplemental and not mutually exclusive.

8 Section 10. (a) Notwithstanding any other provision  
9 of law, a valid judgment rendered by a court of a jurisdiction  
10 having a law substantially similar to this act will be  
11 recognized and enforced by the courts of this state to the  
12 extent that a judgment rendered by a court of this state  
13 pursuant to this act would be enforced in the other  
14 jurisdiction.

15 (b) The Attorney General is authorized to enter into  
16 reciprocal agreements with the attorney general or chief  
17 prosecuting attorney of any jurisdiction having a law  
18 substantially similar to this act so as to further the  
19 purposes of this act.

20 Section 11. In any criminal proceeding brought  
21 pursuant to this act, the crime shall be considered to have  
22 been committed in any county in which an incident of  
23 racketeering occurred or in which an interest or control of an  
24 enterprise or real or personal property is acquired or  
25 maintained.

26 Section 12. (a) Upon the institution of any civil  
27 proceeding, the investigative agency then or at any time

1 during the pendency of the proceeding may file in the official  
2 records of any one or more counties a RICO lien notice. No  
3 filing fee or other charge shall be required as a condition  
4 for filing the RICO lien notice, and the clerk of the court,  
5 upon the presentation of a RICO lien notice, shall immediately  
6 record it in the official records.

7 (b) The RICO lien notice shall be signed by the  
8 Attorney General or his or her designee or by a district  
9 attorney or his or her designee. The notice shall be in such  
10 form as the Attorney General prescribes and shall set forth  
11 all of the following information:

12 (1) The name of the person against whom the civil  
13 proceeding has been brought. In its discretion, the  
14 investigative agency may also name in the RICO lien notice any  
15 other aliases, names, or fictitious names under which the  
16 person may be known. In its discretion, the investigative  
17 agency may also name in the RICO lien notice any corporation,  
18 partnership, or other entity that is either controlled by or  
19 entirely owned by the person.

20 (2) If known to the investigative agency, the  
21 present residence and business addresses of the person named  
22 in the RICO lien notice and of the other names set forth in  
23 the RICO lien notice.

24 (3) A reference to the civil proceeding stating that  
25 a proceeding under this act has been brought against the  
26 person named in the RICO lien notice, the name of the county  
27 or counties where the proceeding has been brought, and, if

1 known to the investigative agency at the time of filing the  
2 RICO lien notice, the case number of the proceeding.

3 (4) A statement that the notice is being filed  
4 pursuant to this act.

5 (5) The name and address of the investigative agency  
6 filing the RICO lien notice and the name of the individual  
7 signing the RICO lien notice.

8 (c) A RICO lien notice shall apply only to one  
9 person and, to the extent applicable, any aliases, fictitious  
10 names, or other names, including names of corporations,  
11 partnerships, or other entities, to the extent permitted in  
12 subdivision (1) of subsection (b). A separate RICO lien notice  
13 shall be filed for any other person against whom the  
14 investigative agency desires to file a RICO lien notice under  
15 this section.

16 (d) The investigative agency, as soon as practicable  
17 after the filing of each RICO lien notice, shall furnish to  
18 the person named in the notice either a copy of the recorded  
19 notice or a copy of the notice with a notation thereon of the  
20 county or counties in which the notice has been recorded. The  
21 failure of the investigative agency to furnish a copy of the  
22 notice under this subsection shall not invalidate or otherwise  
23 affect the notice.

24 (e) The filing of a RICO lien notice creates, from  
25 the time of its filing, a lien in favor of the state on the  
26 following property of the person named in the notice and  
27 against any other names set forth in the notice:

1           (1) Any real property situated in the county where  
2 the notice is filed then or thereafter owned by the person or  
3 under any of the names.

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

7           (f) The lien shall commence and attach as of the  
8 time of filing of the RICO lien notice and shall continue  
9 thereafter until expiration, termination, or release pursuant  
10 to Section 13. The lien created in favor of the state shall be  
11 superior and prior to the interest of any other person in the  
12 real property or beneficial interest if the interest is  
13 acquired subsequent to the filing of the notice.

14           (g) In conjunction with any civil proceedings:

15           (1) The investigative agency may file without prior  
16 court order in any county a lis pendens and, in such case, any  
17 person acquiring an interest in the subject real property or  
18 beneficial interest, if the real property or beneficial  
19 interest is acquired subsequent to the filing of lis pendens,  
20 shall take the interest subject to the civil proceeding and  
21 any subsequent judgment of forfeiture.

22           (2) If a RICO lien notice has been filed, the  
23 investigative agency may name as defendants, in addition to  
24 the person named in the notice, any persons acquiring an  
25 interest in the real property or beneficial interest  
26 subsequent to the filing of the notice. If a judgment of  
27 forfeiture is entered in the proceeding in favor of the state,



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

4 (h) (1) A trustee who acquires actual knowledge that  
5 a RICO lien notice or a civil proceeding or criminal  
6 proceeding has been filed against any person for whom he or  
7 she holds legal or record title to real property shall  
8 immediately furnish to the investigative agency the following:

9 a. The name and address of the person, as known to  
10 the trustee.

11 b. The name and address, as known to the trustee, of  
12 all other persons for whose benefit the trustee holds title to  
13 the real property.

14 c. If requested by the investigative agency, a copy  
15 of the trust agreement or other instrument pursuant to which  
16 the trustee holds legal or record title to the real property.

17 (2) Any trustee who fails to comply with the  
18 provisions of this subsection is guilty of a Class B  
19 misdemeanor.

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

1           (1) The amount of proceeds received directly by the  
2 person named in the RICO lien notice as a result of the  
3 conveyance.

4           (2) The amount of proceeds received by the trustee  
5 as a result of the conveyance and distributed to the person  
6 named in the RICO lien notice.

7           (3) The fair market value of the interest of the  
8 person named in the RICO lien notice in the real property so  
9 conveyed; however, if the trustee conveys the real property  
10 and holds the proceeds that would otherwise be paid or  
11 distributed to the beneficiary or at the direction of the  
12 beneficiary or his or her designee, the trustee's liability  
13 shall not exceed the amount of the proceeds so held for so  
14 long as the proceeds are held by the trustee.

15           (j) The filing of a RICO lien notice shall not  
16 constitute a lien on the record title to real property as  
17 owned by the trustee except to the extent the trustee is named  
18 in the RICO lien notice. The investigative agency may bring a  
19 civil proceeding in any circuit court against the trustee to  
20 recover from the trustee the amounts set forth in subsection  
21 (i), and the state shall also be entitled to recover  
22 investigative costs and attorney's fees incurred by the  
23 investigative agency.

24           (k) The filing of a RICO lien notice shall not  
25 affect the use to which real property or a beneficial interest  
26 owned by the person named in the RICO lien notice may be put  
27 or the right of the person to receive any avails, rents, or

1 other proceeds resulting from the use and ownership, but not  
2 the sale, of the property until a judgment of forfeiture is  
3 entered.

4 (1) (1) This section shall not apply to any  
5 conveyance by a trustee pursuant to a court order unless the  
6 court order is entered in an action between the trustee and  
7 the beneficiary.

8 (2) Unless the trustee has actual knowledge that a  
9 person owning a beneficial interest in the trust is named in a  
10 RICO lien notice or is otherwise a defendant in a civil  
11 proceeding, this section shall not apply to either of the  
12 following:

13 a. Any conveyance by a trustee required under the  
14 terms of any trust agreement, which trust agreement is a  
15 matter of public record prior to the filing of any RICO lien  
16 notice.

17 b. Any conveyance by a trustee to all of the persons  
18 who own a beneficial interest in the trust.

19 (m) All forfeitures or dispositions under this  
20 section shall be made with due provision for the rights of  
21 innocent persons.

22 Section 13. (a) The term of a RICO lien notice shall  
23 be for a period of six years from the date of filing unless a  
24 renewal RICO lien notice has been filed by the investigative  
25 agency; and, in such case, the term of the renewal RICO lien  
26 notice shall be for a period of six years from the date of its

1 filing. The investigative agency shall be entitled to only one  
2 renewal of the RICO lien notice.

3 (b) The investigative agency filing the RICO lien  
4 notice may release in whole or in part any RICO lien notice or  
5 may release any specific real property or beneficial interest  
6 from the RICO lien notice upon such terms and conditions as it  
7 may determine. Any release of a RICO lien notice executed by  
8 the investigative agency may be filed in the official records  
9 of any county. No charge or fee shall be imposed for the  
10 filing of any release of a RICO lien notice.

11 (c) If no civil proceeding has been instituted by  
12 the investigative agency seeking a forfeiture of any property  
13 owned by the person named in the RICO lien notice, the  
14 acquittal in the criminal proceeding of the person named in  
15 the RICO lien notice or the dismissal of the criminal  
16 proceeding shall terminate the RICO lien notice; and, in such  
17 case, the filing of the RICO lien notice shall have no effect.  
18 In the event the criminal proceeding has been dismissed or the  
19 person named in the RICO lien notice has been acquitted in the  
20 criminal proceeding, the RICO lien notice shall continue for  
21 the duration of the civil proceeding.

22 (d) If no civil proceeding is then pending against  
23 the person named in a RICO lien notice, the person named in a  
24 RICO lien notice may institute an action against the  
25 investigative agency filing the notice in the county where the  
26 notice has been filed seeking a release or extinguishment of  
27 the notice; and, in such case:

1           (1) The court, upon the motion of such person, shall  
2 immediately enter an order setting a date for hearing, which  
3 date shall be not less than five nor more than 10 days after  
4 the action has been filed; and the order, along with a copy of  
5 the complaint, shall be served on the investigative agency  
6 within three days after the institution of the action. At the  
7 hearing, the court shall take evidence on the issue of whether  
8 any real property or beneficial interest owned by the person  
9 is covered by the RICO lien notice or otherwise subject to  
10 forfeiture under this act; and, if the person shows by the  
11 preponderance of the evidence that the RICO lien notice is not  
12 applicable to him or her or that any real property or  
13 beneficial interest owned by him or her is not subject to  
14 forfeiture under this act, the court shall enter a judgment  
15 extinguishing the RICO lien notice or releasing the real  
16 property or beneficial interest from the RICO lien notice.

17           (2) The court shall immediately enter its order  
18 releasing from the RICO lien notice any specific real property  
19 or beneficial interest if a sale of the real property or  
20 beneficial interest is pending and the filing of the notice  
21 prevents the sale of the property or interest; however, the  
22 proceeds resulting from the sale of the real property or  
23 beneficial interest shall be deposited into the registry of  
24 the court, subject to the further order of the court.

25           (3) At the hearing set forth in subdivision (1), the  
26 court may release from the RICO lien notice any real property  
27 or beneficial interest upon the posting by the person of the

1 security as is equal to the value of the real property or  
2 beneficial interest owned by the person.

3 (e) In the event a civil proceeding is pending  
4 against a person named in a RICO lien notice, the court, upon  
5 motion by the person, may grant the relief set forth in this  
6 section.

7 Section 14. (a) There shall be established as part  
8 of the Office of Prosecution Services, the Criminal Organized  
9 Activity/RICO Fund. The fund shall be allowed to accept  
10 contributions from public officials, law enforcement agencies,  
11 advocacy groups, individuals, governmental entities as well as  
12 private and charitable entities. Further, the fund may apply  
13 for any applicable grants. The fund shall also receive the  
14 full amounts of any fines imposed pursuant to Section 5.

15 (b) If funds are available, the Attorney General,  
16 district attorneys, Secretary of the Alabama State Law  
17 Enforcement Agency (ALEA), chiefs of police, or sheriffs, may  
18 request funds to assist with RICO investigations, training on  
19 RICO matters, expenses associated with the prosecution of RICO  
20 cases, and the posting of up to a five thousand dollar  
21 (\$5,000) reward for information leading to the arrest and  
22 conviction of any person involved in criminal organized RICO  
23 activity which leads to the death or maiming of another  
24 person, terrorism or funding of terrorism, or human  
25 trafficking.

26 (c) All funds shall be subject to audits by the  
27 Alabama Examiners of Public Accounts.

1                   Section 15. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

9                   Section 16. This act shall become effective on the  
10                  first day of the third month following its passage and  
11                  approval by the Governor, or its otherwise becoming law.