

Approved: _____

Date

CRW 9/5

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by _____ Chairperson Senator Wint Winter Jr. at

10:05 a.m. on March 9, 1992 in room 514-S of the Capitol.

All members were present except:
Senators Gaines and Kerr who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Kim Spunaugle, Wichita
Laura Barnaby, Wichita
Jim West, Wichita
Linda Blackshere, Overland Park
Mike Santos, City of Overland Park Police Legal Advisor
Rich Hayse, Palmer Companies, Inc.
James Clark, Kansas County and District Attorneys Association
Ron Smith, Kansas Bar Association
T.C. Anderson, Kansas Society of Certified Public Accountants
Mark Stafford, Assistant Attorney General, Division of Consumer Protection
Michael Reeht, American Telephone & Telegraph
Eva Powers, MCI Telecommunications
Bob Storey, Direct Marketing Association

Chairman Winter brought the meeting to order by opening the hearing for SB 758.
SB 758 - grandparent visitation rights precluded when child is adopted by a third party.

Kim Spunaugle, Wichita, testified in support of SB 758. She related her personal experience of adoption and conflicts with visitation rights of the biological grandparents of their child even though the Sedgwick County Judge directed them to care for the adopted child as if the child were their own genetically. She concluded by stating although they have experienced difficulties with the biological grandparents, they have not gone before the court to have a hearing on the best interest of their child.

Laura Barnaby, Wichita, testified in support of SB 758. She expressed her concern, as a prospective adoptive parent, with what would happen if the biological grandparents were to claim their rights of visitation.

Jim West, Wichita, testified in support of SB 758. He stated his main support is for assisting in the protection of the best interest of children in Kansas.

Linda Blackshere, Overland Park, testified in opposition to SB 758. (ATTACHMENT 1)

This concluded the hearing for SB 758.

The Committee turned its attention to discussion and action on bills previously heard.
SB 447 - enacting the Kansas criminally influenced and corrupt organizations act.

Mike Santos, City of Overland Park Police Legal Advisor, presented a balloon of SB 447. He explained the balloon was a compromise agreement of all interested parties and explained the purpose of the legislation targeted organized criminal activity regardless of the individual crimes committed by a "gang" member. He further added civil cause of action was totally removed from the balloon. (ATTACHMENT 2)

Rich Hayse, Palmer Companies, Inc., responded to questions by stating they were part of the compromise and would not object to the balloon of SB 447. He concluded by stating the amendments require a pattern of activity and not the "guilt by association" that they objected to in the original version of the bill.

James Clark, Kansas County and District Attorneys Association, responded his organization supports the balloon of SB 447 and believe it is "useable" legislation.

Ron Smith, Kansas Bar Association, responded their concerns remain with the balloon offered. He stated the lack of prior convictions and the forfeiture provisions of the bill raise major policy questions. They do not feel the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:05 a.m. on March 9, 1992.

balloon removes the "guilt by association" factor and they recommend further amending SB 447 on page 2, line 16 by adding at the end of the line, "at least one occasion of conduct that resulted in a conviction." Mr. Smith continued by stating SB 447 will carry a major fiscal impact due to the increase in the court's time and the large number of cases expected to be filed.

Mike Santos responded to Mr. Smith's concerns by stating that under provisions of SB 447 as amended by the balloon, proof would have to be shown beyond a reasonable doubt. However, there could be an occasion when proceedings could continue without a conviction.

T.C. Anderson, Kansas Society of Certified Public Accountants, rose to state their suggested amendments were included in the balloon of SB 447 being offered to the Committee. They support the balloon as offered.

Chairman Winter noted the effort and time expended by the conferees in reaching the compromise offered in the balloon to SB 447. He suggested the bill be sent through the Senate Committee on Ways and Means and returned for the Subcommittee on Criminal Law to conduct further hearings on SB 447 and make a recommendation to the full Committee. The Committee agreed and turned their attention to SB 685.

SB 685 - notification of refund provisions required before telemarketing fraud provisions of consumer protection act inapplicable.

Mark Stafford, Assistant Attorney General, Division of Consumer Protection, offered a balloon to SB 685 for the Committee's consideration. He noted a further change to the balloon not included on page 3 in the printed section, "A telemarketer that has received such notice to cancel from a consumer shall then, within 10 business days of the receipt of such notice..." The "10 business days" should be further amended to read "30 business days." (ATTACHMENT 3)

Michael Reece, American Telephone & Telegraph, rose to state the balloon would satisfy their concerns.

Eva Powers, MCI Telecommunications, rose to state the balloon would also satisfy their concerns.

Bob Storey, Direct Marketing Association, rose to state they would withhold support of the bill until further examination of the balloon. He added they agreed with the other interested parties to delay their objections, if any, and would address any concerns of SB 685 when it is presented for discussion in the House of Representatives.

Senator Rock moved to amend SB 685 by adopting the balloon and further amendment offered by Mr. Stafford. Senator Morris seconded the motion. The motion to amend carried.

Senator Rock moved to recommend SB 685 favorable for passage as amended. Senator Morris seconded the motion. The motion carried.

SB 665 - creating the crime of stalking.

Senator Moran reported the Subcommittee on Criminal Law feels the language in SB 665 requires further work as it does not address all of the concerns and problems. He requested additional time for the Subcommittee to work on the bill. Chairman Winter agreed to the request and asked staff to consult with Matt Lynch, Research Assistant to the Judicial Council, and return within ten days with language recommendations for SB 665.

SB 670 - providing for independent counsel.

Chairman Winter stated that the legislature needs to make clear in SB 670 that the appropriations for independent counsel will be made by the legislature, subject to the regular legislative process.

Senator Yost spoke to SB 670 by stating that the issue that most concerned him is the ability to halt the investigation process and to release the independent counsel. He strongly supports the separation of powers but is concerned that the non-executive branches of government may have difficulty in bringing the investigation to a conclusion.

Senator Moran moved to adopt the amendments to SB 670 recommended by the Subcommittee on Criminal Law, and to further conceptually amend by adding more explicit language to identify the appropriations process. Senator Petty seconded the motion. The motion to amend carried.

Senator Moran moved to recommend SB 670 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on March 9, 1992.

SB 743 - affidavits supporting arrest warrants open for public inspection.

It was noted by Jim Clark, Kansas County and District Attorneys Association, that the practice of public inspection of affidavits already happens in eleven counties. He questioned whether or not affidavits are subject to cross examination and concluded that, in his personal opinion, perhaps the affidavits should be available to the press.

No motions were made and the Committee took no action on the bill.

SB 476 - traffic offense; juveniles prosecuted as adults.

Committee discussion ensued to clarify that SB 476 would not apply to DUI restrictions of K.S.A. 8-2117.

Senator Bond moved to recommend SB 476 favorable for passage. Senator Petty seconded the motion. The motion carried.

The Committee turned its attention to SB 758, which was heard on this date.

Senator Bond moved to recommend SB 758 favorable for passage. Senator Rock seconded the motion. The motion failed. No further motion arose on the bill.

SB 686- appeals from municipal courts.

Senator Moran moved to recommend SB 686 favorable for passage. Senator Petty seconded the motion. The motion was announced as carried. A division was called with five supporting the motion and three against. The motion carried.

SB 648 - creating the crime of abuse of power and authority conferred by a durable power of attorney document.

Senator Moran moved to recommend SB 648 favorable for passage. As no second was made, the motion died for lack of a second.

A balloon to SB 1634, from the Victims' Rights Task Force, was distributed to the Committee for consideration when the bill is addressed by the Committee. (ATTACHMENT 4)

SB 1634 - providing certain constitutional rights for victims of crimes

Having lost a quorum of the Committee, the meeting was adjourned at 11:18 a.m.

Date March 4, 1992

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

| Name/Company | Name/Company |
|---------------------------------------|--------------------------------|
| Tom Smith | KC Bar Assoc |
| Paul M. Spunangle | |
| Sharon Spunangle | |
| Sheri Cloutier / K-NASW | |
| Joan Alberts | |
| Kelly Miguas / KUSO student | |
| Linda Backhouse of Kentucky | |
| Patricia K. K. Kansas Citizens Choice | |
| Dene Johnson | Ks A.S.A.P Assn |
| SUSAN SOMERS | KSCPA |
| Mary Tetterman | |
| Wanda West | |
| Kora Barnaby | |
| Jessie Weston | |
| Patrick W. Sant | |
| Jana K. Jester | |
| Jim Tompkins | Cloud County Community College |
| John A. Spunangle | |
| Tom Spunangle | |
| Jim L. West | |
| Julienne Maslow | A.G. office |
| Nancy Lindberg | AG Office |
| R. W. P. 57 | AG |
| Helen Stephens | KPDA |
| | |
| | |
| | |

March 9, 1992

Goodmorning Senators,

I, Linda Blackshere, resident of Overland Park, and grandmother, come before you in opposition to Senate Bill #758, subsection (c). The paramount clause found in subsection (a)--in the best interest of the child--is all that is necessary regarding visitation rights for grandparents in cases of third party adoptions. Is it not traumatic enough for a child to lose its parents? Must they also be deprived of two sets of supportive grandparents, some of whom may have even helped raise the children as in my case? Were I not able to adopt my grandchildren, then I would lose any contact whatsoever per subsection (c). Think back to your grandparents--they are your past, your roots. Subsection (c) demands a sharp surgical cut from the past for the child. In as much as children think, feel, and love we can not treat them as adopt-a-pets. They deserve more consideration as well as the grandparents. For whose benefit is subsection (c)?

*Senate Judiciary Committee
March 9, 1992
Attachment 1*

SENATE BILL No. 447

By Committee on Judiciary

4-10

8 AN ACT enacting the Kansas criminally influenced and corrupt or-
9 ganizations act.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. ~~This act shall be known and may be cited as the~~
13 ~~Kansas criminally influenced and corrupt organizations act.~~

→ Add →

This act shall be known and may be cited as the organized
criminal activity act.

14 Sec. 2. The purpose of this act is to curtail criminal activity and
15 lessen criminal activities economic and political power in the state
16 by establishing crimes and penalties and providing to law enforce-
17 ment and the victims of criminal activity new civil sanctions and
18 remedies.

→ Add the word "social".

19 ~~Sec. 3. the provisions of this act shall be liberally construed to~~
20 ~~achieve its remedial purpose.~~

→ Add new Section 3

This act shall be part of and supplemental to the Kansas
criminal code.

21 Sec. 15 As used in this act:

22 (a) ~~"Alien corporation" means a corporation organized under laws~~
23 ~~other than the laws of the United States, or the laws of any state~~
24 ~~of the United States;~~

→ Add new Section 4

Nothing in this act is intended to create a civil cause of
action or liability.

25 (a) (b) "attorney general" includes the attorney general, any duly
26 authorized assistant attorney general or any assistant to the attorney
27 general that the attorney general may require to assist with the
28 concurrence of the requirements of this act;

29 (b) (c) "beneficial interest includes:

30 (1) The interest of a person as a beneficiary under a trust, in
31 which the trustee of the trust holds legal or recorded title to personal
32 or real property;

33 (2) the interest of a person as a beneficiary under any other trust
34 arrangement under which any other person holds legal or recorded
35 title to personal or real property for the benefit of such person; or

36 (3) the interest of a person under any other form of express
37 fiduciary arrangement under which any other person holds legal or
38 recorded title to personal or real property for the benefit of such
39 person;

40 (c) (d) ~~"civil proceedings" means any civil proceedings begun under~~
41 ~~this act;~~

→ add new subsection (c)

"Conduct" means performing any activity, or pursuing any
purpose, of any enterprise and includes any such activity or pursuit
by any person or entity in any manner associated with, or employed
by, such enterprise at the highest as well as at the lowest levels
thereof.

42 (d) (e) "criminal activity" means engaging in, attempting to engage
43 in, conspiring to engage in or soliciting, coercing or intimidating

*Senate Judiciary Committee
March 9, 1992*

1 another person to engage in a violation of ~~this act~~ *any of the crimes*

2 ~~(e)~~ *(f)* "criminal activity lien" means the notice as required by this

3 act;

4 ~~(f)~~ *(g)* "criminal proceeding" means any criminal proceeding begun

5 under this act;

6 ~~(g)~~ *(h)* "documentary material" means any books, documents, rec-

7 ords, writings, recordings or tangible things;

8 ~~(h)~~ *(i)* "enterprise" includes any individual, sole proprietorship part-

9 nership, corporation, trust or other legal entity, or any union, as-

10 sociation or group of persons, associated in fact although not a legal

11 entity, and includes illicit as well as licit enterprises and govern-

12 mental as well as other entities;

13 (j) "innocent party" includes bona fide purchasers and victims;

14 (k) "pattern of criminal activity" means two or more occasions of

15 conduct, that:

16 (1) Constitute criminal activity; *At least one occasion*

17 (2) are related to the affairs of the enterprise; *of conduct*

18 (3) are not isolated; and *which resulted*

19 (4) are not so closely related to each other and connected in *in a*

20 point of time and place that they constitute a single event; and *conduct*

21 where at least one of the occasions of conduct occurred after the

22 effective date of this act; and the last of the occasions of conduct

23 occurred within the statutory limits for criminal activity within the

24 state, excluding any period of imprisonment served by any person

25 engaging in the conduct, after a prior occasion of conduct;

26 (l) "pecuniary value" means:

27 (1) Anything of value in the form of money, a negotiable instru-

28 ment or a commercial interest, or anything else, the primary sig-

29 nificance of which is economic advantage; or

30 (2) any other property or service that has a value in excess of

31 \$100;

32 (m) "person" means any individual or entity holding or capable

33 of holding a legal or beneficial interest in property;

34 (n) "personal property" includes any personal property, or any

35 interest in such personal property, or any right, including bank

36 account, debts, corporate stocks, patents or copyrights. Personal

37 property and beneficial interest in personal property shall be deemed

38 to be located where the trustee is, the personal property is, or the

39 instrument evidencing the right is;

40 (o) "principal" means a person who engages in conduct consti-

41 tuting a violation or who is legally accountable for the conduct of

42 another constituting a violation; and

43 ~~(p)~~ *(r)* "real property" means any real property or any interest in

set forth in Chapters 21 and 65 of the Kansas Statutes or

any felony offense that by such offense's terms involves de-
ception or fraud or which one of such offense's statutory elements
is an attempt to defraud.

Nothing in this Act is intended to create jurisdiction
for acts that are not violations of the criminal laws
of the State of Kansas.

→ add new subsection (i)

"Entity" means any individual, partnership, corporation, en-
terprise, association in fact, group or other organization, including
legal as well as illegal, governmental as well as nongovernmental,
and economic as well as noneconomic.

→ add - in no event shall any criminal prosecution
be brought later than ten years after the
occurrence of the predicate crime.

(4) "prosecuting attorney" means the
Attorney General, any Assistant Attorneys
General, any County or District Attorney,
and Deputy or Assistant County or
District Attorney.

"proceeds" means any advantage, property, or other
thing of value, of any kind and in any form, constituting the fruits
of, derived from, or traceable to, directly or indirectly, any violation
of ~~subsection (a) or (b) of section 2, or both~~ *(A)*, or to any commission
of any of the crimes listed in subsection *(d)* of section ~~2~~ *5*.

→ add new (p) Fees or other remuneration received by
suppliers in the ordinary course of legal
business activity are not considered
→ add new (q) proceeds for the purposes of this Act.

1 real property, including any lease of, or mortgage upon, real prop-
2 erty. Real property and beneficial interest in real property shall be
3 deemed to be located where the real property is located.

4 Sec. 7.6 (a) ~~It is unlawful for any person employed by, or asso-~~
5 ~~ciated with, any enterprise to conduct or participate, directly or~~
6 ~~indirectly, in the enterprise's affairs through a pattern of criminal~~
7 ~~activity.~~

8 (b) ~~It is unlawful for any person, through a pattern of criminal~~
9 ~~activity, to acquire or maintain, directly or indirectly any interest~~
10 ~~in, or control of, any enterprise or real property.~~

11 (c) ~~It is unlawful for any person who has received any proceeds~~
12 ~~derived, directly or indirectly from a pattern of criminal activity in~~
13 ~~which such person participated as principal, to use or invest, directly~~
14 ~~or indirectly, any part of the proceeds, or any proceeds derived from~~
15 ~~the investment or use of any of these proceeds, in the acquisition,~~
16 ~~of any title to, or any right, interest or equity in, real property, or~~
17 ~~in the establishment or operation of any enterprise.~~

18 (d) ~~It is unlawful for any person to conspire or attempt to violate,~~
19 ~~either directly or through others the provisions of this act.~~

ac. 20 (b) ~~It is not unlawful for any person to purchase securities on~~
21 ~~the open market with intent to make an investment, and without~~
22 ~~the intent of controlling or participating in the control of the issuer,~~
23 ~~or of assisting another to do so, if the securities of the issuer held~~
24 ~~by the purchaser, the members of such purchaser's immediate family,~~
25 ~~and such purchaser's or their accomplices in any pattern of criminal~~
26 ~~activity do not amount in the aggregate to 1% of the outstanding~~
27 ~~securities of any one class and do not confer, either in law or in~~
28 ~~fact, the power to elect one or more directors of the issuer.~~

29 Sec. 8.7 (a) Any person convicted of conduct constituting a vio-
30 lation of any provisions of this act shall be guilty of a class C felony.

31 (b) In lieu of the fine authorized by this act any person convicted
32 of conduct constituting a violation of this act, through which such
33 person derived pecuniary value, or by which such person caused
34 personal injury, not including pain and suffering, or property damage
35 or other loss, may be sentenced to pay a fine that does not exceed
36 three times the gross value gained or three times the gross loss
37 caused, whichever is greater, plus court costs and the costs of in-
38 vestigation and prosecution reasonably incurred, less the value of
39 any property ordered forfeited under the provisions of this act. The
40 court having jurisdiction over the provisions of this act shall hold a
41 hearing to determine the fine to be assessed.

42 (c) Any person convicted of conduct constituting a violation of
43 any of the provisions of this act, shall be required to forfeit, according

add | Sec. 6 (a) It is unlawful for any person to

(1) Knowingly participate

(1) (2) Establish, participate in or conduct any of
the affairs of or pursue any purposes of any
enterprise, (or acquire or participate in any of the
profits of any enterprise) ³ through such person's
commission of (or aiding and abetting) of one or more
others to engage in a pattern of criminal activity;

(2) Acquire or maintain, directly or indirectly,
any interest in, or control of, any enterprise or
real property through a pattern of criminal ac-
tivity;

(3) Use or invest, directly or indirectly, any
part of the proceeds derived, directly or indirec-
tly from a pattern of criminal activity in which
such person participated as principal, or any
proceeds derived from the investment or use of any
of those proceeds, in the acquisition of any title
to, or any right, interest or equity in, real prop-
erty or in the establishment or operation of any
enterprise;

(4) Conspire or attempt to violate, either
directly or through others, the provisions of
this act.

(2) ^{To} provide goods or services in connection with
any activity found to be ~~to be~~ unlawful, if ~~such~~
the person or persons providing the goods or services
does not knowingly participate in the unlawful
enterprise or criminal activity. Providers of goods or
services who do not knowingly participate in an unlawful
enterprise or criminal activity shall not be subject
to the criminal forfeiture provisions contained herein.

add | except that, if the most serious crime committed is a class C felony or
higher, then each violation of ~~subsection (a) or (b)~~ shall be one class
higher than such most serious crime and if the most serious such
crime is a class A felony, then each such violation shall also be a
class A felony.

1 to the procedures established herein, to the law enforcement agencies
2 involved in the investigation of the violation, any real or personal
3 property used in the course of, intended for use in the course of,
4 derived from, or realized through conduct in violation of this act,
5 including any property constituting an interest in or means of control
6 or influence over the enterprise involved in the conduct in violation
7 of this act or any property constituting proceeds derived from the
8 conduct in violation of this act, including:

9 (1) Any position, office, appointment, tenure, commission or em-
10 ployment contract of any kind that such person acquired or main-
11 tained in violation of this act, or through which such person
12 conducted or participated in the conduct of the affairs of an enterprise
13 in violation of this act, or that afforded such person a source of
14 influence or control over the affairs of an enterprise that such person
15 exercised in violation of this act;

16 (2) any compensation, right or benefit derived from a position,
17 office, appointment, tenure, commission or employment contract de-
18 scribed in this act that accrued to such person during the occurrence
19 of conduct in violation of this act;

20 (3) any interest in, security of, claim against or property or con-
21 tractual right affording such person a source of influence or control
22 over the affairs of an enterprise that such person exercised in violation
23 of this act; or

24 (4) any amount payable or paid under any contract for goods or
25 services that was awarded or performed in violation of this act.

26 (d) A judgment of criminal forfeiture may not be entered unless
27 the indictment ^{complaint} or the information alleges the extent of property
28 subject to forfeiture. If the indictment ^{complaint} or the information alleges
29 that property is subject to criminal forfeiture a special verdict shall
30 be returned as to the extent of the property, if any, subject to the
31 forfeiture. When a verdict contains a finding of property subject to
32 a criminal forfeiture, a judgment of criminal forfeiture shall be
33 entered.

34 ~~(e) If any property included in a special verdict of criminal for-~~
35 ~~feiture: (1) cannot be located; (2) has been sold to a bona fide~~
36 ~~purchaser for value; (3) has been placed beyond the jurisdiction of~~
37 ~~the court; (4) has been substantially diminished in value by the~~
38 ~~conduct of the defendant; (5) has been commingled with other prop-~~
39 ~~erty that cannot be divided without difficulty or undue injury to~~
40 ~~innocent persons; or (6) is otherwise unreachable without undue~~
41 ~~injury to innocent person; the court may order forfeiture of any other~~
42 ~~property of the defendant up to the value of the property that is~~
43 ~~unreachable.~~

2-4/21

1 (e) Upon the filing of an indictment, ^{complaint or information} the court, after a hearing
2 with respect to which any person who will be affected has been
3 given reasonable notice and opportunity to participate, but at which
4 the usual rules of evidence shall not apply, may, based on the
5 indictment ^{complaint or information}

- 6 (1) Enter a restraining order or injunction;
- 7 (2) require the execution of a satisfactory performance bond; or
- 8 (3) take any other action, including the appointment of a receiver,
- 9 that the investigating law enforcement agency shows by a prepon-
- 10 derance of the evidence is necessary to preserve the reachability of
- 11 property subject to criminal forfeiture.

12 (f) ^(g) If no indictment, ^{complaint or information} has been filed, the ^{investigating law en-} ^{prosecuting attorney}
13 ~~forcement agency~~, in addition to the showing made in the hearing
14 otherwise specified by this act, shall similarly show that:

- 15 (1) There is probable cause to believe that the property with
- 16 respect to which the order is sought would, in the event of a con-
- 17 viction, be subject to criminal forfeiture under this act; and
- 18 (2) the requested order would not result in substantial and ir-
- 19 reparable harm or injury to the party against whom the order is to
- 20 be entered that outweighs the need to preserve the reachability of
- 21 the property.

22 No order so entered shall be effective for more than 90 days,
23 unless it is similarly extended by the court for good cause shown
24 or unless an indictment, ^{complaint or information} is returned alleging that the property is
25 subject to forfeiture.

26 (g) ^(h) Upon application by the ^{prosecuting attorney} ~~investigating law enforcement~~
27 ~~agency~~, a temporary restraining order to preserve the reachability
28 of property subject to criminal forfeiture under this act may be
29 granted without notice to any party, if:

- 30 (1) An indictment, ^{complaint or information} alleging that property is subject to criminal
- 31 forfeiture has been filed or if the court determines that there is
- 32 probable cause to believe that property with respect to which the
- 33 order is sought would, in the event of a conviction, be subject to
- 34 criminal forfeiture under this act;
- 35 (2) the property is in the possession or control of the party against
- 36 whom the order is to be entered; and
- 37 (3) the court determines that the nature of the property is such
- 38 that it can be concealed, disposed of or placed beyond the jurisdiction
- 39 of the court before any party may be heard in opposition.

40 A temporary restraining order granted without notice to any party
41 under this act shall expire within such time, not to exceed 10 days,
42 as the court fixes, unless extended for good cause shown, or unless
43 the party against whom it is entered consents to an extension for a

1 longer period. If a temporary restraining order is granted under this
 2 act without notice to any party, a hearing concerning the entry of
 3 an order under this act shall be held at the earliest practicable time
 4 and prior to the expiration of the temporary order.
 5 (h) Following the entry of a judgment that includes a fine or an
 6 order of criminal forfeiture under this act, or both, the court may
 7 enter a restraining order or injunction, require the execution of a
 8 satisfactory performance bond, or take any other action, including
 9 the appointment of a receiver, that the court deems proper to protect
 10 the interests of the parties or an innocent party.
 11 (i) An order of criminal forfeiture entered under this act shall
 12 authorize the investigating law enforcement agency to seize the prop-
 13 erty declared forfeited under this act upon such terms and conditions,
 14 relating to the time and manner of seizure, as the court shall deem
 15 proper. The investigating law enforcement agency shall direct the
 16 disposition of the property in accordance with the provisions of this
 17 act.
 18 (j) Fines collected under this act shall be applied to the costs
 19 and expenses of investigation and prosecution, including costs of
 20 resources and personnel incurred in investigation and prosecution.
 21 (k) Criminal penalties and fines under this act are supplemental
 22 and not mutually exclusive, except where designated, and shall not
 23 preclude the application of any other criminal or civil remedy under
 24 this act or any other provision of law. A D J
 25 (m) In any settlement discussions or prior to the imposition of
 26 any sentence under this act the court, in addition to any other
 27 appropriate matter, shall vigorously advocate full and complete res-
 28 titution to any aggrieved person, and the court, prior to the ac-
 29 ceptance of a plea or after a verdict, but prior to the imposition of
 30 any sentence under this act shall not consider any matter in miti-
 31 gation until full and complete restitution has been duly affected or
 32 a satisfactory explanation of why it is impractical has been made to
 33 the court.
 34 ~~Sec. 7. (a) The investigating law enforcement agency may insti-~~
 35 ~~tute civil proceedings against any enterprise other than an individual~~
 36 ~~in the appropriate jurisdiction seeking relief from conduct consti-~~
 37 ~~tuting a violation or to prevent or restrain a violation of this act. If~~
 38 ~~the plaintiff in such a proceeding proves the alleged violation by a~~
 39 ~~preponderance of the evidence, the court, after making due provision~~
 40 ~~for the rights of innocent persons, may grant relief by entering any~~
 41 ~~appropriate order or judgment, including:~~
 42 (1) ~~Ordering any defendant to divest oneself of any interest in~~
 43 ~~any enterprise, or in any real property;~~

(i) Any defendant may be convicted of a violation of subsection (a) (1), (a) (2), ^{(a) (3) and (a) (4)} ~~subsec-~~ ~~tion (c), (d), and (e)~~, one or more predicate crimes, or any grouping of the above, and may be sentenced for all consecutively, concurrently, or as otherwise provided by law.

1 ~~(2) imposing reasonable restrictions upon the future activities or~~
2 ~~investments of any defendant, including prohibiting any defendant~~
3 ~~from engaging in the same type of endeavor as the enterprise in~~
4 ~~which the defendant was engaged in violation of this act;~~

5 ~~(3) ordering the suspension or revocation of a licence, permit or~~
6 ~~prior approval granted to any enterprise by any agency of the state;~~

7 ~~(4) ordering the dissolution or reorganization of any enterprise;~~
8 ~~or~~

9 ~~(5) ordering the surrender of the charter of a corporation orga-~~
10 ~~nized under the laws of this state or the revocation of a certificate~~
11 ~~authorizing a foreign corporation to conduct business within the state,~~
12 ~~upon finding that the board of directors or a managerial agent acting~~
13 ~~on behalf of the corporation in conducting the affairs of the corpo-~~
14 ~~ration, has authorized or engaged in conduct made unlawful by this~~
15 ~~act, and that, for the prevention of future criminal conduct, the~~
16 ~~public interest requires the charter of the corporation dissolved or~~
17 ~~the certificate revoked.~~

18 ~~In a proceeding initiated under this subsection, injunctive relief~~
19 ~~shall be granted in conformity with the principles that govern the~~
20 ~~granting of relief from injury or threatened injury in other cases,~~
21 ~~but no showing of special or irreparable injury shall have to be~~
22 ~~made. Pending final determination of a proceeding initiated under~~
23 ~~this subsection, a temporary restraining order or a preliminary in-~~
24 ~~junction may be issued upon a showing of immediate danger of~~
25 ~~significant injury, including the possibility that any judgment for~~
26 ~~money damages might be difficult to execute. If the court issues an~~
27 ~~injunction, or grants other relief under this subsection, or the plaintiff~~
28 ~~otherwise substantially prevails, the plaintiff shall also recover rea-~~
29 ~~sonable attorney fees in the trial and appellate courts and costs of~~
30 ~~investigation and litigation reasonably incurred.~~

31 ~~(b) Notwithstanding any other provision of law, any pleading,~~
32 ~~motion or other paper filed in connection with a proceeding or action~~
33 ~~under subsection (a) shall be verified. Where such pleading, motion~~
34 ~~or other paper includes an allegation of fraud, coercion or accomplice~~
35 ~~or conspiratorial accountability, it shall state, insofar as practicable,~~
36 ~~the circumstances with particularity. The verification by an aggrieved~~
37 ~~party and the signature of an attorney required by this subsection~~
38 ~~shall constitute a certification by such party and attorney that such~~
39 ~~party and attorney have carefully read the pleading, motion or other~~
40 ~~paper and based on a reasonable inquiry, believes that:~~

41 ~~(1) It is well grounded in fact;~~

42 ~~(2) it is warranted by existing law, or a good faith argument for~~
43 ~~the extension, modification or reversal of existing law; and-~~

1 ~~(3) it is not made for any improper purpose, including to harass,~~
2 ~~to cause unnecessary delay, to impose a needless increase in the~~
3 ~~cost of litigation, or to force an unjust settlement through the serious~~
4 ~~character of the allegation.~~

5 ~~If a pleading, motion or other paper is verified or signed in vi-~~
6 ~~olation of the certification provisions of this subsection the court,~~
7 ~~upon motion or upon its own initiative, after hearing and appropriate~~
8 ~~findings of fact, shall impose upon the person who verified such~~
9 ~~pleading, motion or other paper or the attorney who signed such~~
10 ~~pleading, motion or other paper, or both, a fit and proper sanction,~~
11 ~~which may include an order to pay to the other party or parties the~~
12 ~~amount of the reasonable expenses incurred because of the pleading,~~
13 ~~motion or other paper, including reasonable attorney fees. If the~~
14 ~~court determines that the filing of the pleading, motion or the paper~~
15 ~~was frivolous, the court shall award treble actual expenses, including~~
16 ~~attorney fees.~~

17 ~~(e) The law enforcement authority may institute proceedings~~
18 ~~against any enterprise other than an individual to recover a civil~~
19 ~~penalty to be imposed in the discretion of the court for conduct~~
20 ~~constituting a violation of any provision of section 5. The civil penalty~~
21 ~~shall not exceed \$100,000 less the value of any property criminally~~
22 ~~forfeited or any fine imposed under section 7. Penalties collected~~
23 ~~under this subsection shall be applied to the costs and expenses of~~
24 ~~investigation and prosecution, including costs of resources and per-~~
25 ~~sonnel incurred in investigation and prosecution, and the balance,~~
26 ~~if any, to the racketeering investigation and prosecution fund estab-~~
27 ~~lished under section 9.~~

28 ~~(d) Upon the filing of a civil proceeding or action under sub-~~
29 ~~section (a), a law enforcement authority shall immediately notify the~~
30 ~~attorney general of the filing. The attorney general, upon timely~~
31 ~~application, may intervene in any civil proceeding or action brought~~
32 ~~under subsection (a) if the attorney general certified that, in the~~
33 ~~opinion of the attorney general, the proceeding or action is of general~~
34 ~~public importance.~~

35 ~~(e) Notwithstanding any other provision of law providing a shorter~~
36 ~~statute of limitations, a civil proceeding or action under this section~~
37 ~~may be commenced within five years after the conduct made unlawful~~
38 ~~under section 5 or when the cause of action otherwise accrues or~~
39 ~~within any longer statutory period that shall be applicable. If a~~
40 ~~criminal proceeding or civil action or other proceeding is brought~~
41 ~~or intervened in by the attorney general to punish, prevent or re-~~
42 ~~strain any activity made unlawful under section 5, the running of~~
43 ~~the period of limitations prescribed by this subsection with respect~~

1 ~~to any other cause of action of an investigating law enforcement~~
2 ~~agency under subsection (a), based in whole or part upon any matter~~
3 ~~complained of in any such prosecution, action or proceeding, shall~~
4 ~~be suspended during the pendency of such prosecution, action or~~
5 ~~proceeding and for two years following its termination.~~

Sec 6 7. ~~(f)~~ Notwithstanding any other provision of this section, any person
7 who has perfected a security interest in personal or real property
8 or a beneficial interest in personal or real property for the payment
9 of an enforceable debt or other similar obligation prior to the filing
10 of a criminal activity lien notice ~~or a lis pendens~~ in reference to
11 such property or interest may foreclose such interest as otherwise
12 provided by law. The foreclosure of such interest shall, insofar as it
13 is practicable, be made in such a fashion that such foreclosure will
14 not otherwise interfere with a forfeiture under this act.

15 ~~(g) Personal service of any process in a proceeding or action under~~
16 ~~this section may be made upon any person outside this state if the~~
17 ~~person was a principal in any conduct constituting a violation of this~~
18 ~~act in this state. The person shall be deemed to have thereby sub-~~
19 ~~mitted to the jurisdiction of the courts of this state for the purposes~~
20 ~~of this section.~~

21 ~~(h) The application of any civil remedy under this section shall~~
22 ~~not preclude the application of any other civil or criminal remedy~~
23 ~~under this act or any other provision of law. Civil remedies under~~
24 ~~this section are supplemental and not mutually exclusive.~~

25 Sec. 8. (a) The investigating law enforcement authority shall dis-
26 pose of all property ordered forfeited in any criminal proceeding
27 under this act as soon as feasible, making due provisions for the
28 rights of innocent persons by:

- 29 (1) Public sale;
30 (2) transfer to a state governmental agency for official use;
31 (3) sale or transfer to an innocent person; or
32 (4) destruction, if the property is not needed for evidence in any
33 pending criminal or civil proceeding.

34 (b) Any interest in personal or real property not exercisable by,
35 or transferable for value by the law enforcement agency shall expire
36 and shall not revert to the defendant. No defendant or any person
37 acting in concert with such defendant or on such defendant's behalf
38 shall be eligible to purchase forfeited property from the law en-
39 forcement agency.

40 (c) With respect to property ordered forfeited, fine imposed or
41 civil penalty imposed in any criminal ~~or civil~~ proceeding under this
42 act, the court may, upon petition of law enforcement authority or
43 any other person authorize:

1 (1) The compromise of claims;

2 (2) the awarding of compensation to persons providing informa-
3 tion resulting in a forfeiture under this act;

4 (3) the granting of petitions for mitigation or remission of for-
5 feiture or fines, restore forfeited property or imposed fines to victims
6 ~~of a violation of section 5, or~~

7 (4) the taking of any other action to protect the rights of innocent
8 persons that is in the interest of justice and that is consistent with
9 the purposes of this act.

10 (d) The proceeds of any sale or other disposition of forfeited
11 property imposed under this act, whether by final judgment, set-
12 tlement or otherwise, shall be applied as follows:

13 (1) To the fees and costs of the forfeiture and sale, including
14 expenses of seizure, maintenance and custody of the property pend-
15 ing the property's disposition, advertising and court costs;

16 (2) to all costs and expenses of investigation and prosecution,
17 including costs of resources and personnel incurred in investigation
18 and prosecution; and

19 (3) the balance to the credit of the law enforcement authority in
20 such proportions as are represented by the costs and expenses of
21 investigation and prosecution in the criminal activity investigation
22 and prosecution fund established by section 9.

23 Sec. 9. (a) The proceeds of all forfeitures ordered or fines ~~or~~
24 ~~civil penalties~~ imposed under this act shall be remitted to the state
25 treasurer for deposit in the state treasury and credit to the criminal
26 activity investigation and prosecution fund of the law enforcement
27 agency conducting the investigation or making application pursuant
28 to this act.

29 (b) There is hereby established in the state treasury the criminal
30 activity investigation and prosecution fund. Moneys in the criminal
31 activity investigation and prosecution fund shall be used for the costs
32 and expenses of investigation and prosecution, ~~whether criminally~~
33 ~~or civilly~~, of conduct made unlawful by this act, including costs of
34 resources and personnel.

35 Sec. 10. (a) Upon the institution of any criminal ~~or civil pro-~~
36 ~~ceeding or action~~ ^{prosecution} under this act, the law enforcement authority ^{prosecuting authority} then
37 or at any time during the pendency of the proceeding may file in
38 the official records of any one or more counties a criminal activity
39 lien notice. No filing fee or other charge shall be required as a
40 condition for filing the criminal activity lien notice, and the clerk of
41 the court, upon the presentation of a criminal activity lien notice,
42 shall immediately record such lien in the official records.

43 (b) The criminal activity lien notice shall be signed by the law

prosecuting attorney

~~enforcement authority~~ The notice shall be in such form as the attorney general prescribes and shall set forth the following information:

(1) The name of the person against whom the criminal ^{*prosecution*} ~~or civil~~ proceeding or action has been brought. In its discretion, the ~~law enforcement authority~~ ^{*prosecuting attorney*} may name in the criminal activity lien notice any other aliases, names or fictitious names under which the person may be known. In its discretion, the ~~law enforcement authority~~ ^{*prosecuting attorney*} may name in the criminal activity lien notice any corporation, partnership or other entity that is either controlled by or entirely owned by the person;

(2) if known to the ~~law enforcement authority~~ ^{*prosecuting attorney*}, the current residence and business addresses of the person named in the criminal activity lien notice and of the other names set forth in the criminal activity lien notice;

(3) a reference to the criminal ~~or civil~~ proceeding ~~or action~~ stating that a proceeding under this act has been brought against the person named in the criminal activity lien notice, the name of the court where the proceeding or action has been brought and, if known to the ~~law enforcement authority~~ ^{*prosecuting attorney*} at the time of filing the criminal activity lien notice, the case number of the proceeding or action;

(4) a statement that the notice is being filed pursuant to this act; and

(5) the name and address of the ~~law enforcement authority~~ ^{*prosecuting attorney*} filing the criminal activity lien notice and the name of the individual signing the criminal activity lien notice.

A criminal activity lien notice shall apply only to one person and, to the extent applicable, any aliases, fictitious names or other names, including names of corporations, partnerships or other entities, to the extent permitted in this section. A separate criminal activity lien notice shall be filed for any other person against whom the ~~law enforcement authority~~ ^{*prosecuting attorney*} desires to file a criminal activity lien notice under this section.

(c) The ~~law enforcement authority~~ ^{*prosecuting attorney*}, as soon as practicable after the filing of each criminal activity lien notice, shall furnish to the person named in the notice by certified mail, return receipt requested, to the last known business or residential address, either a copy of the recorded notice or a copy of the notice with a notation on it of the court in which the notice has been recorded. The failure of the ~~law enforcement authority~~ ^{*prosecuting attorney*} to furnish a copy of the notice under this section shall not invalidate or otherwise affect the notice.

(d) The filing of a criminal activity lien notice creates, from the time of the filing, a lien in favor of the lienholder on the following

1 property of the person named in the notice and against any other
2 names set forth in the notice:

3 (1) Any personal or real property situated in the county where
4 the notice is filed then or thereafter owned by the person or under
5 any of the names; and

6 (2) any beneficial interest in it located in the county where the
7 notice is filed then or thereafter owned by the person or under any
8 of the names.

9 The lien shall commence and attach as of the time of filing of the
10 criminal activity lien notice and shall continue thereafter until ex-
11 piration, termination or release. The lien created in favor of the
12 lienholder shall be superior and prior to the interest of any other
13 person in the person or real property or beneficial interest in it, if
14 the interest is acquired subsequent to the filing of the notice.

15 (e) In conjunction with any civil proceeding or action: ^{prosecution} the filing

16 ~~(1) The law enforcement authority may file without prior court~~
17 ~~order in any county lis pendens under the provisions of state law~~
18 ~~and, in such case, any person acquiring an interest in the real~~
19 ~~property or beneficial interest in such real property, if the real~~
20 ~~property or a beneficial interest in such real property is acquired~~
21 ~~subsequent to the filing of the lis pendens, shall take the interest~~
22 ~~subject to the civil proceeding or action and any subsequent judg-~~
23 ~~ment of forfeiture, and~~

24 ~~(b) if a criminal activity lien notice has been filed, the law en-~~
25 ~~forcement authority may name as defendants, in addition to the~~
26 ~~person named in the notice, any person acquiring an interest in the~~
27 ~~personal or real property or beneficial interest in such personal or~~
28 ~~real property subsequent to the filing of the notice. If a judgment~~
29 ~~of forfeiture is entered in the proceeding or action in favor of the~~
30 ~~plaintiff, the interest of any person in the property that was acquired~~
31 ~~subsequent to the filing of the notice and judgment of forfeiture~~
32 ~~shall be subject to the notice and judgment of forfeiture.~~

33 (f) Upon the entry of a final judgment of forfeiture in favor of
34 the plaintiff, the title to the forfeited property shall:

35 (1) In the case of real property, or a beneficial interest in such
36 real property, relate back to the date of filing of the criminal activity
37 lien notice in the official records of the county where the real prop-
38 erty or a beneficial interest in such real property is located; and if
39 no criminal activity lien notice is filed, then to the date of the filing
40 of any notice of lis pendens under subsection (e) in the official records
41 of the county where the real property or a beneficial interest in such
42 real property is located; and, if no criminal activity lien notice or
43 notice of lis pendens is filed, then to the date of recording of the

of an indictment or complaint seeking criminal forfeiture.

1 final judgment of forfeiture in the official records of the county where
 2 the real property or a beneficial interest in such real property is
 3 located; and

4 (2) in the case of personal property or a beneficial interest in
 5 such personal property, relate back to the date the personal property
 6 or the beneficial interest in it was seized by the law enforcement
 7 agency, or the date of filing of a criminal activity lien notice in the
 8 official records of the county where the personal property or a ben-
 9 efiticial interest in such personal property is located, but if the prop-
 10 erty was not seized or no criminal activity lien notice was filed, then
 11 to the date of the recording of the final judgment of forfeiture in
 12 the official records of the court where the personal property or a
 13 beneficial interest in such personal property is located.

14 ~~(g) If personal or real property or a beneficial interest in such~~
 15 ~~personal or real property subject to forfeiture is conveyed, alienated,~~
 16 ~~disposed of or otherwise rendered unavailable for forfeiture after the~~
 17 ~~filing of a criminal activity lien notice, or after the filing of a civil~~
 18 ~~proceeding or action or criminal proceeding, whichever is earlier,~~
 19 ~~the claimant may institute an action in any court against the person~~
 20 ~~named in the criminal activity lien notice or the defendant in the~~
 21 ~~civil proceeding or criminal proceeding, and the court shall enter~~
 22 ~~final judgment against the person named in the criminal activity lien~~
 23 ~~notice or the defendant in the civil proceeding or action or criminal~~
 24 ~~proceeding in an amount equal to the fair market value of the prop-~~
 25 ~~erty or any beneficial interest in such personal or real property~~
 26 ~~together with investigative costs and attorney fees incurred by the~~
 27 ~~plaintiff in the action. If a civil proceeding or action is pending, such~~
 28 ~~action shall be filed only in the court where such civil proceeding~~
 29 ~~or action is pending.~~

30 (s) (M) If personal or real property or a beneficial interest in such
 31 personal or real property subject to forfeiture is conveyed, alienated
 32 or otherwise disposed of after the filing of a criminal activity lien
 33 notice ~~or after the filing of a civil proceeding of action~~ or criminal
 34 proceeding, whichever is earlier, the court may treat such convey-
 35 ance, alienation or disposition as a fraudulent and preferential
 36 conveyance.

37 (h) (K) A trustee, who acquires actual knowledge that a criminal ac-
 38 tivity lien notice or a ~~civil proceeding or action~~ or criminal proceeding
 39 has been filed against any person for whom the trustee holds legal
 40 or recorded title to personal or real property, shall immediately
 41 furnish to the law enforcement authority the following:

- 42 (1) The name and address of the person, as known to the trustee;
- 43 (2) the names and addresses, as known to the trustee, of all other

1 persons for whose benefit the trustee holds title to the personal or
2 real property; and

3 (3) if requested by the ^{prosecuting attorney} law enforcement authority, a copy of the
4 trust agreement or other instrument under which the trustee holds
5 legal or record title to the personal or real property. ~~Any trustee~~
6 ~~who fails to comply with the provisions of this section is guilty of a~~
7 ~~violation of this act.~~

8 ~~(j) Any trustee who transfers or conveys title to personal or real~~
9 ~~property for which a criminal activity lien notice has been filed at~~
10 ~~the time of transfer or conveyance in the county where the personal~~
11 ~~or real property is located naming a person who holds a beneficial~~
12 ~~interest in personal or real property, if the trustee has actual notice~~
13 ~~of the criminal activity lien notice, shall be liable to the law en-~~
14 ~~forcement authority for the greater of:~~

15 ~~(1) The amount of proceeds received directly by the person~~
16 ~~named in the criminal activity lien notice as a result of the transfer~~
17 ~~or conveyance;~~

18 ~~(2) the amount of proceeds received by the trustee as a result~~
19 ~~of the transfer or conveyance and distributed to the person named~~
20 ~~in the criminal activity lien notice; or~~

21 ~~(3) the fair market value of the interest of the person named in~~
22 ~~the criminal activity lien notice in the personal or real property or~~
23 ~~conveyance; but if the trustee transfers or conveys the personal or~~
24 ~~real property for at least its fair market value and holds the proceeds~~
25 ~~that would otherwise be paid or distributed to the beneficiary or at~~
26 ~~the direction of the beneficiary or such beneficiary's designee, the~~
27 ~~trustee's liability shall not exceed the amount of the proceeds held~~
28 ~~for so long as the proceeds are held by the trustee.~~

29 ~~(i) The filing of a criminal activity lien notice shall not constitute~~
30 ~~a lien on the recorded title to personal or real property as owned~~
31 ~~by the trustee except to the extent the trustee is named in the~~
32 ~~criminal activity lien notice. The law enforcement agency may bring~~
33 ~~a civil proceeding in any court against the trustee to recover from~~
34 ~~the trustee the amounts set forth in subsection (g), and the law~~
35 ~~enforcement authority shall also be entitled to recover investigative~~
36 ~~costs and attorney fees incurred by the law enforcement authority.~~

37 ~~(j) The filing of a criminal activity lien notice shall not affect the~~
38 ~~use to which personal or real property or a beneficial interest in it~~
39 ~~owned by the person named in the criminal activity lien may be~~
40 ~~put or the right of the person to receive any ^{assets} rents or other~~
41 ~~proceeds resulting from the use and ownership, but not the sale, of~~
42 ~~the property, until a judgment of forfeiture is entered.~~

43 ~~(k) (1) The provisions of this section shall not apply to any trans-~~

2-14/21

1 fer or conveyance by a trustee under a court order, unless the court
2 order is entered in an action between the trustee and the beneficiary.

3 (2) Unless the trustee has actual knowledge that a person owning
4 a beneficial interest in the trust is named in a criminal activity lien
5 notice or is otherwise a defendant in a civil proceeding or action,
6 this section shall not apply to:

7 (A) Any conveyance by a trustee required under the terms of
8 any trust agreement, where trust agreement is a matter of public
9 record prior to the filing of any criminal activity lien notice; or

10 (B) any transfer or conveyance by a trustee to all of the persons
11 who own a beneficial interest in the trust.

12 (i) ~~(n)~~ The term of a criminal activity lien notice shall be for a period
13 of six years from the date of filing unless a renewal criminal activity
14 lien notice has been filed by the law enforcement authority and, in
15 such case, the term of the renewal lien notice shall be for a period
16 of six years from the date of this filing. The law enforcement authority
17 shall be entitled to only one renewal of the criminal activity lien
18 notice.

19 (m) ~~(o)~~ ^{prosecuting attorney} The ~~law enforcement authority~~ filing the criminal activity lien
20 notice may release in whole or in part any criminal activity lien
21 notice or may release any personal or real property or beneficial
22 interest in such personal or real property from the criminal activity
23 lien notice upon such terms and conditions as such authority may
24 determine. Any release of a criminal activity lien notice executed
25 by the law enforcement authority may be filed in the official records
26 of any court. No charge or fee shall be imposed for the filing of any
27 release of a criminal activity lien notice.

28 (n) ~~(p)~~ ~~If no civil proceeding or action has been instituted by the~~
29 ~~law enforcement authority seeking a forfeiture of any property owned~~
30 ~~by a person named in the criminal activity lien notice, the acquittal~~
31 ~~in the criminal proceeding of the person named in the criminal~~
32 ~~activity lien notice or the dismissal of the criminal proceeding shall~~
33 ~~terminate the criminal activity lien notice and, in such case, the~~
34 ~~filing of the criminal activity lien notice shall have no effect. If a~~
35 ~~civil proceeding has been instituted, in the event the criminal pro-~~
36 ~~ceeding has been dismissed or the person named in the criminal~~
37 ~~activity lien notice has been acquitted in the criminal proceeding,~~
38 ~~the criminal activity lien notice shall continue for the duration of~~
39 ~~the civil proceeding.~~

40 (o) ~~(q)~~ If no criminal or ~~civil proceeding~~ or action under this act is
41 then pending against the person named in a criminal activity lien
42 notice, any person named in a criminal activity lien notice may
43 institute an action against the ~~law enforcement authority~~ filing the
^{prosecuting attorney}

1 notice, in the jurisdiction where the notice has been filed, seeking
2 a release or extinguishment of the notice and, in such case:

3 (1) The court, upon the motion of the person, shall immediately
4 enter an order setting a date for hearing, which date shall be not
5 less than five nor more than 10 days after the suit has been filed,
6 and the order along with a copy of the complaint shall be served
7 on the law enforcement authority within three days after the insti-
8 tution of the suit. At the hearing, the court shall take evidence on
9 the issue of whether any personal or real property or beneficial
10 interest in it owned by such person is covered by the criminal activity
11 lien notice or otherwise is subject to forfeiture under this act and,
12 if such person shows by the preponderance of the evidence that the
13 criminal activity lien notice is not applicable to such person or that
14 any personal or real property or beneficial interest in such personal
15 or real property owned by such person is not subject to forfeiture
16 under this act, the court shall enter a judgment extinguishing the
17 criminal activity lien notice or releasing the personal or real property
18 or beneficial interest in such personal or real property from the
19 criminal activity lien notice;

20 (2) the court shall immediately enter its order releasing from the
21 criminal activity lien notice any specific personal or real property or
22 beneficial interest in such personal or real property, if a sale of the
23 personal or real property or beneficial interest in such personal or
24 real property is pending and the filing of the notice prevents the
25 sale of the property or interest, but the proceeds resulting from the
26 sale of the personal or real property or beneficial interest in such
27 personal or real property shall be deposited into the registry of the
28 court, subject to the further order of the court; and

29 (3) at the hearing set forth in subsection ~~(1)~~, the court may
30 release from the criminal activity lien notice any personal or real
31 property or beneficial interest in such personal or real property upon
32 the posting by such person of such security as is equal to the value
33 of the personal or real property or beneficial interest in such personal
34 or real property owned by such person.

35 ~~(r) In the event a civil proceeding is pending against a person~~
36 ~~named in a criminal activity lien notice, the court upon motion by~~
37 ~~the person may grant the relief set forth in this section.~~

38 ~~Sec 11 (a) Each alien corporation desiring to acquire of record~~
39 ~~any personal or real property in this state shall have, prior to ac-~~
40 ~~quisition, and shall maintain continuously in this state during any~~
41 ~~year thereafter in which the personal or real property is owned by~~
42 ~~the alien corporation:~~

43 ~~(1) A registered office, and~~

1 ~~(2) a registered agent, which agent may be either: (A) An indi-~~
 2 ~~vidual resident in the state whose business office is identical with~~
 3 ~~the registered office, or (B) another corporation authorized to transact~~
 4 ~~business in this state having a business office identical with the~~
 5 ~~registered office.~~

6 ~~(b) Each registered agent appointed under this section, on whom~~
 7 ~~process may be served, shall file a statement in writing with the~~
 8 ~~official accepting the appointment as registered agent simultaneously~~
 9 ~~with being designated.~~

10 ~~(c) Each alien corporation shall file with the official no earlier~~
 11 ~~than January 1 and no later than July 1 of each year, a sworn report~~
 12 ~~on such forms as the official shall prescribe setting forth:~~

13 ~~(1) The name of the alien corporation;~~

14 ~~(2) the street address of the principal office of the alien~~
 15 ~~corporation;~~

16 ~~(3) the names and street addresses of each officer and each di-~~
 17 ~~rector of the alien corporation;~~

18 ~~(4) the names and street addresses of the registered agent and~~
 19 ~~registered office of the alien corporation;~~

20 ~~(5) the signature of the corporate president, vice president, sec-~~
 21 ~~retary, assistant secretary or treasurer attesting to the accuracy of~~
 22 ~~the report as of the day immediately preceding filing of the report.~~

23 ~~(d) The official shall collect a filing fee of \$15 for each such report~~
 24 ~~filed and a fee of \$20 plus the past year's fee for a late filing.~~

25 ~~(e) The official shall record the status of any alien corporation~~
 26 ~~that fails to comply with the requirements of this section.~~

27 ~~(f) Each alien corporation that fails to file a report as required~~
 28 ~~by this section or fails to maintain a registered office and a registered~~
 29 ~~agent as required by this section shall not be entitled to own, pur-~~
 30 ~~chase or sell any personal or real property in this state and shall~~
 31 ~~not be entitled to sue or defend in the courts of this state until such~~
 32 ~~requirements have been complied with.~~

33 ~~(g) The filing of a report by a corporation as required by this~~
 34 ~~section shall be solely for the purposes of this act and shall not be~~
 35 ~~used as a determination of whether the corporation is actually doing~~
 36 ~~business in this state.~~

37 Sec. 12.11 (a) Whenever any person has engaged in, is engaging
 38 in or is about to engage in any conduct constituting a violation of
 39 any of the provisions of section 5, the attorney general may conduct
 40 an investigation of the conduct. The attorney general is authorized
 41 before the commencement of any ~~civil or~~ criminal proceeding ~~or~~
 42 ~~action~~ under this act to subpoena witnesses, compel their attendance,
 43 examine them under oath or require the production of any books,

1 documents, records, writings, recordings or tangible things.

2 (b) Service of subpoena of the attorney general under this section
3 may be made by:

4 (1) Delivery of a duly executed copy of the subpoena to the
5 person served, or if a person is not a natural person, to the principal
6 place of business of the person to be served; or

7 (2) mailing by certified mail, return receipt requested, a duly
8 executed copy of the subpoena addressed to the person to be served
9 at such person's principal place of business in this state or, if the
10 person has no place of business in this state of such person's principal
11 place of business.

12 (c) any subpoena issued by the attorney general under this section
13 shall contain the following information:

14 (1) The nature of the conduct constituting the alleged violation
15 that is under investigation and the provision of law applicable to
16 such violation;

17 (2) the date, not less than 10 days from the date of service of
18 the subpoena, and place where the person is required to appear or
19 produce documentary material in such person's possession, custody
20 or control; and

21 (3) a description by class of any documentary material required
22 to be produced that indicates the material demanded.

23 (d) When documentary material is demanded by subpoena, the
24 subpoena shall not:

25 (1) Contain any requirement that would be unreasonable or im-
26 proper if contained in a subpoena duces tecum issued by a court of
27 this state; or

28 (2) require the disclosure of any documentary material that would
29 be privileged, or that for any other reason would not be required
30 by a subpoena duces tecum issued by a court of this state.

31 (e) The production of documentary material in response to a
32 subpoena served under this section shall be made under a sworn
33 certificate, in such form as the subpoena designates, by a sworn
34 certificate, if a natural person, to whom the demand is directed or,
35 if not a natural person, by a person having knowledge of the facts
36 and circumstances relating to the production, to the effect that all
37 of the documentary material required by the demand and in the
38 possession, custody or control of the person to whom the demand
39 is directed has been produced and made available to the custodian.

40 (f) The attorney general may require the production under this
41 section of documentary material prior to the taking of any testimony
42 of the person subpoenaed. The required documentary material shall
43 be made available for inspection or copying during normal business

1 hours at the principal place of business of the person served, or at
2 such other time and place as may be agreed upon by the person
3 served and the attorney general.

4 (g) The examination of all witnesses under this section shall be
5 conducted by the attorney general before an officer authorized to
6 administer oaths in this state. The testimony shall be taken steno-
7 graphically or by a sound recording device and shall be transcribed.
8 The attorney general shall exclude from the place where the ex-
9 amination is held all persons except the person being examined, such
10 person's counsel, the officer before whom the testimony is to be
11 taken, and any stenographer taking such testimony. Any person com-
12 pelled to appear under a demand for oral testimony under this act
13 may be accompanied, represented and advised by counsel. The ex-
14 amination shall be conducted in a manner consistent with the rules
15 of this state dealing with the taking of depositions.

16 (h) While in the possession of the attorney general and under
17 such reasonable terms and conditions as the attorney general shall
18 prescribe:

19 (1) Documentary material shall be available for examination by
20 the person who produced the material or by any duly authorized
21 representative of the person; and

22 (2) transcripts of oral testimony shall be available for examination
23 by the person who produced such testimony, or such person's
24 counsel.

25 Except as otherwise provided in this section, no documentary
26 material, transcripts, oral testimony or copies of the foregoing, in
27 the possession of the attorney general shall be available for exami-
28 nation by any individual other than another law enforcement official
29 without the consent of the person who produced the material or
30 transcript.

31 (i) No person served with a subpoena by the attorney general
32 under this section shall be paid the same fees and mileage as paid
33 witnesses in the court of this state.

34 (j) No person shall, with intent to avoid, evade, prevent or ob-
35 struct compliance in whole or in part by any person with any duly
36 served subpoena of the attorney general under this section, know-
37 ingly remove from any place, conceal, withhold, destroy, mutilate,
38 alter or by any other means falsify any documentary material that
39 is the subject of the subpoena. The attorney general shall investigate
40 suspected violations of this section and shall commence and try all
41 prosecutions under this section.

(k) In the event a witness served with a subpoena by the attorney
general under this section fails or refuses to appear or to produce

1 documentary material as provided by the subpoena, or to give tes-
 2 timony relevant or material to the investigation, the attorney general
 3 may petition the court, of the county where the witness resides, for
 4 an order requiring the witness to attend and to testify or to produce
 5 the documentary material. Any failure or refusal by the witness to
 6 obey an order of the court may be punishable by the court as
 7 contempt.

8 Sec. 18.12 (a) If a person is or may be called to produce evidence
 9 at a hearing or trial under this act or at an investigation brought by
 10 the attorney general under section 12 the court for the judicial district
 11 in which the hearing, trial or investigation is or may be held, upon
 12 certification in writing of a request of the law enforcement authority
 13 for the judicial district, or any person in a hearing or trial, shall
 14 issue an order, ex parte or after a hearing, requiring the person to
 15 produce evidence, notwithstanding such person's refusal to do so on
 16 the basis of privilege against self-incrimination.

17 (b) The law enforcement authority may certify in writing a re-
 18 quest for an ex parte order under this section if in such authority's
 19 judgment:

20 (1) The production of the evidence may be necessary to the public
 21 interest; and

22 (2) the person has refused or is likely to refuse to produce evi-
 23 dence on the basis of such person's privilege against self-
 24 incrimination.

25 ~~(c) Any person in a hearing or trial may certify in writing a~~
 26 ~~request for an order under this section to be issued after an immunity~~
 27 ~~hearing and the due service of the certification. A copy of such~~
 28 ~~person's certification shall be served on the clerk of the court in~~
 29 ~~which the hearing or trial is or may be held 30 days before the~~
 30 ~~immunity hearing. The court shall grant the requested order of~~
 31 ~~immunity where:~~

32 ~~(1) The production of the information is necessary to a fair de-~~
 33 ~~termination of the matter pending at the hearing or trial;~~

34 ~~(2) the person has refused or is likely to refuse to produce the~~
 35 ~~information on the basis of such person's privilege against self-in-~~
 36 ~~crimination; and~~

37 ~~(3) no objection to the order is made by the law enforcement~~
 38 ~~authority.~~

39 (c) If a person refuses, on the basis of such person's privilege
 40 against self-incrimination, to produce evidence in any proceeding
 41 described in this section, and the presiding officer informs the person
 42 of an order issued under this section, the person may not refuse to
 43 comply with the order on the basis of such person's privilege against

1 self-incrimination. If the person refuses to comply with the order,
2 such person may be punished by the court issuing an order for
3 contempt.

4 (e) The production of evidence compelled by order issued under
5 this section, and any information directly or indirectly derived from
6 such evidence, may not be used against the person in a subsequent
7 criminal case, except in a prosecution for perjury, false swearing, or
8 an offense otherwise involving a failure to comply with the order.

9 ~~Sec. 14. The attorney general may bring a civil proceeding or
10 action on behalf of this state in federal court for civil relief under
11 any comparable provision of federal law. No civil proceeding or action
12 brought by the attorney general under this section shall impair the
13 authority of any county, municipality, township or political subdi-
14 vision to bring a proceeding or action on its own behalf or impair
15 its authority to engage its own counsel in connection with the pro-
16 ceeding or action.~~

17 ~~Sec. 15. When the language of this act is the same or similar
18 to the language of title IX of public law 91-452 (18 U.S.C. § 1961
19 et seq.), the courts of this state in construing this act shall follow
20 the construction given to federal law by the United States supreme
21 court or the United States court of appeals of the tenth circuit.~~

22 Sec. 16. If any provision of this act or the application of it to
23 any person or circumstance is held to be invalid or unconstitutional,
24 it shall be conclusively presumed that the legislature would have
25 enacted the remainder of this act without such invalid or unconsti-
26 tutional provision.

27 Sec. 16. This act shall take effect and be in force from and after
28 its publication in the statute book.

→ New Section 13

The criminal forfeiture provisions contained in this Act are intended to be new and additional law enforcement remedies. Nothing in this Act is intended to reduce or restrict the civil forfeiture procedures set forth in Chapter 65 of the Kansas Statutes or any other forfeiture procedures, whether enacted by the State of Kansas or the Federal Government.

SENATE BILL No. 685

By Committee on Judiciary

2-17

8 AN ACT concerning the Kansas consumer protection act; relating to
9 telemarketing fraud; amending K.S.A. 1991 Supp. 50-672, 50-673
10 and 50-675 and repealing the existing sections.
11

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

13 Section 1. K.S.A. 1991 Supp. 50-672 is hereby amended to read
14 as follows: 50-672. (a) Any verbal agreement made by a consumer
15 to purchase any goods or services from a telemarketer shall not be
16 considered valid and legally binding unless the telemarketer receives
17 from the consumer a signed ~~contract~~ confirmation that discloses in
18 full the terms of the sale agreed upon.

19 (b) The ~~contract~~ confirmation shall include, but is not limited
20 to, the following information:

21 (1) The name, address, and telephone number of the
22 telemarketer;

23 (2) *the address and telephone number at which personal or voice*
24 *contact with an employee or agent of the telemarketer can be made*
25 *during normal business hours;*

26 (3) a list of all prices or fees being requested, including any
27 handling, shipping, delivery, or other charges;

28 (3) (4) the date of the transaction;

29 (4) (5) a detailed description of the goods or services being sold;

30 (5) (6) a duplicate copy with the complete information as pre-
31 sented in the original ~~contract~~ confirmation, to be retained by the
32 consumer as proof of the terms of the agreement to purchase; and

33 (6) (7) in a type size of a minimum of twelve points, in a space
34 immediately preceding the space allotted for the consumer signature,
35 the following statement:

36 "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS
37 YOU SIGN THIS ~~CONTRACT~~ CONFIRMATION AND RETURN
38 IT TO THE SELLER."

39 (c) A telemarketer may not make or submit any charge to the
40 consumer's credit card account until the telemarketer has received
41 from the consumer an original copy of a ~~contract~~ confirmation,
42 signed by the consumer, that complies with this section. Any mer-
43 chandise sent or services provided without such written ~~contract~~

Senate Judiciary Committee
March 9, 1992
Attachment 3

1 *confirmation* shall be considered as unsolicited goods subject to the
2 provisions of K.S.A. 50-617, and amendments thereto.

3 (d) No consumer shall be held liable for payment for any good
4 or service provided by a telemarketer unless such telemarketer has
5 first received the written consent of the consumer in the form of a
6 ~~contract~~ *confirmation* as defined in this section.

7 (e) In the event that the consumer sends payment to the tele-
8 marketer in the form of a personal check, cash money, or any other
9 form of payment other than credit card without having included a
10 signed copy of such ~~contract~~ *confirmation*, the consumer shall have
11 the right to choose at any time to cancel the sale by notifying the
12 telemarketer in writing, provided the consumer returns to the te-
13 telemarketer the goods sold in substantially the same condition as when
14 they were received by the consumer. A telemarketer that has re-
15 ceived such notice to cancel from a consumer shall then, within 10
16 business days of the receipt of such notice:

17 (1) Refund all payments made, including any down payment
18 made under the agreement;

19 (2) return any goods or property traded in to the seller on account
20 of or in contemplation of the agreement, in substantially the same
21 condition as when received by the telemarketer; and

22 (3) take any action necessary or appropriate to terminate promptly
23 any security interest created in connection with the agreement.

24 Sec. 2. K.S.A. 1991 Supp. 50-673 is hereby amended to read as
25 follows: 50-673. The provisions of K.S.A. 1991 Supp. 50-671 through
26 50-674 *and amendments thereto* do not apply to a transaction:

27 (a) That has been made in accordance with prior negotiations in
28 the course of a visit by the consumer to a merchant operating a
29 business establishment that has a fixed permanent location and where
30 consumer goods or services are displayed or offered for sale on a
31 continuing basis;

32 (b) in which the business establishment making the solicitation
33 has made a prior sale to the consumer or has a clear, preexisting
34 business relationship with the consumer, provided that relationship
35 resulted in the consumer becoming aware of the full name, business
36 address and phone number of the establishment;

37 (c) in which the consumer purchases goods or services pursuant
38 to an examination of a television, radio, or print advertisement or
39 a sample, brochure, catalogue, or other mailing material of the te-
40 telemarketer that contains:

41 (1) The name, address, and telephone number of the
42 telemarketer;

43 (2) a full description of the goods or services being sold along

1 with a list of all prices or fees being requested, including any han-
2 dling, shipping, or delivery charges; and

3 (3) any limitations or restrictions that apply to the offer; or

4 (d) in which the consumer ~~is initially solicited by postcard or~~
5 ~~other written notice sent through the mail and such postcard or~~
6 ~~other written notice states that the consumer~~ may obtain a full refund
7 for the return of undamaged and unused goods or a cancellation of
8 services notice to the seller within seven days after receipt by the
9 consumer, and the seller will process the refund within 30 days after
10 receipt of the returned merchandise by the consumer or the refund
11 for any services not performed or a pro rata refund for any services
12 not yet performed for the consumer;

13 Sec. 3. K.S.A. 1991 Supp. 50-675 is hereby amended to read as
14 follows: 50-675. (a) This act shall be part of and supplemental to the
15 Kansas consumer protection act.

16 (b) ~~Any attempt to collect a fee, or enforce a credit card charge~~
17 ~~or transaction is an unconscionable act within the meaning of K.S.A.~~
18 ~~50-627 and amendments thereto.~~

19 Sec. 4. K.S.A. 1991 Supp. 50-672, 50-673 and 50-675 are hereby
20 repealed.

21 Sec. 5. This act shall take effect and be in force from and after
22 its publication in the statute book.

The review, return, and refund privilege shall be disclosed to the consumer orally by telephone or in writing with advertising, promotional material or with delivery of the product or service. The words "satisfaction guaranteed," "free inspection," "no risk guarantee" or similar words and phrases meet the requirements of this act.

(e) Any telemarketer who, pursuant to this section, is exempted from K.S.A. 1991 Supp. 50-671 through 50-674 and amendments thereto, impliedly warrants the goods or property to be satisfactory to the consumer to the extent that

the consumer shall have the right to choose at any time to cancel the sale by notifying the telemarketer in writing, provided the consumer returns to the telemarketer the goods sold in substantially the same condition as when they were received by the consumer. A telemarketer that has received such notice to cancel from a consumer shall then, within 10 business days of the receipt of such notice:

(1) Refund all payments made, including any down payment made under the agreement;

(2) return any goods or property traded in to the seller on account of or in contemplation of the agreement, in substantially the same condition as when received by the telemarketer; and

(3) take any action necessary or appropriate to terminate promptly any security interest created in connection with the agreement.

(b) Any attempt to collect a fee, or enforce a credit card charge or transaction or any refusal to make a refund to the consumer in violation of this act is an unconscionable act within the meaning of K.S.A. 50-627 and amendments thereto.

Senate Concurrent Resolution No. 1634

By Committee on Judiciary

2-6

This balloon version would be acceptable by the Attorney General and his Victims Rights Task Force.

8 A PROPOSITION to amend article 15 of the constitution of the state
9 of Kansas by adding a new section thereto, prescribing certain
10 rights for victims of crime.
11

12 *Be it resolved by the Legislature of the State of Kansas, two-thirds*
13 *of the members elected (or appointed) and qualified to the Senate*
14 *and two-thirds of the members elected (or appointed) and qualified*
15 *to the House of Representatives concurring therein:*

16 Section 1. The following proposition to amend the constitution
17 of the state of Kansas shall be submitted to the qualified electors of
18 the state for their approval or rejection: Article 15 of the constitution
19 of the state of Kansas is amended by adding a new section thereto
20 to read as follows:

21 "§ 15. Victims' rights. (a) Victims of crime shall be entitled to
22 certain basic rights, including the right to be informed of, to be
23 present at, ~~and to be heard at all critical stages of the criminal~~
24 justice process, to the extent that these rights do not interfere
25 with the constitutional rights of the accused.

as defined by law
and
public hearings, as defined by law,
and to be heard at sentencing or at any
other time deemed appropriate by
the court,

26 "(b) Nothing in this section shall be construed as creating a
27 cause of action for money damages against the state, a county, a
28 municipality, or any of the agencies, instrumentalities, or em-
29 ployees thereof, ~~provided that the legislature may, by statutory~~
30 ~~enactment, reverse, modify or supersede any judicial decision or~~
31 ~~rule arising from any cause of action brought pursuant to this~~
32 ~~section.~~

33 "(c) Nothing in this section shall be construed to authorize a
34 court to set aside or to void a finding of guilt, or an acceptance
35 of a plea of guilty in any criminal case."

36 Sec. 2. The following statement shall be printed on the ballot
37 with the amendment as a whole:

38 "*Explanatory statement:* This amendment would prescribe that
39 victims of crime would be guaranteed certain basic rights during
40 the criminal justice process as long as they do not interfere with
41 the constitutional rights of the accused. Such rights include the
42 right to be informed, be present and be heard at all stages of
43 the criminal justice process. This amendment does not provide

Senate Judiciary Committee

March 9, 1992

Attachment 4

1/2

1 or create a cause of action for money damages against the state,
2 a county, a municipality or any agency, instrumentality or em-
3 ployee thereof nor does this amendment authorize a court to set
4 aside or void a finding of guilt or an acceptance of a plea of guilty
5 in any criminal case.

6 "A vote for this amendment would guarantee certain basic rights
7 for victims of crime as long as such rights do not interfere with
8 the rights of the accused.

9 "A vote against this amendment would continue the present
10 situation where victims of crime are not provided certain specific
11 guaranteed constitutional rights."

12 Sec. 3. This resolution, if approved by two-thirds of the members
13 elected (or appointed) and qualified to the senate and two-thirds of
14 the members elected (or appointed) and qualified to the house of
15 representatives, shall be entered on the journals, together with the
16 yeas and nays. The secretary of state shall cause this resolution to
17 be published as provided by law and shall cause the proposed amend-
18 ment to be submitted to the electors of the state at the general
19 election in the year 1992 unless a special election is called at a
20 sooner date by concurrent resolution of the legislature, in which
21 case it shall be submitted to the electors of the state at the special
22 election.