

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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 WITHDRAWN        (Y/N)  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

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

**Amendment (with title amendment)**

Remove lines 40-228 and insert:

Section 2. Subsections (1), (2), (6), and (7) of section  
 932.703, Florida Statutes, are amended 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 upon the arrest of the owner of the property  
for a violation of a criminal law that renders the property a  
contraband article, or when the property was used in violation  
of a criminal law that renders the property a contraband article

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18 ~~and shall be forfeited subject to the provisions of the Florida~~  
19 ~~Contraband Forfeiture Act.:~~

20 1. The owner of the contraband article cannot be  
21 identified and located after a diligent search;

22 2. The person in possession of the contraband article  
23 denies ownership and the owner of the property cannot be readily  
24 identified by reasonable means that are available to the  
25 employee or agent of the seizing agency at the time of the  
26 seizure;

27 3. The owner of the contraband article is a fugitive from  
28 justice or is deceased, and probable cause exists that the owner  
29 committed a violation of a criminal law that renders the  
30 property a contraband article; or

31 4. There are two or more owners of the contraband article  
32 and at least one owner is arrested for a violation of a criminal  
33 law that renders the property a contraband article.

34 (b) When seizure of a contraband article is made without  
35 an arrest pursuant to paragraph (1)(a), the seizing agency shall  
36 submit a written petition to the court requesting a finding of  
37 probable cause that the property was lawfully seized pursuant to  
38 paragraph (1)(a). The petition shall be filed within 10 days of  
39 the seizure and the filing deadline shall be calculated in  
40 accordance with the Florida Rules of Civil Procedure.

41 1. Upon a written finding of probable cause, the seized  
42 property may be held by the seizing agency pending the

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43 completion of forfeiture proceedings according to the Florida  
44 Contraband Forfeiture Act.

45 2. Upon a finding that probable cause does not exist, any  
46 forfeiture hold, lien, lis pendens, or other civil encumbrance  
47 shall be released within 5 days thereafter.

48 3. Upon a finding of good cause, the court shall seal any  
49 portion of the petition and the record of any related proceeding  
50 that is exempt or confidential and exempt from s. 119.07(1) and  
51 s. 24(a) Art. I of the Florida Constitution.

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

67 (d)-(e) At the time of seizure of property or entry of a  
68 restraining order, the state acquires provisional title to the

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69 property that is seized or subject to the restraining order. A  
70 forfeiture under the Florida Contraband Forfeiture Act is not  
71 final, and title or other indicia of ownership, other than  
72 provisional title, do not pass to a seizing agency until the  
73 title to the seized property is perfected in accordance with the  
74 Florida Contraband Forfeiture Act ~~All rights to, interest in,~~  
75 ~~and title to contraband articles used in violation of s. 932.702~~  
76 ~~shall immediately vest in the seizing law enforcement agency~~  
77 ~~upon seizure.~~

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

85 (2) (a) Personal property may be seized at the time of the  
86 property owner's arrest, ~~of the violation or~~ subsequent to the  
87 arrest, or when seizure of a contraband article is made without  
88 an arrest pursuant to paragraph (1) (a) violation, if the person  
89 entitled to notice is notified at the time of the seizure or by  
90 certified mail, return receipt requested, that there is a right  
91 to an adversarial preliminary hearing after the seizure to  
92 determine whether probable cause exists to believe that such  
93 property was lawfully seized pursuant to paragraph (1) (a) ~~has~~  
94 ~~been or is being used in violation of the Florida Contraband~~

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95 ~~Forfeiture Act~~. Seizing agencies shall make a diligent effort to  
96 notify the person entitled to notice of the seizure. Notice  
97 provided by certified mail must be mailed within 5 working days  
98 after the seizure and must state that a person entitled to  
99 notice may request an adversarial preliminary hearing within 15  
100 days after receiving such notice. When a postseizure,  
101 adversarial preliminary hearing as provided in this section is  
102 desired, a request must be made in writing by certified mail,  
103 return receipt requested, to the seizing agency. The seizing  
104 agency shall set and notice the hearing, which must be held  
105 within 10 days after the request is received or as soon as  
106 practicable thereafter.

107 (b) Real property may only ~~not~~ be seized or restrained  
108 pursuant to paragraph (1) (a), ~~other than~~ by lis pendens,  
109 ~~subsequent to a violation of the Florida Contraband Forfeiture~~  
110 ~~Act~~ until the persons entitled to notice are afforded the  
111 opportunity to attend the pre seizure adversarial preliminary  
112 hearing. A lis pendens may be obtained by any method authorized  
113 by law. Notice of the adversarial preliminary hearing shall be  
114 by certified mail, return receipt requested. The purpose of the  
115 adversarial preliminary hearing is to determine whether probable  
116 cause exists to believe that such property has been lawfully  
117 seized pursuant to paragraph (1) (a) ~~used in violation of the~~  
118 ~~Florida Contraband Forfeiture Act~~. The seizing agency shall make  
119 a diligent effort to notify any person entitled to notice of the  
120 seizure. The pre seizure adversarial preliminary hearing provided

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121 herein shall be held within 10 days after ~~of~~ the filing of the  
122 lis pendens or as soon as practicable.

123 (c) When an adversarial preliminary hearing is held, the  
124 court shall review the verified affidavit and any other  
125 supporting documents and take any testimony to determine whether  
126 there is probable cause to believe that the property was  
127 lawfully seized pursuant to paragraph (1) (a) ~~used, is being~~  
128 ~~used, was attempted to be used, or was intended to be used in~~  
129 ~~violation of the Florida Contraband Forfeiture Act.~~ If probable  
130 cause is established, the court shall authorize the seizure or  
131 continued seizure of the subject contraband. A copy of the  
132 findings of the court shall be provided to any person entitled  
133 to notice.

134 (d) If the court determines that probable cause exists to  
135 believe that the property was lawfully seized pursuant to  
136 paragraph (1) (a) ~~such property was used in violation of the~~  
137 ~~Florida Contraband Forfeiture Act,~~ the court shall order the  
138 property restrained by the least restrictive means to protect  
139 against disposal, waste, or continued illegal use of such  
140 property pending disposition of the forfeiture proceeding. The  
141 court may order the claimant to post a bond or other adequate  
142 security equivalent to the value of the property.

143 (6) ~~(a) Property may not be forfeited under the Florida~~  
144 ~~Contraband Forfeiture Act unless the seizing agency establishes~~  
145 ~~by a preponderance of the evidence that the owner either knew,~~  
146 ~~or should have known after a reasonable inquiry, that the~~

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147 ~~property was being employed or was likely to be employed in~~  
148 ~~criminal activity.~~

149 ~~(a)-(b)~~ A bona fide lienholder's interest that has been  
150 perfected in the manner prescribed by law prior to the seizure  
151 may not be forfeited under the Florida Contraband Forfeiture Act  
152 unless the seizing agency establishes by a preponderance of the  
153 evidence that the lienholder had actual knowledge, at the time  
154 the lien was made, that the property was being employed or was  
155 likely to be employed in criminal activity. If a lienholder's  
156 interest is not subject to forfeiture under the requirements of  
157 this section, such interest shall be preserved by the court by  
158 ordering the lienholder's interest to be paid as provided in s.  
159 932.7055.

160 ~~(b)-(e)~~ Property titled or registered between husband and  
161 wife jointly by the use of the conjunctives "and," "and/or," or  
162 "or," in the manner prescribed by law prior to the seizure, may  
163 not be forfeited under the Florida Contraband Forfeiture Act  
164 unless the seizing agency establishes by clear and convincing  
165 evidence ~~a preponderance of the evidence~~ that the coowner either  
166 knew or acted with reckless disregard for the fact ~~had reason to~~  
167 ~~know, after reasonable inquiry,~~ that such property was employed  
168 or was likely to be employed in criminal activity.

169 ~~(c)-(d)~~ A vehicle that is rented or leased from a company  
170 engaged in the business of renting or leasing vehicles, which  
171 vehicle was rented or leased in the manner prescribed by law  
172 prior to the seizure, may not be forfeited under the Florida

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173 Contraband Forfeiture Act, and no fine, penalty, or  
174 administrative charge, other than reasonable and customary  
175 charges for towing and storage, shall be imposed by any  
176 governmental agency on the company which rented or leased the  
177 vehicle, ~~unless the seizing agency establishes by preponderance~~  
178 ~~of the evidence that the renter or lessor had actual knowledge,~~  
179 ~~at the time the vehicle was rented or leased, that the vehicle~~  
180 ~~was being employed or was likely to be employed in criminal~~  
181 ~~activity.~~ When a vehicle that is rented or leased from a company  
182 engaged in the business of renting or leasing vehicles is seized  
183 under the Florida Contraband Forfeiture Act, upon learning the  
184 address or phone number of the company, the seizing law  
185 enforcement agency shall, as soon as practicable, inform the  
186 company that the vehicle has been seized and is available for  
187 the company to take possession upon payment of the reasonable  
188 and customary charges for towing and storage.

189 (7) Any interest in, title to, or right to property titled  
190 or registered jointly by the use of the conjunctives "and,"  
191 "and/or," or "or" held by a coowner, other than property held  
192 jointly between husband and wife, may not be forfeited unless  
193 the seizing agency establishes by clear and convincing evidence  
194 ~~a preponderance of the evidence~~ that the coowner either knew, or  
195 acted with reckless disregard for the fact ~~had reason to know,~~  
196 ~~after reasonable inquiry,~~ that the property was employed or was  
197 likely to be employed in criminal activity. When the interests  
198 of each culpable coowner are forfeited, any remaining coowners



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199 shall be afforded the opportunity to purchase the forfeited  
200 interest in, title to, or right to the property from the seizing  
201 law enforcement agency. If any remaining coowner does not  
202 purchase such interest, the seizing agency may hold the property  
203 in coownership, sell its interest in the property, liquidate its  
204 interest in the property, or dispose of its interest in the  
205 property in any other reasonable manner.

206 Section 3. Subsections (8), (9), and (11) of section  
207 932.704, Florida Statutes, are amended to read:

208 932.704 Forfeiture proceedings.—

209 ~~(8)(a) Upon clear and convincing evidence that the~~  
210 ~~contraband article was being used in violation of the Florida~~  
211 ~~Contraband Forfeiture Act,~~ The court shall order the seized  
212 property forfeited to the seizing law enforcement agency upon  
213 clear and convincing evidence that:

214 1. The property has been or is being used in violation of  
215 a criminal law that renders the property a contraband article.

216 2. The claimant is the owner of the property.

217 3. The owner was arrested and prosecuted for the criminal  
218 violation that formed the basis for the forfeiture proceeding,  
219 and has:

220 a. Been placed into a pretrial intervention program;

221 b. Been placed into a diversion program;

222 c. Been placed into a program for confidential informants,  
223 as defined in s. 914.28;

224 d. Entered a plea of guilty;

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225 e. Entered a plea of nolo contendere;

226 f. Been found guilty at trial, regardless of adjudication  
227 of guilt;

228 g. Become deceased; or

229 h. Become a fugitive from justice.

230 (b) When the seizure of a contraband article is made  
231 without an arrest pursuant to s. 932.703(1)(a) the court shall  
232 order the seized property forfeited to the seizing law  
233 enforcement agency upon clear and convincing evidence that:

234 1. The property was used in violation of a criminal law  
235 that renders the property a contraband article; and

236 2. The owner of the property cannot be identified and  
237 located after a diligent search;

238 3. The owner of the property is deceased; or

239 4. The owner of the property is a fugitive from justice.

240 (c) The final order of forfeiture by the court shall  
241 perfect in the law enforcement agency right, title, and interest  
242 in and to such property, subject only to the rights and  
243 interests of bona fide lienholders, and shall relate back to the  
244 date of seizure.

245 (9) (a) When the claimant prevails at the conclusion of the  
246 forfeiture proceeding, if the seizing agency decides not to  
247 appeal, the seized property shall be released immediately to the  
248 person entitled to possession of the property as determined by  
249 the court. If the court finds that a perfected security interest  
250 applies to the property or the criminal case that formed the

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251 basis for the forfeiture proceeding was discharged by acquittal,  
252 dismissal, or nolle prosequi, not resulting from successful  
253 completion of a pretrial diversion program, pretrial  
254 intervention program, or program for confidential informants as  
255 defined in s. 914.28, the seizing agency shall return

256 -----

257 **T I T L E A M E N D M E N T**

258 Remove lines 3-11 and insert:

259 932.701, F.S.; conforming provisions to changes made by the act;  
260 amending s. 932.703, F.S.; specifying that property may be  
261 seized only upon specified circumstances; specifying a procedure  
262 for seizure of property without an arrest; authorizing the court  
263 to seal specified records; requiring that specified persons  
264 approve a settlement; specifying the nature of title interest in  
265 seized property; providing circumstances when property may be  
266 deemed contraband; specifying requirements for forfeiture of  
267 jointly owned property; amending s. 932.704, F.S.;