

By the Committee on Civil Justice & Claims and
 Representatives Crow, Fasano, Heyman and Silver

1 A bill to be entitled
 2 An act relating to stalking offenses; amending
 3 s. 784.048, F.S.; providing for court
 4 revocation for a specified period of the
 5 driver's license of a person who has used a
 6 motor vehicle in the course of committing
 7 stalking or aggravated stalking; providing for
 8 forfeiture as contraband of such motor vehicle;
 9 providing for booting or immobilization of the
 10 vehicle for a specified period, unless the
 11 court finds that the vehicle owner's family
 12 lacks other transportation means; requiring
 13 payment of such booting or immobilization costs
 14 by the vehicle owner; providing for forfeiture
 15 of personal property used in the course of
 16 committing the stalking or aggravated stalking;
 17 amending s. 932.701, F.S., relating to
 18 definitions with respect to the Florida
 19 Contraband Forfeiture Act; redefining the term
 20 "contraband article," to conform to changes
 21 made by the act; reenacting s. 932.703, F.S.,
 22 relating to forfeiture of contraband articles,
 23 to incorporate the amendment to s. 932.701,
 24 F.S., in references; providing an effective
 25 date.

26
 27 Be It Enacted by the Legislature of the State of Florida:

28
 29 Section 1. Section 784.048, Florida Statutes, is
 30 amended to read:
 31 784.048 Stalking; definitions; penalties.--

1 (1) As used in this section, the term:

2 (a) "Harass" means to engage in a course of conduct
3 directed at a specific person that causes substantial
4 emotional distress in such person and serves no legitimate
5 purpose.

6 (b) "Course of conduct" means a pattern of conduct
7 composed of a series of acts over a period of time, however
8 short, evidencing a continuity of purpose. Constitutionally
9 protected activity is not included within the meaning of
10 "course of conduct." Such constitutionally protected activity
11 includes picketing or other organized protests.

12 (c) "Credible threat" means a threat made with the
13 intent to cause the person who is the target of the threat to
14 reasonably fear for his or her safety. The threat must be
15 against the life of, or a threat to cause bodily injury to, a
16 person.

17 (2) Any person who willfully, maliciously, and
18 repeatedly follows or harasses another person commits the
19 offense of stalking, a misdemeanor of the first degree,
20 punishable as provided in s. 775.082 or s. 775.083.

21 (3) Any person who willfully, maliciously, and
22 repeatedly follows or harasses another person, and makes a
23 credible threat with the intent to place that person in
24 reasonable fear of death or bodily injury, commits the offense
25 of aggravated stalking, a felony of the third degree,
26 punishable as provided in s. 775.082, s. 775.083, or s.
27 775.084.

28 (4) Any person who, after an injunction for protection
29 against repeat violence pursuant to s. 784.046, or an
30 injunction for protection against domestic violence pursuant
31 to s. 741.30, or after any other court-imposed prohibition of

1 conduct toward the subject person or that person's property,
2 knowingly, willfully, maliciously, and repeatedly follows or
3 harasses another person commits the offense of aggravated
4 stalking, a felony of the third degree, punishable as provided
5 in s. 775.082, s. 775.083, or s. 775.084.

6 (5) Any person who willfully, maliciously, and
7 repeatedly follows or harasses a minor under 16 years of age
8 commits the offense of aggravated stalking, a felony of the
9 third degree, punishable as provided in s. 775.082, s.
10 775.083, or s. 775.084.

11 (6) If during the course of committing an offense in
12 violation of this section a person is found by the court or a
13 jury to have used a motor vehicle, the court shall revoke the
14 offender's driver's license for 1 year. Upon a finding by the
15 court that the defendant committed an offense in violation of
16 this section and used any personal property, including, but
17 not limited to, any vessel, aircraft, item, object, tool,
18 substance, device, weapon, machine, vehicle of any kind,
19 money, securities, books, records, research, negotiable
20 instruments, or currency, during the course of the violation,
21 such property may be forfeited pursuant to ss.

22 932.701-932.707. In lieu of forfeiture, the court may order
23 that the motor vehicle be booted or immobilized for a 30-day
24 period, unless the court finds that the family of the owner of
25 the vehicle has no other public or private means of
26 transportation. All costs of the booting or immobilization
27 shall be paid by the vehicle owner pursuant to s. 713.78.

28 ~~(7)~~(6) Any law enforcement officer may arrest, without
29 a warrant, any person he or she has probable cause to believe
30 has violated the provisions of this section.

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1 Section 2. Paragraph (a) of subsection (2) of section
2 932.701, Florida Statutes, is amended to read:
3 932.701 Short title; definitions.--
4 (2) As used in the Florida Contraband Forfeiture Act:
5 (a) "Contraband article" means:
6 1. Any controlled substance as defined in chapter 893
7 or any substance, device, paraphernalia, or currency or other
8 means of exchange that was used, was attempted to be used, or
9 was intended to be used in violation of any provision of
10 chapter 893, if the totality of the facts presented by the
11 state is clearly sufficient to meet the state's burden of
12 establishing probable cause to believe that a nexus exists
13 between the article seized and the narcotics activity, whether
14 or not the use of the contraband article can be traced to a
15 specific narcotics transaction.
16 2. Any gambling paraphernalia, lottery tickets, money,
17 currency, or other means of exchange which was used, was
18 attempted, or intended to be used in violation of the gambling
19 laws of the state.
20 3. Any equipment, liquid or solid, which was being
21 used, is being used, was attempted to be used, or intended to
22 be used in violation of the beverage or tobacco laws of the
23 state.
24 4. Any motor fuel upon which the motor fuel tax has
25 not been paid as required by law.
26 5. Any personal property, including, but not limited
27 to, any vessel, aircraft, item, object, tool, substance,
28 device, weapon, machine, vehicle of any kind, money,
29 securities, books, records, research, negotiable instruments,
30 or currency, which was used or was attempted to be used as an
31 instrumentality in the commission of, or in aiding or abetting

1 in the commission of, any felony, whether or not comprising an
2 element of the felony, or which is acquired by proceeds
3 obtained as a result of a violation of the Florida Contraband
4 Forfeiture Act.

5 6. Any real property, including any right, title,
6 leasehold, or other interest in the whole of any lot or tract
7 of land, which was used, is being used, or was attempted to be
8 used as an instrumentality in the commission of, or in aiding
9 or abetting in the commission of, any felony, or which is
10 acquired by proceeds obtained as a result of a violation of
11 the Florida Contraband Forfeiture Act.

12 7. Any personal property, including, but not limited
13 to, equipment, money, securities, books, records, research,
14 negotiable instruments, currency, or any vessel, aircraft,
15 item, object, tool, substance, device, weapon, machine, or
16 vehicle of any kind in the possession of or belonging to any
17 person who takes aquaculture products in violation of s.
18 812.014(2)(c).

19 8. Any personal property, including, but not limited
20 to, any vessel, aircraft, item, object, tool, substance,
21 device, weapon, machine, vehicle of any kind, money,
22 securities, books, records, research, negotiable instruments,
23 or currency, used during the course of committing an offense
24 in violation of s. 784.048.

25 Section 3. For the purpose of incorporating the
26 amendment to s. 932.701, Florida Statutes, in references
27 thereto, section 932.703, Florida Statutes, is reenacted to
28 read:

29 932.703 Forfeiture of contraband article;
30 exceptions.--

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1 (1)(a) Any contraband article, vessel, motor vehicle,
2 aircraft, other personal property, or real property used in
3 violation of any provision of the Florida Contraband
4 Forfeiture Act, or in, upon, or by means of which any
5 violation of the Florida Contraband Forfeiture Act has taken
6 or is taking place, may be seized and shall be forfeited
7 subject to the provisions of the Florida Contraband Forfeiture
8 Act.

9 (b) Notwithstanding any other provision of the Florida
10 Contraband Forfeiture Act, except the provisions of paragraph
11 (a), contraband articles set forth in s. 932.701(2)(a)7. used
12 in violation of any provision of the Florida Contraband
13 Forfeiture Act, or in, upon, or by means of which any
14 violation of the Florida Contraband Forfeiture Act has taken
15 or is taking place, shall be seized and shall be forfeited
16 subject to the provisions of the Florida Contraband Forfeiture
17 Act.

18 (c) All rights to, interest in, and title to
19 contraband articles used in violation of s. 932.702 shall
20 immediately vest in the seizing law enforcement agency upon
21 seizure.

22 (d) The seizing agency may not use the seized property
23 for any purpose until the rights to, interest in, and title to
24 the seized property are perfected in accordance with the
25 Florida Contraband Forfeiture Act. This section does not
26 prohibit use or operation necessary for reasonable maintenance
27 of seized property. Reasonable efforts shall be made to
28 maintain seized property in such a manner as to minimize loss
29 of value.

30 (2)(a) Personal property may be seized at the time of
31 the violation or subsequent to the violation, if the person

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

18 (b) Real property may not be seized or restrained,
19 other than by lis pendens, subsequent to a violation of the
20 Florida Contraband Forfeiture Act until the persons entitled
21 to notice are afforded the opportunity to attend the
22 pre seizure adversarial preliminary hearing. A lis pendens may
23 be obtained by any method authorized by law. Notice of the
24 adversarial preliminary hearing shall be by certified mail,
25 return receipt requested. The purpose of the adversarial
26 preliminary hearing is to determine whether probable cause
27 exists to believe that such property has been used in
28 violation of the Florida Contraband Forfeiture Act. The
29 seizing agency shall make a diligent effort to notify any
30 person entitled to notice of the seizure. The pre seizure
31 adversarial preliminary hearing provided herein shall be held

1 within 10 days of the filing of the lis pendens or as soon as
2 practicable.

3 (c) When an adversarial preliminary hearing is held,
4 the court shall review the verified affidavit and any other
5 supporting documents and take any testimony to determine
6 whether there is probable cause to believe that the property
7 was used, is being used, was attempted to be used, or was
8 intended to be used in violation of the Florida Contraband
9 Forfeiture Act. If probable cause is established, the court
10 shall authorize the seizure or continued seizure of the
11 subject contraband. A copy of the findings of the court shall
12 be provided to any person entitled to notice.

13 (d) If the court determines that probable cause exists
14 to believe that such property was used in violation of the
15 Florida Contraband Forfeiture Act, the court shall order the
16 property restrained by the least restrictive means to protect
17 against disposal, waste, or continued illegal use of such
18 property pending disposition of the forfeiture proceeding.
19 The court may order the claimant to post a bond or other
20 adequate security equivalent to the value of the property.

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

28 (4) In any incident in which possession of any
29 contraband article defined in s. 932.701(2)(a) constitutes a
30 felony, the vessel, motor vehicle, aircraft, other personal
31 property, or real property in or on which such contraband

1 article is located at the time of seizure shall be contraband
2 subject to forfeiture. It shall be presumed in the manner
3 provided in s. 90.302(2) that the vessel, motor vehicle,
4 aircraft, other personal property, or real property in which
5 or on which such contraband article is located at the time of
6 seizure is being used or was attempted or intended to be used
7 in a manner to facilitate the transportation, carriage,
8 conveyance, concealment, receipt, possession, purchase, sale,
9 barter, exchange, or giving away of a contraband article
10 defined in s. 932.701(2).

11 (5) The court shall order the forfeiture of any other
12 property of a claimant, excluding lienholders, up to the value
13 of any property subject to forfeiture under this section if
14 any of the property described in this section:

15 (a) Cannot be located;

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

18 (c) Has been placed beyond the jurisdiction of the
19 court;

20 (d) Has been substantially diminished in value by any
21 act or omission of the person in possession of the property;
22 or

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

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

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1 (b) A bona fide lienholder's interest that has been
2 perfected in the manner prescribed by law prior to the seizure
3 may not be forfeited under the Florida Contraband Forfeiture
4 Act unless the seizing agency establishes by a preponderance
5 of the evidence that the lienholder had actual knowledge, at
6 the time the lien was made, that the property was being
7 employed or was likely to be employed in criminal activity.
8 If a lienholder's interest is not subject to forfeiture under
9 the requirements of this section, such interest shall be
10 preserved by the court by ordering the lienholder's interest
11 to be paid as provided in s. 932.7055.

12 (c) Property titled or registered between husband and
13 wife jointly by the use of the conjunctives "and," "and/or,"
14 or "or," in the manner prescribed by law prior to the seizure,
15 may not be forfeited under the Florida Contraband Forfeiture
16 Act unless the seizing agency establishes by a preponderance
17 of the evidence that the coowner either knew or had reason to
18 know, after reasonable inquiry, that such property was
19 employed or was likely to be employed in criminal activity.

20 (d) A vehicle that is rented or leased from a company
21 engaged in the business of renting or leasing vehicles, which
22 vehicle was rented or leased in the manner prescribed by law
23 prior to the seizure, may not be forfeited under the Florida
24 Contraband Forfeiture Act unless the seizing agency
25 establishes by preponderance of the evidence that the renter
26 or lessor had actual knowledge, at the time the vehicle was
27 rented or leased, that the vehicle was being employed or was
28 likely to be employed in criminal activity. When a vehicle
29 that is rented or leased from a company engaged in the
30 business of renting or leasing vehicles is seized under the
31 Florida Contraband Forfeiture Act, upon learning the address

1 or phone number of the company, the seizing law enforcement
2 agency shall, as soon as practicable, inform the company that
3 the vehicle has been seized and is available for the company
4 to take possession.

5 (7) Any interest in, title to, or right to property
6 titled or registered jointly by the use of the conjunctives
7 "and," "and/or," or "or" held by a coowner, other than
8 property held jointly between husband and wife, may not be
9 forfeited unless the seizing agency establishes by a
10 preponderance of the evidence that the coowner either knew, or
11 had reason to know, after reasonable inquiry, that the
12 property was employed or was likely to be employed in criminal
13 activity. When the interests of each culpable coowner are
14 forfeited, any remaining coowners shall be afforded the
15 opportunity to purchase the forfeited interest in, title to,
16 or right to the property from the seizing law enforcement
17 agency. If any remaining coowner does not purchase such
18 interest, the seizing agency may hold the property in
19 coownership, sell its interest in the property, liquidate its
20 interest in the property, or dispose of its interest in the
21 property in any other reasonable manner.

22 (8) It is an affirmative defense to a forfeiture
23 proceeding that the nexus between the property sought to be
24 forfeited and the commission of any underlying violation was
25 incidental or entirely accidental. The value of the property
26 sought to be forfeited in proportion to any other factors must
27 not be considered in any determination as to this affirmative
28 defense.

29 Section 4. This act shall take effect July 1 after the
30 year in which enacted.

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