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594-03401-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to forfeiture of contraband; amending s. 932.703, F.S.; providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing exceptions; prohibiting the seizing law enforcement agency from threatening a property owner with property seizure or forfeiture under certain circumstances; requiring a seizing law enforcement agency to follow specified procedures under certain circumstances; requiring a court to issue a written order finding probable cause under certain circumstances; authorizing a court to order that the written order of probable cause be sealed under certain circumstances; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; requiring the return of property by the seizing law enforcement agency to the property owner under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal offense that renders the



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28 property a contraband article; providing construction;  
29 deleting a provision vesting rights, interests, and  
30 title to contraband articles in the seizing law  
31 enforcement agency; amending s. 322.34, F.S.;  
32 providing for payment of court costs, fines, and fees  
33 from proceeds of certain forfeitures; conforming a  
34 provision to changes made by the act; reenacting s.  
35 403.413(6)(e), F.S., relating to forfeiture under the  
36 Florida Litter Law, to incorporate the amendment made  
37 to s. 932.703, F.S., in a reference thereto; providing  
38 an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsection (1) of section 932.703, Florida  
43 Statutes, is amended to read:

44 932.703 Forfeiture of contraband article; exceptions.-

45 (1)(a) Any contraband article, vessel, motor vehicle,  
46 aircraft, other personal property, or real property used in  
47 violation of ~~any provision of~~ the Florida Contraband Forfeiture  
48 Act, or in, upon, or by means of which any violation of the  
49 Florida Contraband Forfeiture Act has taken or is taking place,  
50 may be seized and shall be forfeited subject to ~~the provisions~~  
51 ~~of~~ the Florida Contraband Forfeiture Act.

52 (b) Notwithstanding any other provision of the Florida  
53 Contraband Forfeiture Act, except ~~the provisions of~~ paragraph  
54 (a), contraband articles set forth in s. 932.701(2)(a)7. used in  
55 violation of ~~any provision of~~ the Florida Contraband Forfeiture  
56 Act, or in, upon, or by means of which any violation of the



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57 Florida Contraband Forfeiture Act has taken or is taking place,  
58 shall be seized and shall be forfeited subject to ~~the provisions~~  
59 ~~of~~ the Florida Contraband Forfeiture Act.

60 (c)1. At the time of seizure, the state acquires  
61 provisional title to the seized property. Property may not be  
62 seized under the Florida Contraband Forfeiture Act until an  
63 owner of such property is arrested for a criminal offense that  
64 renders the property a contraband article. However, property may  
65 be immediately seized if:

66 a. The owner of the contraband article cannot be readily  
67 identified;

68 b. There is probable cause to arrest an individual, but he  
69 or she is a fugitive or dies before an arrest is made; or

70 c. The owner of property subject to seizure agrees to  
71 cooperate as a confidential informant in lieu of an arrest. The  
72 confidential informant status must be agreed upon between the  
73 seizing agency and the property owner, and the property owner  
74 must actively participate as a confidential informant in  
75 gathering criminal intelligence or investigative information for  
76 an active criminal investigation. The seizing agency may not use  
77 the threat of property seizure or forfeiture when offering the  
78 property owner the status of confidential informant in lieu of  
79 an arrest. If charges are not brought against the property  
80 owner, the property must be returned to the owner at the  
81 conclusion of the active criminal investigation or the cessation  
82 of the status of criminal informant. Final forfeiture of  
83 property may be included as a component of the agreement to  
84 serve as a confidential informant.

85 2. If a seizure is made under one of the exceptions



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86 specified in subparagraph 1., the law enforcement agency that  
87 seizes the contraband article, vessel, motor vehicle, aircraft,  
88 other personal property, or real property used in violation of  
89 the Florida Contraband Forfeiture Act shall, within 10 business  
90 days, apply to a court of competent jurisdiction for an order  
91 determining whether probable cause exists for the seizure of the  
92 property. The application for the probable cause determination  
93 must establish probable cause that the property that has been  
94 seized is subject to seizure under the Florida Contraband  
95 Forfeiture Act and may be filed by reliable electronic means. If  
96 the court finds that probable cause exists for the seizure, it  
97 shall enter a written order to that effect and order that the  
98 property be held until the issue of a determination of title is  
99 resolved pursuant to the procedures established in the Florida  
100 Contraband Forfeiture Act. Upon a finding of good cause shown,  
101 the court may order that the court order finding probable cause  
102 be sealed for as long as reasonably necessary to preserve the  
103 integrity of an active criminal investigation. If the court  
104 determines that probable cause does not exist for the seizure,  
105 any forfeiture hold, lien, lis pendens, or other civil  
106 encumbrance must be released.

107 3. If, after 90 days after the date of the initial seizure,  
108 the seizing agency cannot find the owner of the seized property  
109 after a diligent effort, the seized property is deemed a  
110 contraband article and forfeited subject to s. 932.704. However,  
111 if the seizing agency finds the owner within 90 days after the  
112 date of the initial seizure, the seizing agency shall return the  
113 property to the owner within 5 days after:

114 a. The court finding that the owner had a bona fide



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115 security interest;

116 b. The court finding that the owner was an innocent owner;

117 c. The acquittal or dismissal of the owner of the criminal  
118 charge that was the basis of the forfeiture proceedings; or

119 d. The disposal of the criminal charge that was the basis  
120 of the forfeiture proceedings by nolle prosequi. The seizing  
121 agency is responsible for any damage, storage fee, and related  
122 cost applicable to the property.

123 4. A forfeiture under the Florida Contraband Forfeiture Act  
124 is not final, and title or other indicia of ownership, other  
125 than provisional title, does not pass to the state or  
126 jurisdiction seeking forfeiture until the owner of the seized  
127 property is prosecuted and convicted of or pleads guilty or nolo  
128 contendere to a criminal offense, without regard to whether  
129 adjudication is withheld, that renders the property a contraband  
130 article.

131 5. This paragraph is in addition to all other requirements  
132 and rights in the Florida Contraband Forfeiture Act and does not  
133 affect any other requirement or right set forth in this act.  
134 This paragraph does not affect any party's discovery obligations  
135 under the Florida Rules of Civil Procedure ~~All rights to,~~  
136 ~~interest in, and title to contraband articles used in violation~~  
137 ~~of s. 932.702 shall immediately vest in the seizing law~~  
138 ~~enforcement agency upon seizure.~~

139 (d) The seizing agency may not use the seized property for  
140 any purpose until the rights to, interest in, and title to the  
141 seized property are perfected in accordance with the Florida  
142 Contraband Forfeiture Act. This section does not prohibit use or  
143 operation necessary for reasonable maintenance of seized



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144 property. Reasonable efforts shall be made to maintain seized  
145 property in such a manner as to minimize loss of value.

146 Section 2. Paragraph (c) of subsection (9) of section  
147 322.34, Florida Statutes, is amended to read:

148 322.34 Driving while license suspended, revoked, canceled,  
149 or disqualified.—

150 (9)

151 (c) Notwithstanding ~~s. 932.703(1)(c)~~ or s. 932.7055, when  
152 the seizing agency obtains a final judgment granting forfeiture  
153 of the motor vehicle under this section, 30 percent of the net  
154 proceeds from the sale of the motor vehicle shall be retained by  
155 the seizing law enforcement agency. The remaining 70 percent of  
156 the proceeds shall first be applied to payment of court costs,  
157 finer, and fees remaining due, and any remaining balance of  
158 proceeds and 70 percent shall be deposited in the General  
159 Revenue Fund for use by regional workforce boards in providing  
160 transportation services for participants of the welfare  
161 transition program. In a forfeiture proceeding under this  
162 section, the court may consider the extent that the family of  
163 the owner has other public or private means of transportation.

164 Section 3. For the purpose of incorporating the amendment  
165 made by this act to section 932.703, Florida Statutes, in a  
166 reference thereto, paragraph (e) of subsection (6) of section  
167 403.413, Florida Statutes, is reenacted to read:

168 403.413 Florida Litter Law.—

169 (6) PENALTIES; ENFORCEMENT.—

170 (e) A motor vehicle, vessel, aircraft, container, crane,  
171 winch, or machine used to dump litter that exceeds 500 pounds in  
172 weight or 100 cubic feet in volume is declared contraband and is



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173 subject to forfeiture in the same manner as provided in ss.  
174 932.703 and 932.704.

175 Section 4. This act shall take effect July 1, 2016.