

FIRST REGULAR SESSION

SENATE BILL NO. 352

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 29, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1818S.02I

AN ACT

To amend chapter 574, RSMo, by adding thereto five new sections relating to the Missouri criminal enterprise act, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 574, RSMo, is amended by adding thereto five new sections, to be known as sections 574.200, 574.205, 574.210, 574.215, and 574.220, to read as follows:

574.200. Sections 574.200 to 574.220 shall be known, and may be cited, as "The Missouri Criminal Enterprise Act".

574.205. 1. For purposes of sections 574.200 to 574.220, the following terms mean:

(1) "Documentary materials", any book, paper, document, writing, drawing, graph, chart, photograph, record, recording, magnetic tape, computer printout, other tangible item, or any data compilation from which information can be obtained or from which information can be translated into useable form;

(2) "Enterprise", any individual, sole proprietorship, partnership, corporation, trust, or other legal entity; and any union, association, or group of persons associated in fact, although not a legal entity. The word "enterprise" shall include illicit as well as licit enterprises, and governmental as well as other entities;

(3) "Pattern of racketeering activity", engaging in at least two incidents of racketeering activity:

(a) That have the same or similar intents, results, accomplices, victims, or methods of commission, or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, but are not so closely related to each other and connected in point of time and

19 place that they constitute a single event; and

20 (b) Where at least one of the incidents occurred after August 28,
21 2015 and the last of such incidents occurred within five years,
22 excluding any period of imprisonment, after a prior incident of
23 racketeering activity;

24 (4) "Pecuniary value", as defined in section 513.605;

25 (5) "Personal property", any personal property or any interest in
26 such personal property, or any right, including bank accounts, debts,
27 corporate stocks, patents, or copyrights. An item of personal property
28 or a beneficial interest, as the term "beneficial interest" is defined
29 under section 513.603, in personal property shall be deemed to be
30 located where the trustee, as the term "trustee" is defined under section
31 513.605, is, where the personal property is, or where the instrument
32 evidencing the right is located;

33 (6) "Racketeering", to engage in, attempt or conspire to engage
34 in, or to solicit, coerce, or intimidate another person to engage in any
35 activity defined as "racketeering activity" under 18 U.S.C.A. Section
36 1961(1), or any felony offense of chapter 195, 409, 566, 567, 568, 570, 573,
37 575, or 579;

38 (7) "Real property", any real property situated in this state or
39 any interest in such real property, including any lease of or mortgage
40 upon such real property;

41 (8) "Unlawful debt", a debt incurred or contracted in an illegal
42 gambling activity or business, or a debt that is unenforceable under
43 state law, in whole or in part, as to either principal or interest.

574.210. 1. A person commits the offense of racketeering if such
2 person:

3 (1) Is employed by, or associated with, any enterprise and
4 conducts, or participates in the conduct of, the affairs of the enterprise
5 through a pattern of racketeering activity or the collection of an
6 unlawful debt;

7 (2) Through a pattern of racketeering activity or proceeds
8 derived therefrom, acquires or maintains, directly or indirectly, any
9 interest in, or control of, any enterprise, real property, or personal
10 property, of any nature, including money;

11 (3) Has received any proceeds derived, directly or indirectly,
12 from a pattern of racketeering activity in which such person has

13 participated, and uses or invests, directly or indirectly, any part of
14 such proceeds or any proceeds derived from the investment or use
15 thereof, in the acquisition of any interest in, or the establishment or
16 operation of, any enterprise or real property; or

17 (4) Conspires or attempts to violate any of the provisions of this
18 subsection.

19 2. The offense of racketeering is a class B felony.

20 3. The attorney general shall have original jurisdiction to
21 commence any criminal actions under this section, and may commence
22 such actions throughout the state where the violations have occurred.

23 4. Notwithstanding the provisions of chapters 558 and 560 to the
24 contrary, any person found guilty of racketeering, through which the
25 person derived pecuniary value, or by which the person caused
26 personal injury or property damage or other loss, may be sentenced to
27 pay a fine that does not exceed three times the gross value gained or
28 three times the gross loss caused, whichever is the greater, plus court
29 costs and the reasonably incurred costs of investigation and
30 prosecution.

31 5. The court shall hold a hearing to determine the amount of the
32 fine authorized by this section.

574.215. 1. The attorney general may institute civil proceedings
2 to provide relief and enjoin violations of section 574.210. If the
3 attorney general proves the alleged violation by a preponderance of the
4 evidence and the court has made due provision for the rights of
5 innocent persons, the court may issue appropriate orders and
6 judgments, including:

7 (1) Ordering any defendant to divest such defendant of any
8 interest in any enterprise, including real property;

9 (2) Imposing reasonable restrictions upon the future activities
10 or investments of any defendant, including prohibiting any defendant
11 from engaging in the same type of endeavor as the enterprise in which
12 the defendant was engaged in violation of the provisions of section
13 574.210;

14 (3) Ordering the dissolution or reorganization of any enterprise;

15 (4) Ordering the suspension or revocation of a license, permit, or
16 prior approval granted to any enterprise by any agency of the state;

17 (5) Ordering the forfeiture of the charter of a corporation

18 organized under the laws of the state, or the revocation of a certificate
19 authorizing a foreign corporation, as the term "foreign corporation" is
20 defined under section 351.015, to conduct business within the state,
21 upon finding that the board of directors or a managerial agent acting
22 on behalf of the corporation, in conducting the affairs of the
23 corporation, has authorized or engaged in conduct in violation of
24 section 574.210, and that, for the prevention of future criminal activity,
25 the public interest requires the charter of the corporation forfeited and
26 the corporation dissolved or the certificate revoked.

27 2. All property, real or personal, including money, used in the
28 course of, intended for use in the course of, derived from, or realized
29 through conduct in violation of section 574.210 is subject to civil
30 forfeiture pursuant to the Criminal Activity Forfeiture Act under
31 sections 513.600 to 513.645.

574.220. 1. Whenever the attorney general has reasonable cause
2 to believe that any person or enterprise may have knowledge of, has
3 been engaged in, or is engaging in any conduct in violation of sections
4 574.200 to 574.220, the attorney general may, in the attorney general's
5 discretion, conduct an investigation of such conduct. The attorney
6 general is authorized before the commencement of any civil or criminal
7 proceeding under sections 574.200 to 574.220 to subpoena
8 witnesses. The attorney general may issue in writing and cause to be
9 served on any person an investigative demand to compel the
10 attendance of witnesses, examine witnesses under oath, require the
11 production of evidence or documentary materials, and require answers
12 to written interrogatories to be furnished under oath.

13 2. The production of documentary material in response to an
14 investigative demand served under this section shall be made pursuant
15 to a sworn certificate, in such form as the demand designates, by the
16 person, if a natural person, to whom the demand is directed or, if not
17 a natural person, by an individual having knowledge of the facts and
18 circumstances relating to the production of materials, which certificate
19 shall affirm that all of the documentary material required by the
20 investigative demand and in the possession, custody, or control of the
21 person to whom the demand is directed has been produced and made
22 available to the custodian.

23 3. The attorney general may, in the attorney general's discretion,

24 require the production under this section of documentary materials
25 prior to the taking of any testimony of the person subpoenaed. The
26 required documentary materials shall be made available for inspection
27 or copying during normal business hours at the principal place of
28 business of the person served, or at such other time and place as may
29 be agreed upon between the person served and the attorney general.

30 4. The examination of all persons pursuant to this section shall
31 be conducted by the attorney general or by a person designated in
32 writing to be the attorney general's representative, before an officer
33 chosen by the attorney general who is authorized to administer oaths
34 in this state. The statements made shall be taken down
35 stenographically, or by a sound-recording device, and shall be
36 transcribed.

37 5. No person shall, with the intent to avoid, evade, or prevent, or
38 obstruct the compliance in whole or in part of any person with, a duly
39 served investigative demand of the attorney general, knowingly remove
40 to any place, conceal, withhold, destroy, mutilate, alter, or by any other
41 means falsify any documentary material or materials that are the
42 subject of the demand. A violation of this subsection is a class D felony
43 until December 31, 2016, and a class E felony beginning January 1,
44 2017. The attorney general shall investigate suspected violations of this
45 subsection.

46 6. In the event a witness subpoenaed under this section fails or
47 refuses to appear, or to produce documentary materials as provided in
48 this section, or to give testimony relevant or material to an
49 investigation, the attorney general may petition the circuit court in the
50 county where the witness resides for an order requiring the witness to
51 attend and testify, or to produce the documentary materials. Any
52 failure or refusal by the witness to obey an order of the court may be
53 punishable by the court as contempt.

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