

- Providing that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless extended by the court upon a showing of good cause by the investigating agency; and
- Providing that forfeiture funds obtained by the Department of Legal Affairs and deposited in the Legal Affairs Revolving Trust Fund may be expended to provide restitution to consumers, as appropriate.

II. Present Situation:

Florida RICO Act

The “Florida RICO Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.¹

Section 893.04, F.S., punishes as a first degree felony:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt² to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;³
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.⁴

In addition to criminal penalties, the Florida 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.⁵

¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

² An “unlawful debt” is any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any law listed in the definition. Section 895.02(2), F.S. These offenses include violations of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

³ An “enterprise” is any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity. The definition includes: illicit as well as licit enterprises; governmental, as well as other, entities; and a criminal gang, as defined in s. 874.03, F.S. Section 895.02(3), F.S.

⁴ Section 895.03(1)-(4), F.S. (prohibited activities).

⁵ Section 895.05(2), F.S.

Recovery of Property Unavailable for Forfeiture

Section 895.05, 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 notice⁶ or after the filing of a civil or criminal proceeding pursuant to the act, whichever is earlier, an investigative agency may institute an action to recover an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action.⁷ “[I]f a defendant conveys or otherwise disposes of property subject to forfeiture before the filing of a civil RICO action or the filing of a RICO lien notice, or if the property's value has been diminished, no money judgment can be obtained against the defendant for the dissipated or devalued property and the property in question cannot be forfeited.”⁸

Investigative Subpoenas

Section 895.06, F.S., provides that during the course of a civil enforcement investigation, an investigating agency may subpoena witnesses or materials.⁹ “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”¹⁰ An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except the attorney for the subpoenaed person or entity.¹¹ The 90-day time limit may be extended by the court for good cause shown by the investigative agency.¹²

Omissions Relevant to Civil Enforcement

Current law does not:

- Specify where an action may be filed if personal property involved in a Florida RICO Act violation is subject to forfeiture;
- Address civil penalties in a Florida RICO Act enforcement action; and
- Address consent decrees or settlement agreements in civil actions for Florida RICO Act violations.

⁶ 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. Section 895.07, F.S. An “investigative agency” is the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.

⁷ Section 895.05(2), F.S.,

⁸ Analysis of SB 1514 (March 5, 2015), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “Department of Legal Affairs Analysis.”

⁹ Section 895.06, F.S.

¹⁰ *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001).

¹¹ Section 895.06(3), F.S. “Investigative subpoenas issued by the enforcement agency can be disclosed unless the agency obtains a court order preventing disclosure of the subpoena for 90 days.” Department of Legal Affairs Analysis.

¹² *Id.*

III. Effect of Proposed Changes:

The bill amends civil enforcement provisions of the Florida RICO Act to:

- Authorize an investigative agency, on behalf of the state, to institute a civil proceeding for forfeiture of personal property involved in a Florida Rico Act violation in a circuit court where the personal property is located;
- Authorize an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorize a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property (as an alternative to the court ordering an amount equal to the fair market value of the unavailable property);
- Authorize the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;
- Provide that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to \$100,000 and any other person who violates the act may be subject to a civil penalty of up to \$1 million and require that moneys recovered for civil penalties be deposited into the General Revenue Fund;
- Require that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Funds and authorize use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorize any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;
- Require that the proposed decree or agreement set out the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement;
- Provide that current law relating to the suspension of the running of the period of limitations with respect to certain causes of action will apply to actions for injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any Florida RICO Act violation;¹³
- Provide that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless the period is extended by the court upon a showing of good cause by the investigating agency;
- Prohibit a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the period in which the subpoena is confidential;

¹³ A criminal or civil action or proceeding under the Florida RICO Act may be commenced at any time within 5 years after the conduct in violation of the act terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the act, the running of the period of limitations prescribed with respect to certain causes of action (e.g., an action for damages brought by the state) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding is suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination. Section 895.05(10), F.S.

- Require that the subpoena include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity is prohibited;
- Authorize an investigative agency to stipulate to protective orders with respect to documents and information submitted in response to an investigative subpoena; and
- Provide that forfeiture funds obtained by the Department of Legal Affairs and deposited in the Legal Affairs Revolving Trust Fund may be expended to provide restitution to consumers, as appropriate.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

SB 1514 provides that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless the period is extended by the court upon a showing of good cause by the investigating agency. SB 1514 appears to be linked to SB 1536, which makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. Under SB 1536, the information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Legal Affairs, “[t]he 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.”¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 895.02, 895.05, 895.06, 895.09, and 905.34.

This bill reenacts the following sections of the Florida Statutes to incorporate the amendment made to s. 895.05, F.S, in references to that statute: 16.53, 27.345, and 92.142

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁴ Department of Legal Affairs Analysis.