

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Metz offered the following:

Amendment (with title amendment)

Remove lines 40-251 and insert:

Section 2. Present subsection (1) of section 932.703, Florida Statutes, is amended, a new subsection (2) is added, and present subsections (2) through (8), are redesignated as subsections (3) through (9), respectively, to read:

932.703 Forfeiture of contraband article; exceptions.—

(1) (a) A ~~Any~~ contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized only if:

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17 1. The owner of the property is arrested for a criminal
18 violation that renders the property a contraband article; or

19 2. A criminal violation occurs that renders the property a
20 contraband article and one or more of the following
21 circumstances applies ~~shall be forfeited subject to the~~
22 ~~provisions of the Florida Contraband Forfeiture Act.:~~

23 a. The owner of the property cannot be identified after a
24 diligent search;

25 b. The owner of the property is a fugitive from justice or
26 deceased;

27 c. An individual who does not own the property is arrested
28 for the criminal violation that renders the property a
29 contraband article, and the owner of the property had actual
30 knowledge of the criminal activity;

31 d. The owner of the property agrees to be a confidential
32 informant, as defined in s. 914.28. The seizing agency may not
33 use the threat of property seizure or forfeiture to coerce the
34 owner of the property into entering a confidential informant
35 agreement. The agency may include the final forfeiture of the
36 property as a component of the confidential informant agreement.
37 The seizing agency shall return the property to the owner if
38 criminal charges are not filed against the owner and the active
39 criminal investigation ends or the owner ceases being a
40 confidential informant; or

41 e. The property is a monetary instrument. For purposes of
42 this sub-subparagraph, the term "monetary instrument" means coin

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43 or currency of the United States or any other country; a
44 traveler's check; a personal check; a bank check; a cashier's
45 check; a money order; a bank draft of any country; an investment
46 security or negotiable instrument in bearer form or in other
47 form such that title passes upon delivery; a prepaid or stored
48 value card or other device that is the equivalent of money and
49 can be used to obtain cash, property, or services; gold, silver,
50 or platinum bullion or coins.

51 (b) After property is seized pursuant to the Florida
52 Contraband Forfeiture Act, regardless of whether the civil
53 complaint has been filed, all settlements must be personally
54 approved by the head of the law enforcement agency that seized
55 the property. If the agency head is unavailable and a delay
56 would adversely affect the settlement, approval may be given by
57 a subordinate of the agency head who is designated to grant such
58 approval ~~Notwithstanding any other provision of the Florida~~
59 ~~Contraband Forfeiture Act, except the provisions of paragraph~~
60 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~
61 ~~violation of any provision of the Florida Contraband Forfeiture~~
62 ~~Act, or in, upon, or by means of which any violation of the~~
63 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
64 ~~shall be seized and shall be forfeited subject to the provisions~~
65 ~~of the Florida Contraband Forfeiture Act.~~

66 (c) If at least 90 days have elapsed since the initial
67 seizure of the property and the seizing agency has failed to
68 locate the owner after making a diligent effort, the seized

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69 property is deemed a contraband article that is subject to
70 forfeiture under the Florida Contraband Forfeiture Act All
71 rights to, interest in, and title to contraband articles used in
72 violation of s. 932.702 shall immediately vest in the seizing
73 law enforcement agency upon seizure.

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

81 2. The agency seeking to forfeit the seized property is
82 responsible for any damage to the property and any storage fees
83 or maintenance costs applicable to the property. If more than
84 one agency seeks forfeiture of the property, the division of
85 liability under this subparagraph may be governed by the terms
86 of an agreement between the agencies.

87 (2) (a) A seizing agency shall submit a written petition to
88 the court within 10 days after a seizure of property under the
89 Florida Contraband Forfeiture Act which requests a finding of:

90 1. Compliance with subparagraph (1) (a)1. or subparagraph
91 (1) (a)2.; and

92 2. Probable cause that the seized property was used in
93 violation of the Florida Contraband Forfeiture Act.

94 (b) If the court issues an order finding that:

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95 1. Compliance and probable cause under paragraph (a)
96 exists, the seized property may be held by the seizing agency
97 pending the completion of proceedings in accordance with the
98 Florida Contraband Forfeiture Act.

99 2. Compliance or probable cause under paragraph (a) does
100 not exist, any seizure, forfeiture hold, lien, lis pendens, or
101 other civil encumbrance shall be released within 5 days after
102 issuance of the order.

103 (c) The court may seal any portion of the petition and the
104 record of any proceeding under the Florida Contraband Forfeiture
105 Act which is exempt or confidential and exempt from s. 119.07(1)
106 and s. 24(a) Art. I of the Florida Constitution or may otherwise
107 be sealed pursuant to Rule 2.420, Rules of Judicial
108 Administration.

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

112 932.704 Forfeiture proceedings.—

113 (4) The seizing agency shall promptly proceed against the
114 contraband article by filing a complaint in the circuit court
115 within the jurisdiction where the seizure or the offense
116 occurred. The seizing agency shall pay a filing fee of at least
117 \$1,000 and deposit a bond of \$1,500 to the clerk of the court.
118 The bond shall be payable to the claimant, as determined by the
119 court, if the forfeiture is not awarded to the seizing agency.

120 (5)

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121 (b) If no person entitled to notice requests an
122 adversarial preliminary hearing, as provided in s. 932.703(3)(a)
123 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall
124 review the complaint and the verified supporting affidavit to
125 determine whether there was probable cause for the seizure. Upon
126 a finding of probable cause, the court shall enter an order
127 showing the probable cause finding.

128 (6)

129 (b) The complaint must, in addition to stating that which
130 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,
131 as appropriate, describe the property; state the county, place,
132 and date of seizure; state the name of the law enforcement
133 agency holding the seized property; and state the name of the
134 court in which the complaint will be filed.

135 (8) Upon proof beyond a reasonable doubt ~~clear and~~
136 ~~convincing evidence~~ that the contraband article was being used
137 in violation of the Florida Contraband Forfeiture Act, the court
138 shall order the seized property forfeited to the seizing law
139 enforcement agency. The final order of forfeiture by the court
140 shall perfect in the law enforcement agency right, title, and
141 interest in and to such property, subject only to the rights and
142 interests of bona fide lienholders, and shall relate back to the
143 date of seizure.

144 (10) The court shall award reasonable attorney's fees and
145 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the
146 close of the adversarial preliminary hearing if the court makes

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147 a finding of no probable cause. When the claimant prevails, at
148 the close of forfeiture proceedings and any appeal, the court
149 shall award reasonable trial attorney's fees and costs to the
150 claimant if the court finds that the seizing agency has not
151 proceeded at any stage of the proceedings in good faith or that
152 the seizing agency's action which precipitated the forfeiture
153 proceedings was a gross abuse of the agency's discretion. The
154 court may order the seizing agency to pay the awarded attorney's
155 fees and costs from the appropriate contraband forfeiture trust
156 fund. Nothing in this subsection precludes any party from
157 electing to seek attorney's fees and costs under chapter 57 or
158 other applicable law.

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160
161 **T I T L E A M E N D M E N T**

162 Remove lines 4-23 and insert:

163 by the act; amending s. 932.703, F.S.; specifying that property
164 may be seized under certain circumstances; requiring that
165 specified persons approve a settlement; providing circumstances
166 when property may be deemed contraband; allocating
167 responsibility for damage to seized property and payment of
168 storage and maintenance expenses; providing a procedure for
169 judicial review of seizures; amending s. 932.704, F.S.;
170 providing requirements for a filing fee and a bond to be paid to
171 the clerk of court; specifying the circumstances when a court
172 shall order the forfeiture of seized property; amending s.