

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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