

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 783 Racketeering of Aquatic and Wild Animal Life

**SPONSOR(S):** Environment, Agriculture & Flooding Subcommittee, Persons-Mulicka and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Walsh	Hall
2) Environment, Agriculture & Flooding Subcommittee	15 Y, 0 N, As CS	Melkun	Moore
3) Judiciary Committee			

### SUMMARY ANALYSIS

Chapter 379, F.S., outlines penalties and violations for laws relating to fish and wildlife conservation and provides the Florida Fish and Wildlife Commission (FWC) with rule-making authority. Violations of fish and wildlife laws and FWC rules are organized into a four-level system providing penalties based on the level of offense. The penalties for violating FWC laws and rules range from a noncriminal civil penalty to a third degree felony, which is punishable by up to five years in prison and a \$5,000 fine.

Sections 895.01-895.06, F.S., are also known as the "Florida RICO (Racketeering Influenced and Corrupt Organization) Act." A person convicted under this section commits a first degree felony, which is punishable by up to 30 years in prison and a \$10,000 fine. Section 895.03, F.S., provides that it is unlawful for any person:

- To receive, with criminal intent, any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt 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.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

The trafficking of plant and animal life is one of the most profitable illegal trades in the world. Under current law, it is difficult to prosecute wildlife, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise and the activity associated therewith.

The bill amends the definition of "racketeering activity" to include violations of FWC laws and rules. Under the bill, any wildlife, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture, which may help to undermine profitability of the underlying criminal enterprises.

The bill may have an indeterminate impact on state government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### The Florida Fish and Wildlife Commission

Article IV, section 9, of the Florida Constitution establishes the Florida Fish and Wildlife Conservation Commission (FWC) and grants FWC the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.<sup>1</sup> FWC executes ch. 379, F.S., and the rules adopted in Title 68, F.A.C. (FWC laws and rules).<sup>2</sup>

As a result of FWC's constitutional authority, the Legislature is constitutionally prohibited from adopting statutes in conflict with rules adopted by FWC to execute such authority.<sup>3</sup> However, the Constitution specifies that all licensing fees for taking wild animal life, freshwater aquatic life, and marine life as well as the penalties for violating FWC regulations must be prescribed by the Legislature.<sup>4</sup> In addition, the Legislature must provide for FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing.<sup>5</sup> The Legislature may also enact laws to aid FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting and fishing.<sup>6</sup>

##### FWC Violations and Penalties

Section 379.401, F.S., outlines penalties and violations for fish and wildlife conservation laws, breaking violations down into a four-level system and providing penalties based on the level of offense.<sup>7</sup> The penalty and severity of each offense increases with each level of violation, beginning at Level One.<sup>8</sup>

##### *Level One Violations*

Examples of a Level One violation include, but are not limited to:

- Violating FWC rules or orders requiring a person who holds a license or permit to file reports or other documents;
- Violating FWC rules or orders relating to quota hunt permits, daily use permits, and hunting zone assignments;
- Failing to wear at least 500 square inches of daylight fluorescent orange material as an outer garment while deer hunting;<sup>9</sup>
- Failing to comply with licensure requirements; and
- Failing to comply with hunter safety course requirements.<sup>10</sup>

Under s. 379.401(1)(b), F.S., a person who commits a Level One violation commits a noncriminal infraction requiring him or her to appear before a county court, which will impose the appropriate civil penalty as provided in s. 379.401(1), F.S.<sup>11</sup>

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<sup>1</sup> Art. IV, s. 9, Fla. Const.

<sup>2</sup> "The rules of FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So. 3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

<sup>3</sup> Art. IV, s. 9, Fla. Const.

<sup>4</sup> Art. IV, s. 9, Fla. Const.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> S. 379.401, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> S. 379.3003, F.S.

<sup>10</sup> S. 379.401(1)(a), F.S.

<sup>11</sup> S. 379.401(1)(b), F.S.

### *Level Two Violations*

Examples of a Level Two violation include, but are not limited to, violating FWC rules or orders:

- Relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Relating to tagging requirements for wildlife and fur-bearing animals;
- Relating to the use of dogs for the taking of wildlife;
- Prohibiting the unlawful use of traps, unless otherwise provided by law; and
- Which are not otherwise classified.<sup>12</sup>

Under s. 379.401(2)(b), F.S., the penalties for a Level Two violation are as follows:

<b>Level Two Violation</b>	<b>Degree of Offense</b>	<b>Penalty Requirements<sup>13</sup></b>
First offense	2nd degree misdemeanor <sup>14</sup>	None
Second offense within 3 years of previous Level Two violation (or higher)	1st degree misdemeanor <sup>15</sup>	\$250 minimum fine
Third offense within 5 years of two previous Level Two violations (or higher)	1st degree misdemeanor	\$500 minimum fine 1 year license or permit suspension
Fourth offense within 10 years of three previous Level Two violations (or higher)	1st degree misdemeanor	\$750 minimum fine 3 year license or permit suspension

### *Level Three Violations*

Examples of a Level Three violation include, but are not limited to:

- Illegal sale or possession of alligators;
- Taking game, freshwater fish, or saltwater fish while a required license is suspended or revoked;
- Importing freshwater fish without a permit;
- Possessing certain finfish in excess of recreational daily bag limits;
- Possessing, moving, or transporting any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities violating FWC laws or rules;<sup>16</sup> and
- Illegal taking and possession of deer and wild turkey.<sup>17</sup>

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<sup>12</sup> S. 379.401(2)(a), F.S.

<sup>13</sup> While a first degree misdemeanor may include a fine up to \$1,000, some level two violations also impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

<sup>14</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>15</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>16</sup> S. 379.406, F.S.

<sup>17</sup> S. 379.401(3)(a), F.S.

Under s. 379.401(3)(b), F.S., the penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Penalty Requirements <sup>18</sup>
First offense	1st degree misdemeanor <sup>19</sup>	None
Second offense within 10 years of previous Level Three violation (or higher)	1st degree misdemeanor	\$750 minimum fine Up to 3 year license or permit suspension
Fishing, hunting, or trapping on a suspended or revoked license <sup>20</sup>	1st degree misdemeanor	\$1,000 mandatory fine May not acquire a license or permit for 5 years

#### *Level Four Violations*

Examples of a Level Four violation include, but are not limited to:

- Making, forging, counterfeiting, or reproducing a recreational license or possessing such license without authorization from FWC;
- Selling illegally-taken deer or wild turkey;
- Unlawfully killing, injuring, possessing, or capturing alligators or other crocodilian or their eggs;
- Intentionally killing or wounding any species designated as endangered, threatened, or of special concern; and
- Killing any Florida or wild panther.<sup>21</sup>

Under s. 379.401(4)(b), F.S., a person who commits a Level Four violation commits a third degree felony.<sup>22</sup>

#### Florida RICO Act

Sections 895.01-895.06, F.S., are also known as the “Florida RICO (Racketeering Influenced and Corrupt Organization) Act.”<sup>23</sup> A person commits “racketeering activity” when he or she commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another person to commit any offense listed in s. 895.02(8), F.S.<sup>24, 25</sup>

As defined by s. 895.02(7), F.S., a “pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct<sup>26</sup> having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

Section 895.03, F.S., provides that it is unlawful for any person:

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>27</sup> to use or invest, whether

<sup>18</sup> While a first degree misdemeanor may include a fine up to \$1,000, some level three violations impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

<sup>19</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>20</sup> S. 379.354(17), F.S.

<sup>21</sup> S. 379.401(4)(a), F.S.

<sup>22</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>23</sup> S. 895.01, F.S.

<sup>24</sup> S. 895.02, F.S.

<sup>25</sup> The offenses listed under s. 895.02(8), F.S., include violations of specified Florida laws (e.g., Medicaid fraud, workers' compensation fraud, human trafficking, kidnapping, and drug offenses), as well as any conduct defined as “racketeering activity” in 18 U.S.C. § 1961.

<sup>26</sup> At least one of such incidents of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. S. 895.02(7), F.S.

<sup>27</sup> “Unlawful debt” means 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 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. S. 895.02(12), F.S.

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.<sup>28</sup>

- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

A person convicted of any of the activities outlined in s. 895.03, F.S., commits a first degree felony,<sup>29</sup> and may be subject to a number of civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.<sup>30</sup>

In *Bowden v. State*, the Supreme Court of Florida considered the definition of “pattern of racketeering activity” in s. 895.02(7), F.S., construing the statutory definition to not only require “similarity and interrelatedness of racketeering activities,” but also “proof that a continuity of a particular criminal activity exists.”<sup>31</sup> The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.<sup>32</sup>

In cases where the defendant is charged under s. 895.03, F.S., Florida courts have analyzed the continuity requirement by turning to U.S. Supreme Court precedent.<sup>33</sup> When considering the elements necessary to satisfy the pattern requirement<sup>34</sup> of the federal RICO Act<sup>35</sup> in *H.J. Inc. v. Northwestern Bell Telephone Co.*, the U.S. Supreme Court held that the predicate offenses must amount to, or otherwise constitute a threat of, continuing racketeering activity in order to establish a pattern.<sup>36</sup> The Court described continuity as “both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.”<sup>37</sup>

### Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

The illegal trade of plants and animals on the black-market is estimated to be the third most valuable black-market trade in the world<sup>38</sup> and is currently the fourth most profitable trans-national crime, only behind the drug trade, arms trade, and human trafficking.<sup>39</sup> Current consumer demand drives the illegal trade of wildlife and is not limited to one category of animal life or a type of species.<sup>40</sup> FWC provided the following statement regarding the large number of species that are subject to exploitation by traffickers:

Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife

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<sup>28</sup> “Enterprise” means 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; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise. S. 895.02(5), F.S.

<sup>29</sup> S. 895.04, F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>30</sup> S. 895.05(2), F.S.

<sup>31</sup> *Bowden v. State*, 402 So. 2d 1173, 1174 (Fla. 1981).

<sup>32</sup> *Id.*

<sup>33</sup> See *State v. Lucas*, 600 So. 2d 1093, 1094 (Fla. 1992) (reasoning that the state sufficiently alleged a threat of criminal activity to constitute open-ended continuity as described by federal precedent).

<sup>34</sup> 18 U.S.C. § 1962 discusses prohibited activities, which all require a pattern of racketeering activity or collection of an unlawful debt.

<sup>35</sup> The Racketeer Influenced and Corrupt Organizations Act is found in 18 U.S.C. §§1961-1968.

<sup>36</sup> *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

<sup>37</sup> *Id.* at 241.

<sup>38</sup> Jay O'Brien, *Inside South Florida animal smuggling and what's being done to stop it*, 12 News (Nov. 30, 2019), <https://cbs12.com/news/local/inside-south-florida-animal-smuggling-and-whats-being-done-to-stop-it> (last visited Mar. 11, 2021).

<sup>39</sup> Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

<sup>40</sup> *Id.*

and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs).<sup>41</sup>

FWC predicts that the trafficking of wildlife, freshwater aquatic life, and marine life will continue until the given species is overharvested and declines to the extent the species is difficult to acquire or the species has special protections placed on it.<sup>42</sup> In addition to its effects on biodiversity, the illegal trade of plant and animal life may affect human health, as trafficked species may not be properly sanitized, which could lead to the spread of diseases transmitted from animals to humans.<sup>43</sup>

Wildlife, marine life, and fresh water aquatic life trafficking involves more than just the illegal taking and sale of species, as traffickers may falsify records, licenses, and documents in an effort to launder trafficked species.<sup>44</sup>

### Prosecution of Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

In October 2020, FWC announced that it had uncovered a Florida-based international flying squirrel trafficking scheme, in which as many as 3,600 flying squirrels were trafficked and exported.<sup>45</sup> The suspects, who were also found to be trapping and trafficking turtles and alligators, were charged with money laundering, grand theft, and dealing in stolen property, among other charges.<sup>46</sup>

Under current law, FWC indicates that it is difficult to prosecute wild animal life, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise.<sup>47</sup> Current fish and wildlife conservation laws are primarily misdemeanors and typically only result in small fines and probation for those who are convicted.<sup>48</sup>

### **Effect of Proposed Changes**

The bill amends the definition of “racketeering activity” to include violations of FWC laws and rules relating to the illegal collection, harvest, capture, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

By adding violations of fish and wildlife conservation laws and FWC rules to the list of crimes constituting “racketeering activity,” the bill allows wild animal life, freshwater aquatic life, and marine life traffickers to be prosecuted under the Florida RICO Act. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture, which may help to undermine profitability of the underlying criminal enterprises.

Under the bill, a wild animal life, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony.<sup>49</sup> A person who violates FWC laws and rules may still be penalized in accordance with current law when the Florida RICO Act does not apply.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Tanya Rosen, *The Evolving War on Illegal Wildlife Trade*, IISD, (Oct. 6, 2020), <https://www.iisd.org/articles/evolving-war-illegal-wildlife-trade> (last visited Mar. 11, 2021).

<sup>44</sup> Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

<sup>45</sup> Bryan Pietsch, *Seven Charged in Flying Squirrel Trafficking Ring, Florida Officials Say*, The New York Times, (Oct. 19, 2020), <https://www.nytimes.com/2020/10/19/us/squirrel-trafficking-ring-florida.html> (last visited Mar. 11, 2021).

<sup>46</sup> *Id.*

<sup>47</sup> Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 6 (Mar. 4, 2021).

<sup>48</sup> *Id.*

<sup>49</sup> S. 895.04, F.S.

The bill is effective upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 895.02, F.S., relating to racketeering of aquatic animal and wild animal life.

**Section 2:** Provides an effective date of upon becoming a law.

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

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

1. Revenues:

The bill may allow additional civil remedies under the Florida RICO Act, including forfeiture to the state of money derived from racketeering activity involving fish and wildlife.<sup>50</sup>

2. Expenditures:

The Criminal Justice Impact Conference met on February 15, 2021, and determined that the bill may have a positive insignificant impact on prison beds by adding violations of FWC rules and regulations to the list of conduct considered racketeering activity.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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<sup>50</sup> S. 895.05(2), F.S.  
**STORAGE NAME:** h0783c.EAF  
**DATE:** 3/30/2021

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment specified that the term “racketeering activity” includes violations of FWC laws and rules related to illegal collection, harvest, and capture rather than violations related to illegal taking.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.