

Senate Bill 415

By: Senators Mullis of the 53rd, Shafer of the 48th, Murphy of the 27th, Douglas of the 17th, Unterman of the 45th and others

VETOED

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 public transportation, so as to provide for the regulation of private emergency warning point
3 to multipoint systems by the Public Service Commission; to define certain terms; to provide
4 for audits; to provide for immunity from liability for failure to deliver information over an
5 emergency warning point to multipoint system; to provide for related matters; to repeal
6 conflicting laws; and 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 public
10 transportation, is amended by revising Code Section 46-1-1, relating to definitions,
11 exclusions, and Georgia Forest Products Trucking Rules, as follows:

12 "46-1-1.

13 As used in this title, the term:

14 (1) 'Carrier' means a person who undertakes the transporting of goods or passengers for
15 compensation.

16 (2) 'Certificate' means a certificate of public convenience and necessity issued pursuant
17 to this title.

18 (3) 'Commission' means the Public Service Commission.

19 (4) 'Company' shall include a corporation, a firm, a partnership, an association, or an
20 individual.

21 (5) 'Electric utility' means any retail supplier of electricity whose rates are fixed by the
22 commission.

23 (5.1) 'Emergency warning point to multipoint system' means an emergency warning
24 point to multipoint, geographic messaging system that is:

25 (A) Owned, controlled, or offered by a private company, individual, firm, partnership,
26 or association; and

27 (B) Operated in whole or in part in this state utilizing:

28 (i) The FM 57 kHz Radio Broadcast Data System standard and a codeable,
 29 programmable receiver; or

30 (ii) The FM broadcast band generally and a codeable, programmable receiver.

31 (5.2) 'Emergency warning point to multipoint system provider' means a private company
 32 providing emergency warning point to multipoint system services to the public.

33 (5.3) 'Emergency warning point to multipoint system services' means the provision of
 34 an emergency warning point to multipoint system to the public including but not limited
 35 to the wireless addresses for delivery, testing, and monitoring over the FM broadcast
 36 band.

37 (5.4) 'Exempt rideshare' means:

38 (A) Government endorsed rideshare programs;

39 (B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the
 40 rideshare participants pool or otherwise share, rideshare costs such as fuel; or

41 (C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's
 42 business, for rideshare purposes as part of a government endorsed rideshare program,
 43 or for rideshare under a contract requiring compliance with subparagraph (B) of this
 44 paragraph.

45 (6) 'For compensation' or 'for hire' means an activity wherein for payment or other
 46 compensation a motor vehicle and driver are furnished to a person by another person,
 47 acting directly or knowingly and willfully acting with another to provide the combined
 48 service of the vehicle and driver, and includes every person acting in concert with, under
 49 the control of, or under common control with a motor carrier who shall offer to furnish
 50 transportation for compensation or for hire, provided that no exempt rideshare shall be
 51 deemed to involve any element of transportation for compensation or for hire.

52 (6.1) 'Gas company' means any person certificated under Article 2 of Chapter 4 of this
 53 title to construct or operate any pipeline or distribution system, or any extension thereof,
 54 for the transportation, distribution, or sale of natural or manufactured gas.

55 (6.2) 'Government endorsed rideshare program' means a vanpool, carpool, or similar
 56 rideshare operation conducted by or under the auspices of a state or local governmental
 57 transit instrumentality, such as GRTA, a transportation management association, or a
 58 community improvement district, or conducted under the auspices of such transit
 59 agencies, including through any form of contract between such transit instrumentality and
 60 private persons or businesses.

61 (6.3) 'GRTA' means the Georgia Regional Transportation Authority, which is itself
 62 exempt from regulation as a carrier under Code Section 50-32-71.

63 (7) 'Household goods' means any personal effects and property used or to be used in a
64 dwelling when a part of the equipment or supplies of such dwelling and such other
65 similar property as the commission may provide for by regulation; provided, however,
66 that such term shall not include property being moved from a factory or store except
67 when such property has been purchased by a householder with the intent to use such
68 property in a dwelling and such property is transported at the request of, and with
69 transportation charges paid by, the householder.

70 (8) 'Motor carrier of property' means a motor common or contract carrier engaged in
71 transporting property, except household goods, in intrastate commerce in this state.

72 (9) 'Motor contract carrier and motor common carrier' means as follows:

73 (A) 'Motor contract carrier' means every person, except common carriers, owning,
74 controlling, operating, or managing any motor propelled vehicle including the lessees
75 or trustees of such persons or receivers appointed by any court used in the business of
76 transporting persons or property for hire over any public highway in this state and not
77 operated exclusively within the corporate limits of any city.

78 (B) 'Motor common carrier' means every person owning, controlling, operating, or
79 managing any motor propelled vehicle, and the lessees, receivers, or trustees of such
80 person, used in the business of transporting for hire of persons or property, or both,
81 otherwise than over permanent rail tracks, on the public highways of Georgia as a
82 common carrier. The term includes, but is not limited to, limousine carriers as defined
83 in paragraph (5) of Code Section 46-7-85.1.

84 (C) Except as otherwise provided in this subparagraph, the terms 'motor common
85 carrier' and 'motor contract carrier' shall not include:

86 (i) Motor vehicles engaged solely in transporting school children and teachers to and
87 from public schools and private schools;

88 (ii) Taxicabs, drays, trucks, buses, and other motor vehicles which operate within the
89 corporate limits of municipalities and are subject to regulation by the governing
90 authorities of such municipalities. This exception shall apply to such vehicles even
91 though such vehicles may, in the prosecution of their regular business, occasionally
92 go beyond the corporate limits of such municipalities. Such exception shall not
93 include such vehicles engaged in the moving of household goods nor include
94 passenger vans (I) having a capacity of ten persons or more, (II) conducting
95 nonmetered transportation service and not operated by a municipality or municipal,
96 county, or regional governmental authority, and (III) which are engaged in private
97 for-hire transportation operating between points within the corporate limits of a
98 municipality. Pursuant to Code Section 44-1-13, all tow trucks engaged in
99 nonconsensual towing operations between points within the corporate limits of a

- 100 municipality shall remain subject to the jurisdiction of the commission and the
101 municipality within which such nonconsensual towing operations are conducted;
- 102 (iii) Hotel passenger or baggage motor vehicles when used exclusively for patrons
103 and employees of such hotel;
- 104 (iv) Motor vehicles operated not for profit with a capacity of 15 persons or less when
105 they are used exclusively to transport elderly and disabled passengers or employees
106 under a corporate sponsored van pool program, except that a vehicle owned by the
107 driver may be operated for profit when such driver is traveling to and from his or her
108 place of work provided each such vehicle carrying more than nine passengers
109 maintains liability insurance in an amount of not less than \$100,000.00 per person and
110 \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this
111 division, elderly and disabled passengers are defined as individuals over the age of 60
112 years or who, by reason of illness, injury, age, congenital malfunction, or other
113 permanent or temporary incapacity or disability, are unable to utilize mass
114 transportation facilities as effectively as persons who are not so affected;
- 115 (v) Granite trucks, where transportation from quarry to finishing plant involves not
116 crossing more than two counties;
- 117 (vi) RFD carriers and star-route carriers which carry no more than nine passengers
118 along with carriage of the United States mail, provided that such carriers shall not
119 carry passengers on a route along which another motor common carrier or motor
120 contract carrier of passengers has a permit or a certificate to operate;
- 121 (vii) Motor trucks of railway companies which perform a pick-up and delivery
122 service in connection with their freight train service, between their freight terminals
123 and points not more than ten miles distant, when either the freight terminal or such
124 points, or both, are outside the limits of an incorporated city;
- 125 (viii) Motor vehicles owned and operated exclusively by the United States
126 government or by this state or any subdivision thereof;
- 127 (ix) Single source leasing whereby a leasing company whose primary business is
128 leasing vehicles and who operates a fleet of ten or more vehicles provides vehicle
129 equipment and drivers in a single transaction to a private carrier. Such arrangement
130 is presumed to result in private carriage by the shipper if the requirements enumerated
131 below are met and subject only to the commission's transportation safety rules:
- 132 (I) The lease must be reduced to writing and a copy maintained on the leased
133 vehicle at all times during the term of the lease;
- 134 (II) The period for which the lease applies must be no less than 30 days;

135 (III) The lease agreement must provide, and the surrounding facts must reflect, that
136 the leased equipment is exclusively committed to the lessee's use for the term of the
137 lease;

138 (IV) The lease agreement must provide, and the surrounding facts must reflect, that
139 during the term of the lease the lessee accepts, possesses, and exercises exclusive
140 dominion and control over the leased equipment and assumes complete
141 responsibility for the operation of the equipment;

142 (V) The lessee must maintain public liability insurance and accept responsibility
143 to the public for any injury caused in the course of performing the transportation
144 service conducted by the lessee with the equipment during the term of the lease;

145 (VI) The lessee shall display appropriate identification on all equipment leased by
146 it showing operation by the lessee during the performance of the transportation;

147 (VII) The lessee must accept responsibility for, and bear the cost of, compliance
148 with safety regulations during performance by the lessee of any such transportation
149 services; and

150 (VIII) The lessee must bear the risk of damage to the cargo, subject to any right of
151 action the lessee may have against the lessor for the latter's negligence;

152 (x) Motor vehicles engaged exclusively in the transportation of agricultural or dairy
153 products, or both, between farm, market, gin, warehouse, or mill, whether such motor
154 vehicle is owned by the owner or producer of such agricultural or dairy products or
155 not, so long as the title remains in the producer. For the purposes of this division, the
156 term 'producer' includes a landlord where the relations of landlord and tenant or
157 landlord and cropper are involved. As used in this division, the term 'agricultural
158 products' includes fruit, livestock, meats, fertilizer, wood, lumber, cotton, and naval
159 stores; household goods and supplies transported to farms for farm purposes; or other
160 usual farm and dairy supplies, including products of grove or orchard; poultry and
161 eggs; fish and oysters; and timber or logs being hauled by the owner thereof or the
162 owner's agents or employees between forest and mill or primary place of manufacture;
163 provided, however, motor vehicles with a manufacturer's gross weight rated capacity
164 of 44,000 pounds or more engaged solely in the transportation of unmanufactured
165 forest products shall be subject to the Georgia Forest Products Trucking Rules which
166 shall be adopted and promulgated by the commissioner of public safety only for
167 application to such vehicles and vehicles defined in subparagraph (A) of paragraph
168 (13) of this Code section; provided, further, that pulpwood trailers and pole trailers
169 with a manufacturer's gross weight rated capacity of 10,001 pounds or more engaged
170 solely in the transportation of unmanufactured forest products shall have two amber
171 side marker reflectors on each side of the trailer chassis between the rear of the tractor

172 cab and the rearmost support for the load. All such reflectors shall be not less than
 173 four inches in diameter. Such rules and any amendments thereto adopted by the
 174 commissioner of public safety shall be subject to legislative review in accordance
 175 with the provisions of Code Section 46-2-30, and, for the purposes of such rules and
 176 any amendments thereto, the Senate Natural Resources and the Environment
 177 Committee and the House Committee on Natural Resources and Environment shall
 178 be the appropriate committees within the meaning of said Code Section 46-2-30. The
 179 first such rules adopted by the commissioner of public safety shall be effective July
 180 1, 1991;

181 (xi) Reserved;

182 (xii) Reserved;

183 (xiii) Vehicles, owned or operated by the federal or state government, or by any
 184 agency, instrumentality, or political subdivision of the federal or state government,
 185 or privately owned and operated for profit or not for profit, capable of transporting not
 186 more than ten persons for hire when such vehicles are used exclusively to transport
 187 persons who are elderly, disabled, en route to receive medical care or prescription
 188 medication, or returning after receiving medical care or prescription medication. For
 189 the purpose of this division, elderly and disabled persons shall have the same meaning
 190 as in division (iv) of this paragraph;

191 (xiv) Reserved; or

192 (xv) Ambulances.

193 (10) 'Passenger' means a person who travels in a public conveyance by virtue of a
 194 contract, either express or implied, with the carrier as to the payment of the fare or that
 195 which is accepted as an equivalent therefor. The prepayment of fare is not necessary to
 196 establish the relationship of passenger and carrier; although a carrier may demand
 197 prepayment of fare if persons enter his or her vehicle by his or her permission with the
 198 intention of being carried; in the absence of such a demand, an obligation to pay fare is
 199 implied on the part of the passenger, and the reciprocal obligation of carriage of the
 200 carrier arises upon the entry of the passenger.

201 (11) 'Permit' means a registration permit issued by the state revenue commissioner
 202 authorizing interstate transportation for hire exempt from the jurisdiction of the United
 203 States Department of Transportation or intrastate passenger transportation for hire exempt
 204 from the jurisdiction of the state revenue commissioner or intrastate transportation by a
 205 motor carrier of property.

206 (12) 'Person' means any individual, partnership, trust, private or public corporation,
 207 municipality, county, political subdivision, public authority, cooperative, association, or
 208 public or private organization of any character.

209 (13) 'Private carrier' means every person except motor common carriers or motor
210 contract carriers owning, controlling, operating, or managing any motor propelled
211 vehicle, and the lessees or trustees thereof or receivers appointed by any court
212 whatsoever, used in the business of transporting persons or property in private
213 transportation not for hire over any public highway in this state. The term 'private carrier'
214 shall not include:

215 (A) Motor vehicles not for hire engaged solely in the harvesting or transportation of
216 forest products; provided, however, that motor vehicles not for hire with a
217 manufacturer's gross weight rated capacity of 44,000 pounds or more engaged solely
218 in the transportation of unmanufactured forest products shall be subject only to the
219 Georgia Forest Products Trucking Rules provided for in division (9)(C)(x) of this Code
220 section;

221 (B) Motor vehicles not for hire engaged solely in the transportation of road-building
222 materials;

223 (C) Motor vehicles not for hire engaged solely in the transportation of unmanufactured
224 agricultural or dairy products between farm, market, gin, warehouse, or mill whether
225 such vehicle is owned by the owner or producer of such agricultural or dairy products
226 or not, so long as the title remains in the producer;

227 (D) Except for the motor vehicles excluded under subparagraph (C) of this paragraph,
228 motor vehicles having a manufacturer's gross vehicle weight rating of 10,000 pounds
229 or less; provided, however, that motor vehicles which have a manufacturer's gross
230 vehicle weight rating of 10,000 pounds or less and which are transporting hazardous
231 materials, as the term 'hazardous materials' is defined in Title 49 C.F.R., Parts 107,
232 171-173, and 177-178, shall be included within the meaning of the term 'private carrier';
233 or

234 (E) Exempt rideshares.

235 (14) 'Public highway' means every public street, road, highway, or thoroughfare of any
236 kind in this state.

237 (15) 'Railroad corporation' or 'railroad company' means all corporations, companies, or
238 individuals owning or operating any railroad in this state. This title shall apply to all
239 persons, firms, and companies, and to all associations of persons, whether incorporated
240 or otherwise, that engage in business as common carriers upon any of the lines of railroad
241 in this state, as well as to railroad corporations and railroad companies as defined in this
242 Code section.

243 (16) 'Rate,' when used in this title with respect to an electric utility, means any rate,
244 charge, classification, or service of an electric utility or any rule or regulation relating
245 thereto.

246 (17) 'Utility' means any person who is subject in any way to the lawful jurisdiction of the
247 commission.

248 (18) 'Vehicle' or 'motor vehicle' means any vehicle, machine, tractor, trailer, or
249 semitrailer propelled or drawn by mechanical power and used upon the highways in the
250 transportation of passengers or property, or any combination thereof, determined by the
251 state revenue commissioner."

252 **SECTION 2.**

253 Said title is further amended by adding a new Code section to read as follows:

254 "46-2-22.1.

255 All emergency warning point to multipoint systems shall be under the jurisdiction and
256 control of the commission, which shall have full power to regulate and determine just and
257 reasonable rates and charges to be made by any emergency warning point to multipoint
258 system provider for any service performed by such provider."

259 **SECTION 3.**

260 Said title is further amended by adding a new chapter to read as follows:

261 "CHAPTER 12

262 46-12-1.

263 (a) At least once every five years, the commission shall cause to be performed a
264 management audit of each emergency warning point to multipoint system provider to
265 determine whether it is being managed in an efficient and effective manner.

266 (b) The management audit provided for in this Code section shall be performed by a
267 qualified and reputable management auditor of national reputation, to be selected by the
268 commission from a list of not less than three such auditors, which list shall be made up by
269 mutual agreement of the commission and the emergency warning point to multipoint
270 system provider. The management auditor shall report the results of the audit to the
271 commission.

272 (c) In the event that the commission and the emergency warning point to multipoint system
273 provider are unable to agree on a list of management auditors, either party may petition the
274 Superior Court of Fulton County to select, within 30 days of filing, such a list after a
275 hearing on the petition.

276 (d) The audited emergency warning point to multipoint system provider shall pay for the
277 management audit. The cost of the management audit shall be recognized by the
278 commission as an operating expense of the emergency warning point to multipoint system

279 provider; and the emergency warning point to multipoint system provider's rates shall be
280 fixed by the commission to recover this retail expense amortized over such period as the
281 commission may direct.

282 46-12-2.

283 Municipal corporations, counties, consolidated governments, or any other political
284 subdivision of the state or any department or agency thereof shall not be required to utilize
285 the services of an emergency warning point to multipoint system. Municipal corporations,
286 counties, consolidated governments, or any other political subdivision of the state or any
287 department or agency thereof utilizing the services of an emergency warning point to
288 multipoint system and emergency warning point to multipoint system providers shall not
289 be liable for failure to deliver information over an emergency warning point to multipoint
290 system, except in the case of gross negligence."

291 **SECTION 4.**

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