

By Senator Fasano

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

17
18 Be It Enacted by the Legislature of the State of Florida:

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

22 458.327 Penalty for violations.—

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

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

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

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30 (c) Attempting to obtain or obtaining a license to practice
31 medicine by knowing misrepresentation.

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

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

45 Section 2. Subsection (1) of section 459.013, Florida
46 Statutes, is amended to read:

47 459.013 Penalty for violations.—

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

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

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

58 (c) Attempting to obtain or obtaining a license to practice

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59 osteopathic medicine by knowing misrepresentation.

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

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

73 Section 3. Section 932.701, Florida Statutes, is amended to
74 read:

75 932.701 Short title; definitions.—

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

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

79 (a) "Contraband article" means:

80 1. Any controlled substance as defined in chapter 893 or
81 any substance, device, paraphernalia, or currency or other means
82 of exchange that was used, was attempted to be used, or was
83 intended to be used in violation of any provision of chapter
84 893, if the totality of the facts presented by the state is
85 clearly sufficient to meet the state's burden of establishing
86 probable cause to believe that a nexus exists between the
87 article seized and the narcotics activity, whether or not the

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88 use of the contraband article can be traced to a specific
89 narcotics transaction.

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

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

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

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

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

115 7. Any personal property, including, but not limited to,
116 equipment, money, securities, books, records, research,

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117 negotiable instruments, currency, or any vessel, aircraft, item,
118 object, tool, substance, device, weapon, machine, or vehicle of
119 any kind in the possession of or belonging to any person who
120 takes aquaculture products in violation of s. 812.014(2)(c).

121 8. Any motor vehicle offered for sale in violation of s.
122 320.28.

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

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

131 11. Any real property, including any right, title,
132 leasehold, or other interest in the whole of any lot or tract of
133 land, which is acquired by proceeds obtained as a result of
134 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
135 property, including, but not limited to, equipment, money,
136 securities, books, records, research, negotiable instruments, or
137 currency; or any vessel, aircraft, item, object, tool,
138 substance, device, weapon, machine, or vehicle of any kind in
139 the possession of or belonging to any person which is acquired
140 by proceeds obtained as a result of Medicaid fraud under s.
141 409.920 or s. 409.9201.

142 12. Any real property, including any right, title,
143 leasehold, or other interest in the whole of any lot or tract of
144 land, which is acquired by proceeds obtained as a result of
145 knowingly operating, owning, or managing an unregistered pain-

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146 management clinic as prohibited in s. 458.327(1) or s.
147 459.013(1); any personal property, including, but not limited
148 to, equipment, money, securities, books, records, research,
149 negotiable instruments, or currency; or any vessel, aircraft,
150 item, object, tool, substance, device, weapon, machine, or
151 vehicle of any kind in the possession of or belonging to a
152 person which is acquired by proceeds obtained as a result
153 knowingly operating, owning, or managing an unregistered pain-
154 management clinic as prohibited in s. 458.327(1) or s.
155 459.013(1).

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

158 (c) "Promptly proceed" means to file the complaint within
159 45 days after seizure.

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

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

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

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

174 (h) "Claimant" means any party who has proprietary interest

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175 in property subject to forfeiture and has standing to challenge
176 such forfeiture, including owners, registered owners, bona fide
177 lienholders, and titleholders.

178 Section 4. Paragraph (a) of subsection (6) of section
179 932.7055, Florida Statutes, is amended to read:

180 932.7055 Disposition of liens and forfeited property.—

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

183 However, if the seizing agency is:

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

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

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

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

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