

Senate Substitute for HOUSE BILL No. 2144

By Committee on Judiciary

3-21

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

11

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

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

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

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

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

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

30 (b) Organized retail crime:

31 (1) Involving merchandise with an aggregate retail market value of at
32 least \$3,000 but less than \$15,000 is a severity level 5, nonperson felony;
33 and

34 (2) involving merchandise with an aggregate retail market value of
35 \$15,000 or more is a severity level 4, nonperson felony.

36 (c) In addition to the venue provided for under any other provision of

1 law, a prosecution for organized retail crime may be brought in any county
 2 where at least \$1 in aggregate retail market value of merchandise is taken,
 3 received, sold or purchased.

4 (d) As used in this section:

5 (1) "Aggregate retail market value" means the total combined value
 6 of merchandise taken, at the price at which the merchandise would
 7 ordinarily be sold by the retailer through legitimate sale or distribution;

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

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

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

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

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

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

17 Sec. 2. K.S.A. 21-5801 is hereby amended to read as follows: 21-
 18 5801. (a) Theft is any of the following acts done with intent to
 19 permanently deprive the owner of the possession, use or benefit of the
 20 owner's property or services:

21 (1) Obtaining or exerting unauthorized control over property or
 22 services;

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

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

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

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

31 (b) Theft of:

32 (1) Property or services of the value of \$100,000 or more is a severity
 33 level 5, nonperson felony, *except as provided in subsection (b)(10)*;

34 (2) property or services of the value of at least \$25,000 but less than
 35 \$100,000 is a severity level 7, nonperson felony, *except as provided in*
 36 *subsection (b)(10)*;

37 (3) property or services of the value of at least \$1,500 but less than
 38 \$25,000 is a severity level 9, nonperson felony, except as provided in
 39 subsection (b)(7), (b)(9) or (b)(10);

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

43 (5) property of the value of less than \$1,500 from three separate

1 mercantile establishments within a period of 72 hours as part of the same
2 act or transaction or in two or more acts or transactions connected together
3 or constituting parts of a common scheme or course of conduct is a
4 severity level 9, nonperson felony;

5 (6) property of the value of at least \$50 but less than \$1,500 is a
6 severity level 9, nonperson felony if committed by a person who has,
7 within five years immediately preceding commission of the crime,
8 excluding any period of imprisonment, been convicted of theft two or
9 more times;

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

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

17 (9) *property, by deception, that is refunds, money or merchandise*
18 *from a retailer with an aggregate retail market value of at least \$3,000 but*
19 *less than \$15,000 is a severity level 5, nonperson felony; and*

20 (10) *property, by deception, that is refunds, money or merchandise*
21 *from a retailer with an aggregate retail market value of \$15,000 or more is*
22 *a severity level 4, nonperson felony.*

23 (c) As used in this section:

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

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

29 ~~(2)~~(3) "mail" means a letter, postal card, package or bag sent through
30 the United States postal service or other delivery service, or any other
31 article or thing contained therein;

32 ~~(3)~~(4) "regulated scrap metal" means the same as defined in K.S.A.
33 2023 Supp. 50-6,109, and amendments thereto;

34 ~~(4)~~(5) "remote service unit" means the same as defined in K.S.A. 9-
35 1111, and amendments thereto, and includes, but is not limited to,
36 automated cash dispensing machines and automated teller machines; and

37 ~~(5)~~(6) "value" means the value of the property or, if the property is
38 regulated scrap metal or a remote service unit, the cost to restore the site of
39 the theft of such regulated scrap metal or remote service unit to its
40 condition at the time immediately prior to the theft of such regulated scrap
41 metal or remote service unit, whichever is greater.

42 Sec. 3. K.S.A. 21-6328 is hereby amended to read as follows: 21-
43 6328. As used in the Kansas racketeer influenced and corrupt organization

1 act:

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

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

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

9 (2) The term "beneficial interest" does not include the interest of a
10 stock holder in a corporation or the interest of a partner in either a general
11 partnership or a limited partnership. A beneficial interest shall be deemed
12 to be located where the real property owned by the trustee is located.

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

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

16 (2) has engaged in or is engaging in any conduct prohibited by K.S.A.
17 21-5426, and amendments thereto, human trafficking or aggravated human
18 trafficking, or K.S.A. 21-6422, and amendments thereto, commercial
19 sexual exploitation of a child;

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

24 (4) has engaged in or is engaging in any conduct prohibited by K.S.A.
25 21-6107, and amendments thereto, identity theft or identity fraud.

26 (c) "Documentary material" means any book, paper, document,
27 writing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
28 computer printout, other data compilation from which information can be
29 obtained or from which information can be translated into usable form, or
30 other tangible item.

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

38 (e) "Pattern of racketeering activity" means engaging in at least two
39 incidents of racketeering activity that have the same or similar intents,
40 results, accomplices, victims or methods of commission or that otherwise
41 are interrelated by distinguishing characteristics and are not isolated
42 incidents, provided at least one of such incidents occurred after the
43 effective date of this act and that the last of such incidents occurred within

1 five years, excluding any period of imprisonment, after a prior incident of
2 racketeering activity.

3 (f) "Racketeering activity" means to commit, attempt to commit,
4 conspire to commit or to solicit, coerce or intimidate another person to
5 commit any:

6 (1) Felony or misdemeanor violation of: The felony provisions of
7 K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a
8 police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas
9 money transmitter act; article 12a of chapter 17 of the Kansas Statutes
10 Annotated, and amendments thereto, Kansas uniform securities act; K.S.A.
11 21-5401, and amendments thereto, capital murder; K.S.A. 21-5402, and
12 amendments thereto, murder in the first degree; K.S.A. 21-5403, and
13 amendments thereto, murder in the second degree; K.S.A. 21-5408, and
14 amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 21-
15 5412, and amendments thereto; K.S.A. 21-5413, and amendments thereto;
16 K.S.A. 21-5414, and amendments thereto, domestic battery; K.S.A. 21-
17 5415, and amendments thereto, criminal threat or aggravated criminal
18 threat; K.S.A. 21-5420, and amendments thereto, robbery or aggravated
19 robbery; K.S.A. 21-5421, and amendments thereto, terrorism; K.S.A. 21-
20 5422, and amendments thereto, illegal use of weapons of mass destruction;
21 K.S.A. 21-5423, and amendments thereto; K.S.A. 21-5426, and
22 amendments thereto, human trafficking or aggravated human trafficking;
23 K.S.A. 21-5428, and amendments thereto, blackmail; K.S.A. 21-5510, and
24 amendments thereto, sexual exploitation of a child; K.S. 21-5601, and
25 amendments thereto, endangering a child or aggravated endangering a
26 child; K.S.A. 21-5602, and amendments thereto, abuse of a child; K.S.A.
27 21-5603, and amendments thereto, contributing to a child's misconduct or
28 deprivation; K.S.A. 21-5607(b), and amendments thereto, furnishing
29 alcoholic beverages to a minor for illicit purposes; article 57 of chapter 21
30 of the Kansas Statutes Annotated, and amendments thereto, crimes
31 involving controlled substances; K.S.A. 21-5801, and amendments thereto,
32 theft; K.S.A. 21-5803, and amendments thereto, criminal deprivation of
33 property; K.S.A. 21-5805, and amendments thereto; K.S.A. 21-5807, and
34 amendments thereto, burglary or aggravated burglary; K.S.A. 21-5812,
35 and amendments thereto, arson or aggravated arson; K.S.A. 21-5813, and
36 amendments thereto, criminal damage to property; K.S.A. 21-5814, and
37 amendments thereto, criminal use of an explosive; K.S.A. 21-5821, and
38 amendments thereto, giving a worthless check; K.S.A. 21-5823, and
39 amendments thereto, forgery; K.S.A. 21-5824, and amendments thereto,
40 making false information; K.S.A. 21-5825, and amendments thereto,
41 counterfeiting; K.S.A. 21-5826, and amendments thereto, destroying
42 written instrument; K.S.A. 21-5828, and amendments thereto, criminal use
43 of a financial card; K.S.A. 21-5838, and amendments thereto, conducting a

1 pyramid promotional scheme; K.S.A. 21-5839, and amendments thereto;
2 *section 1, and amendments thereto, organized retail crime*; K.S.A. 21-
3 5903, and amendments thereto, perjury; K.S.A. 21-5904, and amendments
4 thereto, interference with law enforcement; K.S.A. 21-5905, and
5 amendments thereto, interference with the judicial process; K.S.A. 21-
6 5909, and amendments thereto, intimidation of a witness or victim or
7 aggravated intimidation of a witness or victim; K.S.A. 21-5912, and
8 amendments thereto, aiding escape; K.S.A. 21-5913, and amendments
9 thereto, obstructing apprehension or prosecution; K.S.A. 21-5918, and
10 amendments thereto; K.S.A. 21-6001, and amendments thereto, bribery;
11 K.S.A. 21-6002, and amendments thereto, official misconduct; K.S.A. 21-
12 6107, and amendments thereto, identity theft or identity fraud; K.S.A. 21-
13 6301, and amendments thereto, criminal use of weapons; K.S.A. 21-6302,
14 and amendments thereto, criminal carrying of a weapon; K.S.A. 21-6303,
15 and amendments thereto, criminal distribution of firearms to a felon;
16 K.S.A. 21-6304, and amendments thereto, criminal possession of a
17 weapon by a convicted felon; K.S.A. 21-6305, and amendments thereto,
18 aggravated weapons violation by a convicted felon; K.S.A. 21-6306, and
19 amendments thereto, defacing identification marks of a firearm; K.S.A.
20 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A.
21 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 21-
22 6312, and amendments thereto; K.S.A. 21-6314, and amendments thereto,
23 recruiting criminal street gang membership; K.S.A. 21-6315, and
24 amendments thereto, criminal street gang intimidation; K.S.A. 21-6401,
25 and amendments thereto, promoting obscenity or promoting obscenity to
26 minors; K.S.A. 21-6404, and amendments thereto, gambling; K.S.A. 21-
27 6405, and amendments thereto, illegal bingo operation; K.S.A. 21-6406,
28 and amendments thereto, commercial gambling; K.S.A. 21-6407, and
29 amendments thereto, dealing in gambling devices; K.S.A. 21-6408, and
30 amendments thereto; K.S.A. 21-6409, and amendments thereto, installing
31 communication facilities for gamblers; K.S.A. 21-6414(a) or (b), and
32 amendments thereto, unlawful conduct of dog fighting or unlawful
33 possession of dog fighting paraphernalia; K.S.A. 21-6417(a) or (b), and
34 amendments thereto, unlawful conduct of cockfighting or unlawful
35 possession of cockfighting paraphernalia; K.S.A. 21-6419, and
36 amendments thereto, selling sexual relations; K.S.A. 21-6420, and
37 amendments thereto, promoting the sale of sexual relations; K.S.A. 21-
38 6422, and amendments thereto, commercial sexual exploitation of a child;
39 K.S.A. 21-6501, and amendments thereto, extortion; K.S.A. 21-6502, and
40 amendments thereto, debt adjusting; K.S.A. 21-6504, and amendments
41 thereto, equity skimming; K.S.A. 21-6506, and amendments thereto,
42 commercial bribery; K.S.A. 21-6507, and amendments thereto, sports
43 bribery; K.S.A. 21-6508, and amendments thereto, tampering with a sports

1 contest; K.S.A. 39-720, and amendments thereto, social welfare service
2 fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance
3 acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor
4 control act; K.S.A. 44-5,125, and amendments thereto, workers'
5 compensation act; K.S.A. 65-1657, and amendments thereto, nonresident
6 pharmacy registration; K.S.A. 65-3441, and amendments thereto,
7 hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in
8 counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes
9 Annotated, and amendments thereto, Kansas parimutuel racing act; or
10 K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco
11 products act; or

12 (2) conduct defined as "racketeering activity" under 18 U.S.C. §
13 1961(1).

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

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

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

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

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

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

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

32 (1) Violation of any of the following provisions of law: Article 88 of
33 chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
34 Kansas parimutuel racing act; K.S.A. 21-6404, and amendments thereto,
35 gambling; K.S.A. 21-6405, and amendments thereto, illegal bingo
36 operation; K.S.A. 21-6406, and amendments thereto, commercial
37 gambling; K.S.A. 21-6407, and amendments thereto, dealing in gambling
38 devices; K.S.A. 21-6408, and amendments thereto, unlawful possession of
39 a gambling device; or K.S.A. 21-6409, and amendments thereto, installing
40 communication facilities for gamblers; or

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

43 Sec. 4. K.S.A. 2023 Supp. 75-702 is hereby amended to read as

1 follows: 75-702. (a) The attorney general shall appear for the state, and
2 prosecute and defend any and all actions and proceedings, civil or
3 criminal, in the Kansas supreme court, the Kansas court of appeals and in
4 all federal courts, in which the state shall be interested or a party, and shall,
5 when so appearing, control the state's prosecution or defense.

6 (b) The attorney general shall also, when required by the governor or
7 either branch of the legislature, appear for the state and prosecute or
8 defend, in any other court or before any officer, in any cause or matter,
9 civil or criminal, in which this state may be a party or interested or when
10 the constitutionality of any law of this state is at issue and when so
11 directed shall seek final resolution of such issue in the supreme court of
12 the state of Kansas.

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

17 (2) Notwithstanding any provision of law to the contrary, the attorney
18 general shall have concurrent authority with any county or district attorney
19 to prosecute ~~theft as defined in K.S.A. 21-5801, and amendments thereto,~~
20 ~~a violation of the Kansas racketeer influenced and corrupt organizations~~
21 ~~act, K.S.A. 21-6327 et seq., and amendments thereto, or an~~

22 (A) *The following crimes when they are part of an alleged course of*
23 *criminal conduct that occurred in two or more counties: K.S.A. 8-1568,*
24 *and amendments thereto, fleeing or attempting to elude a police officer;*
25 *K.S.A. 21-5402(a)(2), and amendments thereto, murder in the first degree,*
26 *where the inherently dangerous felony is stated in K.S.A. 21-5402(c)(1)*
27 *(C), (D), (H), (I), (J), (O), (R) or (S) or (c)(2)(D) through (G), and*
28 *amendments thereto; K.S.A. 21-5403, and amendments thereto, murder in*
29 *the second degree; K.S.A. 21-5405, and amendments thereto, involuntary*
30 *manslaughter; K.S.A. 21-5406, and amendments thereto, vehicular*
31 *homicide; K.S.A. 21-5411, and amendments thereto, criminal restraint;*
32 *K.S.A. 21-5412, and amendments thereto; K.S.A. 21-5413, and*
33 *amendments thereto; K.S.A. 21-5415, and amendments thereto, criminal*
34 *threat or aggravated criminal threat; K.S.A. 21-5420, and amendments*
35 *thereto, robbery or aggravated robbery; K.S.A. 21-5429, and amendments*
36 *thereto, endangerment; K.S.A. 21-5706, unlawful possession of controlled*
37 *substances; K.S.A. 21-5708, and amendments thereto, unlawfully*
38 *obtaining or selling a prescription-only drug; K.S.A. 21-5801, and*
39 *amendments thereto, theft; K.S.A. 21-5803, and amendments thereto,*
40 *criminal deprivation of property; K.S.A. 21-5805, and amendments*
41 *thereto, unlawful acts involving theft detection shielding devices; K.S.A.*
42 *21-5807, and amendments thereto, burglary or aggravated burglary;*
43 *K.S.A. 21-5808, and amendments thereto, criminal trespass; K.S.A. 21-*

1 5813, and amendments thereto, criminal damage to property or
2 aggravated criminal damage to property; K.S.A. 21-5814, and
3 amendments thereto, criminal use of an explosive; K.S.A. 21-5821, and
4 amendments thereto, giving a worthless check; K.S.A. 21-5823, and
5 amendments thereto, forgery; K.S.A. 21-5828, and amendments thereto,
6 criminal use of a financial card; K.S.A. 21-5831, and amendments thereto,
7 warehouse receipt fraud; K.S.A. 21-5832, and amendments thereto,
8 unauthorized delivery of stored goods; K.S.A. 21-5839, and amendments
9 thereto, unlawful acts concerning computers; K.S.A. 21-5840, and
10 amendments thereto, counterfeiting currency; K.S.A. 21-5904, and
11 amendments thereto, interference with law enforcement; K.S.A. 21-5918,
12 and amendments thereto, dealing in false identification documents or vital
13 records identity fraud; K.S.A. 21-6107, and amendments thereto, identity
14 theft or identity fraud; K.S.A. 21-6108, and amendments thereto, unlawful
15 possession of a scanning device or reencoder; K.S.A. 21-6201, and
16 amendments thereto, riot or incitement to riot; K.S.A. 21-6203, and
17 amendments thereto, disorderly conduct; K.S.A. 21-6207, making an
18 unlawful request for emergency service assistance; article 63 of chapter
19 21 of the Kansas Statutes Annotated, and amendments thereto; K.S.A. 21-
20 6416, and amendments thereto; and K.S.A. 21-6503, and amendments
21 thereto, deceptive commercial practice; and

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

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

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