

By the Committee on Criminal Justice and Senator McKay

307-2211-98

1                                   A bill to be entitled  
2           An act relating to driving under the influence  
3           of alcohol or drugs; amending s. 322.34, F.S.;  
4           providing that a motor vehicle is subject to  
5           forfeiture under the Florida Contraband Act if  
6           the motor vehicle is driven by a person under  
7           the influence of alcohol or drugs and the  
8           person's license is suspended as a result of a  
9           prior conviction for driving under the  
10          influence; requiring that notification of the  
11          impoundment or seizure be sent to the  
12          Department of Highway Safety and Motor  
13          Vehicles; amending s. 932.701, F.S., relating  
14          to definitions with respect to the Florida  
15          Contraband Act; redefining the term "contraband  
16          article" to conform to changes made by the act;  
17          reenacting s. 932.703, F.S., relating to  
18          forfeiture of contraband articles, to  
19          incorporate the amendment to s. 932.701, F.S.,  
20          in references; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

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24           Section 1. Subsection (9) is added to section 322.34,  
25 Florida Statutes, to read:

26           322.34 Driving while license suspended, revoked,  
27 canceled, or disqualified.--

28           (9)(a) A motor vehicle that is driven by a person  
29 under the influence of alcohol or drugs in violation of s.  
30 316.193 is subject to seizure and forfeiture under ss.  
31 932.701-932.707 and is subject to liens for recovering,

1 towing, or storing vehicles under s. 715.78 if, at the time of  
2 the offense, the person's driver's license is suspended,  
3 revoked, or canceled as a result of a prior conviction for  
4 driving under the influence.

5 (b) The law enforcement officer shall notify the  
6 Department of Highway Safety and Motor Vehicles of any  
7 impoundment or seizure for violation of paragraph (a) in  
8 accordance with procedures established by the department.

9 (c) Notwithstanding s. 932.703(1)(c) or s. 932.7055,  
10 when the seizing agency obtains a final judgment granting  
11 forfeiture of the motor vehicle, 30 percent of the proceeds  
12 accrued from the sale of the motor vehicle shall be retained  
13 by the seizing law enforcement agency and 70 percent shall be  
14 deposited into the General Revenue Fund for use by the  
15 Department of Labor and Employment Security in providing  
16 transportation services for participants of the WAGES program.

17 Section 2. Paragraph (a) of subsection (2) of section  
18 932.701, Florida Statutes, is amended to read:

19 932.701 Short title; definitions.--

20 (2) As used in the Florida Contraband Forfeiture Act:

21 (a) "Contraband article" means:

22 1. Any controlled substance as defined in chapter 893  
23 or any substance, device, paraphernalia, or currency or other  
24 means of exchange that was used, was attempted to be used, or  
25 was intended to be used in violation of any provision of  
26 chapter 893, if the totality of the facts presented by the  
27 state is clearly sufficient to meet the state's burden of  
28 establishing probable cause to believe that a nexus exists  
29 between the article seized and the narcotics activity, whether  
30 or not the use of the contraband article can be traced to a  
31 specific narcotics transaction.

1           2. Any gambling paraphernalia, lottery tickets, money,  
2 currency, or other means of exchange which was used, was  
3 attempted, or intended to be used in violation of the gambling  
4 laws of the state.

5           3. Any equipment, liquid or solid, which was being  
6 used, is being used, was attempted to be used, or intended to  
7 be used in violation of the beverage or tobacco laws of the  
8 state.

9           4. Any motor fuel upon which the motor fuel tax has  
10 not been paid as required by law.

11           5. Any personal property, including, but not limited  
12 to, any vessel, aircraft, item, object, tool, substance,  
13 device, weapon, machine, vehicle of any kind, money,  
14 securities, books, records, research, negotiable instruments,  
15 or currency, which was used or was attempted to be used as an  
16 instrumentality in the commission of, or in aiding or abetting  
17 in the commission of, any felony, whether or not comprising an  
18 element of the felony, or which is acquired by proceeds  
19 obtained as a result of a violation of the Florida Contraband  
20 Forfeiture Act.

21           6. Any real property, including any right, title,  
22 leasehold, or other interest in the whole of any lot or tract  
23 of land, which was used, is being used, or was attempted to be  
24 used as an instrumentality in the commission of, or in aiding  
25 or abetting in the commission of, any felony, or which is  
26 acquired by proceeds obtained as a result of a violation of  
27 the Florida Contraband Forfeiture Act.

28           7. Any personal property, including, but not limited  
29 to, equipment, money, securities, books, records, research,  
30 negotiable instruments, currency, or any vessel, aircraft,  
31 item, object, tool, substance, device, weapon, machine, or

1 vehicle of any kind in the possession of or belonging to any  
2 person who takes aquaculture products in violation of s.  
3 812.014(2)(c).

4 8. Any motor vehicle used during the course of  
5 committing an offense in violation of s. 322.34(9)(a).

6 Section 3. For purposes of incorporating the amendment  
7 to section 932.701, Florida Statutes, in references thereto,  
8 section 932.703, Florida Statutes, is reenacted to read:

9 932.703 Forfeiture of contraband article;  
10 exceptions.--

11 (1)(a) Any contraband article, vessel, motor vehicle,  
12 aircraft, other personal property, or real property used in  
13 violation of any provision of the Florida Contraband  
14 Forfeiture Act, or in, upon, or by means of which any  
15 violation of the Florida Contraband Forfeiture Act has taken  
16 or is taking place, may be seized and shall be forfeited  
17 subject to the provisions of the Florida Contraband Forfeiture  
18 Act.

19 (b) Notwithstanding any other provision of the Florida  
20 Contraband Forfeiture Act, except the provisions of paragraph  
21 (a), contraband articles set forth in s. 932.701(2)(a)7. used  
22 in violation of any provision of the Florida Contraband  
23 Forfeiture Act, or in, upon, or by means of which any  
24 violation of the Florida Contraband Forfeiture Act has taken  
25 or is taking place, shall be seized and shall be forfeited  
26 subject to the provisions of the Florida Contraband Forfeiture  
27 Act.

28 (c) All rights to, interest in, and title to  
29 contraband articles used in violation of s. 932.702 shall  
30 immediately vest in the seizing law enforcement agency upon  
31 seizure.

1           (d) The seizing agency may not use the seized property  
2 for any purpose until the rights to, interest in, and title to  
3 the seized property are perfected in accordance with the  
4 Florida Contraband Forfeiture Act. This section does not  
5 prohibit use or operation necessary for reasonable maintenance  
6 of seized property. Reasonable efforts shall be made to  
7 maintain seized property in such a manner as to minimize loss  
8 of value.

9           (2)(a) Personal property may be seized at the time of  
10 the violation or subsequent to the violation, if the person  
11 entitled to notice is notified at the time of the seizure or  
12 by certified mail, return receipt requested, that there is a  
13 right to an adversarial preliminary hearing after the seizure  
14 to determine whether probable cause exists to believe that  
15 such property has been or is being used in violation of the  
16 Florida Contraband Forfeiture Act. Seizing agencies shall make  
17 a diligent effort to notify the person entitled to notice of  
18 the seizure. Notice provided by certified mail must be mailed  
19 within 5 working days after the seizure and must state that a  
20 person entitled to notice may request an adversarial  
21 preliminary hearing within 15 days after receiving such  
22 notice. When a postseizure, adversarial preliminary hearing  
23 as provided in this section is desired, a request must be made  
24 in writing by certified mail, return receipt requested, to the  
25 seizing agency. The seizing agency shall set and notice the  
26 hearing, which must be held within 10 days after the request  
27 is received or as soon as practicable thereafter.

28           (b) Real property may not be seized or restrained,  
29 other than by lis pendens, subsequent to a violation of the  
30 Florida Contraband Forfeiture Act until the persons entitled  
31 to notice are afforded the opportunity to attend the

1 | pre seizure adversarial preliminary hearing. A lis pendens may  
2 | be obtained by any method authorized by law. Notice of the  
3 | adversarial preliminary hearing shall be by certified mail,  
4 | return receipt requested. The purpose of the adversarial  
5 | preliminary hearing is to determine whether probable cause  
6 | exists to believe that such property has been used in  
7 | violation of the Florida Contraband Forfeiture Act. The  
8 | seizing agency shall make a diligent effort to notify any  
9 | person entitled to notice of the seizure. The pre seizure  
10 | adversarial preliminary hearing provided herein shall be held  
11 | within 10 days of the filing of the lis pendens or as soon as  
12 | practicable.

13 |         (c) When an adversarial preliminary hearing is held,  
14 | the court shall review the verified affidavit and any other  
15 | supporting documents and take any testimony to determine  
16 | whether there is probable cause to believe that the property  
17 | was used, is being used, was attempted to be used, or was  
18 | intended to be used in violation of the Florida Contraband  
19 | Forfeiture Act. If probable cause is established, the court  
20 | shall authorize the seizure or continued seizure of the  
21 | subject contraband. A copy of the findings of the court shall  
22 | be provided to any person entitled to notice.

23 |         (d) If the court determines that probable cause exists  
24 | to believe that such property was used in violation of the  
25 | Florida Contraband Forfeiture Act, the court shall order the  
26 | property restrained by the least restrictive means to protect  
27 | against disposal, waste, or continued illegal use of such  
28 | property pending disposition of the forfeiture proceeding.  
29 | The court may order the claimant to post a bond or other  
30 | adequate security equivalent to the value of the property.

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1           (3) Neither replevin nor any other action to recover  
2 any interest in such property shall be maintained in any  
3 court, except as provided in this act; however, such action  
4 may be maintained if forfeiture proceedings are not initiated  
5 within 45 days after the date of seizure. However, if good  
6 cause is shown, the court may extend the aforementioned  
7 prohibition to 60 days.

8           (4) In any incident in which possession of any  
9 contraband article defined in s. 932.701(2)(a) constitutes a  
10 felony, the vessel, motor vehicle, aircraft, other personal  
11 property, or real property in or on which such contraband  
12 article is located at the time of seizure shall be contraband  
13 subject to forfeiture. It shall be presumed in the manner  
14 provided in s. 90.302(2) that the vessel, motor vehicle,  
15 aircraft, other personal property, or real property in which  
16 or on which such contraband article is located at the time of  
17 seizure is being used or was attempted or intended to be used  
18 in a manner to facilitate the transportation, carriage,  
19 conveyance, concealment, receipt, possession, purchase, sale,  
20 barter, exchange, or giving away of a contraband article  
21 defined in s. 932.701(2).

22           (5) The court shall order the forfeiture of any other  
23 property of a claimant, excluding lienholders, up to the value  
24 of any property subject to forfeiture under this section if  
25 any of the property described in this section:

26           (a) Cannot be located;

27           (b) Has been transferred to, sold to, or deposited  
28 with, a third party;

29           (c) Has been placed beyond the jurisdiction of the  
30 court;

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1 (d) Has been substantially diminished in value by any  
2 act or omission of the person in possession of the property;  
3 or

4 (e) Has been commingled with any property which cannot  
5 be divided without difficulty.

6 (6)(a) Property may not be forfeited under the Florida  
7 Contraband Forfeiture Act unless the seizing agency  
8 establishes by a preponderance of the evidence that the owner  
9 either knew, or should have known after a reasonable inquiry,  
10 that the property was being employed or was likely to be  
11 employed in criminal activity.

12 (b) A bona fide lienholder's interest that has been  
13 perfected in the manner prescribed by law prior to the seizure  
14 may not be forfeited under the Florida Contraband Forfeiture  
15 Act unless the seizing agency establishes by a preponderance  
16 of the evidence that the lienholder had actual knowledge, at  
17 the time the lien was made, that the property was being  
18 employed or was likely to be employed in criminal activity.  
19 If a lienholder's interest is not subject to forfeiture under  
20 the requirements of this section, such interest shall be  
21 preserved by the court by ordering the lienholder's interest  
22 to be paid as provided in s. 932.7055.

23 (c) Property titled or registered between husband and  
24 wife jointly by the use of the conjunctives "and," "and/or,"  
25 or "or," in the manner prescribed by law prior to the seizure,  
26 may not be forfeited under the Florida Contraband Forfeiture  
27 Act unless the seizing agency establishes by a preponderance  
28 of the evidence that the coowner either knew or had reason to  
29 know, after reasonable inquiry, that such property was  
30 employed or was likely to be employed in criminal activity.

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1           (d) A vehicle that is rented or leased from a company  
2 engaged in the business of renting or leasing vehicles, which  
3 vehicle was rented or leased in the manner prescribed by law  
4 prior to the seizure, may not be forfeited under the Florida  
5 Contraband Forfeiture Act unless the seizing agency  
6 establishes by preponderance of the evidence that the renter  
7 or lessor had actual knowledge, at the time the vehicle was  
8 rented or leased, that the vehicle was being employed or was  
9 likely to be employed in criminal activity. When a vehicle  
10 that is rented or leased from a company engaged in the  
11 business of renting or leasing vehicles is seized under the  
12 Florida Contraband Forfeiture Act, upon learning the address  
13 or phone number of the company, the seizing law enforcement  
14 agency shall, as soon as practicable, inform the company that  
15 the vehicle has been seized and is available for the company  
16 to take possession.

17           (7) Any interest in, title to, or right to property  
18 titled or registered jointly by the use of the conjunctives  
19 "and," "and/or," or "or" held by a coowner, other than  
20 property held jointly between husband and wife, may not be  
21 forfeited unless the seizing agency establishes by a  
22 preponderance of the evidence that the coowner either knew, or  
23 had reason to know, after reasonable inquiry, that the  
24 property was employed or was likely to be employed in criminal  
25 activity. When the interests of each culpable coowner are  
26 forfeited, any remaining coowners shall be afforded the  
27 opportunity to purchase the forfeited interest in, title to,  
28 or right to the property from the seizing law enforcement  
29 agency. If any remaining coowner does not purchase such  
30 interest, the seizing agency may hold the property in  
31 coownership, sell its interest in the property, liquidate its

1 interest in the property, or dispose of its interest in the  
2 property in any other reasonable manner.

3 (8) It is an affirmative defense to a forfeiture  
4 proceeding that the nexus between the property sought to be  
5 forfeited and the commission of any underlying violation was  
6 incidental or entirely accidental. The value of the property  
7 sought to be forfeited in proportion to any other factors must  
8 not be considered in any determination as to this affirmative  
9 defense.

10 Section 4. This act shall take effect July 1, 1998.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13 COMMITTEE SUBSTITUTE FOR  
14 Senate Bill 2274

15 . Places the bill's provisions in s. 322.34, F.S.

16 . Amends s. 932.701(2)(a), F.S., to provide that a motor  
17 vehicle driven in violation of s. 322.34(9)(a), F.S., is  
a contraband article.

18 . Removes the probable cause and notice requirements  
19 because s. 932.703, F.S., of the Contraband Act currently  
20 provides similar requirements and reenacts s. 932.703,  
F.S., to conform the above changes to the Florida  
Contraband Forfeiture Act.

21 . Provides for liens to be placed on vehicles seized under  
22 the provisions of this bill for recovery of towing and  
storage fees.

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