

House Bill 36

By: Representative Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to provide a short title; to define certain terms; to abolish civil forfeitures; to
3 provide for the criminal offense of theft under color of law; to provide a penalty; to provide
4 for applicability; to provide for an effective date; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as "The Anti Road Agent Gang Act."

9 **SECTION 2.**

10 Chapter 1 of Title 16 of the Official Code of Georgia Annotated, relating to general
11 provisions relative to crimes and offenses, is amended by adding a new Code section to read
12 as follows:

13 "16-1-12.

14 (a) As used in this Code section, the term 'civil forfeiture' means a proceeding brought
15 against property suspect of being used in the commission of an offense or the proceeds of
16 an offense rather than against the person who committed the offense. Civil forfeiture does
17 not require either criminal charges against the owner of the property or a criminal
18 conviction.

19 (b) Civil forfeiture is abolished in this state. No officer or agent of federal, state, or local
20 government shall be authorized to seize any item of property of whatever description
21 within the boundaries of this state unless the possession of such property is unlawful under
22 the laws of this state or such property is seized as evidence in a criminal investigation.

23 (c) Any person who violates the provisions of this Code section shall be guilty of the
24 felony offense of theft under color of law. Such person shall be personally liable to pay

25 restitution to the person whose property was seized in an amount equal to five times the
 26 value of the seized property.

27 (d) The provisions of this Code section shall not apply to property seized as evidence in
 28 conjunction with an arrest; provided, however, that such property shall be returned to the
 29 rightful owner at the conclusion of the criminal investigation."

30 SECTION 2.

31 Said title is further amended by revising Code Section 16-13-49, relating to forfeitures, as
 32 follows:

33 "16-13-49.

34 (a) ~~As used in this Code section, the term:~~

35 (1) ~~'Controlled substance' shall have the same meaning as provided in paragraph (4) of~~
 36 ~~Code Section 16-13-21 and shall also include marijuana as such term is defined in~~
 37 ~~paragraph (16) of Code Section 16-13-21, notwithstanding any other provisions of this~~
 38 ~~article.~~

39 (2) ~~'Costs' means, but is not limited to:~~

40 (A) ~~All expenses associated with the seizure, towing, storage, maintenance, custody,~~
 41 ~~preservation, operation, or sale of the property, and~~

42 (B) ~~Satisfaction of any security interest or lien not subject to forfeiture under this Code~~
 43 ~~section.~~

44 (3) ~~'Court costs' means, but is not limited to:~~

45 (A) ~~All court costs, including the costs of advertisement, transcripts, and court reporter~~
 46 ~~fees; and~~

47 (B) ~~Payment of receivers, conservators, appraisers, accountants, or trustees appointed~~
 48 ~~by the court pursuant to this Code section.~~

49 (4) ~~'Enterprise' means any person, sole proprietorship, partnership, corporation, trust,~~
 50 ~~association, or other legal entity created under the laws of this state, of the United States~~
 51 ~~or any of the several states of the United States, or of any foreign nation or a group of~~
 52 ~~individuals associated in fact although not a legal entity and includes illicit as well as licit~~
 53 ~~enterprises and governmental as well as other entities.~~

54 (5) ~~'Governmental agency' means any department, office, council, commission,~~
 55 ~~committee, authority, board, bureau, or division of the executive, judicial, or legislative~~
 56 ~~branch of a state, the United States, or any political subdivision thereof.~~

57 (6) ~~'Interest holder' means a secured party within the meaning of Code Section 11-9-102~~
 58 ~~or the beneficiary of a perfected encumbrance pertaining to an interest in property.~~

59 ~~(7) 'Owner' means a person, other than an interest holder, who has an interest in property~~
 60 ~~and is in compliance with any statute requiring its recordation or reflection in public~~
 61 ~~records in order to perfect the interest against a bona fide purchaser for value.~~

62 ~~(8) 'Proceeds' means property derived directly or indirectly from, maintained by, or~~
 63 ~~realized through an act or omission and includes any benefit, interest, or property of any~~
 64 ~~kind without reduction for expenses incurred for acquisition, maintenance, or any other~~
 65 ~~purpose.~~

66 ~~(9) 'Property' means anything of value and includes any interest in anything of value,~~
 67 ~~including real property and any fixtures thereon, and tangible and intangible personal~~
 68 ~~property, including but not limited to currency, instruments, securities, or any other kind~~
 69 ~~of privilege, interest, claim, or right.~~

70 ~~(10) 'United States' includes its territories, possessions, and dominions and the District~~
 71 ~~of Columbia.~~

72 ~~(b)(1) An action filed pursuant to this Code section shall be filed in the name of the State~~
 73 ~~of Georgia and may be brought:~~

74 ~~(A) In the case of an in rem action, by the district attorney for the judicial circuit where~~
 75 ~~the property is located;~~

76 ~~(B) In the case of an in personam action, by the district attorney for the judicial circuit~~
 77 ~~in which the defendant resides; or~~

78 ~~(C) By the district attorney having jurisdiction over any offense which arose out of the~~
 79 ~~same conduct which made the property subject to forfeiture.~~

80 ~~Such district attorney may bring an action pursuant to this Code section in any superior~~
 81 ~~court of this state.~~

82 ~~(2) If more than one district attorney has jurisdiction to file an action pursuant to this~~
 83 ~~Code section, the district attorney having primary jurisdiction over a violation of this~~
 84 ~~article shall, in the event of a conflict, have priority over any other district attorney.~~

85 ~~(3) Any action brought pursuant to this Code section may be compromised or settled in~~
 86 ~~the same manner as other civil actions.~~

87 ~~(c) An action for forfeiture brought pursuant to this Code section shall be tried:~~

88 ~~(1) If the action is in rem against real property, in the county where the property is~~
 89 ~~located, except where a single tract is divided by a county line, in which case the superior~~
 90 ~~court of either county shall have jurisdiction;~~

91 ~~(2) If the action is in rem against tangible or intangible personal property, in any county~~
 92 ~~where the property is located or will be during the pendency of the action; or~~

93 ~~(3) If the action is in personam, as provided by law.~~

94 ~~(d) The following are declared to be contraband and no person shall have a property right~~
 95 ~~in them:~~

- 96 ~~(1) All controlled substances, raw materials, or controlled substance analogs that have~~
 97 ~~been manufactured, distributed, dispensed, possessed, or acquired in violation of this~~
 98 ~~article;~~
- 99 ~~(2) All property which is, directly or indirectly, used or intended for use in any manner~~
 100 ~~to facilitate a violation of this article or any proceeds derived or realized therefrom;~~
- 101 ~~(3) All property located in this state which was, directly or indirectly, used or intended~~
 102 ~~for use in any manner to facilitate a violation of this article or of the laws of the United~~
 103 ~~States or any of the several states relating to controlled substances which is punishable~~
 104 ~~by imprisonment for more than one year or any proceeds derived or realized therefrom;~~
- 105 ~~(4) All weapons possessed, used, or available for use in any manner to facilitate a~~
 106 ~~violation of this article or any of the laws of the United States or any of the several states~~
 107 ~~relating to controlled substances which is punishable by imprisonment for more than one~~
 108 ~~year;~~
- 109 ~~(5) Any interest, security, claim, or property or contractual right of any kind affording~~
 110 ~~a source of influence over any enterprise that a person has established, operated,~~
 111 ~~controlled, conducted, or participated in the conduct of in violation of this article or any~~
 112 ~~of the laws of the United States or any of the several states relating to controlled~~
 113 ~~substances which is punishable by imprisonment for more than one year or any proceeds~~
 114 ~~derived or realized therefrom; and~~
- 115 ~~(6) All moneys, negotiable instruments, securities, or other things of value which are~~
 116 ~~found in close proximity to any controlled substance or marijuana or other property~~
 117 ~~which is subject to forfeiture under this subsection.~~
- 118 ~~(e)(1) A property interest shall not be subject to forfeiture under this Code section if the~~
 119 ~~owner of such interest or interest holder establishes that the owner or interest holder:~~
- 120 ~~(A) Is not legally accountable for the conduct giving rise to its forfeiture, did not~~
 121 ~~consent to it, and did not know and could not reasonably have known of the conduct or~~
 122 ~~that it was likely to occur;~~
- 123 ~~(B) Had not acquired and did not stand to acquire substantial proceeds from the~~
 124 ~~conduct giving rise to its forfeiture other than as an interest holder in an arm's length~~
 125 ~~commercial transaction;~~
- 126 ~~(C) With respect to conveyances for transportation only, did not hold the property~~
 127 ~~jointly, in common, or in community with a person whose conduct gave rise to its~~
 128 ~~forfeiture;~~
- 129 ~~(D) Does not hold the property for the benefit of or as nominee for any person whose~~
 130 ~~conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the~~
 131 ~~interest through any such person, the owner or interest holder acquired it as a bona fide~~
 132 ~~purchaser for value without knowingly taking part in an illegal transaction; and~~

- 133 ~~(E) Acquired the interest:~~
- 134 ~~(i) Before the completion of the conduct giving rise to its forfeiture, and the person~~
- 135 ~~whose conduct gave rise to its forfeiture did not have the authority to convey the~~
- 136 ~~interest to a bona fide purchaser for value at the time of the conduct; or~~
- 137 ~~(ii) After the completion of the conduct giving rise to its forfeiture:~~
- 138 ~~(I) As a bona fide purchaser for value without knowingly taking part in an illegal~~
- 139 ~~transaction;~~
- 140 ~~(II) Before the filing of a lien on it and before the effective date of a notice of~~
- 141 ~~pending forfeiture relating to it and without notice of its seizure for forfeiture under~~
- 142 ~~this article; and~~
- 143 ~~(III) At the time the interest was acquired, was reasonably without cause to believe~~
- 144 ~~that the property was subject to forfeiture or likely to become subject to forfeiture~~
- 145 ~~under this article.~~
- 146 ~~(2) A property interest shall not be subject to forfeiture under this Code section for a~~
- 147 ~~violation involving only one gram or less of a mixture containing cocaine or four ounces~~
- 148 ~~or less of marijuana unless said property was used to facilitate a transaction in or a~~
- 149 ~~purchase of or sale of a controlled substance or marijuana.~~
- 150 ~~(f) A rented or leased vehicle shall not be subject to forfeiture unless it is established in~~
- 151 ~~forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable~~
- 152 ~~for the conduct which would otherwise subject the vehicle to forfeiture, consented to the~~
- 153 ~~conduct, or knew or reasonably should have known of the conduct or that it was likely to~~
- 154 ~~occur. Upon learning of the address or phone number of the company which owns any~~
- 155 ~~rented or leased vehicle which is present at the scene of an arrest or other action taken~~
- 156 ~~pursuant to this Code section, the duly authorized authorities shall immediately contact the~~
- 157 ~~company to inform it that the vehicle is available for the company to take possession.~~
- 158 ~~(g)(1) Property which is subject to forfeiture under this Code section may be seized by~~
- 159 ~~the director of the Georgia Drugs and Narcotics Agency or any duly authorized agent or~~
- 160 ~~drug agent of this state or by any law enforcement officer of this state or of any political~~
- 161 ~~subdivision thereof who has power to make arrests or execute process or a search warrant~~
- 162 ~~issued by any court having jurisdiction over the property. A search warrant authorizing~~
- 163 ~~seizure of property which is subject to forfeiture pursuant to this Code section may be~~
- 164 ~~issued on an affidavit demonstrating that probable cause exists for its forfeiture or that~~
- 165 ~~the property has been the subject of a previous final judgment of forfeiture in the courts~~
- 166 ~~of this state, any other state, or the United States. The court may order that the property~~
- 167 ~~be seized on such terms and conditions as are reasonable.~~
- 168 ~~(2) Property which is subject to forfeiture under this Code section may be seized without~~
- 169 ~~process if there is probable cause to believe that the property is subject to forfeiture under~~

170 ~~this article or the seizure is incident to an arrest or search pursuant to a search warrant or~~
171 ~~to an inspection under an inspection warrant.~~

172 ~~(3) The court's jurisdiction over forfeiture proceedings is not affected by a seizure in~~
173 ~~violation of the Constitution of Georgia or the United States Constitution made with~~
174 ~~process or in a good faith belief of probable cause.~~

175 ~~(h)(1) When property is seized pursuant to this article, the sheriff, drug agent, or law~~
176 ~~enforcement officer seizing the same shall report the fact of seizure, in writing, within 20~~
177 ~~days thereof to the district attorney of the judicial circuit having jurisdiction in the county~~
178 ~~where the seizure was made.~~

179 ~~(2) Within 60 days from the date of seizure, a complaint for forfeiture shall be initiated~~
180 ~~as provided for in subsection (n), (o), or (p) of this Code section.~~

181 ~~(3) If the state fails to initiate forfeiture proceedings against property seized for forfeiture~~
182 ~~by notice of pending forfeiture within the time limits specified in paragraphs (1) and (2)~~
183 ~~of this subsection, the property must be released on the request of an owner or interest~~
184 ~~holder, pending further proceedings pursuant to this Code section, unless the property is~~
185 ~~being held as evidence.~~

186 ~~(i)(1) Seizure of property by a law enforcement officer constitutes notice of such seizure~~
187 ~~to any person who was present at the time of seizure who may assert an interest in the~~
188 ~~property.~~

189 ~~(2) When property is seized pursuant to this article, the district attorney or the sheriff,~~
190 ~~drug agent, or law enforcement officer seizing the same shall give notice of the seizure~~
191 ~~to any owner or interest holder who is not present at the time of seizure by personal~~
192 ~~service, publication, or the mailing of written notice:~~

193 ~~(A) If the owner's or interest holder's name and current address are known, by either~~
194 ~~personal service or mailing a copy of the notice by certified mail or statutory overnight~~
195 ~~delivery to that address;~~

196 ~~(B) If the owner's or interest holder's name and address are required by law to be on~~
197 ~~record with a government agency to perfect an interest in the property but the owner's~~
198 ~~or interest holder's current address is not known, by mailing a copy of the notice by~~
199 ~~certified mail or statutory overnight delivery, return receipt requested, to any address~~
200 ~~on the record; or~~

201 ~~(C) If the owner's or interest holder's address is not known and is not on record as~~
202 ~~provided in subparagraph (B) of this paragraph or the owner's or interest holder's~~
203 ~~interest is not known, by publication in two consecutive issues of a newspaper of~~
204 ~~general circulation in the county in which the seizure occurs.~~

205 ~~(3) Notice of seizure must include a description of the property, the date and place of~~
206 ~~seizure, the conduct giving rise to forfeiture, and the violation of law alleged.~~

207 ~~(j) A district attorney may file, without a filing fee, a lien for forfeiture of property upon~~
208 ~~the initiation of any civil or criminal proceeding under this article or upon seizure for~~
209 ~~forfeiture. The filing constitutes notice to any person claiming an interest in the property~~
210 ~~owned by the named person. The filing shall include the following:~~

211 ~~(1) The lien notice must set forth:~~

212 ~~(A) The name of the person and, in the discretion of the state, any alias and any~~
213 ~~corporations, partnerships, trusts, or other entities, including nominees, that are either~~
214 ~~owned entirely or in part or controlled by the person; and~~

215 ~~(B) The description of the property, the criminal or civil proceeding that has been~~
216 ~~brought under this article, the amount claimed by the state, the name of the court where~~
217 ~~the proceeding or action has been brought, and the case number of the proceeding or~~
218 ~~action if known at the time of filing;~~

219 ~~(2) A lien under this subsection applies to the described property and to one named~~
220 ~~person and to any aliases, fictitious names, or other names, including names of~~
221 ~~corporations, partnerships, trusts, or other entities, that are either owned entirely or in part~~
222 ~~or controlled by the named person and any interest in real property owned or controlled~~
223 ~~by the named person. A separate lien for forfeiture of property must be filed for any other~~
224 ~~person;~~

225 ~~(3) The lien creates, upon filing, a lien in favor of the state as it relates to the seized~~
226 ~~property or to the named person or related entities with respect to said property. The lien~~
227 ~~secures the amount of potential liability for civil judgment and, if applicable, the fair~~
228 ~~market value of seized property relating to all proceedings under this article enforcing the~~
229 ~~lien. The forfeiture lien referred to in this subsection must be filed in accordance with the~~
230 ~~provisions of the laws in this state pertaining to the type of property that is subject to the~~
231 ~~lien. The state may amend or release, in whole or in part, a lien filed under this subsection~~
232 ~~at any time by filing, without a filing fee, an amended lien in accordance with this~~
233 ~~subsection which identifies the lien amended. The state, as soon as practical after filing~~
234 ~~a lien, shall furnish to any person named in the lien a notice of the filing of the lien.~~
235 ~~Failure to furnish notice under this subsection does not invalidate or otherwise affect a~~
236 ~~lien filed in accordance with this subsection;~~

237 ~~(4) Upon entry of judgment in favor of the state, the state may proceed to execute on the~~
238 ~~lien as in the case of any other judgment;~~

239 ~~(5) A trustee, constructive or otherwise, who has notice that a lien for forfeiture of~~
240 ~~property, a notice of pending forfeiture, or a civil forfeiture proceeding has been filed~~
241 ~~against the property or against any person or entity for whom the person holds title or~~
242 ~~appears as the owner of record shall furnish, within ten days, to the district attorney or his~~
243 ~~designee the following information:~~

244 ~~(A) The name and address of the person or entity for whom the property is held;~~

245 ~~(B) The names and addresses of all beneficiaries for whose benefit legal title to the~~
 246 ~~seized property, or property of the named person or related entity, is held, and~~

247 ~~(C) A copy of the applicable trust agreement or other instrument, if any, under which~~
 248 ~~the trustee or other person holds legal title or appears as the owner of record of the~~
 249 ~~property; and~~

250 ~~(6) A trustee, constructive or otherwise, who fails to comply with this subsection shall~~
 251 ~~be guilty of a misdemeanor.~~

252 ~~(k) Property taken or detained under this Code section is not subject to replevin,~~
 253 ~~conveyance, sequestration, or attachment. The seizing law enforcement agency or the~~
 254 ~~district attorney may authorize the release of the property if the forfeiture or retention is~~
 255 ~~unnecessary or may transfer the action to another agency or district attorney by~~
 256 ~~discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other~~
 257 ~~law enforcement agency or district attorney. An action under this Code section may be~~
 258 ~~consolidated with any other action or proceeding under this article relating to the same~~
 259 ~~property on motion by an interest holder and must be so consolidated on motion by the~~
 260 ~~district attorney in either proceeding or action. The property is deemed to be in the custody~~
 261 ~~of the State of Georgia subject only to the orders and decrees of the superior court having~~
 262 ~~jurisdiction over the forfeiture proceedings.~~

263 ~~(l)(1) If property is seized under this article, the district attorney may:~~

264 ~~(A) Remove the property to a place designated by the superior court having jurisdiction~~
 265 ~~over the forfeiture proceeding;~~

266 ~~(B) Place the property under constructive seizure by posting notice of pending~~
 267 ~~forfeiture, by giving notice of pending forfeiture to its owners and interest holders, or~~
 268 ~~by filing notice of seizure in any appropriate public record relating to the property;~~

269 ~~(C) Remove the property to a storage area, within the jurisdiction of the court, for~~
 270 ~~safekeeping or, if the property is a negotiable instrument or money and is not needed~~
 271 ~~for evidentiary purposes, the district attorney may authorize its being deposited in an~~
 272 ~~interest-bearing account in a financial institution in this state. Any accrued interest shall~~
 273 ~~follow the principal in any judgment with respect thereto;~~

274 ~~(D) Provide for another governmental agency, a receiver appointed by the court~~
 275 ~~pursuant to Chapter 8 of Title 9, an owner, or an interest holder to take custody of the~~
 276 ~~property and remove it to an appropriate location within the county where the property~~
 277 ~~was seized; or~~

278 ~~(E) Require the sheriff or chief of police of the political subdivision where the property~~
 279 ~~was seized to take custody of the property and remove it to an appropriate location for~~
 280 ~~disposition in accordance with law.~~

281 ~~(2) If any property which has been attached or seized pursuant to this Code section is~~
 282 ~~perishable or is liable to perish, waste, or be greatly reduced in value by keeping or if the~~
 283 ~~expense of keeping the same is excessive or disproportionate to the value thereof, the~~
 284 ~~court, upon motion of the state, a claimant, or the custodian, may order the property or~~
 285 ~~any portion thereof to be sold upon such terms and conditions as may be prescribed by~~
 286 ~~the court, and the proceeds shall be paid into the registry of the court pending final~~
 287 ~~disposition of the action.~~

288 ~~(m) As soon as possible, but not more than 30 days after the seizure of property, the~~
 289 ~~seizing law enforcement agency shall conduct an inventory and estimate the value of the~~
 290 ~~property seized.~~

291 ~~(n) If the estimated value of personal property seized is \$25,000.00 or less, the district~~
 292 ~~attorney may elect to proceed under the provisions of this subsection in the following~~
 293 ~~manner:~~

294 ~~(1) Notice of the seizure of such property shall be posted in a prominent location in the~~
 295 ~~courthouse of the county in which the property was seized. Such notice shall include a~~
 296 ~~description of the property, the date and place of seizure, the conduct giving rise to~~
 297 ~~forfeiture, a statement that the owner of such property has 30 days within which a claim~~
 298 ~~must be filed, and the violation of law alleged;~~

299 ~~(2) A copy of the notice, which shall include a statement that the owner of such property~~
 300 ~~has 30 days within which a claim must be filed, shall be served upon an owner, interest~~
 301 ~~holder, or person in possession of the property at the time of seizure as provided in~~
 302 ~~subsection (i) of this Code section and shall be published for at least three successive~~
 303 ~~weeks in a newspaper of general circulation in the county where the seizure was made;~~

304 ~~(3) The owner or interest holder may file a claim within 30 days after the second~~
 305 ~~publication of the notice of forfeiture by sending the claim to the seizing law enforcement~~
 306 ~~agency and to the district attorney by certified mail or statutory overnight delivery, return~~
 307 ~~receipt requested;~~

308 ~~(4) The claim must be signed by the owner or interest holder under penalty of perjury~~
 309 ~~and must set forth:~~

310 ~~(A) The caption of the proceedings as set forth on the notice of pending forfeiture and~~
 311 ~~the name of the claimant;~~

312 ~~(B) The address at which the claimant will accept mail;~~

313 ~~(C) The nature and extent of the claimant's interest in the property;~~

314 ~~(D) The date, identity of the transferor, and circumstances of the claimant's acquisition~~
 315 ~~of the interest in the property;~~

316 ~~(E) The specific provision of this Code section relied on in asserting that the property~~
 317 ~~is not subject to forfeiture;~~

318 ~~(F) All essential facts supporting each assertion; and~~
319 ~~(G) The precise relief sought;~~
320 ~~(5) If a claim is filed, the district attorney shall file a complaint for forfeiture as provided~~
321 ~~in subsection (o) or (p) of this Code section within 30 days of the actual receipt of the~~
322 ~~claim. A person who files a claim shall be joined as a party; and~~
323 ~~(6) If no claim is filed within 30 days after the second publication of the notice of~~
324 ~~forfeiture, all right, title, and interest in the property is forfeited to the state and the~~
325 ~~district attorney shall dispose of the property as provided in subsection (u) of this Code~~
326 ~~section.~~
327 ~~(o) In rem proceedings:~~
328 ~~(1) In actions in rem, the property which is the subject of the action shall be named as~~
329 ~~the defendant. The complaint shall be verified on oath or affirmation by a duly authorized~~
330 ~~agent of the state in a manner required by the laws of this state. Such complaint shall~~
331 ~~describe the property with reasonable particularity; state that it is located within the~~
332 ~~county or will be located within the county during the pendency of the action; state its~~
333 ~~present custodian; state the name of the owner or interest holder, if known; allege the~~
334 ~~essential elements of the violation which is claimed to exist; state the place of seizure, if~~
335 ~~the property was seized; and conclude with a prayer of due process to enforce the~~
336 ~~forfeiture.~~
337 ~~(2) A copy of the complaint and summons shall be served on any person known to be an~~
338 ~~owner or interest holder and any person who is in possession of the property.~~
339 ~~(A) Service of the complaint and summons shall be as provided in subsections (a), (b),~~
340 ~~(c), and (e) of Code Section 9-11-4.~~
341 ~~(B) If real property is the subject of the action or the owner or interest holder is~~
342 ~~unknown or resides out of the state or departs the state or cannot after due diligence be~~
343 ~~found within the state or conceals himself so as to avoid service, notice of the~~
344 ~~proceeding shall be published once a week for two successive weeks in the newspaper~~
345 ~~in which the sheriff's advertisements are published. Such publication shall be deemed~~
346 ~~notice to any and all persons having an interest in or right affected by such proceeding~~
347 ~~and from any sale of the property resulting therefrom, but shall not constitute notice to~~
348 ~~an interest holder unless that person is unknown or resides out of the state or departs the~~
349 ~~state or cannot after due diligence be found within the state or conceals himself to avoid~~
350 ~~service.~~
351 ~~(C) If tangible property which has not been seized is the subject of the action, the court~~
352 ~~may order the sheriff or another law enforcement officer to take possession of the~~
353 ~~property. If the character or situation of the property is such that the taking of actual~~
354 ~~possession is impracticable, the sheriff shall execute process by affixing a copy of the~~

355 ~~complaint and summons to the property in a conspicuous place and by leaving another~~
 356 ~~copy of the complaint and summons with the person having possession or his agent. In~~
 357 ~~cases involving a vessel or aircraft, the sheriff or other law enforcement officer is~~
 358 ~~authorized to make a written request with the appropriate governmental agency not to~~
 359 ~~permit the departure of such vessel or aircraft until notified by the sheriff or his deputy~~
 360 ~~that the vessel or aircraft has been released.~~

361 ~~(3) An owner of or interest holder in the property may file an answer asserting a claim~~
 362 ~~against the property in the action in rem. Any such answer shall be filed within 30 days~~
 363 ~~after the service of the summons and complaint. Where service is made by publication~~
 364 ~~and personal service has not been made, an owner or interest holder shall file an answer~~
 365 ~~within 30 days of the date of final publication. An answer must be verified by the owner~~
 366 ~~or interest holder under penalty of perjury. In addition to complying with the general~~
 367 ~~rules applicable to an answer in civil actions, the answer must set forth:~~

- 368 ~~(A) The caption of the proceedings as set forth in the complaint and the name of the~~
 369 ~~claimant;~~
- 370 ~~(B) The address at which the claimant will accept mail;~~
- 371 ~~(C) The nature and extent of the claimant's interest in the property;~~
- 372 ~~(D) The date, identity of transferor, and circumstances of the claimant's acquisition of~~
 373 ~~the interest in the property;~~
- 374 ~~(E) The specific provision of this Code section relied on in asserting that the property~~
 375 ~~is not subject to forfeiture;~~
- 376 ~~(F) All essential facts supporting each assertion; and~~
- 377 ~~(G) The precise relief sought.~~

378 ~~(4) If at the expiration of the period set forth in paragraph (3) of this subsection no~~
 379 ~~answer has been filed, the court shall order the disposition of the seized property as~~
 380 ~~provided for in this Code section.~~

381 ~~(5) If an answer is filed, a hearing must be held within 60 days after service of the~~
 382 ~~complaint unless continued for good cause and must be held by the court without a jury.~~

383 ~~(6) An action in rem may be brought by the state in addition to or in lieu of any other in~~
 384 ~~rem or in personam action brought pursuant to this title.~~

385 ~~(p) In personam proceedings:~~

- 386 ~~(1) The complaint shall be verified on oath or affirmation by a duly authorized agent of~~
 387 ~~the state in a manner required by the laws of this state. It shall describe with reasonable~~
 388 ~~particularity the property which is sought to be forfeited; state its present custodian; state~~
 389 ~~the name of the owner or interest holder, if known; allege the essential elements of the~~
 390 ~~violation which is claimed to exist; state the place of seizure, if the property was seized;~~
 391 ~~and conclude with a prayer of due process to enforce the forfeiture.~~

392 ~~(2) Service of the complaint and summons shall be as follows:~~

393 ~~(A) Except as otherwise provided in this subsection, service of the complaint and~~
 394 ~~summons shall be as provided by subsections (a), (b), (c), and (d) of Code Section~~
 395 ~~9-11-4; and~~

396 ~~(B) If the defendant is unknown or resides out of the state or departs the state or cannot~~
 397 ~~after due diligence be found within the state or conceals himself so as to avoid service,~~
 398 ~~notice of the proceedings shall be published once a week for two successive weeks in~~
 399 ~~the newspaper in which the sheriff's advertisements are published. Such publication~~
 400 ~~shall be deemed sufficient notice to any such defendant.~~

401 ~~(3) A defendant shall file a verified answer within 30 days after the service of the~~
 402 ~~summons and complaint. Where service is made by publication and personal service has~~
 403 ~~not been made, a defendant shall file such answer within 30 days of the date of final~~
 404 ~~publication. In addition to complying with the general rules applicable to an answer in~~
 405 ~~civil actions, the answer must contain all of the elements set forth in paragraph (3) of~~
 406 ~~subsection (o) of this Code section.~~

407 ~~(4) Any interest holder or person in possession of the property may join any action~~
 408 ~~brought pursuant to this subsection as provided by Chapter 11 of Title 9, known as the~~
 409 ~~'Georgia Civil Practice Act.'~~

410 ~~(5) If at the expiration of the period set forth in paragraph (3) of this subsection no~~
 411 ~~answer has been filed, the court shall order the disposition of the seized property as~~
 412 ~~provided for in this Code section.~~

413 ~~(6) If an answer is filed, a hearing must be held within 60 days after service of the~~
 414 ~~complaint unless continued for good cause and must be held by the court without a jury.~~

415 ~~(7) On a determination of liability of a person for conduct giving rise to forfeiture under~~
 416 ~~this Code section, the court must enter a judgment of forfeiture of the property described~~
 417 ~~in the complaint and must also authorize the district attorney or his agent or any law~~
 418 ~~enforcement officer or peace officer to seize all property ordered to be forfeited which~~
 419 ~~was not previously seized or was not then under seizure. Following the entry of an order~~
 420 ~~declaring the property forfeited, the court, on application of the state, may enter any~~
 421 ~~appropriate order to protect the interest of the state in the property ordered to be forfeited.~~

422 ~~(8) Except as provided in this subsection, no person claiming an interest in property~~
 423 ~~subject to forfeiture under this Code section may intervene in a trial or appeal of a~~
 424 ~~criminal action or in an in personam civil action involving the forfeiture of the property.~~

425 ~~(q) In conjunction with any civil or criminal action brought pursuant to this article:~~

426 ~~(1) The court, on application of the district attorney, may enter any restraining order or~~
 427 ~~injunction; require the execution of satisfactory performance bonds; appoint receivers,~~
 428 ~~conservators, appraisers, accountants, or trustees; or take any action to seize, secure,~~

429 ~~maintain, or preserve the availability of property subject to forfeiture under this article,~~
430 ~~including issuing a warrant for its seizure and writ of attachment, whether before or after~~
431 ~~the filing of a complaint for forfeiture;~~

432 ~~(2) A temporary restraining order under this Code section may be entered on application~~
433 ~~of the district attorney, without notice or an opportunity for a hearing, if the district~~
434 ~~attorney demonstrates that:~~

435 ~~(A) There is probable cause to believe that the property with respect to which the order~~
436 ~~is sought, in the event of final judgment or conviction, would be subject to forfeiture~~
437 ~~under this title; and~~

438 ~~(B) Provision of notice would jeopardize the availability of the property for forfeiture;~~

439 ~~(3) Notice of the entry of a restraining order and an opportunity for a hearing must be~~
440 ~~afforded to persons known to have an interest in the property. The hearing must be held~~
441 ~~at the earliest possible date consistent with the date set in subsection (b) of Code Section~~
442 ~~9-11-65 and is limited to the issues of whether:~~

443 ~~(A) There is a probability that the state will prevail on the issue of forfeiture and that~~
444 ~~failure to enter the order will result in the property's being destroyed, conveyed,~~
445 ~~encumbered, removed from the jurisdiction of the court, concealed, or otherwise made~~
446 ~~unavailable for forfeiture; and~~

447 ~~(B) The need to preserve the availability of property through the entry of the requested~~
448 ~~order outweighs the hardship on any owner or interest holder against whom the order~~
449 ~~is to be entered;~~

450 ~~(4) If property is seized for forfeiture or a forfeiture lien is filed without a previous~~
451 ~~judicial determination of probable cause or order of forfeiture or a hearing under~~
452 ~~paragraph (2) of this subsection, the court, on an application filed by an owner of or~~
453 ~~interest holder in the property within 30 days after notice of its seizure or lien or actual~~
454 ~~knowledge of such seizure or lien, whichever is earlier, and complying with the~~
455 ~~requirements for an answer to an in rem complaint, and after five days' notice to the~~
456 ~~district attorney of the judicial circuit where the property was seized or, in the case of a~~
457 ~~forfeiture lien, to the district attorney filing such lien, may issue an order to show cause~~
458 ~~to the seizing law enforcement agency for a hearing on the sole issue of whether probable~~
459 ~~cause for forfeiture of the property then exists. The hearing must be held within 30 days~~
460 ~~unless continued for good cause on motion of either party. If the court finds that there is~~
461 ~~no probable cause for forfeiture of the property, the property must be released pending~~
462 ~~the outcome of a judicial proceeding which may be filed pursuant to this Code section;~~
463 ~~and~~

464 ~~(5) The court may order property that has been seized for forfeiture to be sold to satisfy~~
 465 ~~a specified interest of any interest holder, on motion of any party, and after notice and a~~
 466 ~~hearing, on the conditions that:~~

467 ~~(A) The interest holder has filed a proper claim and:~~

468 ~~(i) Is authorized to do business in this state and is under the jurisdiction of a~~
 469 ~~governmental agency of this state or of the United States which regulates financial~~
 470 ~~institutions, securities, insurance, or real estate; or~~

471 ~~(ii) Has an interest that the district attorney has stipulated is exempt from forfeiture;~~

472 ~~(B) The interest holder must dispose of the property by commercially reasonable public~~
 473 ~~sale and apply the proceeds first to its interest and then to its reasonable expenses~~
 474 ~~incurred in connection with the sale or disposal; and~~

475 ~~(C) The balance of the proceeds, if any, must be returned to the actual or constructive~~
 476 ~~custody of the court, in an interest-bearing account, subject to further proceedings under~~
 477 ~~this Code section.~~

478 ~~(r) A defendant convicted in any criminal proceeding is precluded from later denying the~~
 479 ~~essential allegations of the criminal offense of which the defendant was convicted in any~~
 480 ~~proceeding pursuant to this Code section, regardless of the pendency of an appeal from that~~
 481 ~~conviction, however, evidence of the pendency of an appeal is admissible. For the purposes~~
 482 ~~of this Code section, a conviction results from a verdict or plea of guilty, including a plea~~
 483 ~~of nolo contendere.~~

484 ~~(s) In hearings and determinations pursuant to this Code section:~~

485 ~~(1) The court may receive and consider, in making any determination of probable cause~~
 486 ~~or reasonable cause, all evidence admissible in determining probable cause at a~~
 487 ~~preliminary hearing or by a magistrate pursuant to Article 1 of Chapter 5 of Title 17,~~
 488 ~~together with inferences therefrom;~~

489 ~~(2) The fact that money or a negotiable instrument was found in proximity to contraband~~
 490 ~~or to an instrumentality of conduct giving rise to forfeiture authorizes the trier of the fact~~
 491 ~~to infer that the money or negotiable instrument was the proceeds of conduct giving rise~~
 492 ~~to forfeiture or was used or intended to be used to facilitate such conduct; and~~

493 ~~(3) There is a rebuttable presumption that any property of a person is subject to forfeiture~~
 494 ~~under this Code section if the state establishes probable cause to believe that:~~

495 ~~(A) The person has engaged in conduct giving rise to forfeiture;~~

496 ~~(B) The property was acquired by the person during the period of the conduct giving~~
 497 ~~rise to forfeiture or within a reasonable time after the period; and~~

498 ~~(C) There was no likely source for the property other than the conduct giving rise to~~
 499 ~~forfeiture.~~

500 ~~(t)(1) All property declared to be forfeited under this Code section vests in this state at~~
 501 ~~the time of commission of the conduct giving rise to forfeiture together with the proceeds~~
 502 ~~of the property after that time. Any property or proceeds transferred later to any person~~
 503 ~~remain subject to forfeiture and thereafter must be ordered to be forfeited unless the~~
 504 ~~transferee claims and establishes in a hearing under this Code section that the transferee~~
 505 ~~is a bona fide purchaser for value and the transferee's interest is exempt under subsection~~
 506 ~~(e) of this Code section.~~

507 ~~(2) On entry of judgment for a person claiming an interest in the property that is subject~~
 508 ~~to proceedings to forfeit property under this Code section, the court shall order that the~~
 509 ~~property or interest in property be released or delivered promptly to that person free of~~
 510 ~~liens and encumbrances, as provided under this article.~~

511 ~~(3) The court shall order a claimant who fails to establish that a substantial portion of the~~
 512 ~~claimant's interest is exempt from forfeiture under subsection (e) of this Code section to~~
 513 ~~pay the reasonable costs relating to the disproving of the claim which were incurred by~~
 514 ~~the state, including costs for investigation, prosecution, and attorneys' fees.~~

515 ~~(u)(1) Whenever property is forfeited under this article, any property which is required~~
 516 ~~by law to be destroyed or which is harmful to the public shall, when no longer needed for~~
 517 ~~evidentiary purposes, be destroyed or forwarded to the Division of Forensic Sciences of~~
 518 ~~the Georgia Bureau of Investigation or any other agency of state or local government for~~
 519 ~~destruction or for any medical or scientific use not prohibited under the laws of the~~
 520 ~~United States or this state.~~

521 ~~(2) When property, other than money or real property, is forfeited under this article, the~~
 522 ~~court may:~~

523 ~~(A) Order the property to be sold, with the proceeds of the sale to be distributed as~~
 524 ~~provided in paragraph (4) of this subsection; or~~

525 ~~(B) Provide for the in-kind distribution of the property as provided for in paragraph (4)~~
 526 ~~of this subsection.~~

527 ~~(2.1) When real property is forfeited, the court may order that:~~

528 ~~(A) The real property be turned over to the state;~~

529 ~~(B) The appropriate political subdivision take charge of the property and:~~

530 ~~(i) Sell the property with such conditions as the court deems proper, and distribute~~
 531 ~~the proceeds in such manner as the court so orders; or~~

532 ~~(ii) Hold the property for use by one or more law enforcement agencies;~~

533 ~~(C) The real property be turned over to an appropriate political subdivision without~~
 534 ~~restrictions;~~

535 ~~(D) The real property be deeded to a land bank authority as provided in Article 4 of~~
 536 ~~Chapter 4 of Title 48; or~~

537 ~~(E) The real property be disposed of in such other manner as the court deems proper.~~
538 ~~(3) Where property is to be sold pursuant to this subsection, the court may direct that~~
539 ~~such property be sold by:~~

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

542 ~~(B) Any commercially feasible means, including, but not limited to, in the case of real~~
543 ~~property, listing such property with a licensed real estate broker, selected by the district~~
544 ~~attorney through competitive bids.~~

545 ~~(4) All money and property forfeited in the same forfeiture proceeding shall be pooled~~
546 ~~together for distribution as follows:~~

547 ~~(A) A fair market value shall be assigned to all items of property other than money in~~
548 ~~such pool, and a total value shall be established for the pool by adding together the fair~~
549 ~~market value of all such property in the pool and the amount of money in the pool;~~

550 ~~(B) All costs, including court costs, shall be paid and the remaining pool shall be~~
551 ~~distributed pro rata to the state and to local governments, according to the role which~~
552 ~~their law enforcement agencies played in the seizure of the assets; provided, however,~~
553 ~~that the amount distributed to the state shall not exceed 25 percent of the amount~~
554 ~~distributed; county governments are authorized upon request of the district attorney to~~
555 ~~provide for payment of any and all necessary expenses for the operation of the office~~
556 ~~from the said forfeiture pool up to 10 percent of the amount distributed, in addition to~~
557 ~~any other expenses paid by the county to the district attorney's office.~~

558 ~~(C) An order of distribution provided for in this subsection shall be submitted by the~~
559 ~~district attorney to the court for approval; and~~

560 ~~(D)(i) Property and money distributed to a local government shall be passed through~~
561 ~~to the local law enforcement agency until the sum equals 33 1/3 percent of the amount~~
562 ~~of local funds appropriated or otherwise made available to such agency for the fiscal~~
563 ~~year in which such funds are distributed. Proceeds received may be used for any~~
564 ~~official law enforcement purpose except for the payment of salaries or rewards to law~~
565 ~~enforcement personnel, at the discretion of the chief officer of the local law~~
566 ~~enforcement agency, or may be used to fund victim-witness assistance programs or~~
567 ~~a state law enforcement museum. Such property shall not be used to supplant any~~
568 ~~other local, state, or federal funds appropriated for staff or operations.~~

569 ~~(ii) The local governing authority shall expend any remaining proceeds for any law~~
570 ~~enforcement purpose; for the representation of indigents in criminal cases; for drug~~
571 ~~treatment, rehabilitation, prevention, or education or any other program which~~
572 ~~responds to problems created by drug or substance abuse; for use as matching funds~~
573 ~~for grant programs related to drug treatment or prevention; to fund victim-witness~~

574 ~~assistance programs; or for any combination of the foregoing. If real property is~~
 575 ~~distributed to a local government, the local government may transfer the real property~~
 576 ~~to a land bank authority as provided in Article 4 of Chapter 4 of Title 48.~~

577 ~~(iii) Any local law enforcement agency receiving property under this subsection shall~~
 578 ~~submit an annual report to the local governing authority. The report shall be submitted~~
 579 ~~with the agency's budget request and shall itemize the property received during the~~
 580 ~~fiscal year and the utilization made thereof.~~

581 ~~(iv) Money distributed to the state pursuant to this subsection shall be paid into the~~
 582 ~~general fund of the state treasury, it being the intent of the General Assembly that the~~
 583 ~~same be used, subject to appropriation from the general fund in the manner provided~~
 584 ~~by law for representation of indigents in criminal cases; for funding of the Crime~~
 585 ~~Victims Emergency Fund; for law enforcement and prosecution agency programs and~~
 586 ~~particularly for funding of advanced drug investigation and prosecution training for~~
 587 ~~law enforcement officers and prosecuting attorneys; for drug treatment, rehabilitation,~~
 588 ~~prevention, or education or any other program which responds to problems created~~
 589 ~~by drug or substance abuse; for use as matching funds for grant programs related to~~
 590 ~~drug treatment or prevention; or for financing the judicial system of the state.~~

591 ~~(v) Property distributed in kind to the state pursuant to this subsection may be~~
 592 ~~designated by the Attorney General, with the approval of the court, for use by such~~
 593 ~~agency or officer of the state as may be appropriate or, otherwise, shall be turned over~~
 594 ~~to the Department of Administrative Services for such use or disposition as may be~~
 595 ~~determined by the commissioner of the Department of Administrative Services.~~

596 ~~(v) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings~~
 597 ~~under this article.~~

598 ~~(w) For good cause shown, the court may stay civil forfeiture proceedings during the~~
 599 ~~criminal trial resulting from a related indictment or information alleging a violation of this~~
 600 ~~article.~~

601 ~~(x)(1) The court shall order the forfeiture of any property of a claimant or defendant up~~
 602 ~~to the value of property found by the court to be subject to forfeiture under the provisions~~
 603 ~~of this Code section if any of the forfeited property:~~

604 ~~(A) Cannot be located;~~

605 ~~(B) Has been transferred or conveyed to, sold to, or deposited with a third party;~~

606 ~~(C) Is beyond the jurisdiction of the court;~~

607 ~~(D) Has been substantially diminished in value while not in the actual physical custody~~
 608 ~~of the receiver or governmental agency directed to maintain custody of the property;~~

609 ~~or~~

610 ~~(E) Has been commingled with other property that cannot be divided without~~
611 ~~difficulty.~~

612 ~~(2) In addition to any other remedy provided for by law, a district attorney on behalf of~~
613 ~~the state may institute an action in any court of this state or of the United States or any~~
614 ~~of the several states against any person acting with knowledge or any person to whom~~
615 ~~notice of a lien for forfeiture of property has been provided in accordance with subsection~~
616 ~~(j) of this Code section; to whom notice of seizure has been provided in accordance with~~
617 ~~subsection (i) of this Code section; or to whom notice of a civil proceeding alleging~~
618 ~~conduct giving rise to forfeiture under this Code section has been provided, if property~~
619 ~~subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered~~
620 ~~unavailable for forfeiture after the filing of a forfeiture lien notice or notice of seizure or~~
621 ~~after the filing and notice of a civil proceeding alleging conduct giving rise to forfeiture~~
622 ~~under this Code section, as the case may be. The state may recover judgment in an~~
623 ~~amount equal to the value of the lien but not to exceed the fair market value of the~~
624 ~~property or, if there is no lien, in an amount not to exceed the fair market value of the~~
625 ~~property, together with reasonable investigative expenses and attorneys' fees. If a civil~~
626 ~~proceeding is pending, the action must be heard by the court in which the civil proceeding~~
627 ~~is pending.~~

628 ~~(3) A district attorney may file and prosecute in any of the courts of this state or of the~~
629 ~~United States or of any of the several states such civil actions as may be necessary to~~
630 ~~enforce any judgment rendered pursuant to this Code section.~~

631 ~~(4) No person claiming an interest in property subject to forfeiture under this article may~~
632 ~~commence or maintain any action against the state concerning the validity of the alleged~~
633 ~~interest other than as provided in this Code section. Except as specifically authorized by~~
634 ~~this Code section, no person claiming an interest in such property may file any~~
635 ~~counterclaim or cross-claim to any action brought pursuant to this Code section.~~

636 ~~(5) A civil action under this article must be commenced within five years after the last~~
637 ~~conduct giving rise to forfeiture or to the claim for relief became known or should have~~
638 ~~8become known, excluding any time during which either the property or defendant is out~~
639 ~~of the state or in confinement or during which criminal proceedings relating to the same~~
640 ~~conduct are in progress.~~

641 ~~(y) Controlled substances included in Schedule I which are contraband and any controlled~~
642 ~~substance whose owners are unknown are summarily forfeited to the state. The court may~~
643 ~~include in any judgment of conviction under this article an order forfeiting any controlled~~
644 ~~substance involved in the offense to the extent of the defendant's interest.~~

645 ~~(z) This Code section must be liberally construed to effectuate its remedial purposes.~~

646 Civil asset forfeiture is abolished in this state. Any provision of the Official Code of
 647 Georgia Annotated which makes reference to this Code section with regard to a civil asset
 648 forfeiture shall be void and of no effect."

649 **SECTION 3.**

650 Said title is further amended by revising Chapter 16, relating to forfeiture of property used
 651 in burglary or armed robbery, as follows:

652 ~~"16-16-1.~~

653 ~~As used in this chapter, the term:~~

654 ~~(1) 'Armed robbery' means the offense defined in subsection (a) of Code Section~~
 655 ~~16-8-41.~~

656 ~~(2) 'Burglary' means the offense defined in subsection (a) of Code Section 16-7-1.~~

657 ~~16-16-2.~~

658 ~~(a) All motor vehicles, tools, and weapons which are used or intended for use in any~~
 659 ~~manner in the commission of or to facilitate the commission of a burglary or armed robbery~~
 660 ~~are subject to forfeiture under this chapter, but:~~

661 ~~(1) No motor vehicle used by any person as a common carrier in the transaction of~~
 662 ~~business as a common carrier is subject to forfeiture under this Code section unless it~~
 663 ~~appears that the owner or other person in charge of the motor vehicle is a consenting~~
 664 ~~party or privy to the commission of a burglary or armed robbery;~~

665 ~~(2) No motor vehicle is subject to forfeiture under this Code section by reason of any act~~
 666 ~~or omission established by the owner thereof to have been committed or omitted without~~
 667 ~~his or her knowledge or consent, and any co-owner of a motor vehicle without knowledge~~
 668 ~~of or consent to the act or omission is protected to the extent of the interest of such~~
 669 ~~co-owner; and~~

670 ~~(3) A forfeiture of a motor vehicle encumbered by a bona fide security interest is subject~~
 671 ~~to the interest of the secured party if he or she neither had knowledge of or nor consented~~
 672 ~~to the act or omission.~~

673 ~~(b) Property subject to forfeiture under this chapter may be seized by any law enforcement~~
 674 ~~officer of this state or any political subdivision thereof who has the power to make arrests~~
 675 ~~upon process issued by any court having jurisdiction over the property. Seizure without~~
 676 ~~process or warrant may be made if:~~

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

678 ~~(2) The property subject to seizure has been the subject of a prior judgment in favor of~~
 679 ~~the state in a criminal injunction or forfeiture proceeding based upon this chapter; or~~

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

681 ~~(c) Property taken or detained under this Code section shall not be subject to replevin but~~
682 ~~is deemed to be in the custody of the superior court wherein the seizure was made or in~~
683 ~~custody of the superior court where it can be proven that the burglary or armed robbery was~~
684 ~~committed, subject only to the orders and decrees of the court having jurisdiction over the~~
685 ~~forfeiture proceedings. When property is seized under this chapter, law enforcement~~
686 ~~officers seizing such property shall:~~

687 ~~(1) Place the property under seal;~~

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

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

693 ~~(d) When property is seized under this chapter, the sheriff or law enforcement officer~~
694 ~~seizing the same shall report the fact of seizure, within 20 days thereof, to the district~~
695 ~~attorney of the judicial circuit having jurisdiction in the county where the seizure was~~
696 ~~made. Within 60 days from the date he or she receives notice of the seizure, the district~~
697 ~~attorney of the judicial circuit shall cause to be filed in the superior court of the county in~~
698 ~~which the property is seized or detained an in rem complaint for forfeiture of such property~~
699 ~~as provided for in this Code section. The proceedings shall be brought in the name of the~~
700 ~~state by the district attorney of the circuit in which the property was seized, and the~~
701 ~~complaint shall be verified by a duly authorized agent of the state in a manner required by~~
702 ~~the law of this state. The complaint shall describe the property, state its location, state its~~
703 ~~present custodian, state the name of the owner, if known to the duly authorized agent of the~~
704 ~~state, allege the essential elements of the violation upon which the forfeiture is based, and~~
705 ~~shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of~~
706 ~~such a complaint, the court shall promptly cause process to issue to the present custodian~~
707 ~~in possession of the property described in the complaint, commanding him or her to seize~~
708 ~~the property described in the complaint and to hold that property for further order of the~~
709 ~~court. A copy of the complaint shall be served on the owner or lessee, if known. A copy~~
710 ~~of the complaint shall also be served upon any person having a duly recorded security~~
711 ~~interest in or lien upon that property. If the owner or lessee is unknown or resides out of~~
712 ~~the state or departs the state or cannot after due diligence be found within the state or~~
713 ~~conceals himself or herself so as to avoid service, notice of the proceedings shall be~~
714 ~~published once a week for two weeks in the newspaper in which the sheriff's~~
715 ~~advertisements are published. Such publication shall be deemed notice to any and all~~
716 ~~persons having an interest in or right affected by such proceeding and from any sale of the~~
717 ~~property resulting therefrom but shall not constitute notice to any person having a duly~~

718 ~~recorded security interest in or lien upon such property and required to be served under this~~
 719 ~~Code section unless that person is unknown or resides out of the state or departs the state~~
 720 ~~or cannot after due diligence be found within the state or conceals himself or herself to~~
 721 ~~avoid service. An owner of or interest holder in the property may file an answer asserting~~
 722 ~~a claim against the property in the action in rem. Any such answer shall be filed within 30~~
 723 ~~days after the service of the summons and complaint. Where service is made by publication~~
 724 ~~and personal service has not been made, an owner or interest holder shall file an answer~~
 725 ~~within 30 days of the date of final publication. An answer must be verified by the owner~~
 726 ~~or interest holder under penalty of perjury. In addition to complying with the general rules~~
 727 ~~applicable to an answer in civil actions, the answer must set forth:~~

- 728 ~~(1) The caption of the proceedings as set forth in the complaint and the name of the~~
 729 ~~claimant;~~
 730 ~~(2) The address at which the claimant will accept mail;~~
 731 ~~(3) The nature and extent of the claimant's interest in the property;~~
 732 ~~(4) The date, identity of transferor, and circumstances of the claimant's acquisition of the~~
 733 ~~interest in the property;~~
 734 ~~(5) The specific provision of this Code section relied on in asserting that the property is~~
 735 ~~not subject to forfeiture;~~
 736 ~~(6) All essential facts supporting each assertion; and~~
 737 ~~(7) The precise relief sought.~~

738 ~~If at the expiration of the period set forth in this subsection no answer has been filed, the~~
 739 ~~court shall order the disposition of the seized property as provided for in this Code section.~~
 740 ~~If an answer is filed, a hearing must be held within 60 days after service of the complaint~~
 741 ~~unless continued for good cause and must be held by the court without a jury. If the court~~
 742 ~~determines that a claimant defending the complaint knew or by the exercise of ordinary~~
 743 ~~care should have known that the property was to be used for an unlawful purpose~~
 744 ~~subjecting it to forfeiture under this chapter, the court shall order the disposition of the~~
 745 ~~seized property as provided in this Code section and that claimant shall have no claim upon~~
 746 ~~the property or proceeds from the sale thereof.~~

747 ~~(e)(1) When property is forfeited under this chapter, the judge of the superior court in the~~
 748 ~~county where the seizure was made or in the county in which it can be proven that the~~
 749 ~~burglary or armed robbery was committed may dispose of the property by issuing an~~
 750 ~~order to:~~

- 751 ~~(A) Retain it for official use by any agency of this state or any political subdivision~~
 752 ~~thereof;~~
 753 ~~(B) Sell that which is not required to be destroyed by law and which is not harmful to~~
 754 ~~the public. The proceeds shall be used for payment of all proper expenses of the~~

755 ~~proceedings for forfeiture and sale, including but not limited to the expenses of seizure,~~
 756 ~~maintenance of custody, advertising, and court costs; or~~
 757 ~~(C) Require the sheriff or police chief of the county in which the seizure occurred to~~
 758 ~~take custody of the property and remove it for disposition in accordance with law.~~
 759 ~~(2)(A) Money, currency, or proceeds which are realized from the sale or disposition~~
 760 ~~of forfeited property shall after satisfaction of the interest of secured parties and after~~
 761 ~~payment of all costs vest in the local political subdivision whose law enforcement~~
 762 ~~officers seized it. If the property was seized by a municipal law enforcement agency~~
 763 ~~then the money, currency, or proceeds realized from the sale or disposition of the~~
 764 ~~property shall vest in that municipality. If the property was seized by a county law~~
 765 ~~enforcement agency, then the money, currency, or proceeds realized from the sale or~~
 766 ~~disposition of the property shall vest in that county. If the property was seized by joint~~
 767 ~~action of a county law enforcement agency and a municipal law enforcement agency,~~
 768 ~~then the money, currency, or proceeds realized from the sale or disposition of the~~
 769 ~~property shall vest in that county and that municipality and shall be divided equally~~
 770 ~~between the county and municipality. If the property was seized by a state law~~
 771 ~~enforcement agency, then the money, currency, or proceeds realized from the sale or~~
 772 ~~disposition of the property shall vest in the county where the condemnation proceedings~~
 773 ~~are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this~~
 774 ~~subsection for payment of all costs, the local government in which the money, currency,~~
 775 ~~or proceeds realized from the forfeited property vests shall expend or use such funds~~
 776 ~~or proceeds received for any official law enforcement purpose except for the payment~~
 777 ~~of salaries or rewards to law enforcement personnel, at the discretion of the chief officer~~
 778 ~~of the local law enforcement agency, or to fund victim-witness assistance programs.~~
 779 ~~Such property shall not be used to supplant any other local, state, or federal funds~~
 780 ~~appropriated for staff or operations.~~
 781 ~~(B) Any local law enforcement agency receiving property under this subsection shall~~
 782 ~~submit an annual report to the local governing authority. The report shall be submitted~~
 783 ~~with the agency's budget request and shall itemize the property received during the~~
 784 ~~fiscal year and the utilization made thereof. Reserved.~~"

785 **SECTION 4.**

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

788 **SECTION 5.**

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