

Senate Bill 181

By: Senators Bethel of the 54th and Williams of the 19th

**AS PASSED**

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 (d) The provisions of this section shall not authorize the recovery of attorneys fees in any  
 56 tort claim."

57 **SECTION 2.**

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

61 "16-1-12.

62 (a) In any forfeiture action brought pursuant to this title, an attorney appointed by the  
63 Attorney General or district attorney as a special assistant attorney general, special assistant  
64 district attorney, or other attorney appointed to represent this state in such forfeiture action  
65 shall not be compensated on a contingent basis by a percentage of assets which arise or are  
66 realized from such forfeiture action. Such attorneys shall also not be compensated on a  
67 contingent basis by an hourly, fixed fee, or other arrangement which is contingent on a  
68 successful prosecution of such forfeiture action.

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

72 **SECTION 3.**

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

75 **SECTION 4.**

76 All laws and parts of laws in conflict with this Act are repealed.