1989

Session Law 89-148

Florida Senate & House of Representatives

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Bills, statutes, and legislative history

S 354 GENERAL BILL/2ND ENG by Beard and others (Compare CS/HB 963, CS/H 1118, S 917)

Forfeiture of Contraband/Policies: adds items to personal property which may be seized & forfeited as contraband & adds real property interests; authorizes seizure of real & personal property acquired with contraband proceeds; provides for forfeiture of substitute property in certain circumstances; requires state & local law enforcement agencies seizing property under Fla. Contraband Forfeiture Act to adopt policies & procedures, etc. Amends 932.701-.704, 893.12. Effective Date: 10/01/89 except as otherwise provided.

03/06/89 SENATE Prefiled
03/24/89 SENATE Referred to Judiciary-Criminal; Community Affairs
04/04/89 SENATE Introduced, referred to Judiciary-Criminal; Community Affairs —SJ 37; On Committee agenda—Judiciary-Criminal, 04/06/89, 1:15 pm, Room—2C—(301)
04/06/89 SENATE Comm. Report: Favorable with 1 amendment(s) by Judiciary-Criminal —SJ 97
04/07/89 SENATE Now in Community Affairs —SJ 97
04/14/89 SENATE Extension of time granted Committee Community Affairs
04/27/89 SENATE On Committee agenda—Community Affairs, 05/01/89, 3:00 pm, Room—C—(LL—32)
04/28/89 SENATE Extension of time granted Committee Community Affairs
05/01/89 SENATE Comm. Report: Favorable by Community Affairs, placed on Calendar —SJ 256
06/09/89 SENATE Placed on Special Order Calendar —SJ 275; Passed as amended; YEAS 38 NAYS 0 —SJ 285
06/10/89 HOUSE In Messages
06/11/89 HOUSE Received, placed on Calendar —HJ 461; Taken up in lieu of CS/HB 1118 —HJ 461; Read second time; Amendments adopted; Read third time; Passed as amended; YEAS 114 NAYS 0 —HJ 463; Immediately certified —HJ 463
06/11/89 SENATE In Messages
05/24/89 SENATE Concurred; Passed as amended; YEAS 35 NAYS 0 —SJ 417
06/24/89 Ordered engrossed, then enrolled —SJ 417
06/12/89 Signed by Officers and presented to Governor
06/27/89 Approved by Governor; Chapter No. 89-148

Notes: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST | STAFF DIRECTOR | REFERENCE | ACTION
--- | --- | --- | ---
1. Dugg | Liepshutz | 1. JCR | Fav/1 Amend.
2. Buck | Buck | 2. CA |  
3. | | 3. |  
4. | | 4. |  

SUBJECT: Forfeiture of Contraband
BILL NO. AND SPONSOR: SB 354 by Senators Beard and Grant

I. SUMMARY:

A. Present Situation:

Law enforcement agencies seizing personal property under the contraband forfeiture statute are regulated by the procedures set forth in sections 932.701-932.705, F.S. However, there is currently no provision in the law which requires these law enforcement agencies to adopt uniform, statewide policies implementing the provisions of the forfeiture law.

Florida's contraband forfeiture statute makes it unlawful to use various vehicles to transport, conceal, possess, or to facilitate the transportation, concealment, possession, sale, or receipt of contraband articles. Under the statute, it is also unlawful to conceal or possess any contraband articles. "Contraband articles" include not only such items as drugs and gambling paraphernalia, but also any personal property employed as an instrumentality in the commission of a felony. Vehicles and contraband articles involved in a violation of this law are subject to seizure and forfeiture by the seizing law enforcement agency. Forfeiture proceedings can be initiated by a state attorney or an attorney representing the seizing agency.

Although Florida's forfeiture statute gives law enforcement broad discretion to seize personal property involved in criminal activity, it also provides protection for third-party rights to seized property. For example, Florida's statute protects the property rights of innocent owners and lienholders by allowing them to prove that they "neither knew, nor should have known after a reasonable inquiry, that the property was employed or was likely to be employed in criminal activity." s. 932.703, F.S. If the innocent owner or lienholder can satisfy this standard, then the seized property is returned. Property owners can also institute proceedings to regain their property if a forfeiture action is not brought by the state within 90 days of the seizure.

The statute also provides procedures for the disbursement of proceeds among the agencies involved in a forfeiture. The seizing agency can retain the forfeited property, transfer it to another public agency, or sell it at a public auction and retain the proceeds. If the property is subject to a lien, it must be sold. Proceeds from the sale must be used to pay off any liens on the property, storage costs incurred by the seizing agency, and any court costs. The remaining proceeds are then deposited into a special law enforcement trust fund.

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the county commission or the governing body of the municipality. If the seizing agency is the Florida Department of Law Enforcement (FDLE), the Department of Highway
Safety and Motor Vehicles, or the Department of Natural Resources, the proceeds from the forfeiture are deposited into a special law enforcement trust fund within each agency.

Proceeds from the local law enforcement trust funds can only be expended upon written certification by the sheriff or police chief that the expenditure request complies with the statute. The expenditure of funds must be approved and the money appropriated by the governing body of the county or city. State forfeiture proceeds can only be expended upon appropriation by the Legislature. Expenditure of forfeiture money is restricted to the following law enforcement purposes: defraying complex or protracted investigative costs; providing additional technical equipment; providing matching funds for federal grants; providing funds for school resource officers, crime prevention, or drug abuse education programs; or funding other law enforcement purposes determined to be appropriate by the local governing body. Forfeiture proceeds may not be considered a source of revenue to meet normal operating needs.

B. Effect of Proposed Changes:

SB 354 would require all state and local law enforcement agencies seizing property under the contraband forfeiture statute to adopt, by October 1, 1989, policies which fairly and uniformly implement the provisions of that statute.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

A model policy for forfeiture of assets by law enforcement agencies has recently been developed by the Florida Police Chiefs Association, the Florida Sheriffs Association, and FDLE as a direct result of the Judiciary-Criminal Committee's inquiry into some alleged abuses of the forfeiture law as reported in an article by the St. Petersburg Times. After hearing testimony by the parties involved in the particular cases cited by the newspaper at the January 10, 1989 committee meeting, the committee members agreed that the alleged abuses did not seem to warrant making drastic amendments to the statute. However, the committee members felt it very important that law enforcement take responsible steps toward developing a model forfeiture policy that fairly and uniformly implements the provisions of the contraband forfeiture law. Law enforcement representatives submitted such a policy to the Committee at its March 7, 1989 meeting.

IV. AMENDMENTS:

#1 by Judiciary-Criminal:
Requires all law enforcement agencies seizing property under the contraband forfeiture statute to adopt policies which comply, or substantially comply, with the Model Policy For Forfeiture Of Assets By Law Enforcement Agencies. Provides that agencies may adopt policies that are more stringent than the model policy, if so desired.
I. SUMMARY:

A. PRESENT SITUATION:

Sections 932.701-932.704, F. S., comprise the Florida Contraband Forfeiture Act. Contraband is defined in s. 932.701 as:

1. controlled substances as defined in chapter 893,

2. gambling paraphernalia, lottery tickets, money, and currency used or intended to be used in the violation of the gambling laws of the state,

3. equipment, used or intended to be used in violation of the beverage or tobacco laws of the state,

4. any personal property, including an item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities or currency which has been or is actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony.

Section 932.702, F. S., provides that it is unlawful to transport, conceal, or possess contraband articles upon any vessel, motor vehicle, or aircraft or to use any vessel, motor vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article. It is also unlawful to conceal or possess any contraband article.
Any contraband article, any vessel, motor vehicle, aircraft and other personal property which has been or is being used in violation of s. 932.702, or in, upon, or by means of which any violation of that section has taken or is taking place may be seized and is subject to forfeiture.

Section 893.12, F. S., provides that any vessel, vehicle, aircraft, or drug paraphernalia which has been or is being used in violation of this chapter, the Comprehensive Drug Abuse Prevention and Control Act, or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided in the Florida Contraband Forfeiture Act.

Law enforcement agencies are authorized to carry out the seizure provisions. A law enforcement agency is required to designate an officer to take possession of a vehicle, vessel or aircraft.

B. EFFECT OF PROPOSED CHANGES:

This bill would amend the Florida Contraband Forfeiture Act and the Comprehensive Drug Abuse Prevention and Control Act to provide that books, records, research, negotiable instruments, real property or any interest in real property are subject to seizure and forfeiture when used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of those acts. In addition, those properties would be forfeitable if acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act and the Comprehensive Drug Abuse Prevention and Control Act.

This bill authorizes the forfeiture of other property of the defendant if the forfeitable property cannot be located, has been transferred to a third party, has been placed outside the jurisdiction of the court, or is otherwise not obtainable.

The bill provides that no property shall be forfeited to the extent of an interest of an owner or lienholder by reason of any act or omission without the knowledge or consent or that owner or lienholder.

This bill also requires law enforcement agencies to adopt model policies for forfeiture of assets.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends the definition of contraband article to include books, records, research, negotiable instruments, real property or interest in real property which has been or is being employed as an instrumentality in the commission of any felony, or was acquired from proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act. This section also provides for the forfeiture of substitute property of the defendant if the forfeited property cannot be obtained.
Section 2 amends s. 932.702 to provide that it is unlawful to conceal or possess any contraband article in or upon real property, or to use real property to facilitate the concealment, receipt, possession, purchase, sale, transportation, carriage, barter, exchange or giving away of a contraband article.

Section 932.702 is also amended to provide that it is unlawful to acquire real or personal property with proceeds obtained in violation of the Florida Contraband Forfeiture Act.

Section 3 provides that any real property used in violation of this act is subject to seizure and forfeiture and provides the method for the seizure and forfeiture. It also provides for forfeiture of other property of the defendant if the forfeitable property cannot be obtained.

Section 4 amends s. 932.704 to provide for the forfeiture proceeding in regards to real property or interests in real property.

Section 5 amends s. 893.12 to provide for the forfeiture and seizure of real property and interests in real property used to commit or to facilitate the commission of or acquired with proceeds obtained from a violation of the controlled substances laws. This section also provides for the forfeiture of other property of the defendant if the forfeitable property cannot be obtained.

Section 6 requires law enforcement agencies to enact model policies for forfeiture of assets that fairly and uniformly implement the provisions of the Florida Contraband Act.

Section 7 provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:

   This bill should have a positive fiscal impact on the State of Florida and the law enforcement agencies participating in the seizure and forfeiture of the property.
B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   Indeterminate

2. Recurring or Annualized Continuation Effects:
   Indeterminate

3. Long Run Effects Other Than Normal Growth:
   Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   Indeterminate

2. Direct Private Sector Benefits:
   Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:
   Indeterminate

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the State Comprehensive Plan, s. 187.201, F. S., in that it is a coordinated and integrated strategy to combat drug trafficking.

IV. COMMENTS:

This bill is consistent with the Committee Mission Statement in that it contains a harsher and more severe punishment for drug traffickers.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by: Susan G. Bisbee
Staff Director: Robin S. Hassler

STANDARD FORM 1/89