

1 A bill to be entitled

2 An act relating to seizure and forfeiture of contraband;
3 creating s. 810.091, F.S.; providing for contraband items
4 to be seized by and forfeited to certain law enforcement
5 agencies in certain circumstances related to trespass;
6 specifying circumstances in which such seizure may occur;
7 requiring the court to make a finding at the disposition
8 of certain criminal cases as to the use of a contraband
9 item; authorizing forfeiture in certain circumstances;
10 requiring forfeiture in certain circumstances; defining
11 the term "convicted"; providing circumstances in which
12 forfeiture is precluded due to a lack of certain knowledge
13 by the registered owner of a contraband item; providing
14 circumstances in which prima facie evidence of such
15 knowledge may be inferred; providing that the rights,
16 title, and interest to a contraband item shall be ordered
17 to the seizing agency upon forfeiture, subject only to the
18 rights of bona fide lienholders; providing for the return
19 of the contraband item to the registered owner in certain
20 circumstances; providing for written notice of the seizure
21 to specified persons; authorizing procedures for providing
22 such notice; requiring that the notice be provided within
23 a reasonable time; specifying the contents of such notice;
24 providing a procedure for circumstances in which the
25 registered owner cannot be identified or located;
26 specifying circumstances in which the person from whom the
27 contraband item was seized may be liable for loss to the
28 registered owner; providing that the person who receives
29 such notice must respond in certain circumstances;

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30 providing that the response must occur within a specified
 31 time and must contain certain information; authorizing the
 32 exclusion of certain evidence in certain circumstances;
 33 authorizing the seizing agency to retain or sell a
 34 contraband item subsequent to forfeiture; providing for
 35 the allocation and sharing of the value of a forfeited
 36 contraband item among certain law enforcement agencies;
 37 specifying that funds received by a law enforcement agency
 38 are supplemental funds; prohibiting a municipality,
 39 county, or state from using such funds as replacement
 40 funds; providing that the provisions of ch. 932, F.S.,
 41 shall not apply to actions for seizure or forfeiture;
 42 authorizing actions for seizure or forfeiture under the
 43 Florida Contraband Forfeiture Act in lieu of certain
 44 proceedings; providing applicability; providing an
 45 effective date.

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 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 810.091, Florida Statutes, is created
 50 to read:

51 810.091 Seizure and forfeiture of contraband.--

52 (1) Any item or equipment, including, but not limited to,
 53 motor vehicles, motorcycles, vessels, off-highway vehicles, all-
 54 terrain vehicles, off-highway motorcycles, tractors, tracked
 55 vehicles, or any other conveyance, regardless of its power
 56 source, used by any person in the commission of an offense
 57 provided in s. 810.09(1)(a)1. shall be considered a contraband
 58 item. Any such contraband item is subject to seizure by the law

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59 enforcement agency investigating an offense provided in s.
 60 810.09(1)(a)1. The seizure of a contraband item may occur
 61 contemporaneously with the arrest of a person who is the subject
 62 of such investigation and who is found to be in the possession
 63 of a contraband item or during the course of the investigation,
 64 pursuant to a lawfully issued search warrant. Upon seizure, a
 65 contraband item is subject to forfeiture in favor of the
 66 investigating agency in accordance with the provisions of this
 67 section.

68 (2) Notwithstanding any sentence imposed or any
 69 jurisdictional limitations on the amount in controversy, the
 70 court having jurisdiction over the criminal prosecution of any
 71 person for an offense provided in s. 810.09(1)(a)1. shall, at
 72 the time of disposition of such offense, make a finding on the
 73 record as to whether such person used any seized contraband item
 74 in connection with such offense. Except as provided in
 75 subsection (3), if the court finds that the item was used in
 76 connection with such offense, and:

77 (a) The person has not previously been convicted of an
 78 offense provided in s. 810.09(1)(a)1., the court may order the
 79 item forfeited to the seizing law enforcement agency.

80 (b) The person has previously been convicted of an offense
 81 provided in s. 810.09(1)(a)1., the court shall order the item
 82 forfeited to the seizing law enforcement agency.

83
 84 For purposes of this subsection, the term "convicted" refers to
 85 any disposition other than an acquittal for or a dismissal of
 86 the offense.

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87 (3) If a person who has been found to have used a seized
88 contraband item in connection with an offense provided in s.
89 810.09(1)(a)1. is not the registered owner of the contraband
90 item, such item shall not be forfeited unless it is shown by a
91 preponderance of the evidence that the registered owner of the
92 contraband item aided, abetted, or participated in the offense
93 or otherwise had reason to know that such person would use the
94 item in connection with the offense. For purposes of this
95 section, it is prima facie evidence that the registered owner
96 had reason to know that a person would use the item in
97 connection with a violation of s. 810.09(1)(a)1. if such item
98 was previously seized from such person under this section.

99 (4) Upon forfeiture under this section, the court shall
100 order all rights, title, and interest to the contraband item to
101 the seizing agency, subject only to the rights and interests of
102 bona fide lienholders. If the court does not order forfeiture,
103 the seizing agency shall return the item to the registered
104 owner.

105 (5)(a) Upon any seizure of a contraband item under this
106 section, the seizing law enforcement agency shall make a
107 diligent effort to provide written notice of the seizure to the
108 registered owner of the item and, if other than the registered
109 owner, the person from whose possession the contraband item was
110 seized. Such notice shall include the mailing and physical
111 addresses of the seizing agency and shall explain the seizure
112 and forfeiture provisions of this section, including the
113 procedure for contesting a forfeiture.

114 (b) The notice described in paragraph (a) may be satisfied
115 by certified mail within 14 days after the seizure. Notice must

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116 be provided in a reasonable time to allow the person receiving
 117 such notice a meaningful opportunity to be heard in a proceeding
 118 under subsection (2) or subsection (3).

119 (c) If the seizing agency cannot, after diligent inquiry,
 120 ascertain the identity of or locate an address for the
 121 registered owner of the item, the seizing agency shall file an
 122 affidavit with the court stating that the notice required by
 123 paragraph (a) has not been accomplished and attesting to its
 124 efforts to comply with the requirements of paragraph (a). The
 125 affidavit shall be filed no later than 14 days prior to the date
 126 of any proceeding at which the issue of forfeiture is decided.
 127 If the court is satisfied that the seizing agency has made
 128 reasonable efforts to provide notice as required by paragraph
 129 (a) and if an order of forfeiture is subsequently entered in
 130 favor of the seizing agency, the court shall include a finding
 131 in the sentencing order of the person who was found to have used
 132 the contraband item in connection with an offense provided in s.
 133 810.09(1)(a)1. that such person is liable to the registered
 134 owner of the item for any loss to the owner as a result of the
 135 forfeiture.

136 (d) Within 21 days after receiving a notice of seizure,
 137 any person who intends to contest the forfeiture or to otherwise
 138 seek the recovery of a contraband item must provide written
 139 notice to the seizing agency of such intent. Such notice must
 140 inform the seizing agency as to whether the person intends to
 141 assert the innocence of the registered owner as a defense to the
 142 forfeiture or seizure. Failure to provide timely notice of
 143 intent to contest as described in this paragraph may constitute

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144 grounds for the court to exclude evidence in a proceeding under
 145 subsection (2) or subsection (3).

146 (6) Any municipal, county, or state law enforcement agency
 147 that investigates, enforces, or assists in investigating or
 148 enforcing the provisions of s. 810.09(1)(a)1., which
 149 investigation or enforcement results in any forfeiture of a
 150 contraband item, is entitled to receive all or a share of the
 151 value of any such item based upon its participation in such
 152 investigation or enforcement. Any contraband item forfeited in
 153 favor of the seizing agency may be retained or sold by the
 154 agency. Any funds received by a law enforcement agency pursuant
 155 to this subsection shall constitute supplemental funds and may
 156 not be used as replacement funds by any municipality, county, or
 157 state.

158 (7) The provisions of chapter 932 shall not apply to any
 159 seizure or forfeiture action initiated under this section.
 160 Nothing herein shall be construed to limit any action under the
 161 provisions of the Florida Contraband Forfeiture Act in lieu of
 162 any action for seizure of forfeiture under this section.

163 Section 2. This act shall take effect July 1, 2004, and
 164 shall apply to offenses committed on or after that date.