

20161044er

1
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

20161044er

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

20161044er

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, or the person in possession of the property
78 denies ownership and the owner of the property cannot be
79 identified by means that are available to the employee or agent
80 of the seizing agency at the time of the seizure;

81 2. The owner of the property is a fugitive from justice or
82 is deceased;

83 3. An individual who does not own the property is arrested
84 for a criminal offense that forms the basis for determining that
85 the property is a contraband article under s. 932.701 and the
86 owner of the property had actual knowledge of the criminal
87 activity. Evidence that an owner received written notification

20161044er

88 from a law enforcement agency and acknowledged receipt of the
89 notification in writing, that the seized asset had been used in
90 violation of the Florida Contraband Forfeiture Act on a prior
91 occasion by the arrested person, may be used to establish actual
92 knowledge;

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

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

113 (b) After property is seized pursuant to the Florida
114 Contraband Forfeiture Act, regardless of whether the civil
115 complaint has been filed, all settlements must be personally
116 approved by the head of the law enforcement agency that seized

20161044er

117 the property. If the agency head is unavailable and a delay
118 would adversely affect the settlement, approval may be given by
119 a subordinate of the agency head who is designated to grant such
120 approval ~~Notwithstanding any other provision of the Florida~~
121 ~~Contraband Forfeiture Act, except the provisions of paragraph~~
122 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~
123 ~~violation of any provision of the Florida Contraband Forfeiture~~
124 ~~Act, or in, upon, or by means of which any violation of the~~
125 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
126 ~~shall be seized and shall be forfeited subject to the provisions~~
127 ~~of the Florida Contraband Forfeiture Act.~~

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

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

143 2. Unless otherwise expressly agreed to in writing by the
144 parties, the agency seeking forfeiture of the seized property is
145 responsible for any damage to the property and any storage fees

20161044er

146 or maintenance costs applicable to the property. If more than
147 one agency seeks forfeiture of the property, the division of
148 liability under this subparagraph may be governed by the terms
149 of an agreement between the agencies.

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

158 (b) The court must determine whether:

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

162 2. Probable cause exists for the property seizure under the
163 Florida Contraband Forfeiture Act.

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

174 (d) If the court finds that the requirements in paragraph

20161044er

175 (1) (a) were not satisfied or that probable cause does not exist
176 for the seizure, any forfeiture hold, lien, lis pendens, or
177 other civil encumbrance must be released within 5 days.

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

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

187 932.704 Forfeiture proceedings.—

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

196 (5)

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

20161044er

204 (6)

205 (b) The complaint must, in addition to stating that which
206 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,
207 as appropriate, describe the property; state the county, place,
208 and date of seizure; state the name of the law enforcement
209 agency holding the seized property; and state the name of the
210 court in which the complaint will be filed.

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

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

20161044er

233 electing to seek attorney's fees and costs under chapter 57 or
234 other applicable law.

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

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

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

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

261 (e) A seizing agency shall adopt and implement written

20161044er

262 policies, procedures, and training to ensure compliance with all
263 applicable legal requirements regarding seizing, maintaining,
264 and the forfeiture of property under the Florida Contraband
265 Forfeiture Act.

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

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

281 (h) The settlement of any forfeiture action must be
282 consistent with the Florida Contraband Forfeiture Act and the
283 policy of the seizing agency.

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

20161044er

291 and other constitutional considerations.

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

294 932.7055 Disposition of liens and forfeited property.—

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

297 ~~932.703(6)(b)~~, the agency shall:

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

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

302 (5)

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

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

20161044er

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

322 3. ~~After July 1, 1992, and during every fiscal year~~
323 ~~thereafter,~~ Any local law enforcement agency that acquires at
324 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
325 within a fiscal year must expend or donate no less than 25 ~~15~~
326 percent of such proceeds for the support or operation of any
327 drug treatment, drug abuse education, drug prevention, crime
328 prevention, safe neighborhood, or school resource officer
329 program or programs ~~program(s)~~. The local law enforcement agency
330 has the discretion to determine which program or programs
331 ~~program(s)~~ will receive the designated proceeds.

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

346 Section 5. Section 932.7061, Florida Statutes, is created
347 to read:

348 932.7061 Reporting seized property for forfeiture.—

20161044er

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

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

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

20161044er

378 Section 6. Section 932.7062, Florida Statutes, is created
379 to read:

380 932.7062 Penalty for noncompliance with reporting
381 requirements.—A seizing agency that fails to comply with the
382 reporting requirements in s. 932.7061 is subject to a civil fine
383 of \$5,000, to be determined by the Chief Financial Officer and
384 payable to the General Revenue Fund. However, such agency is not
385 subject to the fine if, within 60 days after receipt of written
386 notification from the Department of Law Enforcement of
387 noncompliance with the reporting requirements of the Florida
388 Contraband Forfeiture Act, the agency substantially complies
389 with those requirements. The Department of Law Enforcement shall
390 submit any substantial noncompliance to the office of Chief
391 Financial Officer, which shall be responsible for the
392 enforcement of this section.

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

395 322.34 Driving while license suspended, revoked, canceled,
396 or disqualified.—

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

405 (c) Notwithstanding ~~s. 932.703(1)(e)~~ or s. 932.7055, when
406 the seizing agency obtains a final judgment granting forfeiture

20161044er

407 of the motor vehicle under this section, 30 percent of the net
408 proceeds from the sale of the motor vehicle shall be retained by
409 the seizing law enforcement agency. The remaining 70 percent of
410 the proceeds shall first be applied to payment of court costs,
411 finer, and fees remaining due, and any remaining balance of
412 proceeds and 70 percent shall be deposited in the General
413 Revenue Fund for use by regional workforce boards in providing
414 transportation services for participants of the welfare
415 transition program. In a forfeiture proceeding under this
416 section, the court may consider the extent that the family of
417 the owner has other public or private means of transportation.

418 Section 8. Paragraph (a) of subsection (4) of section
419 323.001, Florida Statutes, is amended to read:

420 323.001 Wrecker operator storage facilities; vehicle
421 holds.—

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

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

427 Section 9. Paragraph (b) of subsection (3) of section
428 328.07, Florida Statutes, is amended to read:

429 328.07 Hull identification number required.—

430 (3)

431 (b) If any of the hull identification numbers required by
432 the United States Coast Guard for a vessel manufactured after
433 October 31, 1972, do not exist or have been altered, removed,
434 destroyed, covered, or defaced or the real identity of the
435 vessel cannot be determined, the vessel may be seized as

20161044er

436 contraband property by a law enforcement agency or the division,
437 and shall be subject to forfeiture pursuant to ss. 932.701-
438 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
439 waters of the state unless the division receives a request from
440 a law enforcement agency providing adequate documentation or is
441 directed by written order of a court of competent jurisdiction
442 to issue to the vessel a replacement hull identification number
443 which shall thereafter be used for identification purposes. No
444 vessel shall be forfeited under the Florida Contraband
445 Forfeiture Act when the owner unknowingly, inadvertently, or
446 neglectfully altered, removed, destroyed, covered, or defaced
447 the vessel hull identification number.

448 Section 10. Paragraph (c) of subsection (2) of section
449 817.625, Florida Statutes, is amended to read:

450 817.625 Use of scanning device or reencoder to defraud;
451 penalties.—

452 (2)

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

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