

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 into a nonhazardous waste
10 landfill or the intentional and unlawful dumping into or on any land or water of
11 radioactive waste material in violation of section 23-20.2-09 or rules adopted
12 pursuant to that section which were in effect on January 1, 1997, or
13 hazardous waste in willful violation of chapter 23-20.3 or the rules adopted
14 pursuant to that chapter which were in effect on January 1, 1997, except for
15 the handling of conditionally exempt small quantities of hazardous waste as
16 referenced in section 33-24-02-05 of the North Dakota Administrative Code.
- 17 e. "Pattern of racketeering activity" requires least two acts of racketeering
18 activity, one of which occurred after July 8, 1987, and the last of which
19 occurred within ten years, excluding any period of imprisonment, after the
20 commission of a prior act of racketeering activity.
- 21 e- f. "Racketeering" means any act including any criminal attempt, facilitation,
22 solicitation, or conspiracy, committed for financial gain, which is chargeable or
23 indictable under the laws of the state in which the act occurred and, if the act
24 occurred in a state other than this state, would be chargeable or indictable
25 under the laws of this state had the act occurred in this state and punishable
26 by imprisonment for more than one year, regardless of whether such act is
27 charged or indicted, involving:
- 28 (1) Homicide.
29 (2) Robbery.
30 (3) Kidnapping.
31 (4) Forgery.

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

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

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

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

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

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

1 person for an offense included in the definition of racketeering if it is shown to the satisfaction of
2 the court when ruling upon the application for the order that ~~such~~ the racketeering offense has
3 occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or
4 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section
5 12.1-06.1-05.

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

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

- 1 e. Ordering the payment of all costs and expenses and reasonable attorneys'
2 fees concerned with the prosecution and investigation of any offense included
3 in the definition of racketeering if upon ~~such~~ application for the order it is
4 shown to the satisfaction of the court that ~~such~~ the racketeering offense has
5 occurred as a part of a pattern of racketeering activity or a violation of section
6 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or
7 county as appropriate to be paid to the general fund of the state or county
8 ~~which~~ that brings the action.
- 9 f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or
10 county as appropriate under section 29-27-02.1, to the extent not already
11 ordered to be paid in other damages:
- 12 (1) Any property or other interest acquired or maintained by a person in
13 violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 14 (2) Any interest in, security of, claims against, or property or contractual
15 right of any kind affording a source of influence over any enterprise
16 ~~which~~ that a person has established, operated, controlled, conducted,
17 or participated in the conduct of in violation of section 12.1-06.1-02 or
18 12.1-06.1-03.
- 19 (3) All proceeds traceable to an offense included in the definition of
20 racketeering and all moneys, negotiable instruments, securities, and
21 other things of value used or intended to be used to facilitate
22 commission of the offense if upon application for the order it is shown
23 to the satisfaction of the court that ~~such~~ the racketeering offense has
24 occurred as a part of a pattern of racketeering activity.
- 25 g. Payment to the state school fund of the state or county as appropriate under
26 section 29-27-02.1 of an amount equal to the gain a person has acquired or
27 maintained through an offense included in the definition of racketeering if
28 upon application for the order it is shown to the satisfaction of the court that
29 ~~such~~ the racketeering offense has occurred as a part of a pattern of
30 racketeering activity.

- 1 5. In addition to or in lieu of an action under this section the state may file an action
2 for forfeiture to the state school fund of the state or county as appropriate under
3 section 29-27-02.1, to the extent not already ordered paid pursuant to this section,
4 of:
- 5 a. Any interest acquired or maintained by a person in violation of section
6 12.1-06.1-02 or 12.1-06.1-03.
- 7 b. Any interest in, security of, claims against, or property or contractual right of
8 any kind affording a source of influence over any enterprise ~~which~~ that a
9 person has established, operated, controlled, conducted, or participated in the
10 conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 11 c. All proceeds traceable to an offense included in the definition of racketeering
12 and all moneys, negotiable instruments, securities, and other things of value
13 used or intended to be used to facilitate the commission of the offense if upon
14 application for the order it is shown to the satisfaction of the court that such
15 racketeering offense has occurred as a part of a pattern of racketeering
16 activity.
- 17 7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to
18 violations of any offense included in the definition of racketeering or a violation of
19 section 12.1-06.1-02 or 12.1-06.1-03 ~~shall~~ must be commenced within seven
20 years of actual discovery of the violation.

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

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

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

- 30 1. A custodian of the records of a financial institution shall, at no expense to the
31 financial institution, produce for inspection or copying the records in the custody of

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

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