

SENATE BILL NO. 429

2/15 Introduced
2/16 Referred to Judiciary
2/16 Fiscal Note Requested
2/21 Hearing
2/22 Fiscal Note Received
2/23 Committee Report-Bill Pass As Amended
2/26 2nd Reading Indefinitely Postponed

1 Senate BILL NO. 429
 2 INTRODUCED BY L. J. DeLoe Richard Mercer
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT A LAW TO
 6 CURTAIL ORGANIZED CRIME THROUGH CIVIL AND CRIMINAL
 7 SANCTIONS."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] shall be known and
 11 may be cited as the "Montana Victims of Organized Crime Act
 12 of 1985".

13 Section 2. Purpose. The purpose of [this act] is to
 14 curtail organized criminal activity and lessen its economic
 15 and political power and impact in the state by giving law
 16 enforcement agencies and the victims of organized crime new
 17 civil and criminal sanctions and remedies.

18 Section 3. Construction. (1) The provisions of [this
 19 act] must be liberally construed to achieve their remedial
 20 purpose.

21 (2) When the language of a provision of [this act] is
 22 the same as or similar to the language of Title IX, P.L.
 23 91-452, 84 Stat. 941, codified at 18 U.S.C. 1961, et seq.,
 24 the courts of this state, in construing the provision, must
 25 consider and weigh the construction given to the federal law

1 by the federal courts.

2 Section 4. Legislative findings. (1) Organized crime
 3 in the state is diversified and widespread and annually
 4 diverts enormous resources from the state's legitimate
 5 markets through the illicit use of force, fraud, and
 6 corruption.

7 (2) Traditional law enforcement strategies and
 8 techniques which concentrate on bringing criminal penalties
 9 to bear on individual offenders for the commission of
 10 specific offenses and which do not focus on offenders
 11 involved in racketeering influenced and corrupt
 12 organizations and patterns of racketeering activity and
 13 which do not enlist the assistance of private enforcement
 14 and use civil sanctions are inadequate to control
 15 racketeering. Comprehensive strategies must be formulated;
 16 more effective law enforcement techniques must be developed;
 17 evidentiary, procedural, and substantive laws must be
 18 strengthened; and criminal penalties and civil sanctions
 19 must be enhanced.

20 Section 5. Definitions. As used in [this act], the
 21 following definitions apply:

22 (1) "Alien corporation" means a corporation organized
 23 under laws other than the laws of the United States or the
 24 laws of any state of the United States.

25 (2) "Attorney general" includes the attorney general,



1 a duly authorized assistant attorney general, and a county
2 attorney or deputy county attorney assisting the attorney
3 general.

4 (3) (a) "Beneficial interest" includes:

5 (i) the interest of a person as a beneficiary under a
6 trust in which the trustee holds legal or record title to
7 personal or real property;

8 (ii) the interest of a person as a beneficiary under
9 any other trust arrangement under which another person holds
10 legal or record title to personal or real property for the
11 benefit of the beneficiary; and

12 (iii) the interest of a person under any other form of
13 express fiduciary arrangement under which another person
14 holds legal or record title to personal or real property for
15 the benefit of such person.

16 (b) The term "beneficial interest" does not include
17 the interest of a stockholder in a corporation or the
18 interest of a partner in a general or limited partnership.

19 (4) "County attorney" includes a duly authorized
20 deputy county attorney.

21 (5) "Enterprise" includes any person, sole
22 proprietorship, partnership, corporation, trust, or other
23 legal entity; any union, association, or other group of
24 persons associated in fact although not a legal entity;
25 illicit as well as licit enterprises; and governmental as

1 well as other entities.

2 (6) "Pattern of racketeering activity" means two or
3 more occasions of conduct that:

4 (a) constitute racketeering activity;

5 (b) are related to the affairs of an enterprise;

6 (c) are not isolated; and

7 (d) are not so closely related to each other and
8 connected in point of time and place that they constitute a
9 single event when:

10 (i) at least one of the occasions of conduct occurred
11 after [the effective date of this act];

12 (ii) the last of the occasions of conduct occurred
13 within 3 years, excluding any period of imprisonment served
14 by any person engaging in the conduct, after a prior
15 occasion of conduct; and

16 (iii) for the purposes of [section 6] but not [section
17 8], at least one of the occasions of conduct constituted a
18 felony under Montana law or, if committed subject to the
19 jurisdiction of the United States or any other state of the
20 United States, would constitute a felony under Montana law
21 if committed in Montana.

22 (7) "Pecuniary benefit" means benefit in the form of
23 money, property, commercial interests, or anything else, the
24 primary significance of which is economic gain or that has a
25 value in excess of \$100.

1 (8) "Person" means any individual or entity holding or
2 capable of holding a legal or beneficial interest in
3 property.

4 (9) "Personal property" includes any personal property
5 or interest in personal property and any personal property
6 right, including a bank account, debt, corporate stock,
7 patent, or copyright. Personal property and beneficial
8 interest in personal property are considered to be located
9 where the trustee, if any, personal property, or an
10 instrument evidencing a right is located.

11 (10) "Principal" means a person who engages in conduct
12 constituting a violation of [section 6] or who is legally
13 accountable under Title 45, chapter 2, part 3, for the
14 conduct of another that constitutes a violation.

15 (11) "Racketeering activity" means engaging, attempting
16 to engage, conspiring to engage, or soliciting, coercing, or
17 intimidating another person to engage in any conduct defined
18 on [the effective date of this act] as "racketeering
19 activity" in 18 U.S.C. 1961 (1)(B) through (1)(D), or any
20 conduct constituting a violation of:

21 (a) 45-5-102 through 45-5-104, relating to criminal
22 homicide;

23 (b) 45-7-305, compounding a felony;

24 (c) 45-5-301 through 45-5-303, relating to kidnapping;

25 (d) 45-5-502, 45-5-503, 45-5-601 through 45-5-603, and

1 45-5-625, crimes relating to sex;

2 (e) 45-5-201 through 45-5-203, relating to bodily
3 harm;

4 (f) 45-6-301, 45-6-302, 45-6-305, and 45-6-311,
5 relating to theft, if the offense constitutes a felony;

6 (g) 45-6-317, 45-6-318, and 45-6-325 through 45-6-327,
7 relating to deception;

8 (h) 45-5-401, relating to robbery;

9 (i) 45-6-204 and 45-6-205, relating to burglary;

10 (j) 45-6-103, 45-8-334, and 45-8-335, relating to
11 arson;

12 (k) 45-6-101, relating to criminal mischief, if the
13 offense constitutes a felony;

14 (l) 45-8-303, 45-8-304, 45-8-316, or 46-8-334 through
15 46-18-336, relating to deadly weapons, if the offense
16 constitutes a felony;

17 (m) 45-8-214, relating to bribery in contests;

18 (n) 45-4-101 through 45-4-103, relating to inchoate
19 offenses;

20 (o) 45-7-303, 45-7-306, and 45-7-307, relating to
21 disruption of public order;

22 (p) 45-7-201 and 45-7-206 through 45-6-208, relating
23 to interference with judicial procedure, if the offense
24 constitutes a felony;

25 (q) 45-7-101, 45-7-102, and 45-7-401, relating to

1 official misconduct;

2 (r) 45-8-106, relating to bringing armed men into the
3 state;

4 (s) 45-8-105, relating to criminal syndicalism; or

5 (t) Title 45, chapter 9, part 1, and 50-32-405,
6 relating to drugs, if the offense constitutes a felony.

7 (12) "Racketeering lien notice" means a notice under
8 [section 25].

9 (13) "Real property" means any real property or
10 interest in real property, including any lease of or
11 mortgage upon real property. An interest in real property is
12 considered to be located where the real property is
13 located.

14 (14) (a) "Trustee" includes:

15 (i) any person acting as trustee under a trust in
16 which the trustee holds legal or record title to personal or
17 real property;

18 (ii) any person who holds legal or record title to
19 personal or real property in which any other person has a
20 beneficial interest; and

21 (iii) any successor trustee.

22 (b) "Trustee" does not include an assignee or trustee
23 for an insolvent debtor, personal representative, executor,
24 administrator, administrator with will annexed, testamentary
25 trustee, conservator, guardian, or committee appointed by,

1 under control of, or accountable to a court.

2 (15) "Unlawful debt" means any money or other thing of
3 value constituting principal or interest of a debt that is
4 legally unenforceable in this state, in whole or in part,
5 because the debt was incurred or contracted in violation of
6 a state or federal law relating to gambling or to lending
7 money at a rate usurious under state or federal law.

8 Section 6. Felony offenses. (1) It is a felony
9 offense for a person employed by or associated with an
10 enterprise to conduct or participate in the affairs of the
11 enterprise, directly or indirectly, through a pattern of
12 racketeering activity or the collection of an unlawful debt.

13 (2) It is a felony offense for a person, directly or
14 indirectly, to acquire or maintain an interest in or control
15 of an enterprise or real property through a pattern of
16 racketeering activity or the collection of an unlawful debt.

17 (3) It is a felony offense for a person who has
18 received any proceeds, directly or indirectly, derived from
19 a pattern of racketeering activity or the collection of an
20 unlawful debt in which he participated as a principal to
21 directly or indirectly use or invest any part of the
22 proceeds or any proceeds derived from the investment or use
23 of any of those proceeds:

24 (a) to acquire title to or any right, interest, or
25 equity in real property; or

1 (b) in the establishment or operation of any
2 enterprise.

3 (4) It is a felony offense for a person, directly or
4 through others, to conspire or attempt to violate subsection
5 (1), (2), or (3) of this section. A person may be convicted
6 of violating one or more subsections of this section and
7 also be convicted of a conspiracy to violate one or more of
8 those subsections, and the district court may impose
9 consecutive sentences or cumulative fines.

10 (5) A purchase of securities on the open market with
11 intent to make an investment and without the intent of
12 controlling or participating in the control of the issuer or
13 of assisting another to do so is not unlawful under this
14 section if the securities held by the purchaser, the members
15 of his immediate family, and his or their accomplices in any
16 pattern of racketeering activity or in the collection of an
17 unlawful debt do not, after the purchase, amount in the
18 aggregate to 1% of the outstanding securities of any class
19 of the issuer's securities and do not confer, either in law
20 or in fact, the power to elect one or more directors of the
21 issuer.

22 Section 7. Fines. (1) A person convicted of conduct
23 constituting a violation of [section 6], through which he
24 derived pecuniary benefit or by which he caused personal
25 injury, not including pain and suffering, or property damage

1 or other loss may be fined not to exceed three times the
2 gross value gained or three times the gross loss caused,
3 whichever is greater, and court costs and reasonably
4 incurred costs of investigation and prosecution, less the
5 value of any property ordered forfeited under [section 17].

6 (2) The district court shall hold a hearing to
7 determine the amount of the fine. The hearing must be held
8 before the court, sitting without a jury. The defendant is
9 entitled to the assistance of counsel, and the defendant and
10 prosecutor are entitled to compulsory process and
11 cross-examination of witnesses.

12 Section 8. Action for relief from criminal activity.

13 (1) The attorney general, a county attorney, or, upon grant
14 of leave to file by the attorney general, an aggrieved
15 person may seek relief from conduct constituting or
16 threatening a violation of [section 6] by instituting civil
17 proceedings against a person in the district court. If the
18 plaintiff proves the alleged violation or threatened
19 violation by a preponderance of the evidence, the district
20 court may, after making due provision for the rights of
21 innocent persons, grant relief by entering any appropriate
22 order or judgment, including:

23 (a) ordering a defendant to divest himself of any
24 interest in any enterprise or real property;

25 (b) imposing reasonable restrictions upon the future

1 activities or investments of a defendant, including
 2 prohibiting a defendant from engaging in the same type of
 3 endeavor as the enterprise in which he was engaged in
 4 violation of [section 6];

5 (c) ordering the dissolution or reorganization of an
 6 enterprise;

7 (d) ordering the suspension or revocation of a
 8 license, permit, or prior approval granted to an enterprise
 9 by an agency of the state; or

10 (e) ordering the surrender of the charter of a
 11 corporation organized under the laws of this state or the
 12 revocation of a certificate authorizing a foreign
 13 corporation to conduct business within this state upon
 14 finding that the board of directors or a managerial agent
 15 acting on behalf of the corporation, in conducting the
 16 affairs of the corporation, has authorized or engaged in
 17 conduct made unlawful by [section 6] and that, for the
 18 prevention of future criminal conduct, the public interest
 19 requires that the charter of the corporation be surrendered
 20 and the corporation dissolved or the certificate revoked.

21 (2) In a proceeding under this section, injunctive
 22 relief may be granted in conformity with the principles that
 23 govern the granting of relief from injury or threatened
 24 injury in other cases, but no showing of special or
 25 irreparable injury need be made. Pending final determination

1 of a proceeding under this section, a temporary restraining
 2 order or preliminary injunction may be issued upon a showing
 3 of immediate danger of significant injury, including the
 4 possibility that any judgment for money damages might be
 5 difficult to execute, and, in a proceeding initiated by an
 6 aggrieved person, upon the execution of proper bond against
 7 injury for an injunction or temporary restraining order
 8 improvidently granted. If the district court issues an
 9 injunction or temporary restraining order or grants other
 10 relief under this section, the plaintiff is entitled to
 11 recover reasonable attorney fees in the trial and appellate
 12 courts and costs of investigation and litigation reasonably
 13 incurred.

14 Section 9. Triple damages action. (1) Upon grant of
 15 leave to file by the attorney general, a person directly or
 16 indirectly injured by conduct constituting a violation of
 17 [section 6] has, in addition to any other relief under [this
 18 act], a cause of action for three times the actual damages
 19 he sustained. Damages under this section are not limited to
 20 competitive injury or injury distinct from the injury
 21 inflicted by racketeering activity.

22 (2) A successful plaintiff is entitled to recover
 23 reasonable attorney fees in the trial and appellate courts
 24 and costs of investigation and litigation reasonably
 25 incurred.

1 (3) An injured person has a right to any property
 2 forfeited to the state under [this act], any fine imposed
 3 under [section 7], and any property against which any civil
 4 penalty under this section may be executed superior to any
 5 right or claim of the state to the fine or property, up to
 6 the value of triple damages, fees, and costs awarded under
 7 this section.

8 Section 10. Civil penalty action. The attorney general
 9 or county attorney may institute proceedings against any
 10 enterprise to recover a civil penalty for conduct
 11 constituting a violation of [section 6]. The civil penalty
 12 may not exceed \$100,000, less the value of any property
 13 forfeited under [section 17] and any fine imposed under
 14 [section 7].

15 Section 11. Action by state, county, municipality, or
 16 other political subdivision for civil relief. The attorney
 17 general may bring an action in federal court on behalf of
 18 the state, one or more counties or municipalities, and other
 19 political subdivisions organized under the laws of this
 20 state for civil relief under any provision of federal law
 21 that is comparable to a provision of [this act]. No action
 22 under this section impairs the authority of any county,
 23 municipality, or political subdivision to bring such an
 24 action on its own behalf or its authority to engage its own
 25 counsel in connection with the action.

1 Section 12. State intervention in civil action. Upon
 2 filing a civil action under [section 8 or 9], the plaintiff
 3 shall immediately notify the attorney general of its filing.
 4 The attorney general may, upon timely application, intervene
 5 in the action if he certifies that, in his opinion, the
 6 action is of general public importance. The state is
 7 entitled, upon intervention, to the same relief as if the
 8 attorney general had instituted the action.

9 Section 13. Estoppel by prior judgment or decree. A
 10 final judgment or decree rendered against the defendant in
 11 any civil or criminal action under [this act] estops the
 12 defendant in any subsequent civil action brought by any
 13 person in all matters in which the judgment or decree would
 14 be an estoppel as between the parties to the prior civil or
 15 criminal action.

16 Section 14. Time for filing civil action. A civil
 17 action under [this act] may be commenced within 5 years
 18 after the conduct made unlawful by [section 6] terminates or
 19 the cause of action accrues or within any longer statutory
 20 period that would be applicable if this section were not in
 21 effect. If a criminal or civil action is brought or
 22 intervened in by the state to punish, prevent, or restrain
 23 any activity made unlawful by [section 6], the running of
 24 the period of limitation prescribed by this section with
 25 respect to any cause of action under [section 8 or 9], based

1 in whole or in part upon any matter complained of in the
2 action the state brought or in which it intervened, must be
3 suspended until 2 years after the termination of the action
4 the state brought or in which it intervened.

5 Section 15. Service of process in civil action --
6 persons outside the state. Personal service of any process
7 in a civil action under [this act] may be made upon any
8 person outside the state if the person was a principal in
9 any conduct constituting a violation of [section 6] in this
10 state. The person is considered to have thereby submitted
11 himself to the jurisdiction of the courts of this state for
12 the purposes of a civil action under [this act].

13 Section 16. Remedies to be cumulative. The application
14 of any civil or criminal remedy or sanction under [this act]
15 does not preclude the application of any other civil or
16 criminal remedy under [this act] or any other provision of
17 law.

18 Section 17. Forfeited property. (1) A person
19 convicted under [section 6] forfeits to the state:

20 (a) any real or personal property used in the course
21 of, intended for use in the course of, derived from, or
22 realized through conduct in violation of [section 6],
23 including any property constituting an interest in or means
24 of control or influence over an enterprise involved in the
25 conduct in violation of [section 6];

1 (b) any property constituting proceeds derived from
2 the conduct in violation of [section 6];

3 (c) (i) any position, office, appointment, tenure,
4 commission, or employment contract of any kind which he
5 acquired or maintained in violation of [section 6] or
6 through which he conducted or participated in the conduct of
7 the affairs of an enterprise in violation of [section 6] or
8 which afforded him a source of influence or control over the
9 affairs of an enterprise that he exercised in violation of
10 [section 6]; and

11 (ii) any compensation, right, or benefit derived from
12 the position, office, appointment, tenure, commission, or
13 employment contract that accrued to him during the period of
14 conduct in violation of [section 6];

15 (d) any interest in, security of, claim against, or
16 property or contractual right affording him a source of
17 influence or control over the affairs of an enterprise that
18 he exercised in violation of [section 6]; and

19 (e) any amount payable or paid under any contract for
20 goods or services that was awarded or performed in violation
21 of [section 6].

22 (2) A judgment of forfeiture may not be entered unless
23 the indictment or information alleged the extent of property
24 subject to forfeiture. If the indictment or information
25 alleged that property is subject to forfeiture, a special

1 verdict must be returned on the extent of any property
2 subject to forfeiture. If a verdict contains a finding of
3 property subject to forfeiture, a judgment of forfeiture
4 must be entered.

5 (3) The district court shall order forfeiture of any
6 other property of the defendant up to the value of the
7 property that is unreachable if any property included in a
8 special verdict of forfeiture:

9 (a) cannot be located;

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

11 (c) has been placed beyond the jurisdiction of the
12 court;

13 (d) has been substantially diminished in value by the
14 conduct of the defendant;

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

18 (f) is otherwise unreachable without undue injury to
19 innocent persons.

20 Section 18. Restraining orders and injunctions in
21 criminal proceedings. (1) (a) After the filing of an
22 information or indictment and a hearing as to which any
23 person who will be affected has been given reasonable notice
24 and opportunity to participate, the district court may,
25 based on the indictment:

1 (i) enter a restraining order or injunction;

2 (ii) require the execution of a satisfactory
3 performance bond; and

4 (iii) take any other action, including the appointment
5 of a receiver, that the attorney general or county attorney
6 shows by a preponderance of the evidence is necessary to
7 preserve the reachability of property subject to forfeiture.

8 (b) The Montana Rules of Evidence do not apply at a
9 hearing under subsection (1)(a).

10 (2) If no indictment has been filed, all other
11 provisions of subsection (1) apply, but the attorney general
12 or county attorney, in addition to the showing required by
13 subsection (1), must also show that:

14 (a) there is probable cause to believe that the
15 property with respect to which the order is sought would be
16 subject to forfeiture upon conviction; and

17 (b) the requested order would not result in
18 substantial and irreparable harm or injury to the party
19 against whom the order is to be entered that outweighs the
20 need to preserve the reachability of the property.

21 (3) No order under subsection (1) or (2) is effective
22 for more than 90 days unless it is extended by the district
23 court for good cause shown or, if the order is under
24 subsection (2), an information or indictment is returned
25 alleging that the property is subject to forfeiture.

1 (4) (a) Upon application by the attorney general or
2 the county attorney, a temporary restraining order to
3 preserve the reachability of property subject to forfeiture
4 may be granted without notice to any party if:

5 (i) an information or indictment alleging that
6 property is subject to forfeiture has been filed or the
7 district court determines that there is probable cause to
8 believe that property with respect to which the order is
9 sought would be subject to forfeiture upon conviction;

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

12 (iii) the district court determines that the nature of
13 the property is such that it can be concealed, disposed of,
14 or placed beyond the jurisdiction of the district court
15 before any party may be heard in opposition.

16 (b) A temporary restraining order under this
17 subsection (4) expires within such time, not to exceed 10
18 days, as the district court fixes unless extended for good
19 cause shown or unless the party against whom it is entered
20 consents to an extension for a longer period. If a temporary
21 restraining order is granted under this subsection, a
22 hearing concerning the entry of the order must be held at
23 the earliest practicable time and prior to the expiration of
24 the order.

25 (5) Following the entry of a judgment under [this act]

1 that includes a fine or an order of forfeiture, or both, the
2 district court may enter a restraining order or injunction,
3 require the execution of a satisfactory performance bond, or
4 take any other action, including the appointment of a
5 receiver, that the district court considers proper to
6 protect the interests of the state.

7 Section 19. Seizure of forfeited property. An order of
8 forfeiture must authorize the attorney general or the county
9 attorney to seize the property declared forfeited upon such
10 terms and conditions relating to the time and manner of
11 seizure as the district court considers proper.

12 Section 20. Disposal of forfeited property. (1) The
13 attorney general or county attorney shall dispose of all
14 property ordered forfeited in any criminal action under
15 [this act] as soon as feasible, making due provisions for
16 the rights of innocent persons, by:

17 (a) public sale;

18 (b) transfer to a state governmental agency for
19 official use;

20 (c) sale or transfer to an innocent person; or

21 (d) destruction, if the property is not needed for
22 evidence in any pending criminal or civil action.

23 (2) Any property right not exercisable by or
24 transferable for value to the state expires and does not
25 revert to the defendant. No defendant or person acting in

1 concert with him or on his behalf is eligible to purchase
2 forfeited property from the state.

3 (3) With respect to property ordered forfeited or a
4 fine imposed in any criminal action under [this act], the
5 attorney general may:

6 (a) compromise claims;

7 (b) award compensation to persons providing
8 information resulting in a forfeiture;

9 (c) grant petitions for mitigation or remission of a
10 forfeiture or fine, restore forfeited property, or award
11 imposed fines to victims of a violation of [section 6]; and

12 (d) take any other action to protect the rights of
13 innocent persons which is in the interests of justice and
14 which is consistent with the purposes of [this act].

15 (4) The proceeds of any sale or other disposition of
16 forfeited property must be applied as follows:

17 (a) first, to the fees and costs of the forfeiture and
18 sale, including expenses of seizure, maintenance, and
19 custody of the property pending its disposition,
20 advertising, and court costs;

21 (b) second, to all costs and expenses of investigation
22 and prosecution, including costs of resources and personnel
23 incurred in investigation and prosecution; and

24 (c) the balance to the organized crime investigation
25 and prosecution fund established by [section 41], to the

1 credit of the attorney general, county attorney, and law
2 enforcement agencies in such proportions as are represented
3 by their costs and expenses in investigating and
4 prosecuting.

5 Section 21. Date of state's title to forfeited
6 property. Upon the entry of a final judgment of forfeiture
7 in favor of the state, the title of the state to the
8 forfeited property:

9 (1) in the case of real property or a beneficial
10 interest in it, relates back to the date of a filing of a
11 racketeering lien notice in the county where the real
12 property or a beneficial interest in it is located. If no
13 racketeering lien notice was filed, title relates back to
14 the date of a filing under [section 30] of a notice of
15 action affecting title or possession in the county where the
16 real property or a beneficial interest in it is located. If
17 neither a racketeering lien notice nor a notice of action
18 affecting title or possession was filed, title relates back
19 to the date of the recording of the final judgment of
20 forfeiture in the county where the real property or a
21 beneficial interest in it is located.

22 (2) in the case of personal property or a beneficial
23 interest in it, relates back to the date the personal
24 property or the beneficial interest in it was seized by the
25 state or the date of filing of a racketeering lien notice in

1 the county where the personal property or a beneficial
 2 interest in it is located. If the property was not seized
 3 and no racketeering lien notice was filed, title relates
 4 back to the date of the recording of the final judgment of
 5 forfeiture in the county where the personal property or a
 6 beneficial interest in it is located.

7 Section 22. Property rendered unavailable for
 8 forfeiture. (1) If personal or real property or a
 9 beneficial interest in it subject to forfeiture is conveyed,
 10 alienated, disposed of, or otherwise rendered unavailable
 11 for forfeiture after the filing of a racketeering lien
 12 notice or after the filing of a civil or criminal action,
 13 whichever is earlier, the state may institute an action in
 14 any district court against the person named in the
 15 racketeering lien notice or the defendant in the civil or
 16 criminal action. The court shall enter final judgment
 17 against the person named in the racketeering lien notice or
 18 the defendant in the civil or criminal action for an amount
 19 equal to the value of the property or any beneficial
 20 interest in it, together with investigative costs and
 21 attorney fees incurred by the state in the action. If a
 22 civil proceeding is pending, the action must be filed in the
 23 court where the civil proceeding is pending.

24 (2) If personal or real property or a beneficial
 25 interest in it subject to forfeiture is conveyed, alienated,

1 or otherwise disposed of after the filing of a racketeering
 2 lien notice or after the filing of a civil or criminal
 3 action, whichever is earlier, the state may treat it as a
 4 fraudulent conveyance.

5 (3) A trustee who acquires actual knowledge that a
 6 racketeering lien notice or a civil or criminal action has
 7 been filed against any person for whom he holds legal or
 8 record title to personal or real property shall immediately
 9 furnish to the attorney general or county attorney the
 10 following:

11 (a) the name and address of the person;

12 (b) the name and address of any other person for whose
 13 benefit the trustee holds title to the personal or real
 14 property; and

15 (c) if requested by the attorney general or county
 16 attorney, a copy of the trust agreement or other instrument
 17 under which the trustee holds legal or record title to the
 18 personal or real property. Any trustee who fails to comply
 19 with the provisions of this subsection (3) is guilty of a
 20 felony and may be sentenced under 46-18-213.

21 (4) A trustee who transfers or conveys title to
 22 personal or real property as to which a racketeering lien
 23 notice is in effect is liable to the state for the greater
 24 of the following if he has actual notice of the racketeering
 25 lien notice:

1 (a) the amount of proceeds received directly by the
2 person named in the racketeering lien notice as a result of
3 the transfer or conveyance;

4 (b) the amount of proceeds received by the trustee as
5 a result of the transfer or conveyance and distributed to
6 the person named in the racketeering lien notice; or

7 (c) the fair market value of the interest of the
8 person named in the racketeering lien notice in the personal
9 or real property transferred or conveyed; but if the trustee
10 transfers or conveys the personal or real property for at
11 least its fair market value and holds the proceeds that
12 would otherwise be paid or distributed to the beneficiary or
13 at the direction of the beneficiary or his designee, the
14 trustee's liability under this subsection (4) does not
15 exceed the amount of the proceeds held for so long as the
16 proceeds are held by the trustee.

17 (5) The filing of a racketeering lien notice does not
18 constitute a lien on the record title to personal or real
19 property owned by the trustee except to the extent the
20 trustee is named in the racketeering lien notice. The
21 attorney general or county attorney may file a civil action
22 in the district court against the trustee to recover from
23 the trustee the amount of a judgment under subsection (1)
24 and the investigative costs and attorney fees incurred by
25 the attorney general or county attorney.

1 Section 23. Use of property subject to forfeiture. The
2 filing of a racketeering lien notice does not affect the use
3 to which personal or real property or a beneficial interest
4 in it owned by the person named in the racketeering lien
5 may be put or the right of the person to receive any rents
6 or other proceeds resulting from the use and ownership, but
7 not resulting from the sale, of the property until a
8 judgment of forfeiture is entered.

9 Section 24. Exempted conveyances by trustees. (1) The
10 provisions of [section 22] do not apply to a transfer or
11 conveyance by a trustee under a court order unless the order
12 is entered in an action between the trustee and the
13 beneficiary.

14 (2) Unless the trustee has actual knowledge that a
15 person owning a beneficial interest in the trust is named in
16 a racketeering lien notice or is otherwise a defendant in a
17 civil or criminal action, [section 22] does not apply to:

18 (a) a conveyance by a trustee that is required by the
19 terms of a trust agreement, if the trust agreement is a
20 matter of public record prior to the filing of any
21 racketeering lien notice; or

22 (b) a transfer or conveyance by a trustee to all of
23 the persons who own a beneficial interest in the trust.

24 Section 25. Racketeering lien notice. (1) Upon the
25 filing of a criminal or civil action under [this act] or at

1 any time during the pendency of the action, the attorney
 2 general or a county attorney may file in any one or more
 3 counties a racketeering lien notice. No filing fee or other
 4 charge may be required, and the county clerk and recorder
 5 shall immediately record the notice in the official records.

6 (2) The racketeering lien notice must be signed by the
 7 attorney general or county attorney, be in such form as the
 8 attorney general prescribes, and set forth the following
 9 information:

10 (a) the name of the person against whom the action has
 11 been brought. The attorney general or county attorney may
 12 also list any other aliases, names, or fictitious names
 13 under which the person may be known and any corporation,
 14 partnership, or other entity that is controlled or entirely
 15 owned by the person.

16 (b) if known to the attorney general or county
 17 attorney, the present residence and business address of the
 18 person named in the notice and of the other names listed in
 19 the notice;

20 (c) a statement that an action under [this act] has
 21 been brought against the person named in the notice, the
 22 name of the county or counties where the action was brought,
 23 and, if known to the attorney general or county attorney at
 24 the time of filing the notice, the case number of the
 25 action;

1 (d) a statement that the notice is being filed
 2 pursuant to this section; and

3 (e) the name and business address of the attorney
 4 general or county attorney filing the notice.

5 (3) A racketeering lien notice applies to only one
 6 person, any listed aliases or fictitious or other names of
 7 that person, and listed names of corporations, partnerships,
 8 or other entities controlled or entirely owned by that
 9 person. A separate notice may be filed for any other person.

10 (4) The attorney general or county attorney must, as
 11 soon as practicable after filing a racketeering lien notice,
 12 mail the person a copy of the notice by certified mail,
 13 return receipt requested, addressed to the last-known
 14 business or residential address. The mailed notice must be
 15 either a copy of the notice with a notation on it of the
 16 county or counties in which the notice has been recorded or
 17 a copy of each recorded notice. Failure to furnish a copy
 18 of the notice does not invalidate or otherwise affect the
 19 notice.

20 Section 26. Property lien. (1) The filing of a
 21 racketeering lien notice creates a lien from the time of
 22 filing in favor of the state on any personal or real
 23 property situated in the county where the notice is filed,
 24 and any beneficial interest in the property, then or
 25 thereafter owned by the person named in the notice or under

1 any of the other names listed in the notice.

2 (2) The lien continues until expiration, termination,
3 or release and is superior and prior to the interest of any
4 other person in the personal or real property if the
5 interest of the other person is acquired subsequent to the
6 filing of the notice.

7 Section 27. Term of racketeering lien notice. Except
8 as provided in [section 29], the term of a racketeering lien
9 notice is 6 years from the date of filing unless a renewal
10 notice is filed, and the term of a renewal notice is 6 years
11 from the date of its filing. The attorney general or county
12 attorney is entitled to only one renewal notice.

13 Section 28. Release of property from racketeering lien
14 notice. The attorney general or county attorney filing a
15 racketeering lien notice may, in whole or in part, release
16 any personal or real property or beneficial interest in it
17 from the notice upon such terms and conditions as he may
18 determine. A release may be filed in the official records of
19 any county. No charge or fee may be imposed for the filing
20 of a release.

21 Section 29. Termination of and release of person from
22 racketeering lien notice. (1) If no civil action has been
23 filed by the attorney general or county attorney seeking a
24 forfeiture of any property owned by the person named in a
25 racketeering lien notice, the acquittal in a criminal action

1 of the person named in the notice or the dismissal of a
2 criminal action terminates the notice and the filing of the
3 notice has no effect.

4 (2) If a civil action has been instituted and a
5 criminal action is dismissed or the person named in a
6 racketeering lien notice has been acquitted in a criminal
7 proceeding, the notice continues for the duration of the
8 civil proceeding.

9 (3) (a) If no civil action is pending against the
10 person named in a racketeering lien notice, he may file an
11 action against the attorney general or county attorney
12 filing the notice, in the county where the notice has been
13 filed, seeking a release or extinguishment of the notice.

14 (b) The district court shall, upon motion of the
15 plaintiff, immediately enter an order setting a date for a
16 hearing. The date must be not less than 5 or more than 10
17 days after the action was filed. The order and a copy of the
18 complaint must be served on the attorney general or county
19 attorney within 3 days after the filing of the action.

20 (c) At the hearing, the district court shall take
21 evidence on whether any personal or real property or
22 beneficial interest in it owned by the plaintiff is covered
23 by the notice or is otherwise subject to forfeiture under
24 [this act], and if the plaintiff shows by a preponderance of
25 the evidence that the notice is not applicable to him or

1 that any personal or real property or beneficial interest in
 2 it owned by him is not subject to forfeiture, the district
 3 court must enter a judgment extinguishing the notice or
 4 releasing the personal or real property or beneficial
 5 interest in it from the notice. The district court shall
 6 immediately enter an order releasing from the notice any
 7 specific personal or real property or beneficial interest in
 8 it if a sale of the property or interest is pending and the
 9 filing of the notice prevents the sale of the property or
 10 interest, but the proceeds from the sale of the property or
 11 interest must be deposited with the clerk of the district
 12 court, subject to the further order of the district court.

13 (d) At the hearing, the district court may release
 14 from the notice any personal or real property or beneficial
 15 interest in it upon the posting by the plaintiff of security
 16 equal to the value of the property or interest.

17 (e) If a civil action is pending against a person
 18 named in a racketeering lien notice, the district court,
 19 upon motion by the person, may in its discretion grant a
 20 hearing and relief under this subsection (3).

21 Section 30. Notice of action affecting property --
 22 priority of interests. (1) In conjunction with any civil
 23 action, the attorney general or county attorney may, as
 24 provided in 70-19-102, file in any county a notice of action
 25 affecting title or possession. Any person acquiring an

1 interest in the real property subsequent to the filing of
 2 the notice takes the interest subject to the civil action
 3 and any subsequent judgment of forfeiture.

4 (2) If a racketeering lien notice has been filed, the
 5 attorney general or county attorney may name as a defendant,
 6 in addition to the person named in the racketeering lien
 7 notice, any person acquiring an interest in the personal or
 8 real property subsequent to the filing of the racketeering
 9 lien notice. If a judgment of forfeiture is entered in favor
 10 of the state, the interest of any person in the property
 11 that was acquired subsequent to the filing of the
 12 racketeering lien notice is subject to the notice and a
 13 judgment of forfeiture.

14 Section 31. Registration of alien corporations --
 15 reports. (1) An alien corporation desiring to acquire
 16 personal or real property in this state must have, prior to
 17 acquisition, and continuously maintain in this state during
 18 any year in which the personal or real property is owned by
 19 the alien corporation:

- 20 (a) a registered office; and
 21 (b) a registered agent, that may be either an
 22 individual resident in the state whose business office is
 23 identical with the registered office or another corporation
 24 authorized to transact business in this state and having a
 25 business office identical with the registered office.

1 (2) A registered agent must at the time he is
2 designated file a statement in writing with the secretary of
3 state accepting the designation. Process may be served on
4 the agent.

5 (3) An alien corporation must file with the secretary
6 of state on January 1 of each year a sworn report, on such
7 forms as the secretary of state shall prescribe, setting
8 forth:

- 9 (a) the name of the alien corporation;
- 10 (b) the street address of the principal office of the
11 alien corporation;
- 12 (c) the name and street address of each officer and
13 each director of the alien corporation;
- 14 (d) the name and street address of the registered
15 agent and registered office of the alien corporation; and
- 16 (e) a statement signed by the corporate president,
17 vice president, secretary, and treasurer attesting to the
18 accuracy of the report as of the day immediately preceding
19 the filing of the report.

20 (4) The secretary of state shall collect a \$15 filing
21 fee for each report and an additional \$20 fee for a late
22 filing.

23 (5) The secretary of state shall record the status of
24 an alien corporation that fails to comply with the
25 requirements of this section.

1 (6) An alien corporation that fails to file a report
2 or maintain a registered office and a registered agent is
3 not entitled to own, purchase, or sell any personal or real
4 property in this state or sue or defend in the courts of
5 this state while the noncompliance continues.

6 (7) The filing of a report by a corporation is solely
7 for the purposes of [this act] and the report may not be
8 used to determine whether the corporation is doing business
9 in this state.

10 Section 32. Investigation by attorney general --
11 subpoenas. (1) Whenever a person has engaged in, is
12 engaging in, or is about to engage in any conduct
13 constituting a violation of [section 6], the attorney
14 general may conduct an investigation of the conduct. The
15 attorney general may, prior to the commencement of any civil
16 or criminal action under [this act] subpoena witnesses,
17 compel their attendance, examine them under oath, and
18 require the production of books, documents, records,
19 writings, recordings, and other tangible things (referred to
20 in [this act] as "documentary material") relevant or
21 material to the investigation for inspection, reproducing,
22 and copying.

23 (2) Service of a subpoena of the attorney general may
24 be made by:

- 25 (a) delivery of a duly executed copy to the person

1 served or, if the person is not a natural person, to the
2 principal place of business of the person to be served; or

3 (b) mailing by certified mail, return receipt
4 requested, a duly executed copy addressed to the person to
5 be served at his principal place of business in this state
6 or, if the person has no place of business in this state, to
7 his principal office.

8 (3) A subpoena must contain the following:

9 (a) the nature of the conduct constituting the alleged
10 violation under investigation and the provision of law
11 applicable to it;

12 (b) the date, not less than 10 days from the date of
13 service of the subpoena, and place where the person is
14 required to appear or produce documentary material in his
15 possession, custody, or control; and

16 (c) a description and indication by type of
17 documentary material required to be produced.

18 (4) When documentary material is demanded by subpoena,
19 the subpoena may not:

20 (a) contain a requirement that would be unreasonable
21 or improper if contained in a subpoena duces tecum issued by
22 a court of this state; or

23 (b) require the disclosure of any documentary material
24 which would be privileged or which for any other reason
25 would not be required by a subpoena duces tecum issued by a

1 court of this state.

2 Section 33. Production of subpoenaed material. The
3 production of documentary material in response to a subpoena
4 must be made under a sworn certificate, in such form as the
5 subpoena designates, by the person, if a natural person, to
6 whom the demand is directed or, if not a natural person, by
7 a person having knowledge of the facts and circumstances
8 relating to the production who swears that all the
9 documentary material required by the subpoena and in the
10 possession, custody, or control of the person to whom the
11 subpoena is directed has been produced and made available to
12 the custodian.

13 Section 34. Production of material for inspection by
14 state. The attorney general may require the production of
15 documentary material prior to the taking of any testimony of
16 a subpoenaed person. The material must be made available for
17 inspection and copying during normal business hours at the
18 principal place of business of the subpoenaed person or at
19 such other time and place as may be agreed upon by that
20 person and the attorney general.

21 Section 35. Examination of subpoenaed witnesses. The
22 examination of witnesses must be conducted by the attorney
23 general before an officer authorized to administer oaths in
24 this state. The testimony must be taken stenographically or
25 by a sound-recording device and transcribed. The attorney

1 general shall exclude everyone from the place where the
 2 examination is held except the person being examined, his
 3 counsel, the officer before whom the testimony is taken, and
 4 any stenographer taking the testimony. Any person compelled
 5 to appear under a demand for oral testimony under [section
 6 32] may be accompanied and represented by counsel. The
 7 examination must be conducted in a manner consistent with
 8 the Montana Rules of Civil Procedure.

9 Section 36. Inspection of material and testimony at
 10 examinations. (1) While in the possession of the attorney
 11 general and under such reasonable terms and conditions as he
 12 may prescribe:

13 (a) documentary material is available for examination
 14 and copying by the person who produced the material or by
 15 any duly authorized representative of that person; and

16 (b) transcripts of oral testimony are available for
 17 examination and copying by the person who gave the testimony
 18 or his counsel.

19 (2) Except as provided in subsection (1), documentary
 20 material and transcripts of oral testimony, including
 21 copies, in the possession of the attorney general are not
 22 available for examination by any individual other than
 23 another law enforcement official without the consent of the
 24 person who produced the material or gave the testimony.

25 Section 37. Witness fees and mileage. A person served

1 with a subpoena must be paid the same fees and mileage as
 2 are paid to witnesses in the courts of this state.

3 Section 38. Tampering with subpoenaed material --
 4 misdemeanor. A person who with intent to avoid, evade,
 5 prevent, or obstruct compliance, in whole or in part, by
 6 himself or any other person, with any duly served subpoena
 7 or knowingly removes from any place, conceals, withholds,
 8 destroys, mutilates, alters or by any other means falsifies
 9 any documentary material that is the subject of the subpoena
 10 commits a misdemeanor. The attorney general shall
 11 investigate suspected violations of and commence and try
 12 prosecutions under this section.

13 Section 39. Failure to appear or produce. If a
 14 subpoenaed witness fails or refuses to appear, produce
 15 documentary material, or give testimony relevant or material
 16 to the investigation, the attorney general may petition the
 17 district court of the first judicial district or of the
 18 judicial district where the witness resides for an order
 19 requiring the witness to attend and testify or produce the
 20 documentary material. Failure or refusal by the witness to
 21 obey an order of the district court may be punished by the
 22 district court as contempt.

23 Section 40. Granting of immunity. (1) If a person is
 24 or may be called to testify or produce evidence at an
 25 investigation, hearing, or trial under [this act], the

1 district court for the judicial district in which the
 2 hearing, trial, or investigation is or may be held shall,
 3 upon certification in writing of a request of the attorney
 4 general, a county attorney of the judicial district, or the
 5 person issue an order, ex parte or after a hearing, granting
 6 the person immunity and requiring the person to testify or
 7 produce evidence, notwithstanding his refusal to do so on
 8 the basis of his privilege against self-incrimination, if:

9 (a) the production of the information is necessary to
 10 a fair determination of the matter pending at the hearing or
 11 trial;

12 (b) the person has refused or is likely to refuse to
 13 produce the information on the basis of his privilege
 14 against self-incrimination; and

15 (c) no objection to the order is made by the attorney
 16 general or the county attorney.

17 (2) If a person refuses, on the basis of his privilege
 18 against self-incrimination, to testify or produce evidence
 19 in any proceeding described in this section and the
 20 presiding officer informs the person of an order issued
 21 under this section, the person may not refuse to comply with
 22 the order on the basis of his privilege against
 23 self-incrimination. If the person refuses to comply with the
 24 order, he may be punished for contempt by the district court
 25 issuing the order.

1 (3) Evidence compelled by an order issued under this
 2 section and any information directly or indirectly derived
 3 from it may not be used against the person in a subsequent
 4 criminal case, except in a prosecution for perjury, false
 5 swearing, or an offense otherwise involving a failure to
 6 comply with the order.

7 Section 41. Organized crime investigation and
 8 prosecution fund and Montana law enforcement assistance
 9 fund. (1) The otherwise unallocated proceeds of all
 10 forfeitures ordered and criminal and civil fines imposed
 11 under [this act] must, as provided in [section 20(4)(c)], be
 12 deposited in the state treasury in a state special revenue
 13 fund account designated the "organized crime investigation
 14 and prosecution fund". Money in the organized crime
 15 investigation and prosecution fund must be used for the
 16 costs of the criminal and civil investigation and
 17 prosecution of conduct unlawful under [section 6], including
 18 costs of resources and personnel, and is allocated to the
 19 attorney general and local governments for that purpose.

20 (2) Whenever the money in the organized crime
 21 investigation and prosecution fund credited to the attorney
 22 general, county attorney, or other law enforcement agency
 23 reaches \$75,000, additional money that would otherwise be
 24 credited to that agency under [this act] must be deposited
 25 in the state treasury in a state special revenue fund

1 account designated the "Montana law enforcement assistance
2 fund". The money is allocated to the attorney general, to be
3 used to make grants to local law enforcement agencies to
4 assist them in investigating, prosecuting, and preventing
5 crime.

6 Section 42. Action not barred for affecting or
7 involving interstate or foreign commerce. No action under
8 [this act] may be barred on the grounds that the activities
9 or conduct complained of in any way affects or involves
10 interstate or foreign commerce.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN460-85

Form BD-15

In compliance with a written request received February 16 19 85, there is hereby submitted a Fiscal Note for S.B. 429 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to adopt a law to curtail organized crime through civil and criminal sanctions.

FISCAL IMPACT:

Expenditure: because costs of investigation and prosecution under this act will be paid from fines and forfeitures, there is no fiscal impact to the Department of Justice or the Judiciary.

Revenue: cannot be estimated with any degree of accuracy.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 22, 1985

SB 429

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 429

INTRODUCED BY PINSONEAULT, MERCER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT A LAW TO
CURTAIL ORGANIZED CRIME THROUGH CIVIL AND CRIMINAL
SANCTIONS."

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

Section 1. Short title. [This act] shall be known and
may be cited as the "Montana Victims of Organized Crime Act
of 1985".

Section 2. Purpose. The purpose of [this act] is to
curtail organized criminal activity and lessen its economic
and political power and impact in the state by giving law
enforcement agencies and the victims of organized crime new
civil and criminal sanctions and remedies.

Section 3. Construction. (1) The provisions of [this
act] must be liberally construed to achieve their remedial
purpose.

(2) When the language of a provision of [this act] is
the same as or similar to the language of Title IX, P.L.
91-452, 84 Stat. 941, codified at 18 U.S.C. 1961, et seq.,
the courts of this state, in construing the provision, must
consider and weigh the construction given to the federal law

by the federal courts.

Section 4. Legislative findings. (1) Organized crime
in the state is diversified and widespread and annually
diverts enormous resources from the state's legitimate
markets through the illicit use of force, fraud, and
corruption.

(2) Traditional law enforcement strategies and
techniques which concentrate on bringing criminal penalties
to bear on individual offenders for the commission of
specific offenses and which do not focus on offenders
involved in racketeering influenced and corrupt
organizations and patterns of racketeering activity and
which do not enlist the assistance of private enforcement
and use civil sanctions are inadequate to control
racketeering. Comprehensive strategies must be formulated;
more effective law enforcement techniques must be developed;
evidentiary, procedural, and substantive laws must be
strengthened; and criminal penalties and civil sanctions
must be enhanced.

Section 5. Definitions. As used in [this act], the
following definitions apply:

(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, INCLUDING
CORPORATIONS WHICH HAVE QUALIFIED TO TRANSACT BUSINESS IN



1 THIS STATE UNDER TITLE 35.

2 (2) "Attorney general" includes the attorney general,
3 a duly authorized assistant attorney general, and a county
4 attorney or deputy county attorney assisting the attorney
5 general.

6 (3) (a) "Beneficial interest" includes:

7 (i) the interest of a person as a beneficiary under a
8 trust in which the trustee holds legal or record title to
9 personal or real property;

10 (ii) the interest of a person as a beneficiary under
11 any other trust arrangement under which another person holds
12 legal or record title to personal or real property for the
13 benefit of the beneficiary; and

14 (iii) the interest of a person under any other form of
15 express fiduciary arrangement under which another person
16 holds legal or record title to personal or real property for
17 the benefit of such person.

18 (b) The term "beneficial interest" does not include
19 the interest of a stockholder in a corporation or the
20 interest of a partner in a general or limited partnership.

21 (4) "County attorney" includes a duly authorized
22 deputy county attorney.

23 (5) "Enterprise" includes any person, sole
24 proprietorship, partnership, corporation, trust, or other
25 legal entity; any union, association, or other group of

1 persons associated in fact although not a legal entity;
2 illicit as well as licit enterprises; and governmental as
3 well as other entities.

4 (6) "Pattern of racketeering activity" means two or
5 more occasions of conduct that:

- 6 (a) constitute racketeering activity;
- 7 (b) are related to the affairs of an enterprise;
- 8 (c) are not isolated; and
- 9 (d) are not so closely related to each other and
10 connected in point of time and place that they constitute a
11 single event when:

12 (i) at least one of the occasions of conduct occurred
13 after [the effective date of this act];

14 (ii) the last of the occasions of conduct occurred
15 within 3 years, excluding any period of imprisonment served
16 by any person engaging in the conduct, after a prior
17 occasion of conduct; and

18 (iii) for the purposes of [section 6] but not [section
19 8], at least one of the occasions of conduct constituted a
20 felony under Montana law or, if committed subject to the
21 jurisdiction of the United States or any other state of the
22 United States, would constitute a felony under Montana law
23 if committed in Montana.

24 (7) "Pecuniary benefit" means benefit in the form of
25 money, property, commercial interests, or anything else, the