**South Carolina General Assembly**

125th Session, 2023-2024

**S. 154**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Young, Senn and Cromer

Companion/Similar bill(s): 3003

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Introduced in the Senate on January 10, 2023

Last Amended on April 3, 2024

Currently residing in the Senate Committee on **Judiciary**

Summary: South Carolina Street Gang and Criminal Enterprise Prevention and Anti-Racketeering Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/30/2022 Senate Prefiled

 11/30/2022 Senate Referred to Committee on **Judiciary**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 86)

 1/10/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 86)

 1/19/2024 Senate Referred to Subcommittee: Hutto (ch), Rice, Senn,
 Adams, Tedder

 3/27/2024 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 9)

 4/2/2024 Scrivener's error corrected

 4/3/2024 Senate Committee Amendment Adopted (Senate Journal‑page 25)

 4/3/2024 Senate Amended (Senate Journal‑page 25)

 4/3/2024 Senate Read second time (Senate Journal‑page 25)

 4/4/2024 Scrivener's error corrected

 5/7/2024 Senate Recommitted to Committee on **Judiciary**

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**VERSIONS OF THIS BILL**

[12/01/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/154_20221201.docx)

[03/27/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/154_20240327.docx)

[04/02/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/154_20240402.docx)

[04/03/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/154_20240403.docx)

[04/04/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/154_20240404.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Amendment Adopted and Amended

04/03/24

S. 154

Introduced by Senators Young, Senn and Cromer

S. Printed 04/03/24--S. [SEC 4/4/2024 12:54 PM]

Read the first time January 10, 2023

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A bill

to amend the South Carolina Code of Laws by ENACTing THE “SOUTH CAROLINA STREET GANG AND CRIMINAL ENTERPRISE PREVENTION AND ANTI‑RACKETEERING ACT”; by AMENDing ARTICLE 3 OF CHAPTER 8, TITLE 16, RELATING TO THE CRIMINAL GANG PREVENTION ACT, SO AS TO RETITLE THE ARTICLE, REVISE THE DEFINITIONS FOR PURPOSES OF THE ARTICLE, AND RESTRUCTURE THE ARTICLE AND THE OFFENSES AND PENALTIES CONTAINED WITHIN IT; AND BY ADDING ARTICLE 5 TO CHAPTER 8, TITLE 16 SO AS TO CREATE ANTI-RACKETEERING PROVISIONS TO COMPLIMENT THE REVISED STREET GANG AND CRIMINAL ENTERPRISE PREVENTION ARTICLE, DEFINE NECESSARY TERMS, AND CREATE VARIOUS RACKETEERING OFFENSES AND ESTABLISH PENALTIES FOR VIOLATIONS.

 Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 8, Title 16 of the S.C. Code is amended by adding:

 Article 5

 Anti-Racketeering

 Section 16-8-510. The General Assembly finds that:

 (1) A severe problem is posed in this State by the increasing sophistication of various criminal elements and the increasing extent to which the State and its citizens are harmed by the activities of these elements.

 (2) The intent of this article is to impose sanctions against those who violate this article and to provide compensation to persons injured or aggrieved by such violations. It is not the intent of the General Assembly that isolated incidents of misdemeanor conduct or acts of civil disobedience be prosecuted under this article. It is the intent of the General Assembly, however, that this article apply to an interrelated pattern of criminal activity motivated by, or the effect of which, is pecuniary gain or economic or physical threat or injury. This article must be liberally construed to effectuate the remedial purposes embodied in its operative provisions.

 Section 16-8-520. As used in this article, the term:

 (1) “Alien corporation” means a corporation organized under laws other than the laws of the United States or the laws of any state of the United States.

 (2) “Beneficial interest” means:

 (a) the interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of the person; or

 (b) the interest of a person under any form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of the person.

 “Beneficial interest” does not mean the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest is deemed to be located where the real property owned by the trustee or other person is located.

 (3) “Civil proceeding” means a civil proceeding commenced by an investigative agency under a provision of this article.

 (4) “Criminal proceeding” means a criminal proceeding commenced by an investigative agency under a provision of this article.

 (5) “Documentary material” means a book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, or other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

 (6) “Enterprise” means a person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this State, other legal entity, or unchartered union, association, or group of individuals associated in fact although not a legal entity. “Enterprise” includes illicit as well as licit enterprises and governmental as well as other entities.

 (7) “Investigative agency” means the Office of Attorney General, the South Carolina Law Enforcement Division, or a solicitor’s office.

 (8) “Pattern of racketeering activity” means:

 (a) engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, with the last of the acts having occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity; or

 (b) engaging in any one or more acts of domestic terrorism as described in Sections 16-23-710(18) and 16-23-715 or a criminal attempt, criminal solicitation, or criminal conspiracy related to domestic terrorism.

 (9) “Racketeering activity” means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit a crime that is chargeable by indictment under the following laws of this State:

 (a) Article 3, Chapter 53, Title 44, relating to narcotics and controlled substances;

 (b) Section 16-11-617, relating to marijuana;

 (c) Article 1, Chapter 3, Title 16, and the common law relating to homicide;

 (d) Article 3, Chapter 3, Title 16, relating to assault and battery by mob;

 (e) Article 5, Chapter 3, Title 16, relating to dueling;

 (f) Article 7, Chapter 3, Title 16, relating to assault and criminal sexual conduct;

 (g) Article 8, Chapter 3, Title 16, relating to sexual performance by children;

 (h) Article 9, Chapter 3, Title 16, relating to kidnapping;

 (i) Section 16-3-1040, relating to threatening the life, person, or family of a public official or public employee;

 (j) Section 16-3-1045, relating to the use or employment of a person under eighteen to commit certain crimes;

 (k) Section 16-3-1083, relating to the death or injury of a child in utero due to the commission of a violent crime;

 (l) Article 17, Chapter 3, Title 16, relating to harassment and stalking;

 (m) Article 19, Chapter 3, Title 16, relating to trafficking in persons;

 (n) Article 3, Chapter 11, Title 16, relating to arson and other offenses involving fire;

 (o) Article 5, Chapter 11, Title 16, relating to burglary, housebreaking, robbery, and the like;

 (p) Article 9, Chapter 11, Title 16, relating to bootleg and counterfeit records, tapes, and recordings;

 (q) Section 16-13-10, relating to forgery;

 (r) Section 16-13-30, relating to petit and grand larceny;

 (s) Section 16-13-40, relating to the stealing of bonds and the like;

 (t) Sections 16-13-105 through 16-13-135, relating to shoplifting and retail theft;

 (u) Section 16-13-70, relating to the stealing of vessels and equipment;

 (v) Section 16-13-170, relating to entering a house or vessel, without breaking, with the intent to steal or commit another crime;

 (w) Section 16-13-180, relating to receiving stolen goods, chattels, or other property;

 (x) Sections 16-13-210, relating to the embezzlement of public funds;

 (y) Section 16-13-230, relating to breach of trust with fraudulent intent;

 (z) Section 16-13-240, relating to obtaining a signature or property by false pretense;

 (aa) Section 16-13-260, relating to obtaining property under false tokens or letters;

 (bb) Section 16-13-290, relating to securing property by the fraudulent impersonation of an officer;

 (cc) Section 16-13-320, relating to swindling;

 (dd) Section 16-13-385, relating to altering, tampering with, or bypassing electric, gas, or water meters;

 (ee) Section 16-13-400, relating to avoiding or attempting to avoid the payment of telecommunications services;

 (ff) Section 16-13-430, relating to the fraudulent acquisition or use of food stamps;

 (gg) Sections 16-13-450, 16-13-451, and 16-13-480, relating to false identification documents;

 (hh) Sections 16-15-90 through 16-15-110, relating to prostitution;

 (ii) Article 3, Chapter 15, Title 16, relating to obscenity, material harmful to minors, child exploitation, and child prostitution;

 (jj) Article 3, Chapter 9, Title 16, relating to bribery, the corruption of jurors, and the like;

 (kk) Sections 16-9-340, 16-9-350, and 16-9-370, relating to the influencing of court officials, jurors, or witnesses;

 (ll) Section 16-9-460, relating to unlawful entry into the United States and furthering illegal entry by or avoidance of detection of an undocumented alien;

 (mm) Article 1, Chapter 9, Title 16, relating to perjury;

 (nn) Chapter 19, Title 16, relating to gambling and lotteries;

 (oo) Article 13, Chapter 6, Title 61, relating to unlawful manufacture, possession, and sales of alcohol;

 (pp) Chapter 23, Title 16, relating to offenses involving weapons;

 (qq) Chapter 1, Title 35, relating to violations of the South Carolina Uniform Securities Act of 2005;

 (rr) Chapter 14, Title 16, relating to violations of the Financial Transaction Card Crime Act;

 (ss) Chapter 29, Title 56, relating to violations of the Motor Vehicle Chop Shop, Stolen, and Altered Property Act;

 (tt) Chapter 16, Title 16, relating to violations of the Computer Crime Act;

 (uu) any conduct defined as “racketeering activity” under 18 U.S.C. Section 1961 (1)(A), (B), (C), and (D);

 (vv) 31 U.S.C. Sections 5311 through 5330, relating to records and reports of currency transactions;

 (ww) Section 38-55-170, relating to presenting false insurance claims for payment;

 (xx) Article 5, Chapter 55, Title 38, relating to violations of the Omnibus Insurance Fraud and Reporting Immunity Act;

 (yy) Chapter 36, Title 34, relating to violations in relation to loan brokers;

 (zz) Chapter 23, Title 37, relating to violations of the South Carolina High Cost and Consumer Home Loans Act;

 (aaa) Chapter 13, Title 8, relating to ethics, government accountability, and campaign reform;

 (bbb) Chapter 11, Title 35, relating to violations of the South Carolina Anti Money Laundering Act; or

 (ccc) Chapter 17, Title 2, relating to lobbyists and lobbying.

 “Racketeering activity” also means an act or threat involving murder, kidnapping, gambling, arson, robbery, theft, receipt of stolen property, bribery, extortion, obstruction of justice, dealing in narcotic or dangerous drugs, or dealing in securities that is chargeable under the laws of the United States or any of the several states and that is punishable by imprisonment for more than one year.

 “Racketeering activity” also shall mean any conduct defined as “racketeering activity” under federal law, including 18 U.S.C. Section 1961 (1), any violation of 18 U.S.C. Section 1028, or any violation of 31 U.S.C. Sections 5311 through 5330.

 (10) “Real property” means real property situated in this State or any interest in such real property including, but not limited to, a lease of or mortgage upon such real property.

 Section 16-8-530 (A) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.

 (B) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

 (C) It is unlawful for any person to conspire or endeavor to violate any of the provisions of this section. A person violates this section when:

 (1) he, together with one or more persons, conspires to violate any of the provisions of this section and any one or more of such persons commits any overt act to affect the object of the conspiracy; or

 (2) he endeavors to violate any of the provisions of this section and commits any overt act to affect the object of the endeavor.

 Section 16-8-540 (A) Any person convicted of the offense of engaging in activity in violation of Section 16-8-530 is guilty of a felony and, upon conviction:

 (1) for a first offense, must be fined as provided in subsection (B) or imprisoned not less than five nor more than twenty years, no part of which may be suspended nor probation granted, or both; and

 (2) for a second or subsequent offense, must be fined as provided in subsection (B) or imprisoned not less than ten nor more than twenty years, no part of which may be suspended nor probation granted, or both.

 (B) Any person convicted of the offense of engaging in conduct in violation of Section 16-8-530 may be sentenced to pay a fine that does not exceed the greater of twenty-five thousand dollars or three times the amount of any pecuniary value gained from the violation.

 (C) The court shall hold a hearing to determine the amount of the fine authorized by subsection (B).

 (D) For the purposes of subsection (B), the term “pecuniary value” means:

 (1) anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else, the primary significance of which is economic advantage;  or

 (2) any other property or service that has a value more than one hundred dollars.

 (E) When two or more defendants are jointly charged with engaging in a violation of Section 16-8-530, they must be tried jointly unless the court orders separate trials. Severance may not be granted as a matter of law when codefendants present mutually antagonistic defenses, but may be granted, in the court’s exercise of discretion, only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury making a reliable judgement about a codefendant’s guilt. In ordering separate trials, the court in its discretion may order a separate trial as to one or more defendants, and a joint trial as to the others, or may order any number of the defendants to be tried at one trial, and any number of the others at different trials, or may order a separate trial for each defendant; provided, that when two or more persons can be jointly tried, the fact that separate accusatory pleadings were filed does not prevent their joint trial.

 (F) Nothing in this section limits prosecution under any other provision of law.

 Section 16-8-550. (A) The circuit court, after making due provisions for the rights of innocent persons, may enjoin violations of Section 16-8-530 by issuing appropriate orders and judgments including, but not limited to:

 (1) ordering any defendant to divest himself of any interest in any enterprise, real property, or personal property;

 (a) The court may determine any real property maintained, owned, leased, or used by an enterprise for the purpose of conducting racketeering activities constitutes a public nuisance and may be abated pursuant to Chapter 43, Title 15.

 (b) An action to abate a nuisance pursuant to this section may be brought by the Attorney General or the circuit solicitor in the appropriate state or municipal court;

 (2) 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 the enterprise in which he was engaged in violation of Section 16-8-530;

 (3) ordering the dissolution or reorganization of any enterprise;

 (4) ordering the suspension or revocation of any license, permit, or prior approval granted to any enterprise by any agency of the State; or

 (5) imposing restrictions that a person sentenced may not knowingly have contact of any kind or character with any other member or associate of the enterprise. This condition does not apply to prisoners or inmates in custody of the South Carolina Department of Corrections or a local jail within the State and does not apply to a child in the custody of the Department of Juvenile Justice or a local jail.

 (B) Any aggrieved person or the State may institute a civil action under subsection (A). In such civil action, relief must be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, provided that no showing of special or irreparable damage to the person has to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

 (C) A person who is injured by reason of a violation of Section 16-8-530 has a cause of action for three times the actual damages sustained and, when appropriate, punitive damages. Such person also shall recover attorney’s fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred. The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section.

 (D) An injured person has a right or claim to forfeited property or to the proceeds superior to any right or claim the state or local government has in the same property or proceeds other than for costs incurred by the State in any civil or criminal investigation or prosecution related to the racketeering activity for which the property was intended for use, used, or derived. To enforce such a claim, the injured person must intervene in the civil forfeiture proceeding prior to the entry of a final judgment.

 (E) A conviction in any criminal proceeding estops the defendant in any subsequent civil action or civil forfeiture proceeding under this article as to all matters proved in the criminal proceeding.

SECTION 2. Chapter 8, Article 5, Title 16 of the S.C. Code is amended by adding:

 Section 16-8-560. In any criminal proceeding, the crime will be considered to have been committed in any county in which an incident of racketeering activity, as defined in this article, occurred or in which an interest or control of an enterprise or real or personal property is acquired or maintained.

SECTION 3. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of criminal enterprise prevention and associated anti-racketeering provisions as clearly enumerated in the title.  The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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