

By the Committee on Criminal Justice; and Senator Bean

591-02555-16

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1 A bill to be entitled
2 An act relating to contraband forfeiture; amending s.
3 932.701, F.S.; revising the applicability of a short
4 title; amending s. 932.704, F.S.; requiring that
5 specified persons approve a settlement once property
6 has been seized; specifying when a settlement
7 agreement must be reviewed; requiring each state or
8 local law enforcement agency that seizes property for
9 the purpose of forfeiture to perform a specified
10 review at least annually; prohibiting certain
11 compensation or benefit to any law enforcement officer
12 from being dependent upon attaining a quota of
13 seizures; requiring a seizing agency to adopt certain
14 written policies, procedures, and training to ensure
15 compliance; requiring that supervisory personnel
16 review seizures to determine whether probable cause
17 existed; requiring prompt notification of the seizing
18 agency's legal counsel after a determination is made
19 regarding seizure; requiring that the legal counsel
20 conduct a specified review; requiring each seizing
21 agency to adopt and implement specified written
22 policies and procedures for the prompt release of
23 seized property under certain circumstances; requiring
24 that the settlement of forfeiture actions be
25 consistent with certain mandates and with the seizing
26 agency's policy; requiring specified training and the
27 maintenance of related records; amending s. 932.7055,
28 F.S.; increasing the minimum amount of forfeiture
29 proceeds that certain law enforcement agencies must
30 donate to certain programs; creating s. 932.7061,
31 F.S.; requiring each state or local law enforcement
32 agency that seizes property for the purpose of

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33 forfeiture to complete an annual report; requiring
34 certain information to be included in the annual
35 report; requiring the Department of Law Enforcement to
36 make an annual report to the Office of Program Policy
37 Analysis and Government Accountability compiling the
38 information; prohibiting a law enforcement agency and
39 an entity having budgetary control over the law
40 enforcement agency from anticipating proceeds from
41 forfeitures in their budgeting processes; creating s.
42 932.7062, F.S.; providing a monetary penalty for
43 seizing agencies that fail to comply with reporting
44 requirements; providing an exception; providing for
45 enforcement; amending ss. 322.34, 323.001, 328.07, and
46 817.625, F.S.; conforming cross-references; reenacting
47 ss. 27.3451 and 874.08, F.S., relating to the State
48 Attorney's Forfeiture and Investigative Support Trust
49 Fund, and criminal gang activity, recruitment, and
50 forfeiture, respectively, to incorporate the amendment
51 made to s. 932.704, F.S., in references thereto;
52 providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Subsection (1) of section 932.701, Florida
57 Statutes, is amended to read:

58 932.701 Short title; definitions.—

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

61 Section 2. Subsections (7) and (11) of section 932.704,

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62 Florida Statutes, are amended to read:

63 932.704 Forfeiture proceedings.—

64 (7) Once property is seized pursuant to the Florida
65 Contraband Forfeiture Act, regardless of whether the civil
66 complaint has been filed, all settlements must be personally
67 approved by the head of the law enforcement agency making the
68 seizure. If the agency head is unavailable and a delay would
69 adversely affect the settlement, approval may be given by a
70 subordinate of the agency head who is designated to grant such
71 authority. When the claimant and the seizing law enforcement
72 agency agree to settle the forfeiture action after the civil
73 complaint has been filed and before ~~prior to~~ the conclusion of
74 the forfeiture proceeding, the settlement agreement shall be
75 reviewed, unless such review is waived by the claimant in
76 writing, by the court or a mediator or arbitrator agreed upon by
77 the claimant and the seizing law enforcement agency. If the
78 claimant is unrepresented, the settlement agreement must include
79 a provision that the claimant has freely and voluntarily agreed
80 to enter into the settlement without benefit of counsel.

81 (11) (a) The Department of Law Enforcement, in consultation
82 with the Florida Sheriffs Association and the Florida Police
83 Chiefs Association, shall develop guidelines and training
84 procedures to be used by state and local law enforcement
85 agencies and state attorneys in implementing the Florida
86 Contraband Forfeiture Act. At least annually, each state or
87 local law enforcement agency that seizes property for the
88 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
89 ~~assets made by the agency's law enforcement officers,~~ any
90 settlements, and any forfeiture proceedings initiated by the law

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91 enforcement agency, to determine whether they ~~such seizures,~~
92 ~~settlements, and forfeitures~~ comply with the Florida Contraband
93 Forfeiture Act and the guidelines adopted under this subsection.
94 If the review suggests deficiencies, the state or local law
95 enforcement agency shall promptly take action to comply with the
96 Florida Contraband Forfeiture Act.

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

100 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency
101 must be made by supervisory personnel. The agency's legal
102 counsel must be notified as soon as possible after a
103 determination is made.

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

107 (e) A seizing agency shall adopt and implement written
108 policies, procedures, and training to ensure compliance with all
109 applicable legal requirements regarding seizing, maintaining,
110 and forfeiting property under the Florida Contraband Forfeiture
111 Act.

112 (f) When property is seized for forfeiture, the probable
113 cause supporting the seizure must be promptly reviewed by
114 supervisory personnel. The seizing agency's legal counsel must
115 be notified as soon as possible of all seizures and shall
116 conduct a review to determine whether there is legal sufficiency
117 to proceed with a forfeiture action.

118 (g) Each seizing agency shall adopt and implement written
119 policies and procedures promoting the prompt release of seized

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120 property as may be required by the act or by agency
121 determination when there is no legitimate basis for holding
122 seized property. To help assure that property is not wrongfully
123 held after seizure, each law enforcement agency must adopt
124 written policies and procedures ensuring that all asserted
125 claims of interest in seized property are promptly reviewed for
126 potential validity.

127 (h) The settlement of any forfeiture action must be
128 consistent with the Florida Contraband Forfeiture Act and the
129 agency's policy.

130 (i) Law enforcement agency personnel involved in the
131 seizure of property for forfeiture shall receive basic training
132 and continuing education as required by the Florida Contraband
133 Forfeiture Act. Each agency shall maintain records demonstrating
134 each law enforcement officer's compliance with this requirement.
135 Among other things, the training must address the legal aspects
136 of forfeiture, including, but not limited to, search and seizure
137 and other constitutional considerations.

138 Section 3. Paragraph (c) of subsection (5) of section
139 932.7055, Florida Statutes, is amended to read:

140 932.7055 Disposition of liens and forfeited property.-

141 (5)

142 (c) An agency or organization, other than the seizing
143 agency, that wishes to receive such funds shall apply to the
144 sheriff or chief of police for an appropriation and its
145 application shall be accompanied by a written certification that
146 the moneys will be used for an authorized purpose. Such requests
147 for expenditures shall include a statement describing
148 anticipated recurring costs for the agency for subsequent fiscal

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149 years. An agency or organization that receives money pursuant to
150 this subsection shall provide an accounting for such moneys and
151 shall furnish the same reports as an agency of the county or
152 municipality that receives public funds. Such funds may be
153 expended in accordance with the following procedures:

154 1. Such funds may be used only for school resource officer,
155 crime prevention, safe neighborhood, drug abuse education, or
156 drug prevention programs or such other law enforcement purposes
157 as the board of county commissioners or governing body of the
158 municipality deems appropriate.

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

161 3. ~~After July 1, 1992, and during every fiscal year~~
162 ~~thereafter,~~ Any local law enforcement agency that acquires at
163 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
164 within a fiscal year must expend or donate no less than 25 ~~15~~
165 percent of such proceeds for the support or operation of any
166 drug treatment, drug abuse education, drug prevention, crime
167 prevention, safe neighborhood, or school resource officer
168 program or programs ~~program(s)~~. The local law enforcement agency
169 has the discretion to determine which program or programs
170 ~~program(s)~~ will receive the designated proceeds.

171
172 Notwithstanding the drug abuse education, drug treatment, drug
173 prevention, crime prevention, safe neighborhood, or school
174 resource officer minimum expenditures or donations, the sheriff
175 and the board of county commissioners or the chief of police and
176 the governing body of the municipality may agree to expend or
177 donate such funds over a period of years if the expenditure or

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178 donation of such minimum amount in any given fiscal year would
179 exceed the needs of the county or municipality for such program
180 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
181 minimum requirement for expenditure or donation of forfeiture
182 proceeds in excess of the minimum amounts established in this
183 subparagraph does not preclude expenditures or donations in
184 excess of that amount herein.

185 Section 4. Section 932.7061, Florida Statutes, is created
186 to read:

187 932.7061 Reporting seized property for forfeiture.-

188 (1) Every law enforcement agency shall submit an annual
189 report to the Department of Law Enforcement indicating whether
190 the agency has seized or forfeited property under the Florida
191 Contraband Forfeiture Act. A law enforcement agency receiving or
192 expending forfeited property or proceeds from the sale of
193 forfeited property in accordance with the Florida Contraband
194 Forfeiture Act shall submit a completed annual report by October
195 10 documenting the receipts and expenditures. The report shall
196 be submitted in an electronic form, maintained by the Department
197 of Law Enforcement in consultation with the Office of Program
198 Policy Analysis and Government Accountability, to the entity
199 that has budgetary authority over such agency and to the
200 Department of Law Enforcement. The annual report must, at a
201 minimum, specify the type, approximate value, court case number,
202 type of offense, disposition of property received, and amount of
203 any proceeds received or expended.

204 (2) The Department of Law Enforcement shall submit an
205 annual report to the Office of Program Policy Analysis and
206 Government Accountability compiling the information and data in

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207 the annual reports submitted by the law enforcement agencies.
208 The annual report shall also contain a list of law enforcement
209 agencies that have failed to meet the reporting requirements and
210 a summary of any action taken against the noncomplying agency by
211 the office of Chief Financial Officer.

212 (3) Neither the law enforcement agency nor the entity
213 having budgetary control over the law enforcement agency shall
214 anticipate future forfeitures or proceeds therefrom in the
215 adoption and approval of the budget for the law enforcement
216 agency.

217 Section 5. Section 932.7062, Florida Statutes, is created
218 to read:

219 932.7062 Penalty for noncompliance with reporting
220 requirements.—A seizing agency that fails to comply with the
221 reporting requirements in s. 932.7061 is subject to a civil fine
222 of \$5,000 payable to the General Revenue Fund. However, such
223 agency is not subject to the fine if, within 60 days after
224 receipt of written notification from the Department of Law
225 Enforcement of noncompliance with the reporting requirements of
226 the Florida Contraband Forfeiture Act, the agency substantially
227 complies with those requirements. The Department of Law
228 Enforcement shall submit any substantial noncompliance to the
229 office of Chief Financial Officer, which shall be responsible
230 for the enforcement of this section.

231 Section 6. Paragraph (a) of subsection (9) of section
232 322.34, Florida Statutes, is amended to read:

233 322.34 Driving while license suspended, revoked, canceled,
234 or disqualified.—

235 (9) (a) A motor vehicle that is driven by a person under the

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236 influence of alcohol or drugs in violation of s. 316.193 is
237 subject to seizure and forfeiture under ss. 932.701-932.7062
238 ~~932.706~~ and is subject to liens for recovering, towing, or
239 storing vehicles under s. 713.78 if, at the time of the offense,
240 the person's driver license is suspended, revoked, or canceled
241 as a result of a prior conviction for driving under the
242 influence.

243 Section 7. Subsection (4) of section 323.001, Florida
244 Statutes, is amended to read:

245 323.001 Wrecker operator storage facilities; vehicle
246 holds.-

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

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

252 (b) The officer has probable cause to believe the vehicle
253 should be seized and forfeited under chapter 379;

254 (c) The officer has probable cause to believe the vehicle
255 was used as the means of committing a crime;

256 (d) The officer has probable cause to believe that the
257 vehicle is itself evidence that tends to show that a crime has
258 been committed or that the vehicle contains evidence, which
259 cannot readily be removed, which tends to show that a crime has
260 been committed;

261 (e) The officer has probable cause to believe the vehicle
262 was involved in a traffic accident resulting in death or
263 personal injury and should be sealed for investigation and
264 collection of evidence by a vehicular homicide investigator;

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265 (f) The vehicle is impounded or immobilized pursuant to s.
266 316.193 or s. 322.34; or

267 (g) The officer is complying with a court order.

268 Section 8. Paragraph (b) of subsection (3) of section
269 328.07, Florida Statutes, is amended to read:

270 328.07 Hull identification number required.—

271 (3)

272 (b) If any of the hull identification numbers required by
273 the United States Coast Guard for a vessel manufactured after
274 October 31, 1972, do not exist or have been altered, removed,
275 destroyed, covered, or defaced or the real identity of the
276 vessel cannot be determined, the vessel may be seized as
277 contraband property by a law enforcement agency or the division,
278 and shall be subject to forfeiture pursuant to ss. 932.701-
279 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
280 waters of the state unless the division receives a request from
281 a law enforcement agency providing adequate documentation or is
282 directed by written order of a court of competent jurisdiction
283 to issue to the vessel a replacement hull identification number
284 which shall thereafter be used for identification purposes. No
285 vessel shall be forfeited under the Florida Contraband
286 Forfeiture Act when the owner unknowingly, inadvertently, or
287 neglectfully altered, removed, destroyed, covered, or defaced
288 the vessel hull identification number.

289 Section 9. Paragraph (c) of subsection (2) of section
290 817.625, Florida Statutes, is amended to read:

291 817.625 Use of scanning device or reencoder to defraud;
292 penalties.—

293 (2)

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

297 Section 10. For the purpose of incorporating the amendment
298 made by this act to section 932.704, Florida Statutes, in a
299 reference thereto, section 27.3451, Florida Statutes, is
300 reenacted to read:

301 27.3451 State Attorney's Forfeiture and Investigative
302 Support Trust Fund.—There is created for each of the several
303 state attorneys a trust fund to be known as the State Attorney's
304 Forfeiture and Investigative Support Trust Fund. Revenues
305 received by a state attorney as a result of forfeiture
306 proceedings, as provided under s. 932.704, shall be deposited in
307 such trust fund and shall be used, when authorized by
308 appropriation or action of the Executive Office of the Governor
309 pursuant to s. 216.181(11), for the investigation of crime,
310 prosecution of criminals, or other law enforcement purposes.

311 Section 11. For the purpose of incorporating the amendment
312 made by this act to section 932.704, Florida Statutes, in a
313 reference thereto, section 874.08, Florida Statutes, is
314 reenacted to read:

315 874.08 Criminal gang activity and recruitment; forfeiture.—
316 All profits, proceeds, and instrumentalities of criminal gang
317 activity and all property used or intended or attempted to be
318 used to facilitate the criminal activity of any criminal gang or
319 of any criminal gang member; and all profits, proceeds, and
320 instrumentalities of criminal gang recruitment and all property
321 used or intended or attempted to be used to facilitate criminal
322 gang recruitment are subject to seizure and forfeiture under the

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323 Florida Contraband Forfeiture Act, s. 932.704.

324 Section 12. This act shall take effect July 1, 2016.