

The Senate Public Safety Committee offered the following substitute to SB 53:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 10, 16, and 40 of the Official Code of Georgia Annotated, relating to  
2 commerce and trade, crimes and offenses, and motor vehicles and traffic, respectively, so as  
3 to provide for comprehensive regulation of theft of regulated metal property; to provide for  
4 the offense of advertising for the purchase of regulated metal property in a manner which  
5 violates any provisions of Article 14 of Chapter 1 of Title 10; to provide for criminal  
6 penalties; to provide for the publication of second or subsequent convictions and procedure  
7 therefor; to provide for forfeiture of certain property and procedure therefor; to provide for  
8 the suspension of the drivers' licenses of persons convicted for certain offenses related to the  
9 theft of regulated metal property; to provide for restoration of the drivers' licenses under  
10 certain conditions; to provide for related matters; to provide for an effective date and  
11 applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
15 amended by adding a new Code section to read as follows:

16 "10-1-356.1.

17 (a) It shall be unlawful for any person to advertise, whether in a periodical, by television,  
18 by radio, or by any other public medium or by any private means, including letters,  
19 circulars, handbills, and oral statements, that such person will purchase or will arrange for  
20 or cause to be purchased any regulated metal property in a manner which violates any  
21 provision of this article.

22 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony  
23 and, upon conviction, shall be punished by a fine of not more than \$5,000.00 or by  
24 imprisonment for not less than one nor more than five years, or both."

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## SECTION 2.

Said title is further amended by revising Code Section 10-1-357, relating to penalties for violations of the article, by adding a new a new subsection to read as follows:

"(c)(1) The clerk of the court in which a person is convicted a second or subsequent time of any violation of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long; shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name and address of the convicted person, the date, time, and place of arrest, and the disposition of the case; and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith."

## SECTION 3.

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

"10-1-357.1.

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

(1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section 16-8-7 if the subject of the theft was regulated metal property;

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

(3) A criminal violation of this article.

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

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

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

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

75 (c) Property subject to forfeiture under this Code section may be seized by any law  
76 enforcement officer of this state or any political subdivision thereof who has the power to  
77 make arrests upon process issued by any court having jurisdiction over the property.  
78 Seizure without process or warrant may be made if:

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

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

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

84 (d) Property taken or detained under this Code section shall not be subject to replevin but  
85 shall be deemed to be in the custody of the superior court of the county wherein the seizure  
86 was made or in the custody of the superior court of the county where it can be proven that  
87 the crime was committed, subject only to the orders and decrees of the court having  
88 jurisdiction over the forfeiture proceedings. When property is seized under this Code  
89 section, law enforcement officers seizing such property shall:

90 (1) Place the property under seal;

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

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

96 (e) When property is seized under this Code section, the sheriff or law enforcement officer  
97 seizing the same shall report the seizure, within 20 days thereof, to the district attorney of  
98 the judicial circuit having jurisdiction in the county where the seizure was made. Within  
99 60 days from the date he or she receives notice of the seizure, the district attorney of the  
100 judicial circuit shall cause to be filed in the superior court of the county in which the  
101 property was seized or detained an in rem complaint for forfeiture of such property as  
102 provided for in this Code section. The proceedings shall be brought in the name of the  
103 state by the district attorney of the circuit in which the property was seized, and the  
104 complaint shall be verified by a duly authorized agent of this state in a manner required by  
105 the law of this state. The complaint shall describe the property; state its location; state its  
106 present custodian; state the name of the owner, if known to the duly authorized agent of  
107 this state; allege the essential elements of the violation upon which the forfeiture is based;  
108 and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such  
109 a complaint, the court shall promptly cause process to issue to the present custodian in  
110 possession of the property described in the complaint, commanding him or her to seize the  
111 property described in the complaint and to hold that property for further order of the court.  
112 A copy of the complaint shall be served upon the owner or lessee, if known, and upon any  
113 person having a duly recorded security interest in or lien upon that property. If the owner  
114 or lessee is unknown, resides outside this state, departs this state, cannot after due diligence  
115 be found within this state, or conceals himself or herself so as to avoid service, notice of  
116 the proceedings shall be published once a week for two weeks in the newspaper in which  
117 the sheriff's advertisements are published. Such publication shall be deemed notice to any  
118 and all persons having an interest in or right affected by such proceeding and from any sale  
119 of the property resulting therefrom but shall not constitute notice to any person having a  
120 duly recorded security interest in or lien upon such property and required to be served  
121 under this Code section unless that person is unknown, resides outside this state, departs  
122 this state, cannot after due diligence be found within this state, or conceals himself or  
123 herself to avoid service. An owner of or interest holder in the property may file an answer  
124 asserting a claim against the property in the action in rem. Any such answer shall be filed  
125 within 30 days after the service of the summons and complaint. Where service is made by  
126 publication and personal service has not been made, an owner or interest holder shall file  
127 an answer within 30 days of the date of final publication. An answer shall be verified by  
128 the owner or interest holder under penalty of perjury. In addition to complying with the  
129 general rules applicable to an answer in civil actions, the answer shall set forth:  
130 (1) The caption of the proceedings as set forth in the complaint and the name of the  
131 claimant;  
132 (2) The address at which the claimant will accept mail;

- 133 (3) The nature and extent of the claimant's interest in the property;  
 134 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the  
 135 interest in the property;  
 136 (5) The specific provision of this Code section relied on in asserting that the property is  
 137 not subject to forfeiture;  
 138 (6) All essential facts supporting each assertion; and  
 139 (7) The precise relief sought.

140 If at the expiration of the period set forth in this subsection no answer has been filed, the  
 141 court shall order the disposition of the seized property as provided for in this Code section.  
 142 If an answer is filed, a hearing shall be held within 60 days after service of the complaint  
 143 unless continued for good cause and shall be held by the court without a jury. If the court  
 144 determines that a claimant defending the complaint knew or by the exercise of ordinary  
 145 care should have known that the property was to be used for an unlawful purpose  
 146 subjecting it to forfeiture under this Code section, the court shall order the disposition of  
 147 the seized property as provided in this Code section and that claimant shall have no claim  
 148 upon the property or proceeds from the sale thereof.

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

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

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

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

160 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition  
 161 of forfeited property shall after satisfaction of the interest of secured parties and after  
 162 payment of all costs vest in the local political subdivision whose law enforcement  
 163 officers seized it. If the property was seized by a municipal law enforcement agency,  
 164 then the money, currency, or proceeds realized from the sale or disposition of the  
 165 property shall vest in that municipality. If the property was seized by a county law  
 166 enforcement agency, then the money, currency, or proceeds realized from the sale or  
 167 disposition of the property shall vest in that county. If the property was seized by joint  
 168 action of a county law enforcement agency and a municipal law enforcement agency,  
 169 then the money, currency, or proceeds realized from the sale or disposition of the

170 property shall vest in that county and that municipality and shall be divided equally  
 171 between the county and municipality. If the property was seized by a state law  
 172 enforcement agency, then the money, currency, or proceeds realized from the sale or  
 173 disposition of the property shall vest in the county where the condemnation proceedings  
 174 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this  
 175 subsection for payment of all costs, the local government in which the money, currency,  
 176 or proceeds realized from the forfeited property vests shall expend or use such funds  
 177 or proceeds received for any official law enforcement purpose except for the payment  
 178 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer  
 179 of the local law enforcement agency, or to fund victim-witness assistance programs.  
 180 Such property shall not be used to supplant any other local, state, or federal funds  
 181 appropriated for staff or operations.  
 182 (B) Any local law enforcement agency receiving property under this subsection shall  
 183 submit an annual report to the local governing authority. The report shall be submitted  
 184 with the agency's budget request and shall itemize the property received during the  
 185 fiscal year and the utilization made thereof."

186 **SECTION 4.**

187 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 188 amended by revising paragraph (9) of subsection (a) of Code Section 16-8-12, relating to  
 189 penalties for violation of Code Sections 16-8-2 through 16-8-9, as follows:

190 "(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property  
 191 of the theft was ~~ferrous metals or~~ regulated metal property, as such ~~terms are~~ term is  
 192 defined in Code Section 10-1-350, and the aggregate amount of such property, in its  
 193 original and undamaged condition, exceeds \$500.00, by imprisonment for not less than  
 194 one nor more than five years, a fine of not more than \$5,000.00, or both."

195 **SECTION 5.**

196 Siad title is further amended by revising Code Section 16-8-12, relating to penalties for  
 197 violation of Code Sections 16-8-2 through 16-8-9, by adding a new subsection to read as  
 198 follows:

199 "(d)(1) If the property of the theft was regulated metal property, as such term is defined  
 200 in Code Section 10-1-350, the clerk of the court in which a person is convicted a second  
 201 or subsequent time within five years, as measured from the dates of previous arrests for  
 202 which convictions were obtained or pleas of nolo contendere were accepted to the date  
 203 of the current arrest for which a conviction is obtained or a plea of nolo contendere is  
 204 accepted, shall cause to be published a notice of conviction for each such person

205 convicted. Such notices of conviction shall be published in the manner of legal notices  
 206 in the legal organ of the county in which such person resides or, in the case of  
 207 nonresidents, in the legal organ of the county in which the person was convicted. Such  
 208 notice of conviction shall be one column wide by two inches long; shall contain the  
 209 photograph taken by the arresting law enforcement agency at the time of arrest, the name  
 210 and address of the convicted person, the date, time, and place of arrest, and the  
 211 disposition of the case; and shall be published once in the legal organ of the appropriate  
 212 county in the second week following such conviction or as soon thereafter as publication  
 213 may be made.

214 (2) The convicted person for which a notice of conviction is published pursuant to this  
 215 subsection shall be assessed \$25.00 for the cost of publication of such notice and such  
 216 assessment shall be imposed at the time of conviction in addition to any other fine  
 217 imposed pursuant to this Code section.

218 (3) The clerk of the court, the publisher of any legal organ which publishes a notice of  
 219 conviction, and any other person involved in the publication of an erroneous notice of  
 220 conviction shall be immune from civil or criminal liability for such erroneous publication,  
 221 provided such publication was made in good faith."

## 222 **SECTION 6.**

223 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 224 amended by adding a new Code section to read as follows:

225 "40-5-57.3.

226 (a) The driver's license of any person convicted for a second or subsequent offense of:

227 (1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation  
 228 of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section  
 229 16-8-7 if the subject of the theft was regulated metal property, as such term is defined in  
 230 Code Section 10-1-350;

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

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

234 shall be suspended as provided in this Code section. The person shall submit the driver's  
 235 license to the court upon conviction and the court shall forward the driver's license to the  
 236 department.

237 (b)(1) A first suspension of a driver's license under this Code section shall be for a period  
 238 of six months.

239 (2) A second or subsequent suspension of a driver's license under this Code section shall  
 240 be for a period of one year.

241 (c) After the suspension period and when the person pays a restoration fee of \$200.00 or,  
242 when processed by mail, \$210.00, the suspension shall terminate and the department shall  
243 return the person's driver's license to such person."

244 **SECTION 7.**

245 This Act shall become effective on January 1, 2010, and shall apply to all offenses  
246 committed on or after such date.

247 **SECTION 8.**

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