

House Bill 106

By: Representatives Scott of the 76th, Schofield of the 63rd, and Davis of the 87th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 9 of the Official Code of Georgia Annotated, the "Uniform
2 Civil Forfeiture Procedure Act," so as to provide for hearings upon the seizure of certain
3 property; to provide that certain properties shall not be subject to forfeiture; to provide for
4 a definition; to provide for criteria; to provide for exceptions; to provide for related matters;
5 to provide for a short title; to repeal conflicting laws; and for other 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 "Innocent Georgian Process Improvement
9 Act."

10 **SECTION 2.**

11 Chapter 16 of Title 9 of the Official Code of Georgia Annotated, the "Uniform Civil
12 Forfeiture Procedure Act," is amended by revising Code Section 9-16-7, relating to reporting
13 of seizure and role of state attorney, as follows:

14 "9-16-7.

15 (a)(1) When property that is intended to be forfeited is taken by any law enforcement
16 officer of this state, within 30 days thereof the seizing officer shall, in writing, report the
17 fact of seizure and conduct an inventory and estimate the value of the property seized and
18 provide such information to the district attorney of the judicial circuit having jurisdiction
19 in the county where the seizure was made.

20 (2)(A) As used in this paragraph, the term 'controlled substance' shall have the same
21 meaning as set forth in Code Section 16-13-21. Such term shall not include contraband.

22 (B) When property seized under subsection (a) of this Code section was used in or
23 derived directly from, or is alleged to have been used in or derived directly from, a
24 crime involving a controlled substance, any person with an interest in such property
25 may, upon such seizure, petition the court for a hearing. The court shall hold such
26 hearing no later than seven days after such petition is filed, and such hearing may be
27 held in conjunction with any other pretrial hearing. The court shall return such property
28 if, as the result of such hearing, the court finds that the seizure was invalid, the property
29 is not reasonably required to be held as evidence, or the final judgment in the matter
30 likely will be in favor of the defendant or any other person with an interest in the
31 property.

32 (b) Except as provided for under Code Section 9-16-7.1, within ~~Within~~ 60 days from the
33 date of seizure, the state attorney shall:

34 (1) Initiate a quasi-judicial forfeiture as provided for in Code Section 9-16-11; or

35 (2) File a complaint for forfeiture as provided for in Code Section 9-16-12 or 9-16-13.

36 (c) If the seizing officer fails to comply with paragraph (1) of subsection (a) of this Code
37 section or the state attorney fails to comply with subsection (b) of this Code section, the
38 property shall be released on the request of an owner or interest holder, pending a
39 complaint for forfeiture pursuant to Code Section 9-16-12 or 9-16-13, unless the property
40 is being held as evidence. When the court releases property pursuant to this subsection,

41 upon application by the state attorney, it may impose conditions as specified in paragraph
42 (1) of Code Section 9-16-14."

43 **SECTION 3.**

44 Said chapter is further amended by adding a new Code section to read as follows:

45 "9-16-7.1.

46 (a) As used in this Code section, the term 'controlled substance' shall have the same
47 meaning as set forth in Code Section 16-13-21. Such term shall not include contraband.

48 (b) No property used in or derived directly from, or that is alleged to have been used in or
49 derived directly from, a crime involving a controlled substance and that is encumbered by
50 a security interest shall be forfeited. The state attorney shall summarily return such
51 property to the secured interest holder, other than the defendant or other owner, up to the
52 value of the interest. If the property is not summarily returned, the secured interest holder
53 may petition the court at any time before the court enters judgment in the criminal
54 prosecution. The court shall hear the petition within 30 days after its filing. If the secured
55 interest holder establishes by a preponderance of the evidence the validity of the security
56 interest, the state attorney shall relinquish claims to the property, up to the value of the
57 interest, and the court shall return the interest to the secured interest holder; provided,
58 however, that the property shall not be returned to the secured interest holder if:

59 (1) The security interest is invalid;

60 (2) The interest resulted from a fraudulent conveyance; or

61 (3) The secured interest holder consented to the use of the property in the crime for
62 which the defendant is charged.

63 (c)(1) No property used in or derived directly from, or that is alleged to have been used
64 in or derived directly from, a crime involving a controlled substance and that is owned
65 by a person other than the defendant shall be forfeited. The state attorney shall
66 summarily return such property to such person. If the property is not summarily returned,

67 such person may petition the court at any time before the court enters judgment in the
68 criminal prosecution. Such petition shall set forth:

69 (A) The claimant's right, title, or interest in the property;

70 (B) The date and circumstances of the claimant's acquisition of the right, title, or
71 interest in the property;

72 (C) Additional facts supporting the petition; and

73 (D) The relief sought by the claimant.

74 (2) No fee shall be assessed for a petition filed under paragraph (1) of this subsection.

75 (3) The court shall hear the petition within 30 days after its filing. If such person
76 establishes by a preponderance of the evidence the validity of his or her interest in the
77 property, the state attorney shall relinquish claims to the property, and the court shall
78 return the property to such person; provided, however, that the property shall not be
79 returned to such person if:

80 (A) The claimant's interest in the property is invalid;

81 (B) The claimant had actual knowledge that the property was used in or derived
82 directly from the crime for which the defendant is charged;

83 (C) The claimant was willfully blind to the crime for which the defendant is charged;
84 or

85 (D) The claimant was not a bona fide purchaser of the property.

86 (d) Nothing in this Code section shall prohibit the claimant from providing information to
87 any party or testifying in any trial as to facts the claimant knows.

88 (e) The defendant or convicted offender may invoke the privilege against
89 self-incrimination or marital privilege during the forfeiture proceeding. The trier of fact
90 may draw an adverse inference from the invocation of such privilege."

91 **SECTION 4.**

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