

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

SUBJECT:

Florida RICO Act

BILL NO. AND SPONSOR:

SB 564 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 895.01, 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 895.05(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.

Since its inception, more than \$2 million worth of real and personal property have been forfeited pursuant to the RICO Act.

In the current statute, the definition of real property is limited to real property located in Florida.

B. Effect of Proposed Changes:

This bill deletes the words "situated in this state" from the definition of "Real Property." The importance of this change is illustrated by a recent case where the Attorney General sought to enforce the RICO Act's forfeiture provisions on real property situated in Massachusetts that had been purchased with income realized from criminal activity in Florida. The judge in the Massachusetts court granted the defendant's motion to dismiss the case filed by the state of Florida on the ground that the Florida forfeiture remedy only applies to real property located in Florida. The order is quoted in part:

The question presented by this motion is whether the courts of this state can effectuate a forfeiture pursuant to foreign law of the real property located in Dukes County. Despite a strong inclination to broadly construe the forfeiture provision of the RICO Act to effectuate just such a result lest the commonwealth of Massachusetts become a "haven" state for the illicit profits of organized crime, I find, after full consideration of the purpose and clear language of the foreign law, that with

great judicial reluctance I must decline to enforce the Florida RICO Act provision.

\* \* \* \*

It is equally clear that the forfeiture remedy only applies to property located in that state.

State of Florida, Department of Legal Affairs, v. Stile, LTD.,  
Case No. 42649 of the Superior Court of Barnstable County,  
March 10, 1983.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

Indeterminable. The case discussed above involved real property valued at more than \$200,000.

III. COMMENTS:

The opportunity for the State of Florida to enforce its RICO Act in other states depends on the policy of the host state and principles of judicial comity. The Supreme Judicial Court of Massachusetts has described the "general principles" which are to be applied as follows:

They require that, in cases of other than penal actions, the foreign law, if not contrary to our public policy or to abstract justice or pure morals, or calculated to injure the state or its citizens, shall be recognized and enforced here, if we have jurisdiction of all necessary parties, and if we see that, consistently with our own forms of procedure or law of trials, we can do substantial justice between the parties.

Higgins v. Central New England & W. R. Co., 29 N.E. 334 (Mass. 1892).

The degree of success that Florida may achieve in other states would depend, of course, on the policy of each state. However, that question is not reached unless this bill becomes law.

SB 564 is identical to HB 808.

IV. AMENDMENTS:

#1 by Judiciary-Criminal:

Title amendment.

HB \_\_\_\_\_

The Committee on Judiciary-Criminal recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Title Amendment  
  
In title, on page 1, line 5, strike  
the word "act"

and insert:  
date

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

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\* Amendment No. 1, taken up by committee: Adopted X \*

\* Offered by Senator Langley Failed    \*

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(Amendment No.    Adopted    Failed    Date   /  /  )

# Bill Analysis



## FLORIDA HOUSE OF REPRESENTATIVES

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore  
Committee on Criminal Justice

Elvin L. Martinez  
Chairman

Harold W. Spaet  
Vice Chairman

HB 808 by Rep. Murphy and  
Silver relating to the  
Florida RICO Act

DATE: April 27, 1983

REVISED: \_\_\_\_\_

OTHER COMMITTEES OF REFERENCE:  
None

REVISED: \_\_\_\_\_

SENATE BILL: SB 564

### I. SUMMARY

#### A. PRESENT SITUATION:

The RICO Act; ss. 895.01-895.08, Florida Statutes, allows the state to invoke various civil and criminal remedies in the event of certain racketeering activities. Among the civil penalties permissible is "ordering any defendant to divest himself of any interest in any enterprise, including real property". Section 895.05(1)(a), Florida Statutes.

Section 895.02(9) currently defines "real property" for purposes of the RICO Act as "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."

#### B. EFFECT OF PROPOSED CHANGES:

The bill would expand the definition of "real property" in s. 895.02(9) by removing the current limitation to property situated in this state.

### II. FISCAL IMPACT

Positive fiscal impact. Pursuant to the provisions of this bill, the State of Florida could receive the title for property located within other states, which could then be converted into cash through forfeiture proceedings. Twenty percent of the proceeds from this sale would be deposited into the Legal Affairs Revolving Trust Fund, and 80% would be

deposited into General Revenue. The actual amount is unascertainable at this time.

III. COMMENTS

The present method by which Florida divests a defendant of property he owns in another state pursuant to the RICO Act is by obtaining a judgment against the defendant in Florida and later suing to enforce that judgment in the state where the real property is situated. On at least one occasion, courts in the state where the real property is situated have failed to honor the Florida judgment because of the language which this bill deletes.

IV. AMENDMENTS

Prepared by:

  
Scott Ballard

Staff Director:

  
Thomas R. Tedcastle

Copy to Sponsor: April 27, 1983