



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0409

Introduced 01/26/07, by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Organized Crime Control Act. Provides that a person who has received any proceeds with knowledge that they were derived, directly or indirectly, from a pattern of racketeering activity may not use or invest, whether directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. Provides that a person, through a pattern of racketeering activity, may not acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property. Provides that a person employed by, or associated with, any enterprise may not conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity. Provides that any person convicted of engaging in racketeering activity is guilty of a Class 1 felony. Provides that any person who engages in a continuing criminal enterprise is guilty of a Class 1 felony. Requires the court to order forfeiture to the State of all real or personal property used in the course of, or intended for use in the course of, derived from, or realized through such criminal conduct. Provides for other civil remedies. Provides that the Attorney General and the State's Attorneys of this State have concurrent authority to institute criminal proceedings under the Act, except that a State's Attorney may institute proceedings only with the prior written approval of the Attorney General. Effective immediately.

LRB095 06377 RLC 26473 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Organized Crime Control Act.

6 Section 5. Intent. The General Assembly finds that a severe  
7 problem is posed in this State by the increasing organization  
8 among certain criminal elements and the increasing extent to  
9 which criminal activities and funds acquired as a result of  
10 criminal activity are being directed to and against the  
11 legitimate economy of the State. The General Assembly declares  
12 that the intent of the Organized Crime Control Act is to impose  
13 sanctions against this subversion of the economy by organized  
14 criminal elements and to provide compensation to private  
15 persons injured thereby. It is not the intent of the General  
16 Assembly that isolated incidents of misdemeanor conduct be  
17 prosecuted under this Act, but only an interrelated pattern of  
18 criminal activity the motive or effect of which is to derive  
19 pecuniary gain.

20 Section 10. Definitions. For the purposes of this Act:

21 (1) "Commission of a crime" means being accountable for the  
22 commission of a crime under Article 5 of the Criminal Code of

1 1961.

2 (2) "Enterprise" means any sole proprietorship,  
3 partnership, limited liability company, corporation, business  
4 trust, union organized under the laws of this State or other  
5 legal entity or any union not organized under the laws of this  
6 State, association or group of individuals associated in fact  
7 although not a legal entity. "Enterprise" includes illicit and  
8 licit enterprises and governmental and other entities.

9 (3) "Pattern of racketeering activity" means engaging in at  
10 least 3 incidents of racketeering activity that have the same  
11 or similar intents, results, accomplices, victims, or methods  
12 of commission or otherwise are interrelated by distinguishing  
13 characteristics, provided that at least one of the incidents  
14 occurred after the effective date of this Act and that the last  
15 of the incidents occurred within 7 years after the first  
16 incident of racketeering activity. Acts occurring at the same  
17 time and place which may form the basis for crimes punishable  
18 under more than one statutory provision may count for only one  
19 incident of racketeering activity.

20 (4) "Racketeering activity" means any activity specified  
21 in: (i) 18 U.S.C. 1961 as in effect on the effective date of  
22 this Act or (ii) the attempt, conspiracy to commit, or  
23 commission of any of the felonies specified in: Article 10, 11,  
24 20, 20.5, 21, 24, 26, 28, 29A, 30, 31, 32, 33, or 33E, Section  
25 9-1, 12-4.2, 12-4.2-5, 12-4.3, 12-9, 12-13, 12-14, 12-14.1,  
26 12-15, 12-16, 12-16.2, 12-33, subsection (a) or (d-5) of

1 Section 12-4 of the Criminal Code of 1961, the Illinois  
2 Controlled Substances Act, the Methamphetamine Control and  
3 Community Protection Act, the Cannabis Control Act, the Wrongs  
4 to Children Act, Article VIIIA of the Illinois Public Aid Code,  
5 Section 22 of the Cigarette Tax Act, or the Illinois Securities  
6 Law of 1953.

7 Section 15. Prohibited activities.

8 (a) A person who has received any proceeds with knowledge  
9 that they were derived, directly or indirectly, from a pattern  
10 of racketeering activity may not use or invest, whether  
11 directly or indirectly, any part of the proceeds or the  
12 proceeds derived from the investment or use thereof in the  
13 acquisition of any title to, or any right, interest, or equity  
14 in, real property or in the establishment or operation of any  
15 enterprise.

16 (b) A person, through a pattern of racketeering activity,  
17 may not acquire or maintain, directly or indirectly, any  
18 interest in or control of any enterprise or real property.

19 (c) A person employed by, or associated with, any  
20 enterprise may not conduct or participate, directly or  
21 indirectly, in the enterprise through a pattern of racketeering  
22 activity.

23 Section 20. Penalties.

24 (a) Any person convicted of engaging in racketeering

1 activity in violation of Section 15 is guilty of a Class 1  
2 felony.

3 (b) In lieu of a fine under subsection (a), any person  
4 convicted of engaging in conduct in violation of Section 15,  
5 through which he or she derived pecuniary value, or by which he  
6 or she caused personal injury or property damage or other loss,  
7 may be fined not to exceed 2 times the gross value gained or 2  
8 times the gross loss caused, whichever is the greater, plus  
9 court costs and the costs of investigation and prosecution,  
10 reasonably incurred. In calculating the amount of a fine based  
11 on personal injury, any measurement of pain and suffering shall  
12 be excluded.

13 (c) The court shall hold a hearing to determine the amount  
14 of the fine authorized by subsection (b).

15 (d) In subsection (b), "pecuniary value" means: (1)  
16 anything of value in the form of money, a negotiable  
17 instrument, or a commercial interest or anything else the  
18 primary significance of which is economic advantage; or (2) any  
19 other property or service that has a value in excess of \$100.

20 Section 25. Continuing criminal enterprise.

21 (a) Any person who engages in a continuing criminal  
22 enterprise is guilty of a Class 1 felony.

23 (b) In this Section a person is considered to be engaged in  
24 a continuing criminal enterprise if he or she engages in a  
25 prohibited activity under Section 15; and

1           (1) the activity is undertaken by the person in concert  
2           with 5 or more other persons, each of whom acted with  
3           intent to commit a crime and with respect to whom the  
4           person occupies a supervisory position; and

5           (2) the person obtains gross income or resources in  
6           excess of \$25,000 from the activity.

7           Section 30. Criminal forfeitures.

8           (a) In addition to the penalties under Sections 20 and 25,  
9           the court shall order forfeiture, according to the procedures  
10          set forth in subsections (b), (c), and (d), of all real or  
11          personal property used in the course of, or intended for use in  
12          the course of, derived from, or realized through conduct in  
13          violation of Section 15 or 25. All forfeitures under this  
14          Section shall be made with due provision for the rights of  
15          innocent persons. Property constituting proceeds derived from  
16          conduct in violation of Section 15 or 25 includes, but is not  
17          limited to, any of the following:

18          (1) Any position, office, appointment, tenure,  
19          commission, or employment contract of any kind that the  
20          defendant acquired or maintained in violation of Section 15  
21          or 25, through which the defendant conducted or  
22          participated in the conduct of the affairs of an enterprise  
23          in violation of Section 15 or 25, or that afforded the  
24          defendant a source of influence or control over the affairs  
25          of an enterprise that the defendant exercised in violation

1 of Section 15 or 25.

2 (2) Any compensation, right, or benefit derived from a  
3 position, office, appointment, tenure, commission, or  
4 employment contract that accrued to the defendant during  
5 the period of conduct in violation of Section 15 or 25.

6 (3) Any interest in, security of, claim against, or  
7 property or contractual right affording the defendant a  
8 source of influence or control over the affairs of an  
9 enterprise in which the defendant participated in  
10 violation of Section 15 or 25.

11 (4) Any amount payable or paid under any contract for  
12 goods or services that was awarded or performed in  
13 violation of Section 15 or 25.

14 (b) Any criminal complaint alleging a violation of Section  
15 15 or 25 shall allege the extent of property subject to  
16 forfeiture under this Section. At trial, the trier of fact  
17 shall return a special verdict determining the extent of  
18 property, if any, to be subject to forfeiture under this  
19 Section. When a special verdict contains a finding of property  
20 subject to forfeiture under this Section, a judgment of  
21 criminal forfeiture shall be entered along with the judgment of  
22 conviction.

23 (c) If any property included in a special verdict of  
24 criminal forfeiture cannot be located, has been sold to a bona  
25 fide purchaser for value, has been placed beyond the  
26 jurisdiction of the court, has been substantially diminished in

1 value by the conduct of the defendant, has been commingled with  
2 other property that cannot be divided without difficulty or  
3 undue injury to innocent persons, or is otherwise unreachable  
4 without undue injury to innocent persons, the court may order  
5 forfeiture of any other property of the defendant up to the  
6 value of the property that is unreachable.

7 (d) Any injured person has a right or claim to forfeited  
8 property or the proceeds derived therefrom superior to any  
9 right or claim the State has under this Section in the same  
10 property or proceeds. This subsection (d) does not grant the  
11 injured person priority over State claims or rights by reason  
12 of a tax lien or other basis not covered by this Act. All  
13 rights, titles, and interest in property described in  
14 subsection (a) vest in the State upon the commission of the act  
15 giving rise to forfeiture under this Section.

16 Section 35. Civil remedies.

17 (a) After making due provision for the rights of innocent  
18 persons, any circuit court may enjoin violations of Section 15  
19 or 25 and may issue appropriate orders and judgments related  
20 thereto, including, but not limited to:

21 (1) Ordering any defendant to divest himself or herself  
22 of any interest in any enterprise which is involved in the  
23 violation of Section 15 or 25, including real property.

24 (2) Imposing reasonable restrictions upon the future  
25 activities or investments of any defendant related to



1           enjoining violations of Section 15 or 25, including, but  
2           not limited to, prohibiting any defendant from engaging in  
3           the same type of endeavor as the enterprise in which he or  
4           she was engaged in violation of Section 15 or 25.

5           (3) Ordering the dissolution or reorganization of any  
6           related enterprise.

7           (4) Ordering the suspension or revocation of a license,  
8           permit, or prior approval granted to any related enterprise  
9           by any agency of the State or a county or municipality.

10          (5) Ordering the dissolution of a corporation  
11          organized under the Business Corporation Act of 1983, or  
12          the revocation of a certificate authorizing a foreign  
13          corporation to conduct business within the State, upon  
14          finding that the board of directors or a managerial agent  
15          acting on behalf of the corporation, in conducting the  
16          affairs of the corporation, has authorized or engaged in  
17          conduct in violation of Section 15 or 25 and that, for the  
18          prevention of future criminal activity, the public  
19          interest requires the action under this paragraph (5).

20          (b) (1) All property, real or personal, including money,  
21          used in the course of, intended for use in the course of,  
22          derived from, or realized through conduct which has resulted in  
23          a conviction for violation of Section 15 or 25 is subject to  
24          civil forfeiture to the State. The State shall dispose of all  
25          forfeited property as soon as commercially feasible. If  
26          property is not exercisable or transferable for value by the

1 State, it shall expire. All forfeitures or dispositions under  
2 this Section shall be made with due provision for the rights of  
3 innocent persons. The proceeds realized from the forfeitures  
4 and dispositions shall be deposited into the Common School  
5 Fund.

6 (2) Notwithstanding paragraph (1), property described in  
7 paragraph (1) is subject to forfeiture if the person who  
8 violated Section 15 or 25 has not been convicted, but he or she  
9 is a defendant in a criminal proceeding, is released, pending  
10 trial, on bail, and fails to appear in court regarding the  
11 criminal proceeding. However, before making the final  
12 determination of any action under this Section, the court must  
13 determine that the party bringing the action can prove the  
14 person committed the violation of Section 15 or 25.

15 (3) Any injured person has a right or claim to forfeited  
16 property or the proceeds derived therefrom superior to any  
17 right or claim the State has under this Section in the same  
18 property or proceeds. This paragraph does not grant the person  
19 priority over State claims or rights by reason of a tax lien or  
20 other basis not covered by this Act.

21 (c) The Attorney General or any State's Attorney may  
22 institute civil proceedings under this Section. In any action  
23 brought under this Section, the circuit court shall proceed as  
24 soon as practicable to the hearing and determination. Pending  
25 final determination of any action under this Section, the  
26 circuit court may at any time enter such injunctions,

1 prohibitions, or restraining orders, or take such actions,  
2 including the acceptance of satisfactory performance bonds, as  
3 the court deems proper. At any time pending final determination  
4 of a forfeiture action under subsection (b), the circuit court  
5 may order the seizure of property subject to forfeiture and may  
6 make such orders as it deems necessary to preserve and protect  
7 the property.

8 (d) Any person who is injured by reason of any violation of  
9 Section 15 or 25 has a cause of action for 2 times the actual  
10 damages sustained and, when appropriate, punitive damages. The  
11 person shall also recover attorney's fees and costs of the  
12 investigation and litigation reasonably incurred. The  
13 defendant or any injured person may demand a trial by jury in  
14 any civil action brought under this Section.

15 (e) The burden of proof under this Section is that of  
16 satisfying or convincing to a reasonable certainty by a greater  
17 weight of the credible evidence that the property is subject to  
18 forfeiture under this Section.

19 (f) A final judgment or decree rendered in favor of the  
20 State in any criminal proceeding under this Act shall stop the  
21 defendant from denying the essential allegations of the  
22 criminal offense in any subsequent civil action or proceeding.

23 Section 40. Enforcement and jurisdiction.

24 (a) A criminal or civil action or proceeding under this Act  
25 may be commenced at any time within 6 years after a violation

1 under this Act terminates or the cause of action accrues. If a  
2 criminal action or proceeding under this Act is brought, or  
3 intervened in, to punish, prevent, or restrain any such  
4 violation, the running of the period of limitations with  
5 respect to any civil action or proceeding, including an action  
6 or proceeding under Section 35, which is based in whole or in  
7 part upon any matter complained of in the criminal action or  
8 proceeding shall be suspended for 2 years following the  
9 termination of the criminal action or proceeding.

10 (b) The application of one civil or criminal remedy under  
11 this Act does not preclude the application of any other remedy,  
12 civil or criminal, under this Act or any other provision of  
13 law. Civil remedies under this Act are supplemental, and not  
14 mutually exclusive, except that the State may not proceed under  
15 both subsection (b) of Section 20 and subsection (d) of Section  
16 35.

17 (c) The Attorney General and the State's Attorneys of this  
18 State have concurrent authority to institute criminal  
19 proceedings under this Act, except that a State's Attorney may  
20 institute proceedings only with the prior written approval of  
21 the Attorney General.

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.

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