



681256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

932.701 Short title; definitions.—

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

Section 2. Subsection (1) of section 932.703, Florida



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11 Statutes, is amended, a new subsection (2) is added, and present
12 subsections (2) through (8) are redesignated as subsections (3)
13 through (9), respectively, to read:

14 932.703 Forfeiture of contraband article; exceptions.-

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

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

23 2. A criminal violation occurs that renders the property a
24 contraband article and one or more of the following
25 circumstances applies: and shall be forfeited subject to the
26 provisions of the Florida Contraband Forfeiture Act.

27 a. The owner of the property cannot be identified after a
28 diligent search;

29 b. The owner of the property is a fugitive from justice or
30 deceased;

31 c. An individual who does not own the property is arrested
32 for the criminal violation that renders the property a
33 contraband article, and the owner of the property had actual
34 knowledge of the criminal activity;

35 d. The owner of the property agrees to be a confidential
36 informant, as defined in s. 914.28. The seizing agency may not
37 use the threat of property seizure or forfeiture to coerce the
38 owner of the property into entering a confidential informant
39 agreement. The agency may include the final forfeiture of the



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40 property as a component of the confidential informant agreement.
41 The seizing agency shall return the property to the owner if
42 criminal charges are not filed against the owner and the active
43 criminal investigation ends or the owner ceases being a
44 confidential informant; or

45 e. The property is a monetary instrument. For purposes of
46 this sub-subparagraph, the term "monetary instrument" means coin
47 or currency of the United States or any other country; a
48 traveler's check; a personal check; a bank check; a cashier's
49 check; a money order; a bank draft of any country; an investment
50 security or negotiable instrument in bearer form or in other
51 form such that title passes upon delivery; a prepaid or stored
52 value card or other device that is the equivalent of money and
53 can be used to obtain cash, property, or services; gold, silver,
54 or platinum bullion or coins.

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



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

70 (c) If at least 90 days have elapsed since the initial
71 seizure of the property and the seizing agency has failed to
72 locate the owner after making a diligent effort, the seized
73 property is deemed a contraband article that is subject to
74 forfeiture under the Florida Contraband Forfeiture Act ~~All~~
75 rights to, interest in, and title to contraband articles used in
76 violation of s. 932.702 shall immediately vest in the seizing
77 law enforcement agency upon seizure.

78 (d)1. 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. The agency seeking to forfeit the seized property is
86 responsible for any damage to the property and any storage fees
87 or maintenance costs applicable to the property. If more than
88 one agency seeks forfeiture of the property, the division of
89 liability under this subparagraph may be governed by the terms
90 of an agreement between the agencies.

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

94 1. Compliance with subparagraph (1) (a)1. or subparagraph
95 (1) (a)2.; and

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



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

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

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

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

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

116 932.704 Forfeiture proceedings.—

117 (4) The seizing agency shall promptly proceed against the
118 contraband article by filing a complaint in the circuit court
119 within the jurisdiction where the seizure or the offense
120 occurred. The seizing agency shall pay a filing fee of at least
121 \$1,000 and deposit a bond of \$1,500 to the clerk of the court.
122 The bond shall be payable to the claimant, as determined by the
123 court, if the forfeiture is not awarded to the seizing agency.

124 (5)

125 (b) If no person entitled to notice requests an adversarial
126 preliminary hearing, as provided in s. 932.703(3)(a)



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127 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall
128 review the complaint and the verified supporting affidavit to
129 determine whether there was probable cause for the seizure. Upon
130 a finding of probable cause, the court shall enter an order
131 showing the probable cause finding.

132 (6)

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

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

148 (10) The court shall award reasonable attorney's fees and
149 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the
150 close of the adversarial preliminary hearing if the court makes
151 a finding of no probable cause. When the claimant prevails, at
152 the close of forfeiture proceedings and any appeal, the court
153 shall award reasonable trial attorney's fees and costs to the
154 claimant if the court finds that the seizing agency has not
155 proceeded at any stage of the proceedings in good faith or that



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156 the seizing agency's action which precipitated the forfeiture
157 proceedings was a gross abuse of the agency's discretion. The
158 court may order the seizing agency to pay the awarded attorney's
159 fees and costs from the appropriate contraband forfeiture trust
160 fund. Nothing in this subsection precludes any party from
161 electing to seek attorney's fees and costs under chapter 57 or
162 other applicable law.

163 (11) (a) The Department of Law Enforcement, in consultation
164 with the Florida Sheriffs Association and the Florida Police
165 Chiefs Association, shall develop guidelines and training
166 procedures to be used by state and local law enforcement
167 agencies and state attorneys in implementing the Florida
168 Contraband Forfeiture Act. At least annually, each state or
169 local law enforcement agency that seizes property for the
170 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
171 ~~assets made by the agency's law enforcement officers,~~ any
172 settlements, and any forfeiture proceedings initiated by the law
173 enforcement agency, to determine whether they such seizures,
174 ~~settlements, and forfeitures~~ comply with the Florida Contraband
175 Forfeiture Act and the guidelines adopted under this subsection.
176 If the review suggests deficiencies, the state or local law
177 enforcement agency shall promptly take action to comply with the
178 Florida Contraband Forfeiture Act.

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

182 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency
183 must be made by supervisory personnel. The agency's legal
184 counsel must be notified as soon as possible after a



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185 determination is made.

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

189 (e) A seizing agency shall adopt and implement written
190 policies, procedures, and training to ensure compliance with all
191 applicable legal requirements regarding seizing, maintaining,
192 and the forfeiture of property under the Florida Contraband
193 Forfeiture Act.

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

200 (g) Each seizing agency shall adopt and implement written
201 policies and procedures promoting the prompt release of seized
202 property as may be required by the act or by agency
203 determination when there is no legitimate basis for holding
204 seized property. To help ensure that property is not wrongfully
205 held after seizure, each law enforcement agency must adopt
206 written policies and procedures ensuring that all asserted
207 claims of interest in seized property are promptly reviewed for
208 potential validity.

209 (h) The settlement of any forfeiture action must be
210 consistent with the Florida Contraband Forfeiture Act and the
211 policy of the seizing agency.

212 (i) Law enforcement agency personnel involved in the
213 seizure of property for forfeiture shall receive basic training



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214 and continuing education as required by the Florida Contraband
215 Forfeiture Act. Each agency shall maintain records demonstrating
216 each law enforcement officer's compliance with this requirement.
217 Among other things, the training must address the legal aspects
218 of forfeiture, including, but not limited to, search and seizure
219 and other constitutional considerations.

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

222 932.7055 Disposition of liens and forfeited property.—

223 (3) If the forfeited property is subject to a lien
224 preserved by the court as provided in s. 932.703(7)(b)

225 ~~932.703(6)(b)~~, the agency shall:

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

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

230 (5)

231 (c) An agency or organization, other than the seizing
232 agency, that wishes to receive such funds shall apply to the
233 sheriff or chief of police for an appropriation and its
234 application shall be accompanied by a written certification that
235 the moneys will be used for an authorized purpose. Such requests
236 for expenditures shall include a statement describing
237 anticipated recurring costs for the agency for subsequent fiscal
238 years. An agency or organization that receives money pursuant to
239 this subsection shall provide an accounting for such moneys and
240 shall furnish the same reports as an agency of the county or
241 municipality that receives public funds. Such funds may be
242 expended in accordance with the following procedures:



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243 1. Such funds may be used only for school resource officer,
244 crime prevention, safe neighborhood, drug abuse education, or
245 drug prevention programs or such other law enforcement purposes
246 as the board of county commissioners or governing body of the
247 municipality deems appropriate.

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

250 3. ~~After July 1, 1992, and during every fiscal year~~
251 ~~thereafter,~~ Any local law enforcement agency that acquires at
252 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
253 within a fiscal year must expend or donate no less than 25 ~~15~~
254 percent of such proceeds for the support or operation of any
255 drug treatment, drug abuse education, drug prevention, crime
256 prevention, safe neighborhood, or school resource officer
257 program or programs ~~program(s)~~. The local law enforcement agency
258 has the discretion to determine which program or programs
259 ~~program(s)~~ will receive the designated proceeds.

260
261 Notwithstanding the drug abuse education, drug treatment, drug
262 prevention, crime prevention, safe neighborhood, or school
263 resource officer minimum expenditures or donations, the sheriff
264 and the board of county commissioners or the chief of police and
265 the governing body of the municipality may agree to expend or
266 donate such funds over a period of years if the expenditure or
267 donation of such minimum amount in any given fiscal year would
268 exceed the needs of the county or municipality for such program
269 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
270 minimum requirement for expenditure or donation of forfeiture
271 ~~proceeds in excess of the minimum amounts established in this~~



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272 subparagraph does not preclude expenditures or donations in
273 excess of that amount herein.

274 Section 5. Section 932.7061, Florida Statutes, is created
275 to read:

276 932.7061 Reporting seized property for forfeiture.-

277 (1) Every law enforcement agency shall submit an annual
278 report to the Department of Law Enforcement indicating whether
279 the agency has seized or forfeited property under the Florida
280 Contraband Forfeiture Act. A law enforcement agency receiving or
281 expending forfeited property or proceeds from the sale of
282 forfeited property in accordance with the Florida Contraband
283 Forfeiture Act shall submit a completed annual report by October
284 10 documenting the receipts and expenditures. The report shall
285 be submitted in an electronic form, maintained by the Department
286 of Law Enforcement in consultation with the Office of Program
287 Policy Analysis and Government Accountability, to the entity
288 that has budgetary authority over such agency and to the
289 Department of Law Enforcement. The annual report must, at a
290 minimum, specify the type, approximate value, court case number,
291 type of offense, disposition of property received, and amount of
292 any proceeds received or expended.

293 (2) The Department of Law Enforcement shall submit an
294 annual report to the Office of Program Policy Analysis and
295 Government Accountability compiling the information and data in
296 the annual reports submitted by the law enforcement agencies.
297 The annual report shall also contain a list of law enforcement
298 agencies that have failed to meet the reporting requirements and
299 a summary of any action taken against the noncomplying agency by
300 the office of Chief Financial Officer.



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301 (3) The law enforcement agency and the entity having
302 budgetary control over the law enforcement agency may not
303 anticipate future forfeitures or proceeds therefrom in the
304 adoption and approval of the budget for the law enforcement
305 agency.

306 Section 6. Section 932.7062, Florida Statutes, is created
307 to read:

308 932.7062 Penalty for noncompliance with reporting
309 requirements.—A seizing agency that fails to comply with the
310 reporting requirements in s. 932.7061 is subject to a civil fine
311 of \$5,000, to be determined by the Chief Financial Officer and
312 payable to the General Revenue Fund. However, such agency is not
313 subject to the fine if, within 60 days after receipt of written
314 notification from the Department of Law Enforcement of
315 noncompliance with the reporting requirements of the Florida
316 Contraband Forfeiture Act, the agency substantially complies
317 with those requirements. The Department of Law Enforcement shall
318 submit any substantial noncompliance to the office of Chief
319 Financial Officer, which shall be responsible for the
320 enforcement of this section.

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

323 322.34 Driving while license suspended, revoked, canceled,
324 or disqualified.—

325 (9) (a) A motor vehicle that is driven by a person under the
326 influence of alcohol or drugs in violation of s. 316.193 is
327 subject to seizure and forfeiture under ss. 932.701-932.7062
328 ~~932.706~~ and is subject to liens for recovering, towing, or
329 storing vehicles under s. 713.78 if, at the time of the offense,



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330 the person's driver license is suspended, revoked, or canceled
331 as a result of a prior conviction for driving under the
332 influence.

333 (c) Notwithstanding ~~s. 932.703(1)(e) or~~ s. 932.7055, when
334 the seizing agency obtains a final judgment granting forfeiture
335 of the motor vehicle under this section, 30 percent of the net
336 proceeds from the sale of the motor vehicle shall be retained by
337 the seizing law enforcement agency. The remaining 70 percent of
338 the proceeds shall first be applied to payment of court costs,
339 finest, and fees remaining due, and any remaining balance of
340 proceeds ~~and 70 percent~~ shall be deposited in the General
341 Revenue Fund for use by regional workforce boards in providing
342 transportation services for participants of the welfare
343 transition program. In a forfeiture proceeding under this
344 section, the court may consider the extent that the family of
345 the owner has other public or private means of transportation.

346 Section 8. Paragraph (a) of subsection (4) of section
347 323.001, Florida Statutes, is amended to read:

348 323.001 Wrecker operator storage facilities; vehicle
349 holds.—

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

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

355 Section 9. Paragraph (b) of subsection (3) of section
356 328.07, Florida Statutes, is amended to read:

357 328.07 Hull identification number required.—

358 (3)



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359 (b) If any of the hull identification numbers required by
360 the United States Coast Guard for a vessel manufactured after
361 October 31, 1972, do not exist or have been altered, removed,
362 destroyed, covered, or defaced or the real identity of the
363 vessel cannot be determined, the vessel may be seized as
364 contraband property by a law enforcement agency or the division,
365 and shall be subject to forfeiture pursuant to ss. 932.701-
366 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
367 waters of the state unless the division receives a request from
368 a law enforcement agency providing adequate documentation or is
369 directed by written order of a court of competent jurisdiction
370 to issue to the vessel a replacement hull identification number
371 which shall thereafter be used for identification purposes. No
372 vessel shall be forfeited under the Florida Contraband
373 Forfeiture Act when the owner unknowingly, inadvertently, or
374 neglectfully altered, removed, destroyed, covered, or defaced
375 the vessel hull identification number.

376 Section 10. Paragraph (c) of subsection (2) of section
377 817.625, Florida Statutes, is amended to read:

378 817.625 Use of scanning device or reencoder to defraud;
379 penalties.—

380 (2)

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

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

385

386 ===== T I T L E A M E N D M E N T =====

387 And the title is amended as follows:



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388 Delete everything before the enacting clause
389 and insert:

390 A bill to be entitled
391 An act relating to contraband forfeiture; amending s.
392 932.701, F.S.; conforming provisions to changes made
393 by the act; amending s. 932.703, F.S.; specifying that
394 property may be seized under certain circumstances;
395 requiring that specified persons approve a settlement;
396 providing circumstances when property may be deemed
397 contraband; allocating responsibility for damage to
398 seized property and payment of storage and maintenance
399 expenses; providing a procedure for judicial review of
400 seizures; amending s. 932.704, F.S.; providing
401 requirements for a filing fee and a bond to be paid to
402 the clerk of court; specifying the circumstances when
403 a court shall order the forfeiture of seized property;
404 amending s. 932.7055, F.S.; conforming provisions to
405 changes made by the act; creating s. 932.7061, F.S.;
406 providing reporting requirements for seized property
407 for forfeiture; creating s. 932.7062, F.S.; providing
408 penalties for noncompliance with reporting
409 requirements; amending s. 322.34, F.S.; providing for
410 payment of court costs, fines, and fees from proceeds
411 of certain forfeitures; conforming provisions to
412 changes made by the act; amending ss. 323.001, 328.07,
413 and 817.625, F.S.; conforming provisions to changes
414 made by the act ; providing an effective date.