**South Carolina General Assembly**

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**H. 4580**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith and Quinn

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

Summary: Street Gang and Criminal Organizations Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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**VERSIONS OF THIS BILL**

[2/4/2014](file:///p:\pprever\2013-14\4580_20140204.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA STREET GANG AND CRIMINAL ORGANIZATIONS ACT” BY ADDING ARTICLE 5 TO CHAPTER 8, TITLE 16 SO AS TO DEFINE NECESSARY TERMS; TO CREATE THE OFFENSE OF PARTICIPATING IN, OR CONSPIRING TO PARTICIPATE IN, AN ENTERPRISE INVOLVING ACTS OF QUALIFYING CRIMINAL ACTIVITY AND PROVIDE PENALTIES; TO PROVIDE FOR THE FORFEITURE OF PROPERTY AND PROCEEDS DERIVED FROM A VIOLATION OF THE OFFENSE AND FOR PROCEDURES REGARDING FORFEITURE; AND TO ALLOW OTHER EQUITABLE AND LEGAL REMEDIES INCLUDING THE RECOVERY OF TREBLE DAMAGES FOR DAMAGES SUSTAINED AND COURT COSTS OF A PREVAILING PLAINTIFF.

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

SECTION 1. This act must be known and may be cited as the “South Carolina Street Gang and Criminal Organizations Act”.

SECTION 2. The General Assembly finds that the substantial harm inflicted on the people and economy of this State by pervasive violent street gangs and other forms of criminal enterprise is legitimately a matter of grave concern to the people of this State who have a basic right to be protected from that criminal activity and to be given adequate remedies to redress its harms. Street gangs, in particular, are responsible for a disproportionate amount of violent, sexual, and property crime which often involves the recruitment, use, or victimization of minors. The General Assembly further finds that the current laws of this State provide inadequate remedies, procedures, and punishments and finds the provisions of this act necessary to address those inadequacies for the common good of this State and its people.

SECTION 3. Chapter 8, Title 16 of the 1976 is amended by adding:

“Article 5

South Carolina Street Gang and Criminal Organizations Act

Section 16‑8‑510. As used in this article, the term:

(1) ‘Person’ means an individual or entity capable of holding legal or beneficial interest in property.

(2) ‘State’ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, a political subdivision, or a department, agency, or instrumentality of one of these.

(3) ‘Qualifying criminal activity’ means:

(a) any act, solicitation, coercion, threat, attempt, conspiracy or endeavor involving murder; kidnapping; robbery; burglary; carjacking; grand larceny; assault and battery by mob in the first or second degree as provided in Section 16‑3‑210; assault and battery with intent to kill; assault with intent to kill; assault and battery of a high and aggravated nature; assault of a high and aggravated nature; assault and battery in the first degree as provided in SectionS 16‑3‑600(C)(1)(a)(ii) and 16‑3‑600(C)(1)(b)(ii); bribery as provided in all the offenses defined in Section 8‑13‑705; intimidation of court officials, jurors, and witnesses as provided in Section 16‑9‑340; threatening the life, person, or family of public official or public employee pursuant to Section 16‑3‑1040; blackmail as defined in Section 16‑17‑640; prostitution violations as defined in Section 16‑15‑100(1), (2), and (3); first degree sexual exploitation of a minor pursuant to Section 16‑15‑395; promoting prostitution of a minor as defined in Section 16‑15‑415; trafficking in persons as provided in Sections 16‑3‑2010 and 16‑3‑2020; dealing in a controlled substance or listed chemical as defined in Article 3, Chapter 53, Title 44, which is chargeable pursuant to the substantive law of any state and punishable by imprisonment for more than one year; or a violation of Section 16‑8‑240 or 16‑8‑250 of the Criminal Gang Prevention Act; or

(b) an act which is indictable pursuant to the provisions of 18 U.S.C. 1961(1), as amended or revised as of the date the activity occurred or, in the instance of a continuing offense, the date that charges pursuant to this article are filed in a particular matter.

(4) ‘Enterprise’ means any partnership, corporation, association, or other legal entity, and any union or group of individuals or entities associated in fact although not a legal entity, or any combination of these. An association‑in‑fact must be held together by a common purpose of engaging in a course of conduct, and it may be associated together for purposes that are both legal and illegal. An association‑in‑fact enterprise must be:

(a) an ongoing organization however formal or informal; and

(b) the various participants of the union or group must function as a continuing unit, even if the group changes by gaining or losing participants over time.

The term ‘enterprise’ includes both licit and illicit enterprises.

Section 16‑8‑520. (A) It is unlawful for a person knowingly to participate, directly or indirectly, in the affairs of an enterprise, when participation:

(1) includes committing or causing to be committed two or more acts of qualifying criminal activity in or related to the affairs of the enterprise; or

(2) otherwise includes an act of participation with the intention that some known or unknown participant or participants of the enterprise would commit, or would cause to be committed, individually or collectively, two or more acts of qualifying criminal activity in or related to the affairs of the enterprise.

(B) It is unlawful for a person knowingly to conspire to violate a provision of this section.

(C) If a person commits an offense pursuant to this section, no culpable state of mind is required as to matters of jurisdiction, venue, grading, and or the lawfulness or unlawfulness of conduct.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two hundred fifty thousand dollars and imprisoned for a not less than seven years and not more than thirty years.

(E) Unless a greater sentence is provided by another provision of law, a person who violates the provisions of this section must be fined pursuant to subsection (D) and imprisoned for not less than fifteen years and not more than life imprisonment when the violation involves, with or without the person’s knowledge, a person under eighteen years of age as either a victim or perpetrator of an act or intended act of qualifying criminal activity or when the unlawful death of a person results as a necessary or natural consequence of a violation of the provisions of this section.

(F) A person prosecuted pursuant to this section may be convicted and sentenced for both subsection (A) and (B), and for both the offense of:

(1) conspiring to violate the provisions of this section pursuant to subsection (B) and for any other particular offense that may be one of the objects of that conspiracy; and

(2) violating the provisions of this section pursuant to subsection (A) and for any other particular offense that may constitute qualifying criminal activity underlying a violation of this section.

Section 16‑8‑530. (A) A person who violates a provision of this article shall forfeit, jointly and severally, to the State, pursuant to the remedies and procedures as provided in this article, any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over an enterprise which the person has established, operated, controlled, conducted, or participated in, in violation of this article, and any property constituting, or derived from, any proceeds, including substitute assets, which the person obtained, directly or indirectly, from a violation of this article.

(B) Property subject to forfeiture pursuant to this article may be seized by a law enforcement agency having authority upon a warrant issued by a court having jurisdiction over the property. Seizure without process may be made if the:

(1) seizure is incident to an arrest or a search pursuant to a search warrant or an inspection pursuant to an administrative inspection warrant;

(2) property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this article;

(3) agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) agency has probable cause to believe that the property was used or is intended to be used in violation of this article.

(C) In the event of seizure pursuant to subsection (B), proceedings regarding forfeiture and disposition must be instituted within a reasonable time.

(D) Property taken or detained pursuant to this section is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in subsection (A) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(E) For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(F) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. All monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(G) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(1) The report must provide the following information with respect to the property seized:

(a) description;

(b) circumstances of seizure;

(c) present custodian and where the property is being stored or its location;

(d) name of owner;

(e) name of lienholder, if any; and

(f) seizing agency.

(2) If the property is a conveyance, the report must include the:

(a) make, model, serial number, and year of the conveyance;

(b) person in whose name the conveyance is registered; and

(c) name of all lienholders.

(3) In addition to the report provided in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public, upon request, a report providing the following information:

(a) a description of the quantity and nature of the property and money seized;

(b) the seizing agency;

(c) the make, model, and year of a conveyance; and

(d) the law enforcement agency responsible for the property or conveyance seized.

(H) Property or conveyances seized by a law enforcement agency must not be used by officers for personal purposes.

Section 16‑8‑540. (A) Forfeiture of property defined in Section 16‑8‑530 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and must set forth the facts upon which the seizure was made. The petition must describe the property and include the names of all owners of record and lienholders of record. The petition must identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also must include the make, model, and year of the conveyance; the person in whose name the conveyance is registered; and the person who holds the title to the conveyance. The petition must set forth the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail to the last known address as appears in the records of the governmental agency which records the title or lien.

The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture is warranted, he then shall determine the lienholder’s interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency.

If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to subsection (E).

All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecuting agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the Department of Administration, Division of General Services.

If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a state Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(B) If the property is seized by a state law enforcement agency and is not transferred by the court to the seizing agency, the judge shall order it transferred to the Division of General Services for sale. Proceeds may be used by the division for payment of all proper expenses of the proceedings for the forfeiture and sale of the property, including the expenses of seizure, maintenance, and custody, and other costs incurred by the implementation of this section. The net proceeds from any sale must be remitted to the State Treasurer as provided in subsection (G). The Division of General Services may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.

(C) If the property is seized by a local law enforcement agency and is not transferred by the court to the agency, the judge shall order it sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of the law, proceeds from the sale may be used by the agency for payment of all proper expenses of the proceeding for the forfeiture and sale of the property, including the expenses of the seizure, maintenance, and custody and other costs incurred by the implementation of this section. The net proceeds from the sale must be disposed of as provided in this section.

(D) A forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice pursuant to this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice pursuant to this section may consent to some issues and have the judge determine the remaining issues. All proceeds of property and cash forfeited by consent order must be disposed of as provided in subsection (E).

(E) All real or personal property, conveyances, and equipment of any value, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

(1) seventy‑five percent to the law enforcement agency or agencies;

(2) twenty percent to the prosecuting agency; and

(3) five percent must be remitted to the State Treasurer and deposited in the General Fund of the State.

(F) The first one thousand dollars of cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

(G) All forfeited monies and proceeds from the sale of forfeited property must be retained by the governing body of the local law enforcement agency or prosecuting agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecuting agency for which the account was established. For law enforcement agencies, the accounts must be used for gang or drug enforcement activities, for enforcement of this article, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of gang or drug offenses and litigation of gang or drug‑related matters or for prosecution or litigation of matters pursuant to this article.

These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecuting agency, approved as provided by law.

In the case of a state law enforcement agency or state prosecuting agency, monies, and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

All expenditures from these accounts must be documented and the documentation made available for audit purposes and upon request by a person pursuant to the provisions of Chapter 4, Title 30, the Freedom of Information Act.

(H) The use of all property forfeited pursuant to this article and retained by the law enforcement agency must be documented and the documentation available upon request by a person subject to the provisions of Chapter 4, Title 30.

(I) An expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established.

(J) A law enforcement agency may draw from the account an amount necessary to maintain a confidential financial account to be used in the purchase of information or evidence relating to an investigation, to purchase services, or to provide compensation in matters which are confidential and in support of law enforcement activity. The disbursement of funds from the confidential financial account must be made in accordance with procedures approved by the South Carolina Law Enforcement Division (SLED). All records of disbursement must be maintained and made available for audit purposes as provided in this section. All expenditures from these accounts must be fully documented and audited annually with the general fund of the appropriate jurisdiction.

(K) In all cases when the criminal offense giving rise to the forfeiture of property pursuant to this article is prosecuted in a state court, the forfeiture proceeding must be accomplished in the court of common pleas for the jurisdiction where the items were seized.

(L) It is not necessary for the State to negate any exemption or exception provided in this article in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding pursuant to this article, and the burden of proof of any exemption or exception is on the person claiming its benefit.

(M) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued pursuant to this article, he is presumed not to be the holder of the registration or form and the burden of proof is on him to rebut this presumption.

(N) An innocent owner, a manager or owner of a licensed rental agency, or a common carrier or carrier of goods for hire may apply to the court of common pleas for the return of an item seized pursuant to the provisions of this article. Notice of hearing or rule to show cause accompanied by a copy of the application must be directed to all persons and agencies entitled to notice under this article. If the court denies the application, the hearing may proceed as a forfeiture hearing held pursuant to this article.

(O) The court may return a seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(1) in the case of an innocent owner, that the person or entity was not a consenting party to, privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; and

(2) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, there is a rebuttable presumption that the licensed rental agency was not a party to, privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(P) The lien of an innocent person or other legal entity, recorded in public records, continues in force upon transfer of title of a forfeited item and a transfer of title is subject to the lien if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

Section 16‑8‑550. (A) Upon suit on behalf of public or private persons injured in their person, property, or business by reason of a violation of this article, filed by the Attorney General of this State, the United States, or an attorney general of another state or other constitutionally based state prosecuting officer within the jurisdiction in which a violation of this article occurred in whole or in part, or upon suit by a private person, subject to a substantially equal involvement defense, or a person’s estate, injured in their person, property, or business by reason of a violation of this article, the courts of this state have jurisdiction to prevent and restrain violations of this article and to issue appropriate orders, making due provision for the rights of innocent persons, including:

(1) ordering a person to disgorge illicit gross proceeds obtained by a violation of this article or divest himself of an interest, direct or indirect, in an enterprise or real or personal property of any character, including money, obtained, directly or indirectly, by a violation of this article;

(2) imposing reasonable restrictions on the future activities or investments of a person or enterprise, including prohibiting a person or enterprise from engaging in the same type of endeavor as the person or enterprise engaged in, that violated the provisions of this article; and

(3) ordering the dissolution or reorganization of an enterprise, or requiring private parties, not including this State, the United States, or another State, to post satisfactory performance bonds pending final determination of matters as it deems proper.

(B) A final judgment or decree rendered in favor of this State in a criminal proceeding brought pursuant to the provisions of this article preclude the defendant, as to both issues and claims, from denying the essential allegations of the criminal offense in a subsequent proceeding pursuant to this article or otherwise, but a prior criminal proceeding is not a prerequisite to the commencement of an action pursuant to this article.

(C) Upon judgment in favor of a plaintiff pursuant to Section 16‑8‑530, the plaintiff shall recover threefold damages sustained and the costs of the suit, including a reasonable attorney’s fee, for all pretrial, trial, appellate, and collateral proceedings.

Section 16‑8‑560. (A) Except as provided in subsection (B), a civil proceeding brought pursuant to Section 16‑8‑550(A) must commence within three years of one of the following dates, whichever is latest:

(1) the date of the commission of the last occurrence of qualifying criminal activity underlying the alleged violation of this article;

(2) in the case of a prosecution or proceeding, based upon a conspiracy to violate this article, the date that the last objective of the alleged conspiracy was accomplished, defeated, or abandoned, whichever is later;

(3) the date a minor victim of the violation attains the age of eighteen years or the date a victim of the violation subject to a legal disability gains legal capacity;

(4) the date provided by any other applicable provision of state law; or

(5) in the case of a private suit brought pursuant to Section 16‑8‑530, the completion date of a public suit brought by a governmental plaintiff pursuant to Section 16‑8‑530, or the completion date of a related criminal prosecution brought by the State pursuant to this article.

(C) A civil proceeding brought pursuant to this article may be commenced at any time against any or all defendants if the conduct of any defendant, or any part of the overall violation, resulted in the unlawful death of a person.”

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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