

1981 Senate Bill 561

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CHAPTER 280 , Laws of 1981

AN ACT to amend 939.50 (1) (intro.), 939.52 (1) (intro.) and 939.74 (1); and to create 180.769 (4), 180.771 (1) (e), 180.841 (3), 181.56 (3), 181.57 (1) (e), 893.94 and 946.80 to 946.87 of the statutes, relating to racketeering, continuing criminal enterprise and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 180.769 (4) of the statutes is created to read:

180.769 (4) A corporation may be dissolved involuntarily under s. 946.86.

SECTION 2. 180.771 (1) (e) of the statutes is created to read:

180.771 (1) (e) In an action under s. 946.86.

SECTION 3. 180.841 (3) of the statutes is created to read:

180.841 (3) A court may revoke a certificate of authority under s. 946.86. The court shall notify the secretary of state of the action and the secretary shall proceed under s. 180.843 (1) (a) to (c).

SECTION 4. 181.56 (3) of the statutes is created to read:

181.56 (3) A corporation may be dissolved involuntarily under s. 946.86.

SECTION 5. 181.57 (1) (e) of the statutes is created to read:

181.57 (1) (e) In an action under s. 946.86.

SECTION 6. 893.94 of the statutes is created to read:

893.94 Organized crime control; civil remedies. Any civil action arising under ss. 946.80 to 946.87 is subject to the limitations under s. 946.87 (1).

SECTION 7. 939.50 (1) (intro.) of the statutes is amended to read:

939.50 (1) (intro.) ~~Felonies~~ Except as provided in ss. 946.83 and 946.85, felonies in chs. 939 to 948 are classified as follows:

SECTION 8. 939.52 (1) (intro.) of the statutes is amended to read:

939.52 (1) (intro.) ~~Forfeitures~~ Except as provided in s. 946.85, forfeitures in chs. 939 to 948 are classified as follows:

SECTION 9. 939.74 (1) of the statutes is amended to read:

939.74 (1) Except as provided in sub. (2), and s. 946.87 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

SECTION 10. 946.80 to 946.87 of the statutes are created to read:

946.80 Short title. Sections 946.80 to 946.87 may be cited as the Wisconsin Organized Crime Control Act.

946.81 Intent. The legislature finds that a severe problem is posed in this state by the increasing organization among certain criminal elements and the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state. The legislature declares that the intent of the Wisconsin Organized Crime Control Act is to impose sanctions against this subversion of the economy by organized criminal elements and to provide compensation to private persons injured thereby. It is not the intent of the legislature that isolated incidents of misdemeanor conduct be prosecuted under this act, but only an interrelated pattern of criminal activity the motive or effect of which is to derive pecuniary gain.

946.82 Definitions. In ss. 946.80 to 946.87:

(1) "Commission of a crime" means being concerned in the commission of a crime under s. 939.05.

(2) "Enterprise" means any sole proprietorship, partnership, corporation, business trust, union organized under the laws of this state or other legal entity or any union not organized under the laws of this state, association or group of individuals associated in fact although not a legal entity. "Enterprise" includes illicit and licit enterprises and governmental and other entities.

(3) "Pattern of racketeering activity" means engaging in at least 3 incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, provided at least one of the incidents occurred after the effective date of this section (1981) and that the last of the incidents occurred within 7 years after the first incident of racketeering activity. Acts occurring at the same time and place which may form the basis for crimes punishable under more than one statutory provision may count for only one incident of racketeering activity.

(4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of the effective date of this act (1981) or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 161 and 945 and ss. 49.49, 134.05, 139.44 (1), 180.88, 181.69, 184.09 (2), 185.82 (4), 215.12, 221.17, 221.31, 221.39, 221.40, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (2) and (3), 940.20, 940.203, 940.21, 940.30, 940.305, 940.31, 940.32, 941.20 (2), 941.26, 941.28, 941.31, 941.32, 943.01 (2), 943.02, 943.03, 943.04, 943.05, 943.06, 943.10,

943.20 (3) (b) to (d), 943.205, 943.23 (1), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (2) and (3), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (b) and (c), 943.60, 944.32, 944.33 (2), 944.34, 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.62, 946.64, 946.65, 946.72, 946.76 and 947.015.

946.83 Prohibited activities. (1) No person who has received any proceeds with knowledge that they were derived, directly or indirectly, from a pattern of racketeering activity may 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.

(2) No person, through a pattern of racketeering activity, may acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) No person employed by, or associated with, any enterprise may conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity.

946.84 Penalties. (1) Any person convicted of engaging in racketeering activity in violation of s. 946.83 is guilty of a Class C felony.

(2) In lieu of a fine under sub. (1), any person convicted of engaging in conduct in violation of s. 946.83, through which he or she derived pecuniary value, or by which he or she caused personal injury or property damage or other loss, may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred. In calculating the amount of fine based on personal injury, any measurement of pain and suffering shall be excluded.

(3) The court shall hold a hearing to determine the amount of the fine authorized by sub. (2).

(4) In sub. (2), "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of \$100.

946.85 Continuing criminal enterprise. (1) Any person who engages in a continuing criminal enterprise shall be imprisoned not less than 10 years nor more than 20 years, and fined not more than \$10,000 or as provided in s. 946.84 (2). If the court imposes a sentence less than the presumptive minimum sentence, it shall place its reasons for doing so on the record.

(2) In this section a person is considered to be engaged in a continuing criminal enterprise, if he or she engages in a prohibited activity under s. 946.83, and:

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

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

946.86 Civil remedies. (1) After making due provision for the rights of innocent persons, any circuit court may enjoin violations of s. 946.83 or 946.85 and may issue appropriate orders and judgments related thereto, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise which is involved in the violation of s. 946.83 or 946.85, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant related to enjoining violations of s. 946.83 or 946.85, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of s. 946.83 or 946.85.

(c) Ordering the dissolution or reorganization of any related enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any related enterprise by any agency of the state, county or municipality.

(e) Ordering the dissolution of a corporation organized under ch. 180 or 181, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of s. 946.83 or 946.85 and that, for the prevention of future criminal activity, the public interest requires the action under this paragraph.

(2) (a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct which has resulted in a conviction for violation of s. 946.83 or 946.85 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from the forfeitures and dispositions shall be deposited in the school fund.

(b) Any injured person has a right or claim to forfeited property or the proceeds derived therefrom superior to any right or claim the state has under this section in the same property or proceeds. This paragraph does not grant the person priority over state claims or rights by reason of a tax lien or other basis not covered by ss. 946.80 to 946.87.

(3) The attorney general or any district attorney may institute civil proceedings under this section. Notwithstanding s. 59.456 (5), in counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination of any action under this section, the circuit court may at any time enter such injunctions, prohibitions or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court deems proper. At any time pending final determination of a forfeiture action under sub. (2), the circuit court may order the seizure of property subject to forfeiture and may make such orders as it deems necessary to preserve and protect the property.

(4) Any person who is injured by reason of any violation of s. 946.83 or 946.85 has a cause of action for 2 times the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney fees and costs of the investigation and litigation reasonably incurred. The defendant or any injured person may demand a trial by jury in any civil action brought under this section.

(5) The burden of proof under this section is that of satisfying or convincing to a reasonable certainty by a greater weight of the credible evidence that the property is subject to forfeiture under this section.

(6) A final judgment or decree rendered in favor of the state in any criminal proceeding under ss. 946.80 to 946.87 shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil action or proceeding.

946.87 Enforcement and jurisdiction. (1) A criminal or civil action or proceeding under ss. 946.80 to 946.87 may be commenced at any time within 6 years after a violation under ss. 946.80 to 946.87 terminates or the cause of action accrues. If a criminal action or proceeding under ss. 946.80 to 946.87 is brought, or intervened in, to punish, prevent or

restrain any such violation, the running of the period of limitations with respect to any civil action or proceeding, including an action or proceeding under s. 946.86, which is based in whole or in part upon any matter complained of in the criminal action or proceeding shall be suspended for 2 years following the termination of the criminal action or proceeding.

(2) The application of one civil or criminal remedy under ss. 946.80 to 946.87 does not preclude the application of any other remedy, civil or criminal, under ss. 946.80 to 946.87 or any other provision of law. Civil remedies under ss. 946.80 to 946.87 are supplemental, and not mutually exclusive, except the state may not proceed under both ss. 946.84 (2) and 946.86 (4).

(3) The attorney general and the district attorneys of this state have concurrent authority to institute criminal proceedings under ss. 946.80 to 946.87, except a district attorney may institute proceedings only with the prior written approval of the attorney general.
