

20161044e1

1 A bill to be entitled
2 An act relating to contraband forfeiture; amending s.
3 932.701, F.S.; conforming provisions to changes made
4 by the act; amending s. 932.703, F.S.; specifying that
5 property may be seized only under certain
6 circumstances; defining the term "monetary
7 instrument"; requiring that specified persons approve
8 a settlement; providing circumstances when property
9 may be deemed contraband; allocating responsibility
10 for damage to seized property and payment of storage
11 and maintenance expenses; requiring the seizing agency
12 to apply for an order, within a certain timeframe,
13 making a probable cause determination after the agency
14 seizes property; providing application requirements;
15 requiring a court to make specified determinations;
16 providing procedures upon certain court findings;
17 authorizing the court to seal any portion of the
18 application and of specified proceedings under certain
19 circumstances; amending s. 932.704, F.S.; providing
20 requirements for a filing fee and a bond to be paid to
21 the clerk of court; requiring that the bond be made
22 payable to the claimant under certain circumstances
23 unless otherwise expressly agreed to in writing;
24 increasing the evidentiary standard from clear and
25 convincing evidence to proof beyond a reasonable doubt
26 that a contraband article was being used in violation
27 of the Florida Contraband Forfeiture Act for a court
28 to order the forfeiture of the seized property;
29 increasing the attorney fees and costs awarded to

20161044e1

30 claimant under certain circumstances; requiring a
31 seizing agency to annually review seizures,
32 settlements, and forfeiture proceedings to determine
33 compliance with the Florida Contraband Forfeiture Act;
34 providing requirements for seizing law enforcement
35 agencies; requiring seizing law enforcement agencies
36 to adopt and implement specified written policies,
37 procedures, and training; requiring law enforcement
38 agency personnel to receive basic training and
39 continuing education; requiring the maintenance of
40 training records; amending s. 932.7055, F.S.;
41 conforming provisions to changes made by the act;
42 creating s. 932.7061, F.S.; providing reporting
43 requirements for seized property for forfeiture;
44 creating s. 932.7062, F.S.; providing penalties for
45 noncompliance with reporting requirements; amending s.
46 322.34, F.S.; providing for payment of court costs,
47 fines, and fees from proceeds of certain forfeitures;
48 conforming provisions to changes made by the act;
49 amending ss. 323.001, 328.07, and 817.625, F.S.;
50 conforming provisions to changes made by the act;
51 providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Subsection (1) of section 932.701, Florida
56 Statutes, is amended to read:

57 932.701 Short title; definitions.—

58 (1) Sections 932.701-932.7062 ~~932.706~~ shall be known and

20161044e1

59 may be cited as the "Florida Contraband Forfeiture Act."

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

64 932.703 Forfeiture of contraband article; exceptions.—

65 (1) (a) A Any contraband article, vessel, motor vehicle,
66 aircraft, other personal property, or real property used in
67 violation of any provision of the Florida Contraband Forfeiture
68 Act, or in, upon, or by means of which any violation of the
69 Florida Contraband Forfeiture Act has taken or is taking place,
70 may be seized and shall be forfeited subject to ~~the provisions~~
71 ~~of~~ the Florida Contraband Forfeiture Act. A seizure may occur
72 only if the owner of the property is arrested for a criminal
73 offense that forms the basis for determining that the property
74 is a contraband article under s. 932.701, or one or more of the
75 following circumstances apply:

76 1. The owner of the property cannot be identified after a
77 diligent search;

78 2. The owner of the property is a fugitive from justice or
79 is deceased;

80 3. An individual who does not own the property is arrested
81 for a criminal offense that forms the basis for determining that
82 the property is a contraband article under s. 932.701 and the
83 owner of the property had actual knowledge of the criminal
84 activity. Evidence that an owner received written notification
85 from a law enforcement agency and acknowledged receipt of the
86 notification in writing, that the seized asset had been used in
87 violation of the Florida Contraband Forfeiture Act on a prior

20161044e1

88 occasion by the arrested person, may be used to establish actual
89 knowledge;

90 4. The owner of the property agrees to be a confidential
91 informant as defined in s. 914.28. The seizing agency may not
92 use the threat of property seizure or forfeiture to coerce the
93 owner of the property to enter into a confidential informant
94 agreement. The seizing agency shall return the property to the
95 owner if criminal charges are not filed against the owner and
96 the active criminal investigation ends or if the owner ceases
97 being a confidential informant, unless the agency includes the
98 final forfeiture of the property as a component of the
99 confidential informant agreement; or

100 5. The property is a monetary instrument. For purposes of
101 this subparagraph, the term "monetary instrument" means coin or
102 currency of the United States or any other country; a traveler's
103 check; a personal check; a bank check; a cashier's check; a
104 money order; a bank draft of any country; an investment security
105 or negotiable instrument in bearer form or in other form such
106 that title passes upon delivery; a prepaid or stored value card
107 or other device that is the equivalent of money and can be used
108 to obtain cash, property, or services; or gold, silver, or
109 platinum bullion or coins.

110 (b) After property is seized pursuant to the Florida
111 Contraband Forfeiture Act, regardless of whether the civil
112 complaint has been filed, all settlements must be personally
113 approved by the head of the law enforcement agency that seized
114 the property. If the agency head is unavailable and a delay
115 would adversely affect the settlement, approval may be given by
116 a subordinate of the agency head who is designated to grant such

20161044e1

117 ~~approval~~ Notwithstanding any other provision of the Florida
118 ~~Contraband Forfeiture Act, except the provisions of paragraph~~
119 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~
120 ~~violation of any provision of the Florida Contraband Forfeiture~~
121 ~~Act, or in, upon, or by means of which any violation of the~~
122 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
123 ~~shall be seized and shall be forfeited subject to the provisions~~
124 ~~of the Florida Contraband Forfeiture Act.~~

125 (c) If at least 90 days have elapsed since the initial
126 seizure of the property and the seizing agency has failed to
127 locate the owner after making a diligent effort, the seized
128 property is deemed a contraband article that is subject to
129 forfeiture under the Florida Contraband Forfeiture Act ~~All~~
130 ~~rights to, interest in, and title to contraband articles used in~~
131 ~~violation of s. 932.702 shall immediately vest in the seizing~~
132 ~~law enforcement agency upon seizure.~~

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

140 2. Unless otherwise expressly agreed to in writing by the
141 parties, the agency seeking forfeiture of the seized property is
142 responsible for any damage to the property and any storage fees
143 or maintenance costs applicable to the property. If more than
144 one agency seeks forfeiture of the property, the division of
145 liability under this subparagraph may be governed by the terms

20161044e1

146 of an agreement between the agencies.

147 (2) (a) When a seizure of property is made under the Florida
148 Contraband Forfeiture Act, the seizing agency shall apply,
149 within 10 business days after the date of the seizure, to a
150 court of competent jurisdiction for an order determining whether
151 probable cause exists for the seizure of the property. The
152 application for the probable cause determination must be
153 accompanied by a sworn affidavit and may be filed electronically
154 by reliable electronic means.

155 (b) The court must determine whether:

156 1. The owner was arrested under paragraph (1) (a), and if
157 not, whether an exception to the arrest requirement specified in
158 paragraph (1) (a) applies; and

159 2. Probable cause exists for the property seizure under the
160 Florida Contraband Forfeiture Act.

161 (c) If the court finds that the requirements specified in
162 paragraph (1) (a) were satisfied and that probable cause exists
163 for the seizure, the forfeiture may proceed as set forth in the
164 Florida Contraband Forfeiture Act, and no additional probable
165 cause determination is required unless the claimant requests an
166 adversarial preliminary hearing as set forth in the act. Upon
167 such a finding, the court shall issue a written order finding
168 probable cause for the seizure and order the property held until
169 the issue of a determination of title is resolved pursuant to
170 the procedures defined in the act.

171 (d) If the court finds that the requirements in paragraph
172 (1) (a) were not satisfied or that probable cause does not exist
173 for the seizure, any forfeiture hold, lien, lis pendens, or
174 other civil encumbrance must be released within 5 days.

20161044e1

175 (e) The court may seal any portion of the application and
176 the record of any proceeding under the Florida Contraband
177 Forfeiture Act which is exempt or confidential and exempt from
178 s. 119.07(1) and s. 24(a), Art. I of the State Constitution or
179 may otherwise be sealed pursuant to Rule 2.420, Florida Rules of
180 Judicial Administration.

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

184 932.704 Forfeiture proceedings.—

185 (4) The seizing agency shall promptly proceed against the
186 contraband article by filing a complaint in the circuit court
187 within the jurisdiction where the seizure or the offense
188 occurred, paying a filing fee of at least \$1,000 and depositing
189 a bond of \$1,500 to the clerk of the court. Unless otherwise
190 expressly agreed to in writing by the parties, the bond shall be
191 payable to the claimant if the claimant prevails in the
192 forfeiture proceeding and in any appeal.

193 (5)

194 (b) If no person entitled to notice requests an adversarial
195 preliminary hearing, as provided in s. 932.703(3)(a)
196 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall
197 review the complaint and the verified supporting affidavit to
198 determine whether there was probable cause for the seizure. Upon
199 a finding of probable cause, the court shall enter an order
200 showing the probable cause finding.

201 (6)

202 (b) The complaint must, in addition to stating that which
203 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,

20161044e1

204 as appropriate, describe the property; state the county, place,
205 and date of seizure; state the name of the law enforcement
206 agency holding the seized property; and state the name of the
207 court in which the complaint will be filed.

208 (8) Upon proof beyond a reasonable doubt ~~clear and~~
209 ~~convincing evidence~~ that the contraband article was being used
210 in violation of the Florida Contraband Forfeiture Act, the court
211 shall order the seized property forfeited to the seizing law
212 enforcement agency. The final order of forfeiture by the court
213 shall perfect in the law enforcement agency right, title, and
214 interest in and to such property, subject only to the rights and
215 interests of bona fide lienholders, and shall relate back to the
216 date of seizure.

217 (10) The court shall award reasonable attorney's fees and
218 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the
219 close of the adversarial preliminary hearing if the court makes
220 a finding of no probable cause. When the claimant prevails, at
221 the close of forfeiture proceedings and any appeal, the court
222 shall award reasonable trial attorney's fees and costs to the
223 claimant if the court finds that the seizing agency has not
224 proceeded at any stage of the proceedings in good faith or that
225 the seizing agency's action which precipitated the forfeiture
226 proceedings was a gross abuse of the agency's discretion. The
227 court may order the seizing agency to pay the awarded attorney's
228 fees and costs from the appropriate contraband forfeiture trust
229 fund. Nothing in this subsection precludes any party from
230 electing to seek attorney's fees and costs under chapter 57 or
231 other applicable law.

232 (11) (a) The Department of Law Enforcement, in consultation

20161044e1

233 with the Florida Sheriffs Association and the Florida Police
234 Chiefs Association, shall develop guidelines and training
235 procedures to be used by state and local law enforcement
236 agencies and state attorneys in implementing the Florida
237 Contraband Forfeiture Act. At least annually, each state or
238 local law enforcement agency that seizes property for the
239 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
240 ~~assets made by the agency's law enforcement officers,~~ any
241 settlements, and any forfeiture proceedings initiated by the law
242 enforcement agency, to determine whether they ~~such seizures,~~
243 ~~settlements, and forfeitures~~ comply with the Florida Contraband
244 Forfeiture Act and the guidelines adopted under this subsection.
245 If the review suggests deficiencies, the state or local law
246 enforcement agency shall promptly take action to comply with the
247 Florida Contraband Forfeiture Act.

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

251 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency
252 must be made by supervisory personnel. The agency's legal
253 counsel must be notified as soon as possible after a
254 determination is made.

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

258 (e) A seizing agency shall adopt and implement written
259 policies, procedures, and training to ensure compliance with all
260 applicable legal requirements regarding seizing, maintaining,
261 and the forfeiture of property under the Florida Contraband

20161044e1

262 Forfeiture Act.

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

269 (g) Each seizing agency shall adopt and implement written
270 policies and procedures promoting the prompt release of seized
271 property as may be required by the act or by agency
272 determination when there is no legitimate basis for holding
273 seized property. To help ensure that property is not wrongfully
274 held after seizure, each law enforcement agency must adopt
275 written policies and procedures ensuring that all asserted
276 claims of interest in seized property are promptly reviewed for
277 potential validity.

278 (h) The settlement of any forfeiture action must be
279 consistent with the Florida Contraband Forfeiture Act and the
280 policy of the seizing agency.

281 (i) Law enforcement agency personnel involved in the
282 seizure of property for forfeiture shall receive basic training
283 and continuing education as required by the Florida Contraband
284 Forfeiture Act. Each agency shall maintain records demonstrating
285 each law enforcement officer's compliance with this requirement.
286 Among other things, the training must address the legal aspects
287 of forfeiture, including, but not limited to, search and seizure
288 and other constitutional considerations.

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

20161044e1

291 932.7055 Disposition of liens and forfeited property.—

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

294 ~~932.703(6)(b)~~, the agency shall:

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

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

299 (5)

300 (c) An agency or organization, other than the seizing
301 agency, that wishes to receive such funds shall apply to the
302 sheriff or chief of police for an appropriation and its
303 application shall be accompanied by a written certification that
304 the moneys will be used for an authorized purpose. Such requests
305 for expenditures shall include a statement describing
306 anticipated recurring costs for the agency for subsequent fiscal
307 years. An agency or organization that receives money pursuant to
308 this subsection shall provide an accounting for such moneys and
309 shall furnish the same reports as an agency of the county or
310 municipality that receives public funds. Such funds may be
311 expended in accordance with the following procedures:

312 1. Such funds may be used only for school resource officer,
313 crime prevention, safe neighborhood, drug abuse education, or
314 drug prevention programs or such other law enforcement purposes
315 as the board of county commissioners or governing body of the
316 municipality deems appropriate.

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

319 3. ~~After July 1, 1992, and during every fiscal year~~

20161044e1

320 ~~thereafter,~~ Any local law enforcement agency that acquires at
321 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
322 within a fiscal year must expend or donate no less than 25 ~~15~~
323 percent of such proceeds for the support or operation of any
324 drug treatment, drug abuse education, drug prevention, crime
325 prevention, safe neighborhood, or school resource officer
326 program or programs ~~program(s)~~. The local law enforcement agency
327 has the discretion to determine which program or programs
328 ~~program(s)~~ will receive the designated proceeds.

329
330 Notwithstanding the drug abuse education, drug treatment, drug
331 prevention, crime prevention, safe neighborhood, or school
332 resource officer minimum expenditures or donations, the sheriff
333 and the board of county commissioners or the chief of police and
334 the governing body of the municipality may agree to expend or
335 donate such funds over a period of years if the expenditure or
336 donation of such minimum amount in any given fiscal year would
337 exceed the needs of the county or municipality for such program
338 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
339 minimum requirement for expenditure or donation of forfeiture
340 proceeds in excess of the minimum amounts established in this
341 subparagraph does not preclude expenditures or donations in
342 excess of that amount ~~herein~~.

343 Section 5. Section 932.7061, Florida Statutes, is created
344 to read:

345 932.7061 Reporting seized property for forfeiture.-

346 (1) Every law enforcement agency shall submit an annual
347 report to the Department of Law Enforcement indicating whether
348 the agency has seized or forfeited property under the Florida

20161044e1

349 Contraband Forfeiture Act. A law enforcement agency receiving or
350 expending forfeited property or proceeds from the sale of
351 forfeited property in accordance with the Florida Contraband
352 Forfeiture Act shall submit a completed annual report by October
353 10 documenting the receipts and expenditures. The report shall
354 be submitted in an electronic form, maintained by the Department
355 of Law Enforcement in consultation with the Office of Program
356 Policy Analysis and Government Accountability, to the entity
357 that has budgetary authority over such agency and to the
358 Department of Law Enforcement. The annual report must, at a
359 minimum, specify the type, approximate value, court case number,
360 type of offense, disposition of property received, and amount of
361 any proceeds received or expended.

362 (2) The Department of Law Enforcement shall submit an
363 annual report to the Office of Program Policy Analysis and
364 Government Accountability compiling the information and data in
365 the annual reports submitted by the law enforcement agencies.
366 The annual report shall also contain a list of law enforcement
367 agencies that have failed to meet the reporting requirements and
368 a summary of any action taken against the noncomplying agency by
369 the office of Chief Financial Officer.

370 (3) The law enforcement agency and the entity having
371 budgetary control over the law enforcement agency may not
372 anticipate future forfeitures or proceeds therefrom in the
373 adoption and approval of the budget for the law enforcement
374 agency.

375 Section 6. Section 932.7062, Florida Statutes, is created
376 to read:

377 932.7062 Penalty for noncompliance with reporting

20161044e1

378 requirements.—A seizing agency that fails to comply with the
379 reporting requirements in s. 932.7061 is subject to a civil fine
380 of \$5,000, to be determined by the Chief Financial Officer and
381 payable to the General Revenue Fund. However, such agency is not
382 subject to the fine if, within 60 days after receipt of written
383 notification from the Department of Law Enforcement of
384 noncompliance with the reporting requirements of the Florida
385 Contraband Forfeiture Act, the agency substantially complies
386 with those requirements. The Department of Law Enforcement shall
387 submit any substantial noncompliance to the office of Chief
388 Financial Officer, which shall be responsible for the
389 enforcement of this section.

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

392 322.34 Driving while license suspended, revoked, canceled,
393 or disqualified.—

394 (9) (a) A motor vehicle that is driven by a person under the
395 influence of alcohol or drugs in violation of s. 316.193 is
396 subject to seizure and forfeiture under ss. 932.701-932.7062
397 ~~932.706~~ and is subject to liens for recovering, towing, or
398 storing vehicles under s. 713.78 if, at the time of the offense,
399 the person's driver license is suspended, revoked, or canceled
400 as a result of a prior conviction for driving under the
401 influence.

402 (c) Notwithstanding ~~s. 932.703(1)(c) or~~ s. 932.7055, when
403 the seizing agency obtains a final judgment granting forfeiture
404 of the motor vehicle under this section, 30 percent of the net
405 proceeds from the sale of the motor vehicle shall be retained by
406 the seizing law enforcement agency. The remaining 70 percent of

20161044e1

407 the proceeds shall first be applied to payment of court costs,
408 finest, and fees remaining due, and any remaining balance of
409 proceeds and 70 percent shall be deposited in the General
410 Revenue Fund for use by regional workforce boards in providing
411 transportation services for participants of the welfare
412 transition program. In a forfeiture proceeding under this
413 section, the court may consider the extent that the family of
414 the owner has other public or private means of transportation.

415 Section 8. Paragraph (a) of subsection (4) of section
416 323.001, Florida Statutes, is amended to read:

417 323.001 Wrecker operator storage facilities; vehicle
418 holds.—

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

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

424 Section 9. Paragraph (b) of subsection (3) of section
425 328.07, Florida Statutes, is amended to read:

426 328.07 Hull identification number required.—

427 (3)

428 (b) If any of the hull identification numbers required by
429 the United States Coast Guard for a vessel manufactured after
430 October 31, 1972, do not exist or have been altered, removed,
431 destroyed, covered, or defaced or the real identity of the
432 vessel cannot be determined, the vessel may be seized as
433 contraband property by a law enforcement agency or the division,
434 and shall be subject to forfeiture pursuant to ss. 932.701-
435 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the

20161044e1

436 waters of the state unless the division receives a request from
437 a law enforcement agency providing adequate documentation or is
438 directed by written order of a court of competent jurisdiction
439 to issue to the vessel a replacement hull identification number
440 which shall thereafter be used for identification purposes. No
441 vessel shall be forfeited under the Florida Contraband
442 Forfeiture Act when the owner unknowingly, inadvertently, or
443 neglectfully altered, removed, destroyed, covered, or defaced
444 the vessel hull identification number.

445 Section 10. Paragraph (c) of subsection (2) of section
446 817.625, Florida Statutes, is amended to read:

447 817.625 Use of scanning device or reencoder to defraud;
448 penalties.—

449 (2)

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

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