

Senate Substitute for HOUSE BILL No. 2182

By Committee on Judiciary

2-25

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to the Kansas racketeer influenced and corrupt organization act;
3 amending K.S.A. 2013 Supp. 21-6328 and 21-6329 and repealing the
4 existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2013 Supp. 21-6328 is hereby amended to read as
8 follows: 21-6328. As used in the Kansas racketeer influenced and corrupt
9 organization act:

10 (a) "Beneficial interest" means:

11 (1) The interest of a person as a beneficiary under any trust
12 arrangement pursuant to which a trustee holds legal or record title to real
13 property for the benefit of such person; or

14 (2) the interest of a person under any other form of express fiduciary
15 arrangement pursuant to which any other person holds legal or record title
16 to real property for the benefit of such person.

17 The term "beneficial interest" does not include the interest of a stock
18 holder in a corporation or the interest of a partner in either a general
19 partnership or a limited partnership. A beneficial interest shall be deemed
20 to be located where the real property owned by the trustee is located.

21 (b) "Covered person" means any person who:

22 (1) Is a criminal street gang member or criminal street gang associate,
23 as defined in K.S.A. 2013 Supp. 21-6313, and amendments thereto;

24 (2) has engaged in or is engaging in any conduct prohibited by K.S.A.
25 2013 Supp. 21-5426, and amendments thereto, human trafficking or
26 aggravated human trafficking; or

27 (3) has engaged in or is engaging in any conduct prohibited by K.S.A.
28 2013 Supp. 21-5703, and amendments thereto, unlawful manufacturing of
29 controlled substances, or K.S.A. 2013 Supp. 21-5705, and amendments
30 thereto, unlawful cultivation or distribution of controlled substances.

31 (c) "Documentary material" means any book, paper, document,
32 writing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
33 computer printout, other data compilation from which information can be
34 obtained or from which information can be translated into usable form, or
35 other tangible item.

36 (d) "Enterprise" means any individual, sole proprietorship,

1 partnership, corporation, business trust, union chartered under the laws of
2 this state, or other legal entity, or any unchartered union, association, or
3 group of individuals associated in fact although not a legal entity; and it
4 includes illicit as well as licit enterprises and governmental, as well as
5 other, entities. A criminal street gang, as defined in K.S.A. 2013 Supp. 21-
6 6313, and amendments thereto, constitutes an enterprise.

7 (e) "Pattern of racketeering activity" means engaging in at least two
8 incidents of racketeering activity that have the same or similar intents,
9 results, accomplices, victims or methods of commission or that otherwise
10 are interrelated by distinguishing characteristics and are not isolated
11 incidents, provided at least one of such incidents occurred after the
12 effective date of this act and that the last of such incidents occurred within
13 5 years, excluding any period of imprisonment, after a prior incident of
14 racketeering activity.

15 (f) "Racketeering activity" means to commit, attempt to commit,
16 conspire to commit or to solicit, coerce or intimidate another person to
17 commit:

18 (1) Any felony or misdemeanor violation of: The felony provisions of
19 K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a
20 police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas
21 money transmitter act; article 12a of chapter 17 of the Kansas Statutes
22 Annotated, and amendments thereto, Kansas uniform securities act; K.S.A.
23 2013 Supp. 21-5401, and amendments thereto, capital murder; K.S.A.
24 2013 Supp. 21-5402, and amendments thereto, murder in the first degree;
25 K.S.A. 2013 Supp. 21-5403, and amendments thereto, murder in the
26 second degree; K.S.A. 2013 Supp. 21-5408, and amendments thereto,
27 kidnapping or aggravated kidnapping; K.S.A. 2013 Supp. 21-5412, and
28 amendments thereto; K.S.A. 2013 Supp. 21-5413, and amendments
29 thereto; K.S.A. 2013 Supp. 21-5414, and amendments thereto, domestic
30 battery; K.S.A. 2013 Supp. 21-5415, and amendments thereto, criminal
31 threat or aggravated criminal threat; K.S.A. 2013 Supp. 21-5420, and
32 amendments thereto, robbery or aggravated robbery; K.S.A. 2013 Supp.
33 21-5421, and amendments thereto, terrorism; K.S.A. 2013 Supp. 21-5422,
34 and amendments thereto, illegal use of weapons of mass destruction;
35 K.S.A. 2013 Supp. 21-5423, and amendments thereto; K.S.A. 2013 Supp.
36 21-5426, and amendments thereto, human trafficking or aggravated human
37 trafficking; K.S.A. 2013 Supp. 21-5428, and amendments thereto,
38 blackmail; K.S.A. 2013 Supp. 21-5510, and amendments thereto, sexual
39 exploitation of a child; K.S.A. 2013 Supp. 21-5601, and amendments
40 thereto, endangering a child or aggravated endangering a child; K.S.A.
41 2013 Supp. 21-5602, and amendments thereto, abuse of a child; K.S.A.
42 2013 Supp. 21-5603, and amendments thereto, contributing to a child's
43 misconduct or deprivation; subsection (b) of K.S.A. 2013 Supp. 21-5607,

1 and amendments thereto, furnishing alcoholic beverages to a minor for
2 illicit purposes; article 57 of chapter 21 of the Kansas Statutes Annotated,
3 and amendments thereto, crimes involving controlled substances; K.S.A.
4 2013 Supp. 21-5801, and amendments thereto, theft; K.S.A. 2013 Supp.
5 21-5803, and amendments thereto, criminal deprivation of property;
6 K.S.A. 2013 Supp. 21-5805, and amendments thereto; K.S.A. 2013 Supp.
7 21-5807, and amendments thereto, burglary or aggravated burglary;
8 K.S.A. 2013 Supp. 21-5812, and amendments thereto, arson or aggravated
9 arson; K.S.A. 2013 Supp. 21-5813, and amendments thereto, criminal
10 damage to property; K.S.A. 2013 Supp. 21-5814, and amendments thereto,
11 criminal use of an explosive; K.S.A. 2013 Supp. 21-5818, and
12 amendments thereto, tampering with a pipeline; K.S.A. 2013 Supp. 21-
13 5821, and amendments thereto, giving a worthless check; K.S.A. 2013
14 Supp. 21-5823, and amendments thereto, forgery; K.S.A. 2013 Supp. 21-
15 5824, and amendments thereto, making false information; K.S.A. 2013
16 Supp. 21-5825, and amendments thereto, counterfeiting; K.S.A. 2013
17 Supp. 21-5826, and amendments thereto, destroying written instrument;
18 K.S.A. 2013 Supp. 21-5828, and amendments thereto, criminal use of a
19 financial card; K.S.A. 2013 Supp. 21-5838, and amendments thereto,
20 conducting a pyramid promotional scheme; K.S.A. 2013 Supp. 21-5839,
21 and amendments thereto; K.S.A. 2013 Supp. 21-5903, and amendments
22 thereto, perjury; K.S.A. 2013 Supp. 21-5904, and amendments thereto,
23 interference with law enforcement; K.S.A. 2013 Supp. 21-5905, and
24 amendments thereto, interference with the judicial process; K.S.A. 2013
25 Supp. 21-5909, and amendments thereto, intimidation of a witness or
26 victim or aggravated intimidation of a witness or victim; K.S.A. 2013
27 Supp. 21-5912, and amendments thereto, aiding escape; K.S.A. 2013
28 Supp. 21-5913, and amendments thereto, obstructing apprehension or
29 prosecution; K.S.A. 2013 Supp. 21-5918, and amendments thereto; K.S.A.
30 2013 Supp. 21-6001, and amendments thereto, bribery; K.S.A. 2013 Supp.
31 21-6002, and amendments thereto, official misconduct; K.S.A. 2013 Supp.
32 21-6301, and amendments thereto, criminal use of weapons; K.S.A. 2013
33 Supp. 21-6302, and amendments thereto, criminal carrying of a weapon;
34 K.S.A. 2013 Supp. 21-6303, and amendments thereto, criminal
35 distribution of firearms to a felon; K.S.A. 2013 Supp. 21-6304, and
36 amendments thereto, criminal possession of a firearm by a convicted felon;
37 K.S.A. 2013 Supp. 21-6305, and amendments thereto, aggravated weapons
38 violation by a convicted felon; K.S.A. 2013 Supp. 21-6306, and
39 amendments thereto, defacing identification marks of a firearm; K.S.A.
40 2013 Supp. 21-6308, and amendments thereto, criminal discharge of a
41 firearm; K.S.A. 2013 Supp. 21-6310, and amendments thereto, unlawful
42 endangerment; K.S.A. 2013 Supp. 21-6312, and amendments thereto;
43 K.S.A. 2013 Supp. 21-6313 through 21-6316, and amendments thereto;

1 K.S.A. 2013 Supp. 21-6401, and amendments thereto; K.S.A. 2013 Supp.
2 21-6404, and amendments thereto, gambling; K.S.A. 2013 Supp. 21-6405,
3 and amendments thereto, illegal bingo operation; K.S.A. 2013 Supp. 21-
4 6406, and amendments thereto, commercial gambling; K.S.A. 2013 Supp.
5 21-6407, and amendments thereto, dealing in gambling devices; K.S.A.
6 2013 Supp. 21-6408, and amendments thereto; K.S.A. 2013 Supp. 21-
7 6409, and amendments thereto, installing communication facilities for
8 gamblers; subsections (a) or (b) of K.S.A. 2013 Supp. 21-6414, and
9 amendments thereto, unlawful conduct of dog fighting or unlawful
10 possession of dog fighting paraphernalia; subsections (a) or (b) of K.S.A.
11 2013 Supp. 21-6417, and amendments thereto, unlawful conduct of
12 cockfighting or unlawful possession of cockfighting paraphernalia; K.S.A.
13 2013 Supp. 21-6419, and amendments thereto, ~~prostitution~~ *selling sexual*
14 *relations*; K.S.A. 2013 Supp. 21-6420, and amendments thereto,
15 ~~promoting prostitution~~ *promoting the sale of sexual relations*; K.S.A. 2013
16 *Supp. 21-6422, and amendments thereto, commercial sexual exploitation*
17 *of a child*; K.S.A. 2013 Supp. 21-6501, and amendments thereto,
18 extortion; K.S.A. 2013 Supp. 21-6502, and amendments thereto, debt
19 adjusting; K.S.A. 2013 Supp. 21-6504, and amendments thereto, equity
20 skimming; K.S.A. 2013 Supp. 21-6506, and amendments thereto,
21 commercial bribery; K.S.A. 2013 Supp. 21-6507, and amendments thereto,
22 sports bribery; K.S.A. 2013 Supp. 21-6508, and amendments thereto,
23 tampering with a sports contest; K.S.A. 39-720, and amendments thereto,
24 social welfare service fraud; K.S.A. 40-2,118, and amendments thereto,
25 fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto,
26 Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto,
27 workers' compensation act; K.S.A. 65-1657, and amendments thereto,
28 nonresident pharmacy registration; K.S.A. 65-3441, and amendments
29 thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto,
30 trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas
31 Statutes Annotated, and amendments thereto, Kansas parimutuel racing
32 act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and
33 tobacco products act; or

34 (2) any conduct defined as "racketeering activity" under 18 U.S.C. §
35 1961(1).

36 (g) "Real property" means any real property or any interest in such
37 real property, including, but not limited to, any lease of or mortgage upon
38 such real property.

39 (h) "Trustee" means:

40 (1) Any person acting as trustee pursuant to a trust in which the
41 trustee holds legal or record title to real property;

42 (2) any person who holds legal or record title to real property in
43 which any other person has a beneficial interest; or

1 (3) any successor trustee or trustees to any or all of the foregoing
2 persons.

3 The term "trustee" does not include any person appointed or acting as a
4 personal representative as defined in K.S.A. 59-102, and amendments
5 thereto, or appointed or acting as a trustee of any testamentary trust or as a
6 trustee of any indenture of trust under which any bonds have been or are to
7 be issued.

8 (i) "Unlawful debt" means any money or other thing of value
9 constituting principal or interest of a debt that is legally unenforceable in
10 this state in whole or in part because the debt was incurred or contracted:

11 (1) In violation of any of the following provisions of law: Article 88
12 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
13 Kansas parimutuel racing act; K.S.A. 2013 Supp. 21-6404, and
14 amendments thereto, gambling; K.S.A. 2013 Supp. 21-6405, and
15 amendments thereto, illegal bingo operation; K.S.A. 2013 Supp. 21-6406,
16 and amendments thereto, commercial gambling; K.S.A. 2013 Supp. 21-
17 6407, and amendments thereto, dealing in gambling devices; K.S.A. 2013
18 Supp. 21-6408, and amendments thereto; or K.S.A. 2013 Supp. 21-6409,
19 and amendments thereto, installing communication facilities for gamblers;
20 or

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

23 Sec. 2. K.S.A. 2013 Supp. 21-6329 is hereby amended to read as
24 follows: 21-6329. (a) *Except as provided in subsection (b)*, it is unlawful
25 for any covered person:

26 (1) Who has ~~with criminal intent~~ received any proceeds derived,
27 directly or indirectly, from a pattern of racketeering activity or through the
28 collection of an unlawful debt to use or invest, whether directly or
29 indirectly, any part of such proceeds, or the proceeds derived from the
30 investment or use thereof, in the acquisition of any title to, or any right,
31 interest, or equity in, real property or in the establishment or operation of
32 any enterprise;

33 (2) through a pattern of racketeering activity or through the collection
34 of an unlawful debt, to acquire or maintain, directly or indirectly, any
35 interest in or control of any enterprise or real property; or

36 (3) employed by, or associated with, any enterprise to conduct or
37 participate, directly or indirectly, in such enterprise through a pattern of
38 racketeering activity or the collection of an unlawful debt.

39 (b) *It is not unlawful for a covered person to violate subsection (a)*
40 *through the collection of an unlawful debt if such person was not a*
41 *participant in a violation described in subsection (i) of K.S.A. 2013 Supp.*
42 *21-6328, and amendments thereto, which created such unlawful debt.*

43 (c) *The culpable mental state required for a violation of subsection*

1 *(a) is the culpable mental state required for the underlying offense of*
2 *racketeering activity or unlawful debt, as defined in K.S.A. 2013 Supp. 21-*
3 *6328, and amendments thereto, and no additional culpable mental state is*
4 *required for a violation of subsection (a).*

5 ~~(b)~~ *(d)* Violation of this section or conspiracy to commit a violation of
6 this section is a severity level 2, person felony.

7 ~~(e)~~ *(e)* The provisions of subsection (d) of K.S.A. 2013 Supp. 21-
8 5302, and amendments thereto, shall not apply to conspiracy to commit a
9 violation of this section.

10 ~~(f)~~ *(f)* (1) Notwithstanding the provisions of K.S.A. 2013 Supp. 21-
11 6611, and amendments thereto, any person convicted of engaging in
12 conduct in violation of this section, through which the person derived
13 pecuniary value, or by which the person caused personal injury or property
14 damage or other loss, may be sentenced to pay a fine that does not exceed
15 three times the gross value gained or three times the gross loss caused,
16 whichever is the greater, plus court costs and the costs of investigation and
17 prosecution, reasonably incurred.

18 (2) The court shall hold a hearing to determine the amount of the fine
19 authorized by this subsection.

20 (3) For the purposes of this subsection, "pecuniary value" means:

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

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

25 ~~(g)~~ *(g)* For persons arrested and charged under this section, bail shall
26 be at least \$50,000 cash or surety, unless the court determines on the
27 record that the defendant is not likely to re-offend, an appropriate intensive
28 pretrial supervision program is available and the defendant agrees to
29 comply with the mandate of such pretrial supervision. Notwithstanding
30 any other provision of law, any person arrested and charged under this
31 section shall not be released upon the person's own recognizance pursuant
32 to K.S.A. 22-2802, and amendments thereto.

33 Sec. 3. K.S.A. 2013 Supp. 21-6328 and 21-6329 are hereby repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the statute book.