

As Amended by Senate Committee

Session of 2010

SENATE BILL No. 523

By Senators Petersen and Schodorf

2-3

10 AN ACT concerning ~~crimes, punishment and criminal procedure~~ **rack-**
11 **eteering**; enacting the Kansas racketeer influenced and corrupt or-
12 ganization act; amending **K.S.A. 21-3302 and** K.S.A. 2009 Supp. 60-
13 4104 and repealing the existing ~~section~~ **sections**.

14

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

16 New Section 1. Sections 1 through 5, and amendments thereto, shall
17 be known and may be cited as the Kansas racketeer influenced and cor-
18 rupt organization act (Kansas RICO act).

19 New Sec. 2. As used in the Kansas racketeer influenced and corrupt
20 organization act:

21 (a) "Racketeering activity" means to commit, attempt to commit, con-
22 spire to commit or to solicit, coerce or intimidate another person to
23 commit:

24 (1) Any violation of: K.S.A. 8-1568, and amendments thereto, fleeing
25 or attempting to elude a police officer; K.S.A. 9-508 et seq., and amend-
26 ments thereto, Kansas money transmitter act; article 12a of chapter 17 of
27 the Kansas Statutes Annotated, and amendments thereto, Kansas uniform
28 securities act; K.S.A. 21-3401, and amendments thereto, murder in the
29 first degree; K.S.A. 21-3402, and amendments thereto, murder in the
30 second degree; K.S.A. 21-3403, and amendments thereto, voluntary man-
31 slaughter; K.S.A. 21-3404, and amendments thereto, involuntary man-
32 slaughter; K.S.A. 21-3405, and amendments thereto, vehicular homicide;
33 K.S.A. 21-3406, and amendments thereto, assisting suicide; K.S.A. 21-
34 3408, and amendments thereto, assault; K.S.A. 21-3409, and amendments
35 thereto, assault of a law enforcement officer; K.S.A. 21-3410, and amend-
36 ments thereto, aggravated assault; K.S.A. 21-3411, and amendments
37 thereto, aggravated assault of a law enforcement officer; K.S.A. 21-3412,
38 and amendments thereto, battery; K.S.A. 21-3412a, and amendments
39 thereto, domestic battery; K.S.A. 21-3413, and amendments thereto, bat-
40 tery against a law enforcement officer; K.S.A. 21-3414, and amendments
41 thereto, aggravated battery; K.S.A. 21-3415, and amendments thereto,
42 aggravated battery against a law enforcement officer; K.S.A. 21-3419, and
43 amendments thereto, criminal threat; K.S.A. 21-3419a, and amendments

1 thereto, aggravated criminal threat; K.S.A. 21-3420, and amendments
2 thereto, kidnapping; K.S.A. 21-3421, and amendments thereto, aggra-
3 vated kidnapping; K.S.A. 21-3426, and amendments thereto, robbery;
4 K.S.A. 21-3427, and amendments thereto, aggravated robbery; K.S.A. 21-
5 3428, and amendments thereto, blackmail; K.S.A. 21-3437, and amend-
6 ments thereto, mistreatment of a dependent adult; K.S.A. 21-3439, and
7 amendments thereto, capital murder; K.S.A. 21-3442, and amendments
8 thereto, involuntary manslaughter while driving under the influence of
9 alcohol or drugs; K.S.A. 21-3443, and amendments thereto, battery
10 against a school employee; K.S.A. 21-3446, and amendments thereto, traf-
11 ficking; K.S.A. 21-3447, and amendments thereto, aggravated trafficking;
12 K.S.A. 21-3448, and amendments thereto, battery against a mental health
13 employee; K.S.A. 21-3449, and amendments thereto, terrorism; K.S.A.
14 21-3450, and amendments thereto, illegal use of weapons of mass de-
15 struction; K.S.A. 21-3451, and amendments thereto, furtherance of ter-
16 rorism or illegal use of weapons of mass destruction; K.S.A. 21-3512, and
17 amendments thereto, prostitution; K.S.A. 21-3513, and amendments
18 thereto, promoting prostitution; K.S.A. 21-3516, and amendments
19 thereto, sexual exploitation of a child; article 36a of chapter 21 of the
20 Kansas Statutes Annotated, and amendments thereto, crimes involving
21 controlled substances; article 37 of chapter 21 of the Kansas Statutes
22 Annotated, and amendments thereto, crimes against property; K.S.A. 21-
23 3805, and amendments thereto, perjury; K.S.A. 21-3807, and amend-
24 ments thereto, compounding a crime; K.S.A. 21-3808, and amendments
25 thereto, obstructing legal process or official duty; K.S.A. 21-3811, and
26 amendments thereto, aiding escape; K.S.A. 21-3812, and amendments
27 thereto, aiding a felon; K.S.A. 21-3815, and amendments thereto, at-
28 tempting to influence a judicial officer; K.S.A. 21-3816, and amendments
29 thereto, interference with the administration of justice; K.S.A. 21-3817,
30 and amendments thereto, corrupt conduct by a juror; K.S.A. 21-3830,
31 and amendments thereto, dealing in false identification documents;
32 K.S.A. 21-3831 through 21-3836, and amendments thereto, witness or
33 victim intimidation; K.S.A. 21-3844 et seq., and amendments thereto,
34 Kansas medicaid fraud control act; K.S.A. 21-3901, and amendments
35 thereto, bribery; K.S.A. 21-3902, and amendments thereto, official mis-
36 conduct; K.S.A. 21-3903, and amendments thereto, compensation for past
37 official acts; K.S.A. 21-3904, and amendments thereto, presenting a false
38 claim; K.S.A. 21-3905, and amendments thereto, permitting a false claim;
39 K.S.A. 21-3910, and amendments thereto, misuse of public funds; K.S.A.
40 21-4201, and amendments thereto, criminal use of weapons; K.S.A. 21-
41 4202, and amendments thereto, aggravated weapons violation; K.S.A. 21-
42 4203, and amendments thereto, criminal disposal of firearms; K.S.A. 21-
43 4204, and amendments thereto, criminal possession of a firearm; K.S.A.

1 21-4204a, and amendments thereto, criminal possession of a firearm by
2 a juvenile; K.S.A. 21-4205, and amendments thereto, defacing identifi-
3 cation marks of a firearm; K.S.A. 21-4209, and amendments thereto,
4 criminal disposal of explosives; K.S.A. 21-4209a, and amendments
5 thereto, criminal possession of explosives; K.S.A. 21-4210, and amend-
6 ments thereto, carrying concealed explosives; K.S.A. 21-4214, and amend-
7 ments thereto, obtaining a prescription-only drug by fraudulent means;
8 K.S.A. 21-4215, and amendments thereto, obtaining a prescription-only
9 drug by fraudulent means for resale; K.S.A. 21-4217, and amendments
10 thereto, criminal discharge of a firearm; K.S.A. 21-4219, and amendments
11 thereto, criminal discharge of a firearm at an unoccupied dwelling; K.S.A.
12 21-4220, and amendments thereto, unlawful endangerment; K.S.A. 21-
13 4225 through 21-4229, and amendments thereto, criminal street gang
14 prevention act; K.S.A. 21-4301, and amendments thereto, promoting ob-
15 scenity; K.S.A. 21-4301a, and amendments thereto, promoting obscenity
16 to minors; K.S.A. 21-4303, and amendments thereto, gambling; K.S.A.
17 21-4303a, and amendments thereto, illegal bingo operation; K.S.A. 21-
18 4304, and amendments thereto, commercial gambling; K.S.A. 21-4305,
19 and amendments thereto, permitting premises to be used for commercial
20 gambling; K.S.A. 21-4306, and amendments thereto, dealing in gambling
21 devices; K.S.A. 21-4307, and amendments thereto, possession of a gam-
22 bling device; K.S.A. 21-4308, and amendments thereto, installing com-
23 munication facilities for gamblers; K.S.A. 21-4401, and amendments
24 thereto, racketeering; K.S.A. 21-4402, and amendments thereto, debt ad-
25 justing; K.S.A. 21-4405, and amendments thereto, commercial bribery;
26 K.S.A. 21-4406, and amendments thereto, sports bribery; K.S.A. 21-4407,
27 and amendments thereto, receiving a sports bribe; K.S.A. 21-4408, and
28 amendments thereto, tampering with a sports contest; K.S.A. 21-4410,
29 and amendments thereto, equity skimming; K.S.A. 39-720, and amend-
30 ments thereto, social welfare service fraud; K.S.A. 40-2,118, and amend-
31 ments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and
32 amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and
33 amendments thereto, workers' compensation act; K.S.A. 44-719 et seq.,
34 and amendments thereto, employment security law; article 6 of chapter
35 50 of the Kansas Statutes Annotated, and amendments thereto, consumer
36 protection; K.S.A. 65-1657, and amendments thereto, nonresident phar-
37 macy registration; K.S.A. 65-3441, and amendments thereto, hazardous
38 waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit
39 drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and
40 amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321,
41 and amendments thereto, Kansas cigarette and tobacco products act.
42 (2) Any conduct defined as "racketeering activity" under 18 U.S.C.
43 1961(1).

- 1 (b) “Unlawful debt” means any money or other thing of value con-
2 stituting principal or interest of a debt that is legally unenforceable in this
3 state in whole or in part because the debt was incurred or contracted:
- 4 (1) In violation of any of the following provisions of law: article 88 of
5 chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
6 Kansas parimutuel racing act; K.S.A. 21-4303, and amendments thereto,
7 gambling; K.S.A. 21-4303a, and amendments thereto, illegal bingo op-
8 eration; K.S.A. 21-4304, and amendments thereto, commercial gambling;
9 K.S.A. 21-4305, and amendments thereto, permitting premises to be used
10 for commercial gambling; K.S.A. 21-4306, and amendments thereto, deal-
11 ing in gambling devices; K.S.A. 21-4307, and amendments thereto, pos-
12 session of a gambling device; or K.S.A. 21-4308, and amendments thereto,
13 installing communication facilities for gamblers.
- 14 (2) In gambling activity in violation of federal law or in the business
15 of lending money at a rate usurious under state or federal law.
- 16 (c) “Enterprise” means any individual, sole proprietorship, partner-
17 ship, corporation, business trust, union chartered under the laws of this
18 state, or other legal entity, or any unchartered union, association, or group
19 of individuals associated in fact although not a legal entity; and it includes
20 illicit as well as licit enterprises and governmental, as well as other, en-
21 tities. A criminal street gang, as defined in K.S.A. 21-4226, and amend-
22 ments thereto, constitutes an enterprise.
- 23 (d) “Pattern of racketeering activity” means engaging in at least two
24 incidents of racketeering ~~conduct~~ **activity** that have the same or similar
25 intents, results, accomplices, victims, or methods of commission or that
26 otherwise are interrelated by distinguishing characteristics and are not
27 isolated incidents, provided at least one of such incidents occurred after
28 the effective date of this act and that the last of such incidents occurred
29 within 5 years, **excluding any period of imprisonment**, after a prior
30 incident of racketeering ~~conduct~~ **activity**.
- 31 (e) “Documentary material” means any book, paper, document, writ-
32 ing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
33 computer printout, other data compilation from which information can
34 be obtained or from which information can be translated into usable form,
35 or other tangible item.
- 36 (f) “Beneficial interest” means:
- 37 (1) The interest of a person as a beneficiary under any trust arrange-
38 ment pursuant to which a trustee holds legal or record title to real prop-
39 erty for the benefit of such person; or
- 40 (2) the interest of a person under any other form of express fiduciary
41 arrangement pursuant to which any other person holds legal or record
42 title to real property for the benefit of such person.
- 43 The term “beneficial interest” does not include the interest of a stock-

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

4 (g) “Real property” means any real property or any interest in such
 5 real property, including, but not limited to, any lease of or mortgage upon
 6 such real property.

7 (h) “Trustee” means:

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

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

12 (3) any successor trustee or trustees to any or all of the foregoing
 13 persons.

14 The term “trustee” does not include any person appointed or acting as
 15 a personal representative as defined in K.S.A. 59-102, and amendments
 16 thereto, or appointed or acting as a trustee of any testamentary trust or
 17 as a trustee of any indenture of trust under which any bonds have been
 18 or are to be issued.

19 New Sec. 3. (a) It is unlawful for any person:

20 (1) Who has with criminal intent received any proceeds derived, di-
 21 rectly or indirectly, from a pattern of racketeering activity or through the
 22 collection of an unlawful debt to use or invest, whether directly or indi-
 23 rectly, any part of such proceeds, or the proceeds derived from the in-
 24 vestment or use thereof, in the acquisition of any title to, or any right,
 25 interest, or equity in, real property or in the establishment or operation
 26 of any enterprise;

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

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

33 (b) Violation of this section **or conspiracy to commit a violation**
 34 **of this section** is a severity level 2, person felony.

35 (c) **The provisions of subsection (c) of K.S.A. 21-3302, and**
 36 **amendments thereto, shall not apply to conspiracy to commit a vi-**
 37 **olation of this section.**

38 (d) (1) Notwithstanding the provisions of K.S.A. 21-4503a, and
 39 amendments thereto, any person convicted of engaging in conduct in
 40 violation of this section, through which the person derived pecuniary
 41 value, or by which the person caused personal injury or property damage
 42 or other loss, may be sentenced to pay a fine that does not exceed three
 43 times the gross value gained or three times the gross loss caused, which-

1 ever is the greater, plus court costs and the costs of investigation and
2 prosecution, reasonably incurred.

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

5 (3) For the purposes of this subsection, “pecuniary value” means:

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

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

10 (e) ***For persons arrested and charged under this section, bail***
11 ***shall be at least \$50,000 cash or surety, unless the court determines***
12 ***on the record that the defendant is not likely to re-offend, an ap-***
13 ***propriate intensive pretrial supervision program is available and***
14 ***the defendant agrees to comply with the mandate of such pretrial***
15 ***supervision.***

16 New Sec. 4. (a) Any district court may, after making due provision
17 for the rights of innocent persons, enjoin violations of the provisions of
18 section 3, and amendments thereto, by issuing appropriate orders and
19 judgments, including, but not limited to:

20 (1) Ordering any defendant to divest such defendant of any interest
21 in any enterprise, including real property.

22 (2) Imposing reasonable restrictions upon the future activities or in-
23 vestments of any defendant, including, but not limited to, prohibiting any
24 defendant from engaging in the same type of endeavor as the enterprise
25 in which the defendant was engaged in violation of the provisions of sec-
26 tion 3, and amendments thereto.

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

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

30 (5) Ordering the forfeiture of the charter of a corporation organized
31 under the laws of the state, or the revocation of a certificate authorizing
32 a foreign corporation to conduct business within the state, upon finding
33 that the board of directors or a managerial agent acting on behalf of the
34 corporation, in conducting the affairs of the corporation, has authorized
35 or engaged in conduct in violation of section 3, and amendments thereto,
36 and that, for the prevention of future criminal activity, the public interest
37 requires the charter of the corporation forfeited and the corporation dis-
38 solved or the certificate revoked.

39 (b) All property, real or personal, including money, used in the course
40 of, intended for use in the course of, derived from, or realized through
41 conduct in violation of a provision of the Kansas racketeer influenced and
42 corrupt organization act is subject to civil forfeiture pursuant to the Kan-
43 sas standard asset seizure and forfeiture act, K.S.A. 60-4101 et seq., and

1 amendments thereto.

2 New Sec. 5. (a) For the purposes of this section, “attorney” means
3 the attorney general, assistant attorney general, county attorney or district
4 attorney, or in the absence of the county or district attorney a designated
5 assistant county or district attorney. If an assistant county or district at-
6 torney is designated by the county or district attorney for the purposes
7 of this section, such designation shall be filed with the chief judge of such
8 judicial district.

9 (b) If an attorney is informed or has knowledge that a person or other
10 enterprise has engaged in, or is engaging in, activity in violation of the
11 Kansas racketeer influenced and corrupt organization act, such attorney
12 shall be authorized to administer oaths or affirmations, subpoena wit-
13 nesses or material, and collect evidence relating to such activity.

14 (c) An attorney may apply *ex parte* to the district court of the district
15 in which a subpoenaed person or entity resides, is found or transacts
16 business, for an order directing that the subpoenaed person or entity not
17 disclose the existence of the subpoena to any other person or entity except
18 the subpoenaed person’s attorney for a period of 90 days, which time may
19 be extended by the court for good cause shown by the attorney. The order
20 shall be served with the subpoena, and the subpoena shall include a refer-
21 ence to the order and a notice to the recipient of the subpoena that
22 disclosure of the existence of the subpoena to any other person or entity
23 in violation of the order may subject the subpoenaed person or entity to
24 punishment for contempt of court. Such an order may be granted by the
25 court only upon a showing:

26 (1) Of sufficient factual grounds to reasonably indicate a violation of
27 the Kansas racketeer influenced and corrupt organization act;

28 (2) that the documents or testimony sought appear reasonably cal-
29 culated to lead to the discovery of admissible evidence; and

30 (3) of facts which reasonably indicate that disclosure of the subpoena
31 would hamper or impede the investigation or would result in a flight from
32 prosecution.

33 (d) If information or evidence that the attorney seeks to obtain by
34 the subpoena is located outside the state, the person or enterprise sub-
35 poenaed may make such information or evidence available to the attorney
36 or such attorney’s representative for examination at the place where such
37 information or evidence is located. The attorney may designate represen-
38 tatives, including officials of the jurisdiction in which the information or
39 evidence is located, to inspect the information or evidence on such at-
40 torney’s behalf and may respond to similar requests from officials of other
41 jurisdictions.

42 (e) Upon failure of a person or enterprise, without lawful excuse, to
43 obey a subpoena issued under this section or a subpoena issued in the

1 course of a civil proceeding instituted pursuant to section 4, and amend-
 2 ments thereto, and after reasonable notice to such person or enterprise,
 3 the attorney may apply to the district court in which such civil proceeding
 4 is pending or, if no civil proceeding is pending, to the district court of the
 5 judicial district in which such person or enterprise resides, is found or
 6 transacts business for an order compelling compliance. Except in a pros-
 7 ecution for perjury, an individual who complies with a court order to
 8 provide testimony or material after asserting a privilege against self-in-
 9 crimination to which such individual is entitled by law shall not have the
 10 testimony or material so provided, or evidence derived therefrom, re-
 11 ceived against such individual in any criminal investigation or proceeding.

12 (f) A person who fails to obey a court order entered pursuant to this
 13 section may be adjudged in contempt of court and punished by fine and
 14 imprisonment.

15 **Sec. 6. K.S.A. 21-3302 is hereby amended to read as follows:**
 16 **21-3302. (a) A conspiracy is an agreement with another person to**
 17 **commit a crime or to assist in committing a crime. No person may**
 18 **be convicted of a conspiracy unless an overt act in furtherance of**
 19 **such conspiracy is alleged and proved to have been committed by**
 20 **such person or by a co-conspirator.**

21 (b) *It shall be a defense to a charge of conspiracy that the ac-*
 22 *cused voluntarily and in good faith withdrew from the conspiracy,*
 23 *and communicated the fact of such withdrawal to one or more of*
 24 *the accused person's co-conspirators, before any overt act in fur-*
 25 *therance of the conspiracy was committed by the accused or by a*
 26 *co-conspirator.*

27 (c) (1) *Conspiracy to commit an off-grid felony shall be ranked*
 28 *at nondrug severity level 2. Conspiracy to commit any other non-*
 29 *drug felony shall be ranked on the nondrug scale at two severity*
 30 *levels below the appropriate level for the underlying or completed*
 31 *crime. The lowest severity level for conspiracy to commit a nondrug*
 32 *felony shall be level 10.*

33 (2) *The provisions of this subsection shall not apply to a viola-*
 34 *tion of conspiracy to commit the crime of:*

35 (A) *Terrorism pursuant to as defined in K.S.A. 21-3449, and*
 36 *amendments thereto, or of;*

37 (B) *illegal use of weapons of mass destruction pursuant to as de-*
 38 *defined in K.S.A. 21-3450, and amendments thereto; or*

39 (C) *violation of section 3, and amendments thereto.*

40 (d) *Conspiracy to commit a felony which prescribes a sentence*
 41 *on the drug grid shall reduce the prison term prescribed in the drug*
 42 *grid block for an underlying or completed crime by six months.*

43 (e) *A conspiracy to commit a misdemeanor is a class C*

1 ***misdemeanor.***

2 Sec. ~~6~~ 7. K.S.A. 2009 Supp. 60-4104 is hereby amended to read as
3 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
4 act, whether or not there is a prosecution or conviction related to the
5 offense, are:

6 (a) All offenses which statutorily and specifically authorize forfeiture;

7 (b) violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and
8 amendments thereto;

9 (c) theft which is classified as a felony violation pursuant to K.S.A.
10 21-3701, and amendments thereto, in which the property taken was
11 livestock;

12 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
13 thereto;

14 (e) violations of K.S.A. 2009 Supp. 21-36a16, and amendments
15 thereto;

16 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
17 mercial gambling, K.S.A. 21-4304, and amendments thereto;

18 (g) counterfeiting, K.S.A. 21-3763, and amendments thereto;

19 (h) violations of K.S.A. 21-4019, and amendments thereto;

20 (i) medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;

21 (j) an act or omission occurring outside this state, which would be a
22 violation in the place of occurrence and would be described in this section
23 if the act occurred in this state, whether or not it is prosecuted in any
24 state;

25 (k) an act or omission committed in furtherance of any act or omission
26 described in this section including any inchoate or preparatory offense,
27 whether or not there is a prosecution or conviction related to the act or
28 omission;

29 (l) any solicitation or conspiracy to commit any act or omission de-
30 scribed in this section, whether or not there is a prosecution or conviction
31 related to the act or omission;

32 (m) furtherance of terrorism or illegal use of weapons of mass de-
33 struction, K.S.A. 21-3451, and amendments thereto;

34 (n) unlawful conduct of dog fighting and unlawful possession of dog
35 fighting paraphernalia, K.S.A. 21-4315, and amendments thereto;

36 (o) unlawful conduct of cockfighting and unlawful possession of cock-
37 fighting paraphernalia, K.S.A. 21-4319, and amendments thereto; ~~and~~

38 (p) prostitution, K.S.A. 21-3512, and amendments thereto, promot-
39 ing prostitution, K.S.A. 21-3513, and amendments thereto, and patron-
40 izing a prostitute, K.S.A. 21-3515, and amendments thereto;

41 (q) *racketeering, K.S.A. 21-4401, and amendments thereto; and*

42 (r) *violations of the Kansas racketeer influenced and corrupt organ-*
43 *ization act, sections 1 through 5, and amendments thereto.*

1 Sec. ~~7~~ **8**. K.S.A. **21-3302** *and* **K.S.A.** 2009 Supp. 60-4104 *is* **are**
2 hereby repealed.
3 Sec. ~~8~~ **9**. This act shall take effect and be in force from and after its
4 publication in the statute book.