

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 129

HOUSE BILL 2266

AN ACT

AMENDING SECTION 13-2314.04, ARIZONA REVISED STATUTES; RELATING TO ORGANIZED
CRIME AND FRAUD.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2314.04, Arizona Revised Statutes, is amended
3 to read:

4 13-2314.04. Racketeering; unlawful activity; civil remedies by
5 private cause of action; definitions

6 A. A person who sustains reasonably foreseeable injury to his person,
7 business or property by a pattern of racketeering activity, or by a violation
8 of section 13-2312 involving a pattern of racketeering activity, may file an
9 action in superior court for the recovery of up to treble damages and the
10 costs of the suit, including reasonable attorney fees for trial and appellate
11 representation. If the person against whom a racketeering claim has been
12 asserted, including a lien, prevails on that claim, the person may be awarded
13 costs and reasonable attorney fees incurred in defense of that claim. No
14 person may rely on any conduct that would have been actionable as fraud in
15 the purchase or sale of securities to establish an action under this section
16 except an action against a person who is convicted of a crime in connection
17 with the fraud, in which case the period to initiate a civil action starts
18 to run on the date on which the conviction becomes final.

19 B. The superior court has jurisdiction to prevent, restrain and remedy
20 a pattern of racketeering activity as defined by this section or a violation
21 of section 13-2312 involving a pattern of racketeering activity, after making
22 provision for the rights of all innocent persons affected by the violation
23 and after a hearing or trial, as appropriate, by issuing appropriate orders.

24 C. Before a determination of liability these orders may include, but
25 are not limited to, entering restraining orders or prohibitions or taking
26 such other actions, including the acceptance of satisfactory performance
27 bonds, the creation of receiverships and the enforcement of constructive
28 trusts, in connection with any property or other interest subject to damage
29 or other remedies or restraints pursuant to this section as the court deems
30 proper.

31 D. After a determination of liability these orders may include, but
32 are not limited to:

33 1. Ordering any person to divest himself of any interest, direct or
34 indirect, in any enterprise.

35 2. Imposing reasonable restrictions on the future activities or
36 investments of any person, including prohibiting any person from engaging in
37 the same type of endeavor as the enterprise engaged in, the activities of
38 which affect the laws of this state, to the extent the constitutions of the
39 United States and this state permit.

40 3. Ordering dissolution or reorganization of any enterprise.

41 4. Ordering the payment of up to treble damages to those persons
42 injured by a pattern of racketeering activity or a violation of section
43 13-2312 involving a pattern of racketeering activity.

1 5. Prejudgment interest on damages, except that prejudgment interest
2 may not be awarded on any increase in the damages authorized under paragraph
3 4 of this subsection.

4 6. A person or enterprise that acquires any property through an
5 offense included in the definition of racketeering in section 13-2301,
6 subsection D, paragraph 4 or a violation of section 13-2312 is an involuntary
7 trustee. The involuntary trustee and any other person or enterprise, except
8 a bona fide purchaser for value who is reasonably without notice of the
9 unlawful conduct and who is not knowingly taking part in an illegal
10 transaction, hold the property, its proceeds and its fruits in constructive
11 trust for the benefit of persons entitled to remedies under this section.

12 E. A defendant convicted in any criminal proceeding is precluded from
13 subsequently denying the essential allegations of the criminal offense of
14 which he was convicted in any civil proceedings. For the purpose of this
15 subsection, a conviction may result from a verdict or plea including a no
16 contest plea.

17 F. Notwithstanding any law prescribing a lesser period but subject to
18 subsection A of this section, the initiation of civil proceedings pursuant
19 to this section shall be commenced within three years from the date the
20 violation was discovered, or should have been discovered with reasonable
21 diligence, and ten years after the events giving rise to the cause of action,
22 whichever comes first.

23 G. The standard of proof in actions brought pursuant to this section
24 is the preponderance of evidence test.

25 H. A person who files an action under this section shall serve notice
26 and one copy of the pleading on the attorney general within thirty days after
27 the action is filed with the superior court. This requirement is
28 jurisdictional. The notice shall identify the action, the person and the
29 person's attorney. Service of the notice does not limit or otherwise affect
30 the right of the state to maintain an action under section 13-2314 or to
31 intervene in a pending action nor does it authorize the person to name this
32 state or the attorney general as a party to the action.

33 I. On timely application, the attorney general may intervene in any
34 civil action or proceeding brought under this section if the attorney general
35 certifies that in his opinion the action is of special public importance. On
36 intervention, the attorney general may assert any available claim and is
37 entitled to the same relief as if the attorney general has instituted a
38 separate action.

39 J. In addition to the state's right to intervene as a party in any
40 action under this section, the attorney general may appear as amicus curiae
41 in any proceeding in which a claim under this section has been asserted or
42 in which a court is interpreting section 13-2301, 13-2312, 13-2313,
43 13-2314.01, 13-2314.02 or 13-2315 or this section.

44 K. A civil action authorized by this section is remedial and not
45 punitive and does not limit and is not limited by any other previous or

1 subsequent civil or criminal action under this title or any other provision
2 of law. Civil remedies provided under this title are supplemental and not
3 mutually exclusive, except that a person may not recover, for an action
4 brought pursuant to this section, punitive damages or emotional injury
5 damages in the absence of bodily injury.

6 L. A natural person shall not be held liable in damages or for other
7 relief pursuant to this section based on the conduct of another unless the
8 fact finder finds by a preponderance of the evidence that the natural person
9 authorized, requested, commanded, ratified or recklessly tolerated the
10 unlawful conduct of the other. An enterprise shall not be held liable in
11 damages or for other relief pursuant to this section based on the conduct of
12 an agent, unless the fact finder finds by a preponderance of the evidence
13 that a director or high managerial agent performed, authorized, requested,
14 commanded, ratified or recklessly tolerated the unlawful conduct of the
15 agent. A BANK OR SAVINGS AND LOAN ASSOCIATION INSURED BY THE FEDERAL DEPOSIT
16 INSURANCE CORPORATION OR A CREDIT UNION INSURED BY THE NATIONAL CREDIT UNION
17 ADMINISTRATION SHALL NOT BE HELD LIABLE IN DAMAGES OR FOR OTHER RELIEF
18 PURSUANT TO THIS SECTION FOR CONDUCT PROSCRIBED BY SECTION 13-2317,
19 SUBSECTION A, PARAGRAPH 1, BASED ON ACQUIRING OR MAINTAINING AN INTEREST IN,
20 TRANSPORTING, TRANSACTING, TRANSFERRING OR RECEIVING FUNDS BELONGING TO A
21 PERSON OTHER THAN THE PERSON PRESENTING THE FUNDS, UNLESS THE FACT FINDER
22 FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE PERSON OR AGENT ACQUIRING
23 OR MAINTAINING AN INTEREST IN, TRANSPORTING, TRANSACTING, TRANSFERRING OR
24 RECEIVING THE FUNDS ON BEHALF OF THE DEFENDANT DID SO KNOWING THAT THE FUNDS
25 WERE THE PROCEEDS OF AN OFFENSE AND THAT A DIRECTOR OR HIGH MANAGERIAL AGENT
26 PERFORMED, AUTHORIZED, REQUESTED, COMMANDED, RATIFIED OR RECKLESSLY TOLERATED
27 THE UNLAWFUL CONDUCT OF THE PERSON OR AGENT. A person or enterprise shall
28 not be held liable in damages or for other relief pursuant to this section
29 unless the fact finder makes particularized findings sufficient to permit
30 full and complete review of the record, if any, of the conduct of the
31 person. A natural person or enterprise shall not be held liable in damages
32 for recklessly tolerating the unlawful conduct of another person or agent
33 if the other person or agent engaged in unlawful conduct proscribed by
34 section 13-2301, subsection D, paragraph 4, subdivision (p), (r), (s) or (t)
35 and the unlawful conduct involved the purchase or sale of securities.

36 M. Notwithstanding subsection A of this section, a court shall not
37 award costs, including attorney fees, if the award would be unjust because
38 of special circumstances, including the relevant disparate economic position
39 of the parties or the disproportionate amount of the costs, including
40 attorney fees, to the nature of the damage or other relief obtained.

41 N. If the court determines that the filing of any pleading, motion or
42 other paper under this section was frivolous or that any civil action or
43 proceeding was brought or continued under this section in bad faith,
44 vexatiously, wantonly or for an improper or oppressive reason, it shall award
45 a proper sanction to deter this conduct in the future that may include the

1 costs of the civil action or proceeding, including the costs of investigation
2 and a reasonable attorney fee in the trial and appellate courts.

3 O. Notwithstanding any other law, a complaint, counterclaim, answer
4 or response filed by a person in connection with a civil action or proceeding
5 under this section shall be verified by at least one party or his attorney.
6 If the person is represented by an attorney, any pleading, motion or other
7 paper shall be signed by at least one attorney of record in his individual
8 name, and his address shall be stated.

9 P. The verification by a person or his attorney and the signature by
10 an attorney required by subsection O of this section constitutes a
11 certification by the person or attorney that he has carefully read the
12 pleading, motion or other paper and, based on a reasonable inquiry, believes
13 all of the following:

14 1. It is well grounded in fact.

15 2. It is warranted by existing law or there is a good faith argument
16 for the extension, modification or reversal of existing law.

17 3. It is not made for any bad faith, vexatious, wanton, improper or
18 oppressive reason, including to harass, to cause unnecessary delay, to impose
19 a needless increase in the cost of litigation or to force an unjust
20 settlement through the serious character of the averment.

21 If any pleading, motion or other paper is signed in violation of the
22 certification provisions of this subsection, the court, on its own motion or
23 on the motion of the other party and after a hearing and appropriate findings
24 of fact, shall impose on the person who verified it or the attorney who
25 signed it, or both, a proper sanction to deter this conduct in the future,
26 including the costs of the proceeding under subsection N of this section.

27 Q. If any pleading, motion or other paper includes an averment of
28 fraud or coercion, it shall state these circumstances with particularity with
29 respect to each defendant.

30 R. In any civil action or proceeding under this section in which the
31 pleading, motion or other paper does not allege a crime of violence as a
32 racketeering act:

33 1. The term "racketeer" shall not be used in referring to any person.

34 2. The terms used to refer to acts of racketeering or a pattern of
35 racketeering activity shall be "unlawful acts" or "a pattern of unlawful
36 activity".

37 S. In this section, unless the context otherwise requires:

38 1. "Acquire" means for a person to do any of the following:

39 (a) Possess.

40 (b) Act so as to exclude another person from using the person's
41 property except on his own terms.

42 (c) Bring about or receive the transfer of any interest in property,
43 whether to himself or to another person, or to secure performance of a
44 service.

1 2. "Gain" means any benefit, interest or property of any kind without
2 reduction for expenses of acquiring or maintaining it or incurred for any
3 other reason.

4 3. "Pattern of racketeering activity" means either:

5 (a) At least two acts of racketeering as defined in section 13-2301,
6 subsection D, paragraph 4, subdivision (d), (e), (f), (g), (h), (i), (j),
7 (m), (o), (p), (q), (r), (s), (t), (x) or (z) that meet the following
8 requirements:

9 (i) The last act of racketeering activity that is alleged as the basis
10 of the claim occurred within five years of a prior act of racketeering.

11 (ii) The acts of racketeering that are alleged as the basis of the
12 claim were related to each other or to a common external organizing
13 principle, including the affairs of an enterprise. Acts of racketeering are
14 related if they have the same or similar purposes, results, participants,
15 victims or methods of commission or are otherwise interrelated by
16 distinguishing characteristics.

17 (iii) The acts of racketeering that are alleged as the basis of the
18 claim were continuous or exhibited the threat of being continuous.

19 (b) A single act of racketeering as defined in section 13-2301,
20 subsection D, paragraph 4, subdivision (a), (b), (c), (k), (l), (n), (u),
21 (v), (w), (y), (aa) or (bb).

22 4. "Proceeds" means any interest in property of any kind acquired
23 through or caused by an act or omission, or derived from the act or omission,
24 directly or indirectly, and any fruits of this interest, in whatever form.

APPROVED BY THE GOVERNOR APRIL 17, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2001.

Passed the House March 12, 2001,

Passed the Senate April 10, 2001,

by the following vote: 44 Ayes,

by the following vote: 28 Ayes,

9 Nays, 7 Not Voting

1 Nays, 1 Not Voting


Speaker of the House


President of the Senate

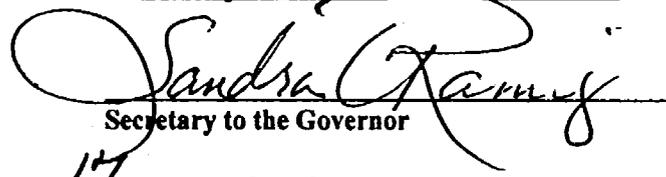

Chief Clerk of the House


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
11 day of April, 2001,

at 8:24 o'clock A M.


Secretary to the Governor

Approved this 17 day of

April, 2001,

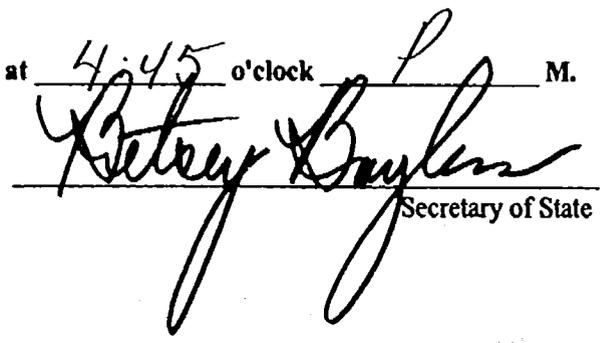
at 2:25 o'clock P M.


Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 17 day of April, 2001,

at 4:45 o'clock P M.


Secretary of State

H.B. 2266