

House Bill 636

By: Representatives Powell of the 23<sup>rd</sup>, Buck of the 112<sup>th</sup>, Parham of the 94<sup>th</sup> and Channell of the 77<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 32-6-27 of the Official Code of Georgia Annotated, relating to  
2 enforcement of load limitations, so as to provide for the administrative determination of  
3 overweight assessments; to provide for penalties for violations; to provide for the perfection  
4 of liens upon vehicles subject to unpaid overweight assessments; to provide for the  
5 suspension of the registration of vehicles subject to unpaid overweight assessments; to amend  
6 Code Section 32-6-28 of the Official Code of Georgia Annotated, relating to permits for  
7 excess weight and dimensions, so as to provide for the remittance of funds from the fees for  
8 such permits to be remitted to the general fund of the state treasury; to provide for related  
9 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Code Section 32-6-27 of the Official Code of Georgia Annotated, relating to enforcement of  
13 load limitations, is amended by striking said Code section in its entirety and inserting in lieu  
14 thereof the following:

15 "32-6-27.

16 (a) Any person who violates the load limitation provisions of Code Section 32-6-26 shall  
17 be conclusively presumed to have damaged the public roads, including bridges, of this state  
18 by reason of such overloading and shall recompense the state for such damage in  
19 accordance with the following schedule:

20 (1) For the first 1,000 pounds of excess weight, 0.8¢ per pound; plus 1.5¢ per pound for  
21 the next 2,000 pounds of excess weight; plus 3¢ per pound for the next 2,000 pounds of  
22 excess weight; plus 4¢ per pound for the next 3,000 pounds of excess weight; plus 5¢ per  
23 pound for all excess weight over 8,000 pounds;

24 (2) Where a vehicle is authorized to exceed the weight limitations of Code Section  
25 32-6-26 by a permit issued pursuant to Code Section 32-6-28, the term 'excess weight'  
26 means that weight which exceeds the weight allowed by such permit. For such vehicles,

1 damages for excess weight shall be assessed according to the following schedule: 125  
2 percent times, in each category of excess weights, the rate imposed on offending vehicles  
3 operating without a permit.

4 (a.1)(1)(A) The Department of Motor Vehicle Safety is authorized to issue a citation  
5 to the owner or operator of any vehicle in violation of a maximum weight limit on a  
6 county road which is a designated local truck route under subsection (f) of Code  
7 Section 32-6-26 and for which signs have been placed and maintained as required under  
8 paragraph (2) of subsection (c) of Code Section 32-6-50.

9 (B) The Department of Motor Vehicle Safety is authorized to issue a warning to the  
10 owner or operator of any vehicle in violation of a maximum weight limit on a county  
11 road which is a designated local truck route under subsection (f) of Code Section  
12 32-6-26 but for which signs have not been placed or maintained as required under  
13 paragraph (2) of subsection (c) of Code Section 32-6-50 upon the first such violation  
14 and to issue a citation to such owner or operator for a subsequent such violation.

15 (2)(A) The Department of Motor Vehicle Safety is authorized to issue a citation to the  
16 owner or operator of any vehicle in violation of a maximum weight limit on a bridge  
17 for which signs have been placed and maintained as required under paragraph (3) of  
18 Code Section 32-4-41 or subsection (a.1) of Code Section 32-4-91.

19 (B) The Department of Motor Vehicle Safety is authorized to issue a warning to the  
20 owner or operator of any vehicle in violation of a maximum weight limit on a bridge  
21 but for which signs have not been placed or maintained as required under paragraph (3)  
22 of Code Section 32-4-41 or subsection (a.1) of Code Section 32-4-91 upon the first such  
23 violation and to issue a citation to such owner or operator for a subsequent such  
24 violation.

25 (b) The schedules listed in paragraphs (1) and (2) of subsection (a) of this Code section  
26 shall apply separately to (1) the excess weight of the gross load and (2) the sum of the  
27 excess weight or weights of any axle or axles, provided that where both gross load and axle  
28 weight limits are exceeded, the owner or operator shall be required to recompense the state  
29 only for the largest of the money damages imposed under items (1) and (2) of this  
30 subsection.

31 (c)(1) Within 15 days after the issuance of the citation, the owner or operator of any  
32 offending vehicle shall pay the amount of the assessment to the Department of Motor  
33 Vehicle Safety or request an administrative determination of the amount and validity of  
34 the assessment.

35 (2) The right to an administrative determination of the amount and validity of the  
36 assessment shall be granted only to the owner or operator of an offending vehicle.

1 (3) The party requesting an administrative determination of the amount and validity of  
 2 the assessment shall deposit the amount of the assessment with the Department of Motor  
 3 Vehicle Safety, within the time permitted to request such determination, before the  
 4 determination will be granted. In the event the assessment is determined to be erroneous,  
 5 the Department of Motor Vehicle Safety shall make prompt refund of any overpayment  
 6 after receipt of a final decision making such determination.

7 (4) If an administrative hearing is requested, it shall be held in accordance with Chapter  
 8 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations  
 9 of the Department of Motor Vehicle Safety. The scope of any such hearing shall be  
 10 limited to a determination of:

11 (A) The weight measured by the officer who issued the citation;

12 (B) The maximum weight allowed by law on the roadway upon which the offending  
 13 vehicle was operated; and

14 (C) Whether the operator had in his or her actual possession a valid oversize or  
 15 overweight permit issued by the Department of Transportation allowing the vehicle to  
 16 operate in excess of the maximum weight otherwise allowed by law on the roadway  
 17 upon which the offending vehicle was operated.

18 (5) Any person who has exhausted all administrative remedies available within the  
 19 Department of Motor Vehicle Safety and who is aggrieved by a final order of the  
 20 Department of Motor Vehicle Safety is entitled to judicial review in accordance with  
 21 Chapter 13 of Title 50.

22 (6) If a party requests an administrative determination of the amount and validity of the  
 23 assessment and fails to appear without first obtaining permission from the administrative  
 24 law judge or does not withdraw the request in writing no less than five days in advance  
 25 of a scheduled hearing, the party shall be deemed in default and the citation shall be  
 26 affirmed by operation of law. The party shall be deemed to owe the sum of \$75.00 in  
 27 addition to the amount due on the citation, which sum shall represent hearing costs.

28 (d) All moneys collected in accordance with this Code section shall be transmitted to the  
 29 Department of Motor Vehicle Safety, thereafter to be disposed of as follows:

30 (1) All moneys collected for violations of the weight limitations imposed by this article  
 31 shall be remitted to the general fund of the state treasury; ~~and~~

32 (2) All moneys collected for violations of the height, width, or length limitations  
 33 imposed by this article, after the appropriate statutory deductions, shall be retained by the  
 34 governing authority of the county wherein the violation occurred for deposit in the  
 35 general treasury of said county;

36 (3) Hearing costs imposed pursuant to paragraph (6) of subsection (c) of this Code  
 37 section shall be retained by the Department of Motor Vehicle Safety;

1 (4) Reissuance fees imposed pursuant to paragraph (4) of subsection (g) of this Code  
 2 section shall be retained by the Department of Motor Vehicle Safety; and

3 (5) Restoration fees imposed pursuant to paragraph (1) of subsection (i) of this Code  
 4 section shall be retained by the Department of Motor Vehicle Safety.

5 (e) Any owner or operator of a vehicle which is operated on the public roads of this state  
 6 in violation of the weight limitations provided in this article shall be required, in addition  
 7 to paying the moneys provided in subsection (a) of this Code section, to unload all gross  
 8 weight in excess of 6,000 pounds over the legal weight limit before being allowed to move  
 9 the vehicle.

10 (f) Any person authorized by law to enforce this article may seize the offending vehicle  
 11 of an owner who fails or whose operator ~~has failed~~ fails to pay the moneys prescribed in  
 12 subsection (a) of this Code section and hold such vehicle until the prescribed moneys are  
 13 paid. If the offending vehicle is not registered in this state, any person authorized by law  
 14 to enforce this article may seize any vehicle owned or operated by an owner who fails or  
 15 whose operator fails to pay the moneys prescribed in subsection (a) of this Code section  
 16 and hold such vehicle until the prescribed moneys are paid. Any person seizing ~~such a~~  
 17 vehicle under this subsection or subsection (e) of this Code section may, when necessary,  
 18 store the vehicle; and the owner thereof shall be responsible for all reasonable storage  
 19 charges thereon. When any vehicle is seized, held, unloaded, or partially unloaded under  
 20 these subsections, the load or any part thereof shall be removed or cared for by the owner  
 21 or operator of the vehicle without any liability on the part of the authorized person or of the  
 22 state or any political subdivision because of damage to or loss of such load or any part  
 23 thereof.

24 (g)(1) Whenever any person, firm, or corporation violates this article and becomes  
 25 indebted to the Department of Motor Vehicle Safety because of such violations and fails  
 26 within 15 days of the date of issuance of the overweight assessment citation either to pay  
 27 the assessment or appeal to the Department of Motor Vehicle Safety for administrative  
 28 review, as provided for in subsection (c) of this Code section, such assessment shall  
 29 become a lien upon the overweight motor vehicle so found to be in violation, which lien  
 30 shall be superior to all liens except liens for taxes or perfected security interests  
 31 established before the debt to the Department of Motor Vehicle Safety was created.

32 (2) Whenever any person, firm, or corporation requests an administrative review, it shall  
 33 be held in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure  
 34 Act.' In the event that the administrative law judge finds in favor of the Department of  
 35 Motor Vehicle Safety, the person, firm, or corporation shall pay the assessment within  
 36 30 days ~~after the issuance of a final decision by the administrative law judge~~ that decision  
 37 becomes final or, if judicial review is had in accordance with Chapter 13 of Title 50, then

1 within 30 days after final judicial review is terminated. If the person, firm, or corporation  
 2 fails to pay the assessment within 30 days, such assessment shall become a lien as  
 3 provided for under paragraph (1) of this subsection.

4 (3) The Department of Motor Vehicle Safety shall perfect the lien created under this  
 5 subsection ~~in the same manner as is provided for in subsection (b) of Code Section~~  
 6 ~~40-3-50 and Code Section 40-3-53~~ by sending notice thereof on a notice designated by  
 7 the commissioner of motor vehicle safety, by first-class mail or by statutory overnight  
 8 delivery, to the owner and all holders of liens and security interests shown on the records  
 9 of the Department of Motor Vehicle Safety maintained pursuant to Chapter 3 of Title 40.  
 10 Upon receipt of notice from the Department of Motor Vehicle Safety, the holder of the  
 11 certificate of title shall surrender same to the commissioner of motor vehicle safety for  
 12 issuance of a replacement certificate of title bearing the lien of the department unless the  
 13 assessment is paid within 15 days of the receipt of notice. The Department of Motor  
 14 Vehicle Safety may append its lien to its records, notwithstanding the failure of the holder  
 15 of the certificate of title to surrender said certificate as required by this paragraph.

16 (4) Upon issuance of a title bearing the lien of the Department of Motor Vehicle Safety,  
 17 or the appending of the lien to the records of the Department of Motor Vehicle Safety,  
 18 the owner of the vehicle or the holder of any security interest or lien shown in the records  
 19 of the department may satisfy such lien by payment of the amount of the assessment,  
 20 including hearing costs, if any, and payment of a reissuance fee of \$100.00. Upon receipt  
 21 of such amount, the Department of Motor Vehicle Safety shall release its lien.

22 (h)(1) The Department of Motor Vehicle Safety, in seeking to foreclose its lien on the  
 23 motor vehicle arising out of an overweight motor vehicle citation assessed under this  
 24 article, may seek an immediate writ of possession from the court before whom the  
 25 petition is filed, if the petition contains a statement of facts, under oath, by the  
 26 Department of Motor Vehicle Safety, its agents, its officers, or attorney setting forth the  
 27 basis of the petitioner's claim and sufficient grounds for issuance of an immediate writ  
 28 of possession.

29 (2) The Department of Motor Vehicle Safety shall allege under oath specific facts  
 30 sufficient to show that it is within the power of the defendant to conceal, encumber,  
 31 convert, convey, or remove from the jurisdiction of the court the property which is the  
 32 subject matter of the petition.

33 (3) The court before whom the petition is pending shall issue a writ for immediate  
 34 possession, upon finding that the petitioner has complied with paragraphs (1) and (2) of  
 35 this subsection. If the petitioner is found not to have made sufficient showing to obtain  
 36 an immediate writ of possession, the court may, nevertheless, treat the petition as one  
 37 being filed under Code Section 44-14-231 and proceed accordingly.

1 (4) When an immediate writ of possession has been granted, the Department of Motor  
 2 Vehicle Safety shall proceed against the defendant in the same manner as provided for  
 3 in Code Sections 44-14-265 through 44-14-269.

4 (i)(1) Whenever any person, firm, or corporation violates this article and fails within 15  
 5 days of the date of issuance of the overweight assessment citation either to pay the  
 6 assessment or appeal to the Department of Motor Vehicle Safety for an administrative  
 7 review as provided for under Chapter 13 of Title 50, the 'Georgia Administrative  
 8 Procedure Act,' the Department of Motor Vehicle Safety may act to suspend the motor  
 9 vehicle ~~license plate~~ registration of the vehicle involved. However, if the person, firm,  
 10 or corporation requests an administrative review, the Department of Motor Vehicle Safety  
 11 shall act to suspend the ~~license plate~~ registration only after the issuance of a final decision  
 12 favorable to the Department of Motor Vehicle Safety and the requisite failure of the  
 13 person, firm, or corporation to pay the assessment. Upon such failure to pay the  
 14 assessment, the Department of Motor Vehicle Safety shall send a letter to the owner of  
 15 such motor vehicle ~~stating the fact of such overdue assessment. Upon receipt of such~~  
 16 ~~letter from the Department of Motor Vehicle Safety, it shall be the duty of the owner of~~  
 17 ~~such vehicle to notify the Department of Motor Vehicle Safety, within 15 days of the date~~  
 18 ~~on which notification was mailed by the Department of Motor Vehicle Safety, as to~~  
 19 ~~whether the assessment has been paid. If such information is not received by the~~  
 20 ~~Department of Motor Vehicle Safety within the specified time period or if the assessment~~  
 21 ~~has not in fact been paid, the Department of Motor Vehicle Safety shall suspend the~~  
 22 ~~motor vehicle license plate issued to the motor vehicle involved in the overweight~~  
 23 ~~assessment citation and shall notify the owner of the motor vehicle that he or she must~~  
 24 ~~forward the motor vehicle license plate issued to such motor vehicle to the Department~~  
 25 ~~of Motor Vehicle Safety notifying the owner of the suspension of the motor vehicle~~  
 26 ~~registration issued to the motor vehicle involved in the overweight assessment citation.~~  
 27 Upon complying with this subsection by paying the overdue assessment and upon  
 28 submitting proof of compliance and paying a \$10.00 restoration fee to the Department of  
 29 Motor Vehicle Safety, the commissioner of motor vehicle safety shall ~~return~~ reinstate any  
 30 motor vehicle ~~license plate~~ registration suspended under this subsection ~~to the owner of~~  
 31 ~~such motor vehicle~~. In cases where the motor vehicle ~~license plate~~ registration has been  
 32 suspended under this subsection for a second or subsequent time during any two-year  
 33 period, the Department of Motor Vehicle Safety shall suspend the motor vehicle ~~license~~  
 34 ~~plate~~ registration for a period of 60 days and thereafter until the owner submits proof of  
 35 compliance with this subsection and pays the ~~\$25.00~~ \$150.00 restoration fee to the  
 36 Department of Motor Vehicle Safety.

1       ~~The Department of Motor Vehicle Safety, upon suspending the motor vehicle license~~  
2       ~~plate, as provided for in this subsection, shall require that such plate be surrendered to the~~  
3       ~~Department of Motor Vehicle Safety immediately following the effective date of~~  
4       ~~suspension; and it is the duty of the owner, immediately upon receipt of notice from the~~  
5       ~~Department of Motor Vehicle Safety, to forward the license plate to the Department of~~  
6       ~~Motor Vehicle Safety. Unless otherwise provided for in this Code section, notice of the~~  
7       ~~effective date of the suspension of a motor vehicle registration occurs when the owner has~~  
8       ~~actual knowledge or legal notice thereof, whichever first occurs. For the purposes of~~  
9       ~~making any determination relating to the restoration of a suspended motor vehicle~~  
10       ~~registration, no period of suspension shall be deemed to have begun until ten days after~~  
11       ~~the mailing of the notice required in paragraph (1) of this subsection.~~

12       ~~(3) If such motor vehicle license plate is not received by the Department of Motor~~  
13       ~~Vehicle Safety within ten days following the effective date of suspension, the~~  
14       ~~commissioner of motor vehicle safety shall forthwith direct any peace officer to secure~~  
15       ~~possession of such plate and return the same to the commissioner of motor vehicle safety.~~  
16       ~~For the purposes of this subsection, except where otherwise provided, the mailing of a~~  
17       ~~notice to a person at the name and address shown in records of the Department of Motor~~  
18       ~~Vehicle Safety maintained under Chapter 3 of Title 40 shall, with respect to the holders~~  
19       ~~of liens and security interests, be presumptive evidence that such person received the~~  
20       ~~required notice.~~

21       ~~(4) Unless otherwise provided for in this subsection, notice of the effective date of~~  
22       ~~suspension shall occur when the driver receives actual knowledge or legal notice thereof,~~  
23       ~~whichever occurs first. For the purposes of making any determination under this article~~  
24       ~~relating to the return of a suspended motor vehicle license plate, no period of suspension~~  
25       ~~under this subsection shall begin until the plate is surrendered to the Department of Motor~~  
26       ~~Vehicle Safety or to a court of competent jurisdiction under this subsection, whichever~~  
27       ~~shall occur first. If the motor vehicle license plate is lost or for any other reason surrender~~  
28       ~~to the Department of Motor Vehicle Safety is impossible, the period of suspension shall~~  
29       ~~begin on the date an affidavit setting forth the reasons for such impossibility is received~~  
30       ~~by the department. For the purposes of this subsection, except where otherwise provided,~~  
31       ~~the mailing of a notice to a person or firm at the name and address shown on the~~  
32       ~~overweight assessment citation shall, with respect to owners and operators of vehicles~~  
33       ~~involved in an overweight assessment, be presumptive evidence that such person received~~  
34       ~~the required notice.~~

35       ~~(5) It shall be unlawful to refuse to deliver upon a legal demand any motor vehicle~~  
36       ~~license plate. The commissioner of motor vehicle safety may suspend the motor vehicle~~

1 registration of any offending vehicle for which payment of an overweight assessment is  
 2 made by a check that is returned for any reason.

3 ~~(6) Any person violating the provisions of paragraph (2) of this subsection shall be guilty~~  
 4 ~~of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than~~  
 5 ~~\$1,000.00 or imprisonment for not more than 90 days.~~

6 ~~(7) For the purposes of this subsection, where any provisions require the Department of~~  
 7 ~~Motor Vehicle Safety to give notice to a person, which notice affects such person's motor~~  
 8 ~~vehicle license plate, the mailing of such notice and the name and address shown on the~~  
 9 ~~notice of overdue assessment citation supplied by the Department of Motor Vehicle~~  
 10 ~~Safety, as required by this subsection, shall be presumptive evidence that such person~~  
 11 ~~received the required notice."~~

## 12 SECTION 2.

13 Code Section 32-6-28 of the Official Code of Georgia Annotated, relating to permits for  
 14 excess weight and dimensions, is amended by striking subsection (d) in its entirety and  
 15 inserting in lieu thereof the following:

16 ~~"(d) Notwithstanding any provision of Code Section 48-2-17 to the contrary, all All fees~~  
 17 ~~collected in accordance with this Code section shall be paid to the treasurer of the~~  
 18 ~~department to help defray the expenses of enforcing the limitations set forth in this article~~  
 19 ~~and may also be used for public road maintenance purposes in addition to any sums~~  
 20 ~~appropriated therefor to the department remitted to the general fund of the state treasury."~~

## 21 SECTION 3.

22 (a) Section 1 of this Act shall become effective July 1, 2003.

23 (b) Section 2 of this Act shall become effective July 1, 2004.

## 24 SECTION 4.

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