

House Bill 595

By: Representatives Williams of the 83rd, West of the 101st, Bridges of the 9th and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
2 controlled substances, so as to provide for nonliability of law enforcement officers engaged
3 in the lawful performance of their duties; to change certain provisions relating to burden of
4 proof and liability of enforcement officers in lawful performance of duties; to amend Article
5 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to the
6 disposition of property seized, so as to provide that certain provisions of law relating to the
7 disposition of personal property in custody of a law enforcement agency shall not apply to
8 any controlled substance, marijuana, or dangerous drug, or other substance which is seized
9 by a law enforcement agency for a violation of Chapter 13 of Title 16 and in which no
10 property interest exists; to provide under certain conditions for the use of controlled
11 substances, marijuana, dangerous drugs, or other substances which are seized by a law
12 enforcement officer for a violation of Chapter 13 of Title 16 in other criminal investigations
13 or for authorized scientific or educational purposes; to provide for the permanent disposition
14 of such substances by a law enforcement agency, prosecuting attorney, or court official in
15 accordance with standards adopted by the Division of Forensic Sciences of the Georgia
16 Bureau of Investigation unless certain prosecuting attorneys object to the final disposition
17 of such substances; to provide procedures; to amend Code Section 35-3-151 of the Official
18 Code of Georgia Annotated, relating to responsibilities of the Division of Forensic Sciences
19 of the Georgia Bureau of Investigation, so as to provide for promulgation of certain standards
20 regarding forensic evidence; to provide for related matters; to provide an effective date; to
21 repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

24 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
25 substances, is amended by adding a new Code Section 16-13-5 to read as follows:

1 "16-13-5.

2 (c) No liability is imposed by this chapter upon any authorized state, county, or municipal
3 officer engaged in the lawful performance of his or her duties."

4 **SECTION 2.**

5 Said chapter is further amended by striking Code Section 16-13-50, relating to burden of
6 proof and liability of enforcement officers in lawful performance of duties, and inserting in
7 lieu thereof the following:

8 "16-13-50.

9 (a) It is not necessary for the state to negate any exemption or exception in this article in
10 any complaint, accusation, indictment, or other pleading or in any trial, hearing, or other
11 proceeding under this article. The burden of proof of any exemption or exception is upon
12 the person claiming it.

13 (b) In the absence of proof that a person is the duly authorized holder of an appropriate
14 registration or order form issued under this article, he is presumed not to be the holder of
15 the registration or form. The burden of proof is upon him to rebut the presumption.

16 ~~(c) No liability is imposed by this article upon any authorized state, county, or municipal
17 officer engaged in the lawful performance of his duties."~~

18 **SECTION 3.**

19 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to the
20 disposition of property seized, is amended by striking subsection (d) of Code Section
21 17-5-54, relating to the disposition of personal property in the custody of a law enforcement
22 agency, and inserting in lieu thereof the following:

23 "(d) The provisions of this Code section shall not apply to personal property which is the
24 subject of forfeiture proceedings as otherwise provided by law nor shall it apply to any
25 controlled substance, marijuana, dangerous drug, or other substance which is seized by a
26 law enforcement agency for a violation of Chapter 13 of Title 16 and in which no property
27 interest exists."

28 **SECTION 4.**

29 Said article is further amended by adding following Code Section 17-5-54 a new Code
30 Section 17-5-55 to read as follows:

31 "17-5-55.

32 With respect to any controlled substance, marijuana, dangerous drug, or other substance
33 which is seized by a law enforcement officer for a violation of Chapter 13 of Title 16, after
34 a period of 90 days following the seizure or following a final conviction in any case where

1 the substance is used as evidence, whichever is later, and which is no longer needed in the
2 criminal investigation or for evidentiary purposes, such substance may be retained for use
3 in other criminal investigations or for authorized scientific or educational purposes or may
4 be disposed of by the law enforcement agency, prosecuting attorney, or court official, all
5 in accordance with standards adopted by the Division of Forensic Sciences of the Georgia
6 Bureau of Investigation pursuant to Code Section 35-3-151. At least 30 days prior to the
7 permanent disposition of any such substance, a law enforcement agency in possession of
8 such substance shall notify any prosecuting attorney having jurisdiction over any offense
9 arising out of the possession, distribution, transportation, or use of such substance that the
10 agency intends to permanently dispose of the substance. No such substance shall be
11 permanently disposed of if a prosecuting attorney objects to such final disposition."

12 **SECTION 5.**

13 Code Section 35-3-151 of the Official Code of Georgia Annotated, relating to responsibilities
14 of the Division of Forensic Sciences of the Georgia Bureau of Investigation, is amended by
15 striking paragraph (3) and inserting in lieu thereof the following:

16 "(3) Shall establish standards for the identification, collection, storage, handling,
17 transportation, ~~and~~ analysis, and disposal of forensic evidence;"

18 **SECTION 6.**

19 This Act shall become effective upon its approval by the Governor or upon its becoming law
20 without such approval.

21 **SECTION 7.**

22 All laws and parts of laws in conflict with this Act are repealed.