

Legal Sidebar

What's RICO?

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The question arose most recently when Congress added trade secret offenses to the RICO predicate offense list in [P.L. 114-153](#) (S. 1890). RICO is the Racketeer Influenced and Corrupt Organization (RICO) portion of Title 18 of the United States Code. In spite of its name and origin, RICO is not limited to “mobsters” or members of “organized crime” as those terms are popularly understood. Rather, it covers those activities which Congress felt characterized the conduct of organized crime, no matter who actually engages in them.

RICO [proscribes](#) no conduct that is not otherwise prohibited. Instead it enlarges the civil and criminal consequences, under some circumstances, of a list of state and federal [crimes](#) (“racketeering activities”), often referred to as predicate offenses.

In simple terms, RICO condemns:

1. any person
2. who
 - a. invests in, or
 - b. acquires or maintains an interest in, or
 - c. conducts or participates in the affairs of, or
 - d. conspires to invest in, acquire, or conduct the affairs of
3. an enterprise
4. which
 - a. engages in, or
 - b. whose activities affect interstate or foreign commerce
5. through
 - a. the collection of an unlawful debt, or
 - b. the patterned commission of various state and federal crimes.

Violations are [punishable](#) by (a) the forfeiture of any property acquired through a RICO violation and of any property interest in the enterprise involved in the violation, and (b) imprisonment for not more than 20 years, or for life if one of the predicate offenses carries such a penalty, and/or a fine of not more than the greater of twice the amount of gain or loss associated with the offense or \$250,000 for individuals and \$500,000 for organizations. RICO has generally survived constitutional challenges. Although its forfeiture provisions are subject to an excessive fines clause analysis and perhaps to cruel and unusual punishment disproportionality analysis, the courts have upheld the confiscation of \$23.1 million predicated on bank [fraud](#) and \$2 million predicated on a Los Angeles private detective’s wiretapping and computer [hacking](#).

RICO violations also subject the offender to [civil](#) liability. The courts may award anyone injured in their business or property by a RICO violation treble damages, costs and attorneys’ fees, and may enjoin RICO violations, order divestiture, dissolution or reorganization, or restrict an offender’s future professional or investment activities. Civil RICO has been controversial. At one time, some [commentators](#) urged Congress to amend its provisions. Congress found little consensus on the questions raised by proposed revisions, however, and the issue seems to have been put aside at least for the time being. The Supreme Court has also [agreed](#) to decide whether civil RICO applies to overseas

“racketeering,” and the outcome may stimulate further congressional activity.

The text of the RICO sections, citations to state RICO statutes, and a selected bibliography may be found in a CRS [report](#) from which this sidebar was largely taken.

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