

Kansas Racketeer Influenced and Corrupt Organization Act; Criminal Street Gangs; SB 16

SB 16 creates the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act). The bill also amends the criminal street gangs definitions statute.

Kansas RICO Act

The Kansas RICO Act makes it a crime for any covered person:

- Who has with criminal intent received any proceeds from a pattern of racketeering activity or through the collection of an unlawful debt, to use or invest such proceeds in acquiring any title, right, interest, or equity in real property, or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain any interest in or control of any enterprise or real property; or
- Who is employed by, or associated with, any enterprise to conduct or participate in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

“Covered person” is defined as any person who is a criminal street gang member or associate, has engaged or is engaged in human trafficking or aggravated human trafficking, or has engaged in or is engaged in the unlawful manufacturing, cultivation, or distribution of controlled substances.

“Enterprise” is defined as any individual, sole proprietorship, partnership, corporation, business trust, Kansas union, legal entity, unchartered union, association, group of individuals associated in fact although not a legal entity, governmental entity, or criminal street gang.

“Pattern of racketeering activity” is defined as engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission, or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents. At least one of such incidents would have to occur after the effective date of the Act, and the last such incident would have to occur within five years, excluding any period of imprisonment, of a prior incident of racketeering activity.

“Racketeering activity” is defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit certain felony and misdemeanor crimes enumerated in the Act, or any conduct defined as “racketeering activity” in the federal RICO Act.

“Unlawful debt” is defined as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Kansas because it was incurred or contracted in violation of various federal or Kansas racing, gambling, gaming, or usurious lending laws.

The Act also defines the terms “trustee,” “real property,” “documentary material,” and “beneficial interest.”

The crime created by this act or conspiracy to commit this crime is a severity level 2, person felony. The court also may impose a fine of up to three times the gross value gained or three times the gross loss caused, whichever is greater, if the defendant gained pecuniary value or caused personal injury, property damage, or other loss. Bail for persons charged with this crime is a minimum of \$50,000, unless certain conditions are met. Own recognizance (O.R.) bonds are not permitted.

The Act grants the district court the power to enjoin violations of the Act by divesting a defendant of any interest in any enterprise; imposing reasonable restrictions on activities or investments of the defendant; dissolving or reorganizing any enterprise; suspending or revoking a license, permit, or prior approval granted by a state agency; or ordering the forfeiture of a corporate charter or certificate, upon certain findings. All property used in the course of, intended for use in the course of, derived from, or realized through conduct violating the Act is subject to civil forfeiture.

Prosecuting attorneys are authorized to administer oaths or affirmations, subpoena witnesses or material, and collect evidence relating to activity violating the Act. They also are allowed to apply *ex parte* to a district court for an order requiring a subpoenaed person or entity to not disclose the subpoena to anyone except the subpoenaed person’s attorney for a period of 90 days. Such order may be granted only if the prosecutor shows factual grounds reasonably indicating a violation of the Act, that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence, and facts showing that disclosure of the subpoena would hamper or impede the investigation or cause a flight from prosecution. If a person or enterprise fails to obey a subpoena, the prosecuting attorney may apply to the district court for an order compelling compliance, and a person failing to obey any court order under the Act is subject to being adjudged in contempt of court and punishment by fine and imprisonment.

Criminal Street Gangs

The bill amends the criminal street gangs definitions statute by adjusting the criteria required to identify a person as a “criminal street gang member.” To meet the definition, a person must meet three or more criteria from a list set forth in the statute. The bill separates what had been three separate parts of a single criteria into three separate criteria: that the person frequents a particular criminal street gang’s area; adopts such gang’s style of dress, color, use of hand signs or tattoos; or associates with known criminal street gang members.