

House Bill 278

By: Representatives Turner of the 21st, Tarvin of the 2nd, Dreyer of the 59th, Caldwell of the 20th, Boddie of the 62nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the
2 "Uniform Civil Forfeiture Procedure Act," so as to require the conclusion of criminal
3 proceedings prior to civil forfeiture proceedings; to provide for exceptions; to prohibit the
4 outsourcing of forfeiture litigation to federal agencies as a circumvention to the forfeiture
5 laws of this state; to provide for a definition; to amend Chapter 1 of Title 16 of the Official
6 Code of Georgia Annotated, relating to general provisions for crimes and offenses, so as to
7 change provisions relating to restrictions on contingency fee compensation of an attorney
8 appointed to represent the state in forfeiture actions; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the "Uniform
13 Civil Procedure Act," is amended in Code Section 9-16-15, relating to stay of civil forfeiture
14 proceedings during pendency of criminal proceedings, by revising subsections (a) and (b) as
15 follows:

16 ~~"(a) For good cause shown by the state or the owner or interest holder of the property, the~~
17 ~~court may~~ The court shall stay civil forfeiture proceedings during the pendency of criminal
18 proceedings resulting from a related indictment or accusation until such time as the
19 criminal proceedings result in a plea of guilty, a conviction after trial, or an acquittal after
20 trial or are otherwise concluded before the trial court unless the owner or interest holder
21 of the property waives such stay.

22 (b) An acquittal or dismissal in a criminal proceeding shall ~~not~~ preclude civil forfeiture
23 proceedings."

24 style="text-align:center">**SECTION 2.**

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

26 "9-16-19.1.

27 (a) As used in this Code section, the term 'law enforcement agency' shall have the same
 28 meaning as provided for under Code Section 9-16-19.

29 (b) No state attorney or law enforcement agency shall transfer or otherwise relinquish
 30 possession of property seized under this chapter or as a result of a forfeiture action brought
 31 pursuant to Title 3, 7, 10, 12, 16, 17, 27, 40, 46, 48, 49, or 52 to a federal agency by way
 32 of adoption of such seized property or other means by the federal agency for the purpose
 33 of such property's forfeiture under the Controlled Substances Act, 21 U.S.C. 801, et seq.

34 (c) No state attorney or law enforcement agency shall accept payment of any kind or
 35 distribution of forfeiture proceeds resulting from a joint task force or other
 36 multijurisdictional collaboration unless the aggregate net equity value of the property and
 37 currency seized in a case, as found by the court, exceeds \$100,000.00, excluding the value
 38 of contraband.

39 (d) Nothing in subsection (b) or (c) of this Code section shall be construed to:

40 (1) Restrict a state attorney or law enforcement agency from acting alone or
 41 collaborating with a federal or other agency to seize property that such state attorney or
 42 law enforcement agency has probable cause to believe is the proceeds or instruments of
 43 a crime that subjects such property to forfeiture; or

44 (2) Prohibit the federal government, acting without involvement of a state attorney or
 45 law enforcement agency, from seizing property and seeking forfeiture under federal law."

46 **SECTION 3.**

47 Chapter 1 of Title 16 of the Official Code of Georgia Annotated, relating to general
 48 provisions for crimes and offenses, is amended by revising Code Section 16-1-12, relating
 49 to restrictions on contingency fee compensation of an attorney appointed to represent the
 50 state in forfeiture actions, as follows:

51 "16-1-12.

52 (a) In any forfeiture action brought pursuant to this title or Title 3, 7, 10, 12, 17, 27, 40,
 53 46, 48, 49, or 52, an attorney appointed by the Attorney General or district attorney as a
 54 special assistant attorney general, special assistant district attorney, or other attorney
 55 appointed to represent this state in such forfeiture action shall not be compensated on a:

56 (1) A contingent basis by a percentage of assets which arise or are realized from such
 57 forfeiture action. ~~Such attorneys shall also not be compensated on a:~~

58 (2) An hourly basis that is capped by the value of the assets which arise or are realized
 59 from such forfeiture action; or

60 (3) An ~~contingent basis by an~~ hourly basis, fixed fee, or other arrangement which is
 61 contingent on a successful prosecution of such forfeiture action.

62 (b) When an attorney is appointed by the Attorney General or district attorney as a special
63 assistant attorney general, special assistant district attorney, or other attorney to represent
64 this state in a forfeiture action, such appointment and the terms of compensation for each
65 case to which he or she is appointed shall be in writing and filed with the clerk of court,
66 and copies shall be provided to the presiding judge and the Prosecuting Attorneys' Council
67 of the State of Georgia.

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

71 **SECTION 4.**

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