

CHAPTER 12.1-06.1
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

12.1-06.1-01. Definitions.

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 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 12.1-06.1-02 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 moneylender under the jurisdiction of the state department of 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 at 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.
 - 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.
 - (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
3. For the purposes of section 12.1-06.1-08:
- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
 - b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
 - c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
 - d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
 - e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
 - i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

(Contingent effective date - See note) Definitions.

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 - e. "Pattern of racketeering activity" requires at 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.
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 - (12) Leading a criminal association.
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 - d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
 - e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
 - i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

12.1-06.1-02. Leading a criminal association - Classification.

- 1. A person is guilty of an offense by any of the following:
 - a. Intentionally organizing, managing, directing, supervising, or financing a criminal association.
 - b. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal association.
 - c. Willfully furnishing advice, assistance, or direction in the conduct, financing, or management of a criminal association's affairs with the intent to promote or further the criminal objectives of a criminal association.
 - d. Intentionally promoting or furthering the criminal objectives of a criminal association by inducing or committing any act or omission by a public servant in violation of official duty.
- 2. No person shall be convicted pursuant to this section on the basis of accountability as an accomplice unless that person aids or participates in violating this section in one of the ways specified.
- 3. Leading a criminal association is a class B felony.

12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.

1. A person is guilty of an offense if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is guilty of an offense if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.
3. A knowing violation of this section is a class B felony.

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 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 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.

12.1-06.1-05. Racketeering - Civil remedies.

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 the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
3. Prior to a determination of liability, orders may include entering restraining orders, receivership orders or prohibitions or other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section.
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 application for the order it is shown to the satisfaction of the court that 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 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 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 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 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 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.
 6. A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For purposes of this subsection, a conviction may result from a verdict or plea including a no contest plea.
 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 must be commenced within seven years of actual discovery of the violation.
 8. This state may, in a civil action brought pursuant to this section, file with the clerk of the district court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding judge of the district court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.
 9. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.
 10. A person other than the attorney general or state's attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the district court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or

intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

11. Except in cases filed by a state's attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought pursuant to this section if the attorney general certifies that in his opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.
12. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting any provisions of this chapter.
13. A civil action under this section is remedial and does not limit any other civil or criminal action. Civil remedies provided under this section are supplemental and not mutually exclusive.

12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.

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 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.
2. A racketeering lien shall be signed by the attorney general or the state's attorney representing the state in the action and set forth the following information:
 - a. The name of the defendant whose property, interests in property, or other interests are to be subject to the lien.
 - b. In the discretion of the attorney general or state's attorney filing the lien, any aliases or fictitious names of the defendant named in the lien.
 - c. If known to the attorney general or state's attorney filing the lien, the present residence or principal place of business of the person named in the lien.
 - d. A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding.
 - e. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed.
 - f. A statement that the notice is being filed pursuant to this section.
 - g. The amount which the state claims in the action or, with respect to property or other interests which the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited.
 - h. If known to the attorney general or state's attorney filing the lien, a description of property which is subject to forfeiture to the state or property in which the defendant has an interest which is available to satisfy a judgment entered in favor of the state.
 - i. Such other information as the attorney general or state's attorney filing the lien deems appropriate.
3. The attorney general or the state's attorney filing the lien may amend a lien filed under this section at any time by filing an amended racketeering lien in accordance with this section which identifies the prior lien amended.
4. The attorney general or the state's attorney filing the lien shall, as soon as practical after filing a racketeering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a racketeering lien filed in accordance with this section.
5. A racketeering lien is perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the director of the department of transportation. A racketeering lien is perfected against interests in real property by filing the lien with the county recorder of

- the county in which the real property is located. The state may give additional notice of the lien.
6. The filing of a racketeering lien in accordance with this section creates a lien in favor of the state in:
 - a. Any interest of the defendant in real property situated in the county in which the lien is filed, then maintained or later acquired in the name of the defendant identified in the lien.
 - b. Any interest of the defendant in personal property situated in this state, then maintained or later acquired in the name of the defendant identified in the lien.
 - c. Any property identified in the lien to the extent of the defendant's interest in the property.
 7. The filing of a racketeering lien under this section is notice to all persons dealing with the person or property identified in the lien of the state's claim. The lien created in favor of the state in accordance with this section is superior and prior to the claims or interests of any other person, except a person possessing:
 - a. A valid lien perfected prior to the filing of the racketeering lien.
 - b. In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien.
 - c. In the case of personal property, an interest acquired prior to the filing of the racketeering lien.
 8. Upon entry of judgment in favor of the state, the state may proceed to execute the judgment as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to notice as required by law, give at least thirty days' notice of execution to any person possessing at the time notice is given, an interest recorded after the date the state's lien was perfected.
 9. Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:
 - a. In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien with the county recorder of the county where the real property is located, or if no racketeering lien is filed, then to the date of recording of the final judgment with the county recorder of the county where the real property is located.
 - b. In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a racketeering lien in accordance with this section, whichever is earlier, but if the property was not seized and no racketeering lien was filed then to the date the final judgment was filed with the secretary of state, or in the case of a titled motor vehicle, with the director of the department of transportation.
 10. This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under section 12.1-06.1-05 or available under other applicable law.

12.1-06.1-07. Racketeering - Investigation of records - Confidentiality - Court enforcement - Classification.

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, if the person requesting the information signs and submits a sworn statement to the custodian that the request is made 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 may not use or 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 upon noncompliance with the request for inspection. Enforcement 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.
3. The investigation authority granted pursuant to the provisions of this section may not be exercised by a state's attorney in the absence of authorization by the attorney general.
4. Any person releasing information obtained pursuant to this section, except in the proper discharge of official duties, is guilty of a class B misdemeanor.

12.1-06.1-08. Computer fraud - Computer crime - Classification - Penalty.

1. A person commits computer fraud by gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying any computer, computer system, computer network, or any part of the computer, computer system, or computer network, without authorization, and with the intent to devise or execute any scheme or artifice to defraud, deceive, prevent the authorized use of, or control property or services by means of false or fraudulent pretenses, representations, or promises. A person who commits computer fraud is guilty of a class C felony.
2. A person commits computer crime by intentionally and either in excess of authorization given or without authorization gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, introducing a computer contaminant into, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in the computer, computer system, or computer network. A person who commits computer crime is guilty of a class A misdemeanor.
3. In addition to any other remedy available, the owner or lessee of a computer, computer system, computer network, or any part of the computer, computer system, or computer network may bring a civil action for damages, restitution, and attorney's fees for damages incurred as a result of the violation of this section.