

SENATE BILL No. 415

By Committee on Judiciary

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; creating
2 the crime of organized retail crime and providing criminal penalties for
3 violation thereof; relating to theft; increasing penalties for theft of
4 certain property; relating to the Kansas racketeer influenced and corrupt
5 organization act; including organized retail crime in the definition of
6 racketeering activity; relating to the attorney general; authorizing the
7 attorney general to prosecute crimes that are part of an alleged course
8 of criminal conduct that occurred in two or more counties; amending
9 K.S.A. 21-5801 and 21-6328 and K.S.A. 2023 Supp. 75-702 and
10 repealing the existing sections.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) Organized retail crime is any of the following acts
14 done with intent to permanently deprive the owner of the possession, use
15 or benefit of the owner's property or services:

16 (1) Taking merchandise with an aggregate retail market value of
17 \$3,000 or more from one or more retailers within a 12-month period, with
18 intent to provide, transfer or sell such merchandise to another person;

19 (2) acting in concert with one or more other persons to receive,
20 purchase, sell or possess merchandise with an aggregate retail market
21 value of \$3,000 or more within a 12-month period, knowing or believing
22 such merchandise to have been stolen;

23 (3) acting as an agent of one or more other persons to take
24 merchandise with an aggregate retail market value of \$3,000 or more from
25 one or more retailers within a 12-month period, as part of an organized
26 plan to commit theft; or

27 (4) recruiting, coordinating, organizing, supervising, directing,
28 managing or financing one or more other persons to undertake any of the
29 acts described in paragraphs (1) through (3).

30 (b) Organized retail crime is a severity level 5, nonperson felony.

31 (c) In addition to the venue provided for under any other provision of
32 law, a prosecution for organized retail crime may be brought in any county
33 where at least \$1 in aggregate retail market value of merchandise is taken,
34 received, sold or purchased.

35 (d) As used in this section:

36 (1) "Aggregate retail market value" means the total combined value

1 of merchandise taken, at the price at which the merchandise would
2 ordinarily be sold by the retailer through legitimate sale or distribution;

3 (2) "merchandise" means chattels of any type or description
4 regardless of the value offered for sale in or about a store;

5 (3) "retailer" means a person or business selling, leasing or
6 facilitating the sale or lease of merchandise to the public or a business; and

7 (4) "store" means a place where merchandise is:

8 (A) Sold or offered to the public for sale at retail; or

9 (B) leased or offered to the public for lease.

10 (e) This section shall be a part of and supplemental to the Kansas
11 criminal code.

12 Sec. 2. K.S.A. 21-5801 is hereby amended to read as follows: 21-
13 5801. (a) Theft is any of the following acts done with intent to
14 permanently deprive the owner of the possession, use or benefit of the
15 owner's property or services:

16 (1) Obtaining or exerting unauthorized control over property or
17 services;

18 (2) obtaining control over property or services, by deception;

19 (3) obtaining control over property or services, by threat;

20 (4) obtaining control over stolen property or services knowing the
21 property or services to have been stolen by another; or

22 (5) knowingly dispensing motor fuel into a storage container or the
23 fuel tank of a motor vehicle at an establishment in which motor fuel is
24 offered for retail sale and leaving the premises of the establishment
25 without making payment for the motor fuel.

26 (b) Theft of:

27 (1) Property or services of the value of \$100,000 or more is a severity
28 level 5, nonperson felony;

29 (2) property or services of the value of at least \$25,000 but less than
30 \$100,000 is a severity level 7, nonperson felony;

31 (3) property or services of the value of at least \$1,500 but less than
32 \$25,000 is a severity level 9, nonperson felony, except as provided in
33 subsection (b)(7) or (b)(9);

34 (4) property or services of the value of less than \$1,500 is a class A
35 nonperson misdemeanor, except as provided in subsection (b)(5), (b)(6),
36 (b)(7) or (b)(8);

37 (5) property of the value of less than \$1,500 from three separate
38 mercantile establishments within a period of 72 hours as part of the same
39 act or transaction or in two or more acts or transactions connected together
40 or constituting parts of a common scheme or course of conduct is a
41 severity level 9, nonperson felony;

42 (6) property of the value of at least \$50 but less than \$1,500 is a
43 severity level 9, nonperson felony if committed by a person who has,

1 within five years immediately preceding commission of the crime,
2 excluding any period of imprisonment, been convicted of theft two or
3 more times;

4 (7) property that is a firearm of the value of less than \$25,000 is a
5 severity level 9, nonperson felony; ~~and~~

6 (8) property that is mail of the value of less than \$1,500 from three
7 separate locations within a period of 72 hours as part of the same act or
8 transaction or in two or more acts or transactions connected together or
9 constituting parts of a common scheme or course of conduct is a severity
10 level 9, nonperson felony; *and*

11 (9) *property, by deception, that is refunds, money or merchandise*
12 *from a retailer with an aggregate retail market value of \$3,000 or more is*
13 *a severity level 5, nonperson felony.*

14 (c) As used in this section:

15 (1) *"Aggregate retail market value," "merchandise" and "retailer"*
16 *mean the same as defined in section 1, and amendments thereto;*

17 (2) "conviction" or "convicted" includes being convicted of a
18 violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal
19 ordinance ~~which~~ that prohibits the acts that this section prohibits;

20 ~~(2)~~(3) "mail" means a letter, postal card, package or bag sent through
21 the United States postal service or other delivery service, or any other
22 article or thing contained therein;

23 ~~(3)~~(4) "regulated scrap metal" means the same as defined in K.S.A.
24 2023 Supp. 50-6,109, and amendments thereto;

25 ~~(4)~~(5) "remote service unit" means the same as defined in K.S.A. 9-
26 1111, and amendments thereto, and includes, but is not limited to,
27 automated cash dispensing machines and automated teller machines; and

28 ~~(5)~~(6) "value" means the value of the property or, if the property is
29 regulated scrap metal or a remote service unit, the cost to restore the site of
30 the theft of such regulated scrap metal or remote service unit to its
31 condition at the time immediately prior to the theft of such regulated scrap
32 metal or remote service unit, whichever is greater.

33 Sec. 3. K.S.A. 21-6328 is hereby amended to read as follows: 21-
34 6328. As used in the Kansas racketeer influenced and corrupt organization
35 act:

36 (a) (1) "Beneficial interest" means the interest of a person:

37 (A) As a beneficiary under any trust arrangement pursuant to which a
38 trustee holds legal or record title to real property for the benefit of such
39 person; or

40 (B) under any other form of express fiduciary arrangement pursuant
41 to which any other person holds legal or record title to real property for the
42 benefit of such person.

43 (2) The term "beneficial interest" does not include the interest of a

1 stock holder in a corporation or the interest of a partner in either a general
2 partnership or a limited partnership. A beneficial interest shall be deemed
3 to be located where the real property owned by the trustee is located.

4 (b) "Covered person" means any person who:

5 (1) Is a criminal street gang member or criminal street gang associate,
6 as defined in K.S.A. 21-6313, and amendments thereto;

7 (2) has engaged in or is engaging in any conduct prohibited by K.S.A.
8 21-5426, and amendments thereto, human trafficking or aggravated human
9 trafficking, or K.S.A. 21-6422, and amendments thereto, commercial
10 sexual exploitation of a child;

11 (3) has engaged in or is engaging in any conduct prohibited by K.S.A.
12 21-5703, and amendments thereto, unlawful manufacturing of controlled
13 substances, or K.S.A. 21-5705, and amendments thereto, unlawful
14 cultivation or distribution of controlled substances; or

15 (4) has engaged in or is engaging in any conduct prohibited by K.S.A.
16 21-6107, and amendments thereto, identity theft or identity fraud.

17 (c) "Documentary material" means any book, paper, document,
18 writing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
19 computer printout, other data compilation from which information can be
20 obtained or from which information can be translated into usable form, or
21 other tangible item.

22 (d) "Enterprise" means any individual, sole proprietorship,
23 partnership, corporation, business trust, union chartered under the laws of
24 this state, or other legal entity, or any unchartered union, association, or
25 group of individuals associated in fact although not a legal entity; and it
26 includes illicit as well as licit enterprises and governmental, as well as
27 other, entities. A criminal street gang, as defined in K.S.A. 21-6313, and
28 amendments thereto, constitutes an enterprise.

29 (e) "Pattern of racketeering activity" means engaging in at least two
30 incidents of racketeering activity that have the same or similar intents,
31 results, accomplices, victims or methods of commission or that otherwise
32 are interrelated by distinguishing characteristics and are not isolated
33 incidents, provided at least one of such incidents occurred after the
34 effective date of this act and that the last of such incidents occurred within
35 five years, excluding any period of imprisonment, after a prior incident of
36 racketeering activity.

37 (f) "Racketeering activity" means to commit, attempt to commit,
38 conspire to commit or to solicit, coerce or intimidate another person to
39 commit any:

40 (1) Felony or misdemeanor violation of: The felony provisions of
41 K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a
42 police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas
43 money transmitter act; article 12a of chapter 17 of the Kansas Statutes

1 Annotated, and amendments thereto, Kansas uniform securities act; K.S.A.
2 21-5401, and amendments thereto, capital murder; K.S.A. 21-5402, and
3 amendments thereto, murder in the first degree; K.S.A. 21-5403, and
4 amendments thereto, murder in the second degree; K.S.A. 21-5408, and
5 amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 21-
6 5412, and amendments thereto; K.S.A. 21-5413, and amendments thereto;
7 K.S.A. 21-5414, and amendments thereto, domestic battery; K.S.A. 21-
8 5415, and amendments thereto, criminal threat or aggravated criminal
9 threat; K.S.A. 21-5420, and amendments thereto, robbery or aggravated
10 robbery; K.S.A. 21-5421, and amendments thereto, terrorism; K.S.A. 21-
11 5422, and amendments thereto, illegal use of weapons of mass destruction;
12 K.S.A. 21-5423, and amendments thereto; K.S.A. 21-5426, and
13 amendments thereto, human trafficking or aggravated human trafficking;
14 K.S.A. 21-5428, and amendments thereto, blackmail; K.S.A. 21-5510, and
15 amendments thereto, sexual exploitation of a child; K.S. 21-5601, and
16 amendments thereto, endangering a child or aggravated endangering a
17 child; K.S.A. 21-5602, and amendments thereto, abuse of a child; K.S.A.
18 21-5603, and amendments thereto, contributing to a child's misconduct or
19 deprivation; K.S.A. 21-5607(b), and amendments thereto, furnishing
20 alcoholic beverages to a minor for illicit purposes; article 57 of chapter 21
21 of the Kansas Statutes Annotated, and amendments thereto, crimes
22 involving controlled substances; K.S.A. 21-5801, and amendments thereto,
23 theft; K.S.A. 21-5803, and amendments thereto, criminal deprivation of
24 property; K.S.A. 21-5805, and amendments thereto; K.S.A. 21-5807, and
25 amendments thereto, burglary or aggravated burglary; K.S.A. 21-5812,
26 and amendments thereto, arson or aggravated arson; K.S.A. 21-5813, and
27 amendments thereto, criminal damage to property; K.S.A. 21-5814, and
28 amendments thereto, criminal use of an explosive; K.S.A. 21-5821, and
29 amendments thereto, giving a worthless check; K.S.A. 21-5823, and
30 amendments thereto, forgery; K.S.A. 21-5824, and amendments thereto,
31 making false information; K.S.A. 21-5825, and amendments thereto,
32 counterfeiting; K.S.A. 21-5826, and amendments thereto, destroying
33 written instrument; K.S.A. 21-5828, and amendments thereto, criminal use
34 of a financial card; K.S.A. 21-5838, and amendments thereto, conducting a
35 pyramid promotional scheme; K.S.A. 21-5839, and amendments thereto;
36 *section 1, and amendments thereto, organized retail crime*; K.S.A. 21-
37 5903, and amendments thereto, perjury; K.S.A. 21-5904, and amendments
38 thereto, interference with law enforcement; K.S.A. 21-5905, and
39 amendments thereto, interference with the judicial process; K.S.A. 21-
40 5909, and amendments thereto, intimidation of a witness or victim or
41 aggravated intimidation of a witness or victim; K.S.A. 21-5912, and
42 amendments thereto, aiding escape; K.S.A. 21-5913, and amendments
43 thereto, obstructing apprehension or prosecution; K.S.A. 21-5918, and

1 amendments thereto; K.S.A. 21-6001, and amendments thereto, bribery;
2 K.S.A. 21-6002, and amendments thereto, official misconduct; K.S.A. 21-
3 6107, and amendments thereto, identity theft or identity fraud; K.S.A. 21-
4 6301, and amendments thereto, criminal use of weapons; K.S.A. 21-6302,
5 and amendments thereto, criminal carrying of a weapon; K.S.A. 21-6303,
6 and amendments thereto, criminal distribution of firearms to a felon;
7 K.S.A. 21-6304, and amendments thereto, criminal possession of a
8 weapon by a convicted felon; K.S.A. 21-6305, and amendments thereto,
9 aggravated weapons violation by a convicted felon; K.S.A. 21-6306, and
10 amendments thereto, defacing identification marks of a firearm; K.S.A.
11 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A.
12 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 21-
13 6312, and amendments thereto; K.S.A. 21-6314, and amendments thereto,
14 recruiting criminal street gang membership; K.S.A. 21-6315, and
15 amendments thereto, criminal street gang intimidation; K.S.A. 21-6401,
16 and amendments thereto, promoting obscenity or promoting obscenity to
17 minors; K.S.A. 21-6404, and amendments thereto, gambling; K.S.A. 21-
18 6405, and amendments thereto, illegal bingo operation; K.S.A. 21-6406,
19 and amendments thereto, commercial gambling; K.S.A. 21-6407, and
20 amendments thereto, dealing in gambling devices; K.S.A. 21-6408, and
21 amendments thereto; K.S.A. 21-6409, and amendments thereto, installing
22 communication facilities for gamblers; K.S.A. 21-6414(a) or (b), and
23 amendments thereto, unlawful conduct of dog fighting or unlawful
24 possession of dog fighting paraphernalia; K.S.A. 21-6417(a) or (b), and
25 amendments thereto, unlawful conduct of cockfighting or unlawful
26 possession of cockfighting paraphernalia; K.S.A. 21-6419, and
27 amendments thereto, selling sexual relations; K.S.A. 21-6420, and
28 amendments thereto, promoting the sale of sexual relations; K.S.A. 21-
29 6422, and amendments thereto, commercial sexual exploitation of a child;
30 K.S.A. 21-6501, and amendments thereto, extortion; K.S.A. 21-6502, and
31 amendments thereto, debt adjusting; K.S.A. 21-6504, and amendments
32 thereto, equity skimming; K.S.A. 21-6506, and amendments thereto,
33 commercial bribery; K.S.A. 21-6507, and amendments thereto, sports
34 bribery; K.S.A. 21-6508, and amendments thereto, tampering with a sports
35 contest; K.S.A. 39-720, and amendments thereto, social welfare service
36 fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance
37 acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor
38 control act; K.S.A. 44-5,125, and amendments thereto, workers'
39 compensation act; K.S.A. 65-1657, and amendments thereto, nonresident
40 pharmacy registration; K.S.A. 65-3441, and amendments thereto,
41 hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in
42 counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes
43 Annotated, and amendments thereto, Kansas parimutuel racing act; or

1 K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco
2 products act; or

3 (2) conduct defined as "racketeering activity" under 18 U.S.C. §
4 1961(1).

5 (g) "Real property" means any real property or any interest in such
6 real property, including, but not limited to, any lease of or mortgage upon
7 such real property.

8 (h) (1) "Trustee" means any:

9 (A) Person acting as trustee pursuant to a trust in which the trustee
10 holds legal or record title to real property;

11 (B) person who holds legal or record title to real property in which
12 any other person has a beneficial interest; or

13 (C) successor trustee or trustees to any or all of the foregoing persons.

14 (2) The term "trustee" does not include any person appointed or
15 acting as a personal representative as defined in K.S.A. 59-102, and
16 amendments thereto, or appointed or acting as a trustee of any
17 testamentary trust or as a trustee of any indenture of trust under which any
18 bonds have been or are to be issued.

19 (i) "Unlawful debt" means any money or other thing of value
20 constituting principal or interest of a debt that is legally unenforceable in
21 this state in whole or in part because the debt was incurred or contracted
22 in:

23 (1) Violation of any of the following provisions of law: Article 88 of
24 chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
25 Kansas parimutuel racing act; K.S.A. 21-6404, and amendments thereto,
26 gambling; K.S.A. 21-6405, and amendments thereto, illegal bingo
27 operation; K.S.A. 21-6406, and amendments thereto, commercial
28 gambling; K.S.A. 21-6407, and amendments thereto, dealing in gambling
29 devices; K.S.A. 21-6408, and amendments thereto, unlawful possession of
30 a gambling device; or K.S.A. 21-6409, and amendments thereto, installing
31 communication facilities for gamblers; or

32 (2) gambling activity in violation of federal law or in the business of
33 lending money at a rate usurious under state or federal law.

34 Sec. 4. K.S.A. 2023 Supp. 75-702 is hereby amended to read as
35 follows: 75-702. (a) The attorney general shall appear for the state, and
36 prosecute and defend any and all actions and proceedings, civil or
37 criminal, in the Kansas supreme court, the Kansas court of appeals and in
38 all federal courts, in which the state shall be interested or a party, and shall,
39 when so appearing, control the state's prosecution or defense.

40 (b) The attorney general shall also, when required by the governor or
41 either branch of the legislature, appear for the state and prosecute or
42 defend, in any other court or before any officer, in any cause or matter,
43 civil or criminal, in which this state may be a party or interested or when

1 the constitutionality of any law of this state is at issue and when so
2 directed shall seek final resolution of such issue in the supreme court of
3 the state of Kansas.

4 (c) (1) The attorney general shall have authority to prosecute any
5 matter related to a violation of K.S.A. 12-189 or 75-5133, and
6 amendments thereto, related to unlawful acts when the offender is an
7 officer or employee of a city or county.

8 (2) Notwithstanding any provision of law to the contrary, the attorney
9 general shall have concurrent authority with any county or district attorney
10 to prosecute ~~theft as defined in K.S.A. 21-5801, and amendments thereto,~~
11 ~~a violation:~~

12 (A) *Violations* of the Kansas racketeer influenced and corrupt
13 organizations act, K.S.A. 21-6327 et seq., and amendments thereto, ~~or an,~~

14 (B) *crimes that are part of an alleged course of criminal conduct that*
15 *occurred in two or more counties; and*

16 (C) *any attempt, conspiracy or criminal solicitation as defined in*
17 *K.S.A. 21-5301, 21-5302 or 21-5303, and amendments thereto, of ~~such~~*
18 ~~*crimes that is part of an alleged course of criminal conduct that occurred in*~~
19 ~~*two or more counties the crimes described in subsection (c)(2)(A) or (c)(2)*~~
20 ~~*(B).*~~

21 Sec. 5. K.S.A. 21-5801 and 21-6328 and K.S.A. 2023 Supp. 75-702
22 are hereby repealed.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.