

Senate Bill 53

By: Senators Harp of the 29th, Douglas of the 17th, Staton of the 18th, Murphy of the 27th,
Henson of the 41st and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 14 of Chapter 1 of Title 10 and Chapter 1 of Title 46 of the Official Code
2 of Georgia Annotated, relating to secondary metals recyclers and general provisions for
3 public utilities and public transportation, respectively, so as to change certain provisions
4 relating to inspection by law enforcement officers; to provide for forfeiture of certain
5 property and procedure therefor; to provide for the Governor to appoint certain special
6 officers for purposes of investigating certain thefts of public utility property; to provide the
7 special officers power of arrest, compensation, qualifications, bond, and duration of
8 appointment and commission; to provide for related matters; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
13 secondary metals recyclers, is amended by revising Code Section 10-1-352, relating to
14 inspections by law enforcement officers, as follows:

15 "10-1-352.

16 During the usual and customary business hours of a secondary metals recycler, a law
17 enforcement officer or special officer, as such official is described in Code Section 46-1-6,
18 shall, after properly identifying himself or herself as a law enforcement officer or special
19 officer, have the right to inspect:

20 (1) Any and all purchased regulated metal property in the possession of the secondary
21 metals recycler; and

22 (2) Any and all records required to be maintained under Code Section 10-1-351."

23 style="text-align:center">**SECTION 2.**

24 Said article is further amended by adding a new Code section to read as follows:

25 "10-1-357.5.

26 (a) As used in this Code section, the term 'crime' means:

27 (1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation
 28 of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section
 29 16-8-7 if the subject of the theft was ferrous metals or regulated metal property, as such
 30 terms are defined in Code Section 10-1-350;

31 (2) Criminal damage to property in the first degree in violation of paragraph (2) of
 32 subsection (a) of Code Section 16-7-22; or

33 (3) A criminal violation of Article 14 of Chapter 1 of Title 10.

34 (b) All motor vehicles, tools, and weapons which are used or intended for use in any
 35 manner in the commission of or to facilitate the commission of a crime are subject to
 36 forfeiture under this Code section, but:

37 (1) No motor vehicle used by any person as a common carrier in the transaction of
 38 business as a common carrier shall be subject to forfeiture under this Code section unless
 39 it appears that the owner or other person in charge of the motor vehicle is a consenting
 40 party or privy to the commission of a crime;

41 (2) No motor vehicle shall be subject to forfeiture under this Code section by reason of
 42 any act or omission established by the owner thereof to have been committed or omitted
 43 without his or her knowledge or consent, and any co-owner of a motor vehicle without
 44 knowledge of or consent to the act or omission shall be protected to the extent of the
 45 interest of such co-owner; and

46 (3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be
 47 subject to the interest of the secured party if he or she neither had knowledge of nor
 48 consented to the act or omission.

49 (c) Property subject to forfeiture under this Code section may be seized by any law
 50 enforcement officer of this state or any political subdivision thereof who has the power to
 51 make arrests upon process issued by any court having jurisdiction over the property.

52 Seizure without process or warrant may be made if:

53 (1) The seizure is incident to an arrest or a search under a search warrant;

54 (2) The property subject to seizure has been the subject of a prior judgment in favor of
 55 this state in a criminal injunction or forfeiture proceeding based upon this Code section;
 56 or

57 (3) If probable cause exists that the vehicle, tool, or weapon is subject to seizure.

58 (d) Property taken or detained under this Code section shall not be subject to replevin but
 59 shall be deemed to be in the custody of the superior court wherein the seizure was made
 60 or in custody of the superior court where it can be proven that the crime was committed,
 61 subject only to the orders and decrees of the court having jurisdiction over the forfeiture

62 proceedings. When property is seized under this Code section, law enforcement officers
63 seizing such property shall:

64 (1) Place the property under seal;

65 (2) Remove the property to a place designated by the judge of the superior court having
66 jurisdiction over the forfeiture as set out in this subsection; or

67 (3) Deliver such property to the sheriff or police chief of the county in which the seizure
68 occurred, and the sheriff or police chief shall take custody of the property and remove it
69 to an appropriate location for disposition in accordance with law.

70 (e) When property is seized under this Code section, the sheriff or law enforcement officer
71 seizing the same shall report the fact of seizure, within 20 days thereof, to the district
72 attorney of the judicial circuit having jurisdiction in the county where the seizure was
73 made. Within 60 days from the date he or she receives notice of the seizure, the district
74 attorney of the judicial circuit shall cause to be filed in the superior court of the county in
75 which the property is seized or detained an in rem complaint for forfeiture of such property
76 as provided for in this Code section. The proceedings shall be brought in the name of the
77 state by the district attorney of the circuit in which the property was seized, and the
78 complaint shall be verified by a duly authorized agent of this state in a manner required by
79 the law of this state. The complaint shall describe the property; state its location; state its
80 present custodian; state the name of the owner, if known to the duly authorized agent of
81 this state; allege the essential elements of the violation upon which the forfeiture is based;
82 and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such
83 a complaint, the court shall promptly cause process to issue to the present custodian in
84 possession of the property described in the complaint, commanding him or her to seize the
85 property described in the complaint and to hold that property for further order of the court.
86 A copy of the complaint shall be served upon the owner or lessee, if known, and upon any
87 person having a duly recorded security interest in or lien upon that property. If the owner
88 or lessee is unknown, resides out of this state, departs this state, cannot after due diligence
89 be found within this state, or conceals himself or herself so as to avoid service, notice of
90 the proceedings shall be published once a week for two weeks in the newspaper in which
91 the sheriff's advertisements are published. Such publication shall be deemed notice to any
92 and all persons having an interest in or right affected by such proceeding and from any sale
93 of the property resulting therefrom but shall not constitute notice to any person having a
94 duly recorded security interest in or lien upon such property and required to be served
95 under this Code section unless that person is unknown, resides out of this state, departs this
96 state, cannot after due diligence be found within this state, or conceals himself or herself
97 to avoid service. An owner of or interest holder in the property may file an answer
98 asserting a claim against the property in the action in rem. Any such answer shall be filed

99 within 30 days after the service of the summons and complaint. Where service is made by
100 publication and personal service has not been made, an owner or interest holder shall file
101 an answer within 30 days of the date of final publication. An answer shall be verified by
102 the owner or interest holder under penalty of perjury. In addition to complying with the
103 general rules applicable to an answer in civil actions, the answer shall set forth:

104 (1) The caption of the proceedings as set forth in the complaint and the name of the
105 claimant;

106 (2) The address at which the claimant will accept mail;

107 (3) The nature and extent of the claimant's interest in the property;

108 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the
109 interest in the property;

110 (5) The specific provision of this Code section relied on in asserting that the property is
111 not subject to forfeiture;

112 (6) All essential facts supporting each assertion; and

113 (7) The precise relief sought.

114 If at the expiration of the period set forth in this subsection no answer has been filed, the
115 court shall order the disposition of the seized property as provided for in this Code section.

116 If an answer is filed, a hearing shall be held within 60 days after service of the complaint
117 unless continued for good cause and shall be held by the court without a jury. If the court
118 determines that a claimant defending the complaint knew or by the exercise of ordinary
119 care should have known that the property was to be used for an unlawful purpose
120 subjecting it to forfeiture under this Code section, the court shall order the disposition of
121 the seized property as provided in this Code section and that claimant shall have no claim
122 upon the property or proceeds from the sale thereof.

123 (f)(1) When property is forfeited under this Code section, the judge of the superior court
124 in the county where the seizure was made or in the county in which it can be proven that
125 the crime was committed may dispose of the property by issuing an order to:

126 (A) Retain it for official use by any agency of this state or any political subdivision
127 thereof;

128 (B) Sell that which is not required to be destroyed by law and which is not harmful to
129 the public. The proceeds shall be used for payment of all proper expenses of the
130 proceedings for forfeiture and sale, including but not limited to the expenses of seizure,
131 maintenance of custody, advertising, and court costs; or

132 (C) Require the sheriff or police chief of the county in which the seizure occurred to
133 take custody of the property and remove it for disposition in accordance with law.

134 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition
135 of forfeited property shall after satisfaction of the interest of secured parties and after

136 payment of all costs vest in the local political subdivision whose law enforcement
 137 officers seized it. If the property was seized by a municipal law enforcement agency,
 138 then the money, currency, or proceeds realized from the sale or disposition of the
 139 property shall vest in that municipality. If the property was seized by a county law
 140 enforcement agency, then the money, currency, or proceeds realized from the sale or
 141 disposition of the property shall vest in that county. If the property was seized by joint
 142 action of a county law enforcement agency and a municipal law enforcement agency,
 143 then the money, currency, or proceeds realized from the sale or disposition of the
 144 property shall vest in that county and that municipality and shall be divided equally
 145 between the county and municipality. If the property was seized by a state law
 146 enforcement agency, then the money, currency, or proceeds realized from the sale or
 147 disposition of the property shall vest in the county where the condemnation proceedings
 148 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this
 149 subsection for payment of all costs, the local government in which the money, currency,
 150 or proceeds realized from the forfeited property vests shall expend or use such funds
 151 or proceeds received for any official law enforcement purpose except for the payment
 152 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer
 153 of the local law enforcement agency, or to fund victim-witness assistance programs.
 154 Such property shall not be used to supplant any other local, state, or federal funds
 155 appropriated for staff or operations.
 156 (B) Any local law enforcement agency receiving property under this subsection shall
 157 submit an annual report to the local governing authority. The report shall be submitted
 158 with the agency's budget request and shall itemize the property received during the
 159 fiscal year and the utilization made thereof."

160 **SECTION 3.**

161 Chapter 1 of Title 46 of the Official Code of Georgia Annotated, relating to general
 162 provisions for public utilities and public transportation, is amended by adding a new Code
 163 section to read as follows:

164 "46-1-6.

165 (a) Upon the application of the president or resident executive officer of any publicly,
 166 privately, or cooperatively owned utility operating and doing business in this state as a
 167 utility, the Governor may appoint one or more persons as special officers for the protection
 168 of the property and interest of such corporation, with power to make arrests, provided that
 169 such special officers shall be paid by the corporation applying for such appointment; and
 170 provided, further, that such special officers shall not receive any compensation from this
 171 state or any county thereof.

172 (b) All special officers appointed and commissioned as provided for in this Code section
173 shall have throughout this state all the powers, duties, and responsibilities of sheriffs or
174 other law enforcement officers of this state while engaged in the performance of their
175 duties as such special officers, except the serving of civil processes.

176 (c) Every special officer appointed and commissioned under this Code section shall be a
177 resident of the United States and of good character. Every such officer shall be required
178 to post a good and sufficient bond payable to the State of Georgia in the sum of \$1,000.00,
179 conditioned on the faithful performance of his or her duties.

180 (d) All appointments and commissions issued under this Code section shall continue so
181 long as the special officer is employed in such capacity by the publicly, privately, or
182 cooperatively owned utility. The authority of any person appointed under this Code section
183 shall immediately cease whenever such person ceases to be an agent, servant, or employee
184 of the utility applying for the appointment or no longer serves as a special officer of such
185 utility.

186 (e) Whenever any publicly, privately, or cooperatively owned utility no longer requires the
187 services of any special officer so appointed, it shall file written notice to that effect in the
188 offices of the Governor and the Secretary of State.

189 (f) The appointment and commission of a special officer may be revoked at any time by
190 the Governor, with or without written notice by the president or resident executive officer
191 of the publicly, privately, or cooperatively owned utility applying for the appointment and
192 commission.

193 (g) All criminal processes served by a special officer shall be returned by the officer to the
194 county from which the same originated."

195 **SECTION 4.**

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