

Senate Bill 139

By: Senators Butler of the 55th, Parent of the 42nd, Jones II of the 22nd, Orrock of the 36th,  
Davenport of the 44th 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 authorize the seizure of property subject to  
3 civil forfeiture only upon a criminal conviction; to provide for a definition; to provide for  
4 related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the Uniform  
8 Civil Forfeiture Procedure Act, is amended by revising Code Section 9-16-6, relating to  
9 seizure of property, as follows:

10 "9-16-6.

11 (a) As used in this Code section, the term 'conviction' means the result from a verdict or  
12 plea of guilty, including a plea of nolo contendere.

13 (b) Property subject to forfeiture may be seized by any law enforcement officer of this  
14 state or any political subdivision thereof who has power to make arrests or execute process  
15 or a search warrant issued by any court having jurisdiction over the property. A court  
16 issued warrant authorizing seizure of property subject to forfeiture may be issued on an

affidavit demonstrating that ~~probable cause exists for its forfeiture~~ a conviction resulting from a related indictment or accusation in a criminal proceeding has occurred or that the property has been the subject of a previous final judgment of forfeiture in the courts of the United States. The court may order that the property be seized on such terms and conditions as are reasonable.

~~(b) Property subject to forfeiture may be seized without process if probable cause exists to believe that the property is subject to forfeiture or the seizure is incident to an arrest or search pursuant to a search warrant or to an inspection under an inspection warrant.~~

(c) The court's jurisdiction over any civil forfeiture proceeding shall not be affected by a seizure in violation of the Constitution of Georgia or the Constitution of the United States made with process or in a good faith belief of probable cause."

## SECTION 2.

Said chapter is further amended by revising Code Section 9-16-14, relating to restraining order, injunction, and other measures to seize, maintain, or preserve property and hearing, as follows:

"9-16-14.

In conjunction with any civil forfeiture proceeding or criminal proceeding involving forfeiture:

(1) The court, upon application of the state attorney, may enter any restraining order or injunction; require the execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any action to seize, secure, maintain, or preserve the availability of property subject to forfeiture, including issuing a warrant for its seizure and writ of attachment, whether before or after the filing of a complaint for forfeiture; and

41 ~~(2) A temporary restraining order under this Code section may be entered on application~~  
42 ~~of the state attorney, without notice or an opportunity for a hearing, if the state attorney~~  
43 ~~demonstrates that:~~

44 ~~(A) There is probable cause to believe that the property subject to the order, in the~~  
45 ~~event of final judgment or conviction, would be subject to forfeiture; and~~

46 ~~(B) Provision of notice would jeopardize the availability of the property for forfeiture;~~

47 ~~(3) Notice of the entry of a restraining order and an opportunity for a hearing shall be~~  
48 ~~afforded to persons known to have an interest in the property. The hearing shall be held~~  
49 ~~at the earliest possible date consistent with subsection (b) of Code Section 9-11-65 and~~  
50 ~~shall be limited to the issues of whether:~~

51 ~~(A) There is a probability that the state will prevail on the issue of forfeiture and that~~  
52 ~~failure to enter the order will result in the property's being destroyed, conveyed,~~  
53 ~~encumbered, removed from the jurisdiction of the court, concealed, or otherwise made~~  
54 ~~unavailable for forfeiture; and~~

55 ~~(B) The need to preserve the availability of the property through the entry of the~~  
56 ~~requested order outweighs the hardship on any owner or interest holder against whom~~  
57 ~~the order is to be entered;~~

58 ~~(4) If property is seized for forfeiture or a forfeiture lien is filed without a previous~~  
59 ~~judicial determination of probable cause or order of forfeiture or a hearing under~~  
60 ~~paragraph (2) of this Code section, the court, on an application filed by an owner or or~~  
61 ~~interest holder in the property within 30 days after notice of its seizure or forfeiture lien~~  
62 ~~or actual knowledge of such seizure or lien, whichever is earlier, and complying with the~~  
63 ~~requirements for an answer to an in rem complaint, and after five days' notice to the~~  
64 ~~district attorney of the judicial circuit where the property was seized or, in the case of a~~  
65 ~~forfeiture lien, to the state attorney filing such lien, may issue an order to show cause to~~  
66 ~~the state attorney and seizing law enforcement agency for a hearing on the sole issue of~~  
67 ~~whether probable cause for forfeiture of the property then exists. The hearing shall be~~

~~held within 30 days unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, the property shall be released. In determining probable cause, the court shall apply the rules of evidence; provided, however, that hearsay shall be admissible; and~~

~~(5)(2)~~ The court may order property that has been seized for forfeiture to be sold to satisfy a specified interest of any interest holder, on motion of any party, and after notice and a hearing, on the conditions that:

(A) The interest holder has filed a proper claim and has an interest that the state attorney has stipulated is exempt from forfeiture, provided that if the interest holder is a financial institution, it is also authorized to do business in this state and is under the jurisdiction of a governmental agency which regulates financial institutions, securities, insurance, or real estate;

(B) The interest holder shall dispose of the property by commercially reasonable public sale and apply the income first to its interest and then to its reasonable expenses incurred in connection with the sale or disposal; and

(C) The balance of the income, if any, shall be returned to the actual or constructive custody of the court, in an interest bearing account, subject to further proceedings under this chapter."

### SECTION 3.

Said chapter is further amended by revising Code Section 9-16-15, relating to stay of civil forfeiture proceedings during pendency of criminal proceedings and effect of criminal conviction, as follows:

"9-16-15.

~~(a) For good cause shown by the state or the owner or interest holder of the property, the court may stay civil forfeiture proceedings during the pendency of criminal proceedings resulting from a related indictment or accusation until such time as the criminal~~

~~proceedings result in a plea of guilty, a conviction after trial, or an acquittal after trial or are otherwise concluded before the trial court.~~

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

(c) A defendant convicted in any criminal proceeding shall be precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any civil forfeiture proceeding against such defendant pursuant to this chapter, regardless of the pendency of an appeal from that conviction; provided, however, that the evidence of the pendency of an appeal shall be admissible. For the purposes of this subsection, the term 'conviction' means the result from a verdict or plea of guilty, including a plea of nolo contendere."

#### **SECTION 4.**

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