

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 389

Approved April 26, 1979

RESOLVED, That the City Council of Providence hereby endorses House Bill 79-H 5297 A, presently pending before the Senate Judiciary Committee, relative to "An Act Relating to Racketeers Influence in Corporate Organizations."

IN CITY COUNCIL
APR 18 1979

READ AND PASSED

Ralph Laing PRES.
Rose M. Mendonca CLERK

APPROVED

MAYOR

Joanna C. Cuneo, Jr.
APR 26 1979

(Substitute A)

79—H 5297

Introduced by—

Representatives Higgins, DeAngelis,
Teitz and Kiley

Ordered Printed by—

House of Representatives

Referred to—

House Committee on Judiciary

Date Printed—

January 18, 1979

State of Rhode Island and Providence Plantations

JANUARY SESSION, A.D. 1979

**AN ACT Relating to Racketeer Influenced and
Corrupt Organizations.**

It is enacted by the General Assembly as follows:

SECTION 1. Title 7 of the General Laws entitled "Corporations, Associations and Partnerships" is hereby amended by adding thereto the following Chapter 7-15 entitled "Racketeer Influenced and Corrupt Organizations."

7-15-1. DEFINITIONS. —

a) "Racketeering activity" means any act or threat which is chargeable as a crime under state law and punishable by imprisonment for more than one year.

b) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property.

c) "Enterprise" includes any sole proprietorship.

partnership, corporation, association, or other legal entity, and any union or group of individuals associated for a particular purpose although not a legal entity.

d) "Unlawful debt" means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury.

7-15-2. PROHIBITED ACTIVITIES. —

a) It shall be unlawful for any person who has knowingly received any income derived, directly or indirectly, from a racketeering activity or through collection of an unlawful debt, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income in the acquisition of an interest in, or the establishment or operation of any enterprise.

b) It shall be unlawful for any person through a racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

c) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.

Provided however that a purchase of securities on the open market for purposes of investment and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in a racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not, either in law or in fact,

confer the power to elect one or more directors of the issuer.

7-15-3. PENALTIES FOR VIOLATIONS. — Whoever violates this Chapter shall be fined not more than ten thousand dollars (\$10,000), or imprisoned not more than ten years, or both, and shall forfeit to the State any interest or property he has acquired or maintained in the violation of this chapter.

Upon conviction of a person under this chapter, the Superior Court shall authorize the attorney general to seize all property or other interest declared forfeited under this chapter upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this chapter as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire, and shall not revert to the convicted person.

7-15-4. CIVIL REMEDIES. —

a) The superior courts of the State shall have jurisdiction to prevent and restrain violations of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

b) The Attorney general may institute proceedings under this section. In any action brought by the State under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at

any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

c) Any person injured in his business or property by reason of a violation of this chapter may sue therefor in any appropriate court and shall recover the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

c) A final judgment or decree rendered in favor of the State in any criminal proceeding brought by the State under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the State.

7-15-5. EVIDENCE. — In any proceeding ancillary to or in any civil action instituted by the State under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

7-15-6. APPLICATION. —

It shall not be a defense in any action brought under this chapter that the racketeering activity as defined in section 7-15-1 (a) occurred prior to the effective date of this chapter.

7-15-7. CIVIL INVESTIGATIVE DEMAND. —

a) Investigative Demand. —

Whenever the attorney general has reason to believe that any person or enterprise may have knowledge or be in possession, custody or, control of any documentary material, pertinent to an investigation of a possible violation of this chapter, he may, prior to and/or following the institution of a civil or criminal proceeding thereon, issue in writing and cause to be served upon such person or enterprise a civil investigatory demand by which he may:

1) Compel the attendance of such person and require

him or her to submit to examination and give testimony under oath; and/or

2) Require the production of documentary material pertinent to the investigation for inspection and/or copying; and/or

3) Require answers under oath to written interrogatories.

The power to issue investigative demands shall not abate or terminate by reason of the bringing of any action or proceeding under this chapter. The attorney general may issue successive investigatory demands to the same person in order to obtain additional information pertinent to an ongoing investigation.

b) Contents of Investigative Demand. —

Each investigatory demand shall:

1) State the nature of the conduct constituting the alleged violation of this chapter which is under investigation and the provision of law applicable thereto;

2) Prescribe a reasonable return date no less than twenty (20) days from the date of the investigative demand, provided that an earlier date may be prescribed under compelling circumstances;

3) Specify the time and place at which the person is to appear and give testimony, produce documentary material, and furnish answers to interrogatories, or do any or a combination of the aforesaid;

4) Identify the custodian to whom any documentary material shall be made available;

5) Describe by class any documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified; and

6) Contain any interrogatories to which written answers under oath are required.

c) Prohibition Against Unreasonable Demand. —

No investigatory demand shall:

1) Contain any requirement which would be unreason-

able or improper if contained in a subpoena or a subpoena duces tecum issued by a court of this state; or

2) Require the disclosure of any material which would be privileged from disclosure if demanded by a subpoena or a subpoena duces tecum issued by a court of this state.

d) Service of Investigative Demand. —

An Investigative demand may be served by:

1) Delivering a duly executed copy to the person to be served, or if the person is not a natural person, to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person;

2) Delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

3) Mailing by certified mail, return receipt requested, a duly executed copy addressed to the person to be served, or if the person is not a natural person, addressed to its principal office or place of business in this state, or if it has none in this state, to its principal office or place of business.

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

e) Authorization to Examine. —

The examination of all persons pursuant to this section shall be conducted by the attorney general or a representative designated in writing by him, before an officer authorized to administer oaths in this state. The statements made shall be taken down stenographically or by a sound recording device and shall be transcribed.

f) Rights of Persons Served with Investigative Demands. —

Any person required to attend and give testimony or to submit documentary material pursuant to this section shall be entitled to retain, or on payment of lawfully prescribed cost to procure, a copy of any document he produces and of his own statements as transcribed. Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented and advised by counsel. Counsel may advise such person in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the attorney general may petition the superior court for an order compelling such person to answer such question. The information and materials supplied to the attorney general pursuant to an investigative demand shall not be permitted to become public or be disclosed by the attorney general or his employees beyond the extent necessary for legitimate law enforcement purposes pursuant to this chapter.

g) Witness Expenses. —

All persons served with an investigative demand, other than those persons whose conduct or practices are being investigated or any officer, director or person in the

employment of such person under investigation, shall be paid the same fees and mileage as paid witnesses in the court of this state. No person shall be excused from attending such inquiry pursuant to the mandate of an investigative demand or from giving testimony, or from producing documentary material or from being required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefore is made at the time testimony is about to be taken and unless payment thereof is not thereupon made.

h) Custody of Documents. —

1) The attorney general shall designate, from within the department of attorney general, an investigator to serve as racketeer document custodian and such racketeering investigators as he shall determine to be necessary to serve as deputies to such officer.

2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute copies of all or any part of such material for originals thereof.

3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the

attorney general. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, other than for legitimate law enforcement purposes pursuant to this chapter. Under such reasonable terms and conditions as the attorney general shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

4) Whenever any attorney has been designated to appear on behalf of the State before any court or grand jury in any case of proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the State. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

5) Upon the completion of the investigation for which any documentary material was produced under this chapter, and any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material, other than copies thereof made by the custodian pursuant to this section, which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

6) When any documentary material has been produced by any person under this chapter, and no such case or proceeding arising therefrom has been instituted within a reasonable time after the completion of the

examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the custodian, to the return of all documentary material, other than copies thereof made by the custodian pursuant to this section, so produced by such person.

7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this chapter or the official relief of such custodian from responsibility for the custody and control of such material, the attorney general shall promptly designate another racketeering investigator to serve as custodian thereof, and transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this chapter upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

i) Enforcement of Investigative Demands for Production. —

Whenever any person fails to comply with any civil investigative demand duly served upon him under this chapter requiring the production of documentary material or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file in the superior court and serve upon such person a petition for an order of such court for the enforcement of the demand.

j) Refusal of Persons Served to Testify or Produce Documents. —

Whenever any natural person shall neglect or refuse to attend and give testimony or to answer any lawful inquiry

or to produce documentary material if in his power to do so in obedience to an investigative demand duly served upon him under this chapter, he may be adjudged in civil contempt by the superior court until such time as he purges himself of contempt by testifying, producing documentary material or presenting written answers as ordered. Any natural person who commits perjury or false swearing in response to an investigative demand pursuant to this section shall be punishable pursuant to the provisions of title 11, chapter 33 of the general laws.

k) Motion to Quash. —

Within twenty days after the service of an investigatory demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, the person served may file in the superior court and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this chapter or upon any constitutional or other legal right or privilege of such person.

l) Right of Persons Producing Documents. —

At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with an investigatory demand, such person may file in the superior court and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this chapter.

m) Duty to Testify. —

1) If, in any investigation brought by the attorney general pursuant to this section, any individual shall

refuse to attend or to give testimony or to produce documentary material or to answer a written interrogatory in obedience to an investigative demand or under order of court on the ground that the testimony or material required of him may tend to incriminate him, that person may be ordered to attend and to give testimony or to produce documentary material or to answer the written interrogatory, or to do an applicable combination of these. The order as aforesaid shall be an order of court given after a hearing in which the attorney general has established a need for the grant of immunity, as hereinafter provided.

2) The attorney general may petition any superior court justice for an order as described in subsection (1) of this section. Such petition shall set forth the nature of the investigation and the need for the immunization of the witness.

3) Testimony so compelled shall not be used against the witness as evidence in any criminal proceedings against him in any court. However, the grant of immunity shall not immunize the witness from civil liability arising from the transactions about which testimony is given, and he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or in failing to answer or in producing evidence or failing to do so in accordance with the order. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify as aforesaid, he may be adjudged in civil contempt by the superior court until such time as he purges himself of contempt by testifying, producing documentary material or presenting written answers as ordered. The foregoing shall not prevent the attorney general from instituting other appropriate contempt proceedings against any person who violates any of the above provisions.

17-15-8. JURISDICTION. —

The superior court shall have jurisdiction to hear and determine all matters arising under this chapter, and to enter such orders as may be required to implement the provisions of this chapter.

17-15-9. REMEDIES CUMULATIVE. —

The criminal sanctions and civil remedies provided for in this chapter are cumulative of each other and of existing powers and remedies which are provided for by statute or are inherent in the court.

7-15-10. CONSTRUCTION.—

The provisions of this chapter shall be liberally construed to effectuate its purpose.

7-15-11. SEVERABILITY. —

If any provision of this chapter is held unconstitutional, such decision shall not affect the validity of the remainder of the chapter.

Section 2. This Act shall take effect upon its passage.

EXPLANATION

The purpose of this Act is to outlaw the infiltration and illegal acquisition of legitimate economic enterprises and the use of legal and illegal enterprises to further criminal activities. Containing both civil and criminal remedies, the Act affords the Attorney General with a valuable tool to fight the infiltration of organized crime into the State's economy.

The Act makes it unlawful to invest any income derived from racketeering activity or collection of an unlawful debt in a legitimate enterprise. Under the Act the Attorney General is empowered to investigate these potential violations and to prosecute same. Penalties include fines, imprisonment and forfeiture to the State of any interest or property acquired through violation of this Act.

This Act shall take effect upon its passage.

May 10, 1979

Representative Richard B. Kiley
517 Pleasant Street
Pawtucket, Rhode Island 02860

Dear Representative Kiley,

Enclosed is certified copy of Resolution Number 389, having been passed by the City Council and approved by His Honor the Mayor on April 26, 1979.

Very truly yours,

Rose M. Mendonca,
City Clerk.

RMM/jma

May 10, 1979

Representative Jeffrey J. Teitz
25 Admiral Kalbfus Road
Newport, Rhode Island 02840

Dear Representative Teitz,

Enclosed is certified copy of Resolution Number 389,
having been passed by the City Council and approved by
His Honor the Mayor on April 26, 1979.

Very truly yours,

Rose M. Mendonca,
City Clerk.

RMM/jma

May 10, 1979

Senate Committee on Judiciary
Rocco A. Quattrocchi, Chairman
State Capitol
Providence, Rhode Island 02903

Dear Senator Quattrocchi,

Enclosed is certified copy of Resolution Number 389, having
been passed by the City Council and approved by His Honor the Mayor
on April 26, 1979.

Very truly yours,

Rose M. Mendonca,
City Clerk.

RMM/jma