

CORRECTED
SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 135

As Amended by Senate Committee on
Judiciary

Brief*

SB 135 would create the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act). The bill would:

- Define “racketeering activity” to mean to commit, attempt to commit, conspire to commit or to solicit, coerce, or intimidate another person to commit certain crimes enumerated in the bill;
- Define “pattern of racketeering activity” to mean engaging in at least two incidents of racketeering activity with the same or similar intents, results, accomplices, victims or methods of commission or that are otherwise interrelated by distinguishing characteristics where at least one incident occurs after the effective date of the act and the last such incident occurred within five years, excluding any period of imprisonment, after a prior incident of racketeering activity;
- Make it a crime to, with criminal intent, receive proceeds from a pattern of racketeering activity, acquire or maintain any interest in or control of any enterprise or real property through a pattern of racketeering activity, or be employed by or associated with an enterprise to conduct or participate in racketeering activity;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Make this crime, or the conspiracy to commit this crime, a severity level 2, person felony and provide that any person convicted of this crime may be fined not more than three times the gross value gained or loss caused, plus court costs and costs of investigation and prosecution;
- Set bail for any person charged with this crime at a minimum of \$50,000 cash or surety, unless the court determines the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available, and the defendant agrees to comply with such supervision;
- Authorize a district court to issue orders enjoining violations of the Act, such as ordering a defendant to divest any interest in an enterprise, imposing reasonable restrictions upon the activities or investments of a defendant, ordering the dissolution or reorganization of an enterprise, ordering the suspension or revocation of a license or permit granted by the state, or ordering the forfeiture of a corporate charter or certificate;
- Authorize the Attorney General, assistant attorney general, and county or district attorney or designee to administer oaths or affirmations, subpoena witnesses or material, collect evidence relating to violations of the Kansas RICO Act, and request *ex parte* orders to not disclose the subpoena for a period of time; and
- Add violation of the Kansas RICO Act as a crime subject to the civil forfeiture statute, allowing the seizure of proceeds of the unlawful activity, whether or not there is a prosecution or conviction.

Background

The sponsors of the bill are Senator Mike Petersen and Senator Jean Schodorf. In the Senate Judiciary Committee,

Senator Mike Petersen and representatives from the Kansas City Police Department and the Office of the Attorney General testified in support of the bill. According to Senator Petersen, SB 135 is the same as 2010 SB 523, as amended by the 2010 Senate Judiciary Committee. 2010 SB 523, as amended, passed the Senate but died in the House Judiciary Committee. The proponents explained the bill is patterned on federal and Florida statutes and would provide law enforcement with a tool to weaken organized crime. The Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association provided written testimony supporting the bill.

No opponents provided testimony. The Senate Committee amended the bill to remove involuntary manslaughter, vehicular manslaughter, and voluntary manslaughter from the list of crimes that can constitute racketeering activity, as there was concern whether it is technically possible to conspire to commit these offenses given their statutory definitions. The Committee recommended the bill be passed as amended.

The fiscal note on the bill, as introduced, states the bill would have the potential to increase litigation in the courts because it creates a new crime. Should litigation increase, the Office of Judicial Administration (OJA) indicates there would be a fiscal effect on court system operation. However, because the number or complexity of additional court cases cannot be predicted, a precise fiscal effect cannot be determined. OJA indicates any fiscal effect would likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Kansas Sentencing Commission estimates SB 135 would require no additional beds in FY 2012 but would require an increase of one to three adult prison beds by FY 2013. The current number of male inmates exceeds the available bed capacity of 8,259 and, based on Kansas Sentencing Commission projections, it is estimated that at the end of FY 2011 and FY 2012, the number of male inmates will

exceed available capacity by 235 beds and 394 beds, respectively. The Governor's recommended FY 2012 budget includes \$2.5 million for contract prison beds to address these issues. If facility construction is necessary, the Department of Corrections has identified two capacity expansion projects: two high medium security housing units at El Dorado Correctional Facility that would provide 512 beds with a construction cost of \$22,687,232 (\$44,311 per bed X 512) and operating costs of \$9,339,904 (\$18,242 per bed X 512); and one minimum security housing unit at Ellsworth Correctional Facility that would provide 100 beds with a construction cost of \$5,935,000 (\$59,350 per bed X 100) and operating costs of \$1,832,000 (\$18,320 per bed X 100).

Any capacity needed beyond these options would require additional contract or construction costs. Actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied. Any further prison commitments that result in additional parolees could require additional staff and resources so that the additional parolees can be effectively supervised. Any fiscal effect associated with SB 135 is not reflected in *The FY 2012 Governor's Budget Report*.