

1 A bill to be entitled
 2 An act relating to pain-management clinics; amending ss.
 3 458.327 and 459.013, F.S.; providing that persons who are
 4 convicted of, enter a plea of guilty or nolo contendere
 5 to, or have adjudication withheld for knowingly operating,
 6 owning, or managing an unregistered pain-management clinic
 7 are subject to the Florida Contraband Forfeiture Act;
 8 amending s. 932.701, F.S.; redefining the term "contraband
 9 article" as it relates to owning, operating, or managing
 10 an unregistered pain-management clinic; amending s.
 11 932.7055, F.S.; requiring that proceeds from a forfeiture
 12 involving an unregistered pain-management clinic be
 13 deposited in the Crimes Compensation Trust Fund within the
 14 Department of Revenue; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (1) of section 458.327, Florida
 19 Statutes, is amended to read:

20 458.327 Penalty for violations.—

21 (1) Each of the following acts constitutes a felony of the
 22 third degree, punishable as provided in s. 775.082, s. 775.083,
 23 or s. 775.084:

24 (a) The practice of medicine or an attempt to practice
 25 medicine without a license to practice in Florida.

26 (b) The use or attempted use of a license which is
 27 suspended or revoked to practice medicine.

28 (c) Attempting to obtain or obtaining a license to

29 | practice medicine by knowing misrepresentation.

30 | (d) Attempting to obtain or obtaining a position as a
 31 | medical practitioner or medical resident in a clinic or hospital
 32 | through knowing misrepresentation of education, training, or
 33 | experience.

34 | (e) Knowingly operating, owning, or managing an
 35 | unregistered ~~a nonregistered~~ pain-management clinic that is
 36 | required to be registered with the Department of Health pursuant
 37 | to s. 458.3265(1). A person who is convicted of, enters a plea
 38 | of guilty or nolo contendere to, or has adjudication withheld
 39 | for knowingly operating, owning, or managing an unregistered
 40 | pain-management clinic that is required to be registered with
 41 | the Department of Health is also subject to the Florida
 42 | Contraband Forfeiture Act as provided in ss. 932.701-932.706.

43 | Section 2. Subsection (1) of section 459.013, Florida
 44 | Statutes, is amended to read:

45 | 459.013 Penalty for violations.—

46 | (1) Each of the following acts constitutes a felony of the
 47 | third degree, punishable as provided in s. 775.082, s. 775.083,
 48 | or s. 775.084:

49 | (a) The practice of osteopathic medicine, or an attempt to
 50 | practice osteopathic medicine, without an active license or
 51 | certificate issued pursuant to this chapter.

52 | (b) The practice of osteopathic medicine by a person
 53 | holding a limited license, osteopathic faculty certificate, or
 54 | other certificate issued under this chapter beyond the scope of
 55 | practice authorized for such licensee or certificateholder.

56 | (c) Attempting to obtain or obtaining a license to

57 | practice osteopathic medicine by knowing misrepresentation.

58 | (d) Attempting to obtain or obtaining a position as an
 59 | osteopathic medical practitioner or osteopathic medical resident
 60 | in a clinic or hospital through knowing misrepresentation of
 61 | education, training, or experience.

62 | (e) Knowingly operating, owning, or managing a
 63 | nonregistered pain-management clinic that is required to be
 64 | registered with the Department of Health pursuant to s.
 65 | 459.0137(1). A person who is convicted of, enters a plea of
 66 | guilty or nolo contendere to, or has adjudication withheld for
 67 | knowingly operating, owning, or managing an unregistered pain-
 68 | management clinic that is required to be registered with the
 69 | Department of Health is also subject to the Florida Contraband
 70 | Forfeiture Act as provided in ss. 932.701-932.706.

71 | Section 3. Section 932.701, Florida Statutes, is amended
 72 | to read:

73 | 932.701 Short title; definitions.—

74 | (1) Sections 932.701-932.706 shall be known and may be
 75 | cited as the "Florida Contraband Forfeiture Act."

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

77 | (a) "Contraband article" means:

78 | 1. Any controlled substance as defined in chapter 893 or
 79 | any substance, device, paraphernalia, or currency or other means
 80 | of exchange that was used, was attempted to be used, or was
 81 | intended to be used in violation of any provision of chapter
 82 | 893, if the totality of the facts presented by the state is
 83 | clearly sufficient to meet the state's burden of establishing
 84 | probable cause to believe that a nexus exists between the

HB 1185

2011

85 | article seized and the narcotics activity, whether or not the
86 | use of the contraband article can be traced to a specific
87 | narcotics transaction.

88 | 2. Any gambling paraphernalia, lottery tickets, money,
89 | currency, or other means of exchange which was used, was
90 | attempted, or intended to be used in violation of the gambling
91 | laws of the state.

92 | 3. Any equipment, liquid or solid, which was being used,
93 | is being used, was attempted to be used, or intended to be used
94 | in violation of the beverage or tobacco laws of the state.

95 | 4. Any motor fuel upon which the motor fuel tax has not
96 | been paid as required by law.

97 | 5. Any personal property, including, but not limited to,
98 | any vessel, aircraft, item, object, tool, substance, device,
99 | weapon, machine, vehicle of any kind, money, securities, books,
100 | records, research, negotiable instruments, or currency, which
101 | was used or was attempted to be used as an instrumentality in
102 | the commission of, or in aiding or abetting in the commission
103 | of, any felony, whether or not comprising an element of the
104 | felony, or which is acquired by proceeds obtained as a result of
105 | a violation of the Florida Contraband Forfeiture Act.

106 | 6. Any real property, including any right, title,
107 | leasehold, or other interest in the whole of any lot or tract of
108 | land, which was used, is being used, or was attempted to be used
109 | as an instrumentality in the commission of, or in aiding or
110 | abetting in the commission of, any felony, or which is acquired
111 | by proceeds obtained as a result of a violation of the Florida
112 | Contraband Forfeiture Act.

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

119 8. Any motor vehicle offered for sale in violation of s.
 120 320.28.

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

123 10. Any photograph, film, or other recorded image,
 124 including an image recorded on videotape, a compact disc,
 125 digital tape, or fixed disk, that is recorded in violation of s.
 126 810.145 and is possessed for the purpose of amusement,
 127 entertainment, sexual arousal, gratification, or profit, or for
 128 the purpose of degrading or abusing another person.

129 11. Any real property, including any right, title,
 130 leasehold, or other interest in the whole of any lot or tract of
 131 land, which is acquired by proceeds obtained as a result of
 132 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 133 property, including, but not limited to, equipment, money,
 134 securities, books, records, research, negotiable instruments, or
 135 currency; or any vessel, aircraft, item, object, tool,
 136 substance, device, weapon, machine, or vehicle of any kind in
 137 the possession of or belonging to any person which is acquired
 138 by proceeds obtained as a result of Medicaid fraud under s.
 139 409.920 or s. 409.9201.

140 12. Any real property, including any right, title,

HB 1185

2011

141 leasehold, or other interest in the whole of any lot or tract of
142 land, which is acquired by proceeds obtained as a result of
143 knowingly operating, owning, or managing an unregistered pain-
144 management clinic as prohibited in s. 458.327(1) or s.
145 459.013(1); or any personal property, including, but not limited
146 to, equipment, money, securities, books, records, research,
147 negotiable instruments, or currency; or any vessel, aircraft,
148 item, object, tool, substance, device, weapon, machine, or
149 vehicle of any kind in the possession of or belonging to a
150 person which is acquired by proceeds obtained as a result of
151 knowingly operating, owning, or managing an unregistered pain-
152 management clinic as prohibited in s. 458.327(1) or s.
153 459.013(1).

154 (b) "Bona fide lienholder" means the holder of a lien
155 perfected pursuant to applicable law.

156 (c) "Promptly proceed" means to file the complaint within
157 45 days after seizure.

158 (d) "Complaint" is a petition for forfeiture filed in the
159 civil division of the circuit court by the seizing agency
160 requesting the court to issue a judgment of forfeiture.

161 (e) "Person entitled to notice" means any owner, entity,
162 bona fide lienholder, or person in possession of the property
163 subject to forfeiture when seized, who is known to the seizing
164 agency after a diligent search and inquiry.

165 (f) "Adversarial preliminary hearing" means a hearing in
166 which the seizing agency is required to establish probable cause
167 that the property subject to forfeiture was used in violation of
168 the Florida Contraband Forfeiture Act.

169 (g) "Forfeiture proceeding" means a hearing or trial in
 170 which the court or jury determines whether the subject property
 171 shall be forfeited.

172 (h) "Claimant" means any party who has proprietary
 173 interest in property subject to forfeiture and has standing to
 174 challenge such forfeiture, including owners, registered owners,
 175 bona fide lienholders, and titleholders.

176 Section 4. Paragraph (a) of subsection (6) of section
 177 932.7055, Florida Statutes, is amended to read:

178 932.7055 Disposition of liens and forfeited property.—

179 (6) If the seizing agency is a state agency, all remaining
 180 proceeds shall be deposited into the General Revenue Fund.

181 However, if the seizing agency is:

182 (a) The Department of Law Enforcement, the proceeds
 183 accrued pursuant to the provisions of the Florida Contraband
 184 Forfeiture Act shall be deposited into the following trust
 185 funds:

186 1. The Forfeiture and Investigative Support Trust Fund as
 187 provided in s. 943.362; ~~or into~~

188 2. The department's Federal Law Enforcement Trust Fund as
 189 provided in s. 943.365, as applicable; ~~or-~~

190 3. The Crimes Compensation Trust Fund if the forfeiture
 191 involves an unregistered pain-management clinic.

192 Section 5. This act shall take effect October 1, 2011.