

House Bill 978

By: Representative Mills of the 25th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 12 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated,
2 relating to the uniform rules of the road for motor vehicles, so as to allow law enforcement
3 officers to seize the vehicles of drivers who are not in the country legally and are involved
4 in a traffic accident; to provide for related matters; to provide for an effective date; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 12 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to the
9 uniform rules of the road for motor vehicles, is amended by adding a new Code section to
10 read as follows:

11 "40-6-279.

12 (a) Except as otherwise provided in this Code section, any motor vehicle that is involved
13 in an accident while being operated by a person who is not legally in this country is
14 declared to be contraband and subject to forfeiture to the state, as provided in this Code
15 section, provided that said forfeiture shall not be absolute unless the defendant is finally
16 convicted of the offense charged at the time of the accident.

17 (b) Any motor vehicle subject to forfeiture under subsection (a) of this Code section shall
18 be seized immediately upon discovery by any law enforcement officer, peace officer, or
19 law enforcement agency of this state or any political subdivision thereof who has the power
20 to make arrests and whose duty it is to enforce this article, that said motor vehicle has been
21 declared contraband under the provisions of subsection (a) of this Code section. Said
22 motor vehicle shall be delivered within 20 days to the district attorney whose circuit
23 includes the county in which a seizure is made or to his or her duly authorized agent. At
24 any time subsequent to the seizure, the chief officer of the seizing agency, his or her
25 designee, or the district attorney may release the vehicle upon bond being posted in like
26 manner as authorized in subsection (e) of this Code section.

1 (c) Within 60 days from the date of the seizure, the district attorney of the judicial circuit,
2 or the director on his or her behalf, shall cause to be filed in the superior court of the county
3 in which the motor vehicle is seized or detained an action for condemnation of such motor
4 vehicle. The proceedings shall be brought in the name of the state by the district attorney
5 of the circuit in which the motor vehicle was seized, and the action shall be verified by a
6 duly authorized agent of the state in a manner required by the law of this state. The action
7 shall describe the motor vehicle and state its location, present custodian, and the name of
8 the owner, if known, to the duly authorized agent of the state; allege the essential elements
9 of the violation which is claimed to exist; and conclude with a prayer of due process to
10 enforce the forfeiture. Upon the filing of such an action, the court shall promptly cause
11 process to issue to the present custodian in possession of the motor vehicle described in the
12 action, commanding such custodian to seize the motor vehicle in the action and to hold that
13 motor vehicle for further order of the court. The owner, lessee, or any person having a duly
14 recorded security interest in or lien on such motor vehicle shall be notified by any means
15 of service provided for in Title 9 or by delivery of a copy of the complaint and summons
16 by certified mail or statutory overnight delivery to said owner or lienholder or a person of
17 suitable age or discretion having charge of said owner's premises. For purposes of this
18 subsection, where forfeiture of a motor vehicle titled or registered in Georgia is sought,
19 notice to the titleholder shall be deemed adequate if a copy of the complaint and summons
20 is mailed by certified mail or statutory overnight delivery to the titleholder at the address
21 set out in the title and an additional copy is mailed by certified mail or statutory overnight
22 delivery to the firm, person, or corporation which holds the current registration for said
23 motor vehicle, who shall be deemed agent for service for said titleholder, and said
24 complaint is advertised once a week for two weeks as set out in this subsection. If the
25 owner, lessee, or person having a duly recorded security interest in or lien on the
26 contraband motor vehicle is unknown or resides out of the state or departs the state or
27 cannot after due diligence be found within the state or conceals himself or herself so as to
28 avoid notice, notice of the proceedings shall be published once a week for two weeks in the
29 newspaper in which the sheriff's advertisements are published. Such publication shall be
30 deemed notice to any and all persons having an interest in or right affected by such
31 proceeding and any sale of the motor vehicle resulting therefrom, but shall not constitute
32 notice to any person having a duly recorded security interest in or lien upon such motor
33 vehicle and required to be served under this Code section unless that person is unknown
34 or resides out of the state or departs the state or cannot after due diligence be found within
35 the state or conceals himself or herself to avoid notice.

36 (d)(1) Any party at interest may appear, by answer under oath, and file an intervention
37 or defense within 30 days from the date of service on the condemnee of the action for

1 condemnation. The owner, lessee, security interest holder, or lienholder shall be
2 permitted to defend by showing that the motor vehicle seized was not subject to forfeiture
3 under this Code section.

4 (2) A rented or leased vehicle shall not be subject to forfeiture unless it is established in
5 the forfeiture proceedings that the owner of the rented or leased vehicle knew or should
6 have known of or consented to the operation of such motor vehicle in a manner which
7 would subject the vehicle to forfeiture. Upon learning of the address or phone number
8 of the rental or leasing company which owns such vehicle, the district attorney shall
9 immediately contact the company to inform it that the vehicle is available for the
10 company to take possession.

11 (e) The court to which any such petition for condemnation may be referred may, in its
12 discretion, allow any party at interest, after making said defense under subsection (d) of
13 this Code section, to give bond and take possession of the motor vehicle seized. Such
14 motor vehicle shall not be sold or leased without prior approval of the court. In the event
15 the court approves such sale or lease, the proceeds arising therefrom shall be deposited in
16 the registry of the court, pending final adjudication of the forfeiture proceeding. The court
17 shall determine whether the bond shall be a forthcoming bond or an eventual condemnation
18 money bond and shall also determine the amount of the bond. The enforcement of any
19 bond so given shall be regulated by the general law applicable to such cases.

20 (f) If no defense or intervention is filed within 30 days from the date of service on the
21 condemnee of the petition, judgment shall be entered by the court and the motor vehicle
22 shall be sold. The court may direct that such property be sold by:

23 (1) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however, that
24 the court may establish a minimum acceptable price for such property; or

25 (2) Any commercially feasible means.

26 (g) The proceeds arising from such sale shall be deposited into the general treasury of the
27 state or any other governmental unit whose law enforcement agency it was that originally
28 seized the motor vehicle. Before the proceeds are deposited, the following claims shall be
29 satisfied:

30 (1) Any costs incurred in the seizure;

31 (2) The costs of the court and its officers; and

32 (3) Any costs incurred in the storage, advertisement, maintenance, or care of the motor
33 vehicle.

34 (h) The interest of an owner, lessee, security interest holder, or lienholder shall not be
35 subject to forfeiture unless the condemnor shows by a preponderance of evidence that such
36 person knew or reasonably should have known that the operator was illegally in this
37 country. It is not a defense to the forfeiture proceeding that the owner, lessee, security

1 interest holder, or lienholder failed to inquire as to the legal status of the operator of the
2 motor vehicle.

3 (i) In any case where a vehicle which is the only family vehicle is determined to be subject
4 to forfeiture, the court may, if it determines that the financial hardship to the family as a
5 result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order
6 the title to the vehicle transferred to such other family member who is a duly licensed
7 operator and who requires the use of such vehicle for employment or family transportation
8 purposes. Such transfer shall be subject to any valid liens and shall be granted only once."

9 **SECTION 2.**

10 This Act shall become effective on July 1, 2008.

11 **SECTION 3.**

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