

Racketeering; unlawful activity; civil remedies by private cause of action; definitions

A. A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity, or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation. If the person against whom a racketeering claim has been asserted, including a lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. No person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section except an action against a person who is convicted of a crime in connection with the fraud, in which case the period to initiate a civil action starts to run on the date on which the conviction becomes final.

B. The superior court has jurisdiction to prevent, restrain and remedy a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity, after making provision for the rights of all innocent persons affected by the violation and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Before a determination of liability these orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to damage or other remedies or restraints pursuant to this section as the court deems proper.

D. After a determination of liability these orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.
2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of up to treble damages to those persons injured by a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity.

5. Prejudgment interest on damages, except that prejudgment interest may not be awarded on any increase in the damages authorized under paragraph 4 of this subsection.

6. A person or enterprise that acquires any property through an offense included in the definition of racketeering in section 13-2301, subsection D or a violation of section 13-2312 is an involuntary trustee. The involuntary trustee and any other person or enterprise, except a bona fide purchaser for value who is reasonably without notice of the unlawful conduct and who is not knowingly taking part in an illegal transaction, hold the property, its proceeds and its fruits in constructive trust for the benefit of persons entitled to remedies under this section.

E. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any civil proceedings. For the purpose of this subsection, a conviction may result from a verdict or plea including a no contest plea.

F. Notwithstanding any law prescribing a lesser period but subject to subsection A of this section, the initiation of civil proceedings pursuant to this section shall be commenced within three years from the date the violation was discovered, or should have been discovered with reasonable diligence, and ten years after the events giving rise to the cause of action, whichever comes first.

G. The standard of proof in actions brought pursuant to this section is the preponderance of evidence test.

H. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. This requirement is jurisdictional. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under section 13-2314 or to intervene in a pending action nor does it authorize the person to name this state or the attorney general as a party to the action.

I. On timely application, the attorney general may intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. On intervention,

the attorney general may assert any available claim and is entitled to the same relief as if the attorney general has instituted a separate action.

J. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting section 13-2301, 13-2312, 13-2313, 13-2314.01, 13-2314.02 or 13-2315 or this section.

K. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive, except that a person may not recover, for an action brought pursuant to this section, punitive damages or emotional injury damages in the absence of bodily injury.

L. A natural person shall not be held liable in damages or for other relief pursuant to this section based on the conduct of another unless the fact finder finds by a preponderance of the evidence that the natural person authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the other. An enterprise shall not be held liable in damages or for other relief pursuant to this section based on the conduct of an agent, unless the fact finder finds by a preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the agent. A bank or savings and loan association insured by the federal deposit insurance corporation or a credit union insured by the national credit union administration shall not be held liable in damages or for other relief pursuant to this section for conduct proscribed by section 13-2317, subsection B, paragraph 1, based on acquiring or maintaining an interest in or transporting, transacting, transferring or receiving funds belonging to a person other than the person presenting the funds, unless the fact finder finds by a preponderance of the evidence that the person or agent acquiring or maintaining an interest in or transporting, transacting, transferring or receiving the funds on behalf of the defendant did so knowing that the funds were the proceeds of an offense and that a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the person or agent. A person or enterprise shall not be held liable in damages or for other relief pursuant to this section unless the fact finder makes particularized findings sufficient to permit full and complete review of the record, if any, of the conduct of the person. A natural person or enterprise shall not be held liable in damages for recklessly tolerating the unlawful conduct of another person or agent if the other person or agent engaged in unlawful conduct proscribed by section 13-2301, subsection D, paragraph 4, subdivision (b), item (xvi), (xviii), (xix) or (xx) and the unlawful conduct involved the purchase or sale of securities.

M. Notwithstanding subsection A of this section, a court shall not award costs, including attorney fees, if the award would be unjust because of special circumstances, including the relevant disparate economic position of the parties or the disproportionate amount of the costs, including attorney fees, to the nature of the damage or other relief obtained.

N. If the court determines that the filing of any pleading, motion or other paper under this section was frivolous or that any civil action or proceeding was brought or continued under this section in bad faith, vexatiously, wantonly or for an improper or oppressive reason, it shall award a proper sanction to deter this conduct in the future that may include the costs of the civil action or proceeding, including the costs of investigation and reasonable attorney fees in the trial and appellate courts.

O. Notwithstanding any other law, a complaint, counterclaim, answer or response filed by a person in connection with a civil action or proceeding under this section shall be verified by at least one party or the party's attorney. If the person is represented by an attorney, at least one attorney of record shall sign any pleading, motion or other paper in the attorney's individual name and shall state the attorney's address.

P. The verification by a person or the person's attorney and the signature by an attorney required by subsection O of this section constitute a certification by the person or the person's attorney that the person or the person's attorney has carefully read the pleading, motion or other paper and, based on a reasonable inquiry, believes all of the following:

1. It is well grounded in fact.
2. It is warranted by existing law or there is a good faith argument for the extension, modification or reversal of existing law.
3. It is not made for any bad faith, vexatious, wanton, improper or oppressive reason, including to harass, to cause unnecessary delay, to impose a needless increase in the cost of litigation or to force an unjust settlement through the serious character of the averment.

Q. If any pleading, motion or other paper is signed in violation of the certification provisions of subsection P of this section, the court, on its own motion or on the motion of the other party and after a hearing and appropriate findings of fact, shall impose on the person who verified it or the attorney who signed it, or both, a proper sanction to deter this conduct in the future, including the costs of the proceeding under subsection N of this section.

R. If any pleading, motion or other paper includes an averment of fraud or coercion, it shall state these circumstances with particularity with respect to each defendant.

S. In any civil action or proceeding under this section in which the pleading, motion or other paper does not allege a crime of violence as a racketeering act:

1. The term "racketeer" shall not be used in referring to any person.
2. The terms used to refer to acts of racketeering or a pattern of racketeering activity shall be "unlawful acts" or "a pattern of unlawful activity".

T. In this section, unless the context otherwise requires:

1. "Acquire" means for a person to do any of the following:

(a) Possess.

(b) Act so as to exclude another person from using the person's property except on the person's own terms.

(c) Bring about or receive the transfer of any interest in property, whether to himself or to another person, or to secure performance of a service.

2. "Gain" means any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

3. "Pattern of racketeering activity" means either:

(a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:

(i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.

(ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.

(iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.

(b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

4. "Proceeds" means any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form.