

Sen. File 1046
Senate File 1046
Judiciary
Kelly, Chairperson
Willits
Ramsey

FILED JAN 22 1976

SENATE FILE 1046
BY WINKELMAN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to civil proceedings against corporations
2 and businesses connected with organized crime.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. "Organized crime"
2 means any combination or conspiracy to engage in criminal
3 activity as a significant source of income or livelihood,
4 or to violate, aid or abet the violation of criminal laws
5 relating to prostitution, gambling, loan sharking, drug abuse,
6 illegal drug distribution, counterfeiting, extortion, corrup-
7 tion of law enforcement officers or other public officers
8 or employers.

9 Sec. 2. NEW SECTION. REVOCATION OF PERMIT. The attorney
10 general may institute civil proceedings in the district court
11 to revoke the permit to do business of any corporation
12 organized under the laws of this state and to revoke the
13 permit authorizing any foreign corporation to carry on business
14 in this state when:

15 1. Any of the corporate officers or any other person con-
16 trolling the management or operation of such corporation,
17 with the knowledge of the president and a majority of the
18 board of directors or under such circumstances wherein the
19 president and a majority of the board of directors should
20 have knowledge, is a person engaged in organized crime or
21 who is connected directly or indirectly with organizations
22 or criminal societies engaging in organized crime.

23 2. A director, officer, employee, agent or stockholder
24 acting for, through, or on behalf of a corporation, in con-
25 ducting the corporation's affairs, purposely engages in a
26 persistent course of organized crime with the knowledge of
27 the president and a majority of the board of directors or
28 under such circumstances wherein the president and a majority
29 of the board of directors should have had such knowledge,
30 with the intent to compel or induce other persons, firms or
31 corporations to deal with the corporation or to engage in
32 organized crime.

33 3. For the prevention of future illegal conduct of the
34 same character, the public interest requires the permit to
35 do business of the corporation to be revoked and the corpora-

1 tion to be dissolved.

2 Sec. 3. NEW SECTION. ENJOINING BUSINESS OPERATIONS.

3 The attorney general may institute civil proceedings in the
4 district court to enjoin the operation of any business other
5 than a corporation, including a partnership, unincorporated
6 association, joint venture or sole proprietorship, when:

7 1. Any person in control of the business, who may be a
8 partner in a partnership, a participant in a joint venture,
9 the owner of a sole proprietorship, an employee or agent of
10 any such business or a person who, in fact, exercises control
11 over the operations of the business in conducting business
12 affairs, purposely engages in a persistent course of organized
13 crime with the intent to compel or induce other persons, firms
14 or corporations to deal with the business or engage in orga-
15 nized crime.

16 2. The prevention of future illegal conduct of the same
17 character, the public interest requires the operation of the
18 business to be enjoined.

19 Sec. 4. NEW SECTION. INSTITUTION AND CONDUCT OF PROCEED-
20 INGS. The proceedings authorized by section two (2) of this
21 Act may be instituted against a corporation in the district
22 court for any county in which it is doing business and the
23 proceedings shall be conducted in accordance with the Iowa
24 rules of civil procedure and the applicable rules of court.
25 These proceedings shall be additional to any other proceed-
26 ing authorized by law for the purpose of revoking the permit
27 of a corporation or revoking the permit of a foreign
28 corporation.

29 The proceedings authorized by section three (3) of this
30 Act may be instituted against a business other than a corpora-
31 tion in the district court for any county in which it is doing
32 business and the proceedings shall be conducted in accordance
33 with the Iowa rules of civil procedure and the applicable
34 rules of court.

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EXPLANATION

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This bill provides the attorney general with the authority to institute civil proceedings to revoke the permit to do business or enjoin the operations of businesses which are found to be connected with organized crime.

LSB 3376
be/cw/4

S-5886

1 Amend Senate File 1046 as follows:

2 1. By striking everything after the enacting
3 clause and inserting in lieu thereof the following:

4 "Section ____ . NEW SECTION. DEFINITIONS.

5 As used in Section ____ through ____:

6 1. "Racketeering activity" means any act
7 or threat involving an indictable misdemeanor or
8 a felony under the laws of this state.

9 2. "Pattern of racketeering activity" means
10 at least two separate acts of racketeering
11 activity, at least one of which occurred after the
12 effective date of this Act, that have the same or
13 similar purposes, results, participants, victims,
14 or methods of commission, or that are otherwise
15 interrelated by distinguishing characteristics
16 and not isolated events.

17 3. "Unlawful debt" means a debt for a thing
18 of value which is incurred or contracted in viola-
19 tion of chapters ninety-nine A (99A), ninety-nine B
20 (99B), five hundred thirty-five (535), or five
21 hundred thirty-seven (537) of the Code and which
22 is incurred or contracted at an interest rate at
23 least twice the lawful rate.

24 4. "Attorney General" means the attorney
25 general or a designee, including a state agency.

26 5. "Enterprise" means a natural person,
27 partnership, corporation, association, or other
28 legal entity, and any union or group of individuals
29 associated in fact although not a legal entity.

30 6. "Person" means any natural person or
31 entity capable of holding a legal or beneficial
32 interest in property.

33 7. "Commerce" is any kind of activity which
34 can, in any manner, affect the buying, selling, trading,
35 or flow of goods and services in this state.

36 Sec. ____ . NEW SECTION. PROHIBITED ACTIVITIES.

37 1. A person shall not directly or indirectly
38 receive income from a pattern of racketeering
39 activity or through the collection of an unlawful
40 debt in which this person has participated as
41 a principal, to directly or indirectly use or invest
42 this income or its proceeds in the acquisition of
43 an enterprise which is engaged in or the activities
44 of which affect commerce in this State. This
45 subsection does not prohibit the purchase of
46 securities on the open market for purposes of
47 investment and without the intention of
48 controlling or participating in the control of
49 the issuer or of assisting another to do so if the
50 securities of the issuer held by the purchaser,
the members of the purchaser's family within the
fifth degree of consanguinity or affinity, or the

1 purchaser's accomplices in any pattern of racketeering
2 activity or the collection of an unlawful debt after
3 this purchase do not amount in the aggregate to one
4 percent of the outstanding securities of any one
5 class and do not confer the power, either in law
6 or in fact, to elect one or more directors of the
7 issuer.

8 2. A person shall not directly or indirectly
9 acquire or maintain through a pattern of racketeering
10 activity or through a collection of an unlawful debt
11 any interest in or control of any enterprise which
12 is engaged in or the activities of which affect
13 commerce in this state.

14 3. A person employed by or associated with
15 an enterprise engaged in or the activities of which
16 affect commerce in this state shall not directly
17 or indirectly conduct or participate in this
18 enterprise's affairs through a pattern of racketeering
19 activities or through a collection of an unlawful
20 debt.

21 4. A person shall not conspire to violate the
22 provisions of subsection one (1), two (2), or three
23 (3) of this section.

24 Sec. _____. NEW SECTION. CRIMINAL PENALTIES.

25 1. A person who violates the provisions of
26 this enactment shall be, upon conviction, fined not
27 to exceed twenty-five thousand dollars, imprisoned
28 in the state penitentiary not to exceed twenty
29 years, or both so fined and imprisoned.

30 2. In addition to the penalty prescribed
31 under subsection one (1) of this section, a person
32 who violates the provisions of this enactment shall,
33 upon conviction, forfeit to the state:

34 a. Any interest acquired or maintained in
35 violation of this enactment and

36 b. Any interest in, security of, claim
37 against, or property or contractual right of any
38 kind affording a source of influence over any
39 enterprise which this person has established,
40 operated, conducted, or participated in the conduct
41 of in violation of this division.

42 3. In any prosecution brought under this section,
43 a district court may enter restraining orders or
44 injunctions and take other appropriate action such
45 as requiring a satisfactory performance bond with
46 regard to any property or interest subject to
47 forfeiture.

48 4. Upon conviction of a person under this
49 section, a district court shall authorize the
50 attorney general to seize all property or interests
declared forfeited under this section under designated
terms and conditions. If a forfeited property right

1 or other interest is not exercisable in favor of the
2 state, it shall expire and not revert to the con-
3 victed person. The state shall dispose of forfeited
4 property and interests as soon as commercially
5 feasible, making due provision for the rights of
6 innocent persons.

7 Sec. _____. NEW SECTION. CIVIL REMEDIES.

8 1. Upon petition of the attorney general, a
9 district court may prevent or restrain violations
10 under this enactment by issuing appropriate orders.
11 These orders may include:

12 a. Ordering a person to divest of any direct
13 or indirect interest in an enterprise.

14 b. Imposing reasonable restrictions on the
15 future activities or investments of any person,
16 including prohibiting any person from engaging in the
17 same type of endeavor as the enterprise is engaged
18 in if this endeavor affects commerce in this state.

19 c. Ordering dissolution or reorganization
20 of any enterprise, making due provision for the rights
21 of innocent persons.

22 2. Any action brought by the attorney general
23 under this section shall proceed as soon as
24 practicable to hearing and final determination. Prior
25 to final determination, a district court may enter
26 restraining orders or injunctions and take other
27 appropriate action such as requiring a satisfactory
28 performance bond.

29 3. In addition to any action brought by the
30 attorney general under this section, a person injured
31 by a violation of this enactment may recover up to
32 threefold the damages sustained and court costs,
33 including a reasonable attorney fee.

34 4. A criminal conviction under this division
35 shall estop a civil defendant under this section
36 from denying the essential elements of this
37 defendant's criminal offense.

38 5. Any civil action or proceeding brought
39 under this section shall be brought in the district
40 court in whose jurisdiction the defendant resides,
41 is found, has an agent, or transacts the defendant's
42 affairs.

43 6. In any proceeding ancillary to or any civil
44 action brought by the attorney general, the district
45 court may close the proceedings after considering
46 the rights of affected persons."

47 2. Amend the title, lines 1 and 2 by striking
48 everything after the word "Act" and inserting in
49 lieu thereof the following: "relating to criminal
50 and civil proceedings against enterprises connected
with organized crime."

EXPLANATION TO AMENDMENT S-5886
TO SENATE FILE 1046

S-5886
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This Act is a RICO Statute (Racketeer Influenced and Corrupt Organizations) patterned after Title IX of the Federal Organized Crime Control Act of 1970. The purpose of the statute is to outlaw the use of illegally obtained funds in legitimate business. The law involves both criminal and civil penalties for its violation. The RICO Statute is aimed primarily at organized crime's prevention of free competition and its burden on commerce in the State of Iowa.

S-5886 FILED
MAY 21, 1976

BY WILLIAM P. WINKELMAN