

Sec. 7. REPEALER.

Minnesota Statutes 1988, section 150A.06, subdivision 7, is repealed.

Sec. 8. EFFECTIVE DATE.

Section 4 is effective July 1, 1989.

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 11:27 p.m.

CHAPTER 286—H.F.No. 837

An act relating to crimes; prohibiting the concealing of criminal proceeds; prohibiting racketeering; providing civil and criminal penalties for engaging in narcotics and violent offenses as part of an enterprise; authorizing the dissolution of a corporate charter, revocation of a license, and injunctive relief to prevent criminal activity by an enterprise; authorizing fines of three times the profit gained through racketeering; authorizing criminal forfeiture; amending Minnesota Statutes 1988, section 541.07; proposing coding for new law in Minnesota Statutes, chapters 541 and 609.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 541.07, is amended to read:

541.07 TWO OR THREE YEAR LIMITATIONS.

Except where the uniform commercial code or this section otherwise prescribes, the following actions shall be commenced within two years:

(1) For libel, slander, assault, battery, false imprisonment, or other tort, resulting in personal injury, and all actions against physicians, surgeons, dentists, other health care professionals as defined in section 145.61, and veterinarians as defined in chapter 156, hospitals, sanitariums, for malpractice, error, mistake or failure to cure, whether based on contract or tort; provided a counterclaim may be pleaded as a defense to any action for services brought by a physician, surgeon, dentist or other health care professional or veterinarian, hospital or sanitarium, after the limitations herein described notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred and was not barred at the time the claim sued on originated, but no judgment thereof except for costs can be rendered in favor of the party so pleading it;

(2) Upon a statute for a penalty or forfeiture, except as provided in section 2;

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(3) For damages caused by a dam, other than a dam used for commercial purposes; but as against one holding under the preemption or homestead laws, the limitations shall not begin to run until a patent has been issued for the land so damaged;

(4) Against a master for breach of an indenture of apprenticeship; the limitation runs from the expiration of the term of service;

(5) For the recovery of wages or overtime or damages, fees or penalties accruing under any federal or state law respecting the payment of wages or overtime or damages, fees or penalties except, that if the employer fails to submit payroll records by a specified date upon request of the department of labor and industry or if the nonpayment is willful and not the result of mistake or inadvertence, the limitation is three years. (The term "wages" means all remuneration for services or employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, where the relationship of master and servant exists and the term "damages," means single, double, or treble damages, accorded by any statutory cause of action whatsoever and whether or not the relationship of master and servant exists);

(6) For damages caused by the establishment of a street or highway grade or a change in the originally established grade;

(7) For sales or use taxes imposed by the laws of any other state;

(8) Against the person who applies the pesticide for injury or damage to property resulting from the application, but not the manufacture or sale, of a pesticide.

Sec. 2. [541.074] CIVIL REMEDY IN RACKETEERING CASES.

A civil proceeding under section 14 shall be commenced within five years.

Sec. 3. [609.496] CONCEALING CRIMINAL PROCEEDS.

Subdivision 1. CRIME. A person is guilty of a felony and may be sentenced under subdivision 2 if the person:

(1) conducts a transaction involving a monetary instrument or instruments with a value exceeding \$5,000; and

(2) knows or has reason to know that the monetary instrument or instruments represent the proceeds of, or are derived from the proceeds of, the commission of a felony under this chapter or chapter 152 or an offense in another jurisdiction that would be a felony under this chapter or chapter 152 if committed in Minnesota.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$100,000, or both.

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Subd. 3. MONETARY INSTRUMENT. For purposes of this section, "monetary instrument" means United States currency and coin; the currency and coin of a foreign country; a bank check, cashier's check, traveler's check, money order, stock, investment security, or negotiable instrument in bearer form or otherwise in the form by which title to the instrument passes upon delivery; gold, silver, or platinum bullion or coins; and diamonds, emeralds, rubies, or sapphires.

Subd. 4. PAYMENT OF REASONABLE ATTORNEY FEES. Subdivision 1 does not preclude the payment or receipt of reasonable attorney fees.

Sec. 4. [609.497] ENGAGING IN A BUSINESS OF CONCEALING CRIMINAL PROCEEDS.

Subdivision 1. CRIME. A person is guilty of a felony and may be sentenced under subdivision 2 if the person knowingly initiates, organizes, plans, finances, directs, manages, supervises, or otherwise engages in a business that has as a primary or secondary purpose concealing money or property that was gained as a direct result of the commission of a felony under this chapter or chapter 152, or of an offense committed in another jurisdiction that would be a felony under this chapter or chapter 152 if committed in Minnesota.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 20 years, or to payment of a fine of not more than \$1,000,000, or both.

Sec. 5. [609.901] CONSTRUCTION OF RACKETEERING PROVISIONS.

Sections 6 to 15 shall be liberally construed to achieve their remedial purposes of curtailing racketeering activity and controlled substance crime and lessening their economic and political power in Minnesota.

Sec. 6. [609.902] DEFINITIONS.

Subdivision 1. DEFINITIONS. As used in sections 5 to 15, the following terms have the meanings given them.

Subd. 2. CRIMINAL PROCEEDING. "Criminal proceeding" means a criminal proceeding begun under section 7.

Subd. 3. ENTERPRISE. "Enterprise" means a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as legitimate enterprises.

Subd. 4. CRIMINAL ACT. "Criminal act" means conduct constituting, or a conspiracy or attempt to commit, a felony violation of chapter 152, or a felony violation of section 297D.09; 299F.79; 299F.80; 299F.811; 299F.815; 299F.82; 609.185; 609.19; 609.195; 609.20; 609.205; 609.221; 609.222; 609.223; 609.2231;

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609.228; 609.235; 609.245; 609.25; 609.27; 609.322; 609.323; 609.342; 609.343; 609.344; 609.345; 609.42; 609.48; 609.485; 609.495; sections 3 and 4; 609.498; 609.52, subdivision 3, clause (3)(b), or clause (4)(e) or (f); 609.53; 609.561; 609.562; 609.582, subdivision 1 or 2; 609.67; 609.687; 609.713; 609.86; 624.713; or 624.74.

Subd. 5. PARTICIPATION IN A PATTERN OF CRIMINAL ACTIVITY. A person "participates in a pattern of criminal activity" when the person is a principal with respect to conduct constituting at least three of the criminal acts included in the pattern and two of the acts constitute felonies other than conspiracy.

Subd. 6. PATTERN OF CRIMINAL ACTIVITY. "Pattern of criminal activity" means conduct constituting three or more criminal acts that:

(1) were committed within ten years of the commencement of the criminal proceeding;

(2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and

(3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, imprompted, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Subd. 7. PERSONAL PROPERTY. "Personal property" includes personal property, an interest in personal property, or a right, including a bank account, debt, corporate stock, patent, or copyright. Personal property and a beneficial interest in personal property are deemed to be located where the trustee is, the personal property is, or the instrument evidencing the right is.

Subd. 8. PRINCIPAL. "Principal" means a person who personally engages in conduct constituting a violation or who is criminally liable under section 609.05 for the conduct of another constituting a violation.

Subd. 9. PROSECUTING AUTHORITY. "Prosecuting authority" means the office of a county attorney or office of the attorney general.

Subd. 10. REAL PROPERTY. "Real property" means any real property or an interest in real property, including a lease of, or mortgage on, real property. A beneficial interest in real property is deemed to be located where the real property is located.

Sec. 7. [609.903] RACKETEERING.

Subdivision 1. CRIME. A person is guilty of racketeering if the person:

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(1) is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;

(2) acquires or maintains an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of criminal activity; or

(3) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

Subd. 2. PERMITTED ACTIVITIES. For purposes of this section, it is not unlawful to:

(1) purchase securities on the open market with intent to make an investment, and without the intent of controlling or participating in the control of the issuer, or of assisting another to do so, if the securities of the issuer held by the purchaser, the members of the purchaser's immediate family, and the purchaser's accomplices in a pattern of criminal activity do not amount in the aggregate to five percent of the outstanding securities of any one class and do not confer, either in the law or in fact, the power to elect one or more directors of the issuer;

(2) make a deposit in an account maintained in a savings and loan association, or a deposit in any other financial institution, that creates an ownership interest in that association or institution; or

(3) purchase nonvoting shares in a limited partnership, with intent to make an investment, and without the intent of controlling or participating in the control of the partnership.

Sec. 8. [609.904] CRIMINAL PENALTIES.

Subdivision 1. PENALTY. A person convicted of violating section 7 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$1,000,000, or both.

Subd. 2. FINE. In lieu of the fine authorized by subdivision 1, a person convicted of violating section 7, who received economic gain from the act or caused economic loss or personal injury during the act, may be sentenced to pay a fine calculated under this subdivision. The maximum fine is three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property forfeited under section 9. The district court shall hold a hearing to determine the amount of the fine authorized by this subdivision. In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the fine is disproportionate to the conduct in which the person engaged, its impact on victims and any legitimate enterprise involved in that conduct, as well as the economic circumstances of the convicted person,

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including the effect of the imposition of the fine on the person's immediate family. For purposes of this subdivision, loss does not include pain and suffering.

Subd. 3. INJUNCTIVE RELIEF. After the entry of a judgment that includes a fine or an order of criminal forfeiture under section 9, the district court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take other action, including the appointment of a receiver, that the court deems proper to protect the interests of the prosecuting authority in collecting the money or forfeiture or an innocent party.

Subd. 4. DISPOSITION OF FINE PROCEEDS. The court shall apply fines collected under this section to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution and the balance, if any, as provided under section 574.34.

Subd. 5. RESTITUTION. In a settlement discussion or before the imposition of a sentence under this section, the prosecuting authority shall vigorously advocate full and complete restitution to an aggrieved person. Before the acceptance of a plea or after a verdict but before the imposition of a sentence under this section, the district court must ensure that full and complete restitution has been duly effected or that a satisfactory explanation of why it is impractical has been made to the court.

Sec. 9. [609.905] CRIMINAL FORFEITURE.

Subdivision 1. FORFEITURE. When a person is convicted of violating section 7, the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 7. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 7. The term includes property constituting an interest in or means of control or influence over the enterprise involved in the violation of section 6 and any property constituting proceeds derived from the violation of section 6, including:

(1) a position, office, appointment, tenure, commission, or employment contract that was acquired or maintained in violation of section 7 or through which the person conducted or participated in the conduct of the affairs of an enterprise in violation of section 7 or that afforded the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of section 7;

(2) any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in this section that accrued to the person during the period of conduct in violation of section 7;

(3) any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of section 7; and

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(4) any amount payable or paid under any contract for goods or services that was awarded or performed in violation of section 7.

Subd. 2. OTHER PROPERTY OF DEFENDANT. The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1:

(1) cannot be located;

(2) has been sold to a bona fide purchaser for value;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value by the conduct of the defendant;

(5) has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons; or

(6) is otherwise unreachable without undue injury to an innocent person.

Sec. 10. [609.907] PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE.

Subdivision 1. TEMPORARY RESTRAINING ORDER. (a) When an indictment or complaint is filed under section 7, the district court may take any of the following actions if the prosecuting authority shows by a preponderance of the evidence that the action is necessary to preserve the reachability of property subject to criminal forfeiture:

(1) enter a restraining order or injunction;

(2) require the execution of a satisfactory performance bond; or

(3) take any other reasonable action, including the appointment of a receiver.

(b) Before granting the remedies provided by this subdivision, the court shall hold a hearing, after notice to all affected persons, giving them a reasonable opportunity to respond. At the hearing, the rules of evidence do not apply.

Subd. 2. PREINDICTMENT ORDER. (a) If no indictment or complaint has been filed, the district court may take actions provided in subdivision 1 if the prosecuting authority makes the showing required by subdivision 1 and also shows that:

(1) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to criminal forfeiture under section 8; and

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(2) the requested order would not result in substantial and irreparable harm or injury to the party against whom the order is to be entered, or to other affected persons, that outweighs the need to preserve the reachability of the property.

(b) An order entered under this subdivision is effective for a maximum of 90 days unless:

(1) extended by the district court for good cause; or

(2) terminated by the filing of an indictment or complaint alleging that the property is subject to forfeiture.

Subd. 3. RESTRAINING ORDER WITHOUT NOTICE. (a) On application by the prosecuting authority, the district court may grant, without notice to any party, a temporary restraining order to preserve the reachability of property subject to criminal forfeiture under section 9 if:

(1) an indictment or complaint alleging that property is subject to criminal forfeiture has been filed or the district court determines that there is probable cause to believe that property with respect to which the order is sought would, in the event of a conviction, be subject to criminal forfeiture under section 9;

(2) the property is in the possession or control of the party against whom the order is to be entered; and

(3) the district court makes a specific finding in writing that the property can be concealed, disposed of, or placed beyond the jurisdiction of the court before any party may be heard in opposition.

(b) A temporary restraining order granted without notice to any party under this subdivision expires within the time fixed by the court, not to exceed ten days. The court may extend the order for good cause shown, or if the party against whom it is entered consents to an extension. After a temporary restraining order is granted under this subdivision, a hearing concerning the entry of an order under this section shall be held at the earliest practicable time and before the temporary order expires.

Sec. 11. [609.908] DISPOSITION OF FORFEITURE PROCEEDS.

Subdivision 1. DISPOSITION ALTERNATIVES. After making due provisions for the rights of innocent persons, the prosecuting authority shall, as soon as feasible, dispose of all property ordered forfeited under section 9 by:

(1) public sale;

(2) transfer to a state governmental agency for official use;

(3) sale or transfer to an innocent person; or

(4) destruction, if the property is not needed for evidence in a pending criminal or civil proceeding.

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Subd. 2. NO REVERSION TO DEFENDANT. An interest in personal or real property not exercisable by or transferable for value by the prosecuting authority expires and does not revert to the defendant. Forfeited property may not be purchased by the defendant, relative of the defendant, or any person acting in concert with the defendant or on the defendant's behalf.

Subd. 3. SALE PROCEEDS. The proceeds of a sale or other disposition of forfeited property under this section whether by final judgment, settlement, or otherwise, must be applied as follows:

(1) to the fees and costs of the forfeiture and sale including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs;

(2) to all costs and expenses of investigation and prosecution including costs of resources and personnel incurred in investigation and prosecution; and

(3) the balance to the appropriate agencies under section 609.5315, subdivision 5.

Sec. 12. [609.909] ADDITIONAL RELIEF AVAILABLE.

With respect to property ordered forfeited, fine imposed, or civil penalty imposed in a criminal proceeding under section 7 or civil proceeding under section 14, the district court may, on petition of the prosecuting authority or any other person within 60 days of a final order:

(1) authorize the compromise of claims;

(2) award compensation to persons providing information that results in a forfeiture under section 9;

(3) grant petitions for mitigation or remission of forfeiture or fines;

(4) restore forfeited property or imposed fines to victims of a violation of section 7; and

(5) take any other action to protect the rights of innocent persons that is in the interest of justice and is consistent with the purposes of sections 5 to 15.

Sec. 13. [609.910] RELATION TO OTHER SANCTIONS.

Subdivision 1. REMEDY NOT EXCLUSIVE. Except as provided in this section, a criminal penalty, forfeiture, or fine imposed under section 7, 8, 9, or 14 does not preclude the application of any other criminal penalty or civil remedy for the separate criminal acts. A prosecuting authority may not file a civil action under section 14 if any prosecuting authority has filed a previous criminal proceeding under section 7 against the same person based on the same criminal conduct and the charges were dismissed after jeopardy attached or the person acquitted.

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Subd. 2. RESTITUTION. A restitution payment to a victim under section 8 does not limit the liability for damages in a civil action or proceeding for an amount greater than the restitution payment.

Sec. 14. [609.911] CIVIL REMEDIES.

Subdivision 1. RELIEF AVAILABLE. The prosecuting authority may institute civil proceedings in district court against a person seeking relief from conduct constituting a violation of section 7 or to prevent or restrain future violations. If the prosecuting authority proves the alleged violation by a preponderance of the evidence, and the court has made due provision for the rights of innocent persons, the court may:

(1) order a defendant to divest an interest in an enterprise or in real property;

(2) impose reasonable restrictions on the future activities or investments of a defendant, including prohibiting a defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of section 7;

(3) order the dissolution or reorganization of an enterprise;

(4) order the suspension or revocation of a license, permit, or prior approval granted to an enterprise by a state agency; or

(5) order the surrender of the charter of a corporation organized under Minnesota law, dissolution of an enterprise, or the revocation of a certificate authorizing a foreign corporation to conduct business in Minnesota, if the court finds that:

(i) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, authorized or engaged in conduct prohibited by section 7; and

(ii) the public interest in preventing future criminal conduct requires the action.

Subd. 2. INJUNCTIVE RELIEF. In a proceeding under this section, the court may grant injunctive relief.

Subd. 3. CIVIL PENALTY. The prosecuting authority may institute proceedings against an enterprise or an individual to recover a civil penalty. The penalty may be imposed in the discretion of the district court for conduct constituting a violation of section 7. The civil penalty may not exceed \$1,000,000 less a fine imposed under section 7. Penalties collected under this section must be applied to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution, and the balance, if any, to the state general fund.

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Subd. 4. ATTORNEY FEES. If the district court issues an injunction, or grants other relief under this section, or the prosecuting authority otherwise substantially prevails, the prosecuting authority shall also recover reasonable attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

Subd. 5. PERSONAL JURISDICTION. Personal service of process in a proceeding under this section may be made on any person outside of Minnesota if the person was a principal in any conduct constituting a violation of section 7 in this state. The person is deemed to have submitted to the jurisdiction of the courts of this state for the purposes of this section.

Sec. 15. [609.912] NOTICE TO OTHER PROSECUTING AUTHORITIES.

When a county attorney begins an investigation involving sections 5 to 14, the county attorney shall notify the attorney general. When the attorney general begins an investigation involving sections 5 to 14, the attorney general shall notify the county attorney of each county in which a substantial part of the investigation is likely to be conducted.

Sec. 16. EFFECTIVE DATE.

Sections 1 to 15 are effective August 1, 1989, and apply to crimes committed on or after that date.

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 10:43 p.m.

CHAPTER 287—H.F.No. 827

An act relating to game and fish; prohibiting interference with or disturbance of a person taking wild animals under certain conditions; authorizing application fees for special permits to take game from certain areas during special seasons; clarifying the penalty for false or incomplete license applications; prohibiting certain actions related to license fee refunds; authorizing the taking of certain muskrat that are causing damage; creating an exception to fur buying and selling license requirements; permitting use of certain ammunition; amending Minnesota Statutes 1988, sections 97A.401, subdivision 4; 97A.481; 97A.485, subdivision 6; 97B.655, subdivision 1; 97B.905, subdivision 1; and Laws 1989, chapter 153, section 1; proposing coding for new law in Minnesota Statutes, chapter 97A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [97A.037] HUNTER, TRAPPER, AND ANGLER HARASSMENT PROHIBITED.

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