

By the Committees on Fiscal Policy; and Criminal Justice; and
Senators Brandes, Negron, Clemens, and Bean

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1 A bill to be entitled
2 An act relating to contraband forfeiture; amending s.
3 932.701, F.S.; conforming provisions to changes made
4 by the act; amending s. 932.703, F.S.; specifying that
5 property may be seized only under certain
6 circumstances; defining the term "monetary
7 instrument"; requiring that specified persons approve
8 a settlement; providing circumstances when property
9 may be deemed contraband; allocating responsibility
10 for damage to seized property and payment of storage
11 and maintenance expenses; requiring the seizing agency
12 to apply for an order, within a certain timeframe,
13 making a probable cause determination after the agency
14 seizes property; providing application requirements;
15 requiring a court to make specified determinations;
16 providing procedures upon certain court findings;
17 authorizing the court to seal any portion of the
18 application and of specified proceedings under certain
19 circumstances; providing for construction; amending s.
20 932.704, F.S.; providing requirements for a filing fee
21 and a bond to be paid to the clerk of court;
22 increasing the evidentiary standard from clear and
23 convincing evidence to proof beyond a reasonable doubt
24 that a contraband article was being used in violation
25 of the Florida Contraband Forfeiture Act for a court
26 to order the forfeiture of the seized property;
27 increasing the attorney fees and costs awarded to
28 claimant under certain circumstances; requiring a
29 sizing agency to annually review seizures,
30 settlements, and forfeiture proceedings to determine
31 compliance with the Florida Contraband Forfeiture Act;

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32 providing requirements for seizing law enforcement
33 agencies; requiring seizing law enforcement agencies
34 to adopt and implement specified written policies,
35 procedures, and training; requiring law enforcement
36 agency personnel to receive basic training and
37 continuing education; requiring the maintenance of
38 training records; amending s. 932.7055, F.S.;
39 conforming provisions to changes made by the act;
40 creating s. 932.7061, F.S.; providing reporting
41 requirements for seized property for forfeiture;
42 creating s. 932.7062, F.S.; providing penalties for
43 noncompliance with reporting requirements; amending s.
44 322.34, F.S.; providing for payment of court costs,
45 fines, and fees from proceeds of certain forfeitures;
46 conforming provisions to changes made by the act;
47 amending ss. 323.001, 328.07, and 817.625, F.S.;
48 conforming provisions to changes made by the act;
49 providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Subsection (1) of section 932.701, Florida
54 Statutes, is amended to read:

55 932.701 Short title; definitions.—

56 (1) Sections 932.701-932.7062 ~~932.706~~ shall be known and
57 may be cited as the "Florida Contraband Forfeiture Act."

58 Section 2. Subsection (1) of section 932.703, Florida
59 Statutes, is amended, a new subsection (2) is added, and present
60 subsections (2) through (8) are redesignated as subsections (3)

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61 through (9), respectively, to read:

62 932.703 Forfeiture of contraband article; exceptions.—

63 (1) (a) A ~~Any~~ contraband article, vessel, motor vehicle,
64 aircraft, other personal property, or real property used in
65 violation of any provision of the Florida Contraband Forfeiture
66 Act, or in, upon, or by means of which any violation of the
67 Florida Contraband Forfeiture Act has taken or is taking place,
68 may be seized and shall be forfeited subject to ~~the provisions~~
69 ~~of~~ the Florida Contraband Forfeiture Act. A seizure may occur
70 only if the owner of the property is arrested or if one or more
71 of the following circumstances apply:

72 1. The owner of the property cannot be identified after a
73 diligent search;

74 2. The owner of the property is a fugitive from justice or
75 is deceased;

76 3. An individual who does not own the property is arrested
77 for the criminal violation that renders the property a
78 contraband article and the owner of the property had actual
79 knowledge of the criminal activity. Evidence that an owner
80 received written notification from a law enforcement agency and
81 acknowledged receipt of the notification in writing, that the
82 seized asset had been used in violation of the Florida
83 Contraband Forfeiture Act on a prior occasion by the arrested
84 person, may be used to establish actual knowledge;

85 4. The owner of the property agrees to be a confidential
86 informant as defined in s. 914.28. The seizing agency may not
87 use the threat of property seizure or forfeiture to coerce the
88 owner of the property to enter into a confidential informant
89 agreement. The seizing agency shall return the property to the

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90 owner if criminal charges are not filed against the owner and
91 the active criminal investigation ends or if the owner ceases
92 being a confidential informant, unless the agency includes the
93 final forfeiture of the property as a component of the
94 confidential informant agreement; or

95 5. The property is a monetary instrument. For purposes of
96 this subparagraph, the term "monetary instrument" means coin or
97 currency of the United States or any other country; a traveler's
98 check; a personal check; a bank check; a cashier's check; a
99 money order; a bank draft of any country; an investment security
100 or negotiable instrument in bearer form or in other form such
101 that title passes upon delivery; a prepaid or stored value card
102 or other device that is the equivalent of money and can be used
103 to obtain cash, property, or services; or gold, silver, or
104 platinum bullion or coins.

105 (b) After property is seized pursuant to the Florida
106 Contraband Forfeiture Act, regardless of whether the civil
107 complaint has been filed, all settlements must be personally
108 approved by the head of the law enforcement agency that seized
109 the property. If the agency head is unavailable and a delay
110 would adversely affect the settlement, approval may be given by
111 a subordinate of the agency head who is designated to grant such
112 approval ~~Notwithstanding any other provision of the Florida~~
113 ~~Contraband Forfeiture Act, except the provisions of paragraph~~
114 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~
115 ~~violation of any provision of the Florida Contraband Forfeiture~~
116 ~~Act, or in, upon, or by means of which any violation of the~~
117 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
118 ~~shall be seized and shall be forfeited subject to the provisions~~

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119 ~~of the Florida Contraband Forfeiture Act.~~

120 (c) If at least 90 days have elapsed since the initial
121 seizure of the property and the seizing agency has failed to
122 locate the owner after making a diligent effort, the seized
123 property is deemed a contraband article that is subject to
124 forfeiture under the Florida Contraband Forfeiture Act ~~All~~
125 ~~rights to, interest in, and title to contraband articles used in~~
126 ~~violation of s. 932.702 shall immediately vest in the seizing~~
127 ~~law enforcement agency upon seizure.~~

128 (d)1. The seizing agency may not use the seized property
129 for any purpose until the rights to, interest in, and title to
130 the seized property are perfected in accordance with the Florida
131 Contraband Forfeiture Act. This section does not prohibit use or
132 operation necessary for reasonable maintenance of seized
133 property. Reasonable efforts shall be made to maintain seized
134 property in such a manner as to minimize loss of value.

135 2. Unless the parties agree in writing to a different
136 assignment of responsibility, the agency seeking to forfeit the
137 seized property is responsible for any damage to the property
138 and any storage fees or maintenance costs applicable to the
139 property. If more than one agency seeks forfeiture of the
140 property, the division of liability under this subparagraph may
141 be governed by the terms of an agreement between the agencies.

142 (2) (a) When a seizure of property is made under the Florida
143 Contraband Forfeiture Act, the seizing agency shall apply,
144 within 10 business days after the date of the seizure, to a
145 court of competent jurisdiction for an order determining whether
146 probable cause exists for the seizure of the property. The
147 application for the probable cause determination must be

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148 accompanied by a sworn affidavit and may be filed electronically
149 by reliable electronic means.

150 (b) The court must determine whether:

151 1. The owner was arrested and if not, whether an exception
152 to the arrest requirement specified in paragraph (1)(a) applies;
153 and

154 2. Probable cause exists for the property seizure under the
155 Florida Contraband Forfeiture Act.

156 (c) If the court finds that the requirements in paragraph
157 (1)(a) were met and that probable cause exists for the seizure,
158 the forfeiture may proceed as set forth in the Florida
159 Contraband Forfeiture Act, and no further probable cause
160 determination is required unless the claimant requests an
161 adversarial preliminary hearing as set forth in the act. Upon
162 such a finding, the court shall issue a written order finding
163 probable cause for the seizure and order the property held until
164 the issue of a determination of title is resolved pursuant to
165 the procedures defined in the act.

166 (d) If the court finds that no probable cause exists for
167 the seizure, any forfeiture hold, lien, lis pendens, or other
168 civil encumbrance must be released within 5 days.

169 (e) The court may seal any portion of the application and
170 the record of any proceeding under the Florida Contraband
171 Forfeiture Act which is exempt or confidential and exempt from
172 s. 119.07(1) and s. 24(a), Art. I of the State Constitution or
173 may otherwise be sealed pursuant to Rule 2.420, Florida Rules of
174 Judicial Administration.

175 (f) The provisions of this subsection do not affect any
176 other requirement or right set forth in the Florida Contraband

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177 Forfeiture Act.

178 Section 3. Subsection (4), paragraph (b) of subsection (5),
179 paragraph (b) of subsection (6), subsections (8), (10), and (11)
180 of section 932.704, Florida Statutes, are amended to read:

181 932.704 Forfeiture proceedings.—

182 (4) The seizing agency shall promptly proceed against the
183 contraband article by filing a complaint in the circuit court
184 within the jurisdiction where the seizure or the offense
185 occurred, paying a filing fee of at least \$1,000 and depositing
186 a bond of \$1,500 to the clerk of the court. The bond shall be
187 payable to the claimant if the claimant prevails at the close of
188 the forfeiture proceedings and any appeal.

189 (5)

190 (b) If no person entitled to notice requests an adversarial
191 preliminary hearing, as provided in s. 932.703(3)(a)
192 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall
193 review the complaint and the verified supporting affidavit to
194 determine whether there was probable cause for the seizure. Upon
195 a finding of probable cause, the court shall enter an order
196 showing the probable cause finding.

197 (6)

198 (b) The complaint must, in addition to stating that which
199 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,
200 as appropriate, describe the property; state the county, place,
201 and date of seizure; state the name of the law enforcement
202 agency holding the seized property; and state the name of the
203 court in which the complaint will be filed.

204 (8) Upon proof beyond a reasonable doubt ~~clear and~~
205 ~~convincing evidence~~ that the contraband article was being used

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206 in violation of the Florida Contraband Forfeiture Act, the court
207 shall order the seized property forfeited to the seizing law
208 enforcement agency. The final order of forfeiture by the court
209 shall perfect in the law enforcement agency right, title, and
210 interest in and to such property, subject only to the rights and
211 interests of bona fide lienholders, and shall relate back to the
212 date of seizure.

213 (10) The court shall award reasonable attorney's fees and
214 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the
215 close of the adversarial preliminary hearing if the court makes
216 a finding of no probable cause. When the claimant prevails, at
217 the close of forfeiture proceedings and any appeal, the court
218 shall award reasonable trial attorney's fees and costs to the
219 claimant if the court finds that the seizing agency has not
220 proceeded at any stage of the proceedings in good faith or that
221 the seizing agency's action which precipitated the forfeiture
222 proceedings was a gross abuse of the agency's discretion. The
223 court may order the seizing agency to pay the awarded attorney's
224 fees and costs from the appropriate contraband forfeiture trust
225 fund. Nothing in this subsection precludes any party from
226 electing to seek attorney's fees and costs under chapter 57 or
227 other applicable law.

228 (11) (a) The Department of Law Enforcement, in consultation
229 with the Florida Sheriffs Association and the Florida Police
230 Chiefs Association, shall develop guidelines and training
231 procedures to be used by state and local law enforcement
232 agencies and state attorneys in implementing the Florida
233 Contraband Forfeiture Act. At least annually, each state or
234 local law enforcement agency that seizes property for the

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235 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
236 ~~assets made by the agency's law enforcement officers, any~~
237 ~~settlements, and any~~ forfeiture proceedings initiated by the law
238 enforcement agency, to determine whether they such seizures,
239 ~~settlements, and forfeitures~~ comply with the Florida Contraband
240 Forfeiture Act and the guidelines adopted under this subsection.
241 If the review suggests deficiencies, the state or local law
242 enforcement agency shall promptly take action to comply with the
243 Florida Contraband Forfeiture Act.

244 (b) The determination as to ~~of~~ whether an agency will file
245 a civil forfeiture action is ~~must be~~ the sole responsibility of
246 the head of the agency or his or her designee.

247 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency
248 must be made by supervisory personnel. The agency's legal
249 counsel must be notified as soon as possible after a
250 determination is made.

251 (d) The employment, salary, promotion, or other
252 compensation of any law enforcement officer may not be dependent
253 on the ability of the officer to meet a quota for seizures.

254 (e) A seizing agency shall adopt and implement written
255 policies, procedures, and training to ensure compliance with all
256 applicable legal requirements regarding seizing, maintaining,
257 and the forfeiture of property under the Florida Contraband
258 Forfeiture Act.

259 (f) When property is seized for forfeiture, the probable
260 cause supporting the seizure must be promptly reviewed by
261 supervisory personnel. The seizing agency's legal counsel must
262 be notified as soon as possible of all seizures and shall
263 conduct a review to determine whether there is legal sufficiency

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264 to proceed with a forfeiture action.

265 (g) Each seizing agency shall adopt and implement written
266 policies and procedures promoting the prompt release of seized
267 property as may be required by the act or by agency
268 determination when there is no legitimate basis for holding
269 seized property. To help ensure that property is not wrongfully
270 held after seizure, each law enforcement agency must adopt
271 written policies and procedures ensuring that all asserted
272 claims of interest in seized property are promptly reviewed for
273 potential validity.

274 (h) The settlement of any forfeiture action must be
275 consistent with the Florida Contraband Forfeiture Act and the
276 policy of the seizing agency.

277 (i) Law enforcement agency personnel involved in the
278 seizure of property for forfeiture shall receive basic training
279 and continuing education as required by the Florida Contraband
280 Forfeiture Act. Each agency shall maintain records demonstrating
281 each law enforcement officer's compliance with this requirement.
282 Among other things, the training must address the legal aspects
283 of forfeiture, including, but not limited to, search and seizure
284 and other constitutional considerations.

285 Section 4. Subsection (3) and paragraph (c) of subsection
286 (5) of section 932.7055, Florida Statutes, are amended to read:

287 932.7055 Disposition of liens and forfeited property.—

288 (3) If the forfeited property is subject to a lien
289 preserved by the court as provided in s. 932.703(7)(b)
290 ~~932.703(6)(b)~~, the agency shall:

291 (a) Sell the property with the proceeds being used towards
292 satisfaction of any liens; or

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293 (b) Have the lien satisfied prior to taking any action
294 authorized by subsection (1).

295 (5)

296 (c) An agency or organization, other than the seizing
297 agency, that wishes to receive such funds shall apply to the
298 sheriff or chief of police for an appropriation and its
299 application shall be accompanied by a written certification that
300 the moneys will be used for an authorized purpose. Such requests
301 for expenditures shall include a statement describing
302 anticipated recurring costs for the agency for subsequent fiscal
303 years. An agency or organization that receives money pursuant to
304 this subsection shall provide an accounting for such moneys and
305 shall furnish the same reports as an agency of the county or
306 municipality that receives public funds. Such funds may be
307 expended in accordance with the following procedures:

308 1. Such funds may be used only for school resource officer,
309 crime prevention, safe neighborhood, drug abuse education, or
310 drug prevention programs or such other law enforcement purposes
311 as the board of county commissioners or governing body of the
312 municipality deems appropriate.

313 2. Such funds shall not be a source of revenue to meet
314 normal operating needs of the law enforcement agency.

315 3. ~~After July 1, 1992, and during every fiscal year~~
316 ~~thereafter,~~ Any local law enforcement agency that acquires at
317 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
318 within a fiscal year must expend or donate no less than 25 ~~15~~
319 percent of such proceeds for the support or operation of any
320 drug treatment, drug abuse education, drug prevention, crime
321 prevention, safe neighborhood, or school resource officer

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322 program or programs ~~program(s)~~. The local law enforcement agency
323 has the discretion to determine which program or programs
324 ~~program(s)~~ will receive the designated proceeds.

325

326 Notwithstanding the drug abuse education, drug treatment, drug
327 prevention, crime prevention, safe neighborhood, or school
328 resource officer minimum expenditures or donations, the sheriff
329 and the board of county commissioners or the chief of police and
330 the governing body of the municipality may agree to expend or
331 donate such funds over a period of years if the expenditure or
332 donation of such minimum amount in any given fiscal year would
333 exceed the needs of the county or municipality for such program
334 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
335 minimum requirement for expenditure or donation of forfeiture
336 proceeds in excess of the minimum amounts established in this
337 subparagraph does not preclude expenditures or donations in
338 excess of that amount herein.

339 Section 5. Section 932.7061, Florida Statutes, is created
340 to read:

341 932.7061 Reporting seized property for forfeiture.—

342 (1) Every law enforcement agency shall submit an annual
343 report to the Department of Law Enforcement indicating whether
344 the agency has seized or forfeited property under the Florida
345 Contraband Forfeiture Act. A law enforcement agency receiving or
346 expending forfeited property or proceeds from the sale of
347 forfeited property in accordance with the Florida Contraband
348 Forfeiture Act shall submit a completed annual report by October
349 10 documenting the receipts and expenditures. The report shall
350 be submitted in an electronic form, maintained by the Department

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351 of Law Enforcement in consultation with the Office of Program
352 Policy Analysis and Government Accountability, to the entity
353 that has budgetary authority over such agency and to the
354 Department of Law Enforcement. The annual report must, at a
355 minimum, specify the type, approximate value, court case number,
356 type of offense, disposition of property received, and amount of
357 any proceeds received or expended.

358 (2) The Department of Law Enforcement shall submit an
359 annual report to the Office of Program Policy Analysis and
360 Government Accountability compiling the information and data in
361 the annual reports submitted by the law enforcement agencies.
362 The annual report shall also contain a list of law enforcement
363 agencies that have failed to meet the reporting requirements and
364 a summary of any action taken against the noncomplying agency by
365 the office of Chief Financial Officer.

366 (3) The law enforcement agency and the entity having
367 budgetary control over the law enforcement agency may not
368 anticipate future forfeitures or proceeds therefrom in the
369 adoption and approval of the budget for the law enforcement
370 agency.

371 Section 6. Section 932.7062, Florida Statutes, is created
372 to read:

373 932.7062 Penalty for noncompliance with reporting
374 requirements.—A seizing agency that fails to comply with the
375 reporting requirements in s. 932.7061 is subject to a civil fine
376 of \$5,000, to be determined by the Chief Financial Officer and
377 payable to the General Revenue Fund. However, such agency is not
378 subject to the fine if, within 60 days after receipt of written
379 notification from the Department of Law Enforcement of

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380 noncompliance with the reporting requirements of the Florida
381 Contraband Forfeiture Act, the agency substantially complies
382 with those requirements. The Department of Law Enforcement shall
383 submit any substantial noncompliance to the office of Chief
384 Financial Officer, which shall be responsible for the
385 enforcement of this section.

386 Section 7. Paragraphs (a) and (c) of subsection (9) of
387 section 322.34, Florida Statutes, are amended to read:

388 322.34 Driving while license suspended, revoked, canceled,
389 or disqualified.—

390 (9) (a) A motor vehicle that is driven by a person under the
391 influence of alcohol or drugs in violation of s. 316.193 is
392 subject to seizure and forfeiture under ss. 932.701-932.7062
393 ~~932.706~~ and is subject to liens for recovering, towing, or
394 storing vehicles under s. 713.78 if, at the time of the offense,
395 the person's driver license is suspended, revoked, or canceled
396 as a result of a prior conviction for driving under the
397 influence.

398 (c) Notwithstanding ~~s. 932.703(1)(c) or~~ s. 932.7055, when
399 the seizing agency obtains a final judgment granting forfeiture
400 of the motor vehicle under this section, 30 percent of the net
401 proceeds from the sale of the motor vehicle shall be retained by
402 the seizing law enforcement agency. The remaining 70 percent of
403 the proceeds shall first be applied to payment of court costs,
404 finer, and fees remaining due, and any remaining balance of
405 proceeds ~~and 70 percent~~ shall be deposited in the General
406 Revenue Fund for use by regional workforce boards in providing
407 transportation services for participants of the welfare
408 transition program. In a forfeiture proceeding under this

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409 section, the court may consider the extent that the family of
410 the owner has other public or private means of transportation.

411 Section 8. Paragraph (a) of subsection (4) of section
412 323.001, Florida Statutes, is amended to read:

413 323.001 Wrecker operator storage facilities; vehicle
414 holds.—

415 (4) The requirements for a written hold apply when the
416 following conditions are present:

417 (a) The officer has probable cause to believe the vehicle
418 should be seized and forfeited under the Florida Contraband
419 Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

420 Section 9. Paragraph (b) of subsection (3) of section
421 328.07, Florida Statutes, is amended to read:

422 328.07 Hull identification number required.—

423 (3)

424 (b) If any of the hull identification numbers required by
425 the United States Coast Guard for a vessel manufactured after
426 October 31, 1972, do not exist or have been altered, removed,
427 destroyed, covered, or defaced or the real identity of the
428 vessel cannot be determined, the vessel may be seized as
429 contraband property by a law enforcement agency or the division,
430 and shall be subject to forfeiture pursuant to ss. 932.701-
431 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
432 waters of the state unless the division receives a request from
433 a law enforcement agency providing adequate documentation or is
434 directed by written order of a court of competent jurisdiction
435 to issue to the vessel a replacement hull identification number
436 which shall thereafter be used for identification purposes. No
437 vessel shall be forfeited under the Florida Contraband

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438 Forfeiture Act when the owner unknowingly, inadvertently, or
439 neglectfully altered, removed, destroyed, covered, or defaced
440 the vessel hull identification number.

441 Section 10. Paragraph (c) of subsection (2) of section
442 817.625, Florida Statutes, is amended to read:

443 817.625 Use of scanning device or reencoder to defraud;
444 penalties.—

445 (2)

446 (c) Any person who violates subparagraph (a)1. or
447 subparagraph (a)2. shall also be subject to the provisions of
448 ss. 932.701-932.7062 ~~932.706~~.

449 Section 11. This act shall take effect July 1, 2016.