**South Carolina General Assembly**

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**H. 4838**

**STATUS INFORMATION**

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Sponsors: Reps. Bustos, Bennett, Wooten, Bryant and Pope

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

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/20/2022 House Introduced and read first time ([House Journal‑page 32](file:///h:\hj\20220120.docx))

1/20/2022 House Referred to Committee on **Judiciary** ([House Journal‑page 32](file:///h:\hj\20220120.docx))

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**VERSIONS OF THIS BILL**

[1/20/2022](file:///p:\pprever\2021-22\4838_20220120.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA STREET GANG AND CRIMINAL ENTERPRISE PREVENTION AND ANTI‑RACKETEERING ACT”; TO AMEND 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, CREATE VARIOUS RACKETEERING OFFENSES AND ESTABLISH PENALTIES FOR VIOLATIONS, AND TO PROVIDE FOR FORFEITURE OF ASSETS USED IN A VIOLATION OF RACKETEERING PROVISIONS.

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

SECTION 1. This act may be cited as the “South Carolina Street Gang and Criminal Enterprise Prevention and Anti‑Racketeering Act”.

SECTION 2. The General Assembly finds that:

(1) It is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap to be secure and protected from fear, intimidation, and physical harm caused by the activities of criminal gangs and criminal gang members. It is not the intent of this act to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(2) The State of South Carolina is facing a mounting crisis caused by criminal gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes. These criminal gang activities, both individually and collectively, present a clear and present danger. The State has a compelling interest in preventing criminal gang activity, and the General Assembly finds that the provisions of this act are necessary to maintain the public order and safety.

(3) 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.

(4) The current laws of this State provide inadequate remedies, procedures, and punishments and the General Assembly finds the provisions of this act necessary to address those inadequacies for the common good of this State and its people.

(5) The General Assembly finds that the most effective punishment and deterrence of the criminal activities of criminal street gangs is not just through incarceration where appropriate, but also through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by criminal street gangs.

(6) It is the intent of the General Assembly to eradicate the terror created by criminal gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal gang activity, including criminal gang recruitment.

SECTION 3. Chapter 8, Title 16, Article 3 of the 1976 Code is amended to read:

“Article 3

~~Criminal~~ South Carolina Street Gang

and Criminal Enterprise Prevention Act

Section 16‑8‑210. This article may be cited as the ‘~~Criminal~~ South Carolina Street Gang and Criminal Enterprise Prevention Act’.

Section 16‑8‑230. As used in this article:

~~(1)~~ ~~‘Contraband’ means any real or personal property, including money, that is owned by, in the possession of, or subject to the control of a criminal gang member and which is acquired by, derived from, or traceable to criminal gang activity.~~

~~(2)~~ ~~‘Criminal gang’ means a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity.~~

~~(3)~~ ~~‘Criminal gang member’ means an individual who is an active member of a criminal gang.~~

~~(4)~~ ~~‘Pattern of criminal gang activity’ means the commission or attempted commission of, commission as an accessory before or after the fact to, or solicitation or conspiracy to commit, by a criminal gang member, while knowingly and actively participating in criminal gang activity , four or more of the following offenses occurring within a two‑year period, provided that at least three of these offenses occurred after July 1, 2007:~~

~~(a)~~ ~~a violent offense as defined in Section 16‑1‑60 committed as a part of criminal gang activity;~~

~~(b)~~ ~~financial transaction card crimes as defined in Chapter 14 of Title 16 committed as a part of criminal gang activity;~~

~~(c)~~ ~~first degree lynching as defined in Section 16‑3‑210 committed as a part of criminal gang activity;~~

~~(d)~~ ~~second degree lynching as defined in Section 16‑3‑220 committed as a part of criminal gang activity;~~

~~(e)~~ ~~breaking into a motor vehicle as defined in Section 16‑13‑160 committed as a part of criminal gang activity;~~

~~(f)~~ ~~grand larceny as defined in Section 16‑13‑30 committed as a part of criminal gang activity;~~

~~(g)~~ ~~blackmail as defined in Section 16‑17‑640 committed as a part of criminal gang activity;~~

~~(h)~~ ~~malicious injury to property as defined in Sections 16‑11‑510, 16‑11‑520, 16‑11‑530, and 16‑11‑535 committed as a part of criminal gang activity;~~

~~(i)~~  ~~drug offense as defined in Sections 44‑53‑370 and 44‑53‑375 committed as a part of criminal gang activity;~~

~~(j)~~ ~~harassment, stalking, or aggravated stalking as defined in Article 17, Chapter 3 of Title 16 committed as a part of criminal gang activity;~~

~~(k)~~ ~~pointing a firearm at any person as defined in Section 16‑23‑410 committed as a part of criminal gang activity;~~

~~(l)~~  ~~discharging a firearm at or into dwellings, structures, enclosures, vehicles, or equipment as defined in Section 16‑23‑440 committed as a part of criminal gang activity;~~

~~(m)~~ ~~the common law offense of assault and battery of a high and aggravated nature committed as a part of criminal gang activity; or~~

~~(n)~~ ~~the common law offense of obstruction of justice committed as a part of criminal gang activity.~~

~~(5)~~ ~~‘Gang‑related incident’ means an incident that, upon investigation, meets any of the following conditions:~~

~~(a)~~ ~~the participants are identified as criminal gang members acting collectively to further a criminal purpose of the criminal gang;~~

~~(b)~~ ~~a reliable informant identifies an incident as criminal gang activity based upon first‑hand knowledge or personal observation; or~~

~~(c)~~ ~~a person other than a reliable informant provides information that identifies an incident as criminal gang activity, and it is corroborated by independent information.~~

(1) ‘Criminal gang activity’ means the commission, attempted commission, conspiracy to commit, solicitation, coercion, or intimidation of another person to commit, or aiding in the commission before or after the fact of a felony, in this State, any other state, or the United States any of the following offenses:

(a) financial transaction card crimes as defined in Chapter 14, Title 16;

(b) assault or battery crimes as defined in Chapter 3, Title 16;

(c) breaking into a motor vehicle as defined in Section 16‑13‑160;

(d) grand larceny as defined in Chapter 13, Title 16;

(e) blackmail as defined in Section 16‑17‑640;

(f) common law extortion;

(g) malicious injury to property as defined in Sections 16‑11‑510, 16‑11‑520, 16‑11‑530, and 16‑11‑535;

(h) drug offense as defined in Sections 44‑53‑370 and 44‑53‑375;

(i) harassment, stalking, or aggravated stalking as defined in Article 17, Chapter 3, Title 16;

(j) any offense relating to financial identity fraud or theft or identity fraud or theft as defined in Article 2, Chapter 13, Title 16 and Section 16‑11‑725;

(k) a violation of the Computer Crime Act as defined in Chapter 16, Title 16;

(l) retail theft as defined in Section 16‑13‑135;

(m) common law obstruction of justice;

(n) any offense that carries a potential penalty of five years or more imprisonment;

(o) any offense relating to escape and other offenses related to confinement;

(p) any offense relating to the security of state or county correctional facilities;

(q) any offense of criminal trespass or criminal damage to property resulting from any act of gang‑related painting on, tagging, marking on, writing on, or creating any form of graffiti on the property of another;

(r) any criminal offense committed in violation of the laws of the United States or its territories, dominions, or possessions, any of the several states, or any foreign nation which, if committed in this State, would be considered criminal gang activity pursuant to this section; and

(s) any criminal offense in this State, any other state, or the United States that involves violence, possession of a weapon, or use of a weapon, whether designated as a felony or not, and regardless of the maximum sentence that could be imposed or actually was imposed.

(2) ‘Criminal gang’ means any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in this section. The existence of such organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics including, but not limited to, common activities, customs, or behaviors. The term does not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity.

Section 16‑8‑240. ~~(A)~~ ~~It is unlawful for a criminal gang member to use or threaten to use physical violence against another person with the intent to coerce, induce, or solicit that person or another person to actively participate in criminal gang activity, or to prevent another criminal gang member from withdrawing from or leaving a criminal gang. A criminal gang member who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars or imprisoned not more than two years, or both. A criminal gang member convicted for a second or subsequent offense pursuant to this subsection is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.~~

~~(B)~~ ~~A criminal gang member who uses a firearm, any other deadly weapon, or physical violence to coerce, induce, or solicit another person to actively participate in a criminal gang, or to prevent another criminal gang member from withdrawing or leaving a criminal gang, in addition to the punishment prescribed in subsection (A), may be punished by an additional fine of not more than ten thousand dollars or by imprisonment for an additional period of not more than ten years, or both.~~

~~(C)~~ ~~If the person solicited, recruited, coerced, or threatened in violation of this section is under the age of eighteen, an additional term of three years may be imposed in addition and consecutive to the penalty prescribed for a violation of this section.~~

~~(D)~~ ~~A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action against a criminal gang or criminal gang member violating this section for treble the amount of the actual damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs from the criminal gang or criminal gang member.~~

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

(A) It is unlawful for a person employed by or associated with a criminal street gang to conduct or participate in a criminal gang activity offense, as defined in Section 16‑8‑230.

(B) It is unlawful for a person to commit a criminal gang activity offense, as defined in Section 16‑8‑230, with the intent to obtain or earn membership or maintain or increase his status or position in a criminal street gang.

(C) It is unlawful for a person to acquire or maintain, directly or indirectly, through criminal gang activity, or proceeds derived from criminal gang activity, any interest in or control of real or personal property of any nature, including money.

(D) It is unlawful for a person who occupies a position of organizer, a supervisory position, or any other position of management or leadership with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in criminal gang activity.

(E) It is unlawful for a person to cause, encourage, solicit, recruit, or coerce another to become a member or associate of a criminal street gang, to participate in a criminal street gang, or to conduct or participate in criminal gang activity.

(F) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to deter such person from assisting a member or associate of a criminal street gang to withdraw from a criminal street gang.

(G) It is unlawful for a person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against a person for having withdrawn from a criminal street gang.

(H) It is unlawful for a person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against a person for refusing to or encouraging another to refuse to become or obtain the status of a member or associate of a criminal street gang.

(I) It is unlawful for a person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against a person for providing statements or testimony against criminal street gangs or any criminal street gang member or associate.

(J) It is unlawful for a person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to intimidate, deter, or prevent a person from communicating to a law enforcement or corrections officer, prosecuting attorney, or judge information relating to criminal street gangs, criminal street gang members or associates, or criminal gang activity.

(K)(1) A person who violates the provisions of subsection (A), (B), or (C) is guilty of a felony and, upon conviction, in addition to any other penalty provided by law, must be fined not less than ten thousand dollars nor more than fifteen thousand dollars or imprisoned not less than five years but not more than twenty years, or both. Restitution also must be ordered as a condition of any sentence imposed.

(2) A person who violates the provisions of subsection (D) is guilty of a felony and, upon conviction, in addition to any other penalty provided by law, must be imprisoned for not less than five years but not more than twenty years which must be served consecutively to any other sentence imposed. Restitution also must be ordered as a condition of any sentence imposed.

(3) Any person who violates the provisions of subsection (E), (F), (G), (H), (I), or (J) is guilty of a felony and, upon conviction, in addition to any other penalty as provided by law, must be imprisoned for not less than five years but not more than twenty years. Restitution also must be ordered as a condition of any sentence imposed.

(4) A person who violates the provisions of this section through the solicitation, recruitment, coercion, or threat of a person under the age of eighteen may be imprisoned for an additional term of three years which must be served consecutively to any other sentence imposed.

(L) In addition to any other penalty provided in this section, all sentences imposed pursuant to this section require as a special condition of the sentence that the person sentenced may not knowingly have contact of any kind or character with any other member or associate of a criminal street gang, may not participate in any criminal gang activity and, in cases involving a victim, may not knowingly have contact of any kind or character with any such victim or any member of the victim’s family or household.

(M) Any offense committed in violation of this section must be considered a separate offense.

(N) When two or more defendants are jointly charged with any criminal gang activity offense, whether felony or misdemeanor, 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 must 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 from making a reliable judgment about a codefendant’s guilt. The trial court shall provide appropriate cautionary instructions to the jury to protect the individual rights of each codefendant and ensure that no prejudice results from a joint trial. 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.

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

Section 16‑8‑250. (A) Any real property which is erected, established, maintained, owned, leased, or used by a criminal street gang for the purpose of conducting criminal gang activity 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 circuit solicitor in the appropriate state or municipal court.

(C) The State, political subdivision, or any person aggrieved by a criminal street gang or criminal gang activity may bring an action to enjoin a violation of this article.

Section 16‑8‑~~250~~260. (A) It is unlawful for a criminal gang member by threat or force to:

(1) prevent a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law that concerns or relates to any criminal activity; or

(2) attempt to prevent a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law that concerns or relates to any criminal activity.

(B) A criminal gang member who violates a provision of this section is guilty of a felony and, upon conviction, must be punished by a fine of not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(C) A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action against a criminal gang or criminal gang member violating this section for treble the amount of his actual damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs from the criminal gang or criminal gang member.

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

Section 16‑8‑270. (A) For the purpose of proving the existence of a criminal gang and criminal gang activity, the adjudication or conviction by any plea or trial of a criminal gang activity offense enumerated in Section 16‑8‑230 by any member or associate of a criminal street gang is admissible in any trial or proceeding. If the prosecution seeks to offer evidence of a third‑party adjudication or conviction, the person so adjudicated or convicted must be available for cross‑examination in order for the evidence to be admitted. The pendency of an appeal may be shown but does not affect admissibility.

(B) A defendant’s conviction of a criminal gang activity offense is admissible in and estops the defendant in any subsequent action or proceeding as to matters proved in the criminal proceeding.

Section 16‑8‑280. (A) In a criminal proceeding in which a person is accused of conducting or participating in criminal gang activity enumerated in Section 16‑8‑230, evidence of the accused’s commission of criminal gang activity is admissible and may be considered for its bearing on any matter to which it is relevant.

(B) This section is not the exclusive means to admit or consider evidence described in this section.

Section 16‑8‑290. 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 Article 5, occurred or in which an interest or control of an enterprise or real or personal property is acquired or maintained.

Section 16‑8‑300. (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 this article, 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‑~~260~~310. (A)(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal gang may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used in ~~a pattern of~~ criminal gang activity or in the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(2) Any written or electronic communications, records, money, negotiable instruments, or valuables may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the written or electronic communications, records, money, negotiable instruments, or valuables have been used in ~~a pattern of~~ criminal gang activity or have been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(3) Any ~~contraband, as defined in Section 16‑8‑230, or other~~ asset owned or titled in the name of the gang or an individual gang member may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the ~~contraband or~~ asset has been used in ~~a pattern of~~ criminal gang activity or has been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(B) The solicitor or another prosecuting attorney shall initiate, in a civil action, forfeiture proceedings by petition in a court of competent jurisdiction regarding any property seized pursuant to the provisions of this section within ninety days of seizure. The solicitor or another prosecuting attorney must provide notice of the filing of the petition to those criminal gang members who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person learned by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court must ensure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(C) A person who claims an interest in any seized property, in order to assert a claim that the property should not be forfeited, must file a notice with the court, without the necessity of paying costs, of the intent to establish either of the following:

(1) that the person asserting the claim did not know and could not have known of the property’s use in the commission of ~~a pattern of~~ criminal gang activity or in furthering the interests of the criminal gang; or

(2) that the law enforcement officer lacked the requisite reasonable belief that the property was or would be used in the commission of ~~a pattern of~~ criminal gang activity or in furtherance of the interests of the criminal gang.

(D) In any hearings held and determinations made, pursuant to this section, the court may receive and consider, in making a determination of reasonable cause, all evidence admissible in determining reasonable or probable cause at a preliminary hearing together with inferences arising from the evidence presented.

(E) An acquittal or dismissal in a criminal proceeding must not preclude civil proceedings under this section. However, for good cause shown, on motion by the solicitor or another prosecuting attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of this section. A stay is not available pending an appeal.

(F) Except as otherwise provided by this section, all proceedings under this section are governed according to the common law, by statutory provisions relating to civil remedies and procedures, and the rules of civil procedure established for the circuit court. Additionally, any action under the provisions of this section may be consolidated with any other action or proceeding pursuant to this section relating to the same property on motion of the solicitor or prosecuting attorney.

(G) The forfeiture provided for in this section must be decided by the court. The hearing on the claim must be held within sixty days after service of the petition, unless continued for good cause. The solicitor or prosecuting attorney has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture.

(H) A person who asserts a successful claim in accordance with subsection (C) must be awarded the seized property by the court. All property to which no claim is filed, or to which no successful claim is made may be destroyed, sold at a public or private sale, retained for use by the seizing agency, or transferred without charge to any law enforcement agency of the State for use by the agency.

Section 16‑8‑~~270~~320. (A) A civil cause of action is created in favor of the State of South Carolina, a county, municipality, or another political subdivision, or an agency or instrumentality of them, that sustains any damage, impairment, or injury proximately caused by ~~a pattern of~~ criminal gang activity as defined in this article, or the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The cause of action created by this section may be brought against a criminal gang, a criminal gang member, or any other person who intentionally directs, participates, conducts, furthers, or assists in the commission of ~~a pattern of~~ criminal gang activity, or any other person who commits a criminal act or delinquency for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(B) Except as provided in this section, an action for injunction, damages, or other relief filed pursuant to this section must proceed according to the common law, statutory provisions relating to civil remedies and procedures, and the rules of civil procedure established for the circuit court.

(C) For purposes of venue, an action under this section for the recovery of damages may be brought in the county where the wrongful conduct occurred, or in the county where the damages were sustained. An action to enjoin the commission of an offense or an unlawful act may be brought in the county where the wrongful conduct occurred or may occur. For purposes of service of process, service of process upon a member of a criminal gang or a person representing a criminal gang member by appointment of court, operation of law, or mandate constitutes adequate service upon a criminal gang.

Section 16‑8‑~~280~~330. In all civil actions brought under the provisions of this article, the identity of an informant, identifying information relating to an informant, and all matters exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, are exempt from discovery or disclosure under the rules of civil procedure.

Section 16‑8‑~~290~~340. When a criminal gang member is released from the custody of a jail, prison, or corrections facility, and the criminal gang member was in the custody of the jail, prison, or corrections facility for a violation of the provisions of this article, the jail, prison, or corrections facility must transmit notice of the release of the criminal gang member to the sheriff of the county in which the crime was committed. Notice also must be given to a sheriff that the criminal gang member is being released and has provided an address within the jurisdiction of that sheriff for the county in which the criminal gang member intends to reside. If the crime was committed in a municipality, or if the criminal gang member will reside in a municipality upon release, that law enforcement agency must transmit the same notice to the chiefs of police of those municipalities.

Section 16‑8‑~~310~~350. Nothing in this article prohibits the governing body of a county, a municipality, or another political subdivision of the State from adopting and enforcing ordinances consistent with this article relating to criminal gangs, criminal gang members, and gang violence. When local ordinances duplicate or supplement this article, this article provides alternative remedies.

Section 16‑8‑~~320~~360. The State Law Enforcement Division must include the Violent Gang and Terrorist Organization File of the Federal Bureau of Investigation’s National Crime Information Center among those National Crime Information Center data available for direct access by authorized criminal justice agencies. State, county, and municipal law enforcement agencies must maintain a record of all persons who are found to be criminal gang members in the Violent Gang and Terrorist Organization File in accordance with the National Crime Information Center entry criteria. All gang‑related incidents must be appropriately annotated in the South Carolina Incident‑Based Reporting System pursuant to the intent and purpose of this article.

Section 16‑8‑~~330~~370. (A) Pursuant to achieving the intent and purpose of this article, the State Law Enforcement Division must develop and manage a statewide criminal gang database to facilitate the exchange of information between federal, state, county, and municipal law enforcement agencies pursuant to the intent and purpose of this article.

(B) All state, county, and municipal law enforcement agencies must furnish information they acquire relating to criminal gangs and gang‑related incidents to the State Law Enforcement Division to be included in the database.

(C) The State Law Enforcement Division may determine if information relating to criminal gangs, gang‑related incidents, patterns of gang activity, or members or associates of criminal gangs received from federal law enforcement agencies and law enforcement agencies of other states is to be included in the database.

(D) Criminal information relating to a criminal gang and collected pursuant to this article must be consistent with the criteria required on the effective date of this act by the Violent Gang and Terrorist Organization File of the Federal Bureau of Investigation’s National Crime Information Center. The State Law Enforcement Division is authorized pursuant to the Administrative Procedures Act in Chapter 23, Title 1:

(1) to promulgate emergency regulations to make the criteria effective for collection of database information until such time as permanent regulations are promulgated and affirmatively approved by the General Assembly;

(2) to promulgate permanent regulations consistent with the criteria required on the effective date of this act, which are to be affirmatively approved by the General Assembly, and to amend those regulations to reflect changes made in the criteria; and

(3) to promulgate permanent regulations concerning the punishment associated with intentional misuse of the database.

(E) Information relating to a person who does not have a criminal arrest record and is not a member of a criminal gang must be used only for intelligence, investigative, and tracking purposes.

(F) The information contained in this database is not subject to the provisions of the Freedom of Information Act.

Section 16‑8‑~~340~~380. There is established in the appropriate office of the Department of Administration a Community Safety Anti‑Gang Matching Grants program to provide funding for local programs to prevent youth idleness and intervene with at‑risk youth. These grants may be awarded to counties and municipalities upon application for after school programs, summer youth employment programs, and police and sheriff anti‑gang task forces. Grants must be awarded on a two‑for‑one matching basis with the local match component consisting of cash. Grant applications must be reviewed and rated by the Governor’s Committee on Criminal Justice, Crime, and Delinquency, but responsibility for the award of grants is solely with the board. Funding for these grants must be in the amount as the General Assembly shall provide by law.”

SECTION 4. Title 16, Chapter 8 of the 1976 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.

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;

(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) ordering the forfeiture of the charter of a corporation organized under the laws of this State or the revocation of a certificate authorizing a foreign corporation to conduct business within this State upon a finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting affairs of the corporation, has authorized or engaged in conduct in violation of Section 16‑8‑530 and that, for the prevention of future criminal activity, the public interest requires that the charter of the corporation be forfeited and that the corporation be dissolved or the certificate be revoked.

(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 16‑8‑560. (A) All property, of every kind including real and personal property and monies, used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity is subject to forfeiture to the State. The Attorney General or his designee or the circuit solicitor or his designee are specifically authorized to commence civil forfeiture proceedings under this article.

(B) Property subject to forfeiture pursuant to subsection (A) and any proceeds are declared to be contraband and no person shall have a property right in them and they must be forfeited in accordance with the procedure set forth in Article 3, Chapter 53, Title 44.”

SECTION 5. 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 street gang and 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 6. 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 7. 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 8. This act takes effect upon approval by the Governor.

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