

A bill to be entitled

An act relating to forfeiture of contraband articles; amending s. 932.703, F.S.; providing that a forfeiture is not final and title to property does not pass until specified criteria are met; providing for recovery for damage to seized property; requiring issuance of a seizure warrant before property may be seized; providing requirements for issuance of such a warrant; providing additional requirements for custody of seized property; providing for rights of owners of seized property; providing for expedited recovery of seized property in certain circumstances; amending ss. 322.34, 932.704, and 932.7055, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1), (2), (6), and (8) of section 932.703, Florida Statutes, are amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(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~~

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

28 (b) Notwithstanding any other provision of the Florida  
29 Contraband Forfeiture Act, ~~except the provisions of~~ paragraph  
30 (a), contraband articles set forth in s. 932.701(2)(a)7. used in  
31 violation of any provision of the Florida Contraband Forfeiture  
32 Act, or in, upon, or by means of which any violation of the  
33 Florida Contraband Forfeiture Act has taken or is taking place,  
34 shall be seized and shall be forfeited subject to the ~~provisions~~  
35 ~~of~~ the Florida Contraband Forfeiture Act.

36 (c) A forfeiture shall not be final and title or other  
37 indicia of ownership may not pass to the state or jurisdiction  
38 seeking forfeiture until:

39 1. The owner of the property in question is prosecuted and  
40 convicted of a criminal act that renders the property subject  
41 contraband; or

42 2. The property is deemed contraband and forfeited as  
43 provided in s. 932.704 ~~All rights to, interest in, and title to~~  
44 ~~contraband articles used in violation of s. 932.702 shall~~  
45 ~~immediately vest in the seizing law enforcement agency upon~~  
46 ~~seizure.~~

47 (d) The seizing agency may not use the seized property for  
48 any purpose until the rights to, interest in, and title to the  
49 seized property are perfected in accordance with the Florida  
50 Contraband Forfeiture Act. This section does not prohibit use or  
51 operation necessary for reasonable maintenance of seized  
52 property. Reasonable efforts shall be made to maintain seized

53 property in such a manner as to minimize loss of value.

54 (e) Any property damage, spoilage, or loss of any  
55 criterion of value during the prehearing possession of the  
56 jurisdiction shall be grounds for recovery of that damage by the  
57 owner or user, from the jurisdiction making the seizure, if the  
58 hearing finds in favor of the opponent of the seizure. Such  
59 recovery may be ordered by the court where the seizure hearing  
60 is held, or in a separate suit in that court by the owner or  
61 other interested party after return of the property.

62 (2) (a) 1. Personal property may not be seized at the time  
63 of the violation or subsequent to the violation until a seizure  
64 warrant is issued pursuant to this paragraph by a judge of a  
65 trial court having jurisdiction where the property to be seized  
66 may be located. If the seizure warrant identifies locations in  
67 more than one county, the judge issuing the warrant must have  
68 such jurisdiction in one of those counties.

69 2. Any officer with the statutory authority to arrest an  
70 offender has the authority to request the issuance of a seizure  
71 warrant. Upon issuance of a seizure warrant, only the sheriff of  
72 the county in which the seizure is to be executed may seize any  
73 property, real or personal.

74 3. If a forfeiture warrant is issued, upon execution of  
75 the forfeiture warrant, all real property seized shall be either  
76 sequestered and guarded against damage from third parties, or  
77 released to the owner or occupant for use and caretaking until  
78 the disposal of the property is resolved by the court. Any

79 person entrusted to such use pending the hearing is responsible  
80 for any loss due to damage caused by neglect or intentional act  
81 or removal of contents subject to the seizure.

82 4.a. All personal property seized shall remain upon the  
83 real property where it was located according to the warrant.  
84 However, if the real property is also being seized, the personal  
85 property shall be removed to a secure location under the  
86 supervision of the law enforcement agency that seized it.

87 b. The owner or persons in possession of the property at  
88 the time of the seizure shall receive full documentation of the  
89 warrant and a receipt particularly describing the property  
90 seized and its condition. The seizing agency shall bear  
91 custodial liability for the safekeeping of the property  
92 throughout its possession until disposition by the court.

93 c. The owner of the property, lessor thereof, or agents of  
94 either shall have access to the property sufficient to assure  
95 the safety and security of the property at all stages of the  
96 holding of that property before the disposition ordered by the  
97 court.

98 d. The person or entity claiming ownership of the property  
99 that has been seized has the right to an expedited recovery  
100 hearing upon a showing of potential loss of value if such  
101 expedited resolution is not accomplished.

102 (b)7 If the person entitled to notice is notified at the  
103 time of the seizure or by certified mail, return receipt  
104 requested, that there is a right to an adversarial preliminary

105 hearing after the seizure to determine whether probable cause  
106 exists to believe that such property has been or is being used  
107 in violation of the Florida Contraband Forfeiture Act. Seizing  
108 agencies shall make a diligent effort to notify the person  
109 entitled to notice of the seizure. Notice provided by certified  
110 mail must be mailed within 5 working days after the seizure and  
111 must state that a person entitled to notice may request an  
112 adversarial preliminary hearing within 15 days after receiving  
113 such notice. When a postseizure, adversarial preliminary hearing  
114 as provided in this section is desired, a request must be made  
115 in writing by certified mail, return receipt requested, to the  
116 seizing agency. The seizing agency shall set and notice the  
117 hearing, which must be held within 10 days after the request is  
118 received or as soon as practicable thereafter.

119 (c) ~~(b)~~ Real property may not be seized or restrained,  
120 other than by lis pendens, subsequent to a violation of the  
121 Florida Contraband Forfeiture Act until the persons entitled to  
122 notice are afforded the opportunity to attend the preseizure  
123 adversarial preliminary hearing. A lis pendens may be obtained  
124 by any method authorized by law. Notice of the adversarial  
125 preliminary hearing shall be by certified mail, return receipt  
126 requested. The purpose of the adversarial preliminary hearing is  
127 to determine whether probable cause exists to believe that such  
128 property has been used in violation of the Florida Contraband  
129 Forfeiture Act. The seizing agency shall make a diligent effort  
130 to notify any person entitled to notice of the seizure. The

131 preseizure adversarial preliminary hearing provided herein shall  
132 be held within 10 days of the filing of the lis pendens or as  
133 soon as practicable.

134 (d)~~(e)~~ When an adversarial preliminary hearing is held,  
135 the court shall review the verified affidavit and any other  
136 supporting documents and take any testimony to determine whether  
137 there is probable cause to believe that the property was used,  
138 is being used, was attempted to be used, or was intended to be  
139 used in violation of the Florida Contraband Forfeiture Act. If  
140 probable cause is established, the court shall authorize the  
141 seizure or continued seizure of the subject contraband. A copy  
142 of the findings of the court shall be provided to any person  
143 entitled to notice.

144 (e)~~(d)~~ If the court determines that probable cause exists  
145 to believe that such property was used in violation of the  
146 Florida Contraband Forfeiture Act, the court shall order the  
147 property restrained by the least restrictive means to protect  
148 against disposal, waste, or continued illegal use of such  
149 property pending disposition of the forfeiture proceeding. The  
150 court may order the claimant to post a bond or other adequate  
151 security equivalent to the value of the property.

152 ~~(6) (a) Property may not be forfeited under the Florida~~  
153 ~~Contraband Forfeiture Act unless the seizing agency establishes~~  
154 ~~by a preponderance of the evidence that the owner either knew,~~  
155 ~~or should have known after a reasonable inquiry, that the~~  
156 ~~property was being employed or was likely to be employed in~~

157 ~~criminal activity.~~

158       (a)~~(b)~~ A bona fide lienholder's interest that has been  
159 perfected in the manner prescribed by law before ~~prior to~~ the  
160 seizure may not be forfeited under the Florida Contraband  
161 Forfeiture Act unless the seizing agency establishes by a  
162 preponderance of the evidence that the lienholder had actual  
163 knowledge, at the time the lien was made, that the property was  
164 being employed or was likely to be employed in criminal  
165 activity. If a lienholder's interest is not subject to  
166 forfeiture under the requirements of this section, such interest  
167 shall be preserved by the court by ordering the lienholder's  
168 interest to be paid as provided in s. 932.7055.

169       (b)~~(e)~~ Property titled or registered between husband and  
170 wife jointly by the use of the conjunctives "and," "and/or," or  
171 "or," in the manner prescribed by law before ~~prior to~~ the  
172 seizure, may not be forfeited under the Florida Contraband  
173 Forfeiture Act unless the seizing agency establishes by a  
174 preponderance of the evidence that the coowner either knew or  
175 had reason to know, after reasonable inquiry, that such property  
176 was employed or was likely to be employed in criminal activity.

177       (c)~~(d)~~ A vehicle that is rented or leased from a company  
178 engaged in the business of renting or leasing vehicles, which  
179 vehicle was rented or leased in the manner prescribed by law  
180 before ~~prior to~~ the seizure, may not be forfeited under the  
181 Florida Contraband Forfeiture Act, and no fine, penalty, or  
182 administrative charge, other than reasonable and customary

183 charges for towing and storage, shall be imposed by any  
184 governmental agency on the company which rented or leased the  
185 vehicle, unless the seizing agency establishes by preponderance  
186 of the evidence that the renter or lessor had actual knowledge,  
187 at the time the vehicle was rented or leased, that the vehicle  
188 was being employed or was likely to be employed in criminal  
189 activity. When a vehicle that is rented or leased from a company  
190 engaged in the business of renting or leasing vehicles is seized  
191 under the Florida Contraband Forfeiture Act, upon learning the  
192 address or phone number of the company, the seizing law  
193 enforcement agency shall, as soon as practicable, inform the  
194 company that the vehicle has been seized and is available for  
195 the company to take possession upon payment of the reasonable  
196 and customary charges for towing and storage.

197 (8) It is an affirmative defense to a forfeiture  
198 proceeding that the nexus between the property sought to be  
199 forfeited and the commission of any underlying violation was  
200 incidental or entirely accidental. The value of the property  
201 sought to be forfeited in proportion to any other factors must  
202 not be considered in any determination as to this affirmative  
203 defense.

204 Section 2. Paragraph (c) of subsection (9) of section  
205 322.34, Florida Statutes, is amended to read:

206 322.34 Driving while license suspended, revoked, canceled,  
207 or disqualified.-

208 (9)



209 (c) Notwithstanding ~~s. 932.703(1)(c)~~ or s. 932.7055, when  
 210 the seizing agency obtains a final judgment granting forfeiture  
 211 of the motor vehicle under this section, 30 percent of the net  
 212 proceeds from the sale of the motor vehicle shall be retained by  
 213 the seizing law enforcement agency and 70 percent shall be  
 214 deposited in the General Revenue Fund for use by regional  
 215 workforce boards in providing transportation services for  
 216 participants of the welfare transition program. In a forfeiture  
 217 proceeding under this section, the court may consider the extent  
 218 that the family of the owner has other public or private means  
 219 of transportation.

220 Section 3. Paragraph (b) of subsection (5) and paragraph  
 221 (b) of subsection (6) of section 932.704, Florida Statutes, are  
 222 amended to read:

223 932.704 Forfeiture proceedings.—

224 (5)

225 (b) If no person entitled to notice requests an  
 226 adversarial preliminary hearing, as provided in s. 932.703(2)(b)  
 227 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall  
 228 review the complaint and the verified supporting affidavit to  
 229 determine whether there was probable cause for the seizure. Upon  
 230 a finding of probable cause, the court shall enter an order  
 231 showing the probable cause finding.

232 (6)

233 (b) The complaint must, in addition to stating that which  
 234 is required by s. 932.703(2)(b) and (c) ~~932.703(2)(a) and (b)~~,

HB 215

2015

235 as appropriate, describe the property; state the county, place,  
236 and date of seizure; state the name of the law enforcement  
237 agency holding the seized property; and state the name of the  
238 court in which the complaint will be filed.

239 Section 4. Subsection (3) of section 932.7055, Florida  
240 Statutes, is amended to read:

241 932.7055 Disposition of liens and forfeited property.—

242 (3) If the forfeited property is subject to a lien  
243 preserved by the court as provided in s. 932.703(6)(a)

244 ~~932.703(6)(b)~~, the agency shall:

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

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

249 Section 5. This act shall take effect October 1, 2015.