

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2369

Introduced by

Senator Heitkamp

Representative Gulleason

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

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

- 9 1. For the purpose of section 12.1-06.1-02:
- 10 a. "Combination" means persons who collaborate in carrying on or furthering the
11 activities or purposes of a criminal association even though ~~such~~ those
12 persons may not know each other's identity or membership in the combination
13 may change from time to time or one or more members may stand in a
14 wholesaler-retailer or other arm's-length relationship with others as to
15 activities or dealings between or among themselves in an illicit operation.
- 16 b. "Criminal association" means any combination of persons or enterprises
17 engaging, or having the purpose of engaging, on a continuing basis in
18 conduct which violates any one or more provisions of any felony statute of
19 this state or which is the willful and illegal transportation or disposal of
20 radioactive waste material or hazardous waste.
- 21 2. For the purposes of sections ~~12.1-06.1-03~~ 12.1-06.1-02 through 12.1-06.1-07,
22 unless the context otherwise requires:
- 23 a. "Control" means the possession of a sufficient interest to permit substantial
24 direction over the affairs of an enterprise.

- 1 b. "Enterprise" means any corporation, limited liability company, association,
2 labor union, or other legal entity or any group of persons associated in fact
3 although not a legal entity.
- 4 c. "Financial institution" means any bank, trust company, savings and loan
5 association, credit union, or money lender under the jurisdiction of the state
6 department of banking and financial institutions or its commissioner, or the
7 state banking board, or the state credit union board.
- 8 d. "Illegal transportation or disposal of radioactive waste material or hazardous
9 waste" means the transportation or disposal of radioactive waste material in
10 violation of section 23-20.2-09 or rules adopted pursuant to that section which
11 were in effect on January 1, 1997, or hazardous waste in willful violation of
12 chapter 23-20.3 or the rules adopted pursuant to that chapter which were in
13 effect on January 1, 1997, except for the handling of conditionally exempt
14 small quantities of hazardous waste as referenced in section 33-24-02-05 of
15 the North Dakota Administrative Code.
- 16 e. "Pattern of racketeering activity" requires least two acts of racketeering
17 activity, one of which occurred after July 8, 1987, and the last of which
18 occurred within ten years, excluding any period of imprisonment, after the
19 commission of a prior act of racketeering activity.
- 20 e: f. "Racketeering" means any act including any criminal attempt, facilitation,
21 solicitation, or conspiracy, committed for financial gain, which is chargeable or
22 indictable under the laws of the state in which the act occurred and, if the act
23 occurred in a state other than this state, would be chargeable or indictable
24 under the laws of this state had the act occurred in this state and punishable
25 by imprisonment for more than one year, regardless of whether such act is
26 charged or indicted, involving:
- 27 (1) Homicide.
28 (2) Robbery.
29 (3) Kidnapping.
30 (4) Forgery.
31 (5) Theft.

- 1 (6) Bribery.
- 2 (7) Gambling.
- 3 (8) Usury.
- 4 (9) Extortion.
- 5 (10) Unlawful delivery of controlled substances.
- 6 (11) Trafficking in explosives, weapons, or stolen property.
- 7 (12) Leading a criminal association.
- 8 (13) Obstructing or hindering criminal investigations or prosecutions.
- 9 (14) Asserting false claims including, but not limited to, false claims asserted
- 10 through fraud or arson.
- 11 (15) Fraud.
- 12 (16) Sale of unregistered securities or real property securities and
- 13 transactions involving such securities by unregistered dealers or
- 14 salesmen.
- 15 (17) Obscenity.
- 16 (18) Child pornography.
- 17 (19) Prostitution.

18 f. g. "Records" means any book, paper, writing, record, computer program, or
19 other material.

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

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

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

25 **12.1-06.1-04. Judicial powers over racketeering criminal cases.** During the
26 pendency of any criminal case charging an offense included in the definition of racketeering if it
27 is shown to the satisfaction of the court when ruling upon the application for the order that ~~such~~
28 the racketeering offense has occurred as a part of a pattern of racketeering activity or a
29 violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers,
30 issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a
31 person for an offense included in the definition of racketeering if it is shown to the satisfaction of

1 the court when ruling upon the application for the order that ~~such~~ the racketeering offense has
2 occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or
3 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section
4 12.1-06.1-05.

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

- 8 1. A person who sustains injury to person, business, or property by a pattern of
9 racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may
10 file an action in district court for the recovery of treble damages and the costs of
11 the suit, including reasonable attorney fees. The state may file an action in behalf
12 of those persons injured or to prevent, restrain, or remedy a pattern of racketeering
13 activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 14 2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of
15 racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after
16 making provision for the rights of all innocent persons affected by ~~such~~ the
17 violation and after hearing or trial, as appropriate, by issuing appropriate orders.
- 18 4. Following a determination of liability orders may include:
 - 19 a. Ordering any person to divest himself of any interests, direct or indirect, in
20 any enterprise.
 - 21 b. Imposing reasonable restrictions on the future activities or investments of any
22 person, including prohibiting any person from engaging in the same type of
23 endeavor as the enterprise engaged in, the activities of which affect the laws
24 of this state, to the extent the constitutions of the United States and this state
25 permit.
 - 26 c. Ordering dissolution or reorganization of any enterprise.
 - 27 d. Ordering the payment of treble damages and appropriate restitution to those
28 persons injured by a pattern of racketeering activity or a violation of section
29 12.1-06.1-02 or 12.1-06.1-03.
 - 30 e. Ordering the payment of all costs and expenses and reasonable attorneys'
31 fees concerned with the prosecution and investigation of any offense included

1 in the definition of racketeering if upon ~~such~~ application for the order it is
2 shown to the satisfaction of the court that ~~such~~ the racketeering offense has
3 occurred as a part of a pattern of racketeering activity or a violation of section
4 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or
5 county as appropriate to be paid to the general fund of the state or county
6 ~~which~~ that brings the action.

7 f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or
8 county as appropriate under section 29-27-02.1, to the extent not already
9 ordered to be paid in other damages:

10 (1) Any property or other interest acquired or maintained by a person in
11 violation of section 12.1-06.1-02 or 12.1-06.1-03.

12 (2) Any interest in, security of, claims against, or property or contractual
13 right of any kind affording a source of influence over any enterprise
14 ~~which~~ that a person has established, operated, controlled, conducted,
15 or participated in the conduct of in violation of section 12.1-06.1-02 or
16 12.1-06.1-03.

17 (3) All proceeds traceable to an offense included in the definition of
18 racketeering and all moneys, negotiable instruments, securities, and
19 other things of value used or intended to be used to facilitate
20 commission of the offense if upon application for the order it is shown
21 to the satisfaction of the court that ~~such~~ the racketeering offense has
22 occurred as a part of a pattern of racketeering activity.

23 g. Payment to the state school fund of the state or county as appropriate under
24 section 29-27-02.1 of an amount equal to the gain a person has acquired or
25 maintained through an offense included in the definition of racketeering if
26 upon application for the order it is shown to the satisfaction of the court that
27 ~~such~~ the racketeering offense has occurred as a part of a pattern of
28 racketeering activity.

29 5. In addition to or in lieu of an action under this section the state may file an action
30 for forfeiture to the state school fund of the state or county as appropriate under

1 section 29-27-02.1, to the extent not already ordered paid pursuant to this section,
2 of:

- 3 a. Any interest acquired or maintained by a person in violation of section
4 12.1-06.1-02 or 12.1-06.1-03.
- 5 b. Any interest in, security of, claims against, or property or contractual right of
6 any kind affording a source of influence over any enterprise ~~which~~ that a
7 person has established, operated, controlled, conducted, or participated in the
8 conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 9 c. All proceeds traceable to an offense included in the definition of racketeering
10 and all moneys, negotiable instruments, securities, and other things of value
11 used or intended to be used to facilitate the commission of the offense if upon
12 application for the order it is shown to the satisfaction of the court that such
13 racketeering offense has occurred as a part of a pattern of racketeering
14 activity.

15 7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to
16 violations of any offense included in the definition of racketeering or a violation of
17 section 12.1-06.1-02 or 12.1-06.1-03 ~~shall~~ must be commenced within seven
18 years of actual discovery of the violation.

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

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

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

- 28 1. A custodian of the records of a financial institution shall, at no expense to the
29 financial institution, produce for inspection or copying the records in the custody of
30 the financial institution when requested to be inspected by the attorney general or
31 a state's attorney authorized by the attorney general, ~~provided~~ if the person

1 requesting the information signs and submits a sworn statement to the custodian
2 that the request is made ~~in order~~ to investigate a pattern of racketeering activity or
3 a violation of section 12.1-06.1-02 or 12.1-06.1-03. Records may be removed
4 from the premises of the financial institution only for the purpose of copying the
5 records and must be returned within forty-eight hours. The attorney general or an
6 authorized state's attorney or any peace officer designated by an authorized
7 state's attorney or the attorney general ~~is prohibited from using~~ may not use or
8 ~~releasing such~~ release the information except in the proper discharge of official
9 duties. The furnishing of records in compliance with this section by a custodian of
10 records is a bar to civil or criminal liability against the custodian or financial
11 institution in any action brought alleging violation of the confidentiality of the
12 records. The fact that records have been obtained may not be released in any
13 way by the financial institution until ninety days after the release.

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