

Bill No. CS for CS for SB 1056, 1st Eng.

Amendment No. (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ogles offered the following:

Amendment (with title amendment)

On page 1, line 22,

insert:

Section 1. Subsection (9) is added to section 322.34, Florida Statutes, 1998 Supplement, to read:

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

(9)(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.707 and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

(b) The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment or seizure for violation of paragraph (a) in

1 accordance with procedures established by the department.

2 (c) Notwithstanding s. 932.703(1)(c) or s. 932.7055,
3 when the seizing agency obtains a final judgment granting
4 forfeiture of the motor vehicle under this section, 30 percent
5 of the net proceeds from the sale of the motor vehicle shall
6 be retained by the seizing law enforcement agency and 70
7 percent shall be deposited in the General Revenue Fund for use
8 by local WAGES coalitions in providing transportation services
9 for participants of the WAGES program. In a forfeiture
10 proceeding under this section, the court may consider the
11 extent that the family of the owner has other public or
12 private means of transportation.

13 Section 2. Paragraph (a) of subsection (2) of section
14 932.701, Florida Statutes, is amended to read:

15 932.701 Short title; definitions.--

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

17 (a) "Contraband article" means:

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

28 2. Any gambling paraphernalia, lottery tickets, money,
29 currency, or other means of exchange which was used, was
30 attempted, or intended to be used in violation of the gambling
31 laws of the state.

- 1 3. Any equipment, liquid or solid, which was being
2 used, is being used, was attempted to be used, or intended to
3 be used in violation of the beverage or tobacco laws of the
4 state.
- 5 4. Any motor fuel upon which the motor fuel tax has
6 not been paid as required by law.
- 7 5. Any personal property, including, but not limited
8 to, any vessel, aircraft, item, object, tool, substance,
9 device, weapon, machine, vehicle of any kind, money,
10 securities, books, records, research, negotiable instruments,
11 or currency, which was used or was attempted to be used as an
12 instrumentality in the commission of, or in aiding or abetting
13 in the commission of, any felony, whether or not comprising an
14 element of the felony, or which is acquired by proceeds
15 obtained as a result of a violation of the Florida Contraband
16 Forfeiture Act.
- 17 6. Any real property, including any right, title,
18 leasehold, or other interest in the whole of any lot or tract
19 of land, which was used, is being used, or was attempted to be
20 used as an instrumentality in the commission of, or in aiding
21 or abetting in the commission of, any felony, or which is
22 acquired by proceeds obtained as a result of a violation of
23 the Florida Contraband Forfeiture Act.
- 24 7. Any personal property, including, but not limited
25 to, equipment, money, securities, books, records, research,
26 negotiable instruments, currency, or any vessel, aircraft,
27 item, object, tool, substance, device, weapon, machine, or
28 vehicle of any kind in the possession of or belonging to any
29 person who takes aquaculture products in violation of s.
30 812.014(2)(c).
- 31 8. Any motor vehicle used during the course of

1 committing an offense in violation of s. 322.34(9)(a).

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

5 932.703 Forfeiture of contraband article;
6 exceptions.--

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

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

24 (c) All rights to, interest in, and title to
25 contraband articles used in violation of s. 932.702 shall
26 immediately vest in the seizing law enforcement agency upon
27 seizure.

28 (d) The seizing agency may not use the seized property
29 for any purpose until the rights to, interest in, and title to
30 the seized property are perfected in accordance with the
31 Florida Contraband Forfeiture Act. This section does not

1 prohibit use or operation necessary for reasonable maintenance
2 of seized property. Reasonable efforts shall be made to
3 maintain seized property in such a manner as to minimize loss
4 of value.

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

24 (b) Real property may not be seized or restrained,
25 other than by lis pendens, subsequent to a violation of the
26 Florida Contraband Forfeiture Act until the persons entitled
27 to notice are afforded the opportunity to attend the
28 preseizure adversarial preliminary hearing. A lis pendens may
29 be obtained by any method authorized by law. Notice of the
30 adversarial preliminary hearing shall be by certified mail,
31 return receipt requested. The purpose of the adversarial

1 preliminary hearing is to determine whether probable cause
2 exists to believe that such property has been used in
3 violation of the Florida Contraband Forfeiture Act. The
4 seizing agency shall make a diligent effort to notify any
5 person entitled to notice of the seizure. The pre seizure
6 adversarial preliminary hearing provided herein shall be held
7 within 10 days of the filing of the lis pendens or as soon as
8 practicable.

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

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

27 (3) Neither replevin nor any other action to recover
28 any interest in such property shall be maintained in any
29 court, except as provided in this act; however, such action
30 may be maintained if forfeiture proceedings are not initiated
31 within 45 days after the date of seizure. However, if good

1 cause is shown, the court may extend the aforementioned
2 prohibition to 60 days.

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

17 (5) The court shall order the forfeiture of any other
18 property of a claimant, excluding lienholders, up to the value
19 of any property subject to forfeiture under this section if
20 any of the property described in this section:

21 (a) Cannot be located;

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

24 (c) Has been placed beyond the jurisdiction of the
25 court;

26 (d) Has been substantially diminished in value by any
27 act or omission of the person in possession of the property;
28 or

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

31 (6)(a) Property may not be forfeited under the Florida

1 Contraband Forfeiture Act unless the seizing agency
2 establishes by a preponderance of the evidence that the owner
3 either knew, or should have known after a reasonable inquiry,
4 that the property was being employed or was likely to be
5 employed in criminal activity.

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

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

25 (d) A vehicle that is rented or leased from a company
26 engaged in the business of renting or leasing vehicles, which
27 vehicle was rented or leased in the manner prescribed by law
28 prior to the seizure, may not be forfeited under the Florida
29 Contraband Forfeiture Act unless the seizing agency
30 establishes by preponderance of the evidence that the renter
31 or lessor had actual knowledge, at the time the vehicle was

1 rented or leased, that the vehicle was being employed or was
2 likely to be employed in criminal activity. When a vehicle
3 that is rented or leased from a company engaged in the
4 business of renting or leasing vehicles is seized under the
5 Florida Contraband Forfeiture Act, upon learning the address
6 or phone number of the company, the seizing law enforcement
7 agency shall, as soon as practicable, inform the company that
8 the vehicle has been seized and is available for the company
9 to take possession.

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

27 (8) It is an affirmative defense to a forfeiture
28 proceeding that the nexus between the property sought to be
29 forfeited and the commission of any underlying violation was
30 incidental or entirely accidental. The value of the property
31 sought to be forfeited in proportion to any other factors must

1 not be considered in any determination as to this affirmative
2 defense.

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5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 On page 1, line 2,

8

9 after the semicolon insert:

10 driving under the influence of alcohol or
11 drugs; amending s. 322.34, F.S.; providing that
12 a motor vehicle is subject to forfeiture under
13 the Florida Contraband Act if the motor vehicle
14 is driven by a person under the influence of
15 alcohol or drugs and the person's license is
16 suspended as a result of a prior conviction for
17 driving under the influence; requiring that
18 notification of the impoundment or seizure be
19 sent to the Department of Highway Safety and
20 Motor Vehicles; amending s. 932.701, F.S.,
21 relating to definitions with respect to the
22 Florida Contraband Act; redefining the term
23 "contraband article" to conform to changes made
24 by the act; reenacting s. 932.703, F.S.,
25 relating to forfeiture of contraband articles,
26 to incorporate the amendment to s. 932.701,
27 F.S., in references;

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