

Approved by the Governor June 24, 1981.

Filed in Office Secretary of State June 25, 1981.

CHAPTER 81-141

Committee Substitute for Senate Bill No. 906

An act relating to the Florida RICO Act; amending ss. 943.461, 943.464(2), Florida Statutes; creating ss. 943.466, 943.467, 943.468, Florida Statutes; providing definitions; providing procedures for forfeiture of certain property to the state; specifying when title vests in the state; providing circumstances for forfeiture of fair market value of such property; providing for filing of a RICO lien notice; specifying effect of the notice; specifying powers of investigative agencies; specifying duties and liability of trustees; providing penalties; providing exceptions; specifying term of the notice; providing for release from the notice; requiring alien corporations to file certain information; providing for costs and attorney's fees; providing severability; providing an appropriation; providing an effective date.

WHEREAS, the Legislature, in Chapter 77-334, Laws of Florida, adopted the Florida RICO Act to combat organized crime, and

WHEREAS, one of the provisions of the Florida RICO Act provided for the forfeiture to the state of any real property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of the Florida RICO Act, and

WHEREAS, the Legislature finds that proceeds and money from a pattern of racketeering activity in violation of the Florida RICO Act in substantial amounts are being invested in real property and other interests in real property located in this state, and that such real property and interests in real property are subject to forfeiture to the state under section 943.464, Florida Statutes, and

WHEREAS, the Legislature finds that persons or entities obtaining proceeds or money in violation of the Florida RICO Act invest such proceeds or money in real property and other interests in real property located in this state through various devices such as, but not limited to, trusts, foreign corporations, and fictitious names, which devices make it difficult or impossible for an investigative agency to locate the real property or interest in real property for the purpose of seeking the forfeiture of the real property or interest in real property to the state under the Florida RICO Act, and

WHEREAS, the Legislature finds that persons charged with a violation of the Florida RICO Act immediately and surreptitiously dispose of any real property or interest in real property that they may own in this state and remove the proceeds resulting from the disposition of such property from this state or otherwise place it out of the reach of the forfeiture provisions of the Florida RICO Act, thus making it difficult or impossible for the investigative agency

to cause a forfeiture under the Florida RICO Act, and

WHEREAS, the Legislature finds that the Florida RICO Act is necessary for an investigative agency to protect the public interest in the Florida RICO Act and to prevent the Florida RICO Act from being deliberately circumvented by their ownership;

WHEREAS, the Legislature finds that the amounts of money invested in the Florida RICO Act interests in real property and other interests in real property activity is increasing in prices of real property in this state, and that citizens are being deprived of the opportunity to purchase property in this state, and

WHEREAS, the Legislature finds that devices are being used to conceal interests in real property and other persons are using such devices to conceal the resulting from the Florida RICO Act property and interests;

WHEREAS, the Legislature finds that the amounts of money invested in the Florida RICO Act interests in real property and other interests in real property are being invested in real property and other interests in real property located in this state, and that such real property and interests in real property are subject to forfeiture to the state under section 943.464, Florida Statutes, and

WHEREAS, the Legislature finds that persons or entities obtaining proceeds or money in violation of the Florida RICO Act invest such proceeds or money in real property and other interests in real property located in this state through various devices such as, but not limited to, trusts, foreign corporations, and fictitious names, which devices make it difficult or impossible for an investigative agency to locate the real property or interest in real property for the purpose of seeking the forfeiture of the real property or interest in real property to the state under the Florida RICO Act, and

WHEREAS, the Legislature finds that persons charged with a violation of the Florida RICO Act immediately and surreptitiously dispose of any real property or interest in real property that they may own in this state and remove the proceeds resulting from the disposition of such property from this state or otherwise place it out of the reach of the forfeiture provisions of the Florida RICO Act, thus making it difficult or impossible for the investigative agency

Be It Enacted by the Legislature that

Section 1.

943.461 Def

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(9) "Real property" means any real property situated in this state or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(10) "Trustee" means any of the following:

(a) Any person acting as trustee pursuant to a trust established under s. 689.07 or s. 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real property for which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term "trustee" does not include any person appointed or acting as a personal representative as defined in s. 731.201 (25) or appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued.

(11) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under s. 943.462 or any other provision of the Florida RICO Act.

(12) "Civil proceeding" means any civil proceeding commenced by an investigative agency under s. 943.464 or any other provision of the Florida RICO Act.

(13) "Alien corporation" means a corporation organized under laws other than the laws of the United States or the laws of any state of the United States.

Section 2. Subsection (2) of section 943.464, Florida Statutes, is amended to read:

943.464 Civil remedies.--

(2)(a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of ss. 943.46-943.464 is subject to civil forfeiture to the state.

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(b) Upon the entry of a final judgment of forfeiture in favor of the state, the title of the state to the forfeited property shall:

1. In the case of real property or beneficial interest, relate back to the date of filing of the RICO lien notice in the official records of the county where the real property or beneficial trust is located, and if no RICO lien notice is filed, then to the date of the filing of any notice of lis pendens under s. 943.466(5)(a) in the official records of the county where the real property or beneficial interest is located, and if no RICO lien notice or notice of lis pendens is so filed, then to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located.

2. In the case of personal property, relate back to the date the personal property was seized by the investigating agency.

If property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding, whichever is earlier, the investigative agency may, on behalf of the state, institute an action in any circuit court against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding, and the court shall enter final judgment against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding in 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. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

(c) The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from such forfeiture and disposition shall be promptly deposited in the treasury of the state and immediately credited to the General Revenue Fund of the state.

Section 3. Section 943.466, Florida Statutes, is created to read:

943.466 RICO lien notice.--

(1) Upon the institution of any civil proceeding, the investigative agency then or at any time during the pendency of the proceeding, may file in the official records of any one or more counties a RICO lien notice. No filing fee or other charge shall be required as a condition for filing the RICO lien notice, and the clerk of the circuit court shall, upon the presentation of a RICO lien notice, immediately record it in the official records.

(2) The RICO lien notice shall be signed by the head of the Department of Legal Affairs or his designee, or by a state attorney or his designee. The notice shall be in such form as the Attorney General prescribes and shall set forth the following information:

(a) The name of the person against whom the civil proceeding has been brought. In its discretion, the investigative agency may also



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FLORIDA HOUSE OF REPRESENTATIVES

RALPH H. HABEN, JR., Speaker/BARRY KUTUN, Speaker pro tempore
COMMITTEE ON CRIMINAL JUSTICE

Lawrence J. Smith
Chairman
Robert Reynolds
Vice Chairman

June 10, 1981

MEMORANDUM

TO: Members of the House of Representatives
FROM: Lawrence J. Smith, Chairman
RE: Criminal Justice Legislation passed during the
1981 Legislative Session

The House and Senate passed twenty bills relating to criminal justice during the 1981 Session. My staff has prepared a brief synopsis of those bills for your review. Significant criminal justice issues remain to be resolved by the appropriations process, however.

If you have any questions regarding criminal justice legislation which was considered this year, please do not hesitate to call me or my staff.

S.L. Clements Richard Crotty A.M. Fontana Charles A. Hall
Joe Lang Kershaw Dexter Lehtinen Elvin L. Martinez Bruce McEwan
James H. Smith, Jr. Frederick B. Tygart Robert M. Woodburn
James E. Eaton, Staff Director

the actual and necessary expenses of transporting a prisoner.

HB 1120 - Mentally disordered sex offenders - Subcommittee III (MDSO) of this committee toured the three facilities (Pembroke Pines, Gainesville, and Chattahoochee) currently being utilized for MDSO programs. The subcommittee also held public hearings in Hollywood and Gainesville. A number of problems were found by the subcommittee. Accounting procedures at the institutions were such that it was difficult to establish the true cost of the programs. The Department of Health and Rehabilitative Services is currently addressing this problem through the implementation of adequate accounting systems. This bill requires that such information be provided annually to the Speaker of the House and the President of the Senate. The subcommittee found that offenders in the Gainesville program were housed in a facility which allowed for frequent commingling with the general psychiatric patients. Members of the subcommittee were concerned about this practice and felt that it was detrimental to the MDSO patients' treatment. The bill addresses this concern by requiring DHRS to end the commingling when other facilities for general psychiatric patients become available. Although their number is small, there are a limited number of offenders who have entered the program through judicial order absent any screening for amenability to treatment. This is not specifically authorized in the current statute and this bill prohibits such a path of entry. The bill requires DHRS and the Department of Corrections to issue a report providing an overview of and plan for mental services jointly provided by the agencies. Finally the bill provides for sunset review through an automatic repeal effective July 1, 1983.

HB 1149 (SB 906 Passed) - RICO lien act - Under present law racketeers effectively defeat the RICO forfeiture provisions by owning real property in secret land trusts or other secret devices, and immediately liquidating these ownerships and removing the proceeds from the jurisdiction. The bill authorizes the Attorney General or State Attorney to file a notice of lien, incident to the filing of a RICO forfeiture action, in the county or counties where the individual named in the forfeiture proceeding owns property. The lien would operate on property in the individual's name, and would also operate as a lien on that person's beneficial interest in a secret land trust. The notice of lien can also set forth any aliases or fictitious names which the individual uses, along with any corporations or partnerships owned or controlled by him. This bill, which is the work product of the Governor's Committee, is a compromise measure which preserves the legitimate use of land trusts and foreign corporations, and at the same time provides a mechanism which, it is hoped, will assist the enforcement authorities in addressing the problem of organized crime in Florida, and fully implements the remedies which the Legislature created by enacting the Racketeer Influenced and Corrupt Organization Act, Section 943.46, et seq., Florida Statutes.

DATE: May 4, 1981

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. J. Hintz	P. Liepshutz	1. J.-Crim.	
2. _____		2. _____	
3. _____		3. _____	

SUBJECT: Florida RICO Lien Act

BILL No. AND SPONSOR:

SB 906 by
Senator Jenne

I. SUMMARY

A. Present Situation:

In 1977, the Legislature enacted the Florida Racketeer Influenced and Corrupt Organization Act (RICO) to combat organized crime. (Chapter 77-334, Laws of Florida, Section 943.46, et seq., Florida Statutes.) The Legislature found that organized crime was systematically infiltrating and corrupting Florida's economy by funneling large amounts of its ill-gotten gains into legitimate businesses, properties and other assets. By this conduct, racketeers were "legitimizing" their illegal capital and broadening their base of power. The Legislature recognized that to successfully combat organized crime, new remedies were needed, including forfeiture of organized crime's ill-gotten gains and removal of its corrupting influence from Florida's economy. Section 943.464(2), Florida Statutes, provides for forfeiture of all property, real or personal, including money, used in the course of, intended for use in the course of, derived from or realized through racketeering activity.

One of the principal areas of concern to the State of Florida, and in which the RICO Act was thought to be most helpful, was related to narcotics smuggling activities and the practice by persons dealing in drugs to invest illegal proceeds in the purchase of real property. Narcotics smugglers, on an ever-increasing scale, are investing their smuggling proceeds in the purchase of real property. These investments, often hidden in secret trusts and foreign corporations, serve to "legitimize" the smuggler's money, and, in addition, raise the price of real property making it more difficult for citizens to purchase homes and other types of real property.

Since investments in Florida real estate by drug dealers and other organized crime figures are made through secret trusts and other forms of devices that shelter or hide the name of the true owner, it is very difficult for the State of Florida and its various enforcement agencies to cause a forfeiture of the property under the RICO Act. Secret ownership not only thwarts discovery of the smuggler's property, but also compounds the problems of proving that the property was acquired with racketeering proceeds.

At present, upon the filing of a RICO forfeiture action, the narcotics smuggler or other organized crime figure immediately begins to liquidate his assets and remove them from the jurisdiction, or even from the country, thereby precluding forfeiture. This practice is aided by the criminal's use and exploitation of secret land ownership devices.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: J. Hintz
Staff Director: P. Liepshutz
Subject: Florida RICO Lien Act

Bill No. And Sponsor:
SB 906 by Senator Jenne

B. Effect of Proposed Changes:

The bill authorizes the Attorney General or State Attorney to file a notice of lien, incident to the filing of a RICO forfeiture action in the county or counties where the individual named in the forfeiture proceeding owns property. The lien would operate on property in the individual's name, and would also operate as a lien on that person's beneficial interest in a secret land trust. The notice of lien can also set forth any aliases or fictitious names which the individual uses, along with any corporations or partnerships owned or controlled by him.

With respect to property owned in the individual's name, the lien would continue in effect upon sale, thereby preserving the State's interest in forfeitable property. With respect to property owned in a secret land trust, the lien would not operate on record title; however, in the event the trustee sells the property, the trustee will be liable to the State for the proceeds of the sale. In addition, in instances where the trustee receives actual notice of the lien, the trustee will be required to disclose to the investigative agency the person or persons for whom he holds title. Failure to disclose would constitute a second degree misdemeanor.

The bill provides a mechanism for requesting the court to dissolve or extinguish the notice of lien, and directs that the court hold a prompt hearing and order dissolution under particular circumstances.

Another provision of the bill requires that foreign corporations designate a registered agent and file annual reports with the Secretary of State as a condition for the corporation to buy or sell real property in Florida. Foreign corporations are defined as corporations formed under the laws of another country.

II. ECONOMIC IMPACT AND FISCAL NOTE

A. Public: None.

B. Government: None.

III. COMMENTS:

Under present law, racketeers effectively defeat the RICO forfeiture provisions by owning real property in secret land trusts or other secret devices, and immediately liquidating these ownerships and removing the proceeds from the jurisdiction. As a result, notwithstanding the forfeiture law, the racketeer is able to retain his ill-gotten gains, and subsequently reinvest these proceeds or utilize the money for funding additional criminal enterprises.

In December, 1980, the Governor created the Governor's Advisory Committee on Secret Land Trusts to study the problem and recommend solutions. Members of the Committee included lawyers, real estate experts, and representatives of law enforcement. The Governor's Committee received testimony from experts in banking and trust practices, real estate experts, and attorneys active in the legitimate use of land trusts and offshore corporations. This bill, which is the work product of the Governor's Committee, is a compromise

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measure which preserves the legitimate use of land trusts and foreign corporations, and at the same time provided a mechanism which, it is hoped, will assist the enforcement authorities in addressing the problem of organized crime in Florida, and fully implementing the remedies which the Legislature created by enacting the Racketeer Influenced and Corrupt Organization Act, Section 943.46, et seq., Florida Statutes.

This bill is similiar to HB 1149 by the Committee on Criminal Justice and Representative Martinez. Placed on Calendar, House Journal 253.

IV. AMENDMENTS:

None.

COMMITTEE ON Judiciary-Criminal

DATE May 5, 1981

Date Reported 5/6/81

TIME 2:00 - 5:00 P.M.

FINAL ACTION:

PLACE Room "C" S.O.B.

 Favorably with amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

 X Favorably with Committee Substitute

 Unfavorably

OTHER: Temporarily Passed

 Reconsidered

 Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Beard										
X		Frank										
		Gordon										
X		Langley										
		Skinner										
		Poole										
X		Jenne										
4	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance ()

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>J. Hintz</u>	<u>P. Liepshutz</u>	1. <u>J.-Crim.</u>	<u>FAV/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Florida RICO Lien Act

BILL NO. AND SPONSOR:

CS for SB 906 by
Senator Jenne

I. SUMMARY

A. Present Situation:

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One of the principal areas of concern to the State of Florida, and in which the RICO Act was thought to be most helpful, was related to narcotics smuggling activities and the practice by persons dealing in drugs to invest illegal proceeds in the purchase of real property. Narcotics smugglers, on an ever-increasing scale, are investing their smuggling proceeds in the purchase of real property. These investments, often hidden in secret trusts and foreign corporations, serve to "legitimize" the smuggler's money, and, in addition, raise the price of real property making it more difficult for citizens to purchase homes and other types of real property.

Since investments in Florida real estate by drug dealers and other organized crime figures are made through secret trusts and other forms of devices that shelter or hide the name of the true owner, it is very difficult for the State of Florida and its various enforcement agencies to cause a forfeiture of the property under the RICO Act. Secret ownership not only thwarts discovery of the smuggler's property, but also compounds the problems of proving that the property was acquired with racketeering proceeds.

At present, upon the filing of a RICO forfeiture action, the narcotics smuggler or other organized crime figure immediately begins to liquidate his assets and remove them from the jurisdiction, or even from the country, thereby precluding forfeiture. This practice is aided by the criminal's use and exploitation of secret land ownership devices.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: J. Hintz
Staff Director: P. Liepshutz
Subject: Florida RICO Lien Act

Bill No. And Sponsor:
CS/SB 906 by Senator Jenne

B. Effect of Proposed Changes:

The bill authorizes the Attorney General or State Attorney to file a notice of lien, incident to the filing of a RICO forfeiture action in the county or counties where the individual named in the forfeiture proceeding owns property. The lien would operate on property in the individual's name, and would also operate as a lien on that person's beneficial interest in a secret land trust. The notice of lien can also set forth any aliases or fictitious names which the individual uses, along with any corporations or partnerships owned or controlled by him.

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The bill provides a mechanism for requesting the court to dissolve or extinguish the notice of lien, and directs that the court hold a prompt hearing and order dissolution under particular circumstances.

Another provision of the bill requires that alien corporations designate a registered agent and file annual reports with the Secretary of State as a condition for the corporation to buy or sell real property in Florida. Alien corporations are defined as corporations formed under the laws of another country.

II. ECONOMIC IMPACT AND FISCAL NOTE

A. Public: None.

B. Government:

The amount of \$25,000 is appropriated to the Department of State to cover the cost of administering section 943.468, Florida Statutes. The filing fees that the Department will collect pursuant to section 943.468 will, of course, be much greater than this appropriation.

III. COMMENTS:

Under present law, racketeers effectively defeat the RICO forfeiture provisions by owning real property in secret land trusts or other secret devices, and immediately liquidating these ownerships and removing the proceeds from the jurisdiction. As a result, notwithstanding the forfeiture law, the racketeer is able to retain his ill-gotten gains, and subsequently reinvest these proceeds or utilize the money for funding additional criminal enterprises.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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In December, 1980, the Governor created the Governor's Advisory Committee on Secret Land Trusts to study the problem and recommend solutions. Members of the Committee included lawyers, real estate experts, and representatives of law enforcement. The Governor's Committee received testimony from experts in banking and trust practices, real estate experts, and attorneys active in the legitimate use of land trusts and offshore corporations. This bill, which is the work product of the Governor's Committee, is a compromise measure which preserves the legitimate use of land trusts and foreign corporations, and at the same time provide a mechanism which, it is hoped, will assist the enforcement authorities in addressing the problem of organized crime in Florida, and fully implementing the remedies which the Legislature created by enacting the Racketeer Influenced and Corrupt Organization Act, Section 943.46, et seq., Florida Statutes.

This bill is similiar to HB 1149 by the Committee on Criminal Justice and Representative Martinez.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 906

1. Provides for a limitation on a trustees liability in those cases where he conveys property that is subject to forfeiture to the state and the trustee holds the proceeds of such conveyance in escrow.
2. Limits investigative agency to one revewal of the RICO lien notice.
3. Defines a corporation organized under the laws of a country other than the United States or a state of the United States as an alien corporation rather than a foreign corporation. This precludes confusion with those corporations organized under the laws of other states which are generally referred to as foreign corporations.
4. Provides an appropriation of \$25,000 to the Department of State for those costs incurred in administering section 943.468, Florida Statutes, which regulates alien corporations.

Committee on JUDICIARY-CRIMINAL


Chairman or Staff Directo