

1 HB442
2 175889-1
3 By Representative Hill (J)
4 RFD: Judiciary
5 First Read: 17-MAR-16

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8 SYNOPSIS: This bill would create the Alabama RICO
9 (Racketeer Influenced and Corrupt Organizations)
10 Act to provide criminal penalties and other
11 sanctions for those who engage in racketeering
12 activity or patterns of racketeering activity.

13 This bill would prohibit a person, through a
14 pattern of racketeering activity or proceeds
15 derived therefrom, from acquiring or maintaining,
16 directly or indirectly, any interest in or control
17 of any enterprise, real property, or personal
18 property of any nature, including money, and would
19 prohibit a person employed by or associated with
20 any enterprise to conduct or participate in,
21 directly or indirectly, an enterprise through a
22 pattern of racketeering activity.

23 This bill would allow courts to enjoin
24 certain violations of the act to protect the rights
25 of innocent persons and would provide that all
26 property of every kind used or derived from a

1 pattern of racketeering activity is subject to
2 forfeiture.

3 This bill would also provide for the
4 enforcement of RICO judgments in other states.

5 Amendment 621 of the Constitution of Alabama
6 of 1901, now appearing as Section 111.05 of the
7 Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, prohibits a general
9 law whose purpose or effect would be to require a
10 new or increased expenditure of local funds from
11 becoming effective with regard to a local
12 governmental entity without enactment by a 2/3 vote
13 unless: it comes within one of a number of
14 specified exceptions; it is approved by the
15 affected entity; or the Legislature appropriates
16 funds, or provides a local source of revenue, to
17 the entity for the purpose.

18 The purpose or effect of this bill would be
19 to require a new or increased expenditure of local
20 funds within the meaning of the amendment. However,
21 the bill does not require approval of a local
22 governmental entity or enactment by a 2/3 vote to
23 become effective because it comes within one of the
24 specified exceptions contained in the amendment.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to racketeering; to provide criminal
4 penalties and other sanctions for those who engage in
5 racketeering activity or patterns of racketeering activity; to
6 provide for criminal and civil penalties; to authorize courts
7 to enjoin certain racketeering activities; to provide for the
8 forfeiture of property used or derived from a pattern of
9 racketeering activity; to provide for the enforcement of RICO
10 judgments in other states; to provide for the venue of
11 criminal proceedings; to provide that the act does not create
12 a private cause of action; and to create the Criminal
13 Organized Activity/RICO Fund; and in connection therewith
14 would have as its purpose or effect the requirement of a new
15 or increased expenditure of local funds within the meaning of
16 Amendment 621 of the Constitution of Alabama of 1901, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. This act shall be known and may be cited
21 as the Alabama RICO (Racketeer Influenced and Corrupt
22 Organizations) Act.

23 Section 2. The Legislature finds and declares the
24 following:

25 (1) A severe problem is posed in this state by the
26 increasing sophistication of various criminal elements and the

1 increasing extent to which the state and its citizens are
2 harmed as a result of the activities of these elements.

3 (2) The intent of this act is to impose sanctions
4 against those who violate this act. It is not the intent of
5 the Legislature that isolated incidents of misdemeanor conduct
6 or acts of civil disobedience be prosecuted under this act. It
7 is the intent of the Legislature, however, that this act apply
8 to an interrelated pattern of criminal activity motivated by
9 or the effect of which is pecuniary gain or economic or
10 physical threat or injury. This act shall be liberally
11 construed to effectuate the purposes embodied in its operative
12 provisions.

13 Section 3. For the purposes of this act, the
14 following terms shall have the following meanings:

15 (1) CIVIL PROCEEDING. Any civil action commenced by
16 an investigative agency under any provision of this act.

17 (2) CRIMINAL PROCEEDING. Any criminal prosecution
18 commenced by an investigative agency under any provision of
19 this act.

20 (3) DOCUMENTARY MATERIAL. Any book, paper, document,
21 writing, drawing, graph, chart, photograph, phonorecord,
22 magnetic tape, computer printout, or other data compilation
23 from which information can be obtained or from which
24 information can be translated into usable form or other
25 tangible item.

26 (4) ENTERPRISE. Any person, sole proprietorship,
27 partnership, corporation, business trust, union chartered

1 under the laws of this state, or other legal entity; or any
2 unchartered union, association, or group of individuals
3 associated in fact although not a legal entity. The term
4 includes illicit as well as licit enterprises and governmental
5 as well as other entities.

6 (5) INVESTIGATIVE AGENCY. The Attorney General or
7 the office of any district attorney.

8 (6) PATTERN OF RACKETEERING ACTIVITY. Any three or
9 more persons engaging in either of the following:

10 a. At least two acts of racketeering activity in
11 furtherance of one or more incidents, schemes, or transactions
12 that have the same or similar intents, results, accomplices,
13 victims, or methods of commission or otherwise are
14 interrelated by distinguishing characteristics and are not
15 isolated incidents, provided at least one of such acts
16 occurred after July 1, 2016, and that the last of the acts
17 occurred within four years, excluding any periods of
18 imprisonment, after the commission of a prior act of
19 racketeering activity.

20 b. Any one or more acts of domestic terrorism as
21 described in Sections 13A-10-151 through 13A-10-154, Code of
22 Alabama 1975.

23 (7) RACKETEERING. Any act or threat involving
24 murder, kidnapping, gambling, arson, robbery, theft, receipt
25 of stolen property, bribery, extortion, obstruction of
26 justice, dealing in narcotic or dangerous drugs, or dealing in
27 securities which is chargeable under the laws of the United

1 States or any of the several states and which is punishable by
2 imprisonment for more than one year or the commission, attempt
3 to commit, solicitation, coercion, or intimidation of another
4 person to commit the following crimes which are chargeable by
5 indictment under the following laws of this state:

6 a. Offenses chargeable as a felony under Alabama
7 law.

8 b. Any one or more acts of domestic terrorism as
9 described in Sections 13A-10-151 through 13A-10-154, Code of
10 Alabama 1975.

11 c. Offenses set forth in Articles 1, 1A, 2, 2A, 3B,
12 4, 5A, and 6 through 10, Chapter 8, Title 13A, Code of Alabama
13 1975.

14 d. Promotion of prostitution.

15 e. Offenses defined in Alabama law relating to the
16 security of state or county or juvenile correctional
17 facilities.

18 f. Any criminal offense committed in violation of
19 the laws of the United States or its territories, dominions,
20 or possessions, any of the several states, or any foreign
21 nation which, if committed in this state, would be considered
22 criminal racketeering activity under Section 4.

23 (8) PERSON. Any natural person or any business
24 entity.

25 (9) REAL PROPERTY. Any real property situated in
26 this state or any interest in the real property, including,

1 but not limited to, any lease of or mortgage upon the real
2 property.

3 Section 4. (a) It is unlawful for any person,
4 through a pattern of racketeering activity or proceeds derived
5 therefrom, to acquire or maintain, directly or indirectly, any
6 interest in or control of any enterprise, real property, or
7 personal property of any nature, including money.

8 (b) It is unlawful for any person employed by or
9 associated with any enterprise to conduct or participate in,
10 directly or indirectly, such enterprise through a pattern of
11 racketeering activity.

12 (c) It is unlawful for any person to conspire or
13 attempt to violate any of the provisions of subsection (a) or
14 (b).

15 Section 5. (a) Any person convicted of the offense
16 of engaging in activity in violation of Section 4 is guilty of
17 a Class A felony.

18 (b) In lieu of any fine otherwise authorized by law,
19 any person convicted of the offense of engaging in conduct in
20 violation of Section 4 shall be sentenced to pay a fine that
21 does not exceed the greater of sixty thousand dollars
22 (\$60,000) or three times the amount of any pecuniary value
23 gained by him or her from the violation, with the funds being
24 paid into the Criminal Organized Activity/RICO Fund. If an
25 adverse ruling is made in a forfeiture case against a person
26 convicted of violating Section 4, the fine shall be offset by

1 the amount of the forfeiture awarded to the investigative
2 agency or other governmental entity in the forfeiture action.

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

5 (d) For the purposes of subsection (b), "pecuniary
6 value" means either of the following:

7 (1) Anything of value in the form of money, a
8 negotiable instrument, a commercial interest, or anything
9 else, derived from the racketeering activity.

10 (2) Any other property or service that has a value
11 in excess of one hundred dollars (\$100) derived from the
12 racketeering activity.

13 Section 6. (a) Upon a proceeding brought by an
14 investigative agency, any circuit court, after making due
15 provisions for the rights of innocent persons, may enjoin
16 violations of Section 4 by issuing appropriate orders and
17 judgments including, but not limited to, the following:

18 (1) Ordering any defendant to divest himself of any
19 interest in any enterprise, real property, or personal
20 property.

21 (2) Imposing reasonable restrictions upon the future
22 activities or investments of any defendant including, but not
23 limited to, prohibiting any defendant from engaging in the
24 same type of endeavor as the enterprise in which he or she was
25 engaged in violation of Section 4.

26 (3) Ordering the dissolution or reorganization of
27 any enterprise.

1 (4) Ordering the suspension or revocation of any
2 license, permit, or prior approval granted to any enterprise
3 by any agency of the state.

4 (5) Ordering the forfeiture of the charter of a
5 corporation organized under the laws of this state or the
6 revocation of a certificate authorizing a foreign corporation
7 to conduct business within this state upon a finding of all of
8 the following:

9 a. That the corporation was organized primarily to
10 engage in activity in violation of Section 4 rather than legal
11 activity.

12 b. That the board of directors or a managerial agent
13 acting on behalf of the corporation, in conducting affairs of
14 the corporation, has authorized or engaged in conduct in
15 violation of Section 4.

16 c. That, for the prevention of future criminal
17 activity, the public interest requires that the charter of the
18 corporation be forfeited and that the corporation be dissolved
19 or the certificate be revoked.

20 (b) The investigative agency may institute a civil
21 proceeding under subsection (a) against the person charged
22 with a violation of Section 4. In the proceeding, relief shall
23 be granted in conformity with the principles that govern the
24 granting of injunctive relief from threatened loss or damage
25 in other civil cases, provided that no showing of special or
26 irreparable damage shall have to be made. Upon the execution
27 of proper bond against damages for an injunction improvidently

1 granted and a showing of immediate danger of significant loss
2 or damage, a temporary restraining order and a preliminary
3 injunction may be issued in any such action before a final
4 determination on the merits.

5 (c) Any injured person shall have a right or claim
6 to property forfeited under Section 7 or to the proceeds
7 derived therefrom superior to any right or claim asserted by
8 the investigative agency or other governmental entity, other
9 than for costs, that the defendant has in the same property or
10 proceeds. To enforce such a claim, the injured person must
11 have been a victim in the criminal proceeding, or have the
12 legal authority to assert the rights of the victim, but such
13 designation does not require being listed as a victim in an
14 indictment.

15 (d) A conviction in any criminal proceeding under
16 this act shall estop the defendant in any subsequent civil
17 action or proceeding as to all matters proved in the criminal
18 proceeding.

19 Section 7. (a) All property of a defendant in a
20 criminal prosecution under Section 4 of every kind used or
21 intended for use in the course of, derived from, or realized
22 through a pattern of racketeering activity proved by the
23 investigative agency is subject to what shall be known as a
24 RICO forfeiture to the state.

25 (b) Any property, whether real or personal, and any
26 funds or monetary instruments for which the defendant
27 transferred ownership interest in to another person, may be

1 forfeited if the investigative agency proves both of the
2 following and the circuit court makes due provisions for the
3 rights of innocent persons:

4 (1) The transfer occurred within the previous three
5 years from the date of arrest for a violation of Section 4 or
6 the institution of forfeiture proceedings pursuant to this
7 act, whichever occurs first.

8 (2) The defendant retained substantial access to,
9 use of, or control over such property, funds, or instruments.

10 (c) A RICO forfeiture proceeding shall be governed
11 by Article 4, Chapter 5, Title 15, Code of Alabama 1975,
12 except to the extent that special rules of procedure are
13 stated in this act.

14 (d) The interest of an owner or lienholder, that is
15 not a defendant in a criminal prosecution under Section 4, in
16 any property otherwise subject to forfeiture, shall not be
17 forfeited unless the investigative agency proves by clear and
18 convincing evidence that the owner or lienholder had both
19 actual knowledge of and knowingly consented to the
20 racketeering activity subject to the criminal prosecution.

21 (e) Prior to commencing forfeiture proceedings or as
22 soon as reasonably practical thereafter, the investigative
23 agency shall use reasonable efforts to determine the ownership
24 of the property subject to forfeiture and the existence of any
25 mortgage, security interest, or other lien affecting the
26 property or part thereof. Notice of the forfeiture proceeding
27 shall be served upon each affected owner and lienholder.

1 (f) Upon motion of any party, a proceeding initiated
2 under this act shall be stayed pending the disposition of the
3 underlying criminal action.

4 Section 8. Notwithstanding any other provision of
5 law, a criminal or civil action or proceeding brought by an
6 investigative agency under this act may be commenced up until
7 five years after the conduct in violation of a provision of
8 this act terminates or the cause of action accrues.

9 Additionally, the running of this period of limitations, with
10 respect to any action brought by the investigative agency
11 under subsection (b) or (c) of Section 6, shall be suspended
12 during the pendency of the prosecution by the investigative
13 agency and for one year thereafter. The limitation of actions
14 set forth in this section does not apply to any criminal or
15 civil action other than as specifically described in this
16 section.

17 Section 9. This act does not create or establish a
18 private cause of action. This act does not affect any
19 statutory or common law right that otherwise exists. Civil
20 remedies that may be brought by an investigative agency under
21 this act are supplemental and not mutually exclusive.

22 Section 10. (a) Notwithstanding any other provision
23 of law, a valid judgment rendered by a court of a jurisdiction
24 having a law substantially similar to this act will be
25 recognized and enforced by the courts of this state to the
26 extent that a judgment rendered by a court of this state

1 pursuant to this act would be enforced in the other
2 jurisdiction.

3 (b) The Attorney General is authorized to enter into
4 reciprocal agreements with the attorney general or chief
5 prosecuting attorney of any jurisdiction having a law
6 substantially similar to this act so as to further the
7 purposes of this act.

8 Section 11. In any criminal proceeding brought
9 pursuant to this act, the crime shall be considered to have
10 been committed in any county in which an incident of
11 racketeering occurred or in which an interest or control of an
12 enterprise or real or personal property is acquired or
13 maintained.

14 Section 12. (a) There shall be established as part
15 of the Office of Prosecution Services, the Criminal Organized
16 Activity/RICO Fund. The fund shall be allowed to accept
17 contributions from public officials, law enforcement agencies,
18 advocacy groups, individuals, governmental entities as well as
19 private and charitable entities. Further, the fund may apply
20 for any applicable grants.

21 (b) If funds are available, the Attorney General,
22 district attorneys, Secretary of the Alabama State Law
23 Enforcement Agency (ALEA), chiefs of police, or sheriffs, may
24 request funds to assist with RICO investigations, training on
25 RICO matters, expenses associated with the prosecution of RICO
26 cases, and the posting of up to a five thousand dollar
27 (\$5,000) reward for information leading to the arrest and

1 conviction of any person involved in criminal organized RICO
2 activity which leads to the death or maiming of another
3 person, terrorism or funding of terrorism, or human
4 trafficking. Funds awarded pursuant to the imposition of fines
5 or through civil judgments may also be expended to pay
6 restitution amounts owed to victims.

7 (c) Twenty-five percent of all fines or civil
8 judgments shall go the State General Fund and the remainder to
9 the Criminal Organized Activity/RICO Fund.

10 (d) All funds shall be subject to audits by the
11 Alabama Examiners of Public Accounts.

12 Section 13. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 14. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.