

Select Year:

## The 2007 Florida Statutes

---

### CHAPTER 895

#### OFFENSES CONCERNING RACKETEERING AND ILLEGAL DEBTS

895.01 Short title.

895.02 Definitions.

895.03 Prohibited activities and defense.

895.04 Criminal penalties and alternative fine.

895.05 Civil remedies.

895.06 Civil investigative subpoenas.

895.07 RICO lien notice.

895.08 Term of RICO lien notice.

895.09 Disposition of funds obtained through forfeiture proceedings.

**895.01 Short title.** --Sections 895.01-895.06 shall be known as the "Florida RICO (Racketeer Influenced and Corrupt Organization) Act."

**History.**--s. 1, ch. 77-334; s. 2, ch. 79-218.

**Note.**--Former s. 943.46.

**895.02 Definitions.** --As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
4. Section 414.39, relating to public assistance fraud.
5. Section 440.105 or s. 440.106, relating to workers' compensation.
6. Section 443.071(4), relating to creation of a fictitious employer scheme to commit unemployment compensation fraud.
7. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs.
9. Part IV of chapter 501, relating to telemarketing.
10. Chapter 517, relating to sale of securities and investor protection.
11. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
12. Chapter 550, relating to jai alai frontons.
13. Section 551.109, relating to slot machine gaming.
14. Chapter 552, relating to the manufacture, distribution, and use of explosives.
15. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
16. Chapter 562, relating to beverage law enforcement.
17. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
18. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
19. Chapter 687, relating to interest and usurious practices.
20. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
21. Chapter 782, relating to homicide.
22. Chapter 784, relating to assault and battery.
23. Chapter 787, relating to kidnapping or human trafficking.
24. Chapter 790, relating to weapons and firearms.

25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.
  26. Chapter 806, relating to arson.
  27. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
  28. Chapter 812, relating to theft, robbery, and related crimes.
  29. Chapter 815, relating to computer-related crimes.
  30. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
  31. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
  32. Section 827.071, relating to commercial sexual exploitation of children.
  33. Chapter 831, relating to forgery and counterfeiting.
  34. Chapter 832, relating to issuance of worthless checks and drafts.
  35. Section 836.05, relating to extortion.
  36. Chapter 837, relating to perjury.
  37. Chapter 838, relating to bribery and misuse of public office.
  38. Chapter 843, relating to obstruction of justice.
  39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
  40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
  41. Chapter 874, relating to criminal street gangs.
  42. Chapter 893, relating to drug abuse prevention and control.
  43. Chapter 896, relating to offenses related to financial transactions.
  44. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.
  45. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.
- (b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).
- (2) "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:

(a) In violation of any one of the following provisions of law:

1. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
2. Chapter 550, relating to jai alai frontons.
3. Section 551.109, relating to slot machine gaming.
4. Chapter 687, relating to interest and usury.
5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

(3) "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 street gang, as defined in s. 874.03, constitutes an enterprise.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have 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, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

(5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(6) "RICO lien notice" means the notice described in s. 895.05(12) or in s. 895.07.

(7) "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(8) "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(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 a 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 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 in 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(27) or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(11) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under s. 895.03 or any other provision of the Florida RICO Act.

(12) "Civil proceeding" means any civil proceeding commenced by an investigative agency under s. 895.05 or any other provision of the Florida RICO Act.

**History.**--s. 2, ch. 77-334; s. 3, ch. 79-218; s. 300, ch. 79-400; s. 1, ch. 81-141; s. 1, ch. 83-65; s. 25, ch. 83-264; s. 2, ch. 84-9; s. 5, ch. 86-277; s. 1, ch. 87-139; s. 5, ch. 89-143; s. 2, ch. 90-246; s. 3, ch. 90-301; s. 13, ch. 91-33; s. 72, ch. 91-282; s. 4, ch. 92-125; s. 4, ch. 92-281; s. 65, ch. 92-348; s. 2, ch. 93-227; s. 106, ch. 93-415; s. 78, ch. 94-209; s. 91, ch. 95-211; s. 9, ch. 95-340; s. 107, ch. 96-175; s. 7, ch. 96-252; s. 5, ch. 96-260; s. 4, ch. 96-280; s. 7, ch. 96-387; s. 43, ch. 96-388; s. 2, ch. 97-78; s. 2, ch. 99-335; s. 17, ch. 2000-360; s. 31, ch. 2003-155; s. 161, ch. 2004-5; s. 13, ch. 2004-344; s. 11, ch. 2004-387; s. 5, ch. 2004-391; s. 143, ch. 2005-2; s. 8, ch. 2005-209; s. 13, ch. 2005-228; s. 3, ch. 2005-362; s. 4, ch. 2006-168; s. 17, ch. 2007-74.

**Note.**--Former s. 943.461.

#### **895.03 Prohibited activities and defense.--**

(1) It is unlawful for any person who has with criminal intent received 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.

(2) It is unlawful for any person, 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.

(3) It is unlawful for any person 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.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

**History.**--s. 3, ch. 77-334.

**Note.**--Former s. 943.462.

#### **895.04 Criminal penalties and alternative fine.--**

(1) Any person convicted of engaging in activity in violation of the provisions of s. 895.03 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03, through which the person derived pecuniary value, or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(3) The court shall hold a hearing to determine the amount of the fine authorized by subsection (2).

(4) For the purposes of subsection (2), "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of \$100.

**History.**--s. 4, ch. 77-334; s. 1446, ch. 97-102.

**Note.**--Former s. 943.463.

#### **895.05 Civil remedies.--**

(1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of s. 895.03 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the

defendant was engaged in violation of the provisions of s. 895.03.

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of s. 895.03 and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(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. 895.01-895.05 is subject to civil forfeiture to the state.

(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 relate back:

1. In the case of real property or a beneficial interest, 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; if no RICO lien notice is filed, then to the date of the filing of any notice of lis pendens under s. 895.07(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 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, 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 the 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 distributed in accordance with the provisions of s. 895.09.

(3) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3), a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(a) Place the property under seal.

(b) Remove the property to a place designated by court.

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Department of Legal Affairs, any state attorney, or any state agency having jurisdiction over conduct in violation of a provision of this act may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) Any aggrieved person may institute a proceeding under subsection (1). In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7) The state, including any of its agencies, instrumentalities, subdivisions, or municipalities, if it proves by clear and convincing evidence that it has been injured by reason of any violation of the provisions of s. 895.03, shall have a cause of action for threefold the actual damages sustained and shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred. In no event shall punitive damages be awarded. The defendant shall be entitled to recover reasonable attorneys' fees and court costs upon a finding that the claimant raised a claim which was without substantial factual or legal support.

(a) Either party may demand a trial by jury in any civil action brought pursuant to this subsection.

(b) Any prevailing plaintiff under this subsection or s. 772.104 shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under this act or any other criminal proceeding under state law shall estop the defendant in any subsequent civil action or proceeding under this act or under s. 772.104 as to all matters as to which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if it certifies that, in its opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted the action or proceeding.

(10) Notwithstanding any other provision of law, a criminal or civil action or proceeding under this act may be commenced at any time within 5 years after the conduct in violation of a provision of this 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 provisions of this act, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or subsection (7) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(11) The application of one civil remedy under any provision of this act does not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, and not mutually exclusive.

(12)(a) In addition to the authority to file a RICO lien notice set forth in s. 895.07(1), the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney may apply ex parte to a criminal division of a circuit court and, upon petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property upon a showing of probable cause to believe that the property was 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. 895.01-895.05. If the lien notice authorization is granted, the department shall, after filing the lien notice, forthwith provide notice to the owner of the property by one of the following methods:

1. By serving the notice in the manner provided by law for the service of process.
2. By mailing the notice, postage prepaid, by registered or certified mail to the person to be served at his or her last known address and evidence of the delivery.
3. If neither of the foregoing can be accomplished, by posting the notice on the premises.

(b) The owner of the property may move the court to discharge the lien, and such motion shall be set for hearing at the earliest possible time.

(c) The court shall discharge the lien if it finds that there is no probable cause to believe that the property was 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. 895.01-895.05 or if it finds that the owner of the property neither knew nor reasonably should have known that the property was 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. 895.01-895.05.

(d) No testimony presented by the owner of the property at the hearing is admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury or false statement, nor shall such testimony constitute a waiver of the owner's constitutional right against self-incrimination.

(e) A lien notice secured under the provisions of this subsection is valid for a period of 90 days from the date the

court granted authorization, which period may be extended for an additional 90 days by the court for good cause shown, unless a civil proceeding is instituted under this section and a lien notice is filed under s. 895.07, in which event the term of the lien notice is governed by s. 895.08.

(f) The filing of a lien notice, whether or not subsequently discharged or otherwise lifted, shall constitute notice to the owner and knowledge by the owner that the property was 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. 895.01-895.05, such that lack of such notice and knowledge shall not be a defense in any subsequent civil or criminal proceeding under this chapter.

**History.**--s. 5, ch. 77-334; s. 301, ch. 79-400; s. 2, ch. 81-141; s. 1, ch. 84-38; s. 5, ch. 84-249; s. 6, ch. 86-277; s. 3, ch. 87-139; s. 5, ch. 90-269; s. 76, ch. 95-211; s. 1447, ch. 97-102.

**Note.**--Former s. 943.464.

#### **895.06 Civil investigative subpoenas.** --

(1) As used in this section, the term "investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(2) If, pursuant to the civil enforcement provisions of s. 895.05, an investigative agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of this act, the investigative agency may administer oaths or affirmations, subpoena witnesses or material, and collect evidence.

(3) The investigative agency may apply ex parte to the circuit court for the circuit in which a subpoenaed person or entity resides, is found, or transacts business for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the subpoenaed person's attorney for a period of 90 days, which time may be extended by the court for good cause shown by the investigative agency. The order shall be served with the subpoena, and the subpoena shall include a reference to the order and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any other person or entity in violation of the order may subject the subpoenaed person or entity to punishment for contempt of court. Such an order may be granted by the court only upon a showing:

(a) Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01-895.06;

(b) That the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and

(c) Of facts which reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or would result in a flight from prosecution.

(4) If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(5) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena issued under this section or a subpoena issued in the course of a civil proceeding instituted pursuant to s. 895.05, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court in which such civil proceeding is pending or, if no civil proceeding is pending, to the circuit court for the judicial circuit in which such person or enterprise resides, is found, or transacts business for an order compelling compliance. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or material after asserting a privilege against self-incrimination to which the individual is entitled by law shall not have the testimony or material so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(6) A person who fails to obey a court order entered pursuant to this section may be punished for contempt of court.

**History.**--s. 1, ch. 79-218; s. 2, ch. 84-38; s. 4, ch. 87-139; s. 20, ch. 88-381; s. 1448, ch. 97-102.

**Note.**--Former s. 943.465.

#### **895.07 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 a RICO lien notice in the official records of any one or more counties. 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 her or his designee or by a state attorney or her 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 name in the RICO lien notice any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person.

(b) If known to the investigative agency, the present residence and business addresses of the person named in the RICO lien notice and of the other names set forth in the RICO lien notice.

(c) A reference to the civil proceeding, stating: that a proceeding under the Florida RICO Act has been brought against the person named in the RICO lien notice; the name of the county or counties in which the proceeding has been brought; and, if known to the investigative agency at the time of filing the RICO lien notice, the case number of the proceeding.

(d) A statement that the notice is being filed pursuant to the Florida RICO Act.

(e) The name and address of the investigative agency filing the RICO lien notice and the name of the individual signing the RICO notice.

A RICO lien notice shall apply only to one person and, to the extent applicable, any other aliases, names, or fictitious names, including names of corporations, partnerships, or other entities, to the extent permitted in paragraph (a). A

separate RICO lien notice shall be filed for each person against whom the investigative agency desires to file a RICO lien notice under this section.

(3) The investigative agency shall, as soon as practicable after the filing of each RICO lien notice, furnish to the person named in the notice either a copy of the recorded notice or a copy of the notice with a notation thereon of the county or counties in which the notice has been recorded. The failure of the investigative agency to furnish a copy of the notice under this subsection shall not invalidate or otherwise affect the notice.

(4) The filing of a RICO lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

(a) Any real property situated in the county where the notice is filed then or thereafter owned by the person or under any of the names; and

(b) Any beneficial interest situated in the county where the notice is filed then or thereafter owned by the person or under any of the names.

The lien shall commence and attach as of the time of filing of the RICO lien notice and shall continue thereafter until expiration, termination, or release of the notice pursuant to s. 895.08. The lien created in favor of the state shall be superior and prior to the interest of any other person in the real property or beneficial interest if the interest is acquired subsequent to the filing of the notice.

(5) In conjunction with any civil proceeding:

(a) The investigative agency may file without prior court order in any county a lis pendens under the provisions of s. 48.23; in such case, any person acquiring an interest in the subject real property or beneficial interest, if the real property or beneficial interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture.

(b) If a RICO lien notice has been filed, the investigative agency may name as a defendant, in addition to the person named in the notice, any person acquiring an interest in the real property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

(6) A trustee who acquires actual knowledge that a RICO lien notice or a civil proceeding or criminal proceeding has been filed against any person for whom the trustee holds legal or record title to real property shall immediately furnish to the investigative agency the following:

(a) The name and address of the person, as known to the trustee.

(b) The name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real property.

(c) If requested by the investigative agency, a copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the real property.

Any trustee who fails to comply with the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any trustee who conveys title to real property for which, at the time of the conveyance, a RICO lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real property is situated is liable to the state for the greatest of:

(a) The amount of proceeds received directly by the person named in the RICO lien notice as a result of the conveyance;

(b) The amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the RICO lien notice; or

(c) The fair market value of the interest of the person named in the RICO lien notice in the real property so conveyed; however, if the trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or her or his designee, the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

(8) The filing of a RICO lien notice shall not constitute a lien on the record title to real property as owned by the trustee except to the extent that the trustee is named in the RICO lien notice. The investigative agency may bring a civil proceeding in any circuit court against the trustee to recover from the trustee the amount set forth in subsection (7), and the state shall also be entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

(9) The filing of a RICO lien notice shall not affect the use to which real property or a beneficial interest owned by the person named in the RICO lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership, but not the sale, of the property until a judgment of forfeiture is entered.

(10)(a) The provisions of this section shall not apply to any conveyance by a trustee pursuant to a court order, unless such court order is entered in an action between the trustee and the beneficiary.

(b) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a RICO lien notice or is otherwise a defendant in a civil proceeding, the provisions of this section shall not apply to:

1. Any conveyance by the trustee required under the terms of the trust agreement, which trust agreement is a matter of public record prior to the filing of the RICO lien notice; or

2. Any conveyance by the trustee to all of the persons who own beneficial interests in the trust.

(11) All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons.

**History.**--s. 3, ch. 81-141; s. 170, ch. 83-216; s. 224, ch. 91-224; s. 1449, ch. 97-102.

#### **895.08 Term of RICO lien notice.--**

(1) The term of a RICO lien notice shall be for a period of 6 years from the date of filing, unless a renewal RICO lien notice has been filed by the investigative agency; in such case, the term of the renewal RICO lien notice shall be for a period of 6 years from the date of its filing. The investigative agency shall be entitled to only one renewal of the RICO lien notice.

(2) The investigative agency filing a RICO lien notice may release in whole or in part the RICO lien notice or may release any specific real property or beneficial interest from the RICO lien notice upon such terms and conditions as it may determine. A release of a RICO lien notice executed by the investigative agency may be filed in the official records of any county. No charge or fee shall be imposed for the filing of a release of a RICO lien notice.

(3) If no civil proceeding has been instituted by the investigative agency seeking a forfeiture of any property owned by the person named in the RICO lien notice, the acquittal in the criminal proceeding of the person named in the RICO lien notice or the dismissal of the criminal proceeding shall terminate the RICO lien notice and, in such case, the filing of the RICO lien notice shall have no effect. In the event the criminal proceeding has been dismissed or the person named in the RICO lien notice has been acquitted in the criminal proceeding, the RICO lien notice shall continue for the duration of the civil proceeding.

(4) If no civil proceeding is then pending against the person named in a RICO lien notice, the person named in the RICO lien notice may institute an action in the county where the notice has been filed against the investigative agency that filed the notice seeking a release or extinguishment of the notice. In such case:

(a) The court shall, upon the motion of such person, immediately enter an order setting a date for hearing, which date shall be not less than 5 or more than 10 days after the suit has been filed, and the order along with a copy of the complaint shall be served on the investigative agency within 3 days after the institution of the suit. At the hearing, the court shall take evidence on the issue of whether any real property or beneficial interest owned by such person is covered by the RICO lien notice or is otherwise subject to forfeiture under the Florida RICO Act; if such person shows by a preponderance of the evidence that the RICO lien notice is not applicable to him or her or that any real property or beneficial interest owned by the person is not subject to forfeiture under the Florida RICO Act, the court shall enter a judgment extinguishing the RICO lien notice or releasing the real property or beneficial interest from the RICO lien notice.

(b) The court shall immediately enter its order releasing from the RICO lien notice any specific real property or beneficial interest if a sale of such real property or beneficial interest is pending and the filing of the notice prevents the sale of the property or interest; however, the proceeds resulting from the sale of such real property or beneficial interest shall be deposited into the registry of the court, subject to the further order of the court.

(c) At the hearing set forth in paragraph (a), the court may release any real property or beneficial interest from the RICO lien notice, upon the posting by such person of such security as is equal to the value of the real property or beneficial interest owned by such person.

(5) In the event a civil proceeding is pending against a person named in a RICO lien notice, the court upon motion by such person may grant the relief set forth herein.

**History.--**s. 4, ch. 81-141; s. 1450, ch. 97-102.

#### **895.09 Disposition of funds obtained through forfeiture proceedings.--**

(1) A court entering a judgment of forfeiture in a proceeding brought pursuant to s. 895.05 shall retain jurisdiction to direct the distribution of any cash or of any cash proceeds realized from the forfeiture and disposition of the property. The court shall direct the distribution of the funds in the following order of priority:

(a) Any statutory fees to which the clerk of the court may be entitled.

(b) Any claims against the property by persons who have previously been judicially determined to be innocent persons, pursuant to the provisions of s. 895.05(2)(c), and whose interests are preserved from forfeiture by the court and not otherwise satisfied. Such claims may include any claim by a person appointed by the court as receiver pending litigation.

(c) Any claim by the Board of Trustees of the Internal Improvement Trust Fund on behalf of the Internal Improvement Trust Fund or the Land Acquisition Trust Fund pursuant to s. 253.03(12), not including administrative costs of the Department of Environmental Protection previously paid directly from the Internal Improvement Trust Fund in accordance with legislative appropriation.

(2)(a) Following satisfaction of all valid claims under subsection (1), 25 percent of the remainder of the funds obtained in the forfeiture proceedings pursuant to s. 895.05 shall be deposited as provided in paragraph (b) into the appropriate trust fund of the Department of Legal Affairs or state attorney's office which filed the civil forfeiture action; 25 percent shall be deposited as provided in paragraph (c) into the applicable law enforcement trust fund of the investigating law enforcement agency conducting the investigation which resulted in or significantly contributed to the forfeiture of the property; 25 percent shall be deposited as provided in paragraph (d) in the Substance Abuse Trust Fund of the Department of Children and Family Services; and the remaining 25 percent shall be deposited in the Internal Improvement Trust Fund of the Department of Environmental Protection. When a forfeiture action is filed by the Department of Legal Affairs or a state attorney, the court entering the judgment of forfeiture shall, taking into account the overall effort and contribution to the investigation and forfeiture action by the agencies that filed the action, make a pro rata apportionment among such agencies of the funds available for distribution to the agencies filing the action as provided in this section. If multiple investigating law enforcement agencies have contributed to the forfeiture of the property, the court which entered the judgment of forfeiture shall, taking into account the overall effort and contribution of the agencies to the investigation and forfeiture action, make a pro rata apportionment among such investigating law enforcement agencies of the funds available for distribution to the investigating agencies as provided in this section.

(b) If a forfeiture action is filed by the Attorney General, any funds obtained by the Department of Legal Affairs by reason of paragraph (a) shall be deposited in the Legal Affairs Revolving Trust Fund as established by s. 16.53 and may be expended for the purposes and in the manner authorized in that section. If a forfeiture action is filed by a state attorney, any funds obtained by the state attorney's office by reason of paragraph (a) shall be deposited in the State Attorney RICO Trust Fund as established by s. 27.345 and may be expended for the purposes and in the manner authorized in that section. In addition, any funds that are distributed pursuant to this section to an agency filing a forfeiture action may be used to pay the costs of investigations of violations of this chapter and the criminal prosecutions and civil actions related thereto. Such costs may include all taxable costs; costs of protecting, maintaining, and forfeiting the property; employees' base salaries and compensation for overtime; and such other costs as are directly attributable to the investigation, prosecution, or civil action.

(c) Any funds distributed to an investigating law enforcement agency under paragraph (a) shall be deposited in the applicable law enforcement trust fund established for that agency pursuant to s. 932.7055 and expended for the purposes and in the manner authorized in that section. In addition, any funds distributed to an investigating law enforcement agency pursuant to this section may be used to pay the costs of investigations of violations of this chapter and the criminal prosecutions and civil actions related thereto, pursuant to s. 932.7055. Such costs may include all taxable costs; costs of protecting, maintaining, and forfeiting the property; employees' base salaries and compensation for overtime; and such other costs directly attributable to the investigation, prosecution, or civil action.

(d) The Department of Children and Family Services shall, in accordance with chapter 397, distribute funds obtained by it pursuant to paragraph (a) to public and private nonprofit organizations licensed by the department to provide substance abuse treatment and rehabilitation centers or substance abuse prevention and youth orientation programs in the service district in which the final order of forfeiture is entered by the court.

(e) On a quarterly basis, any excess funds from forfeited property receipts, including interest, over \$1 million deposited in the Internal Improvement Trust Fund of the Department of Environmental Protection in accordance with paragraph (a) shall be deposited in the Substance Abuse Trust Fund of the Department of Children and Family Services.

(3) Nothing in this section shall be construed to limit the authority of an entity that files a forfeiture action to compromise a claim for forfeiture; however, any proceeds arising from a compromise or from the sale of property obtained in a compromise shall be distributed in the manner provided in subsections (1) and (2).

(4) Pending the final distribution of the cash or cash proceeds pursuant to this section, the court may authorize the cash or cash proceeds to be deposited in the court registry or in a qualified public depository.

(5) For purposes of this section, the term "cash or cash proceeds" includes, but is not limited to, damages or penalties or any other monetary payment, the monetary proceeds from property forfeited to the state pursuant to s. 895.05, or any payment made by any defendant by reason of any decree or settlement in any action filed pursuant to s. 895.05.

**History.**--s. 1, ch. 84-249; s. 2, ch. 85-306; s. 7, ch. 86-277; s. 21, ch. 88-381; ss. 1, 6, ch. 89-102; ss. 8, 9, ch. 92-54; s. 41, ch. 93-39; s. 16, ch. 94-316; s. 478, ch. 94-356; s. 2, ch. 98-389; s. 306, ch. 99-8; s. 37, ch. 2004-234; s. 112, ch. 2006-1.