



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

MF

Pouch Y, State Capitol
Juneau, Alaska 99811
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March 25, 1985

NCJRS

MEMORANDUM

TO: Representative Red Boucher
ATTN: Linda Hanger
FROM: Rob Waldman *RW*
Legislative Analyst
RE: Racketeering Laws in Alaska and Utah
Research Request 85-232

NOV 24 1986

ACQUISITIONS

You requested that we review the Utah statute on racketeering and specifically examine section 76-10-1602(1)(j), which defines the following acts as racketeering:

Illegal kickbacks, including bribery to influence official or political actions and receiving a bribe or bribery for endorsement of a person as a public servant,

With regard to the Utah statute, you asked us to determine:

- 1) whether HB 184 (the proposed Alaska antiracketeering statute) includes this definition as a "predicate offense"¹;
- 2) whether these activities are presently criminal offenses under Alaska statutes; and
- 3) whether other states have enacted rico laws with similar definitions of illegal activities.²

House Bill 184 does not include political kickbacks as illegal activities. Bribery is currently a criminal offense, but kickbacks are not illegal under Alaska statutes. A brief overview of rico laws, including actions in other states, follows.

¹Predicate offenses are illegal activities defined in chapter 96 of Title 18 of 18 USC 1961-1968.

²Rico laws is the acronym utilized by the Department of Justice for Racketeering statutes.

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A Brief Overview of Rico Legislation

The Racketeering and Corrupt Organizations Act of 1970 seeks to prevent organized crime from infiltrating legitimate businesses that engage in interstate and foreign commerce. It defines sanctions and the remedies against persons engaged in racketeering activities with the intention of gaining control of business enterprises. In addition, it sets criminal penalties, civil remedies that include forfeiture and divestiture of interest, and recovery methods of treble damages for persons injured by violations of the act.

Since the enactment of federal legislation, 19 states (Attachment A) have adopted legislation that authorize prosecution for rico crimes. According to Cameron Holmes, Assistant Attorney General for the state of Washington, at least 20 other states are presently in the process of drafting rico legislation. So far, all of the states have modeled their legislation after the federal rico statute, but none have adopted the federal law verbatim. The primary difference between the federal and state legislation is that the federal legislation permits prosecution only of criminal activities that affect interstate commerce, while the state legislation permits prosecution based on violation of federal and state offenses. Other less significant differences relate to the number of crimes that represent a "pattern of criminal activity", the duration between offenses and development of "criminal enterprise", and the statute of limitation. Both the federal and state laws stress civil remedies.

According to Christian Whittaker of the National Association of Attorneys General, the states of Arizona, New Mexico and Washington have enacted very comprehensive statutes that permit implementation of effective methods for criminal and civil prosecution. She recommends that all states interested in developing rico legislation contact the attorney general's offices in those states.

Basic Elements of Rico Legislation

There are five essential elements that must be proven for criminal convictions and civil claims under rico legislation.

- 1) Prohibited Conduct: Three types of prohibited conduct form the basis for rico violations:
 - a) acquiring or maintaining an interest in or control of an enterprise through racketeering (primarily, the use of a pattern of criminal activity to acquire an interest in a legitimate business);

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- b) conducting the affairs of an enterprise through racketeering (the use of a pattern of criminal activity to conduct some or all of the affairs of legitimate or completely illegitimate business); and
 - c) the use of the proceeds of racketeering to acquire or maintain an interest in an enterprise or to conduct the affairs of an enterprise (the use of the ill-gotten gains from a pattern of criminal activity in what would otherwise be a legal attempt to acquire an interest in or run an enterprise).³
- 2) Racketeering Activity: It is required that racketeering be an essential part of each prohibited conduct violation. The act must be indictable when a predicate crime listed under federal or state law is alleged.
- 3) Pattern of Illegal Activity: Racketeering is defined as two or more crimes committed as part of a "pattern" of illegal activity, and not simply two unrelated crimes.
- 4) Enterprise: Each of the prohibited conduct violations must also involve an "enterprise" that is defined as:
"individual, partnership, corporation, association, or legal entity, and any union or group of persons associated in fact although not a legal entity".⁴
- 5) Injury of Plaintiff: In addition to the preceding four elements, it must be proven that the plaintiff was injured in his business or property for civil claims under rico legislation.

The Alaska Rico Bill--HB 184

The six types of illegal activities (felonies) listed in HB 184, section 2 that are predicate offenses under rico are:

- 1) a felony against a person under AS 11.41 (homicide, assault, reckless endangerment, kidnapping, custodial interference, sexual offenses, robbery, extortion, and coercion);

³Commentary and Sectional Analysis to the 1985 act relating to Illegally Controlled Enterprises, p. 5, Alaska Attorney General.

⁴AS 11.59.900.

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- 2) a crime against property under AS 11.46 (theft, burglary, arson, criminal mischief, and forgery), punishable as a class B felony;
- 3) a felony against public administration under AS 11.56, a felony against public order under 11.61, a felony involving alcoholic beverages under AS 04 or a felony involving securities or takeover bids under AS 45.55 or 45.57;
- 4) a crime involving controlled substances under AS 11.71, punishable as an unclassified or class A or B felony;
- 5) promoting prostitution in the first degree under AS 11.66.110, promoting gambling in the first degree under AS 11.66.210; and possession of gambling records in the first degree under AS 11.66.230; and
- 6) felony conduct which is defined as "racketeering activity" under 18 U.S.C. sec 1961(1).

The specific activities mentioned in the Utah law and how they are addressed in Alaska are discussed below:

Bribery: Bribery of a public official and acceptance of a bribe by a public official are Class B felonies under AS 11.56.10 and AS 11.56.110. Each of these offenses can be one of the "illegal activities" used to substantiate a "pattern of illegal activity". However, the second illegal activity must be a class A or unclassified felony. Commercial bribery (a class C felony) is also a predicate offense (AS 11.46.660 and 11.46.670), but as with bribery of a public official, it is restricted by its required association with a class A felony. The required association with a class A felony means that two bribery violations do not support a pattern of racketeering.

Kickbacks: Kickbacks are not included as illegal activities under the Rico statute, nor are they predicate offenses under present Alaska Law. AS 11.56.120 does set penalties for receiving unlawful gratuities, however these violations are defined as class A misdemeanors. Assistant Attorney General Dean Guaneli, of the Crime Division-Chief Prosecutors office, states that it is very unlikely that the attorney general will attempt to prosecute cases in which the "pattern of illegal activity" is substantiated by a misdemeanor and a class A felony.

Dave Schwendiman, Assistant Attorney General (Racketeering Division) State of Utah, states that Utah's act has been shown to be ineffective because criminal activities as defined within the act were not identically defined in other parts of the criminal code. In addition, a bribe for political purposes is not a predicate offense. His general feeling

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concerning section 76-10-1602(1)(j) is that it is "ineffective and confusing, and recommends that Alaska not adopt a similiar definition for illegal activities under rico, unless those activities are presently felony offenses under state law.⁶

Bribery for Endorsement Purposes: No state statute specifically links political endorsement and bribery. Theta Pittman of the Alaska Public Office Commission (APOC) states that this type of offense can be construed to be a violation under Alaska's disclosure laws (AS 15.13, AS 39.50, and AS 24.45). However, violations under these statutes are classified as misdemeanors or less.⁷ In addition, Ms. Pittman stated that it is very difficult to determine criminal intent for these "election crimes". Even if the APOC believed that individuals had criminal intent in committing multiple violations, it is very unlikely that the attorney general's office would initiate rico investigations based on "sequential misdemeanors".

Utah and Other States

Of all the states that have enacted antiracketeering statutes, only Utah has defined "kickbacks and bribery for endorsement purposes" as illegal activities. Cameron Holmes, an assistant attorney general for the state of Washington, stated that the intent of this type of legislation is to develop criminal penalties to combat hardcore criminal activity, and civil remedies to divest organized crime of their ill-gotten gains. She believes that it is improper and a waste of state dollars for a legislature to draft antiracketeering legislation that attempts to prevent what she describes as petty crimes.

I hope this review of antiracketeering legislation will be useful. Attached to this memorandum are the federal, Arizona, and New Mexico rico statutes. Please contact us if you have any additional questions.

RW

Attachments

⁶According to Mr. Schwendiman, Utah used Arizona's law as a model, and adopted all illegal activities of that statute plus violations of Utah's procurement regulations. Utah's law was rushed through the legislature at the end of session and was passed without ensuring that Arizona's language conformed to Utah's existing code.

⁷Violators are not assessed criminal penalties but are assessed civil penalties (fines or imprisonment not to exceed 1 year).

ATTACHMENT A

States That Have Adopted Similar Legislation to RICO

ATTACHMENT A

States that have adopted legislation similar to the federal Racketeer-Influenced and Corrupt Organizations title:

1. Arizona Rev. Stat. Ann. § 13-2312 (1978)
2. California Penal Code § 186 (West Supp. 1983)
3. Colorado Rev. Stat. § 18-17-101 (1981)
4. 1982 Connecticut Pub. Acts. 343
5. Florida Stat. Ann. § 895.01 (West Supp. 1982)
6. Georgia Code Ann. § 16-14-1 (Supp. 1982)
7. Hawaii Rev. Stat. § 842-1 (1976)
8. Idaho Code § 18-7801 (Supp. 1982)
9. The Illinois Narcotics Profit Forfeiture Act, H.R. 2450 (1982)
10. Indiana Code Ann. § 34-45-6-1 (Burns Supp. 1982)
11. Nevada Rev. Stat. Chapter 207 (1983)
12. New Jersey Stat. Ann. § 2C:41 (West 1982)
13. New Mexico Stat. Ann. § 30-42-1 (Supp. 1978)
14. North Dakota Cent. Code § 12.1-106.1 (C Cupp. 1983)
15. Oregon Rev. Stat. § 166-715 (1981)
16. 18 Pennsylvania Cons. Stat. § 911 (1978)
17. Rhode Island Gen. Laws § 7-15-1 (Supp. 1982)
18. Utah Code Ann. § 76.10-1601 (Supp. 1981)
19. Wisconsin Stat. Ann. § 946.80 (Supp. 1982)

ATTACHMENT B

Federal RICO Statute: Organized Crime Control Act of 1970
Arizona RICO Statute
New Mexico RICO Statute

Public Law 91-450

October 14, 1970
 [S. 4235]

U.S. District
Court for the
District of Puerto
Rico.
Jurisdiction.

AN ACT

To continue the jurisdiction of the United States District Court for the District of Puerto Rico over certain cases pending in that court on June 2, 1970.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13 of the Act entitled "An Act to provide for the appointment of additional district judges, and for other purposes", approved June 2, 1970 (Public Law 91-272; 84 Stat. 294), is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; however, nothing in this section shall impair the jurisdiction of the United States District Court for the District of Puerto Rico to hear and determine any action or matter begun in the court on or before June 2, 1970."

Approved October 14, 1970.

Public Law 91-451

October 14, 1970
 [H. R. 12943]

Jellyfish
control.
Appropriation.

80 Stat. 1149.

AN ACT

To amend section 3 of the Act of November 2, 1966, to extend for three years the authority to make appropriations to carry out such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Act entitled "An Act to provide for the control or elimination of jellyfish and other such pests in the coastal waters of the United States, and for other purposes", approved November 2, 1966 (16 U.S.C. 1203), is amended by striking out "for the fiscal year ending June 30, 1970" and inserting in lieu thereof "for the period beginning July 1, 1969, and ending June 30, 1973".

Approved October 14, 1970.

Public Law 91-452

October 15, 1970
 [S. 30]

Organized Crime
Control Act of
1970.

AN ACT

Relating to the control of organized crime in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Organized Crime Control Act of 1970".

STATEMENT OF FINDINGS AND PURPOSE

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money

obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

TITLE I—SPECIAL GRAND JURY

SEC. 101. (a) Title 18, United States Code, is amended by adding immediately after chapter 215 the following new chapter:

62 Stat. 829.
18 USC 3321.

“Chapter 216.—SPECIAL GRAND JURY

^{“Sec.}
“3331. Summoning and term.
“3332. Powers and duties.
“3333. Reports.
“3334. General provisions.

“§ 3331. Summoning and term

“(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

SEC. 901. (a) Title 18, United States Code, is amended by adding immediately after chapter 95 thereof the following new chapter:

62 Stat. 683.

"Chapter 96.—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS"

"Sec.

- "1961. Definitions.
- "1962. Prohibited racketeering activities.
- "1963. Criminal penalties.
- "1964. Civil remedies.
- "1965. Venue and process.
- "1966. Expedition of actions.
- "1967. Evidence.
- "1968. Civil investigative demand.

§ 1961. Definitions

"As used in this chapter—

"(1) 'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473, relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421-24 (relating to white slave traffic); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

76 Stat. 1119.
78 Stat. 203.
72 Stat. 705.
80 Stat. 904.
76 Stat. 41.
82 Stat. 160.
75 Stat. 491.
62 Stat. 763.
70 Stat. 523.
62 Stat. 769.
81 Stat. 362.
Ante, p. 936.
62 Stat. 793.

75 Stat. 498,
492.
76 Stat. 42.
Ante, p. 937.
62 Stat. 806.

61 Stat. 157;
73 Stat. 537, 535.

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

"(3) 'person' includes any individual or entity capable of holding a legal or beneficial interest in property;

"(4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

"(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

"(6) 'unlawful debt' means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

"(7) 'racketeering investigator' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

"(8) 'racketeering investigation' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

"(9) 'documentary material' includes any book, paper, document, record, recording, or other material; and

"(10) 'Attorney General' includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

§ 1962. Prohibited activities

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 14, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. 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 under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt 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.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control

of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

§ 1964. Civil remedies

"(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any 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, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

"(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take

Court restraining orders.

Property, seizure and disposition.

Jurisdiction.

such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

"(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

"(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

§ 1965. Venue and process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

"(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

"(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

§ 1966. Expedition of actions

"In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

§ 1967. Evidence

"In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

§ 1968. Civil investigative demand

"(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon,

issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

"(b) Each such demand shall—

"(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material 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; and

"(4) identify the custodian to whom such material shall be made available.

"(c) No such demand shall—

"(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of 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 a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by—

"(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

"(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

"(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to

this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

"(5) Upon the completion of—

"(i) the racketeering investigation for which any documentary material was produced under this chapter, and

"(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such 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 person 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 subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

"(i) designate another racketeering investigator to serve as custodian thereof, and

"(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any

judicial district in which such person resides, is found, or transacts business, and serve upon such person 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 such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian 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 person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section."

(b) The table of contents of part I, title 18, United States Code, is amended by adding immediately after

75. Racketeering ----- 1951"

the following new item:

76. Racketeer Influenced and Corrupt Organizations----- 1961"

Sec. 902. (a) Paragraph (c), subsection (1), section 2516, title 18, United States Code, is amended by inserting at the end thereof between the parenthesis and the semicolon ", section 1963 (violations with respect to racketeer influenced and corrupt organizations)".

82 Stat. 216.

(b) Subsection (3), section 2517, title 18, United States Code, is amended by striking "criminal proceedings in any court of the United States or of any State or in any Federal or State grand jury proceeding" and inserting in lieu thereof "proceeding held under the authority of the United States or of any State or political subdivision thereof".

Sec. 903. The third paragraph, section 1505, title 18, United States Code, is amended by inserting "or section 1968 of this title" after "Act" and before "willfully".

76 Stat. 551.

Sec. 904. (a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

Federal and
State laws,
priority.

(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

(1) lay before any grand jury impaneled by any district court of

any

the United States any evidence concerning any alleged racketeering violation of law;

(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

62 Stat. 837.
18 USC 3561-
3574.

SEC. 1001. (a) Chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new sections:

“§ 3575. Increased sentence for dangerous special offenders

“(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

“(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it

30-41-2. Offering or paying illegal kickback.

Whoever knowingly offers or pays any remuneration in the form of any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

A. to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part with public money; or

B. to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facilities, services, or items for which payment may be made in whole or in part with public money, shall be guilty of a fourth degree felony.

History: Laws 1979, ch. 384, § 2.

30-41-3. Exceptions.

This act [30-41-1 to 30-41-3 NMSA 1978] shall not apply to:

A. a discount or other reduction in price obtained by a provider of services or other entity if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity; or

B. any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

History: Laws 1979, ch. 384, § 3.

ARTICLE 42

Racketeering

Sec.

30-42-1. Short title.
30-42-2. Purpose.
30-42-3. Definitions.

Sec.

30-42-4. Prohibited activities; penalties.
30-42-5. Enforcement authority.
30-42-6. Racketeering; civil remedies.

30-42-1. Short title.

This act [30-42-1 to 30-42-6 NMSA 1978] may be cited as the "Racketeering Act."

History: 1978 Comp., § 30-42-1, enacted by Laws
1980, ch. 40, § 1.

30-42-2. Purpose.

The purpose of the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978] is to eliminate the infiltration and illegal acquisition of legitimate economic enterprise by racketeering practices and the use of legal and illegal enterprises to further criminal activities.

History: 1978 Comp., § 30-42-2, enacted by Laws
1980, ch. 40, § 2.

30-42-3. Definitions.

As used in the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978]:

A. "racketeering" means any act which is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:

- (1) murder, as provided in Section 30-2-1 NMSA 1978;
(2) robbery, as provided in Section 30-16-2 NMSA 1978;
(3) kidnapping, as provided in Section 30-4-1 NMSA 1978;
(4) forgery, as provided in Section 30-16-10 NMSA 1978;
(5) larceny, as provided in Section 30-16-1 NMSA 1978;
(6) fraud, as provided in Section 30-16-6 NMSA 1978;
(7) embezzlement, as provided in Section 30-16-8 NMSA 1978;
(8) receiving stolen property, as provided in Section 30-16-11 NMSA 1978;
(9) bribery, as provided in Sections 30-24-1 through 30-24-3 NMSA 1978;
(10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
(11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2 NMSA 1978;
(12) extortion, as provided in Section 30-16-9 NMSA 1978;
(13) trafficking in controlled substances, as provided in Section 30-31-20 NMSA 1978;
(14) arson and aggravated arson, as provided in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;
(15) promoting prostitution, as provided in Section 30-9-4 NMSA 1978;
(16) criminal solicitation, as provided in Section 30-28-3 NMSA 1978;
(17) fraudulent securities practices, as provided in Sections 58-13-39 and 58-13-40 NMSA 1978; and
(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;
- B. "person" includes any individual or entity capable of holding a legal or beneficial interest in property;
- C. "enterprise" means any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities; and
- D. "pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of such incidents occurred after the effective date of the Racketeering Act and the last of which occurred within five years after the commission of a prior incident of racketeering.

History: 1978 Comp., § 30-42-3, enacted by Laws 1980, ch. 40, § 3.

30-42-4. Prohibited activities; penalties.

A. It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any interest in, or the establishment or operation of, any enterprise. Whoever violates this subsection is guilty of a second degree felony.

B. It is unlawful for any person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise. Whoever violates this subsection is guilty of a second degree felony.

C. It is 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 by engaging in a pattern of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

D. It is unlawful for any person to conspire to violate any of the provisions of Subsections A through C of this section. Whoever violates this subsection is guilty of a third degree felony.

E. Whoever violates Subsection A, B, C or D of this section in addition to the prescribed penalties shall forfeit to the state of New Mexico:

(1) any interest acquired or maintained in violation of the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978]; and

(2) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the Racketeering Act.

F. In any action brought by the state under the Racketeering Act, the district court shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including but not limited to the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

G. Upon conviction of a person under this section, the court shall authorize the attorney general or the district attorney to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the convicted person it shall expire and shall not revert to the convicted person.

History: 1978 Comp., § 30-42-4, enacted by Laws 1980, ch. 40, § 4.

30-42-5. Enforcement authority.

The attorney general and the district attorneys of New Mexico shall each have authority to enforce the criminal provisions of the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978] by initiating investigations, assisting grand juries, obtaining indictments, filing informations and complaints and prosecuting criminal cases.

History: 1978 Comp., § 30-42-5, enacted by Laws 1980, ch. 40, § 5.

30-42-6. Racketeering; civil remedies.

A. A person who sustains injury to his person, business or property by a pattern of racketeering activity may file an action in the district court for the recovery of three times the actual damages proved and the costs of the suit, including reasonable attorney's fees.

B. The state may file an action on behalf of those persons injured or to prevent, restrain or remedy racketeering as defined by the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978].

C. The district court has jurisdiction to prevent, restrain and remedy racketeering as defined in Subsection A of Section 30-42-3 NMSA 1978 after making provision for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders. Prior to a determination of liability, such orders may include but are not limited to entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this section as it deems proper.

D. Following a determination of liability, such orders may include but are not limited to:

(1) ordering any person to divest himself of any interest, direct or indirect, in any enterprise;

(2) imposing reasonable restrictions on the future activities or investments of any person;

(3) ordering dissolution or reorganization of any enterprise;

(4) ordering the payment of three times the damages proved to those persons injured by racketeering; and

(5) ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering incurred by the state to be paid to the general fund of New Mexico.

History: 1978 Comp., § 30-42-6, enacted by Laws

1980, ch. 40, § 6.

Emergency clause. — Laws 1980, ch. 40, § 8, makes the act effective immediately. Approved February 28, 1980.

Separability clause. — Laws 1980, ch. 40, § 7, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 43

Loan Sharking

Sec.

30-43-1. Short title.

30-43-2. Definitions.

30-43-3. Making extortionate extensions of credit.

30-43-4. Financing extortionate extensions of credit.

Sec.

30-43-5. Collection of extensions of credit by extortionate means.

30-43-1. Short title.

This act [30-43-1 to 30-43-5 NMSA 1978] may be cited as the "Loan Sharking Act."

History: 1978 Comp., § 30-43-1, enacted by Laws
1980, ch. 39, § 1.

30-43-2. Definitions.

As used in the Loan Sharking Act [30-43-1 to 30-43-5 NMSA 1978]:

A. "creditor" means any person making an extension of credit or any person claiming by, under or through any person making an extension of credit;

B. "debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the same;

C. "extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal acts other than petty misdemeanors to cause harm to the person, reputation or property of any person;

D. "extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal acts other than petty misdemeanors to cause harm to the person, reputation or property of any person;

E. "to collect an extension of credit" means to induce in any way any person to make repayment of one extension of credit;

F. "to extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid and however arising, may or shall be deferred; and

G. "repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

History: 1978 Comp., § 30-43-2, enacted by Laws
1980, ch. 39, § 2.

30-43-3. Making extortionate extensions of credit.

A. Any person who makes or conspires or attempts to make an extortionate extension of credit is guilty of a third degree felony.

B. In any prosecution pursuant to this section, if it is shown that all of the following factors were present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

CHAPTER 23

ORGANIZED CRIME AND FRAUD

Sec.

- 13-2301. Definitions.
- 13-2302. Making extortionate extensions of credit; classification.
- 13-2303. Financing extortionate extensions of credit.
- 13-2304. Collection of extensions of credit by extortionate means.
- 13-2305. Permissible inferences.
- 13-2306. Possession of altered property; classification.
- 13-2307. Trafficking in stolen property; classification.
- 13-2308. Leading organized crime; classification.
- 13-2309. Bribery of participants in professional or amateur games, sports, horse races, dog races, contests; classification.
- 13-2310. Fraudulent schemes and artifices; classification.
- 13-2311. Fraudulent schemes and practices; wilful concealment; classification.
- 13-2312. ~~Illegal control of an enterprise; illegally conducting an enterprise; classification.~~
- 13-2313. ~~Judicial powers over racketeering criminal cases.~~
- 13-2314. ~~Racketeering; civil remedies.~~
- 13-2315. ~~Racketeering; investigation of records; confidentiality; court enforcement; classification.~~
- 13-2316. Computer fraud; classification.

Chapter 23, consisting of §§ 13-2301 to 13-2308, was added by Laws 1977, Ch. 142, § 82, effective October 1, 1978.

Sections 13-2309 to 13-2311 were transferred for placement in this chapter by Laws 1977, Ch. 142, § 83, effective October 1, 1978, and Laws 1978, Ch. 201, § 156, effective October 1, 1978.

Laws 1978, Ch. 201, § 150, effective October 1, 1978, substituted "Organized Crime and Fraud" for "Organized Crime" as the heading for this chapter.

For disposition of the subject matter of sections of the former Criminal Code and derivation of sections of the revised Criminal Code, see Tables at the front of this volume.

Cross References

Classification of offenses, see § 13-601 et seq.

Fines, see § 13-801 et seq.

Sentencing, imprisonment, see § 13-701 et seq.

Law Review Commentaries

Criminal Code revision. 13 Ariz.Bar Organized crime. Ariz.State L.J. 3, J. No. 2, p. 14 (1977). 1977, p. 524.

§ 13-2301. Definitions

A. For the purposes of §§ 13-2302 through 13-2304:

1. "Creditor" means any person making such an extension of credit or any person claiming by, under, or through any person making such an extension of credit.

2. "Debtor" means any person to whom such an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the same.

3. "Extortionate extension of credit" means any extension of credit with respect to which is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

4. "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

5. "To collect an extension of credit" means to induce in any way any person to make repayment thereof.

6. "To extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

7. "Repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

B. For the purposes of §§ 13-2305 through 13-2307:

1. "Dealer in property" means a person who buys and sells property as a business.

2. "Stolen property" means property that has been the subject of any unlawful taking.

3. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person.

C. For the purposes of § 13-2308:

1. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity or member-

ship in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

2. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state.

✓ D. For the purposes of §§ 13-2312 through 13-2315, unless the context otherwise requires:

1. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

2. "Enterprise" means any corporation, association, labor union, or other legal entity or any group of individuals associated in fact although not a legal entity.

3. "Financial institution" means any bank, trust company, savings and loan association, credit union, or small money lender under the jurisdiction of the state banking department.

4. "Racketeering" means any act, committed for financial gain which is chargeable or indictable under the laws of this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:

- (a) Homicide.
- (b) Robbery.
- (c) Kidnapping.
- (d) Forgery.
- (e) Theft.
- (f) Bribery.
- (g) Gambling.
- (h) Usury.
- (i) Extortion.
- (j) Extortionate extensions of credit.
- (k) Dealing in narcotic drugs or dangerous drugs.
- (l) Trafficking in explosives, weapons or stolen property.
- (m) Leading organized crime.
- (n) Obstructing or hindering criminal investigations or prosecutions.
- (o) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.

(p) False statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands.

(q) Resale of realty with intent to defraud.

(r) Fraud in purchase or sale of securities.

(s) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.

(t) A scheme or artifice to defraud.

5. "Records" means any book, paper, writing, record, computer program or other material.

E. For the purposes of § 13-2316:

1. "Access" means to approach, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

2. "Computer" means an electronic device which performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.

3. "Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of two or more interconnected computers.

4. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.

5. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

6. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software.

7. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, marketable security or any other written instrument, as defined by § 13-2001, paragraph 7, which is transferable for value.

8. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

had long criminal record of writing bad or bogus checks and forgery. State v. Buckmaster (1963) 94 Ariz. 314, 383 P.2d 869.

17. Review

In determining whether proof of requisite intent is present in prosecution for obtaining or attempting to obtain money by means of false or bogus check, reviewing court will consider overall record, and direct its concern only to query whether there was sub-

stantial evidence to support verdict. State v. Sleskin (1970) 13 Ariz.App. 271, 475 P.2d 756.

Where defendant convicted of attempt to obtain money by means of a false check filed notice of appeal by her appointed counsel, county attorney moved that the appeal be dismissed for lack of prosecution, and examination of record and transcript of testimony disclosed no reversible error, the judgment of conviction would be affirmed. State v. Mansfield (1965) 98 Ariz. 8, 401 P.2d 409.

§ 13-2311. Fraudulent schemes and practices; wilful concealment; classification

Notwithstanding any provision of the law to the contrary, in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, is guilty of a class 5 felony.

Added as § 13-320.02 by Laws 1976, Ch. 134, § 2, eff. June 27, 1976. Renumbered as § 13-3711 and amended by Laws 1977, Ch. 142, § 107 eff. Oct. 1, 1978. Renumbered as § 13-2311 by Laws 1978, Ch. 201, § 156, eff. Oct. 1, 1978.

Historical Note

Source:

Pen.Code 1901, § 79.
Pen.Code 1913, § 74.
Rev.Code 1928, § 4519.
Code 1939, § 43-1706.
A.R.S. former §§ 13-317, 13-320.02.
Laws 1976, Ch. 134, § 2.

Adopted from the United States Code; see 18 U.S.C.A. § 1001.

The 1977 amendment added "Notwithstanding" at the beginning, deleted "notwithstanding" following "to the contrary" and "and wilfully" following "or deceive, knowingly", and substituted "class 5 felony" for "punishable by imprisonment in the state prison for not more than five years, by a fine not to exceed five thousand dollars or both".

Library References

Fraud ☞68.10.

C.J.S. Fraud § 154.

§ 13-2312. Illegal control of an enterprise; illegally conducting an enterprise; classification

A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.

B. A person commits illegally conducting an enterprise if such person is employed or associated with any enterprise and conducts or

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participates in the conduct of such enterprise's affairs through racketeering.

C. A knowing violation of this section is a class 3 felony.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

Historical Note

Adopted from the United States Code; For effective date provision of Laws see 18 U.S.C.A. §§ 1901 through 1908. 1978, Ch. 204, see note following § 13-2301.

Cross References

Racketeering,

Civil remedies, see § 13-2314.

Investigation of records, see § 13-2315.

Judicial powers over criminal cases, see § 13-2313.

§ 13-2313. Judicial powers over racketeering criminal cases

During the pendency of any criminal case charging an offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312, the superior court may, in addition to its other powers, issue an order pursuant to § 13-2314, subsections B and C. Upon conviction of a person for an offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312, the superior court may, in addition to its other powers of disposition, issue an order pursuant to § 13-2314.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

Historical Note

Adopted from the United States Code; For effective date provision of Laws see 18 U.S.C.A. §§ 1901 through 1908. 1978, Ch. 204, see note following § 13-2301.

§ 13-2314. Racketeering; civil remedies

A. A person who sustains injury to his person, business or property by racketeering as defined by § 13-2301, subsection D, paragraph 4 or by a violation of § 13-2312 may file an action in superior court for the recovery of treble damages and the costs of the suit, including reasonable attorney's fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy racketeering as defined by § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312.

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312 after making provision for the

rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders.

C. Prior to a determination of liability such orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this section as it¹ deems proper.

D. Following a determination of liability such orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.
 2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
 3. Ordering dissolution or reorganization of any enterprise.
 4. Ordering the payment of treble damages to those persons injured by racketeering as defined by § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312.
 5. Ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county which brings the action.
 6. Payment to the general fund of the state or county as appropriate to the extent not already ordered to be paid in other damages:
 - (a) Any interest acquired or maintained by a person in violation of § 13-2312.
 - (b) Any interest in, security of, claims against or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted or participated in the conduct of in violation of § 13-2312.
 - (c) An amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4.
- E. A final judgment or decree rendered in favor of the state in any criminal proceeding brought by this state shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding.

F. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312 shall be commenced within seven years after actual discovery of the violation.

G. This state may, in any civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or presiding chief judge of the superior court in which such action is pending and, upon receipt of such copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign such action for hearing, participate in the hearings and determination and cause the action to be expedited.

H. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

¹ So in original. Probably should read "the court".

Historical Note

Adopted from the United States Code; 1978 Reviser's Note:
see 18 U.S.C.A. §§ 1961 through 1968.

For effective date provision of Laws
1978, Ch. 204, see note following § 13-
2301.

Pursuant to authority of section 41-
1304.02, in subsection C of this section a
comma was inserted after the word "in-
clude".

Cross References

Judicial powers over racketeering criminal cases, see § 13-2313.

✓ § 13-2315. Racketeering; investigation of records; confidentiality; court enforcement; classification

A. A custodian of the records of a financial institution as defined in § 13-2301 shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of such financial institution when requested to be inspected by the attorney general or a county attorney authorized by the attorney general, provided such person requesting such information signs and submits a sworn statement to the custodian that the request is made in order to investigate racketeering as defined by § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312. Such records may be removed from the premises of the financial institution only for the purpose of copying the records and shall be returned within forty-eight hours. The attorney general or an authorized county attorney or any peace officer designated by such county attorney or the attorney general shall be prohibited from using or releasing such information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records shall be a bar to civil or

criminal liability against such custodian or financial institution in any action brought alleging violation of the confidentiality of such records.

B. The attorney general or the authorized county attorney may petition the superior court for enforcement of this section in the event of noncompliance with the request for inspection. Enforcement shall be granted if the request is reasonable and the attorney general or the authorized county attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of an offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 or a violation of § 13-2312.

C. The investigation authority granted pursuant to the provisions of this section may not be exercised by a county attorney in the absence of authorization by the attorney general.

D. Any person releasing information obtained pursuant to this section, except in the proper discharge of official duties, is guilty of a class 2 misdemeanor.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

Adopted from the United States Code; "classification" was substituted for see 18 U.S.C.A. §§ 1961 through 1968. "penalty".

1978 Reviser's Note:

Pursuant to authority of section 41-1304.02, in the heading of this section

§ 13-2316. Computer fraud; classification

A. A person commits computer fraud in the first degree by accessing, altering, damaging or destroying without authorization any computer, computer system, computer network, or any part of such computer, system or network, with the intent to devise or execute any scheme or artifice to defraud or deceive, or control property or services by means of false or fraudulent pretenses, representations or promises.

B. A person commits computer fraud in the second degree by intentionally and without authorization accessing, altering, damaging or destroying any computer, computer system or computer network or any computer software, program or data contained in such computer, computer system or computer network.

C. Computer fraud in the first degree is a class 3 felony. Computer fraud in the second degree is a class 6 felony.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

Historical Note

For effective date provision of Laws 1978, Ch. 204, see note following § 13-2301.

Cross References

Computer fraud, definition of terms, see § 13-2301.