

By Senator Perry

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1                   A bill to be entitled  
2       An act relating to contraband forfeiture; amending s.  
3       932.703, F.S.; authorizing a stay of proceedings  
4       subsequent to a finding of probable cause for  
5       forfeiture; amending s. 932.704, F.S.; revising a  
6       statement of policy relating to forfeiture  
7       proceedings; requiring a stay of forfeiture actions  
8       until final disposition of associated criminal  
9       charges; requiring written notice of such charges to  
10      the presiding court; requiring a conviction in an  
11      associated criminal offense for forfeiture of seized  
12      property; requiring the return of seized property if  
13      all associated criminal charges are dismissed;  
14      creating s. 932.7071, F.S.; prohibiting specified  
15      agencies from referring, transferring, or otherwise  
16      relinquishing possession of property seized under  
17      state law to a federal agency for a specified purpose;  
18      providing guidelines relating to state participation  
19      in joint task forces; providing construction;  
20      providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Paragraph (a) of subsection (1) of section  
25       932.703, Florida Statutes, is republished, and paragraph (c) of  
26       subsection (2) and paragraph (d) of subsection (3) of that  
27       section are amended, to read:

28       932.703 Forfeiture of contraband article; exceptions.—

29       (1) (a) A contraband article, vessel, motor vehicle,

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30 aircraft, other personal property, or real property 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 may be seized and shall be forfeited subject to the Florida  
35 Contraband Forfeiture Act. A seizure may occur only if the owner  
36 of the property is arrested for a criminal offense that forms  
37 the basis for determining that the property is a contraband  
38 article under s. 932.701, or one or more of the following  
39 circumstances apply:

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

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

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

57 4. The owner of the property agrees to be a confidential  
58 informant as defined in s. 914.28. The seizing agency may not

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59 use the threat of property seizure or forfeiture to coerce the  
60 owner of the property to enter into a confidential informant  
61 agreement. The seizing agency shall return the property to the  
62 owner if criminal charges are not filed against the owner and  
63 the active criminal investigation ends or if the owner ceases  
64 being a confidential informant, unless the agency includes the  
65 final forfeiture of the property as a component of the  
66 confidential informant agreement; or

67 5. The property is a monetary instrument. For purposes of  
68 this subparagraph, the term "monetary instrument" means coin or  
69 currency of the United States or any other country; a traveler's  
70 check; a personal check; a bank check; a cashier's check; a  
71 money order; a bank draft of any country; an investment security  
72 or negotiable instrument in bearer form or in other form such  
73 that title passes upon delivery; a prepaid or stored value card  
74 or other device that is the equivalent of money and can be used  
75 to obtain cash, property, or services; or gold, silver, or  
76 platinum bullion or coins.

77 (2)

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

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88 written order finding probable cause for the seizure, the  
89 forfeiture action may be stayed as provided in s. 932.704(6)(d).

90 (3)

91 (d) If the court determines that probable cause exists to  
92 believe that such property was used in violation of the Florida  
93 Contraband Forfeiture Act, the court shall order the property  
94 restrained by the least restrictive means to protect against  
95 disposal, waste, or continued illegal use of such property  
96 pending final disposition of the forfeiture proceeding. The  
97 court may order the claimant to post a bond or other adequate  
98 security equivalent to the value of the property.

99 Section 2. Subsection (1) and paragraph (b) of subsection  
100 (6) of section 932.704, Florida Statutes, are amended, and  
101 paragraph (d) is added to subsection (6) of that section, to  
102 read:

103 932.704 Forfeiture proceedings.—

104 (1) It is the policy of this state that law enforcement  
105 agencies shall use ~~utilize the provisions of~~ the Florida  
106 Contraband Forfeiture Act to deter and prevent the continued use  
107 of contraband articles for criminal purposes, to protect while  
108 ~~protecting~~ the proprietary interests of innocent owners and  
109 lienholders, to respect the due process rights of the accused,  
110 and to authorize such law enforcement agencies to use the  
111 proceeds collected under the Florida Contraband Forfeiture Act  
112 as supplemental funding for authorized purposes. The potential  
113 for obtaining revenues from forfeitures must not override  
114 fundamental considerations such as public safety, the safety of  
115 law enforcement officers, or the investigation and prosecution  
116 of criminal activity. It is also the policy of this state that

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117 law enforcement agencies ensure that, in all seizures made under  
118 the Florida Contraband Forfeiture Act, their officers adhere to  
119 federal and state constitutional limitations regarding an  
120 individual's right to be free from unreasonable searches and  
121 seizures, including, but not limited to, the illegal use of  
122 stops based on a pretext, coercive-consent searches, or a search  
123 based solely upon an individual's race or ethnicity.

124 (6)

125 (b) The complaint must, in addition to stating that which  
126 is required by s. 932.703(3) (a) and (b), as appropriate,  
127 describe the property; state the county, place, and date of  
128 seizure; state the name of the law enforcement agency holding  
129 the seized property; ~~and~~ state the name of the court in which  
130 the complaint will be filed; and, if available, state the  
131 criminal case number and the name of the court in which any  
132 criminal charge associated with the underlying activity forming  
133 the basis for the forfeiture action are filed against any  
134 claimant.

135 (d)1. If a criminal charge associated with the underlying  
136 activity forming the basis for the forfeiture action is filed  
137 against any claimant, the forfeiture action must be stayed by  
138 the court presiding over the forfeiture action until the  
139 disposition of the underlying criminal case. If associated  
140 criminal charges are filed after the complaint for forfeiture is  
141 filed, the attorney for the seizing agency must notify, in  
142 writing, the court presiding over the forfeiture action within 3  
143 days after any such criminal charge is filed.

144 2. If an associated criminal charge is filed, the  
145 forfeiture action may only proceed after the claimant is

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146 convicted of or pleads guilty or nolo contendere to, regardless  
147 of adjudication, a criminal charge forming the basis for the  
148 forfeiture action. The attorney for the seizing agency must  
149 notify, in writing, the court presiding over the forfeiture  
150 action of the final disposition of any associated criminal  
151 charges within 3 days after a final judgment and sentence is  
152 entered, but may notify the court immediately upon the  
153 claimant's conviction or plea, regardless of whether the  
154 claimant has been sentenced. Upon written notification by the  
155 attorney for the seizing agency, the stay shall be lifted and  
156 the forfeiture action may proceed as set forth in the Florida  
157 Contraband Forfeiture Act.

158 3. If an associated criminal charge against a claimant is  
159 disposed of by dismissal, nolle prosequi, or acquittal, the  
160 attorney for the seizing agency must notify, in writing, the  
161 court presiding over the forfeiture action within 3 days after  
162 the associated criminal charge is disposed of by dismissal,  
163 nolle prosequi, or acquittal.

164 4. If all associated criminal charges against all claimants  
165 are disposed of by dismissal, nolle prosequi, or acquittal, the  
166 seizing agency must immediately release the seized property to  
167 the person entitled to possession of the property as determined  
168 by the court presiding over the forfeiture action. Under such  
169 circumstances, the seizing agency may not assess any towing  
170 charges, storage fees, administrative costs, or maintenance  
171 costs against the claimant with respect to the seized property  
172 or the forfeiture action.

173  
174 This paragraph does not prohibit a forfeiture pursuant to a

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175 lawful plea agreement which resolves a criminal charge and a  
176 forfeiture action arising from the same activity. However,  
177 seized property may not be used in bargaining to dismiss or  
178 nolle prosequi criminal charges, obtain a guilty plea, or affect  
179 criminal sentencing recommendations.

180 Section 3. Section 932.7071, Florida Statutes, is created  
181 to read:

182 932.7071 Forfeiture adoption under federal law.-

183 (1) PROHIBITION OF FEDERAL ADOPTION.-A local, county, or  
184 state law enforcement agency or other seizing agency may not  
185 refer, transfer, or otherwise relinquish possession of property  
186 seized under state law to a federal agency by way of adoption of  
187 the seized property or other means by the federal agency for the  
188 purpose of the property's forfeiture under the federal  
189 Controlled Substances Act, Pub. L. No. 91-513, 21 U.S.C. ss. 801  
190 et seq.

191 (2) JOINT TASK FORCES.-

192 (a) In a case in which the aggregate net equity value of  
193 the property and currency seized is \$100,000 or less, excluding  
194 the value of contraband, a local, county, or state law  
195 enforcement agency or other seizing agency participating in a  
196 joint task force or other multijurisdictional collaboration with  
197 the Federal Government or an agency thereof shall transfer  
198 responsibility for the seized property to the local, county, or  
199 state seizing agency.

200 (b) If the Federal Government prohibits the transfer of  
201 seized property and currency to the local, county, or state  
202 seizing agency as required under paragraph (a) and instead  
203 requires that the property be transferred to the Federal

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204 Government for forfeiture under federal law, the local, county,  
205 or state seizing agency is prohibited from accepting payment of  
206 any kind or distribution of forfeiture proceeds from the Federal  
207 Government.

208 (c) Paragraphs (a) and (b) do not restrict a local, county,  
209 or state seizing agency from transferring responsibility to the  
210 Federal Government for forfeiture of seized property and  
211 currency that has an aggregate net equity value of greater than  
212 \$100,000, excluding the value of contraband.

213 (3) SEIZURE LAWS UNCHANGED.—Subsections (1) and (2) do not  
214 restrict a local, county, or state law enforcement agency or  
215 other seizing agency from seizing contraband or property if the  
216 agency would otherwise be lawfully permitted to do so.

217 (4) FEDERAL GOVERNMENT.—Subsections (1) and (2) do not  
218 prohibit the Federal Government, acting without the involvement  
219 of a local, county, or state law enforcement agency or other  
220 seizing agency, from seizing property and seeking forfeiture  
221 under federal law.

222 Section 4. This act shall take effect July 1, 2023.