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- (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., when affected to the extent that the person's normal faculties are impaired;
 - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
 - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

Length of Suspension for DUI Offenses

Section 322.28(2)(a), F.S., provides for the period of driver license suspension for driving under the influence:

- (1) Upon a first conviction, except a violation resulting in death, the driver's license or privilege shall be revoked for not less than 180 days or more than 1 year.
- (2) Upon a second conviction within five years from the date of a previous conviction, the driver's license shall be revoked for a period of not less than 5 years.
- (3) Upon a third conviction within a period of 10 years from the date of the first of the three convictions, the driver's license shall be revoked for not less than 10 years.

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (ss. 932.701-932.707, F.S.) provides the definition of contraband and the method for forfeiture.

Property may not be forfeited under this act unless the seizing agency can establish by a preponderance of the evidence that the owner knew, or should have known, that the property would be used in criminal activity. s. 932.703(6)(a), F.S.

Under the Forfeiture Act, the seizing agency is required only to have probable cause to believe that the property sought to be seized "was used, is being used, was attempted to be used, or was intended to be used" in violation of the Act. *White v. State*, 680 So.2d 550, 554 (Fla.App. 1 Dist. 1996).

Personal property may be seized at the time of the violation, or subsequent to the violation, provided that the person entitled to notice is notified at the time of seizure or by certified mail, return receipt requested, and that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been, or is being used in violation of the Act. *Id.*

The fact that the seizing agency does not have probable cause to believe the vehicle contained contraband or was being used in violation of the Act at the moment they seized the vehicle does not render it unlawful under the Act. *Id.*

The Forfeiture Act “clearly contemplates that proof of past violations of the Act may provide the basis for forfeiture.” Therefore, the probable cause element required by the seizing agency may be satisfied merely because the person has violated the Forfeiture Act in the past. *Knight v. State*, 336 So.2d 553 (1977).

Liens for Recovering, Towing, or Storing Vehicles

Section 713.78, F.S., provides for the recovery of fees for towing and storage of vehicles through liens on such vehicles under certain circumstances.

Notice Requirements of the Florida Contraband Forfeiture Act

Section 932.703(2)(a), F.S., provides the notice requirements with regards to the forfeiture of personal property. The person entitled to notice must be notified at the time of the seizure or by certified mail that there is a right to an adversarial preliminary hearing held for the purpose of determining if probable cause exists. Notice must be mailed within five working days after the seizure and must state that the person is entitled to request the adversarial hearing within fifteen days.

Supreme Court Cases Supporting Forfeiture as a Valid Punishment and Deterrent

The Supreme Court of the United States has held forfeiture of a vehicle to be a valid punitive measure despite the Eighth Amendment’s prohibition against excessive fines. *Austin v. United States*, 509 U.S. 408 (1993).

Furthermore, the Supreme Court has held that forfeiture also holds a valid deterrent purpose distinct from any punitive purpose because it prevents further illegal use of the vehicle and imposes an economic impact, thereby rendering the illegal activity unprofitable. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 687 (1974).

The Supreme Court has even gone so far as to hold that the forfeiture of a vehicle of an innocent owner which was used in the commission of a crime by someone else does not violate either the Fifth Amendment (takings clause) or the Fourteenth Amendment. This is true even if the owner has absolutely no knowledge of the illegal conduct. The Court’s primary reason for this is “to preclude evasions of justice by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the innocent owner.” *Van Oester v. Kansas*, 272 U.S. 465, 467 (1926).

Even though the owner of a vehicle has privacy rights in that vehicle under the Fourteenth Amendment, those interests have a lesser degree of protection because the vehicle can so easily be moved out of the jurisdiction. *California v. Carney*, 471 U.S. 386, 390 (1985).

Sale of Forfeited Property

Section 932.7055, F.S., provides that when a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may:

- (a) Retain the property for the agency's use;
- (b) Sell the property at a public auction or by sealed bid to the highest bidder; or
- (c) Salvage, trade, or transfer the property to any public or nonprofit organization.

If the property has a lien attached and the agency decides to sell the property, the proceeds of the sale are to be distributed in this order:

- (a) Payment of the balance due on any lien preserved by the court in the forfeiture proceedings;
- (b) Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security and forfeiture of such property; or
- (c) Payment of court costs incurred in the forfeiture proceeding.

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund. s. 932.7055(5), F.S.

W.A.G.E.S.

In the 1996 Legislative Session, Florida established its welfare reform program called the Work and Gain Self-Sufficiency (WAGES) program. The purpose of this program is to provide temporary assistance to needy families with (or expecting) children and provide parents with job preparation, work opportunities, and support services to enable them to leave the program and become self sufficient. There are several work activity requirements for a participant in the WAGES program. In order for these people to move more rapidly from welfare to work, support services such as subsidized child care and transportation are provided.

III. Effect of Proposed Changes:

Section 1: The bill amends s. 322.34, F.S., to provide that a motor vehicle is contraband and subject to forfeiture under the Florida Contraband Forfeiture Act if the motor vehicle is driven by a person under the influence of alcohol or drugs and the persons license is suspended as a result of a prior conviction for driving under the influence. Additionally, the bill allows for liens to be

placed for the recovery of towing and storage fees for those vehicles, under those circumstances, under s. 713.78, F.S. The bill requires that notice be sent to the Department of Highway Safety and Motor Vehicles. The bill authorizes the seizing agency to retain 30 percent of the proceeds of the sale of the forfeited vehicle and allocates the remaining 70 percent for use in the WAGES program.

Section 2: The bill amends s. 932.701, F.S., relating to definition with respect to the Florida Contraband Forfeiture Act.

Section 3: The bill reenacts s. 932.703, F.S., to conform to changes made by the act.

Section 4: The bill provides that this act shall take effect July 1, of the year in which enacted.

Thus, under the bill, a person stopped by a law enforcement officer for a DUI may have his car impounded if the officer has probable cause to believe that the individual's license is presently suspended for a previous DUI conviction. This vehicle would also be subject to the Florida Contraband Forfeiture Act. If the forfeiture proceeding is finalized, 30 percent of the proceeds from the sale of the vehicle shall go to the seizing law enforcement agency and the remaining 70 percent will be used for participants in the WAGES program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the provisions of this bill, a person who is stopped by a law enforcement officer for DUI may have his car impounded if the officer has probable cause to believe that the person's

license is suspended for a previous DUI conviction. The vehicle will also be subject to the Florida Contraband Forfeiture Act.

Some proceeds from the sale of the vehicles will benefit the WAGES program, which in turn will benefit individuals who participate in the program.

C. Government Sector Impact:

There will be a positive fiscal impact on the government. If the forfeiture proceeding is finalized pursuant to the provisions of this bill, 30 percent of the proceeds from the sale of the vehicle will go to the seizing law enforcement agency and the remaining 70 percent will be used for participants in the WAGES program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.