

SECOND REGULAR SESSION

SENATE BILL NO. 474

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIGGINS.

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TERRY L. SPIELER, Secretary.

L2114.011

AN ACT

Relating to racketeering, with penalty provisions.

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

Section 1. 1. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity in which such person participated as a principal, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful pursuant to this section if the securities of the issue held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity after such purchase, do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer. If, in any proceeding involving an alleged investment in violation of this subsection, it is established that over half of the defendant's aggregate income for a period of two or more years immediately preceding such investment was derived from a pattern of racketeering activity, a rebuttable presumption shall arise that such investment included income derived from such pattern of racketeering activity.

2. It shall be unlawful for any person through a pattern of racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

3. It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such

enterprise's affairs through a pattern of racketeering activity.

4. It shall be unlawful for two or more persons to conspire, combine, confederate or agree to violate any of the provisions of subsections 1, 2 or 3 of this subsection.

5. Whoever violates any provision of this section is guilty of a class C felony. A violation of this section shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation.

Section 2. 1. Circuit courts may prevent and restrain violations of section 1 of this act by issuing appropriate orders, including but not limited to:

(1) Ordering any person to divest himself of any interest direct or indirect, in the enterprise; imposing reasonable restrictions on the future activities or investments of any person, including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; and

(2) Making due provision for the rights of innocent persons, ordering the dissolution of the enterprise, ordering the denial, suspension or revocation of charters of domestic corporations, certificates of authority authorizing foreign corporations to do business within the state, licenses, permits, or prior approval granted to any enterprise by any department or agency of the state or prohibiting the enterprise from engaging in any business.

2. In any proceeding pursuant to this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination, the court may enter preliminary or special injunctions, or take such other actions, including the acceptance of satisfactory performance bonds, as it may deem proper.

3. A final judgment or decree rendered in favor of the state in any criminal proceeding pursuant to section 1 of this act shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding pursuant to this section.

Section 3. 1. The attorney general shall have the power and duty to enforce the provisions of sections 1 and 2 of this act, including the authority to issue civil investigative demands pursuant to section 4 of this act, institute proceedings pursuant to section 2 of this act, and to take such actions as may be necessary to ascertain and investigate alleged violations of section 1 of this act.

2. The attorney general and the prosecuting attorneys of the several counties shall have concurrent authority to institute criminal proceedings pursuant to the provisions of section 1 of this act.

3. Nothing contained in this section shall be construed to limit the regulatory or investigative authority of any department or agency of the state whose functions might relate to persons, enterprises, or matters falling within the scope of sections 1 to 2 of this act.

Section 4. 1. Whenever the attorney general has reason to believe that any person or enterprise may be in possession, custody or control of any documentary material relevant to a racketeering investigation, he may issue in writing, and cause to be served upon such person or enterprise, a civil investigative demand requiring the production of such material for examination.

2. Each such demand shall:

(1) State the nature of the conduct constituting the alleged racketeering violation which is under investigation, the provision of law applicable thereto and the connection between the documentary material demanded and the conduct under investigation;

(2) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) State that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;

(4) Identify a racketeering investigator to whom such material shall be made available; and

(5) Contain the following statement printed conspicuously at the top of the demand: "You have the right to seek the assistance of any attorney and he may represent you in all phases of the racketeering investigation of which this civil investigative demand is a part."

3. No such demand shall:

(1) Contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by any court in connection with a grand jury investigation of such alleged racketeering violation; or

(2) Require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by any court in connection with a grand jury investigation of such alleged racketeering violation.

4. Any party upon whom any demand issued pursuant to this section has been duly served shall make such material available for inspection and copying or reproduction to the racketeering investigator designated therein at the principal place of business of such party, or at such other place as such investigator and such party thereafter may agree or as the court may direct, on the return date specified in such demand. Such party may upon agreement of the investigator substitute copies of all or any part of such material for the originals thereof.

5. The racketeering investigator to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use

made thereof and for its return. The investigator may cause the preparation of such copies of such documentary material as may be required for official use. While in the possession of the investigator, no material so produced shall be available for examination, without the consent of the party who produced such material, by any individual other than the attorney general or any racketeering investigator. Under such reasonable terms and conditions as the attorney general shall prescribe, documentary material while in the possession of the investigator shall be available for examination by the party who produced such material or any duly authorized representatives of such party.

6. Upon completion of:

(1) The racketeering investigation for which any documentary material was produced under this subsection; and

(2) Any case or proceeding arising from such investigation; the investigator shall return to the party who produced such material all such material other than copies thereof made pursuant to this section which have not passed into the control of any court or grand jury through introduction into the record of such case or proceeding.

7. When any documentary material has been produced by any party pursuant to this section for use in any racketeering investigation, and no case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such party shall be entitled, upon written demand made upon the attorney general, to the return of all documentary material, other than copies thereof made pursuant to this section, so produced by such party.

8. Whenever any person or enterprise fails to comply with any civil investigative demand duly served upon him pursuant to this section or whenever satisfactory copying or reproduction of any such material cannot be done and such party refuses to surrender such material, the attorney general may file, in the circuit court for any county in which such party resides or transacts business, and serve upon such party a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which the party maintains his or its principal place of business.

9. Within twenty days after the service of any such demand upon any person or enterprise, or at any time before the return date specified in the demand, whichever period is shorter, such party may file, in the court of common pleas of the county within which such party resides or transacts business, and serve upon the attorney general a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and

ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such party.

10. At any time during which the attorney general is in custody or control of any documentary material delivered by any party in compliance with any such demand, such party may file, in the circuit court of the county within which such documentary material was delivered, and serve upon the attorney general a petition for an order of such court requiring the performance of any duty imposed by this section.

11. Whenever any petition is filed in any court pursuant to this section, such court shall have jurisdiction to hear and determine the matter so presented, and, after a hearing at which all parties are represented, to enter such order or orders as may be required to carry into effect the provisions of this section.

Section 5. Whenever any individual refuses, on the basis of his privilege against self-incrimination, to comply with a civil investigative demand issued pursuant to section 5 of this act or to testify or produce other information in any proceeding under section 2 of this act, the attorney general may invoke the provisions of section 491.205, RSMo.

Section 6. As used in this section, the following terms mean:

(1) "Documentary material", any book, paper, record, recording, tape, report, memorandum, written communication, or other document relating to the business affairs of any person or enterprise;

(2) "Enterprise", any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce and includes legitimate as well as illegitimate entities and governmental entities;

(3) "Organized crime", any person or combination of persons engaging in or having the purpose of engaging in conduct which violates any provision of section 1 of this act;

(4) "Pattern of racketeering activity", a course of conduct requiring two or more acts of racketeering activity one of which occurred after the effective date of this section;

(5) "Racketeering activity", any act which is indictable under any of the provisions of chapters 105, 115, 195, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577 and 578, as well as any conspiracy to commit any such offenses, or the collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding twenty-

five percent per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law. Any act which otherwise would be considered racketeering activity by reason of the application of this paragraph, shall not be excluded from its application solely because the operative acts took place outside the jurisdiction of this state, if such acts would have been in violation of the law of the jurisdiction in which they occurred;

(6) "Racketeering investigator", an attorney, investigator or investigative body so designated in writing by the attorney general and charged with the duty of enforcing or carrying into effect the provisions of this section;

(7) "Racketeering investigation", any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this section or of any order, judgment or decree of any court duly entered in any case or proceeding arising pursuant to this section.

Section 7. 1. If two or more persons conspire either to commit any offense against the state, or to defraud the state, or any agency of the state in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each such person is guilty of a class C felony.

2. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Section 8. If two or more persons conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence of this state, or from discharging any duties thereof, or to induce by like means any officer of the state to leave the place, where such officer's duties are required to be performed, or to injure such officer in such officer's person or property on account of such officer's lawful discharge of those duties, or while engaged in the lawful discharge thereof, or to injure such officer's property so as to molest, interrupt, hinder, or impede such officer in the discharge of such officer's official duties, each of such persons shall be guilty of a class C felony.

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