

Senate Bill 350

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

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

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

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

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

27 without knowledge of or consent to the act or omission ~~is~~ shall be protected to the extent
28 of the interest of such co-owner; and

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

32 Notwithstanding any provisions of this Code section to the contrary, any firearm forfeited
33 under this chapter shall be disposed of in accordance with the provisions of Code
34 Section 17-5-52."

35 SECTION 2.

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

40 "17-5-51.

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

50 (b) As used in this Code section, the term:

51 (1) 'Firearm' shall have the same meaning as set forth in Code Section 16-11-171.

52 (2) 'Innocent owner' means a person who:

53 (A) Did not beforehand know or in the exercise of ordinary care would not have known
54 of the conduct which caused his or her firearm to be forfeited, seized, or abandoned to
55 any law enforcement agency of this state or a political subdivision of this state,
56 including the Department of Natural Resources;

57 (B) Did not participate in the commission of a crime or delinquent act involving his or
58 her firearm;

59 (C) Legally owned and presently owns the firearm forfeited, seized, or abandoned; and

60 (D) Is authorized by state and federal law to receive and possess his or her firearm.

61 (c) A firearm that is the property of an innocent owner shall be returned to such person
62 when such firearm is no longer needed for evidentiary purposes.

63 (d) The costs of returning the firearm to the innocent owner shall be borne by the innocent
 64 owner. Such costs shall be limited to the actual costs of shipping and associated costs from
 65 any transfer and background check fees charged when delivering the firearm to the
 66 innocent owner.

67 (e) If six months elapse after notification to the innocent owner of the possession of the
 68 firearm by a political subdivision or state custodial agency and the innocent owner fails to
 69 bear the costs of return of his or her firearm or fails to respond to the political subdivision
 70 or state custodial agency, then the political subdivision or state custodial agency may
 71 follow the procedures under subsection (d) of Code Section 17-5-52.1."

72 **SECTION 3.**

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

77 "(a) When a final judgment is entered finding a defendant guilty of the commission or
 78 attempted commission of a crime against any person or guilty of the commission of a crime
 79 or delinquent act involving the illegal possession or carrying of a weapon, any device
 80 which was used as a weapon in the commission of the crime or delinquent act shall be
 81 turned over by the person having custody of the weapon or device to the sheriff, chief of
 82 police, or other executive officer of the law enforcement agency that originally confiscated
 83 the weapon or device when the weapon or device is no longer needed for evidentiary
 84 purposes. With the exception of firearms, as such term is defined in Code Section 17-5-51,
 85 which shall be disposed of in accordance with Code Section 17-5-52.1, within ~~Within~~ 90
 86 days after receiving the weapon or device, the sheriff, chief of police, or other executive
 87 officer of the law enforcement agency shall retain the weapon or device for use in law
 88 enforcement, destroy the same, or sell the weapon or device pursuant to judicial sale as
 89 provided in Article 7 of Chapter 13 of Title 9 or by any commercially feasible means,
 90 provided that; if the weapon or device used as a weapon in the crime is not the property of
 91 the defendant, there shall be no forfeiture of such weapon or device."

92 **SECTION 4.**

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

94 "17-5-52.1.

95 (a) As used in this Code section, the terms 'firearm' and 'innocent owner' shall have the
 96 same meaning as set forth in Code Section 17-5-51.

97 (b) Notwithstanding any other provision of law to the contrary and subject to the duty to
98 return firearms to innocent owners pursuant to subsection (c) of Code Section 17-5-51 and
99 this Code section, all firearms that are forfeited or abandoned to any law enforcement
100 agency of this state or a political subdivision of this state, including the Department of
101 Natural Resources, or that are otherwise acquired by the state or a political subdivision and
102 are no longer needed, shall be disposed of as provided in this Code section.

103 (c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state or
104 a political subdivision of the state, the political subdivision or state custodial agency with
105 possession of the firearm shall use its best efforts to determine if the firearm has been lost
106 by, stolen from, or otherwise illegally obtained from an innocent owner and, if so, shall
107 return the firearm to its innocent owner in accordance with Code Section 17-5-51.

108 (d) If an innocent owner of a firearm cannot be located or after proper notification he or
109 she fails to pay for the return of his or her firearm, if the political subdivision is:

110 (1) A municipal corporation, it shall dispose of its firearms as provided for in Code
111 Section 36-37-6; provided, however, that municipal corporations shall not have the right
112 to reject any and all bids or to cancel any proposed sale of such firearms, and all sales
113 shall be to persons who are licensed as firearms collectors, dealers, importers, or
114 manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and Chapter 16 of
115 Title 43 and who are authorized to receive such firearms under the terms of such license.
116 Any political subdivision which disposes of firearms shall use proceeds from the sale of
117 a firearm as are necessary to cover the costs of administering this Code section, with any
118 surplus to be transferred to the general fund of the political subdivision; or

119 (2) Not a municipal corporation, the state custodial agency or the political subdivision
120 shall dispose of its firearms by sale at public auction to persons who are licensed as
121 firearms collectors, dealers, importers, or manufacturers under the provisions of 18
122 U.S.C. Section 921, et seq., and Chapter 16 of Title 43 and who are authorized to receive
123 such firearms under the terms of such license. A state custodial agency shall retain only
124 such proceeds as are necessary to cover the costs of administering this Code section, with
125 any surplus to be transferred to the general fund of the state, provided that a state
126 custodial agency may be reimbursed for any firearms formerly in use by the state
127 custodial agency that are sold under this Code section.

128 (e) Auctions required by paragraph (2) of subsection (d) of this Code section may occur
129 online on a rolling basis or at live events, but in no event shall such auctions occur less
130 frequently than once every six months during any time in which the political subdivision
131 or state custodial agency has an inventory of saleable firearms.

132 (f) The requirements of subsection (d) of this Code section shall not apply to a firearm if
133 no bids from eligible recipients are received within six months from when bidding opened

134 on such firearm or the sheriff, chief of police, agency director, or designee of such official
 135 certifies the firearm is unsafe for use because of wear, damage, age, or modification or
 136 because any federal or state law prohibits the sale or distribution of such firearm. Any such
 137 firearm shall, at the discretion of the sheriff, chief of police, agency director, or designee
 138 of such official, be transferred to the Division of Forensic Sciences of the Georgia Bureau
 139 of Investigation, a municipal or county law enforcement forensic laboratory for training or
 140 experimental purposes, or be destroyed.

141 (g) All agencies subject to the provisions of this Code section shall keep records of the
 142 firearms acquired and disposed of as provided by this Code section as well as records of
 143 the proceeds of the sales thereof and the disbursement of such proceeds in accordance with
 144 records retention schedules adopted in accordance with Article 5 of Chapter 18 of Title 50,
 145 the 'Georgia Records Act.'

146 (h) Neither the state nor any political subdivision of the state nor any of its officers, agents,
 147 or employees shall be liable to any person, including the purchaser of a firearm, for
 148 personal injuries or damage to property arising from the sale of a firearm under this Code
 149 section unless the state or political subdivision acted with gross negligence or willful or
 150 wanton misconduct."

151 **SECTION 5.**

152 Said article is further amended by revising subsection (a) of Code Section 17-5-54, relating
 153 to the disposition of personal property in the custody of law enforcement agencies, as
 154 follows:

155 "(a)(1) Except as provided in Code Sections 17-5-55 and 17-5-56 and subsections (d),
 156 (e), and (f) of this Code section, when a law enforcement agency assumes custody of any
 157 personal property which is the subject of a crime or has been abandoned or is otherwise
 158 seized, a disposition of such property shall be made in accordance with the provisions of
 159 this Code section. When a final verdict and judgment is entered finding a defendant
 160 guilty of the commission of a crime, any personal property used as evidence in the trial
 161 shall be returned to the rightful owner of the property within 30 days following the final
 162 judgment; provided, however, that if the judgment is appealed or if the defendant files a
 163 motion for a new trial and if photographs, videotapes, or other identification or analysis
 164 of the personal property will not be sufficient evidence for the appeal of the case or new
 165 trial of the case, such personal property shall be returned to the rightful owner within 30
 166 days of the conclusion of the appeal or new trial, whichever occurs last. All personal
 167 property in the custody of a law enforcement agency, including personal property used
 168 as evidence in a criminal trial, which is unclaimed after a period of 90 days following its
 169 seizure, or following the final verdict and judgment in the case of property used as

170 evidence, and which is no longer needed in a criminal investigation or for evidentiary
171 purposes in accordance with Code Section 17-5-55 or 17-5-56 shall be subject to
172 disposition by the law enforcement agency. The sheriff, chief of police, or other
173 executive officer of a law enforcement agency shall make application to the superior
174 court for an order to retain, sell, or discard such property. In the application the officer
175 shall state each item of personal property to be retained, sold, or discarded. Upon the
176 superior court's granting an order for the law enforcement agency to retain such property,
177 the law enforcement agency shall retain such property for official use. Upon the superior
178 court's granting an order which authorizes that the property be discarded, the law
179 enforcement agency shall dispose of the property as other salvage or nonserviceable
180 equipment. Upon the superior court's granting an order for the sale of personal property,
181 the officer shall provide for a notice to be placed once a week for four weeks in the legal
182 organ of the county specifically describing each item and advising possible owners of
183 items of the method of contacting the law enforcement agency; provided, however, that
184 miscellaneous items having an estimated fair market value of \$75.00 or less may be
185 advertised or sold, or both, in lots. Such notice shall also stipulate a date, time, and place
186 said items will be placed for public sale if not claimed. Such notice shall also stipulate
187 whether said items or groups of items are to be sold in blocks, by lot numbers, by entire
188 list of items, or separately."

189 **SECTION 6.**

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

192 **SECTION 7.**

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