

By the Committee on Judiciary and Representative Ogles

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.

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 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, 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. 713.78 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 under this section, 30 percent
12 of the net proceeds from the sale of the motor vehicle shall
13 be retained by the seizing law enforcement agency and 70
14 percent shall be deposited in the General Revenue Fund for use
15 by local WAGES coalitions in providing transportation services
16 for participants of the WAGES Program. In a forfeiture
17 proceeding under this section, the court may consider the
18 extent that the family of the owner has other public or
19 private means of transportation.

20 Section 2. Paragraph (a) of subsection (2) of section
21 932.701, Florida Statutes, is amended to read:

22 932.701 Short title; definitions.--

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

24 (a) "Contraband article" means:

25 1. Any controlled substance as defined in chapter 893
26 or any substance, device, paraphernalia, or currency or other
27 means of exchange that was used, was attempted to be used, or
28 was intended to be used in violation of any provision of
29 chapter 893, if the totality of the facts presented by the
30 state is clearly sufficient to meet the state's burden of
31 establishing probable cause to believe that a nexus exists

1 between the article seized and the narcotics activity, whether
2 or not the use of the contraband article can be traced to a
3 specific narcotics transaction.

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

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

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

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

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

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

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

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

13 932.703 Forfeiture of contraband article;
14 exceptions.--

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

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

1 (c) All rights to, interest in, and title to
2 contraband articles used in violation of s. 932.702 shall
3 immediately vest in the seizing law enforcement agency upon
4 seizure.

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

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

1 (b) Real property may not be seized or restrained,
2 other than by lis pendens, subsequent to a violation of the
3 Florida Contraband Forfeiture Act until the persons entitled
4 to notice are afforded the opportunity to attend the
5 preseizure adversarial preliminary hearing. A lis pendens may
6 be obtained by any method authorized by law. Notice of the
7 adversarial preliminary hearing shall be by certified mail,
8 return receipt requested. The purpose of the adversarial
9 preliminary hearing is to determine whether probable cause
10 exists to believe that such property has been used in
11 violation of the Florida Contraband Forfeiture Act. The
12 seizing agency shall make a diligent effort to notify any
13 person entitled to notice of the seizure. The preseizure
14 adversarial preliminary hearing provided herein shall be held
15 within 10 days of the filing of the lis pendens or as soon as
16 practicable.

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

27 (d) If the court determines that probable cause exists
28 to believe that such property was used in violation of the
29 Florida Contraband Forfeiture Act, the court shall order the
30 property restrained by the least restrictive means to protect
31 against disposal, waste, or continued illegal use of such

1 property pending disposition of the forfeiture proceeding.
2 The court may order the claimant to post a bond or other
3 adequate security equivalent to the value of the property.

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

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

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

29 (a) Cannot be located;

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

1 (c) Has been placed beyond the jurisdiction of the
2 court;
3 (d) Has been substantially diminished in value by any
4 act or omission of the person in possession of the property;
5 or
6 (e) Has been commingled with any property which cannot
7 be divided without difficulty.
8 (6)(a) Property may not be forfeited under the Florida
9 Contraband Forfeiture Act unless the seizing agency
10 establishes by a preponderance of the evidence that the owner
11 either knew, or should have known after a reasonable inquiry,
12 that the property was being employed or was likely to be
13 employed in criminal activity.
14 (b) A bona fide lienholder's interest that has been
15 perfected in the manner prescribed by law prior to the seizure
16 may not be forfeited under the Florida Contraband Forfeiture
17 Act unless the seizing agency establishes by a preponderance
18 of the evidence that the lienholder had actual knowledge, at
19 the time the lien was made, that the property was being
20 employed or was likely to be employed in criminal activity.
21 If a lienholder's interest is not subject to forfeiture under
22 the requirements of this section, such interest shall be
23 preserved by the court by ordering the lienholder's interest
24 to be paid as provided in s. 932.7055.
25 (c) Property titled or registered between husband and
26 wife jointly by the use of the conjunctives "and," "and/or,"
27 or "or," in the manner prescribed by law prior to the seizure,
28 may not be forfeited under the Florida Contraband Forfeiture
29 Act unless the seizing agency establishes by a preponderance
30 of the evidence that the coowner either knew or had reason to
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1 know, after reasonable inquiry, that such property was
2 employed or was likely to be employed in criminal activity.

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

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

1 interest, the seizing agency may hold the property in
2 coownership, sell its interest in the property, liquidate its
3 interest in the property, or dispose of its interest in the
4 property in any other reasonable manner.

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

12 Section 4. This act shall take effect October 1, 1999.

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HOUSE SUMMARY

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

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