

CHAPTER 2016-179

Committee Substitute for Committee Substitute for Senate Bill No. 1044

An act relating to contraband forfeiture; amending s. 932.701, F.S.; conforming provisions to changes made by the act; amending s. 932.703, F.S.; specifying that property may be seized only under certain circumstances; defining the term “monetary instrument”; requiring that specified persons approve a settlement; providing circumstances when property may be deemed contraband; allocating responsibility for damage to seized property and payment of storage and maintenance expenses; requiring the seizing agency to apply for an order, within a certain timeframe, making a probable cause determination after the agency seizes property; providing application requirements; requiring a court to make specified determinations; providing procedures upon certain court findings; authorizing the court to seal any portion of the application and of specified proceedings under certain circumstances; amending s. 932.704, F.S.; providing requirements for a filing fee and a bond to be paid to the clerk of court; requiring that the bond be made payable to the claimant under certain circumstances unless otherwise expressly agreed to in writing; increasing the evidentiary standard from clear and convincing evidence to proof beyond a reasonable doubt that a contraband article was being used in violation of the Florida Contraband Forfeiture Act for a court to order the forfeiture of the seized property; increasing the attorney fees and costs awarded to claimant under certain circumstances; requiring a seizing agency to annually review seizures, settlements, and forfeiture proceedings to determine compliance with the Florida Contraband Forfeiture Act; providing requirements for seizing law enforcement agencies; requiring seizing law enforcement agencies to adopt and implement specified written policies, procedures, and training; requiring law enforcement agency personnel to receive basic training and continuing education; requiring the maintenance of training records; amending s. 932.7055, F.S.; conforming provisions to changes made by the act; creating s. 932.7061, F.S.; providing reporting requirements for seized property for forfeiture; creating s. 932.7062, F.S.; providing penalties for noncompliance with reporting requirements; amending s. 322.34, F.S.; providing for payment of court costs, fines, and fees from proceeds of certain forfeitures; conforming provisions to changes made by the act; amending ss. 323.001, 328.07, and 817.625, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

932.701 Short title; definitions.—

(1) Sections 932.701-932.706~~2~~ 932.706 shall be known and may be cited as the “Florida Contraband Forfeiture Act.”

Section 2. Subsection (1) of section 932.703, Florida Statutes, is amended, a new subsection (2) is added, and present subsections (2) through (8) are redesignated as subsections (3) through (9), respectively, 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 and shall be forfeited subject to ~~the provisions of the Florida Contraband Forfeiture Act.~~ A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701, or one or more of the following circumstances apply:

1. The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;

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

3. An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 and the owner of the property had actual knowledge of the criminal activity. Evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Florida Contraband Forfeiture Act on a prior occasion by the arrested person, may be used to establish actual knowledge;

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

5. The property is a monetary instrument. For purposes of this subparagraph, the term “monetary instrument” means coin or currency of the United States or any other country; a traveler’s check; a personal check; a bank check; a cashier’s check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or

other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins.

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

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

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

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

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

(b) The court must determine whether:

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

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

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

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

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

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

932.704 Forfeiture proceedings.—

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

(5)

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

(6)

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

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

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

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

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

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

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

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

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

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

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

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

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

932.7055 Disposition of liens and forfeited property.—

(3) If the forfeited property is subject to a lien preserved by the court as provided in s. ~~932.703(7)(b)~~ ~~932.703(6)(b)~~, the agency shall:

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

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

(5)

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

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

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

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

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

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

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida

Contraband Forfeiture Act shall submit a completed annual report by October 10 documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

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

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

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

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

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

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

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

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

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

323.001 Wrecker operator storage facilities; vehicle holds.—

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

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

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

328.07 Hull identification number required.—

(3)

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

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

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

(2)

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

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

Approved by the Governor April 1, 2016.

Filed in Office Secretary of State April 1, 2016.