

1 A bill to be entitled

2 An act relating to contraband forfeiture; amending s.
3 932.701, F.S.; conforming provisions to changes made
4 by the act; amending s. 932.703, F.S.; specifying
5 circumstances under which property may be seized;
6 requiring that specified persons approve a settlement;
7 providing circumstances when property may be deemed
8 contraband; allocating responsibility for damage to
9 seized property and the payment of storage and
10 maintenance expenses; providing a procedure for
11 judicial review of seizures; amending s. 932.704,
12 F.S.; requiring a seizing agency to pay a filing fee
13 to, and deposit a bond with, the clerk of the court;
14 specifying the circumstances when a court shall order
15 the forfeiture of seized property; amending s.
16 932.7055, F.S.; conforming provisions to changes made
17 by the act; creating s. 932.7061, F.S.; providing
18 reporting requirements for seized property for
19 forfeiture; creating s. 932.7062, F.S.; providing
20 penalties for noncompliance with reporting
21 requirements; amending ss. 322.34, 323.001, 328.07,
22 and 817.625, F.S.; conforming provisions to changes
23 made by the act; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Subsection (1) of section 932.701, Florida
 28 Statutes, is amended to read:

29 932.701 Short title; definitions.—

30 (1) Sections 932.701-932.7062 ~~932.706~~ shall be known and
 31 may be cited as the "Florida Contraband Forfeiture Act."

32 Section 2. Subsection (1) of section 932.703, Florida
 33 Statutes, is amended, present subsections (2) through (8) are
 34 renumbered as subsections (3) through (9), respectively, and a
 35 new subsection (2) is added, to read:

36 932.703 Forfeiture of contraband article; exceptions.—

37 (1)(a) A ~~Any~~ contraband article, vessel, motor vehicle,
 38 aircraft, other personal property, or real property used in
 39 violation of any provision of the Florida Contraband Forfeiture
 40 Act, or in, upon, or by means of which any violation of the
 41 Florida Contraband Forfeiture Act has taken or is taking place,
 42 may be seized only if:

43 1. The owner of the property is arrested for a criminal
 44 violation that renders the property a contraband article; or

45 2. A criminal violation occurs that renders the property a
 46 contraband article and one or more of the following
 47 circumstances applies: ~~and shall be forfeited subject to the~~
 48 ~~provisions of the Florida Contraband Forfeiture Act.~~

49 a. The owner of the property cannot be identified after a
 50 diligent search;

51 b. The owner of the property is a fugitive from justice or
 52 deceased;

53 c. An individual who does not own the property is arrested
54 for the criminal violation that renders the property a
55 contraband article and the owner of the property had actual
56 knowledge of the criminal activity;

57 d. The owner of the property agrees to be a confidential
58 informant, as defined in s. 914.28. The seizing agency may not
59 use the threat of property seizure or forfeiture to coerce the
60 owner of the property into entering a confidential informant
61 agreement. The agency may include the final forfeiture of the
62 property as a component of the confidential informant agreement.
63 The seizing agency shall return the property to the owner if
64 criminal charges are not filed against the owner and the active
65 criminal investigation ends or the owner ceases being a
66 confidential informant; or

67 e. The property is a monetary instrument. For purposes of
68 this sub-subparagraph, the term "monetary instrument" means coin
69 or currency of the United States or any other country; a
70 traveler's check; a personal check; a bank check; a cashier's
71 check; a money order; a bank draft of any country; an investment
72 security or negotiable instrument in bearer form or in other
73 form such that title passes upon delivery; a prepaid or stored
74 value card or other device that is the equivalent of money and
75 can be used to obtain cash, property, or services; or gold,
76 silver, or platinum bullion or coins.

77 (b) After property is seized pursuant to the Florida
78 Contraband Forfeiture Act, regardless of whether the civil

79 complaint has been filed, all settlements must be personally
80 approved by the head of the law enforcement agency that seized
81 the property. If the agency head is unavailable and a delay
82 would adversely affect the settlement, approval may be given by
83 a subordinate of the agency head who is designated to grant such
84 approval ~~Notwithstanding any other provision of the Florida~~
85 ~~Contraband Forfeiture Act, except the provisions of paragraph~~
86 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~
87 ~~violation of any provision of the Florida Contraband Forfeiture~~
88 ~~Act, or in, upon, or by means of which any violation of the~~
89 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
90 ~~shall be seized and shall be forfeited subject to the provisions~~
91 ~~of the Florida Contraband Forfeiture Act.~~

92 (c) If at least 90 days have elapsed since the initial
93 seizure of the property and the seizing agency has failed to
94 locate the owner after making a diligent effort, the seized
95 property is deemed a contraband article that is subject to
96 forfeiture under the Florida Contraband Forfeiture Act ~~All~~
97 ~~rights to, interest in, and title to contraband articles used in~~
98 ~~violation of s. 932.702 shall immediately vest in the seizing~~
99 ~~law enforcement agency upon seizure.~~

100 (d)1. The seizing agency may not use the seized property
101 for any purpose until the rights to, interest in, and title to
102 the seized property are perfected in accordance with the Florida
103 Contraband Forfeiture Act. This section does not prohibit use or
104 operation necessary for reasonable maintenance of seized

105 property. Reasonable efforts shall be made to maintain seized
106 property in such a manner as to minimize loss of value.

107 2. The agency seeking to forfeit the seized property is
108 responsible for any damage to the property and any storage fees
109 or maintenance costs applicable to the property. If more than
110 one agency seeks forfeiture of the property, division of
111 liability under this subparagraph may be governed by the terms
112 of an agreement between the agencies.

113 (2)(a) A seizing agency shall submit a written petition to
114 the court within 10 days after a seizure of property under the
115 Florida Contraband Forfeiture Act which requests a finding of:

116 1. Compliance with subparagraph (1)(a)1. or subparagraph
117 (1)(a)2.; and

118 2. Probable cause that the seized property was used in
119 violation of the Florida Contraband Forfeiture Act.

120 (b) If the court issues an order finding that:

121 1. Compliance and probable cause under paragraph (a)
122 exist, the seized property may be held by the seizing agency
123 pending the completion of proceedings in accordance with the
124 Florida Contraband Forfeiture Act.

125 2. Compliance or probable cause under paragraph (a) does
126 not exist, any seizure, forfeiture hold, lien, lis pendens, or
127 other civil encumbrance shall be released within 5 days after
128 issuance of the order.

129 (c) The court may seal any portion of the petition and the
130 record of any proceeding under the Florida Contraband Forfeiture

131 Act which is exempt or confidential and exempt from s. 119.07(1)
132 and s. 24(a) Art. I of the State Constitution or may otherwise
133 be sealed pursuant to Rule 2.420, Rules of Judicial
134 Administration.

135 Section 3. Subsection (4), paragraph (b) of subsection
136 (5), paragraph (b) of subsection (6), subsections (8), (10), and
137 (11) of section 932.704, Florida Statutes, are amended to read:

138 932.704 Forfeiture proceedings.—

139 (4) The seizing agency shall promptly proceed against the
140 contraband article by filing a complaint in the circuit court
141 within the jurisdiction where the seizure or the offense
142 occurred. The seizing agency shall pay a filing fee of at least
143 \$1,000 to, and deposit a bond of \$1,500 with, the clerk of the
144 court. The bond shall be payable to the claimant, as determined
145 by the court, if the forfeiture is not awarded to the seizing
146 agency.

147 (5)

148 (b) If no person entitled to notice requests an
149 adversarial preliminary hearing, as provided in s. 932.703(3)(a)
150 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall
151 review the complaint and the verified supporting affidavit to
152 determine whether there was probable cause for the seizure. Upon
153 a finding of probable cause, the court shall enter an order
154 showing the probable cause finding.

155 (6)

156 (b) The complaint must, in addition to stating that which

157 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,
158 as appropriate, describe the property; state the county, place,
159 and date of seizure; state the name of the law enforcement
160 agency holding the seized property; and state the name of the
161 court in which the complaint will be filed.

162 (8) Upon proof beyond a reasonable doubt ~~clear and~~
163 ~~convincing evidence~~ that the contraband article was being used
164 in violation of the Florida Contraband Forfeiture Act, the court
165 shall order the seized property forfeited to the seizing law
166 enforcement agency. The final order of forfeiture by the court
167 shall perfect in the law enforcement agency right, title, and
168 interest in and to such property, subject only to the rights and
169 interests of bona fide lienholders, and shall relate back to the
170 date of seizure.

171 (10) The court shall award reasonable attorney ~~attorney's~~
172 fees and costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant
173 at the close of the adversarial preliminary hearing if the court
174 makes a finding of no probable cause. When the claimant
175 prevails, at the close of forfeiture proceedings and any appeal,
176 the court shall award reasonable trial attorney ~~attorney's~~ fees
177 and costs to the claimant if the court finds that the seizing
178 agency has not proceeded at any stage of the proceedings in good
179 faith or that the seizing agency's action which precipitated the
180 forfeiture proceedings was a gross abuse of the agency's
181 discretion. The court may order the seizing agency to pay the
182 awarded attorney ~~attorney's~~ fees and costs from the appropriate

183 | contraband forfeiture trust fund. ~~Nothing in~~ This subsection
 184 | does not preclude ~~precludes~~ any party from electing to seek
 185 | attorney ~~attorney's~~ fees and costs under chapter 57 or other
 186 | applicable law.

187 | (11) (a) The Department of Law Enforcement, in consultation
 188 | with the Florida Sheriffs Association and the Florida Police
 189 | Chiefs Association, shall develop guidelines and training
 190 | procedures to be used by state and local law enforcement
 191 | agencies and state attorneys in implementing the Florida
 192 | Contraband Forfeiture Act. At least annually, each state or
 193 | local law enforcement agency that seizes property for the
 194 | purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
 195 | ~~assets made by the agency's law enforcement officers,~~ any
 196 | settlements, and any forfeiture proceedings initiated by the law
 197 | enforcement agency, ~~to determine whether they such seizures,~~
 198 | ~~settlements, and forfeitures~~ comply with the Florida Contraband
 199 | Forfeiture Act and the guidelines adopted under this subsection.
 200 | If the review suggests deficiencies, the state or local law
 201 | enforcement agency shall promptly take action to comply with the
 202 | Florida Contraband Forfeiture Act.

203 | (b) The determination as to ~~of~~ whether an agency will file
 204 | a civil forfeiture action is ~~must be~~ the sole responsibility of
 205 | the head of the agency or his or her designee.

206 | (c) (b) The determination as to ~~of~~ whether to seize
 207 | currency must be made by supervisory personnel. The agency's
 208 | legal counsel must be notified as soon as possible after a

209 determination is made.

210 (d) The employment, salary, promotion, or other
211 compensation of any law enforcement officer may not be dependent
212 on the ability of the officer to meet a quota for seizures.

213 (e) A seizing agency shall adopt and implement written
214 policies, procedures, and training to ensure compliance with all
215 applicable legal requirements regarding seizing, maintaining,
216 and the forfeiture of property under the Florida Contraband
217 Forfeiture Act.

218 (f) When property is seized for forfeiture, the probable
219 cause supporting the seizure must be promptly reviewed by
220 supervisory personnel. The seizing agency's legal counsel must
221 be notified as soon as possible of all seizures and shall
222 conduct a review to determine whether there is legal sufficiency
223 to proceed with a forfeiture action.

224 (g) Each seizing agency shall adopt and implement written
225 policies and procedures promoting the prompt release of seized
226 property as may be required by the act or by agency
227 determination when there is no legitimate basis for holding
228 seized property. To help ensure that property is not wrongfully
229 held after seizure, each law enforcement agency must adopt
230 written policies and procedures ensuring that all asserted
231 claims of interest in seized property are promptly reviewed for
232 potential validity.

233 (h) The settlement of any forfeiture action must be
234 consistent with the Florida Contraband Forfeiture Act and the

235 policy of the seizing agency.

236 (i) Law enforcement agency personnel involved in the
 237 seizure of property for forfeiture shall receive basic training
 238 and continuing education as required by the Florida Contraband
 239 Forfeiture Act. Each agency shall maintain records demonstrating
 240 each law enforcement officer's compliance with this requirement.
 241 Among other things, the training must address the legal aspects
 242 of forfeiture, including, but not limited to, search and seizure
 243 and other constitutional considerations.

244 Section 4. Subsection (3) and paragraph (c) of subsection
 245 (5) of section 932.7055, Florida Statutes, are amended to read:

246 932.7055 Disposition of liens and forfeited property.—

247 (3) If the forfeited property is subject to a lien
 248 preserved by the court as provided in s. 932.703(7)(b)
 249 ~~932.703(6)(b)~~, the agency shall:

250 (a) Sell the property with the proceeds being used towards
 251 satisfaction of any liens; or

252 (b) Have the lien satisfied prior to taking any action
 253 authorized by subsection (1).

254 (5)

255 (c) An agency or organization, other than the seizing
 256 agency, that wishes to receive such funds shall apply to the
 257 sheriff or chief of police for an appropriation and its
 258 application shall be accompanied by a written certification that
 259 the moneys will be used for an authorized purpose. Such requests
 260 for expenditures shall include a statement describing

261 anticipated recurring costs for the agency for subsequent fiscal
 262 years. An agency or organization that receives money pursuant to
 263 this subsection shall provide an accounting for such moneys and
 264 shall furnish the same reports as an agency of the county or
 265 municipality that receives public funds. Such funds may be
 266 expended in accordance with the following procedures:

267 1. Such funds may be used only for school resource
 268 officer, crime prevention, safe neighborhood, drug abuse
 269 education, or drug prevention programs or such other law
 270 enforcement purposes as the board of county commissioners or
 271 governing body of the municipality deems appropriate.

272 2. Such funds shall not be a source of revenue to meet
 273 normal operating needs of the law enforcement agency.

274 3. ~~After July 1, 1992, and during every fiscal year~~
 275 ~~thereafter,~~ Any local law enforcement agency that acquires at
 276 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
 277 within a fiscal year must expend or donate no less than 25 ~~15~~
 278 percent of such proceeds for the support or operation of any
 279 drug treatment, drug abuse education, drug prevention, crime
 280 prevention, safe neighborhood, or school resource officer
 281 program or programs ~~program(s)~~. The local law enforcement agency
 282 has the discretion to determine which program or programs
 283 ~~program(s)~~ will receive the designated proceeds.

284
 285 Notwithstanding the drug abuse education, drug treatment, drug
 286 prevention, crime prevention, safe neighborhood, or school

287 resource officer minimum expenditures or donations, the sheriff
 288 and the board of county commissioners or the chief of police and
 289 the governing body of the municipality may agree to expend or
 290 donate such funds over a period of years if the expenditure or
 291 donation of such minimum amount in any given fiscal year would
 292 exceed the needs of the county or municipality for such program
 293 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
 294 minimum requirement for expenditure or donation of forfeiture
 295 proceeds in excess of the minimum amounts established in this
 296 subparagraph does not preclude expenditures or donations in
 297 excess of that amount herein.

298 Section 5. Section 932.7061, Florida Statutes, is created
 299 to read:

300 932.7061 Reporting seized property for forfeiture.-

301 (1) Every law enforcement agency shall submit an annual
 302 report to the Department of Law Enforcement indicating whether
 303 the agency has seized or forfeited property under the Florida
 304 Contraband Forfeiture Act. A law enforcement agency receiving or
 305 expending forfeited property or proceeds from the sale of
 306 forfeited property in accordance with the Florida Contraband
 307 Forfeiture Act shall submit a completed annual report by October
 308 10 documenting the receipts and expenditures. The report shall
 309 be submitted in an electronic form, maintained by the Department
 310 of Law Enforcement in consultation with the Office of Program
 311 Policy Analysis and Government Accountability, to the entity
 312 that has budgetary authority over such agency and to the

313 Department of Law Enforcement. The annual report must, at a
314 minimum, specify the type, approximate value, court case number,
315 type of offense, disposition of property received, and amount of
316 any proceeds received or expended.

317 (2) The Department of Law Enforcement shall submit an
318 annual report to the Office of Program Policy Analysis and
319 Government Accountability compiling the information and data in
320 the annual reports submitted by the law enforcement agencies.
321 The annual report shall also contain a list of law enforcement
322 agencies that have failed to meet the reporting requirements and
323 a summary of any action taken against the noncomplying agency by
324 the office of Chief Financial Officer.

325 (3) The law enforcement agency and the entity having
326 budgetary control over the law enforcement agency may not
327 anticipate future forfeitures or proceeds therefrom in the
328 adoption and approval of the budget for the law enforcement
329 agency.

330 Section 6. Section 932.7062, Florida Statutes, is created
331 to read:

332 932.7062 Penalty for noncompliance with reporting
333 requirements.—A seizing agency that fails to comply with the
334 reporting requirements in s. 932.7061 is subject to a civil fine
335 of \$5,000, to be determined by the Chief Financial Officer and
336 payable to the General Revenue Fund. However, such agency is not
337 subject to the fine if, within 60 days after receipt of written
338 notification from the Department of Law Enforcement of

339 noncompliance with the reporting requirements of the Florida
 340 Contraband Forfeiture Act, the agency substantially complies
 341 with those requirements. The Department of Law Enforcement shall
 342 submit any substantial noncompliance to the office of Chief
 343 Financial Officer, which shall be responsible for the
 344 enforcement of this section.

345 Section 7. Paragraphs (a) and (c) of subsection (9) of
 346 section 322.34, Florida Statutes, are amended to read:

347 322.34 Driving while license suspended, revoked, canceled,
 348 or disqualified.—

349 (9) (a) A motor vehicle that is driven by a person under
 350 the influence of alcohol or drugs in violation of s. 316.193 is
 351 subject to seizure and forfeiture under ss. 932.701-932.7062
 352 ~~932.706~~ and is subject to liens for recovering, towing, or
 353 storing vehicles under s. 713.78 if, at the time of the offense,
 354 the person's driver license is suspended, revoked, or canceled
 355 as a result of a prior conviction for driving under the
 356 influence.

357 (c) Notwithstanding ~~s. 932.703(1)(c)~~ or s. 932.7055, when
 358 the seizing agency obtains a final judgment granting forfeiture
 359 of the motor vehicle under this section, 30 percent of the net
 360 proceeds from the sale of the motor vehicle shall be retained by
 361 the seizing law enforcement agency and 70 percent shall be
 362 deposited in the General Revenue Fund for use by regional
 363 workforce boards in providing transportation services for
 364 participants of the welfare transition program. In a forfeiture

365 proceeding under this section, the court may consider the extent
 366 that the family of the owner has other public or private means
 367 of transportation.

368 Section 8. Paragraph (a) of subsection (4) of section
 369 323.001, Florida Statutes, is amended to read:

370 323.001 Wrecker operator storage facilities; vehicle
 371 holds.-

372 (4) The requirements for a written hold apply when the
 373 following conditions are present:

374 (a) The officer has probable cause to believe the vehicle
 375 should be seized and forfeited under the Florida Contraband
 376 Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

377 Section 9. Paragraph (b) of subsection (3) of section
 378 328.07, Florida Statutes, is amended to read:

379 328.07 Hull identification number required.-

380 (3)

381 (b) If any of the hull identification numbers required by
 382 the United States Coast Guard for a vessel manufactured after
 383 October 31, 1972, do not exist or have been altered, removed,
 384 destroyed, covered, or defaced or the real identity of the
 385 vessel cannot be determined, the vessel may be seized as
 386 contraband property by a law enforcement agency or the division,
 387 and shall be subject to forfeiture pursuant to ss. 932.701-
 388 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
 389 waters of the state unless the division receives a request from
 390 a law enforcement agency providing adequate documentation or is

391 directed by written order of a court of competent jurisdiction
392 to issue to the vessel a replacement hull identification number
393 which shall thereafter be used for identification purposes. No
394 vessel shall be forfeited under the Florida Contraband
395 Forfeiture Act when the owner unknowingly, inadvertently, or
396 neglectfully altered, removed, destroyed, covered, or defaced
397 the vessel hull identification number.

398 Section 10. Paragraph (c) of subsection (2) of section
399 817.625, Florida Statutes, is amended to read:

400 817.625 Use of scanning device or reencoder to defraud;
401 penalties.—

402 (2)

403 (c) Any person who violates subparagraph (a)1. or
404 subparagraph (a)2. shall also be subject to the provisions of
405 ss. 932.701-932.7062 ~~932.706~~.

406 Section 11. This act shall take effect July 1, 2016.