

SENATE SUBSTITUTE TO HB 57

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to
2 registration and licensing of motor vehicles, so as to define certain terms and fees; to change
3 certain provisions relating to motor carrier permitting; to designate the Department of
4 Revenue as the agency responsible for the administration of the federal Unified Carrier
5 Registration Act of 2005; to amend Title 46 of the Official Code of Georgia Annotated,
6 relating to public utilities and public transportation, so as to repeal and reserve certain
7 provisions; to provide that certain provisions are unenforceable; to provide that identification
8 requirements shall comply with the applicable provisions of the federal Unified Carrier
9 Registration Act of 2005; to provide for promulgation of rules; to provide exemptions from
10 application of provisions; to provide for related matters; to provide for effective dates and
11 applicability; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and
15 licensing of motor vehicles, is amended by revising Code Section 40-2-1, relating to
16 definitions, as follows:

17 "40-2-1.

18 As used in this chapter, the term:

19 (1) 'Cancellation of vehicle registration' means the annulment or termination by formal
20 action of the department of a person's vehicle registration because of an error or defect
21 in the registration or because the person is no longer entitled to such registration. The
22 cancellation of registration is without prejudice and application for a new registration
23 may be made at any time after such cancellation.

24 (2) 'Commissioner' means the state revenue commissioner.

25 (3) 'Department' means the Department of Revenue.

26 (4) 'Motor carrier' means:

27 (A) Any entity subject to the terms of the Unified Carrier Registration Agreement
 28 pursuant to 49 U.S.C. Section 14504a whether engaged in interstate or intrastate
 29 commerce, or both; or

30 (B) Any entity defined by the commissioner, commissioner of public safety, or Public
 31 Service Commission who operates or controls commercial motor vehicles as defined
 32 in 49 C.F.R. Section 390.5, Title 46, or this chapter whether operated in interstate or
 33 intrastate commerce, or both.

34 (5) 'Operating authority' means the registration required by 49 U.S.C. Section 13902, 49
 35 C.F.R. Part 365, 49 C.F.R. Part 368, and 49 C.F.R. Section 392.9a.

36 (6) 'Regulatory compliance inspection' means the examination of facilities, property,
 37 buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting
 38 documentation kept or required to be kept in the normal course of motor carrier business
 39 or enterprise operations.

40 ~~(4)~~(7) 'Resident' means a person who has a permanent home or ~~abode~~ domicile in
 41 Georgia and to which, ~~whenever he or she is~~ having been absent, he or she has the
 42 intention of returning. For the purposes of this chapter, there is a rebuttable presumption
 43 that any person who, except for infrequent, brief absences, has been present in the state
 44 for 30 or more days is a resident.

45 ~~(5)~~(8) 'Revocation of vehicle registration' means the termination by formal action of the
 46 department of a vehicle registration, which registration shall not be subject to renewal or
 47 ~~restoration~~ reinstatement, except that an application for a new registration may be
 48 presented and acted upon by the department after the expiration of the applicable period
 49 of time prescribed by law.

50 ~~(6)~~(9) 'Suspension of vehicle registration' means the temporary withdrawal by formal
 51 action of the department of a vehicle registration, which temporary withdrawal shall be
 52 for a period specifically designated by the department."

53 **SECTION 2.**

54 Said title is further amended by inserting a new article to read as follows:

55 "ARTICLE 6A

56 40-2-140.

57 (a) The Department of Revenue shall be the state agency responsible for the administration
 58 of the federal Unified Carrier Registration Act of 2005, which includes participating in the
 59 development, implementation, and administration of the Unified Carrier Registration
 60 Agreement.

61 (b) Every foreign or domestic motor carrier, leasing company leasing to a motor carrier,
62 broker, or freight forwarder that engages in interstate commerce in this state shall register
63 with the commissioner or a base state and pay all fees as required by the federal Unified
64 Carrier Registration Act of 2005.

65 (c)(1) Any motor carrier, leasing company leasing to a motor carrier, broker, or freight
66 forwarder that engages in intrastate commerce and operates a motor vehicle on or over
67 any public highway of this state shall register with the commissioner and pay a fee
68 determined by the commissioner.

69 (2) No motor carrier shall be issued a registration unless there is filed with the
70 commissioner or the Federal Motor Carrier Safety Administration or any successor
71 agency a certificate of insurance for such applicant or holder, on forms prescribed by the
72 commissioner, evidencing a policy of indemnity insurance by an insurance company
73 licensed to do business in this state. Such policy shall provide for the protection of
74 passengers in passenger vehicles and the protection of the public against the negligence
75 of such motor carrier, and its servants or agents, when it is determined to be the
76 proximate cause of any injury. The commissioner shall determine and fix the amounts
77 of such indemnity insurance and shall prescribe the provisions and limitations thereof.
78 The insurer shall file such certificate. Failure to file any form required by the
79 commissioner shall not diminish the rights of any person to pursue an action directly
80 against a motor carrier's insurer. The insurer may file its certificate of insurance
81 electronically with the commissioner.

82 (3) The commissioner shall have the power to permit self-insurance in lieu of a policy
83 of indemnity insurance whenever in his or her opinion the financial ability of the motor
84 carrier so warrants.

85 (4) Any person having a cause of action, whether arising in tort or contract, under this
86 Code section may join in the same cause of action the motor carrier and its insurance
87 carrier.

88 (d) Before any motor carrier engaged in exempt passenger intrastate commerce shall
89 operate any motor vehicle on or over any public highway of this state, the motor carrier
90 shall register with the commissioner and pay a fee determined by the commissioner.

91 (e) In addition to any requirements under the federal Unified Carrier Registration Act of
92 2005, motor carriers required to have operating authority shall fulfill all applicable
93 requirements for obtaining operating authority prior to any operation of a motor vehicle to
94 which such requirements apply.

95 (f) The commissioner shall collect the fees imposed by this Code section and may establish
96 rules and regulations and prescribe such forms as are necessary to administer this Code
97 section and the federal Unified Carrier Registration Act of 2005. Notwithstanding the

98 provisions of Code Sections 40-2-131 and 48-2-17, the commissioner shall retain and
 99 utilize such fees for motor carrier safety programs and enforcement and administration of
 100 this article.

101 (g) The commissioner of public safety, and persons he or she designates pursuant to
 102 Chapter 2 of Title 35, shall have the authority to perform regulatory compliance inspections
 103 under the provisions of Article 5 of Chapter 2 of Title 35 for purposes of determining
 104 compliance with laws and regulations, the enforcement and administration of which is the
 105 responsibility of the Department of Public Safety.

106 (h) Every officer, agent, or employee of any corporation and every person who fails to
 107 comply with this article and any order, rule, or regulation of the Public Service
 108 Commission, Department of Public Safety, or Department of Revenue, or who procures,
 109 aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this
 110 article may be prosecuted, handled, and disposed of in the manner provided for in Chapter
 111 13 of this title."

112 SECTION 3.

113 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
 114 transportation, is amended by revising Code Section 46-7-12.1, relating to motor carriers'
 115 requirements as to obtaining indemnity insurance or self-insurance before issuance of permit,
 116 in its entirety as follows:

117 "46-7-12.1.

118 (a) As used in this Code section, the term:

119 (1) 'Motor carrier transportation contract' means a contract, agreement, or understanding
 120 covering:

121 (A) The transportation of property for compensation or hire by the motor carrier;

122 (B) Entrance on property by the motor carrier for the purpose of loading, unloading,
 123 or transporting property for compensation or hire; or

124 (C) A service incidental to activity described in subparagraph (A) or (B) of this
 125 paragraph, including, but not limited to, storage of property.

126 Motor carrier transportation contract shall not include the Uniform Intermodal
 127 Interchange and Facilities Access Agreement administered by the Intermodal Associaton
 128 of North America or other agreements providing for the interchange, use, or possession
 129 of intermodal chassis, containers, or other intermodal equipment.

130 (2) 'Promisee' means the promisee and any agents, employees, servants, or independent
 131 contractors who are directly responsible to the promisee except for motor carriers party
 132 to a motor carrier transportation contract with a promisee and such motor carrier's agents,

133 employees, servants, or independent contractors directly responsible to such motor
134 carrier.

135 (b) Notwithstanding any provision of law to the contrary, a provision, clause, covenant,
136 or agreement contained in, collateral to, or affecting a motor carrier transportation contract
137 that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying,
138 defending, or holding harmless, the promisee from or against any liability for loss or
139 damage resulting from the negligence or intentional acts or omissions of the promisee is
140 against the public policy of this state and is void and unenforceable."

141 **SECTION 4.**

142 Said title is further amended by repealing and reserving Code Section 46-7-15, relating to
143 registration and licensing of motor carriers and cities and counties barred from levying taxes
144 on carriers.

145 **SECTION 5.**

146 Said title is further amended by repealing Code Section 46-7-15.1, relating to motor carrier
147 of property permits, in its entirety.

148 **SECTION 6.**

149 Said title is further amended by repealing and reserving Code Section 46-7-16, relating to
150 registration and insurance for motor carriers engaged solely in interstate commerce;
151 emergency, temporary, or trip-lease vehicle registration permits; late registration and
152 identification; reciprocal agreements; and certificate not required.

153 **SECTION 7.**

154 Said title is further amended by revising Code Section 46-7-26, relating to the authority of
155 the commissioner to promulgate rules and regulations for safety, as follows:
156 "46-7-26.

157 (a) The commissioner of public safety shall have the authority to promulgate rules and
158 regulations for the safe operation of motor vehicles and drivers and the safe transportation
159 of hazardous materials. Any such rules and regulations promulgated or deemed necessary
160 by the commissioner of public safety shall include the following:

161 (1) Every motor vehicle and all parts thereof shall be maintained in a safe condition at
162 all times; and the lights, brakes, and equipment shall meet such safety requirements as the
163 commissioner of public safety shall from time to time promulgate;

164 (2) Every driver employed to operate a motor vehicle for a motor carrier shall be at least
165 18 years of age, of temperate habits and good moral character, possess a valid driver's

166 license, not use or possess prohibited drugs or alcohol while on duty, and shall be fully
 167 competent to operate the motor vehicle under his or her charge;

168 (3) Accidents arising from or in connection with the operation of motor common or
 169 contract carriers shall be reported to the commissioner of transportation in such detail and
 170 in such manner as the commissioner of transportation may require; and

171 (4) The commissioner of public safety shall require every motor common, ~~contract,~~
 172 exempt, and ~~contract carrier~~ private carrier's vehicles to have attached to each unit or
 173 vehicle such distinctive markings ~~or tags~~ as shall be adopted by the commissioner of
 174 public safety. Such identification requirements shall comply with the applicable
 175 provisions of the federal Unified Carrier Registration Act of 2005.

176 (b) Regulations governing the safe operation of motor vehicles and drivers and the safe
 177 transportation of hazardous materials may be adopted by administrative order, including,
 178 but not limited to, referencing compatible federal regulations or standards without
 179 compliance with the procedural requirements of Chapter 13 of Title 50, provided that such
 180 compatible federal regulations or standards shall be maintained on file by the Department
 181 of Public Safety and made available for inspection and copying by the public, by means
 182 including, but not limited to, posting on the department's computer Internet site. The
 183 commissioner of public safety may comply with the filing requirements of Chapter 13 of
 184 Title 50 by filing with the office of the Secretary of State merely the name and designation
 185 of such rules, regulations, standards, and orders. The courts shall take judicial notice of
 186 rules, regulations, standards, or orders so adopted or published.

187 (c) The commissioner of public safety may, pursuant to rule or regulation, specify and
 188 impose civil monetary penalties for violations of laws, rules, and regulations relating to
 189 driver and motor carrier safety and transportation of hazardous materials. Except as may
 190 be hereafter authorized by law, the maximum amount of any such monetary penalty shall
 191 not exceed the maximum penalty authorized by law or rule or regulation for the same
 192 violation immediately prior to July 1, 2005."

193 **SECTION 8.**

194 Said title is further amended by revising Code Section 46-7-37, relating to private carriers
 195 excepted from application of article; safety rules authorized; and certificates or permits not
 196 required, as follows:

197 "46-7-37.

198 (a) Except as otherwise provided in ~~subsection (b)~~ of this Code section, this article shall
 199 not apply to private carriers engaged exclusively in the transportation of goods belonging
 200 to the individual, firm, partnership, corporation, or association owning, controlling,

201 operating, or managing the motor vehicle in private transportation over any public highway
202 in this state.

203 ~~(b) The commission shall have the authority to promulgate rules designed to promote~~
204 ~~safety of private carriers. Every motor vehicle of a private carrier and all parts thereof shall~~
205 ~~be maintained in a safe condition at all times; and the carrier's equipment shall meet such~~
206 ~~safety requirements as the commission shall from time to time promulgate. Private carriers~~
207 ~~shall be subject to the requirements of Code Sections 46-7-26 and 46-7-27, as well as the~~
208 ~~jurisdiction of the commissioner of public safety, pursuant to Article 5 of Chapter 2 of Title~~
209 ~~35.~~

210 (c) Private carriers are not required to hold certificates or permits issued by the
211 commission."

212 SECTION 9.

213 Said title is further amended by revising Code Section 46-7-39, relating to the penalty for
214 failure to comply with Chapter 7 of such title, as follows:

215 "46-7-39.

216 (a) Every officer, agent, or employee of any corporation and every person who violates or
217 fails to comply with this chapter relating to the regulation of motor carriers; or any order,
218 rule, or regulation of the Public Service Commission, Department of Public Safety, or
219 Department of Revenue, or who procures, aids, or abets therein, shall be guilty of a
220 misdemeanor.

221 (b) No person shall drive or operate, or cause the operation of, a motor vehicle in violation
222 of an out-of-service order. As used in this subsection, the term 'out-of-service order' means
223 a temporary prohibition against operating as a carrier or driving or moving a motor vehicle,
224 freight container or any cargo thereon, or any package containing a hazardous material.

225 (c) Misdemeanor violations of this chapter may be prosecuted, handled, and disposed of
226 in the manner provided for by Chapter 13 of Title 40."

227 SECTION 10.

228 (a) Section 3 of this Act shall become effective on July 1, 2009, and shall apply to
229 contracts entered into on or after such date.

230 (b) Sections 4 and 5 of this Act shall become effective October 1, 2009, for the purpose
231 of adopting rules and regulations to implement the federal Unified Carrier Registration Act
232 of 2005.

233 (c) The remaining sections of this Act shall become effective upon its approval by the
234 Governor or upon its becoming law without such approval.

235 **SECTION 11.**
236 All laws and parts of laws in conflict with this Act are repealed.