

House Bill 1248 (AS PASSED HOUSE AND SENATE)

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 provide for the imposition and collection of monthly  
4 "911" charges for additional periods in those jurisdictions in which the local governing  
5 bodies have created a joint authority or which have executed an intergovernmental contract  
6 for the provision of emergency "911" services; to change certain provisions relating to motor  
7 contract carriers; to change certain provisions relating to chauffeur permits; to provide for  
8 hearings, penalties, and judicial review; to amend Title 32 of the Official Code of Georgia  
9 Annotated, relating to highways, bridges, and ferries, so as to change certain provisions  
10 relative to exemptions for weight limitations; to provide for related matters; to repeal  
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

18 "(b)(1) The commission, after a hearing conducted after not less than 30 days' notice,  
19 shall determine whether any utility has willfully violated any law administered by the  
20 commission or any duly promulgated regulation issued thereunder, or has failed,  
21 neglected, or refused to comply with any order of the commission. Upon an appropriate  
22 finding of a violation, the commission may impose by order such civil penalties as are  
23 provided by subsection (a) of this Code section ~~or by subsection (a) of Code Section~~  
24 ~~46-2-94~~. In each such proceeding, the commission shall maintain a record as provided in  
25 paragraph (8) of subsection (a) of Code Section 50-13-13 including all pleadings, a  
26 transcript of proceedings, a statement of each matter of which the commission takes

1 official notice, and all staff memoranda or data submitted to the commission in  
 2 connection with its consideration of the case. All penalties and interest thereon (at the rate  
 3 of 10 percent per annum) recovered by the commission shall be paid into the general fund  
 4 of the state treasury."

5 **SECTION 2.**

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

9 **SECTION 2A.**

10 Said title is further amended by adding at the end of Code Section 46-5-138, relating to joint  
 11 authorities, a new subsection (f) to read as follows:

12 "(f) Notwithstanding subsection (i) of Code Section 46-5-134, if the joint authority and  
 13 each local governing body activating the joint authority certify to the service provider in  
 14 writing prior to the end of the 18 month period in advance of the date on which the '911'  
 15 service was to have become fully operational that the system cannot be placed in operation  
 16 on the date originally projected but that all parties are proceeding in a diligent and timely  
 17 fashion to implement such service, the service provider shall continue to collect the  
 18 monthly '911' charge for an additional period of 18 months or until the '911' service  
 19 becomes fully operational, whichever occurs first."

20 **SECTION 2B.**

21 Said title is further amended by striking subsection (a) of Code Section 46-5-138.1, relating  
 22 to guidelines pertaining to additional charges on exchange access facilities involving  
 23 contracts between two or more counties, and inserting in its place the following:

24 "(a) Notwithstanding any provision of paragraph (1) of subsection (a) of Code Section  
 25 46-5-134 to the contrary, where two or more counties, none of which offers emergency  
 26 '911' services on May 1, 1998, and any participating municipalities within such counties,  
 27 if any, agree by intergovernmental contract to initiate or contract for the joint operation of  
 28 an emergency '911' system for the first time after May 1, 1998, such local governments  
 29 may impose a monthly '911' charge which exceeds \$1.50 per exchange access facility but  
 30 only so long as the following procedure is followed:

31 (1) The participating local governments shall, with input from a local exchange service  
 32 supplier, prepare an estimated budget for the implementation of the joint emergency '911'  
 33 system with costs limited to items eligible for funding through the Emergency Telephone  
 34 System Fund;

1 (2) An estimate of the revenue to be generated by the '911' charge authorized by  
 2 paragraph (1) of subsection (a) of Code Section 46-5-134 during the first 18 months of  
 3 collection shall be prepared;

4 (3) If the total amount necessary for implementation of the emergency '911' system in  
 5 paragraph (1) of this subsection exceeds the estimated revenue from imposition of the  
 6 '911' charge specified in paragraph (2) of this subsection, the monthly '911' charge per  
 7 exchange access facility may be increased on a pro rata basis during the first 18 months  
 8 of collection to the extent necessary to provide revenue sufficient to pay the amount  
 9 specified in paragraph (1) of this subsection, but in no case shall such monthly charge be  
 10 greater than \$2.50 per exchange access facility. Notwithstanding subsection (i) of Code  
 11 Section 46-5-134, if each local governing body which is a party to an intergovernmental  
 12 contract certifies to the service provider in writing prior to the end of the 18 month period  
 13 in advance of the date on which the '911' service was to have become fully operational  
 14 that the system cannot be placed in operation on the date originally projected but that all  
 15 parties are proceeding in a diligent and timely fashion to implement such service, the  
 16 service provider shall continue to collect the monthly '911' charge for an additional period  
 17 of 18 months or until the '911' service becomes fully operational, whichever occurs first;  
 18 and

19 (4) Such local governments comply with the requirements of Code Section 46-5-133  
 20 which relate to the imposition of a monthly '911' charge.

21 Nothing in this subsection shall be construed to authorize the imposition of any charge  
 22 upon a wireless telecommunications connection. Except as otherwise provided in this  
 23 subsection, the requirements of Code Section 46-5-134 which relate to monthly '911'  
 24 charges on exchange access facilities shall apply to charges imposed pursuant to this  
 25 subsection."

### 26 SECTION 3.

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

30 "46-7-3.

31 No motor common or contract carrier of passengers or household goods shall, except as  
 32 otherwise provided in this article, operate without first obtaining from the commissioner  
 33 a certificate of public convenience and necessity, pursuant to findings to the effect that the  
 34 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 holder of the certificate is not furnishing adequate service, ~~or if the continuance of said certificate in its original form is incompatible with the public interest.~~

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

**SECTION 6.**

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

1 "46-7-7.

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

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

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

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

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

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

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

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

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

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

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

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

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



1 "46-7-10.

2 The commissioner, upon the filing of a petition for a certificate of ~~public convenience and~~  
 3 ~~necessity~~, shall fix a time and place for hearing thereon and shall, at least ten days before  
 4 the hearing, give notice thereof by advertising the same at the expense of the applicant in  
 5 a newspaper in Atlanta, in which sheriffs' notices are published. If no protest is filed with  
 6 the commissioner or if the protest is subsequently withdrawn, the commissioner may issue  
 7 the certificate without a hearing."

8 **SECTION 10.**

9 Said title is further amended in Section 46-7-11, relating to refusal or revocation of certificate  
 10 and new application, by striking said Code section and inserting in its place the following:

11 "46-7-11.

12 When a petition for a certificate of ~~public convenience and necessity~~ under this article has  
 13 been in whole or in part denied by the commissioner, or has been granted by the  
 14 commissioner, and the order of the commissioner granting same has been quashed or set  
 15 aside by a court of competent jurisdiction, a new application by the same petitioner or  
 16 applicant therefor shall not be again considered by the commissioner within three months  
 17 from the date of the order denying the same or the judgment of the court quashing or  
 18 setting aside the order."

19 **SECTION 11.**

20 Said title is further amended in Code Section 46-7-15.1, relating to motor carrier of property  
 21 permit, by striking subsection (d) of said Code section in its entirety.

22 **SECTION 12.**

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

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

31 **SECTION 13.**

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

1 "46-7-31.

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

9 **SECTION 14.**

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

13 "46-7-32.

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

18 **SECTION 15.**

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

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

25 **SECTION 16.**

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

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

30 **SECTION 17.**

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

1 "46-7-85.3.

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

5 **SECTION 18.**

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

9 "46-7-85.8.

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

13 **SECTION 19.**

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

17 "46-7-85.9.

18 Pursuant to rules and regulations prescribed by the commissioner, each chauffeur employed  
19 by a limousine carrier shall register with the commissioner and secure a permit as a  
20 limousine chauffeur. A chauffeur's permit issued under this subsection shall be upon a  
21 form prescribed by the commissioner and shall bear thereon a distinguishing number  
22 assigned to the permittee, the full name and a photograph of the permittee, and such other  
23 information or identification as is required by the commissioner. Every chauffeur employed  
24 by a limousine carrier shall have his or her chauffeur's permit in his or her immediate  
25 possession at all times while operating a limousine. All applications for a chauffeur's  
26 permit shall be accompanied by such fee as the commissioner shall prescribe. The  
27 chauffeur's permit shall be valid for ~~two~~ four calendar years. The commissioner may issue  
28 a chauffeur's permit by mail."

29 **SECTION 20.**

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

31 "46-7-90.

32 ~~Reserved.~~ (a) Any motor or common contract carrier subject to the jurisdiction of the  
33 commissioner, which carrier willfully violates any law administered by the commissioner  
34 or any duly promulgated regulation issued thereunder or which fails, neglects, or refuses

1 to comply with any order after notice thereof, shall be liable to a penalty not to exceed  
2 \$15,000.00 for such violation and an additional penalty not to exceed \$10,000.00 for each  
3 day during which such violation continues.

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

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

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

23 (2) Proceedings for review shall be instituted by filing a petition within 30 days after the  
24 service of the final decision of the commissioner or, if a rehearing is requested, within 30  
25 days after the decision thereon. A motion for rehearing or reconsideration after a final  
26 decision by the commissioner shall not be a prerequisite to the filing of a petition for  
27 review. Copies of the petition shall be served upon the commissioner and all parties of  
28 record before the commissioner.

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

33 (4) Within 30 days after service of the petition, or within such further time as is  
34 stipulated by the parties or as is allowed by the court, the agency shall transmit to the  
35 reviewing court the original or a certified copy of the entire record of the proceedings  
36 under review. By stipulation of all parties to the review proceedings, the record may be  
37 shortened. A party unreasonably refusing to stipulate that the record be limited may be

1 taxed for the additional costs. The court may require or permit subsequent corrections or  
 2 additions to the record.

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

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

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

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

19 (C) Made upon unlawful procedure;

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

22 (E) Arbitrary or capricious.

23 (7) A party aggrieved by an order of the court in a proceeding authorized under  
 24 subsection (b) of this Code section may appeal to the Supreme Court of Georgia or to the  
 25 Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5, the  
 26 'Appellate Practice Act.'

## 27 **SECTION 21.**

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

29 "46-7-91.

30 ~~Reserved:~~ (a) Whenever the commissioner, after a hearing conducted in accordance with  
 31 the provisions of subsection (b) of Code Section 46-7-90, finds that any person, firm, or  
 32 corporation is operating as a household goods carrier for hire without a valid certificate  
 33 issued by the commissioner or is holding itself out as such a carrier without such a  
 34 certificate in violation of subsection (b) of this Code section, the commissioner may impose  
 35 a fine of not more than \$5,000.00 for each violation. The commissioner may assess the  
 36 person, firm, or corporation an amount sufficient to cover the reasonable expense of

1 investigation incurred by the commissioner. The commissioner may also assess interest at  
 2 the rate specified in paragraph (1) of subsection (b) of Code Section 46-7-90 on any fine  
 3 or assessment imposed, to commence on the day the fine or assessment becomes  
 4 delinquent. All fines, assessments, and interest collected by the commissioner shall be paid  
 5 into the general fund of the state treasury. Any party aggrieved by a decision of the  
 6 commissioner under this subsection may seek judicial review as provided in subsection (c)  
 7 of Code Section 46-7-90.

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

## 16 **SECTION 22.**

17 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
 18 is amended in Code Section 32-6-26, relating to weight of vehicle and load, by striking  
 19 subparagraph (g)(1)(D) of said Code section and inserting in its place the following:

20 "(D) Hauling granite, either block or sawed, or any other naturally occurring raw ore  
 21 or mineral for further processing, from the quarry or stockpile area to a processing plant  
 22 located in the same or an adjoining county;"

## 23 **SECTION 23.**

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