

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2369
(Senator Heitkamp)
(Representative Gulleon)

AN ACT to amend and reenact subsections 1 and 2 of section 12.1-06.1-01, subsection 3 of section 12.1-06.1-02, section 12.1-06.1-04, subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05, subsection 1 of section 12.1-06.1-06, and subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code, relating to the illegal transportation or disposal of radioactive waste material or hazardous waste; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though ~~such~~ those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
2. For the purposes of sections ~~12.1-06.1-03~~ 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of banking and financial institutions or its commissioner, or the state banking board, or the state credit union board.
 - d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section 23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.

- e. "Pattern of racketeering activity" requires least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
- e. f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
- (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading a criminal association.
 - (13) Obstructing or hindering criminal investigations or prosecutions.
 - (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
 - (15) Fraud.
 - (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
 - (17) Obscenity.
 - (18) Child pornography.
 - (19) Prostitution.
- f. g. "Records" means any book, paper, writing, record, computer program, or other material.

SECTION 2. AMENDMENT. Subsection 3 of section 12.1-06.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Leading ~~organized crime~~ a criminal association is a class B felony.

SECTION 3. AMENDMENT. Section 12.1-06.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-04. Judicial powers over racketeering criminal cases. During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

SECTION 4. AMENDMENT. Subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by ~~such~~ the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
4. Following a determination of liability orders may include:
 - a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
 - b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
 - c. Ordering dissolution or reorganization of any enterprise.
 - d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon ~~such~~ application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county ~~which~~ that brings the action.
 - f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
 - (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.

- (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that ~~such the~~ racketeering offense has occurred as a part of a pattern of racketeering activity.
 - g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that ~~such the~~ racketeering offense has occurred as a part of a pattern of racketeering activity.
5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:
 - a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.
7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of section 12.1-06.1-02 or 12.1-06.1-03 ~~shall~~ must be commenced within seven years of actual discovery of the violation.

SECTION 5. AMENDMENT. Subsection 1 of section 12.1-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if ~~such the~~ offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-07 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, ~~provided if~~ the person requesting the information signs and submits a sworn statement to the custodian that the request is made ~~in order~~ to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03. Records may be removed from the premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general ~~is prohibited from using~~ may not use or releasing such release the information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought

alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section ~~in the event of~~ upon noncompliance with the request for inspection. Enforcement ~~shall~~ must be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2369.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 94 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State