

CHAPTER 706A

ONGOING CRIMINAL CONDUCT

Referred to in §331.307, 364.22, 701.1, 706B.2, 808B.3

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706A.1 Definitions.

In this chapter, unless the context otherwise requires:

1. “*Criminal network*” means any combination of persons engaging, for financial gain on a continuing basis, in conduct which is an indictable offense under the laws of this state regardless of whether such conduct is charged or indicted. As used in this subsection, persons combine if they collaborate or act in concert in carrying on or furthering the activities or purposes of a network even though such persons may not know each other’s identity, membership in the network changes from time to time, or one or more members of the network stand in a wholesaler-retailer, service provider, or other arm’s length relationship with others as to conduct in the furtherance of the financial goals of the network.

2. “*Enterprise*” includes any sole proprietorship, partnership, corporation, trust, or other legal entity, or any unchartered union, association, or group of persons associated in fact although not a legal entity, and includes unlawful as well as lawful enterprises.

3. “*Proceeds*” means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

4. “*Property*” means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

5. “*Specified unlawful activity*” means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an indictable offense under the laws of the state in which it occurred and under the laws of this state.

96 Acts, ch 1133, §26

Referred to in §706A.2

706A.2 Violations.

1. *Specified unlawful activity influenced enterprises.*

a. It is unlawful for any person who has knowingly received any proceeds of specified unlawful activity to use or invest, directly or indirectly, any part of such proceeds in the acquisition of any interest in any enterprise or any real property, or in the establishment or operation of any enterprise.

b. It is unlawful for any person to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through specified unlawful activity.

c. It is unlawful for any person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.

d. It is unlawful for any person to conspire or attempt to violate or to solicit or facilitate the violations of the provisions of paragraph “a”, “b”, or “c”.

2. *Facilitation of a criminal network.* It is unlawful for a person acting with knowledge of the financial goals and criminal objectives of a criminal network to knowingly facilitate criminal objectives of the network by doing any of the following:

a. Engaging in violence or intimidation or inciting or inducing another to engage in violence or intimidation.

b. Inducing or attempting to induce a person believed to have been called or who may be called as a witness to unlawfully withhold any testimony, testify falsely, or absent themselves from any official proceeding to which the potential witness has been legally summoned.

c. Attempting by means of bribery, misrepresentation, intimidation, or force to obstruct, delay, or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor, grand jury, or petit jury.

d. Injuring or damaging another person's body or property because that person or any other person gave information or testimony to a peace officer, magistrate, prosecutor, or grand jury.

e. Attempting to suppress by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of any person.

f. Making any property available to a member of the criminal network.

g. Making any service other than legal services available to a member of the criminal network.

h. Inducing or committing any act or omission by a public servant in violation of the public servant's official duty.

i. Obtaining any benefit for a member of a criminal network by means of false or fraudulent pretenses, representation, promises, or material omissions.

j. Making a false sworn statement regarding a material issue, believing it to be false, or making any statement, believing it to be false, regarding a material issue to a public servant in connection with an application for any benefit, privilege, or license, or in connection with any official investigation or proceeding.

3. *Money laundering.* It is unlawful for a person to commit money laundering in violation of chapter 706B.

4. *Acts of specified unlawful activity.* It is unlawful for a person to commit specified unlawful activity as defined in section 706A.1.

5. *Negligent empowerment of specified unlawful activity.*

a. It is unlawful for a person to negligently allow property owned or controlled by the person or services provided by the person, other than legal services, to be used to facilitate specified unlawful activity, whether by entrustment, loan, rent, lease, bailment, or otherwise.

b. Damages for negligent empowerment of specified unlawful activity shall include all reasonably foreseeable damages proximately caused by the specified unlawful activity, including, in a case brought or intervened in by the state, the costs of investigation and criminal and civil litigation of the specified unlawful activity incurred by the government for the prosecution and defense of any person involved in the specified unlawful activity, and the imprisonment, probation, parole, or other expense reasonably necessary to detain, punish, and rehabilitate any person found guilty of the specified unlawful activity, except for the following:

(1) If the person empowering the specified unlawful activity acted only negligently and was without knowledge of the nature of the activity and could not reasonably have known of the unlawful nature of the activity or that it was likely to occur, damages shall be limited to the greater of the following:

(a) The cost of the investigation and litigation of the person's own conduct plus the value of the property or service involved as of the time of its use to facilitate the specified unlawful activity.

(b) All reasonably foreseeable damages to any person, except any person responsible for the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's own conduct.

(2) If the property facilitating the specified unlawful activity was taken from the possession or control of the person without that person's knowledge and against that person's will in violation of the criminal law, damages shall be limited to reasonably foreseeable damages to any person, except persons responsible for the taking or the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's negligence, if any, in failing to prevent its taking.

(3) If the person was aware of the possibility that the property or service would be used to facilitate some form of specified unlawful activity and acted to prevent the unlawful use, damages shall be limited to reasonably foreseeable damages to any person, except any person responsible for the specified unlawful activity, and to the general economy and welfare of

the state proximately caused by the person's failure, if any, to act reasonably to prevent the unlawful use.

(4) The plaintiff shall carry the burden of proof by a preponderance of the evidence that the specified unlawful activity occurred and was facilitated by the property or services. The defendant shall have the burden of proof by a preponderance of the evidence as to circumstances constituting lack of negligence and on the limitations on damages in this subsection.

96 Acts, ch 1133, §27; 98 Acts, ch 1074, §33

Referred to in §706A.3, 706A.4

706A.3 Civil remedies — actions.

1. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.

2. The district court has jurisdiction to prevent, restrain, or remedy such violations by issuing appropriate orders. Prior to a determination of liability such orders may include, but are not limited to, entering restraining orders or injunctions, requiring the execution of satisfactory performance bonds, creating receiverships, and enforcing constructive trusts in connection with any property or interest subject to damages, forfeiture, or other remedies or restraints pursuant to this chapter.

3. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including any of the following:

a. Ordering any defendant to divest the defendant of any interest in any enterprise, or in any real property.

b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as any enterprise in which the defendant was engaged in a violation of this chapter.

c. Ordering the dissolution or reorganization of any enterprise.

d. Ordering the payment of all reasonable costs and expenses of the investigation and prosecution of any violation, civil or criminal, including reasonable attorney fees in the trial and appellate courts. Such payments received by the state, by judgment, settlement, or otherwise, shall be considered forfeited property and disposed of pursuant to section 809A.17.

e. Ordering the forfeiture of any property subject to forfeiture under chapter 809A, pursuant to the provisions and procedures of that chapter.

f. Ordering the suspension or revocation of any license, permit, or prior approval granted to any person by any agency of the state.

g. Ordering the surrender of the certificate of existence of any corporation organized under the laws of this state or the revocation of any certificate authorizing a foreign corporation to conduct business within this state, upon finding that for the prevention of future violations, the public interest requires the certificate of the corporation to be surrendered and the corporation dissolved or the certificate revoked.

4. Relief under subsection 3, paragraphs “e”, “f”, and “g”, shall not be granted in civil proceedings instituted by an aggrieved person unless the prosecuting attorney has instituted the proceedings or intervened. In any action under this section brought by the state or in which the state has intervened, the state may employ any of the powers of seizure and restraint of property as are provided for forfeiture actions under chapter 809A, or as are provided for the collection of taxes payable and past due, and whose collection has been determined to be in jeopardy.

5. In a proceeding initiated under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other civil cases, but no showing of special or irreparable injury is required. Pending final determination of a proceeding initiated under this section, a temporary restraining

order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that a judgment for money damages might be difficult to execute, and, in a proceeding initiated by a nongovernmental aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

6. Any person who is in possession or control of proceeds of any violation of this chapter, is an involuntary trustee and holds the property in constructive trust for the benefit of the person entitled to remedies under this chapter, unless the holder acquired the property as a bona fide purchaser for value who was not knowingly taking part in an illegal transaction.

7. Any person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, by any person, may bring a civil action, subject to the *in pari delicto* defense, and shall recover threefold the actual damages sustained and the costs and expenses of the investigation and prosecution of the action including reasonable attorney fees in the trial and appellate courts. Damages shall not include pain and suffering. Any person injured shall have a claim to any property against which any fine, or against which treble damages under subsection 11 or 12, may be imposed, superior to any right or claim of the state to the property, up to the value of actual damages and costs awarded in an action under this subsection. The state shall have a right of subrogation to the extent that an award made to a person so injured is satisfied out of property against which any fine or civil remedy in favor of the state may be imposed.

8. *a.* If liability of a legal entity is based on the conduct of another, through respondeat superior or otherwise, the legal entity shall not be liable for more than actual damages and costs, including a reasonable attorney fee, if the legal entity affirmatively shows by a preponderance of the evidence that both of the following apply:

(1) The conduct was not engaged in, authorized, solicited, commanded, or recklessly tolerated by the legal entity, by the directors of the legal entity, or by a high managerial agent of the legal entity acting within the scope of employment.

(2) The conduct was not engaged in by an agent of the legal entity acting within the scope of employment and in behalf of the legal entity.

b. For the purposes of this subsection:

(1) “*Agent*” means any officer, director, or employee of the legal entity, or any other person who is authorized to act in behalf of the legal entity.

(2) “*High managerial agent*” means any officer of the legal entity or, in the case of a partnership, a partner, or any other agent in a position of comparable authority with respect to the formulation of policy of the legal entity.

9. Notwithstanding any other provision of law, any pleading, motion, or other paper filed by a nongovernmental aggrieved party in connection with a proceeding or action under subsection 7 shall be verified. If such aggrieved person is represented by an attorney, such pleading, motion, or other paper shall be signed by at least one attorney of record in the attorney’s individual name, whose address shall be stated.

If such pleading, motion, or other paper includes an averment of fraud, coercion, accomplice, respondent superior, conspiratorial, enterprise, or other vicarious accountability, it shall state, insofar as practicable, the circumstances with particularity. The verification and the signature by an attorney required by this subsection shall constitute a certification by the signer that the attorney has carefully read the pleading, motion, or other paper and, based on a reasonable inquiry, believes that all of the following exist:

a. It is well grounded in fact.

b. It is warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law.

c. It is not made for an improper purpose, including to harass, to cause unnecessary delay, or to impose a needless increase in the cost of litigation.

The court may, after a hearing and appropriate findings of fact, impose upon any person who verified the complaint, cross-claim, or counterclaim, or any attorney who signed it in violation of this subsection, or both, a fit and proper sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the complaint or claim, including reasonable attorney fees. If the court determines that the filing of a complaint or claim under subsection 7 by a nongovernmental party was frivolous

in whole or in part, the court shall award double the actual expenses, including attorney fees, incurred because of the frivolous portion of the complaint or claim.

10. Upon the filing of a complaint, cross-claim, or counterclaim under this section, an aggrieved person, as a jurisdictional prerequisite, shall immediately notify the attorney general of its filing and serve one copy of the pleading on the attorney general. Service of the notice on the attorney general does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action and does not authorize the aggrieved person to name the state or the attorney general as a party to the action. The attorney general, upon timely application, may intervene or appear as *amicus curiae* in any civil proceeding or action brought under this section if the attorney general certifies that, in the opinion of the attorney general, the proceeding or action is of general public importance. In any proceeding or action brought under this section by an aggrieved person, the state shall be entitled to the same relief as if it had instituted the proceeding or action.

11. a. Any prosecuting attorney may bring a civil action on behalf of a person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, and shall recover threefold the damages sustained by such person and the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts. The court shall exclude from the amount of monetary relief awarded any amount of monetary relief which is any of the following:

(1) Which duplicates amounts which have been awarded for the same injury.

(2) Which is properly allocable to persons who have excluded their claims under paragraph "c".

b. In any action brought under this subsection, the prosecuting attorney, at such times, in such manner, and with such content as the court may direct, shall cause notice of the action to be given by publication. If the court finds that notice given solely by publication would deny due process to any person, the court may direct further notice to such person according to the circumstances of the case.

c. A person on whose behalf an action is brought under this subsection may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to the person by filing notice of such election within such time as specified in the notice given under this subsection.

d. A final judgment in an action under this subsection shall preclude any claim under this subsection by a person on behalf of whom such action was brought who fails to give notice of exclusion within the times specified in the notice given under paragraph "b".

e. An action under this subsection on behalf of a person other than the state shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

12. The attorney general may bring a civil action as *parens patriae* on behalf of the general economy, resources, and welfare of this state, and shall recover threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the defendant by reason of a violation of this chapter, plus the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts.

a. A person who has knowingly conducted or participated in the conduct of an enterprise in violation of section 706A.2, subsection 1, paragraph "c", is also jointly and severally liable for the greater of threefold the damage sustained directly or indirectly by the state by reason of conduct in furtherance of the violation or threefold the total of all proceeds acquired, maintained, produced, or realized by, or on behalf of, any person by reason of participation in the enterprise except for the following:

(1) A person is not liable for conduct occurring prior to the person's first knowing participation in or conduct of the enterprise.

(2) If a person shows that, under circumstances manifesting a voluntary and complete renunciation of culpable intent, the person withdrew from the enterprise by giving a complete and timely warning to law enforcement authorities or by otherwise making a reasonable and substantial effort to prevent the conduct or result which is the criminal objective of the enterprise, the person is not liable for conduct occurring after the person's withdrawal.

b. A person who has facilitated a criminal network in violation of section 706A.2, subsection 2, is also jointly and severally liable for all of the following:

(1) The damages resulting from the conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(2) The proceeds of conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(3) A person who has engaged in money laundering in violation of chapter 706B is also jointly and severally liable for the greater of threefold the damages resulting from the person's conduct or threefold the property that is the subject of the violation.

96 Acts, ch 1133, §28; 98 Acts, ch 1074, §34

706A.4 Criminal sanctions.

A person who violates section 706A.2, subsection 1, 2, or 4, commits a class "B" felony.

96 Acts, ch 1133, §29

706A.5 Uniformity of construction and application.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. Civil remedies under this chapter do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §30