

STORAGE NAME: 4331a.leps

DATE: April 14, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4331

RELATING TO: Driving Under the Influence of Alcohol or Drugs

SPONSOR(S): Representatives Ogles & Others

COMPANION BILL(S): S 2274(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 4 NAYS 2
 - (2) CIVIL JUSTICE AND CLAIMS
 - (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill provides that a motor vehicle is contraband, and subject to the Florida Contraband Forfeiture Act, if driven by a person under the influence of alcohol or drugs while that person's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

The bill requires that, in addition to the notice requirements of s. 932.703, F.S., notice also be sent to the Department of Highway Safety and Motor Vehicles.

The bill authorizes the seizing agency to retain thirty percent of the proceeds of the sale of a forfeited motor vehicle. The bill provides for the remaining seventy percent of the proceeds to be deposited into the General Revenue Fund and used to provide transportation services for participants of the WAGES program.

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

STORAGE NAME: 4331a.leps

DATE: April 14, 1998

PAGE 2

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

DUI Definitions

Section 316.193, F.S., provides that a person is guilty of the offense of driving under the influence if the person is driving or in actual physical control of a vehicle within this state and:

(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 chapter 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 one 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 five 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 ten years.

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (**s. 32.701-s.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).

STORAGE NAME: 4331a.leps

DATE: April 14, 1998

PAGE 3

“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).

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 determine 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 US 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 also imposes an economic impact, thereby rendering the illegal activity unprofitable. Calero-Toledo v. Pearson Yacht Leasing Co., 416 US 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 US 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 US 386, 390 (1985).

Sale of Forfeited Property

STORAGE NAME: 4331a.leps

DATE: April 14, 1998

PAGE 4

Section 932.7055, F.S., provides that when a seizing agency obtains a final judgement 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.
- (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 providing 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.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that a motor vehicle is contraband, and subject to the Florida Contraband Forfeiture Act, if driven by a person under the influence of alcohol or drugs while that person's license is currently suspended, revoked, or canceled as a result of a previous conviction for driving under the influence.

The bill requires that notice be sent to the Department of Highway Safety and Motor Vehicles.

The bill authorizes the seizing agency to retain thirty percent of the proceeds of the sale of a forfeited motor vehicle. The bill provides for the remaining 70 percent of the proceeds to be deposited into the General Revenue Fund and used to provide transportation services for participants of the WAGES program.

Thus, under the bill, a person pulled over by a law enforcement agent 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 subject to the Florida Contraband Forfeiture Act. If the forfeiture proceeding is finalized, thirty percent of the proceeds from the sale of the vehicle shall go to the seizing law enforcement agency and the remaining seventy percent will be used for participants in the WAGES program.

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

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Ss 322.34, 932.701, 932.703, F.S.

E. SECTION-BY-SECTION RESEARCH:

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. The bill requires that notice be sent to the Department of Highway Safety and Motor Vehicles. The bill authorizes the seizing agency to retain thirty percent of the proceeds of the sale of the forfeited vehicle and allocates the remaining seventy 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.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

STORAGE NAME: 4331a.leps

DATE: April 14, 1998

PAGE 10

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was adopted on April 14, 1998, and the effects are reflected herein.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

J. Gregory Godsey

Kurt E. Ahrendt