

The House Committee on Judiciary offers the following substitute to SB 181:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 13 and Chapter 1 of Title 16 of the Official Code of Georgia
2 Annotated, relating to general provisions for contracts and crimes and offenses, respectively,
3 so as to change provisions relative to the payment of attorney's fees under certain
4 circumstances; to provide for procedure; to prohibit contingent compensation under certain
5 circumstances; to provide for related matters; to provide for an effective date and
6 applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 1 of Title 13 of the Official Code of Georgia Annotated, relating to contracts, is
10 amended by revising Code Section 13-1-11, relating to the validity and enforcement of
11 obligations to pay attorney's fees upon notes or other evidence of indebtedness, as follows:
12 "13-1-11.

13 (a) Obligations to pay attorney's fees upon any note or other evidence of indebtedness, in
14 addition to the rate of interest specified therein, shall be valid and enforceable and
15 collectable as a part of such debt if such note or other evidence of indebtedness is collected
16 by or through an attorney after maturity, subject to subsection (b) of this Code section and
17 to the following provisions:

18 (1) If such note or other evidence of indebtedness provides for attorney's fees in some
19 specific percent of the principal and interest owing thereon, such provision and obligation
20 shall be valid and enforceable up to but not in excess of 15 percent of the principal and
21 interest owing on said note or other evidence of indebtedness;

22 (2) If such note or other evidence of indebtedness provides for the payment of reasonable
23 attorney's fees without specifying any specific percent, such provision shall be construed
24 to mean 15 percent of the first \$500.00 of principal and interest owing on such note or
25 other evidence of indebtedness and 10 percent of the amount of principal and interest
26 owing thereon in excess of \$500.00; and

27 (3) The holder of the note or other evidence of indebtedness or his or her attorney at law
 28 shall, after maturity of the obligation, notify in writing the maker, endorser, or party
 29 sought to be held on said obligation that the provisions relative to payment of attorney's
 30 fees in addition to the principal and interest shall be enforced and that such maker,
 31 endorser, or party sought to be held on said obligation has ten days from the receipt of
 32 such notice to pay the principal and interest without the attorney's fees. If the maker,
 33 endorser, or party sought to be held on any such obligation shall pay the principal and
 34 interest in full before the expiration of such time, then the obligation to pay the attorney's
 35 fees shall be void and no court shall enforce the agreement. The refusal of a debtor to
 36 accept delivery of the notice specified in this paragraph shall be the equivalent of such
 37 notice.

38 (b)(1) If, in a civil action, application of the provisions of paragraph (2) of subsection (a)
 39 of this Code section will result in an award of attorney's fees in an amount greater than
 40 \$20,000.00, the party required to pay such fees may, prior to the entry of judgment,
 41 petition the court seeking a determination as to the reasonableness of such attorney's fees.

42 (2) In response to a petition filed under paragraph (1) of this subsection, the party
 43 requesting the attorney's fees shall submit an affidavit to the court with evidence of
 44 attorney's fees, and the party required to pay such fees may respond to such affidavit.

45 (3) The court may hold a hearing to decide the matter of attorney's fees or may award
 46 attorney's fees based on the written evidence submitted to the court. The amount of
 47 attorney's fees awarded shall be an amount found by the court to be reasonable and
 48 necessary for asserting the rights of the party requesting attorney's fees.

49 (4) This subsection shall not apply to a party against whom a default judgment is to be
 50 entered pursuant to Code Section 9-11-55.

51 (5) A civil action instituted solely for the purpose of invoking this subsection shall be
 52 void ab initio.

53 ~~(b)~~(c) Obligations to pay attorney's fees contained in security deeds and bills of sale to
 54 secure debt shall be subject to this Code section where applicable."

55 SECTION 2.

56 Chapter 1 of Title 16 of the Official Code of Georgia Annotated, relating to general
 57 provisions for crimes and offenses, is amended by adding a new Code section to read as
 58 follows:

59 "16-1-12.

60 (a) In any forfeiture action brought pursuant to this title, an attorney appointed by the
 61 Attorney General or district attorney as a special assistant attorney general, special assistant
 62 district attorney, or other attorney appointed to represent this state in such forfeiture action

63 shall not be compensated on a contingent basis by a percentage of assets which arise or are
64 realized from such forfeiture action. Such attorneys shall also not be compensated on a
65 contingent basis by an hourly, fixed fee, or other arrangement which is contingent on a
66 successful prosecution of such forfeiture action.

67 (b) Nothing in this Code section shall be construed as prohibiting or otherwise restricting
68 the Attorney General or a district attorney from appointing special assistants or other
69 attorneys to assist in the prosecution of any action brought pursuant to this title."

70 **SECTION 3.**

71 This Act shall become effective on July 1, 2011, and Section 1 of this Act shall apply to
72 contracts entered on or after July 1, 2011.

73 **SECTION 4.**

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