

Senate Bill 350

By: Senators Balfour of the 9th, Sims of the 12th, Hamrick of the 30th and Hooks of the 14th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 16 of the Official Code of Georgia Annotated, relating to
2 forfeiture of property used in burglary or armed robbery, so as to provide for the disposition
3 of firearms used in burglaries or armed robberies; to amend Article 3 of Chapter 5 of Title
4 17 of the Official Code of Georgia Annotated, relating to disposition of seized property, so
5 as to provide for the disposition of firearms seized in criminal investigations and surplus
6 firearms of law enforcement agencies; to provide for related matters; to provide for an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 16 of Title 16 of the Official Code of Georgia Annotated, relating to forfeiture of
11 property used in burglary or armed robbery, is amended by revising subsection (a) of Code
12 Section 16-16-2, relating to motor vehicles, tools, and weapons subject to forfeiture, grounds
13 for seizure, custody of property, duties of officers, proceedings for forfeiture, and disposition
14 of property, as follows:

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

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

22 (2) No motor vehicle ~~is~~ shall be subject to forfeiture under this Code section by reason
23 of any act or omission established by the owner thereof to have been committed or
24 omitted without his or her knowledge or consent, and any co-owner of a motor vehicle
25 without knowledge of or consent to the act or omission ~~is~~ shall be protected to the extent
26 of the interest of such co-owner; and

27 (3) A forfeiture of a motor vehicle encumbered by a bona fide security interest ~~is~~ shall
 28 be subject to the interest of the secured party if he or she neither had knowledge of or nor
 29 consented to the act or omission.
 30 Notwithstanding any provisions of this Code section to the contrary, any firearm forfeited
 31 under this chapter shall be disposed of in accordance with the provisions of Code
 32 Section 17-5-52."

33 SECTION 2.

34 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
 35 disposition of seized property, is amended by revising Code Section 17-5-51, relating to
 36 forfeiture of weapons used in commission of crime, possession of which constitutes crime
 37 or delinquent act, or illegal concealment generally, as follows:

38 "17-5-51.

39 (a) Except as provided in subsection (b) of this Code section, any ~~Any~~ device which is
 40 used as a weapon in the commission of any crime against any person or any attempt to
 41 commit any crime against any person, any weapon the possession or carrying of which
 42 constitutes a crime or delinquent act, and any weapon for which a person has been
 43 convicted of violating Code Section 16-11-126 are declared to be contraband and are
 44 forfeited. For the purposes of this article, a motor vehicle shall not be deemed to be a
 45 weapon or device and shall not be contraband or forfeited under this article; provided,
 46 however, that this exception shall not be construed to prohibit the seizure, condemnation,
 47 and sale of motor vehicles used in the illegal transportation of alcoholic beverages.

48 (b) A firearm that is the property of a person other than the perpetrator of the crime or
 49 delinquent act shall be returned to such person when such firearm is no longer needed for
 50 evidentiary purposes, provided that the person who owned such firearm did not know or
 51 in the exercise of ordinary care would not have known that such firearm would be used by
 52 the perpetrator for an unlawful purpose and the person is authorized by state and federal
 53 law to receive and possess such firearm."

54 SECTION 3.

55 Said article is further amended by revising subsection (a) of Code Section 17-5-52, relating
 56 to sale or destruction of weapons used in commission of crime or delinquent act involving
 57 possession, sale of weapons not the property of the defendant, disposition of proceeds of sale,
 58 and record keeping, as follows:

59 "(a) When a final judgment is entered finding a defendant guilty of the commission or
 60 attempted commission of a crime against any person or guilty of the commission of a crime
 61 or delinquent act involving the illegal possession or carrying of a weapon, any device

62 which was used as a weapon in the commission of the crime or delinquent act shall be
 63 turned over by the person having custody of the weapon or device to the sheriff, chief of
 64 police, or other executive officer of the law enforcement agency that originally confiscated
 65 the weapon or device when the weapon or device is no longer needed for evidentiary
 66 purposes. ~~Within~~ With the exception of firearms which shall be disposed of in accordance
 67 with Code Section 17-5-52.1, within 90 days after receiving the weapon or device, the
 68 sheriff, chief of police, or other executive officer of the law enforcement agency shall
 69 retain the weapon or device for use in law enforcement, destroy the same, or sell the
 70 weapon or device pursuant to judicial sale as provided in Article 7 of Chapter 13 of Title 9
 71 or by any commercially feasible means, provided that; if the weapon or device used as a
 72 weapon in the crime is not the property of the defendant, there shall be no forfeiture of such
 73 weapon or device."

74

SECTION 4.

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

76 "17-5-52.1.

77 (a) Notwithstanding any other provision of law to the contrary and subject to the duty to
 78 return firearms to innocent owners pursuant to subsection (b) of Code Section 17-5-51 and
 79 this Code section, all firearms, as defined in paragraph (3) of Code Section 16-11-171, that
 80 are forfeited or abandoned to any law enforcement agency of this state or a political
 81 subdivision of this state, including the Department of Natural Resources, or that are
 82 otherwise acquired by the state or a political subdivision and are no longer needed, shall
 83 be disposed of as provided in this Code section.

84 (b) Prior to the disposal of any firearm that has been forfeited or abandoned to the state or
 85 a political subdivision of the state, the agency with custody of the firearm shall use best
 86 efforts to determine if the firearm has been lost by, stolen from, or otherwise illegally
 87 obtained from an innocent owner and, if so, shall return the firearm to its innocent owner,
 88 if ascertainable, unless that person is ineligible to receive or possess a firearm under state
 89 or federal law.

90 (c)(1) Except as provided in subsection (b) of this Code section, the custodial agency
 91 shall dispose of the firearms that it receives under subsection (a) of this Code section by
 92 sale at public auction to persons licensed as firearms collectors, dealers, importers, or
 93 manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and Chapter 16 of
 94 Title 43 and who are authorized to receive such firearms under the terms of such license.

95 (2) Auctions required by this subsection may occur online on a rolling basis or at live
 96 events, but in no event shall occur less frequently than once every six months during any
 97 time in which the agency has an inventory of saleable firearms.

98 (3) The agency shall retain only such proceeds as are necessary to cover the costs of
 99 administering this Code section, with any surplus to be transferred to the general fund of
 100 the jurisdiction in which the agency is located, provided that an agency may be
 101 reimbursed for any firearms formerly in use by the agency that are sold under this Code
 102 section.

103 (4) Employees of the agency shall not be eligible to bid on the firearms at an auction
 104 conducted under this Code section and, except for the costs of administration authorized
 105 under paragraph (3) of this subsection, neither the agency nor its employees shall retain
 106 any proceeds from any sale required by this Code section nor shall the agency or its
 107 employees retain any firearm required to be sold under this Code section.

108 (d) The requirements of subsection (c) of this Code section shall not apply to a firearm if
 109 no bids from eligible recipients are received within six months from when bidding opened
 110 on such firearm or that the sheriff, chief of police, agency director, or designee of such
 111 official certifies is unsafe for use because of wear, damage, age, or modification. Any such
 112 firearm shall, at the discretion of the sheriff, chief of police, agency director, or designee
 113 of such official, be transferred to the Division of Forensic Sciences of the Georgia Bureau
 114 of Investigation for training or experimental purposes or to a museum or historical society
 115 that displays such items to the public and is lawfully eligible to receive the item or be
 116 destroyed.

117 (e) All agencies subject to the provisions of this Code section shall keep records of the
 118 firearms acquired and disposed of as herein provided as well as the proceeds of the sales
 119 thereof and the disbursement of such proceeds and shall maintain such records for not less
 120 than ten years from the date on which a firearm is disposed of or on which a disbursement
 121 of funds is made, as the case may be.

122 (f) Neither the state nor any political subdivision of the state nor any of its officers, agents,
 123 or employees shall be liable to any person, including the purchaser of a firearm, for
 124 personal injuries or damage to property arising from the sale of a firearm under this Code
 125 section unless the state or political subdivision acted with gross negligence or
 126 recklessness."

127 **SECTION 5.**

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

130 **SECTION 6.**

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