

House Bill 1248

By: Representatives Powell of the 23rd, Parham of the 94th, and Reece of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 transportation, so as to change certain provisions relating to household goods carriers and
3 services provided by such carriers; to change certain provisions relating to motor contract
4 carriers; to change certain provisions relating to chauffeur permits; to provide for hearings,
5 penalties, and judicial review; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
10 transportation, is amended in Code Section 46-2-91, relating to penalties recoverable before
11 commission, by striking paragraph (1) of subsection (b) and inserting in its place the
12 following:

13 "(b)(1) The commission, after a hearing conducted after not less than 30 days' notice,
14 shall determine whether any utility has willfully violated any law administered by the
15 commission or any duly promulgated regulation issued thereunder, or has failed,
16 neglected, or refused to comply with any order of the commission. Upon an appropriate
17 finding of a violation, the commission may impose by order such civil penalties as are
18 provided by subsection (a) of this Code section ~~or by subsection (a) of Code Section~~
19 ~~46-2-94~~. In each such proceeding, the commission shall maintain a record as provided in
20 paragraph (8) of subsection (a) of Code Section 50-13-13 including all pleadings, a
21 transcript of proceedings, a statement of each matter of which the commission takes
22 official notice, and all staff memoranda or data submitted to the commission in
23 connection with its consideration of the case. All penalties and interest thereon (at the rate
24 of 10 percent per annum) recovered by the commission shall be paid into the general fund
25 of the state treasury."

SECTION 2.

Said title is further amended in Code Section 46-2-94, relating to operation as household goods carrier for hire without having valid certificate prohibited, by repealing and reserving said Code section.

SECTION 3.

Said title is further amended by striking Code Section 46-7-3, relating to certificate of public convenience and necessity requirement for motor common carriers generally, and inserting in its place the following:

"46-7-3.

No motor common or contract carrier of passengers or household goods shall, except as otherwise provided in this article, operate without first obtaining from the commissioner a certificate of ~~public convenience and necessity, pursuant to findings to the effect that the public interest requires such operation.~~"

SECTION 4.

Said title is further amended in Code Section 46-7-4, relating to issuance of certificate for full or partial exercise of privilege sought and terms and conditions of issuance, by striking said Code section and inserting in its place the following:

"46-7-4.

The commissioner may issue the certificate applied for or issue it for the partial exercise of the privilege sought, and may attach to the exercise of the rights granted by such certificate such terms and conditions as, in his or her judgment, ~~the public interest~~ may require."

SECTION 5.

Said title is further amended in Code Section 46-7-5, relating to authority of commission as to revocation, suspension, or change of certificate, by striking said Code section and inserting in its place the following:

"46-7-5.

(a) The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, suspend, revoke, alter, or amend any certificate issued under this article, under the 'Motor Carrier Act of 1929,' under the 'Motor Carrier Act of 1931,' or under prior law, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this article or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the

1 holder of the certificate is not furnishing adequate service, ~~or if the continuance of said~~
 2 ~~certificate in its original form is incompatible with the public interest.~~

3 ~~(b) If and when the commissioner shall undertake to revoke or modify any certificate on~~
 4 ~~account of the public interest on the ground that the traffic conditions are such as not to~~
 5 ~~justify the number of motor carriers which have been granted certificates over the route or~~
 6 ~~routes in question, the preference shall be given to certificates in order of the time of their~~
 7 ~~issuance, so that those which have been issued later in time shall, other things being equal,~~
 8 ~~be canceled rather than those issued earlier in time."~~

9 SECTION 6.

10 Said title is further amended in Code Section 46-7-7, relating to considerations determining
 11 granting of certificate generally, burden of proof, and protest by other carriers, by striking
 12 said Code section and inserting in its place the following:

13 "46-7-7.

14 (a) The commissioner shall issue a certificate of ~~public convenience and necessity~~ to a
 15 person authorizing transportation as a motor common or contract carrier of passengers or
 16 household goods subject to the jurisdiction of the commissioner if he or she finds that: ~~(1)~~
 17 ~~The~~ the person is fit, willing, and able to provide the transportation to be authorized by the
 18 certificate and to comply with regulations of the commissioner. Fitness encompasses three
 19 factors:

20 ~~(A)~~(1) The applicant's financial ability to perform the service it seeks to provide;

21 ~~(B)~~(2) The applicant's capability and willingness to perform properly and safely the
 22 proposed service; and

23 ~~(C)~~(3) The applicant's willingness to comply with the laws of Georgia and the rules and
 24 regulations of the commissioner; ~~and~~

25 ~~(2) Based on evidence presented by the applicant supporting the issuance of the~~
 26 ~~certificate, that the service proposed will serve a useful public purpose and be responsive~~
 27 ~~to a public demand or need.~~

28 (b) The initial burden of making out a prima-facie case that an ~~applicant's service is~~
 29 ~~needed and that the~~ applicant is fit to provide such service rests with the applicant.

30 (c) Upon an applicant making out a prima-facie case as to ~~the need for the service and the~~
 31 ~~carrier's ability to provide the service, the burden shifts to protestant to show that the~~
 32 ~~authority sought would~~ should not be granted ~~consistent with the public convenience and~~
 33 ~~necessity.~~

34 ~~(d) The commissioner shall not consider diversion of revenue or traffic from an existing~~
 35 ~~motor carrier to be grounds for denial of an application.~~

1 ~~(e)~~(d) A protest of a motor carrier of passengers or of household goods to an application
2 will not be considered unless the protesting carrier:

3 (1) Possesses authority from the commissioner to handle, in whole or in part, the
4 ~~commodity for which~~ authority which is being applied for and is willing and able to
5 provide service ~~that meets the reasonable needs of the shippers involved~~ and has
6 performed service ~~within the scope of the application~~ during the previous 12 month
7 period or has actively in good faith solicited service ~~within the scope of application~~
8 during such period;

9 (2) Has pending before the commissioner an application previously filed with the
10 commissioner for substantially the same authority; or

11 (3) Is granted by the commissioner leave to intervene upon a showing of other interests
12 which in the discretion of the commissioner would warrant such a grant.

13 ~~(f)~~(e) The commissioner may issue a certificate ~~of public convenience and necessity~~
14 without a hearing if the application is unopposed or unopposed."

15 SECTION 7.

16 Said title is further amended in Code Section 46-7-8, relating to rules as to manner and form
17 of application for certificate, by striking said Code section and inserting in its place the
18 following:

19 "46-7-8.

20 The commissioner shall adopt rules prescribing the manner and form in which motor
21 carriers of passengers or household goods shall apply for certificates required by this
22 article. Such rules shall require that the application be in writing, under oath, and that the
23 application:

24 (1) Contain full information concerning the applicant's financial condition, the
25 equipment proposed to be used, including the size, weight, and capacity of each vehicle
26 to be used, and other physical property of the applicant;

27 (2) State the complete route or routes over which the applicant desires to operate and the
28 proposed time schedule of the operation;

29 ~~(3) Set forth all existing transportation in the territory proposed to be served, and wherein
30 the public needs additional service, and why; and~~

31 ~~(4)~~(3) Contain any such other or additional information as the commissioner may order
32 or require."

33 SECTION 8.

34 Said title is further amended in Code Section 46-7-9, relating to fees generally, by striking
35 paragraphs (1) through (3) of said Code section and inserting in their places the following:

SECTION 12.

Said title is further amended in Code Section 46-7-16, relating to registration and insurance for vehicles engaged solely in interstate commerce, emergency, temporary, or trip-lease vehicle registration permits, late registration and identification, and certificate requirements for motor common carriers by striking subsection (f) of said Code section and inserting in its place the following:

"(f) It shall not be necessary for any motor carrier to obtain a certificate of ~~public convenience~~ from the commissioner when such carrier is engaged solely in interstate commerce over the public highways of this state."

SECTION 13.

Said title is further amended in Code Section 46-7-31, relating to injunctions, is amended by striking said Code section and inserting in its place the following:

"46-7-31.

Any motor carrier which operates on the public highways of this state without the required certificate of ~~public convenience and necessity~~ or permit, or after such certificate or permit has been canceled, or without having registered its vehicle or vehicles as provided for in this article, or which operates otherwise than is permitted by the terms of such certificate or permit or the laws of this state may be enjoined from operating on the public highways of this state upon the bringing of a civil action by the commissioner, by a competing motor carrier or rail carrier, or by any individual."

SECTION 14.

Said title is further amended in Code Section 46-7-32, relating to no vested right or perpetual franchise in use of public highways, by striking said Code section and inserting in its place the following:

"46-7-32.

Nothing in this article or any other law shall be construed to vest in the owner, holder, or assignee of any certificate of ~~public convenience and necessity~~ or permit issued under this article any vested right to use the public highways of this state and shall not be construed to give to any motor carrier any perpetual franchise over such public highways."

SECTION 15.

Said title is further amended in Code Section 46-7-37, relating to private carriers excepted from application of article, safety rules authorized, and certificates of registration not required, by striking subsection (c) of said Code section and inserting in its place the following:

1 "(c) Private carriers are not required to hold certificates of ~~public convenience and~~
2 ~~necessity~~ or ~~registration~~ permits issued by the commissioner."

3 **SECTION 16.**

4 Said title is further amended in Code Section 46-7-85.1, relating to definitions, by striking
5 paragraph (1) of said Code section and inserting in its place the following:

6 "(1) 'Certificate' means a certificate of ~~public convenience and necessity~~ issued by the
7 commissioner."

8 **SECTION 17.**

9 Said title is further amended in Code Section 46-7-85.3, relating to requirement for certificate
10 of public convenience and necessity, by striking said Code section and inserting in its place
11 the following:

12 "46-7-85.3.

13 No person may engage in the business of a limousine carrier over any public highway in
14 this state without first having obtained from the commissioner a certificate of ~~public~~
15 ~~convenience and necessity~~ to do so."

16 **SECTION 18.**

17 Said title is further amended in Code Section 46-7-85.8, relating to operations unlawful after
18 cancellation, revocation, or suspension of certificate, by striking said Code section and
19 inserting in its place the following:

20 "46-7-85.8.

21 After the cancellation or revocation of a ~~permit~~ certificate or during the period of its
22 suspension, it is unlawful for a limousine carrier to conduct any operations as such a
23 carrier."

24 **SECTION 19.**

25 Said title is further amended in Code Section 46-7-85.9, relating to chauffeur's permit, form,
26 possession requirement, fee, and term, by striking said Code section and inserting in its place
27 the following:

28 "46-7-85.9.

29 Pursuant to rules and regulations prescribed by the commissioner, each chauffeur employed
30 by a limousine carrier shall register with the commissioner and secure a permit as a
31 limousine chauffeur. A chauffeur's permit issued under this subsection shall be upon a
32 form prescribed by the commissioner and shall bear thereon a distinguishing number
33 assigned to the permittee, the full name and a photograph of the permittee, and such other

1 information or identification as is required by the commissioner. Every chauffeur employed
 2 by a limousine carrier shall have his or her chauffeur's permit in his or her immediate
 3 possession at all times while operating a limousine. All applications for a chauffeur's
 4 permit shall be accompanied by such fee as the commissioner shall prescribe. The
 5 chauffeur's permit shall be valid for ~~two~~ four calendar years. The commissioner may issue
 6 a chauffeur's permit by mail."

7 SECTION 20.

8 Said title is further amended by adding a new Code Section 46-7-90 to read as follows:

9 "46-7-90.

10 ~~Reserved.~~ (a) Any motor or common contract carrier subject to the jurisdiction of the
 11 commissioner, which carrier willfully violates any law administered by the commissioner
 12 or any duly promulgated regulation issued thereunder or which fails, neglects, or refuses
 13 to comply with any order after notice thereof, shall be liable to a penalty not to exceed
 14 \$15,000.00 for such violation and an additional penalty not to exceed \$10,000.00 for each
 15 day during which such violation continues.

16 (b)(1) The commissioner, after a hearing conducted after not less than 30 days' notice,
 17 shall determine whether any carrier has willfully violated any law administered by the
 18 commissioner or any duly promulgated regulation issued thereunder, or has failed,
 19 neglected, or refused to comply with any order of the commissioner. Upon an appropriate
 20 finding of a violation, the commissioner may impose by order such civil penalties as are
 21 provided by subsection (a) of this Code section or by subsection (a) of Code Section
 22 46-7-91. In each such proceeding, the commissioner shall maintain a record as provided
 23 in paragraph (8) of subsection (a) of Code Section 50-13-13 including all pleadings, a
 24 transcript of proceedings, a statement of each matter of which the commissioner takes
 25 official notice, and all staff memoranda or data submitted to the commissioner in
 26 connection with its consideration of the case. All penalties and interest thereon (at the rate
 27 of 10 percent per annum) recovered by the commissioner shall be paid into the general
 28 fund of the state treasury.

29 (2) Any party aggrieved by a decision of the commissioner may seek judicial review as
 30 provided in subsection (c) of this Code section.

31 (c)(1) Any party who has exhausted all administrative remedies available before the
 32 commissioner and who is aggrieved by a final decision of the commissioner in a
 33 proceeding described in subsection (b) of this Code section may seek judicial review of
 34 the final order of the commissioner in the Superior Court of Fulton County.

35 (2) Proceedings for review shall be instituted by filing a petition within 30 days after the
 36 service of the final decision of the commissioner or, if a rehearing is requested, within 30

1 days after the decision thereon. A motion for rehearing or reconsideration after a final
 2 decision by the commissioner shall not be a prerequisite to the filing of a petition for
 3 review. Copies of the petition shall be served upon the commissioner and all parties of
 4 record before the commissioner.

5 (3) The petition shall state the nature of the petitioner's interest, the facts showing that
 6 the petitioner is aggrieved by the decision, and the ground, as specified in paragraph (6)
 7 of this subsection, upon which the petitioner contends that the decision should be
 8 reversed. The petition may be amended by leave of court.

9 (4) Within 30 days after service of the petition, or within such further time as is
 10 stipulated by the parties or as is allowed by the court, the agency shall transmit to the
 11 reviewing court the original or a certified copy of the entire record of the proceedings
 12 under review. By stipulation of all parties to the review proceedings, the record may be
 13 shortened. A party unreasonably refusing to stipulate that the record be limited may be
 14 taxed for the additional costs. The court may require or permit subsequent corrections or
 15 additions to the record.

16 (5) If, before the date set for hearing, application is made to the court for leave to present
 17 additional evidence, and it is shown to the satisfaction of the court that the additional
 18 evidence is material and there were good reasons for failure to present it in the
 19 proceedings before the agency, the court may order that the additional evidence be taken
 20 before the commissioner upon such procedure as is determined by the court. The
 21 commissioner may modify its findings and decision by reason of the additional evidence
 22 and shall file that evidence and any modifications, new findings, or decisions with the
 23 reviewing court.

24 (6) The review shall be conducted by the court without a jury and shall be confined to
 25 the record. The court shall not substitute its judgment for that of the commissioner as to
 26 the weight of the evidence on questions of fact. The court may affirm the decision of the
 27 commissioner or remand the case for further proceedings. The court may reverse the
 28 decision of the commissioner if substantial rights of the petitioner have been prejudiced
 29 because the commissioner's findings, inferences, conclusions, or decisions are:

30 (A) In violation of constitutional or statutory provisions;

31 (B) In excess of the statutory authority of the commissioner;

32 (C) Made upon unlawful procedure;

33 (D) Clearly not supported by any reliable, probative, and substantial evidence on the
 34 record as a whole; or

35 (E) Arbitrary or capricious.

36 (7) A party aggrieved by an order of the court in a proceeding authorized under
 37 subsection (b) of this Code section may appeal to the Supreme Court of Georgia or to the

1 Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5, the
 2 'Appellate Practice Act.'"

3 **SECTION 21.**

4 Said title is further amended by adding a new Code Section 46-7-91 to read as follows:

5 "46-7-91.

6 ~~Reserved.~~ (a) Whenever the commissioner, after a hearing conducted in accordance with
 7 the provisions of subsection (b) of Code Section 46-7-90, finds that any person, firm, or
 8 corporation is operating as a household goods carrier for hire without a valid certificate
 9 issued by the commissioner or is holding itself out as such a carrier without such a
 10 certificate in violation of subsection (b) of this Code section, the commissioner may impose
 11 a fine of not more than \$5,000.00 for each violation. The commissioner may assess the
 12 person, firm, or corporation an amount sufficient to cover the reasonable expense of
 13 investigation incurred by the commissioner. The commissioner may also assess interest at
 14 the rate specified in paragraph (1) of subsection (b) of Code Section 46-7-90 on any fine
 15 or assessment imposed, to commence on the day the fine or assessment becomes
 16 delinquent. All fines, assessments, and interest collected by the commissioner shall be paid
 17 into the general fund of the state treasury. Any party aggrieved by a decision of the
 18 commissioner under this subsection may seek judicial review as provided in subsection (c)
 19 of Code Section 46-7-90.

20 (b) Any person, firm, or corporation who knowingly and willfully issues, publishes, or
 21 affixes or causes or permits the issuance, publishing, or affixing of any oral or written
 22 advertisement, broadcast, or other holding out to the public, or any portion thereof, that the
 23 person, firm, or corporation is in operation as a household goods carrier for hire without
 24 having a valid certificate issued by the commissioner is guilty of a misdemeanor. Any fine
 25 or assessment imposed by the commissioner pursuant to the provisions of subsection (a)
 26 of this Code section shall not bar criminal prosecution pursuant to the provisions of this
 27 subsection."

28 **SECTION 22.**

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