

House Bill 1248

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

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."



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.