

By Senator Alexander

17-1575A-04

See HB 1423

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

1 or located; specifying circumstances in which
2 the person from whom the contraband item was
3 seized may be liable for loss to the registered
4 owner; providing that the person who receives
5 such notice must respond in certain
6 circumstances; providing that the response must
7 occur within a specified time and must contain
8 certain information; authorizing the exclusion
9 of certain evidence in certain circumstances;
10 authorizing the seizing agency to retain or
11 sell a contraband item subsequent to
12 forfeiture; providing for the allocation and
13 sharing of the value of a forfeited contraband
14 item among certain law enforcement agencies;
15 specifying that funds received by a law
16 enforcement agency are supplemental funds;
17 prohibiting a municipality, county, or state
18 from using such funds as replacement funds;
19 providing that the provisions of ch. 932, F.S.,
20 shall not apply to actions for seizure or
21 forfeiture; authorizing actions for seizure or
22 forfeiture under the Florida Contraband
23 Forfeiture Act in lieu of certain proceedings;
24 providing applicability; providing an effective
25 date.

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

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29 Section 1. Section 810.091, Florida Statutes, is
30 created to read:

31 810.091 Seizure and forfeiture of contraband.--

1 (1) Any item or equipment, including, but not limited
2 to, motor vehicles, motorcycles, vessels, off-highway
3 vehicles, all-terrain vehicles, off-highway motorcycles,
4 tractors, tracked vehicles, or any other conveyance,
5 regardless of its power source, used by any person in the
6 commission of an offense provided in s. 810.09(1)(a)1. shall
7 be considered a contraband item. Any such contraband item is
8 subject to seizure by the law enforcement agency investigating
9 an offense provided in s. 810.09(1)(a)1. The seizure of a
10 contraband item may occur contemporaneously with the arrest of
11 a person who is the subject of such investigation and who is
12 found to be in the possession of a contraband item or during
13 the course of the investigation, pursuant to a lawfully issued
14 search warrant. Upon seizure, a contraband item is subject to
15 forfeiture in favor of the investigating agency in accordance
16 with the provisions of this section.

17 (2) Notwithstanding any sentence imposed or any
18 jurisdictional limitations on the amount in controversy, the
19 court having jurisdiction over the criminal prosecution of any
20 person for an offense provided in s. 810.09(1)(a)1. shall, at
21 the time of disposition of such offense, make a finding on the
22 record as to whether such person used any seized contraband
23 item in connection with such offense. Except as provided in
24 subsection (3), if the court finds that the item was used in
25 connection with such offense, and:

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

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

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2 For purposes of this subsection, the term "convicted" refers
3 to any disposition other than an acquittal for or a dismissal
4 of the offense.

5 (3) If a person who has been found to have used a
6 seized contraband item in connection with an offense provided
7 in s. 810.09(1)(a)1. is not the registered owner of the
8 contraband item, such item shall not be forfeited unless it is
9 shown by a preponderance of the evidence that the registered
10 owner of the contraband item aided, abetted, or participated
11 in the offense or otherwise had reason to know that such
12 person would use the item in connection with the offense. For
13 purposes of this section, it is prima facie evidence that the
14 registered owner had reason to know that a person would use
15 the item in connection with a violation of s. 810.09(1)(a)1.
16 if such item was previously seized from such person under this
17 section.

18 (4) Upon forfeiture under this section, the court
19 shall order all rights, title, and interest to the contraband
20 item to the seizing agency, subject only to the rights and
21 interests of bona fide lienholders. If the court does not
22 order forfeiture, the seizing agency shall return the item to
23 the registered owner.

24 (5)(a) Upon any seizure of a contraband item under
25 this section, the seizing law enforcement agency shall make a
26 diligent effort to provide written notice of the seizure to
27 the registered owner of the item and, if other than the
28 registered owner, the person from whose possession the
29 contraband item was seized. Such notice shall include the
30 mailing and physical addresses of the seizing agency and shall
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1 explain the seizure and forfeiture provisions of this section,
2 including the procedure for contesting a forfeiture.

3 (b) The notice described in paragraph (a) may be
4 satisfied by certified mail within 14 days after the seizure.
5 Notice must be provided in a reasonable time to allow the
6 person receiving such notice a meaningful opportunity to be
7 heard in a proceeding under subsection (2) or subsection (3).

8 (c) If the seizing agency cannot, after diligent
9 inquiry, ascertain the identity of or locate an address for
10 the registered owner of the item, the seizing agency shall
11 file an affidavit with the court stating that the notice
12 required by paragraph (a) has not been accomplished and
13 attesting to its efforts to comply with the requirements of
14 paragraph (a). The affidavit shall be filed no later than 14
15 days prior to the date of any proceeding at which the issue of
16 forfeiture is decided. If the court is satisfied that the
17 seizing agency has made reasonable efforts to provide notice
18 as required by paragraph (a) and if an order of forfeiture is
19 subsequently entered in favor of the seizing agency, the court
20 shall include a finding in the sentencing order of the person
21 who was found to have used the contraband item in connection
22 with an offense provided in s. 810.09(1)(a)1. that such person
23 is liable to the registered owner of the item for any loss to
24 the owner as a result of the forfeiture.

25 (d) Within 21 days after receiving a notice of
26 seizure, any person who intends to contest the forfeiture or
27 to otherwise seek the recovery of a contraband item must
28 provide written notice to the seizing agency of such intent.
29 Such notice must inform the seizing agency as to whether the
30 person intends to assert the innocence of the registered owner
31 as a defense to the forfeiture or seizure. Failure to provide

1 timely notice of intent to contest as described in this
2 paragraph may constitute grounds for the court to exclude
3 evidence in a proceeding under subsection (2) or subsection
4 (3).

5 (6) Any municipal, county, or state law enforcement
6 agency that investigates, enforces, or assists in
7 investigating or enforcing the provisions of s.
8 810.09(1)(a)1., which investigation or enforcement results in
9 any forfeiture of a contraband item, is entitled to receive
10 all or a share of the value of any such item based upon its
11 participation in such investigation or enforcement. Any
12 contraband item forfeited in favor of the seizing agency may
13 be retained or sold by the agency. Any funds received by a law
14 enforcement agency pursuant to this subsection shall
15 constitute supplemental funds and may not be used as
16 replacement funds by any municipality, county, or state.

17 (7) The provisions of chapter 932 shall not apply to
18 any seizure or forfeiture action initiated under this section.
19 Nothing herein shall be construed to limit any action under
20 the provisions of the Florida Contraband Forfeiture Act in
21 lieu of any action for seizure or forfeiture under this
22 section.

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