

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 549

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Burton

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**COMPANION SB 850
BILLS:**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 549 passed the House on February 24, 2016, and subsequently passed the Senate on March 7, 2016.

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 to 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 the following 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.
- 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.
- An investigatory subpoena issued pursuant to the RICO Act is 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 was approved by the Governor on March 24, 2016, ch. 2016-84, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Florida RICO Act

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act¹ 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.² The term "racketeering activity" encompasses a broad range of state and federal criminal offenses identified in current law.³

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.⁴

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 notice⁵ or after the filing of a civil or criminal proceeding pursuant to the Act, the investigative agency⁶ 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.

¹ ch. 895, F.S.

² ss. 895.03 and 895.04, F.S.

³ s. 895.02(1)(a), F.S.

⁴ s. 895.05(2)(a), F.S.

⁵ 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.

⁶ "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.⁷ 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.⁸ 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.⁹

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.

⁷ 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.

⁸ s. 895.06(2), F.S.

⁹ s. 895.06(3), F.S.

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.

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.¹⁰ 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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 fees and costs for certain civil actions which may 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.

¹⁰ s. 859.09(1), F.S.

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.