

By Senator McKay

26-60-99

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:
23

24 Section 1. Subsection (9) is added to section 322.34,
25 Florida Statutes, 1998 Supplement, 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, 1999.

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13 LEGISLATIVE SUMMARY

14 Authorizes a law enforcement officer to seize and impound
15 a motor vehicle if the law enforcement officer has
16 probable cause to believe that the motor vehicle is
17 driven by a person under the influence of alcohol or
18 drugs and, at the time of the offense, the person's
19 license is suspended as a result of a prior conviction
20 for driving under the influence. Provides for liens
21 against a vehicle so seized. Provides for forfeiture of
22 the motor vehicle under the Florida Contraband Forfeiture
23 Act. Requires that notice of impoundment be sent to the
24 Department of Highway Safety and Motor Vehicles.
25 Authorizes the seizing law enforcement agency to retain
26 30 percent of the proceeds of the sale of a forfeited
27 vehicle following a final judgment. Provides that 70
28 percent of the proceeds of the sale of a forfeited
29 vehicle be deposited into the General Revenue Fund and
30 used to provide transportation services for participants
31 of the WAGES program.