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# CRIMES AND OFFENSES Relating to Forfeiture of Certain Contraband Property; Change Provisions Relating to Exemptions; Change Certain Provisions Relating to Forfeiture of Certain Contraband Property Relative to Controlled Substances; To Provide for Specific Repeal of Certain Related Provisions

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## CRIMES AND OFFENSES

***Relating to Forfeiture of Certain Contraband Property; Change Provisions Relating to Exemptions; Change Certain Provisions Relating to Forfeiture of Certain Contraband Property Relative to Controlled Substances; To Provide for Specific Repeal of Certain Related Provisions***

CODE SECTIONS:	O.C.G.A. § 16-13-49 (amended)
BILL NUMBER:	HB 1338
ACT NUMBER:	885
GEORGIA LAWS:	2002 Ga. Laws 1039
SUMMARY:	The Act provides for the forfeiture of certain contraband property and changing provisions relating to exemptions to the forfeiture provisions, and to change provisions relating to forfeiture of certain contraband property relative to controlled substances, and to provide for the repeal of certain related provisions.
EFFECTIVE DATE:	May 14, 2002

### *History*

HB 1338 was introduced in order to clarify the interpretation of the former statute, which provided for forfeiture for a violation involving one gram of cocaine.<sup>1</sup> The Georgia Court of Appeals has interpreted this statutory language to require the prosecution to show the substance constituted more than one gram of pure cocaine and would not consider the weight of a mixture of cocaine.<sup>2</sup> HB 1338 provides that under the new forfeiture statute, one gram of cocaine means 1

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1. Audio Recording of the Senate Proceedings, Apr. 10, 2002 (remarks by Sen. Charlie Tanksley), at <http://www.ga.us/services/leg/audio/2002archive>.

2. See *Bell v. State*, 249 Ga. App. 296, 548 S.E.2d 35 (2001); *State v. Foote*, 225 Ga. App. 222, 483 S.E.2d 628 (1997).

gram of a mixture containing cocaine instead of one gram of pure cocaine.<sup>3</sup>

### *HB 1338*

#### *Consideration by the House*

Representatives Mike Boggs of the 168th District, Tom Bordeaux of the 151st District, Robert Reichert of the 126th District, Larry Walker of the 141st District, Curtis S. Jenkins of the 110th District, and Mike Snow of the 2nd District sponsored HB 1338.<sup>4</sup> The bill passed the House as introduced on March 26, 2002 by a vote of 146 to 5.<sup>5</sup>

#### *Consideration by the Senate*

Charlie Tanksley of the 32nd District handled the bill on the Senate floor.<sup>6</sup> The bill was introduced to change the interpretation of the former statute to provide that under the forfeiture statute, one gram of cocaine means 1 gram of a mixture containing cocaine instead of one gram of pure cocaine.<sup>7</sup> The Senate voted to adopt the Senate Special Judiciary Committee's substitute of HB 1338 by a vote of 34 to 0. The Senate unanimously passed the bill on April 10, 2002.<sup>8</sup>

The House agreed to the Senate's version of HB 1338 and unanimously passed the bill on April 12, 2002.<sup>9</sup> The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 1338 into law on May 14, 2002.<sup>10</sup>

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3. Audio Recording of the Senate Proceedings, Apr. 10, 2002 (remarks by Sen. Charlie Tanksley), at <http://www.ga.us/services/leg/audio/2002archive>.

4. HB 1338, as introduced, 2002 Ga. Gen. Assem.

5. Georgia House of Representatives Voting Record, HB 1338 (Mar. 26, 2002).

6. Audio Recording of the Senate Proceedings, Apr. 10, 2002 (remarks by Sen. Charlie Tanksley), at <http://www.ga.us/services/leg/audio/2002archive>.

7. *Id.*

8. Georgia Senate Voting Record, HB 1338 (Apr. 10, 2002).

9. Georgia House of Representatives Voting Record, HB 1338 (Apr. 12, 2002).

10. 2002 Ga. Laws 1039, § 2, at 1041.

*The Act**Code Section 16-13-49*

The Act amends Code section 16-13-49 by providing for situations contained in (A) through (E) where a property interest will not be forfeited, including when the owner is not legally accountable for the conduct resulting in the forfeiture, had not and would not stand to acquire proceeds from the conduct, and did not hold the property during transportation.<sup>11</sup> Section (e)(2) provides for limitations when a property interest will not be subject to forfeiture if the violation involves one gram or less of a mixture containing cocaine or four ounces or less of marijuana.<sup>12</sup>

The Act amends Code section 16-13-49 by providing for a list of uses that any remaining proceeds from the sale of the contraband property should be used for.<sup>13</sup>

The Act amends Code section 16-13-49 by repealing Section 1 of HB 783 as enacted at the 2002 regular session of the General Assembly, which amended paragraph (2) and enacted paragraph (2.1) of subsection (u) of 16-13-49.<sup>14</sup>

*Jodie White*

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11. Compare 1974 Ga. Laws 221, § 79A-823, at 259 (formerly found at O.C.G.A. § 16-13-49 (2001)), with O.C.G.A. § 16-13-49 (Supp. 2002).

12. Compare 1974 Ga. Laws 221, § 79A-823, at 259 (formerly found at O.C.G.A. § 16-13-49 (2001)), with O.C.G.A. § 16-13-49 (Supp. 2002).

13. Compare 1974 Ga. Laws 221, § 79A-823, at 261 (formerly found at O.C.G.A. § 16-13-49 (2001)), with O.C.G.A. § 16-13-49 (Supp. 2002).

14. Compare 1974 Ga. Laws 221, § 79A-823, at 258 (formerly found at O.C.G.A. § 16-13-49 (2001)), with O.C.G.A. § 16-13-49 (Supp. 2002).