

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 549 Offenses Concerning Racketeering and Illegal Debts

**SPONSOR(S):** Burton

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Malcolm	Havlicak

### SUMMARY ANALYSIS

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act imposes criminal and civil liability on any person who engages in racketeering or the collection of unlawful debt to acquire real property or establish or operate any enterprise or be associated with such an enterprise. Any property that is used in the course of or derived from the illegal conduct is subject to forfeiture to the state. The bill makes a number of changes to the civil enforcement provisions of the RICO Act:

- If property subject to forfeiture is diminished in value, an investigative agency may pursue an action in circuit court to recover fair market value of the property.
- Investigative agencies may recover fair market value of any property that is diminished in value or made unavailable for forfeiture regardless of when the property is diminished in value or rendered unavailable for forfeiture.
- A court may order the forfeiture of any other property of the defendant up to the value of any property that is unavailable or is diminished in value.
- Civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person may be imposed for violations of the RICO Act.
- All investigatory subpoenas issued pursuant to the RICO Act are confidential for 120 days after the date of its issuance.
- Any party to a RICO Act civil action may petition the court for entry of a consent decree or for approval of a settlement agreement.
- The court is required to order distribution of forfeiture proceeds to the victims of the racketeering activity.

The bill appears to have an indeterminate positive fiscal impact on state revenues. The bill does not appear to have a fiscal impact on local government.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida RICO Act**

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act<sup>1</sup> makes it a first-degree felony for any person to engage in, or conspire to engage in, racketeering activity or the collection of unlawful debt to establish or operate an enterprise or to be associated with such an enterprise.<sup>2</sup> The term "racketeering activity" encompasses a broad range of state and federal criminal offenses identified in current law.<sup>3</sup>

In addition to criminal penalties, the RICO Act imposes civil liability for violations of the Act, including forfeiture to the state of all property, including money, "used in the course of, intended for use in the course of, derived from, or realized through conduct" in violation of the Act.<sup>4</sup>

The bill makes a number of changes to the RICO Act:

##### **Property Rendered Unavailable for Forfeiture**

Current law, s. 895.05(2), F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice<sup>5</sup> or after the filing of a civil or criminal proceeding pursuant to the Act, the investigative agency<sup>6</sup> may institute an action to recover an amount equal to the fair market value of the property along with investigative costs and attorney's fees incurred by the investigative agency.

The bill amends s. 895.05(2), F.S., to include property subject to forfeiture that is diminished in value among the conditions sufficient for an investigative agency to pursue an action in circuit court to recover fair market value of the property. The bill also repeals that portion of s. 895.05(2), F.S., which provided investigative agencies the authority to pursue an action to recover fair market value of the unavailable property only if the property became unavailable "after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding." Consequently, the bill gives investigative agencies the authority to pursue an action to recover fair market value of the unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or rendered unavailable for forfeiture.

In addition to recovering the fair market value of the property of the unavailable or diminished property, the bill allows a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property.

##### **Civil Proceedings by Investigative Agencies and the Department of Legal Affairs**

The bill restates and reorganizes current law provisions in s. 895.05, F.S., that provide for the filing of RICO Act civil proceedings by an investigative agency and the Department of Legal Affairs.

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<sup>1</sup> ch. 895, F.S.

<sup>2</sup> ss. 895.03 and 895.04, F.S.

<sup>3</sup> s. 895.02(1)(a), F.S.

<sup>4</sup> s. 895.05(2)(a), F.S.

<sup>5</sup> An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. s. 895.07, F.S.

<sup>6</sup> "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney." s. 895.02(7), F.S.

An investigative agency may institute a civil proceeding for forfeiture in the judicial circuit in which the defendant's real or personal tangible property is located and may institute a civil proceeding for forfeiture in any circuit court in the state regarding the defendant's intangible property.

The Department of Legal Affairs may bring an action to obtain injunctive relief, attorney fees, and costs incurred in the investigation and prosecution under the RICO Act. Money recovered by the Department of Legal Affairs for attorney fees and costs must be deposited in the Legal Affairs Revolving Trust Fund.

The Department of Legal Affairs may also bring an action for newly created civil penalties. Any natural person who violates the RICO Act is subject to a civil penalty of up to \$100,000, any other person is subject to a civil penalty of up to \$1 million.<sup>7</sup> Money recovered for civil penalties must be deposited into the General Revenue Fund.

## **Court Approval of Consent Decrees and Settlement Agreements**

Current law does not address consent decrees or settlement agreements in civil actions for RICO Act violations brought by the Department of Legal Affairs. The bill provides that any party to such a civil action may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement must specify the alleged violations, the future obligations of the parties, the agreed upon relief, and the reasons for entering into the decree or settlement.

## **Confidentiality of Subpoenas**

During the course of a civil enforcement investigation, an investigating agency may subpoena witnesses or material.<sup>8</sup> Generally, investigatory subpoenas are used to obtain information from third-parties through the production of documents, files, and records or through testimony. Section 895.06, F.S., authorizes investigative agencies to apply ex parte to a circuit court for an order directing a person or entity who has been subpoenaed to not disclose the existence of the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days. The court may only grant an order for nondisclosure if the agency shows:

- sufficient factual grounds to reasonably indicate a violation of the RICO Act;
- that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and
- facts which reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or would result in a flight from prosecution.<sup>9</sup>

The 90-day non-disclosure time limit may be extended by the court for good cause shown by the investigative agency.

The bill amends s. 895.06, F.S., to remove the requirement that an investigative agency seek court authorization for non-disclosable subpoenas and provides that all subpoenas issued pursuant to the RICO Act are automatically confidential for 120 days. The subpoenaed person or entity may only disclose the existence of the subpoena to his or her attorney during the 120-day period. The subpoena must include a reference to the confidentiality of the subpoena and a notice to the recipient that disclosure of the existence of the subpoena to anyone except the subpoenaed person's or entity's attorney is prohibited. The investigative agency may apply for an extension of the confidentiality period for good cause.

The bill also provides that an investigative agency may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.

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<sup>7</sup> A "natural person" is a human being, and "any other person" includes such things as corporations, partnerships, or other types of business entities or organizations.

<sup>8</sup> s. 895.06(2), F.S.

<sup>9</sup> s. 895.06(3), F.S.

## **Restitution for Victims of RICO Act Violations**

Current law requires a court to direct the distribution of the proceeds from a forfeiture in the following priority: the clerk of the court to cover statutory fees; claims by people whose interests in the property are preserved (known as "innocent persons"); and claims by the Board of Trustees of the Internal Improvement Trust Fund.<sup>10</sup> Remaining funds are split between four government funds. However, current law does not authorize restitution to the victims of RICO Act violations.

The bill amends s. 895.09(1), F.S., to require a court to direct the distribution of the proceeds from a forfeiture to claims for restitution for victims of the racketeering activity after the proceeds have been distributed to the clerk, innocent persons, and claims of the Board of Trustees. If the forfeiture action was brought by the Department of Legal Affairs, the restitution must be distributed through the Legal Affairs Revolving Trust Fund; otherwise, the restitution will be distributed by the clerk of the court.

### **Other Effects of the Bill**

The bill deletes duplicative definitions, updates cross-references, and makes conforming changes.

The bill reenacts a trust fund in current law for the purpose of incorporating changes made to s. 895.05, F.S.

The bill has an effective date of July 1, 2016.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 895.02, F.S., related to definitions.

Section 2 amends s. 895.05, F.S., related to civil remedies.

Section 3 amends s. 895.06, F.S., related to civil investigative subpoenas.

Section 4 amends s. 895.09, F.S., related to the disposition of funds obtained through forfeiture.

Section 5 amends s. 16.56, F.S., related to the Office of Statewide Prosecution.

Section 6 amends s. 905.34, F.S., related to the powers and duties of a statewide grand jury; law applicable.

Section 7 reenacts s. 16.53, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S. Section 7 also corrects a cross-reference.

Section 8 reenacts s. 27.345, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 9 reenacts s. 92.142, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 10 provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

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<sup>10</sup> s. 859.09(1), F.S.  
**STORAGE NAME:** h0549d.JDC  
**DATE:** 2/3/2016

The civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person for RICO Act violations created by the bill may have an indeterminate positive revenue impact on the General Revenue Fund. The bill also authorizes the Department of Legal Affairs to recover attorney's fees and costs for certain civil actions which will have a positive impact on the Legal Affairs Revolving Trust Fund.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.