

ACT 71

S. B. NO. 1805-72

A Bill for an Act Relating to Organized Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that organized crime with its increasing affluence and power resulting from the investment of large sums of illegally procured wealth poses a significant threat to the safety and welfare of the State of Hawaii and that such illicit capital, seeking the protection of the corporation and other business laws of the State, could finance organized crime under the authority of law by creating legal entities fully clothed with respectability and capable of holding legal title to property.

The purpose of this Act is to authorize the attorney general to bring actions to forfeit the charters of domestic corporations, to cancel registrations and licenses of foreign corporations, to enjoin the operations of unincorporated businesses when such entities are infiltrated by organized crime, and further, to prohibit the ownership or operation of business by certain persons; to provide penalties and provisions for forfeiture of property; to provide provisions for restraining orders, civil remedies, evidence, civil investigative demands, prohibited affirmative defense, and the inspection of tax records by chiefs of police.

SECTION 2. Hawaii Revised Statutes is amended by adding a new part to be appropriately designated and to read as follows:

“Sec. -1 Definitions: As used in this part, ‘organized crime’ means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, corruption of law enforcement officers or other public officers or employers.

‘Racketeering activity’ means any act or threat involving, but not limited to murder, kidnapping, gambling, arson, robbery, bribery, extortion, larceny or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year.

‘Person’ includes any individual or entity capable of holding a legal or beneficial interest in property.

‘Enterprise’ includes any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity.

‘Unlawful debt’ means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury.

“Sec. -2. Ownership or operation of business by certain persons; prohibited. It shall be unlawful:

- (1) For any person who has received any income derived, directly or indirectly, from a racketeering activity or through collection of an unlawful debt, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise.
- (2) For any person through a racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
- (3) For any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.

“Sec. -3. Penalty; forfeiture of property. Whoever violates this part shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall forfeit to the State any interest or property he has acquired or maintained in violation of this part.

Upon conviction of a person under this part, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, to seize all property or other interest declared forfeited under this part upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this part as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire, and shall not revert to the convicted person.

“Sec. -4. Prohibited affirmative defense. The affirmative defense of being a player in a social gambling game is not available to a person engaged in organized crime or who is connected directly or indirectly with persons who are engaged in organized crime.

“Sec. -5. Forfeiture of corporate charters and cancellation of registrations and licenses. The attorney general may institute civil proceedings in the circuit court to forfeit the charter of any corporation organized under the laws of this State and to cancel the registration and license authorizing any foreign corporation to carry on business or charitable work in this State, when:

- (1) (A) Any of the corporate officers or any other person controlling the management or operation of the corporation, with the knowledge of the president and a majority of the board of directors or under circumstances wherein the president and majority of the directors should have such knowledge, is engaged in organized crime or who is connected directly or indirectly with organizations or criminal societies engaging in organized crime, or
- (B) A director, officer, employee, agent, or stockholder acting for, through, or on behalf of a corporation, in conducting the corporation’s affairs, purposely engages in a persistent course of organized crime with the knowledge of the president and a majority of the board of directors or under circumstances wherein the president and a majority of the directors should have such knowledge, with the intent to compel or induce other persons, firms, or corporations to deal with the corporation or to engage in organized crime; and
- (2) The public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the registration and license to be cancelled, for the prevention of future illegal conduct of the same character.

“Sec. -6. Enjoining other business operations. The attorney general may institute civil proceedings in the circuit court to enjoin the operation of any business other than a corporation, including a partnership, limited partnership, unincorporated association, joint venture, or sole proprietorship, when:

- (1) Any person in control of the business, who may be a partner in a partnership or in a limited partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any such business, or a person who, in fact, exercises control over the operations of the business in conducting business affairs, purposely engages in a persistent course of organized crime with the intent to compel or induce other persons, firms, or corporations to deal with the business or engage in organized crime; and
- (2) The public interest requires the operation of the business to be enjoined, for the prevention of future illegal conduct of the same character.

“Sec. -7. Commencement and conduct of proceedings under Sections -5 and -6. (a) The proceedings authorized by Section -5 may be instituted against a corporation in any judicial circuit in which it is doing business or carrying on its work and the proceedings shall be conducted in accordance with the Hawaii Rules of Civil Procedure and the applicable rules of court. These proceedings shall be additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or cancelling the registration and license of a foreign corporation.

(b) The proceedings authorized by Section -6 may be instituted against a business other than a corporation in any judicial circuit in which it is doing business and the proceedings shall be conducted in accordance with the Hawaii Rules of Civil Procedure and the applicable rules of court.

“Sec. -8. Civil remedies. (a) The circuit courts of the State shall have jurisdiction to prevent and restrain violations of this part by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The attorney general may institute proceedings under this section. In any action brought by the State under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of this part may sue therefor in any appropriate court and shall recover the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the State in any criminal proceeding brought by the State under this part shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the State.

“Sec. -9. Evidence. In any proceeding ancillary to or in any civil action instituted by the State under this part the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

“Sec. -10. Civil investigative demand. (a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

- (b) Each such demand shall:
 - (1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;
 - (2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;
 - (3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and
 - (4) identify the custodian to whom such material shall be made available.
- (c) No such demand shall:
 - (1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the State in aid of a grand jury investigation of such alleged racketeering violation; or
 - (2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the State in aid of a grand jury investigation of such alleged racketeering violation.
- (d) Service of any such demand or any petition filed under this section may be made upon a person by:
 - (1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;
 - (2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or
 - (3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.
- (e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.
- (f) (1) The attorney general shall designate, from the organized crime unit established pursuant to section 28-71, an investigator to serve as racketeer document custodian and such racketeering investigators as he shall determine to be necessary to serve as deputies to such officer.
- (2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section

on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

- (3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the attorney general. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the attorney general. Under such reasonable terms and conditions as the attorney general shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.
- (4) Whenever any attorney has been designated to appear on behalf of the State before any court or grand jury in any case or proceeding involving any alleged violation of this part, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the State. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.
- (5) Upon the completion of:
 - (i) the racketeering investigation for which any documentary material was produced under this part, and
 - (ii) Any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the attorney general pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.
- (6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the attorney general, to the return of all documentary material other

than copies thereof made pursuant to this subsection so produced by such person.

- (7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the attorney general shall promptly:
 - (i) designate another racketeering investigator to serve as custodian thereof, and
 - (ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the court of the State for any judicial circuit in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the court of the State for the judicial circuit within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the court of the State for the judicial circuit within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any court of the State under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

“Sec. -11 Failure to report income; penalty. Any law to the contrary notwithstanding, no person shall willfully fail to report income or to pay the taxes due thereon as provided by Chapters 235 or 237. Whoever violates this section shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, in addition to any assessment and collection of taxes, penalties and interest to which the State may be entitled under Chapters 235 and 237.

“Sec. -12 Inspection of tax records by chiefs of police. The chiefs of police of the several counties or their authorized representatives may apply to any judge for an order allowing inspection and examination of the tax returns and records on file with the department of taxation of persons suspected of willful failure to pay or report taxes, provided that such order shall issue only upon a showing of probable cause.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1972.)