

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 776

INTRODUCER: Senator Gainer

SUBJECT: Racketeering

DATE: February 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>EN</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 776 amends the definition of “racketeering activity” in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include certain crimes relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes under the provisions of ch. 379, F.S., and Title 68, F.A.C., which are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The FWC estimates the bill will have an indeterminate impact on the commission. The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Under Article IV, s. 9, of the State Constitution, the FWC exercises the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ The FWC implements ch. 379, F.S., and rules adopted in Title 68,² F.A.C.³

¹ Art. IV, s. 9, Fla. Const.

² Title 68 is also referred to as “chapter 68.”

³ “The rules of the 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).

License fees for taking wild animal life, freshwater aquatic life, and marine life and penalties for violating FWC regulations are prescribed by general law.⁴ Further, the FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing are provided by law.⁵ The Legislature may also enact laws in aid of the FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting or fishing.⁶

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits.⁷ Level One violations are considered the least serious while Level Four violations are considered the most serious.⁸

Level Two Violations

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.⁹

⁴ Art. IV, s. 9, Fla. Const.

⁵ *Id.*

⁶ *Id.*

⁷ Information in this analysis relating to level violations and penalties was reproduced from *Bill Analysis and Fiscal Impact Statement* (CS/CS/SB 688) (Feb. 20, 2020), Florida Senate, available at <https://www.flsenate.gov/Session/Bill/2020/688/Analyses/2020s00688.rc.PDF> (last visited Feb. 8, 2021).

⁸ Section 379.401, F.S.

⁹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

Level Two Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	2 nd Degree Misdemeanor ¹⁰	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ¹¹	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹²	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹³	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

Level Three Violations

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.¹⁴

The penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	1 st Degree Misdemeanor ¹⁵	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 st Degree Misdemeanor ¹⁶	Min: \$750; Max: \$1,000 Max: one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1,000 ¹⁷ Max: one year	May not acquire license or permit for five years

¹⁰ Section 379.401(2)(b)1., F.S.

¹¹ Section 379.401(2)(b)2., F.S.

¹² Section 379.401(2)(b)3., F.S.

¹³ Section 379.401(2)(b)4., F.S.

¹⁴ Section 379.401(3), F.S.

¹⁵ Section 379.401(3)(b)1., F.S.

¹⁶ Section 379.401(3)(b)2., F.S.

¹⁷ Section 379.401(3)(b)3., F.S.

Level Four Violations

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.¹⁸

The penalties for Level Four Violations are as follows:

Level Four Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense ¹⁹	3 rd Degree Felony	Max: \$5,000 Max: Five Years	None

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.²⁰ “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²¹

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

- Who with criminal intent has 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.
- 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.

¹⁸ Section 379.401(4)(a), F.S.

¹⁹ Section 379.401(4)(b), F.S.

²⁰ Section 895.01, F.S.

²¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1).

Section 895.04, F.S., punishes as a first degree felony:²²

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²³ 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;²⁴
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.²⁵

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.²⁶

Trafficking in Wildlife Species

The FWC describes the problem of trafficking in wildlife species:

There is a significant black-market trade in Florida's wildlife, freshwater aquatic life, and marine life. This includes live wildlife and aquatic species, including captive wildlife, as well as eggs, products, and parts thereof. Trafficking in wild species is the fourth most profitable transnational crime behind the drug trade, arms trade, and human trafficking. Criminal organizations are often involved in more than one illegal trade.

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

²² A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²³ Section 895.02(2), F.S., defines an "unlawful debt" as 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.

²⁴ Section 895.02(3), F.S., defines "enterprise" as 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.

²⁵ Section 895.03(4), F.S.

²⁶ Section 895.05(2), F.S.

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). Wildlife, freshwater aquatic life, and marine life are trafficked for many reasons; the species or parts thereof that are being trafficked are usually determined by the consumer demand at the time. For these reasons, it is important that anti-racketeering efforts are not limited to one category of animal life or type of species.

Species listed under the ESA and CITES, and Florida's listed endangered and threatened species, are of particular concern as illegal collection and trafficking are significant factors in the further decline of these species. However, less regulated species are often some of the most exploited and are harvested in large numbers. Illegal wildlife markets sometimes follow a "boom and bust" cycle. Wildlife, freshwater aquatic life, and marine life will be exploited until the species is over harvested and declines to the extent the species are difficult to acquire or special protections are placed on the species. Once one species has followed this "boom and bust" cycle, markets will shift to a new species and so on.

In addition, trafficking involves offenses beyond illegal take or sale of species. Efforts to launder trafficked wildlife and aquatic life may involve the falsification of records, licenses, and documents and concealment of sources of acquisition as related crimes that further the criminal enterprise.²⁷

Prosecution of Trafficking in Wildlife Species

In October of 2020, the FWC announced that a group of suspects were charged with racketeering, money laundering, scheming to defraud "and other organized criminal laws involving an elaborate organized enterprise to smuggle Florida's wildlife to interstate and international buyers."²⁸ The smuggling involved illegally trapping flying squirrels but FWC investigators also learned that the "Florida suspects were dealing in multiple species of poached animals. Protected freshwater turtles and alligators were illegally taken and laundered through other seemingly legitimate licensed businesses. Documents were falsified concealing the true source of the wildlife."²⁹

The FWC notes some of the problems arising from current prosecution of wildlife trafficking:

Individuals associated with wildlife trafficking are difficult to deter exploiting fish and wildlife without the appropriate charges. While there are a variety of laws that protect wildlife and even a few that protect against the illegal sale of wildlife in Florida, the current laws protecting against the illegal tak[ing], possession, purchase and sale of wildlife and aquatic life are primarily misdemeanors and typically only result in small

²⁷ 2021 Agency Legislative Bill Analysis (SB 776), Feb. 8, 2021, Florida Fish and Wildlife Conservation Commission (on file with the Senate Committee on Criminal Justice). This analysis is referred to as "FWC analysis" in subsequent references.

²⁸ FWC uncovers a transnational wildlife trafficking operation in Florida (Oct. 19, 2020), Florida Fish and Wildlife Conservation Commission, available at <https://myfwc.com/news/all-news/trafficking-case-1020/> (last visited Feb. 9, 2021).

²⁹ *Id.*

finances and probation when traffickers are convicted. These laws do little to affect the criminal organizations engaged in trafficking.

To combat organized crime, Florida's RICO (Racketeer Influence and Corrupt Organization) Act makes it unlawful for a person to engage in a pattern of criminal activity to acquire, establish, operate, maintain, or control, or be associated with or employed by an enterprise, or conspire to do so. Currently, there are no predicate offenses under Florida's RICO Act specifically related to the illegal trafficking of wildlife and aquatic life.³⁰

The Office of Statewide Prosecution has assisted the FWC in prosecution of theft of alligators and alligator eggs by prosecuting these acts under RICO.³¹ The RICO prosecution relies on theft, a predicate RICO offense.³² However, the office notes that defense counsel has challenged the prosecution, "arguing there could be no theft of wildlife from the State as the State did not own the wildlife. The case is currently being challenged on appeal."³³

The FWC has provided the following reasons for adding violations of ch. 379, F.S., and Title 68, F.A.C., as predicate Florida RICO offenses:

The bill "does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO. The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida's legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus."³⁴

III. Effect of Proposed Changes:

The bill amends the definition of "racketeering activity" in s. 895.02(8), F.S., of the Florida RICO Act to include certain crimes relating to the illegal taking, killing wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes under the provisions of ch. 379, F.S., and Title 68, F.A.C., which are implemented by the

³⁰ 2021 Agency Legislative Bill Analysis (SB 776), Feb. 8, 2021, Florida Fish and Wildlife Conservation Commission (on file with the Senate Committee on Criminal Justice).

³¹ *RE: FWC Proposed Legislation* (undated memo), Kelly A McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General (on file with the Senate Committee on Criminal Justice).
Section 895.02(8)(a)32., F.S.

³² Section 895.02(8)(a)32., F.S.

³³ See footnote 31.

³⁴ FWC analysis, *supra*.

FWC.³⁵ The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

³⁵ The FWC notes that “[i]t is critical that the amendment’s language address the enumerated crimes under both Chapter 379, F.S., and Title 68, F.A.C. There are many crimes related to wildlife trafficking that are offenses under the Commission’s regulations, but that do not have a companion statutory offense under Chapter 379, F.S. Violations of these offenses have a prescribed penalty in statute, but the offense itself is articulated and charged under the regulations of Title 68, F.A.C. In addition, criminal organizations often utilize related crimes (i.e., mislabeling, falsifying documents or records, hiding sources of acquisitions, etc.) to conceal and further illegal activity. For this reason, prosecutors need the ability to pursue racketeering charges for related crimes under the laws and rules of the Commission.” *Id.*

C. Government Sector Impact:

The FWC estimates the bill will have an indeterminate impact on the commission.³⁶

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.³⁷

The EDR provides the following additional information relevant to its estimate:

Per [Florida Department of Law Enforcement or] FDLE, there were 436 misdemeanor arrests in CY 2019, with 114 guilty/convicted and 61 adjudications withheld under Chapter 379, and there were 337 arrests in CY 2020, with 48 guilty/convicted and 40 adjudications withheld. For felony violations, in CY 2019, there were 37 arrests, with 28 guilty/convicted and 14 adjudications withheld. In CY 2020, there were 80 arrests, with 4 guilty/convicted and 8 adjudications withheld. Per [Department of Corrections or] DOC, there was one new commitment to prison in FY 18-19 and one new commitment to prison in FY 19-20 for felony violations associated with Chapter 379.

Per DOC, in FY 18-19, there were 82 new commitments to prison under s. 895.03, F.S. In FY 19-20, there were 58 new commitments. Given that under current statute there are a large number of offenses where these felonies could apply, including offenses that have a high volume of commitments each year, the additions of Chapter 379 and violations of Title 68 are not expected to have a significant impact on prison beds.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.02 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

³⁶ *Id.*

³⁷ The EDR estimate is on file with the Senate Committee on Criminal Justice.

³⁸ *Id.*

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
