AN ACT concerning racketeering; enacting the Kansas racketeer influenced and corrupt organization act; amending K.S.A. 2010 Supp. 60-4104 and section 34 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2010 Supp. 21-3302.

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

New Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the Kansas racketeer influenced and corrupt organization act (Kansas RICO act).

New Sec. 2. As used in the Kansas racketeer influenced and corrupt organization act:

(a) “Racketeering activity” means to commit, attempt to commit, conspire to commit or to solicit, coerce or intimidate another person to commit:

(1) Any violation of: K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas money transmitter act; article 12a of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, Kansas uniform securities act; article 36a of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, crimes involving controlled substances; section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, capital murder; section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, murder in the first degree; section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, murder in the second degree; section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, voluntary manslaughter; section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, involuntary manslaughter; section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, vehicular homicide; section 42 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, assisting suicide; section 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, kidnapping or aggravated kidnapping; section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; section 48 of chapter 136 of the 2010
Session Laws of Kansas, and amendments thereto; section 49 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, domestic battery; section 50 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal threat or aggravated criminal threat; section 52 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, mistreatment of a dependent adult; section 55 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, robbery or aggravated robbery; section 56 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, illegal use of weapons of mass destruction; section 58 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, trafficking or aggravated trafficking; section 64 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, blackmail; section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sexual exploitation of a child; sections 87 through 125 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, crimes against property; section 128 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, perjury; section 129 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, interference with law enforcement; section 130 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, interference with the judicial process; section 134 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, intimidation of a witness or victim or aggravated intimidation of a witness or victim; section 137 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aiding escape; section 138 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, obstructing apprehension or prosecution; section 143 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, Kansas medicaid fraud control act; section 165 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, bribery; section 166 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, official misconduct; section 167 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, compensation for past official acts; section 168 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, presenting a false claim or permitting a false claim; section 169 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, misuse of public funds; section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal use of weapons; section 187 of chapter
136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal carrying of a weapon; section 188 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal distribution of firearms to a felon; section 189 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal possession of a firearm by a convicted felon; section 190 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated weapons violation by a convicted felon; section 191 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, defacing identification marks of a firearm; section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal discharge of a firearm; section 195 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, unlawful endangerment; section 197 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; sections 198 through 201 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; section 212 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; section 215 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, gambling; section 216 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, illegal bingo operation; section 217 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, commercial gambling; section 218 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, dealing in gambling devices; section 219 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; section 220 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, installing communication facilities for gamblers; subsections (a) or (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, unlawful conduct of dog fighting or unlawful possession of dog fighting paraphernalia; subsections (a) or (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, unlawful conduct of cockfighting or unlawful possession of cockfighting paraphernalia; section 229 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, prostitution; section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, promoting prostitution; section 232 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, extortion; section 233 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, debt adjusting; section 235 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, equity skimming; section 237 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, commercial bribery; section 238 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sports bribery; section
239 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, tampering with a sports contest; K.S.A. 39-720, and amendments thereto, social welfare service fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto, workers’ compensation act; K.S.A. 44-719 et seq., and amendments thereto, employment security law; article 6 of chapter 50 of the Kansas Statutes Annotated, and amendments thereto, consumer protection; K.S.A. 65-1657, and amendments thereto, nonresident pharmacy registration; K.S.A. 65-3441, and amendments thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco products act; or

(2) any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

(b) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(1) In violation of any of the following provisions of law: article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; section 215 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, gambling; section 216 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, illegal bingo operation; section 217 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, commercial gambling; section 218 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, dealing in gambling devices; section 219 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or section 220 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, installing communication facilities for gamblers; or

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

(c) “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in section 198 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, constitutes an enterprise.

(d) “Pattern of racketeering activity” means engaging in at least two
incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity.

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

(f) “Beneficial interest” means:

(1) 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 such person; or

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

The term “beneficial interest” does not include the interest of a stock holder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

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

(h) “Trustee” means:

(1) Any person acting as trustee pursuant to a trust in which the trustee holds legal or record title to real property;

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

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

The term “trustee” does not include any person appointed or acting as a personal representative as defined in K.S.A. 59-102, and amendments thereto, or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

New Sec. 3. (a) It is unlawful for any person:

(1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the
investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;

(2) through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property; and

(3) employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(b) Violation of this section or conspiracy to commit a violation of this section is a severity level 2, person felony.

(c) The provisions of subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to conspiracy to commit a violation of this section.

(d) (1) Notwithstanding the provisions of section 251 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, any person convicted of engaging in conduct in violation of this section, through which the person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

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

(3) For the purposes of this subsection, “pecuniary value” means:

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

(B) any other property or service that has a value in excess of $100.

(e) For persons arrested and charged under this section, bail shall be at least $50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available and the defendant agrees to comply with the mandate of such pretrial supervision.

New Sec. 4. (a) Any district court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of section 3, and amendments thereto, by issuing appropriate orders and judgments, including, but not limited to:

(1) Ordering any defendant to divest such defendant of any interest in any enterprise, including real property.

(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 the defendant was engaged in violation of the
provisions of section 3, and amendments thereto.

(3) Ordering the dissolution or reorganization of any enterprise.

(4) Ordering the suspension or revocation of a license, permit, or
prior approval granted to any enterprise by any agency of the state.

(5) Ordering the forfeiture of the charter of a corporation organized
under the laws of the state, or the revocation of a certificate authorizing a
foreign corporation to conduct business within the state, upon finding that
the board of directors or a managerial agent acting on behalf of the
corporation, in conducting the affairs of the corporation, has authorized or
engaged in conduct in violation of section 3, and amendments thereto,
and that, for the prevention of future criminal activity, the public interest
requires the charter of the corporation forfeited and the corporation
dissolved or the certificate revoked.

(b) All property, real or personal, including money, used in the
course of, intended for use in the course of, derived from, or realized
through conduct in violation of a provision of the Kansas racketeer
influenced and corrupt organization act is subject to civil forfeiture
pursuant to the Kansas standard asset seizure and forfeiture act, K.S.A.
60-4101 et seq., and amendments thereto.

New Sec. 5. (a) For the purposes of this section, “attorney” means
the attorney general, assistant attorney general, county attorney or district
attorney, or in the absence of the county or district attorney, a designated
assistant county or district attorney. If an assistant county or district
attorney is designated by the county or district attorney for the purposes
of this section, such designation shall be filed with the chief judge of such
judicial district.

(b) If an attorney is informed or has knowledge that a person or other
enterprise has engaged in, or is engaging in, activity in violation of the
Kansas racketeer influenced and corrupt organization act, such attorney
shall be authorized to administer oaths or affirmations, subpoena
witnesses or material, and collect evidence relating to such activity.

(c) An attorney may apply ex parte to the district court of the district
in which a subpoenaed person or entity resides, is found or transacts
business, for an order directing that the subpoenaed person or entity not
disclose the existence of the subpoena to any other person or entity
except the subpoenaed person’s attorney for a period of 90 days, which
time may be extended by the court for good cause shown by the attorney.
The order shall be served with the subpoena, and the subpoena shall
include a reference to the order and a notice to the recipient of the
subpoena that disclosure of the existence of the subpoena to any other
person or entity in violation of the order may subject the subpoenaed
person or entity to punishment for contempt of court. Such an order may
be granted by the court only upon a showing:

(1) Of sufficient factual grounds to reasonably indicate a violation of
the Kansas racketeer influenced and corrupt organization act;
(2) that the documents or testimony sought appear reasonably
calculated to lead to the discovery of admissible evidence; and
(3) of facts which reasonably indicate that disclosure of the subpoena
would hamper or impede the investigation or would result in a flight from
prosecution.

(d) If information or evidence that the attorney seeks to obtain by the
subpoena is located outside the state, the person or enterprise subpoenaed
may make such information or evidence available to the attorney or such
attorney’s representative for examination at the place where such
information or evidence is located. The attorney may designate
representatives, including officials of the jurisdiction in which the
information or evidence is located, to inspect the information or evidence
on such attorney’s behalf and may respond to similar requests from
officials of other jurisdictions.

(e) Upon failure of a person or enterprise, without lawful excuse, to
obey a subpoena issued under this section or a subpoena issued in the
course of a civil proceeding instituted pursuant to section 4, and
amendments thereto, and after reasonable notice to such person or
enterprise, the attorney may apply to the district court in which such civil
proceeding is pending or, if no civil proceeding is pending, to the district
court of the judicial district in which such person or enterprise resides, is
found or transacts business for an order compelling compliance. Except
in a prosecution for perjury, an individual who complies with a court
order to provide testimony or material after asserting a privilege against
self-incrimination to which such individual is entitled by law shall not
have the testimony or material so provided, or evidence derived
therefrom, received against such individual in any criminal investigation
or proceeding.

(f) A person who fails to obey a court order entered pursuant to this
section may be adjudged in contempt of court and punished by fine and
imprisonment.

Sec. 6. K.S.A. 2010 Supp. 60-4104 is hereby amended to read as
follows: 60-4104. Conduct and offenses giving rise to forfeiture under
this act, whether or not there is a prosecution or conviction related to the
offense, are:

(a) All offenses which statutorily and specifically authorize
forfeiture;
(b) violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and
amendments thereto;
(c) theft which is classified as a felony violation pursuant to K.S.A.
21-3701 section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in which the property taken was livestock;
(d) unlawful criminal discharge of a firearm, K.S.A. 21-4219 as defined in subsections (a)(1) and (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(e) violations of K.S.A. 2010 Supp. 21-36a16, and amendments thereto;
(f) gambling, K.S.A. 21-4303 section 215 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and commercial gambling, K.S.A. 21-4304 as defined in subsection (a)(1) of section 217 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(g) counterfeiting, K.S.A. 21-3763 section 111 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(h) violations of K.S.A. 21-4019 section 178 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(i) medicaid fraud, K.S.A. 21-3844 et seq. sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;
(k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;
(l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;
(m) furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. 21-3451 violations of section 58 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(n) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, K.S.A. 21-4315 as defined in subsections (a) and (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(o) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, K.S.A. 21-4319 as defined in subsections (a) and (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(p) prostitution, K.S.A. 21-3512 section 229 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, promoting
prostitution, K.S.A. 21-3513 section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and patronizing a prostitute, K.S.A. 21-3515 section 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(q) human trafficking, K.S.A. 21-3446, and amendments thereto, and aggravated human trafficking, K.S.A. 21-3447 section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(r) extortion, section 232 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(s) violations of the Kansas racketeer influenced and corrupt organization act, sections 1 through 5, and amendments thereto.

Sec. 7. Section 34 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 34.

(a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) Aggravated trafficking, as defined in subsection (b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(B) terrorism pursuant to as defined in section 56 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or of;

(C) illegal use of weapons of mass destruction pursuant to as defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;
(E) aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;

(G) promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age;

(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; or

(I) violation of section 3, and amendments thereto.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 8. K.S.A. 2010 Supp. 21-3302 and 60-4104 and section 34 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.