

House Bill 323

By: Representatives Powell of the 32nd, Taylor of the 173rd, Lumsden of the 12th, Glanton of the 75th, Hitchens of the 161st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to
2 identification and regulation of motor vehicles so as to modify the age for operation of
3 certain commercial motor vehicle operators; to require commercial motor vehicle operators
4 to utilize safety belts; to change the names of sections within the Motor Carrier Compliance
5 Division of the Department of Public Safety; to increase civil fines and sanctions against
6 motor carriers, limousine carriers, and persons regulated by the Motor Carrier Compliance
7 Division of the Department of Public Safety; to authorize the commissioner of public safety
8 to issue an out-of-service order against any motor carrier or limousine carrier or person
9 permitted or certified by the department; to authorize the commissioner to immediately
10 suspend a motor carrier or limousine carrier certificate; to authorize the department to retain
11 and set certain fees imposed against motor carriers and limousine carriers; to authorize the
12 department to seize vehicles for the nonpayment of assessed fines and penalties; to provide
13 a definition for corporate sponsored vanpool; to modify provisions relating to out-of-service
14 orders; to require certain motor carriers of passengers and towing companies to obtain
15 permits from the Department of Public Safety; to modify provisions relating to the
16 suspension of motor carrier permits and certificates; to modify provisions relating to motor
17 carriers of passengers; to make it a crime for motor carriers to operate vehicles without a
18 valid certification, permit, or registration from the Department of Public Safety; to increase
19 fines for advertising carrier services without a certificate from the Department of Public
20 Safety; to amend Code Section 40-1-167, relating to required information on license plates
21 of limousines, so as to modify provisions relating to requirements on limousine license
22 plates; to amend Code Section 44-1-13, relating to the removal of improperly parked cars or
23 trespassing personal property, concurrent jurisdiction, procedure, automatic surveillance
24 prohibited, and penalties, so as to authorize the Department of Public Safety to assess an
25 undetermined application fee for towing companies; to provide for related matters; to provide
26 an effective date; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 323

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SECTION 1.

Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to identification and regulation of motor vehicles, is amended by revising Code Section 40-1-8, relating to definitions, safe operations of motor carriers and commercial motor vehicles, civil and criminal penalties, and operation of out-of-service vehicles, as follows:

"40-1-8.

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

(1) 'Commissioner' means the commissioner of public safety.

(2) 'Department' means the Department of Public Safety.

(b) The commissioner shall have the authority to promulgate rules and regulations for the safe operation of motor carriers, the safe operation of commercial motor vehicles and drivers, and the safe transportation of hazardous materials. Any such rules and regulations promulgated or deemed necessary by the commissioner shall include, but are not limited to, the following:

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

(2) Every driver employed to operate a motor vehicle for a motor carrier shall:

(A) Be be at least 18 years of age to operate a motor vehicle for a motor carrier intrastate and at least 21 years of age to operate a motor vehicle for a motor carrier interstate;

(B) Meet meet the qualification requirements the commissioner shall from time to time promulgate;

(C) Be be of temperate habits and good moral character;

(D) Possess possess a valid driver's license;

(E) Not not use or possess prohibited drugs or alcohol while on duty; and

(F) Be be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;

(3) Accidents arising from or in connection with the operation of commercial motor vehicles shall be reported to the commissioner of transportation in such detail and in such manner as the commissioner of transportation may require;

(4) The commissioner shall require each commercial motor vehicle to have attached such distinctive markings as shall be adopted by the commissioner. Such identification requirements shall comply with the applicable provisions of the ~~Federal~~ federal Unified Carrier Registration Act of 2005; and

63 (5) The commissioner shall provide distinctive rules for the transportation of
64 unmanufactured forest products in intrastate commerce to be designated the 'Georgia
65 Forest Products Trucking Rules.'

66 (c)(1) Regulations governing the safe operations of motor carriers, commercial motor
67 vehicles and drivers, and the safe transportation of hazardous materials may be adopted
68 by administrative order, including, but not limited to, by referencing compatible federal
69 regulations or standards without compliance with the procedural requirements of Chapter
70 13 of Title 50, the 'Georgia Administrative Procedure Act,' provided that such federal
71 regulations or standards shall be maintained on file by the department and made available
72 for inspection and copying by the public, by means including, but not limited to, posting
73 on the department's Internet site. The commissioner may comply with the filing
74 requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State
75 the name and designation of such rules, regulations, standards, and orders. The courts
76 shall take judicial notice of rules, regulations, standards, or orders so adopted or
77 published.

78 (2) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to
79 the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in
80 full force and effect until such time as the commissioner of public safety adopts, issues,
81 or promulgates new rules, regulations, or orders pursuant to the provisions of this Code
82 section.

83 (d)(1) The commissioner may, pursuant to rule or regulation, specify and impose civil
84 monetary penalties for violations of laws, rules, and regulations relating to driver and
85 motor carrier safety and transportation of hazardous materials. Except as may be
86 hereafter authorized by law, the maximum amount of any such monetary penalty shall not
87 exceed the maximum penalty authorized by law or rule or regulation for the same
88 violation immediately prior to July 1, 2005.

89 (2) A cause of action for the collection of a penalty imposed pursuant to this subsection
90 may be brought in the superior court of the county where the principal place of business
91 of the penalized company is located, in the superior court of the county where the action
92 giving rise to the penalty occurred, or in the Superior Court of Fulton County.

93 (e) The commissioner is authorized to adopt such rules and orders as he or she may deem
94 necessary in the enforcement of this Code section. Such rules and orders shall have the
95 same dignity and standing as if such rules and orders were specifically provided in this
96 Code section. The commissioner is authorized to establish such exceptions or exemptions
97 from the requirements of this Code section, as he or she shall deem appropriate, consistent
98 with any federal program requirements, and consistent with the protection of the public
99 health, safety, and welfare.

100 (f)(1) The commissioner may designate members of the department, pursuant to Article
 101 5 of Chapter 2 of Title 35, to perform regulatory compliance inspections. Members of
 102 county, municipal, campus, and other state agencies may be designated by the
 103 commissioner to perform regulatory compliance inspections only of vehicles, drivers, and
 104 cargo in operation, and may only enforce the provisions of rules and regulations
 105 promulgated under this Code section or Article 2 of this chapter subject to the provisions
 106 of a valid agreement between the commissioner and the county, municipal, campus, or
 107 other state agency.

108 (2) Unless designated and authorized by the commissioner, no members of county,
 109 municipal, campus, and other state agencies may perform regulatory compliance
 110 inspections.

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

115 (h) Unless otherwise provided by law, a motor carrier or operator of a commercial motor
 116 vehicle shall comply with the:

117 (1) Motor carrier safety standards found in 49 C.F.R. Part 391;

118 (2) Seatbelt usage requirements found in 49 C.F.R. Section 392.16; and

119 (3) Hours of service and record of duty status requirements of 49 C.F.R. Part 395.

120 (i) A person failing to comply with the requirements of paragraph (2) of subsection (h) of
 121 this Code section shall be guilty of the offense of failure to wear a seat safety belt while
 122 operating a commercial motor vehicle and, upon conviction thereof, may be fined not more
 123 than \$50.00; however, the costs of such prosecution shall not be taxed nor shall any
 124 additional penalty, fee, or surcharge to a fine for such offense be assessed against a person
 125 for conviction thereof. The court imposing such fine shall forward a record of the
 126 disposition of the case to the Department of Driver Services.

127 ~~(h)~~(j) Every officer, agent, or employee of any corporation and every person who violates
 128 or fails to comply with this Code section or any order, rule, or regulation adopted pursuant
 129 to this Code section, or who procures, aids, or abets a violation of this Code section or such
 130 rule or regulation, shall be guilty of a misdemeanor. Misdemeanor violations of this Code
 131 section may be prosecuted, handled, and disposed of in the manner provided for by Chapter
 132 13 of this title."

133 **SECTION 2.**

134 Said chapter is further amended in Code Section 40-1-52, relating to the establishment of the
 135 Motor Carrier Compliance Division, as follows:

136 "40-1-52.
 137 There is created and established a division within the Department of Public Safety to be
 138 known as the Motor Carrier Compliance Division which shall include a section designated
 139 the Regulatory Compliance Section. ~~The Motor Carrier Compliance Division shall consist~~
 140 ~~of two sections, the Motor Carrier Compliance Enforcement Section and the Motor Carrier~~
 141 ~~Regulation Compliance Section.~~ Except as provided in Chapter 2 of Title 35, the members
 142 of the Motor Carrier Compliance ~~Enforcement Section~~ Division shall be known and
 143 designated as law enforcement officers. The ~~Motor Carrier Regulation~~ Regulatory
 144 Compliance Section shall be responsible for the regulation of the operation of motor
 145 carriers and limousine carriers in accordance with this article, ~~and motor carrier safety and~~
 146 ~~the transportation of hazardous materials as provided in Code Section 40-1-8,~~ and Article
 147 2 of this chapter."

148 SECTION 3.

149 Said chapter is further amended in Code Section 40-1-53, relating to methods of enforcement
 150 for the Georgia Motor Carrier Act of 2012, as follows:

151 "40-1-53.

152 (a) As used in this article, the term 'department' means the Department of Public Safety.

153 (b) The department is authorized to enforce this article by instituting actions for injunction,
 154 mandamus, or other appropriate relief."

155 SECTION 4.

156 Said chapter is further amended by repealing in its entirety Code Section 40-1-56, relating
 157 to penalties for failure to register, administrative procedures, and judicial review, and
 158 enacting a new Code Section 40-1-56 to read as follows:

159 "40-1-56.

160 (a) Any motor carrier, limousine carrier, or person who:

161 (1) Fails to obtain a certificate or permit from the department as required by law, rule,
 162 or regulation;

163 (2) Willfully violates a law, rule, or regulation enforced by the department pursuant to
 164 this chapter or Article 2 of Chapter 1 of Title 40; or

165 (3) Fails to comply with an order of the department entered pursuant this chapter or
 166 Article 2 of Chapter 1 of Title 40

167 shall be liable for a penalty not to exceed \$15,000.00 for such violation and an additional
 168 penalty not to exceed \$10,000.00 for each day during which such violation continues. The
 169 department is authorized to assess a penalty against a motor carrier, limousine carrier, or
 170 person for a violation of this subsection.

171 (b) For a violation of a law, rule, or regulation enforced by the department, the
172 commissioner is authorized to issue an out-of-service order against any motor carrier,
173 limousine carrier, or person permitted or certified by the department requiring a service
174 provider or a specified vehicle, or both, to cease all operation.

175 (c) Following a reasonable attempt to notify a holder of a certificate, the commissioner is
176 authorized to immediately suspend a motor carrier or limousine carrier certificate if the
177 commissioner finds that such suspension is necessary to protect against an immediate threat
178 to the life, health, or safety of others. An emergency suspension made pursuant to this
179 subsection may be appealed by filing a request for administrative review with the
180 department within 30 days of receipt of notice of the department's decision. An
181 administrative hearing shall be conducted in accordance with the procedures for contested
182 cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

183 (d) Notice of a violation and the assessed amount shall be made by means of personal
184 service upon the violator. The respondent shall then have 30 days in which to pay the
185 assessed penalty or file with the department a written request for an administrative review.
186 An administrative review hearing shall only be provided to the person or entity against
187 which the penalty was assessed and upon payment to the department of a \$200.00
188 administrative filing fee which shall be retained by the department. The request for an
189 administrative review shall specify whether the respondent is challenging the validity of
190 the imposition of the penalty or the amount of the assessment, or both. An administrative
191 hearing shall be conducted in accordance with the procedures for contested cases under
192 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

193 (e)(1) All penalties and interest thereon, at the rate of 10 percent per annum, recovered
194 by the department shall be paid into the general fund of the state treasury. Interest shall
195 be charged beginning 30 days from the date the assessed penalty was served upon the
196 responding party. A respondent may elect to remit the assessed penalty to the department
197 in order to stop the interest thereon from accruing. In such case, if the respondent is a
198 prevailing party, the department shall return the assessed penalty, including any interest
199 paid, to the respondent within 30 days of the final decision.

200 (2) Hearing costs awarded to the department shall be retained by the department.

201 (3) Reissuance fees charged by the Department of Revenue shall be retained by the
202 Department of Revenue.

203 (4) Restoration fees charged by the department shall be retained by the department.

204 (5) The department may seize a vehicle as provided by this Code section and hold the
205 vehicle until all fines, fees, and penalties owing the department are paid in full.

206 (f) Any responding party failing to appear shall be assessed an additional penalty of
207 \$150.00 which shall be collected by the department in addition to the assessed penalties
208 and interest.

209 (g)(1) Any party who has exhausted all administrative remedies available before the
210 department and who is aggrieved by a final decision of the department made pursuant to
211 this Code section may seek judicial review of the final order of the department in the
212 Superior Court of Fulton County. During the appeal, the decision of the department shall
213 not be stayed.

214 (2) Proceedings for review shall be instituted by filing a petition within 30 days after the
215 service of the final decision of the department or, if a rehearing is requested, within 30
216 days after the decision thereon. A motion for rehearing or reconsideration after a final
217 decision by the department shall not be a prerequisite to the filing of a petition for review.
218 Copies of the petition shall be served upon the department and all parties of record before
219 the department.

220 (3) The petition shall state the nature of the petitioner's interest, the facts showing that
221 the petitioner is aggrieved by the decision, and the ground upon which the petitioner
222 contends the decision should be reversed. The petition may be amended by leave of
223 court.

224 (4) Within 30 days after service of the petition or within such further time as is stipulated
225 by the parties or as is allowed by the court, the agency shall have transmitted to the
226 reviewing court the original or a certified copy of the entire record of the proceedings
227 under review. By stipulation of all parties to the review proceedings, the record may be
228 shortened. A party unreasonably refusing to stipulate that the record be limited may be
229 taxed for the additional costs. The court may require or permit subsequent corrections
230 or additions to the record.

231 (5) The review shall be conducted by the court without a jury and shall be confined to
232 the record. The court shall not substitute its judgment for that of the department as to the
233 weight of the evidence on questions of fact. The court may affirm the decision of the
234 department or remand the case for further proceedings. The court may reverse the
235 decision of the department if substantial rights of the petitioner have been prejudiced
236 because the department's findings, inferences, conclusions, or decisions are:

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

238 (B) In excess of the statutory authority of the department;

239 (C) Made upon unlawful procedure;

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

242 (E) Arbitrary or capricious.

243 (6) A party aggrieved by an order of the court may appeal to the Supreme Court or to the
 244 Court of Appeals in accordance with Article 2 of Chapter 6 of Title 5, the 'Appellate
 245 Practice Act.'"

246 **SECTION 5.**

247 Said chapter is further amended by adding a new Code section to read as follows:

248 "40-1-56.1

249 (a) Whenever any motor carrier, limousine carrier, or person owes penalties to the
 250 department which were imposed for violations pursuant to Code Section 40-1-56 and the
 251 violation relates to an identifiable vehicle, then the motor carrier, limousine carrier, or
 252 person shall have 30 days from the date of the assessed penalty or final judicial review
 253 following an appeal of the assessment. If the assessment is not paid within the 30 days,
 254 such assessment shall become a lien upon the identified motor vehicle found to be in
 255 violation, and the lien shall be superior to all liens except liens for taxes or perfected
 256 security interests established before the debt to the department was created.

257 (b) The department shall perfect the lien created under this Code section by sending notice
 258 thereof on a notice designated by the department, by first-class mail or by statutory
 259 overnight delivery, return receipt requested, to the owner and all holders of liens and
 260 security interests shown on the records of the Department of Revenue maintained pursuant
 261 to Chapter 3 of this title. Upon receipt of notice from the Department of Public Safety, the
 262 holder of the certificate of title shall surrender the same to the state revenue commissioner
 263 for issuance of a replacement certificate of title bearing the lien of the department unless
 264 the assessment is paid within 30 days of the receipt of notice. The Department of Revenue
 265 may append the lien to its records, notwithstanding the failure of the holder of the
 266 certificate of title to surrender such certificate as required by this subsection.

267 (c) Upon issuance of a title bearing the lien of the department, or the appending of the lien
 268 to the records of the Department of Revenue, the owner of the vehicle or the holder of any
 269 security interest or lien shown in the records of the Department of Revenue may satisfy
 270 such lien by payment of the amount of the assessment, including hearing costs, if any, and
 271 payment of an additional reissuance fee of \$100.00 which shall be paid to the Department
 272 of Revenue. Upon receipt of such amount, the department shall release its lien and the
 273 Department of Revenue shall issue a new title without the lien.

274 (d)(1) The department, in seeking to foreclose its lien on the motor vehicle arising out
 275 of an assessed violation pursuant to Code Section 40-1-56, may seek an immediate writ
 276 of possession from the court before whom the petition is filed, if the petition contains a
 277 statement of facts, under oath, by the department, its agents, its officers, or attorney

278 setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an
279 immediate writ of possession.

280 (2) The department shall allege under oath specific facts sufficient to show that it is
281 within the power of the defendant to conceal, encumber, convert, convey, or remove from
282 the jurisdiction of the court the property which is the subject matter of the petition.

283 (3) The court before whom the petition is pending shall issue a writ for immediate
284 possession upon finding that the petitioner has complied with paragraphs (1) and (2) of
285 this subsection. If the petitioner is found not to have made sufficient showing to obtain
286 an immediate writ of possession, the court may, nevertheless, treat the petition as one
287 being filed under Code Section 44-14-231 and proceed accordingly.

288 (4) When an immediate writ of possession has been granted, the department shall
289 proceed against the defendant in the same manner as provided for in Code Sections
290 44-14-265 through 44-14-269.

291 (e)(1) Whenever any motor carrier, limousine carrier, or person fails within 30 days of
292 the date of issuance of a penalty involving an identifiable vehicle assessed pursuant to
293 Code Section 40-1-56 either to pay the assessment or appeal to the department for an
294 administrative review, the Department of Revenue may act to suspend the motor vehicle
295 registration of the vehicle involved. However, if the motor carrier, limousine carrier, or
296 person requests an administrative review, the Department of Revenue shall act to suspend
297 the registration only after the issuance of a final decision favorable to the department and
298 the requisite failure of the motor carrier, limousine carrier, or person to pay the
299 assessment. Upon such failure to pay the assessment, the Department of Revenue shall
300 send a letter to the owner of such motor vehicle notifying the owner of the suspension of
301 the motor vehicle registration issued to the motor vehicle involved in violation which was
302 the basis for the penalty. Upon complying with this subsection by paying the overdue
303 assessment, submitting proof of compliance, and paying a \$10.00 restoration fee to the
304 Department of Revenue, the state revenue commissioner shall reinstate any motor vehicle
305 registration suspended under this subsection. In cases where the motor vehicle
306 registration has been suspended under this subsection for a second or subsequent time
307 during any two-year period, the Department of Revenue shall suspend the motor vehicle
308 registration for a period of 60 days and thereafter until the owner submits proof of
309 compliance with this subsection and pays a \$150.00 restoration fee to the Department of
310 Revenue.

311 (2) Unless otherwise provided for in this Code section, notice of the effective date of the
312 suspension of a motor vehicle registration occurs when the owner has actual knowledge
313 or legal notice thereof, whichever first occurs. For the purposes of making any
314 determination relating to the restoration of a suspended motor vehicle registration, no

315 period of suspension shall be deemed to have begun until ten days after the mailing of the
 316 notice required in paragraph (1) of this subsection.

317 (3) For the purposes of this subsection, except where otherwise provided, the mailing of
 318 a notice to a person at the name and address shown in records of the Department of
 319 Revenue maintained under Chapter 3 of this title shall, with respect to the holders of liens
 320 and security interests, be presumptive evidence that such person received the required
 321 notice.

322 (4) For the purposes of this subsection, except where otherwise provided, the mailing of
 323 a notice to owners and operators of vehicles involved in a penalty assessed pursuant to
 324 40-1-56 shall be presumptive evidence that such person received the required notice.

325 (5) The state revenue commissioner may suspend the motor vehicle registration of any
 326 offending vehicle for which payment of an assessment is made by a check that is returned
 327 for any reason."

328 **SECTION 6.**

329 Said chapter is further amended by revising Code Section 40-1-100, relating to definitions
 330 relative to certification of motor carriers, as follows:

331 "40-1-100.

332 As used in this part, the term:

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

335 (2) 'Certificate' or 'motor carrier certificate' means a certificate of public convenience and
 336 necessity issued pursuant to this part or under the 'Motor Carrier Act of 1929,' under the
 337 'Motor Carrier Act of 1931,' or under prior law.

338 (3) 'Commissioner' means the ~~Commissioner of the Department of Public Safety~~
 339 commissioner of public safety.

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

342 (5) 'Corporate sponsored vanpool' means a rideshare program sponsored by an employer
 343 in which the employer pays all or some of the costs associated with the transportation of
 344 its employees to a single work reporting location and all the vehicles used in the program
 345 have a manufacturer's gross vehicle weight rating of not more than 10,000 pounds and
 346 are designed to carry not more than 15 passengers including the driver.

347 (6) 'Department' means the Department of Public Safety.

348 ~~(5)~~(7) 'Exempt rideshare' means:

349 (A) Government endorsed rideshare programs;

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

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

356 ~~(6)(8)~~ 'For compensation motor vehicle' or 'for hire motor vehicle' means ~~an activity~~
 357 ~~wherein for payment or other compensation a motor vehicle and driver are furnished to~~
 358 ~~a person by another person, acting directly or knowingly and willfully acting with another~~
 359 ~~to provide the combined service of the vehicle and driver, and includes every person~~
 360 ~~acting in concert with, under the control of, or under common control with a motor carrier~~
 361 ~~who shall offer to furnish transportation for compensation or for hire, provided that no~~
 362 ~~exempt rideshare shall be deemed to involve any element of transportation for~~
 363 ~~compensation or for hire~~ a person engaged in the transportation of goods or passengers
 364 for compensation.

365 ~~(7)(9)~~ 'Government endorsed rideshare program' means a vanpool, carpool, or similar
 366 rideshare operation conducted by or under the auspices of a state or local governmental
 367 transit instrumentality, such as GRTA, a transportation management association, or a
 368 community improvement district, or conducted under the auspices of such transit
 369 agencies, including through any form of contract between such transit instrumentality and
 370 private persons or businesses.

371 ~~(8)(10)~~ 'GRTA' means the Georgia Regional Transportation Authority, which is itself
 372 exempt from regulation as a carrier under Code Section 50-32-71.

373 ~~(9)(11)~~ 'Household goods' means any personal effects and property used or to be used
 374 in a dwelling when a part of the equipment or supplies of such dwelling and such other
 375 similar property as the commissioner may provide for by regulation; provided, however,
 376 that such term shall not include property being moved from a factory or store except
 377 when such property has been purchased by a householder with the intent to use such
 378 property in a dwelling and such property is transported at the request of, and with
 379 transportation charges paid by, the householder.

380 ~~(10)(12)~~ 'Motor carrier' means:

381 (A) Every person owning, controlling, operating, or managing any motor vehicle,
 382 including the lessees, receivers, or trustees of such persons or receivers appointed by
 383 any court, used in the business of transporting for hire persons, household goods, or
 384 property; or engaged in the activity of nonconsensual towing pursuant to Code Section
 385 44-1-13 for hire over any public highway in this state.

386 (B) Except as otherwise provided in this subparagraph, the term 'motor carrier' shall
 387 not include:

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

390 (ii) Taxicabs which operate within the corporate limits of municipalities and are
 391 subject to regulation by the governing authorities of such municipalities; the
 392 provisions of this division notwithstanding, vehicles and the drivers thereof operating
 393 within the corporate limits of any city shall be subject to the safety regulations
 394 adopted by the commissioner of public safety pursuant to Code Section 40-1-8;

395 (iii) Limousine carriers as provided for in Part 3 of this article;

396 (iv) Hotel passenger or baggage motor vehicles when used exclusively for patrons
 397 and employees of such hotel;

398 (v) Motor vehicles operated not for profit with a capacity of 15 persons or less when
 399 they are used exclusively to transport elderly and disabled passengers or employees
 400 under a corporate sponsored ~~van pool~~ vanpool program, except that a vehicle owned
 401 by the driver may be operated for profit when such driver is traveling to and from his
 402 or her place of work, provided each such vehicle carrying more than nine passengers
 403 maintains liability insurance in an amount of not less than \$100,000.00 per person and
 404 \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this
 405 part, elderly and disabled passengers are defined as individuals over the age of 60
 406 years or who, by reason of illness, injury, age, congenital malfunction, or other
 407 permanent or temporary incapacity or disability, are unable to utilize mass
 408 transportation facilities as effectively as persons who are not so affected;

409 (vi) Motor vehicles owned and operated exclusively by the United States government
 410 or by this state or any subdivision thereof;

411 (vii) Vehicles, owned or operated by the federal or state government; or by any
 412 agency, instrumentality, or political subdivision of the federal or state government,
 413 or privately owned and operated for profit or not for profit, capable of transporting not
 414 more than ten persons for hire when such vehicles are used exclusively to transport
 415 persons who are elderly, disabled, en route to receive medical care or prescription
 416 medication, or returning after receiving medical care or prescription medication. ~~For~~
 417 ~~the purpose of this part, elderly and disabled persons shall have the same meaning as~~
 418 ~~in division (v) of this subparagraph; or~~

419 (viii) Ambulances; or

420 (ix) Any truck engaged exclusively in the transportation of agricultural or dairy
 421 products, or both, between farm, market, gin, warehouse, or mill.

422 ~~(11)~~(13) 'Passenger' means a person who travels in a public conveyance by virtue of a
 423 contract, either express or implied, with the carrier as to the payment of the fare or that
 424 which is accepted as an equivalent therefor. The prepayment of fare is not necessary to
 425 establish the relationship of passenger and carrier, although a carrier may demand
 426 prepayment of fare if persons enter his or her vehicle by his or her permission with the
 427 intention of being carried; in the absence of such a demand, an obligation to pay fare is
 428 implied on the part of the passenger, and the reciprocal obligation of carriage of the
 429 carrier arises upon the entry of the passenger.

430 (14) 'Permit' means a written or electronic authorization issued by the department to
 431 motor carriers of passengers and nonconsensual towing companies for the purpose of
 432 providing services in accordance with the rules and guidelines of the department.

433 ~~(12)~~(15) 'Person' means any individual, partnership, trust, private or public corporation,
 434 municipality, county, political subdivision, public authority, cooperative, association, or
 435 public or private organization of any character.

436 ~~(13)~~(16) 'Public highway' means every public street, road, highway, or thoroughfare of
 437 any kind in this state.

438 ~~(14)~~(17) 'Vehicle' or 'motor vehicle' means any vehicle, machine, tractor, trailer, or
 439 semitrailer propelled or drawn by mechanical power and used upon the highways in the
 440 transportation of passengers or property, or any combination thereof, determined by the
 441 commissioner."

442 **SECTION 7.**

443 Said chapter is further amended in subsection (a) of Code Section 40-1-102, relating to
 444 certificates as prerequisite to the operation of motor carriers and minimum insurance
 445 requirements, as follows:

446 "(a) No motor carrier of passengers or household goods ~~or property~~ shall, except as
 447 otherwise provided in this part, operate without first obtaining from the commissioner a
 448 certificate or permit."

449 **SECTION 8.**

450 Said chapter is further amended in Code Section 40-1-104 relating to the revocation,
 451 alteration, or amendment of a motor carrier certificate, suspension of a certificate, and
 452 out-of-service orders, as follows:

453 "40-1-104.

454 (a) The commissioner may, at any time after notice and opportunity to be heard and for
 455 reasonable cause, revoke, alter, or amend any motor carrier certificate or permit, if it shall
 456 be made to appear that the holder of the certificate has willfully violated or refused to

457 observe any of the lawful and reasonable orders, rules, or regulations prescribed by the
 458 commissioner or any of the provisions of this part or any other law of this state regulating
 459 or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the
 460 certificate is not furnishing adequate service.

461 (b) The commissioner may, at any time, after reasonable attempt at notice, immediately
 462 suspend any motor carrier certificate or permit, if the commissioner finds such suspension
 463 necessary:

464 (1) ~~To~~ to protect life, health, or safety, ~~or;~~

465 (2) ~~to protect the public and~~ For the protection of consumers; ~~or~~

466 (3) Based upon a finding that the carrier no longer meets the qualification or fitness
 467 requirements of Code Section 40-1-103 or 40-1-106.

468 Certificate holders affected by such suspension may appeal to the commissioner for review
 469 pursuant to Chapter 13 of Title 50, the 'Georgia Administrative ~~Procedures~~ Procedure Act.'

470 The commissioner may exercise his or her discretion to designate a hearing officer for such
 471 appeals.

472 (c) The commissioner, or his or her designated employees, may issue an out-of-service
 473 order or orders to a certificate or permit holder, pursuant to the provisions of this article or
 474 the department's rules."

475 **SECTION 9.**

476 Said chapter is further amended in Code Section 40-1-106, relating to fitness of applicant and
 477 protesting certificate, as follows:

478 "40-1-106.

479 (a) The commissioner shall issue a motor carrier certificate to a person authorizing
 480 transportation as a motor carrier of passengers or household goods ~~or property~~ subject to
 481 the jurisdiction of the department if the commissioner finds that the person is fit, willing,
 482 and able to provide the transportation to be authorized by the certificate and to comply with
 483 regulations of the department. Fitness encompasses three factors:

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

485 (2) The applicant's capability and willingness to perform properly and safely the
 486 proposed service; and

487 (3) The applicant's willingness to comply with the laws of Georgia and the rules and
 488 regulations of the department.

489 (b) The initial burden of making out a prima-facie case that an applicant is fit to provide
 490 such service rests with the applicant.

491 (c) Upon an applicant making out a prima-facie case as to the motor carrier's ability to
 492 provide the service, the burden shifts to protestant to show that the authority sought should
 493 not be granted.

494 (d) A protest of a motor carrier of passengers or of household goods ~~or property~~ to an
 495 application ~~will~~ shall not be considered unless the protesting motor carrier:

496 (1) Possesses authority from the department to handle, in whole or in part, the authority
 497 which is being applied for and is willing and able to provide service and has performed
 498 service during the previous 12 month period or has actively in good faith solicited service
 499 during such period;

500 (2) Has pending before the department an application previously filed with the
 501 department for substantially the same authority; or

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

504 (e) The commissioner may issue a certificate without a hearing if the application is
 505 unopposed."

506 **SECTION 10.**

507 Said chapter is further amended in Code Section 40-1-107, relating to information in
 508 application, as follows:

509 "40-1-107.

510 The commissioner shall adopt rules prescribing the manner and form in which motor
 511 carriers of passengers or household goods ~~or property~~ shall apply for certificates required
 512 by this part. Such rules shall require that the application be in writing, under oath, and that
 513 the application:

514 (1) Contains full information concerning the applicant's financial condition, the
 515 equipment proposed to be used, including the size, weight, and capacity of each vehicle
 516 to be used, and other physical property of the applicant;

517 (2) States the complete route or routes over which the applicant desires to operate and
 518 the proposed time schedule of the operation; and

519 (3) Contains any such other or additional information as the commissioner may order or
 520 require."

521 **SECTION 11.**

522 Said chapter is further amended by revising Code Section 40-1-108, relating to the
 523 transportation of persons under age 21 consuming alcohol, by designating the existing
 524 language as subsection (a) and adding a new subsection to read as follows:

525 "(b) The commissioner shall be authorized to suspend a motor carrier certificate or permit
 526 at any time upon a finding that the motor carrier has acted in violation of Code Section
 527 3-3-23."

528 **SECTION 12.**

529 Said chapter is further amended in Code Section 40-1-110, relating to hearing and notice of
 530 pending application, as follows:

531 "40-1-110.

532 The commissioner, upon the filing of an application for a motor carrier certificate, shall ~~fix~~
 533 ~~a time and place for hearing thereon and shall, at least ten days before the hearing, give~~
 534 ~~notice thereof by advertising the same at the expense of the applicant in a newspaper in~~
 535 ~~Atlanta, in which sheriffs' notices are published~~ give notice of the pending application by
 536 posting the same on the department's official website for ten days. If a protest is filed with
 537 the department, the commissioner shall fix a time and place for a hearing. If no protest is
 538 filed with the department or if the protest is subsequently withdrawn, the commissioner
 539 may issue the motor carrier certificate without a hearing."

540 **SECTION 13.**

541 Said chapter is further amended in subsection (a) of Code Section 40-1-112, relating to
 542 insurance of motor carriers, as follows:

543 "40-1-112.

544 (a) No motor carrier of household goods ~~or property~~ or passengers shall be issued a motor
 545 carrier certificate unless there is filed with the department a certificate of insurance for such
 546 applicant or holder on forms prescribed by the commissioner evidencing a policy of
 547 indemnity insurance by an insurance company licensed to do business in this state ~~which~~
 548 ~~policy must provide~~ that provides for the protection, in case of passenger vehicles, of
 549 passengers and the public against injury proximately caused by the negligence of such
 550 motor carrier, its servants, or its agents; and, in the case of vehicles transporting household
 551 goods, to secure the owner or person entitled to recover against loss or damage to such
 552 household goods for which the motor common carrier may be legally liable. The
 553 department shall determine and fix the amounts of such indemnity insurance and shall
 554 prescribe the provisions and limitations thereof. The insurer shall file such certificate. The
 555 failure to file any form required by the department shall not diminish the rights of any
 556 person to pursue an action directly against a motor carrier's insurer."

557 **SECTION 14.**

558 Said chapter is further amended in Code Section 40-1-117, relating to registered agents,
 559 service, and vehicles excluded from motor common or contract carriers, as follows:

560 "40-1-117.

561 (a) Each nonresident motor carrier shall, before any certificate or permit is issued to it
 562 under this part or at the time of registering as required by Code Section 40-2-140, designate
 563 and maintain in this state an agent or agents upon whom may be served all summonses or
 564 other lawful processes in any action or proceeding against such motor carrier growing out
 565 of its carrier operations; and service of process upon or acceptance or acknowledgment of
 566 such service by any such agent shall have the same legal force and validity as if duly served
 567 upon such nonresident carrier personally. Such designation shall be in writing, shall give
 568 the name and address of such agent or agents, and shall be filed in the office of the state
 569 revenue commissioner. Upon failure of any nonresident motor carrier to file such
 570 designation with the state revenue commissioner or to maintain such an agent in this state
 571 at the address given, such nonresident carrier shall be conclusively deemed to have
 572 designated the Secretary of State and his or her successors in office as such agent; and
 573 service of process upon or acceptance or acknowledgment of such service by the Secretary
 574 of State shall have the same legal force and validity as if duly served upon such nonresident
 575 carrier personally, provided that notice of such service and a copy of the process are
 576 immediately sent by registered or certified mail or statutory overnight delivery, return
 577 receipt requested, by the Secretary of State or his or her successor in office to such
 578 nonresident carrier, if its address be known. Service of such process upon the Secretary
 579 of State shall be made by delivering to his or her office two copies of such process with a
 580 fee of \$10.00.

581 (b) Except in those cases where the Constitution requires otherwise, any action against any
 582 resident or nonresident motor carrier for damages by reason of any breach of duty, whether
 583 contractual or otherwise, or for any violation of this article or of any order, decision, rule,
 584 regulation, direction, demand, or other requirement established by the state revenue
 585 commissioner; may be brought in the county where the cause of action or some part thereof
 586 arose; and if the motor carrier or its agent shall not be found for service in the county where
 587 the action is instituted, a second original may ~~issue~~ be issued and service be made in any
 588 other county where the service can be made upon the motor carrier or its agent. The venue
 589 prescribed by this Code section shall be cumulative of any other venue provided by law.

590 ~~(c) Except in those cases where the Constitution requires otherwise, for the purposes of~~
 591 ~~venue only, any truck engaged exclusively in the transportation of agricultural or dairy~~
 592 ~~products, or both, between farm, market, gin, warehouse, or mill shall not be classified as~~
 593 ~~a motor common or contract carrier."~~

594 **SECTION 15.**

595 Said chapter is further amended in Code Section 40-1-119, relating to charges by motor
 596 carriers and unjust discrimination by carriers prohibited, as follows:

597 "40-1-119.

598 No motor carrier of household goods or ~~property passengers~~ shall charge, demand, collect,
 599 or receive a greater or lesser or different compensation for the transportation of ~~property~~
 600 household goods or passengers or for any service rendered in connection therewith than the
 601 rates, fares, and charges prescribed or approved by order of the department; nor shall any
 602 such motor carrier unjustly discriminate against any person in its rates, fares, or charges for
 603 service. The commissioner may prescribe, by general order, to what persons motor carriers
 604 of ~~household goods~~ passengers may issue passes or free transportation; may prescribe
 605 reduced rates for special occasions; and may fix and prescribe rates and schedules."

606 **SECTION 16.**

607 Said chapter is further amended in Code Section 40-1-123, relating to enjoining operation
 608 of motor carriers, as follows:

609 "40-1-123.

610 (a) Any motor carrier which operates on the public highways of this state:

611 (1) ~~Without~~ without the required certificate or permit, ~~or;~~

612 (2) ~~After a~~ after such certificate or permit has been canceled, ~~or;~~

613 (3) ~~Without~~ without having registered its vehicle or vehicles as provided for in this part;

614 or

615 (4) ~~Otherwise which operates otherwise~~ otherwise than is permitted by the terms of ~~such a~~
 616 certificate or permit

617 shall be guilty of a misdemeanor.

618 (b) Any motor carrier which operates on the public highways of this state in violation of
 619 any provision of subsection (a) of this Code section or the laws of this state may be
 620 enjoined from operating on the public highways of this state upon the bringing of a civil
 621 action by the department, by a competing motor carrier or rail carrier, or by any individual."

622 **SECTION 17.**

623 Said chapter is further amended in Code Section 40-1-129, relating to fines for violating
 624 certificate requirements and advertising services without a certificate, as follows:

625 "40-1-129.

626 (a) Whenever the department, after a hearing conducted in accordance with the provisions
 627 of Code Section 40-1-56, finds that any person, firm, or corporation is operating as a
 628 household goods carrier for hire without a valid certificate issued by the department or is

629 holding itself out as such a carrier without such a certificate in violation of this part, the
 630 department may impose a fine of not more than \$5,000.00 as provided for in Code Section
 631 40-1-56 for each violation. The department may assess the person, firm, or corporation an
 632 amount sufficient to cover the reasonable expense of investigation incurred by the
 633 department. The department may also assess interest at the rate specified in Code Section
 634 40-1-56 on any fine or assessment imposed, to commence on the day the fine or assessment
 635 becomes delinquent. All fines, assessments, and interest collected by the department shall
 636 be paid into the general fund of the state treasury. Any party aggrieved by a decision of
 637 the department under this subsection may seek judicial review as provided in Code ~~section~~
 638 Section 40-1-56.

639 (b) Any person, firm, or corporation ~~who~~ that knowingly and willfully issues, publishes,
 640 or affixes or causes or permits the issuance, publishing, or affixing of any oral or written
 641 advertisement, broadcast, or other holding out to the public, or any portion thereof, that the
 642 person, firm, or corporation is in operation as a household goods carrier for hire without
 643 having a valid certificate issued by the department is shall be guilty of a misdemeanor.
 644 Any fine or assessment imposed by the department pursuant to the provisions of ~~subsection~~
 645 ~~(a) of this Code section~~ Code Section 40-1-56 shall not bar criminal prosecution pursuant
 646 to the provisions of this subsection."

647 **SECTION 18.**

648 Said chapter is further amended in subparagraph (G) of paragraph (5) and paragraph (8) of
 649 Code Section 40-1-151, relating to definitions for Georgia limousine carrier provisions, as
 650 follows:

651 "(G) Other vehicles with a capacity for seating and transporting no more than ~~15~~ ten
 652 persons for hire including the driver; or"

653 "(8) 'Vehicle' or 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer
 654 propelled or drawn by mechanical power and used upon the highways in the transportation
 655 of passengers or property, or any combination thereof, determined by the ~~commission~~
 656 commissioner."

657 **SECTION 19.**

658 Said chapter is further amended in Code Section 40-1-161, relating to revocation, alteration,
 659 or amendment of limousine certificates, as follows:

660 "40-1-161.

661 The commissioner may, at any time after notice and opportunity to be heard and for
 662 reasonable cause, revoke, alter, or amend any limousine certificate issued under this part,
 663 or under prior law, if it shall be made to appear that the holder of the certificate has

664 willfully violated or refused to observe any of the lawful and reasonable orders, rules, or
 665 regulations prescribed by the commissioner or any of the provisions of this part or any
 666 other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of
 667 the commissioner the holder of the certificate is not furnishing adequate service. An
 668 administrative hearing shall be conducted in accordance with the procedures for contested
 669 cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act' and the
 670 provisions of Code Section 40-1-56."

671 **SECTION 20.**

672 Said chapter is further amended in Code Section 40-1-163, relating to rates and charges for
 673 limousine carriers, as follows:

674 "40-1-163.

675 (a) Notwithstanding the powers granted to the department regarding tariffs of other motor
 676 carriers, the department is not authorized to set, adjust, or change rates or charges for
 677 transportation of passengers, property, or passengers and property by a vehicle of a type
 678 listed in Code Section ~~40-1-118~~ 40-1-151 that is managed, operated, owned, leased, rented,
 679 or controlled by a limousine carrier.

680 (b) Any tariff issued by the department that exists as of June 30, 2007, that regulates the
 681 rates or charges for transportation of passengers, property, or passengers and property by
 682 a vehicle of a type listed in Code Section ~~40-1-118~~ 40-1-151 that is managed, operated,
 683 owned, leased, rented, or controlled by a limousine carrier shall be void."

684 **SECTION 21.**

685 Said chapter is further amended in Code Section 40-1-167, relating to required information
 686 on license plates of limousines, as follows:

687 "40-1-167.

688 Each limousine carrier which registers any vehicle under this article shall, for each such
 689 certificated vehicle, affix to the center of the front bumper of each such certificated vehicle
 690 a standard size license plate bearing the following information:

- 691 (1) ~~limousine~~ Limousine carrier name;;
- 692 (2) ~~city~~ City and state of principal domicile;;
- 693 (3) ~~company~~ Company telephone number; and
- 694 (4) ~~the vehicle classification, HE-1~~ Motor carrier identification number if the limousine
 695 carrier is a commercial motor carrier or motor carrier authorization number issued by the
 696 department if the limousine carrier is a lightweight commercial vehicle.

697 The cost for such license plate shall be the sole responsibility of the limousine carrier and
 698 must be placed on each certificated vehicle prior to ~~said~~ such vehicle being placed in
 699 service."

700 **SECTION 22.**

701 Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to uniform rules
 702 of the road, is amended by revising Code Section 40-6-248.1, relating to securing loads on
 703 vehicles, as follows:

704 "40-6-248.1.

705 (a) As used in this Code section, the term 'litter' has the meaning provided by paragraph
 706 (1) of Code Section 16-7-42.

707 (a.1) No vehicle shall be driven or moved on any public road unless such vehicle is
 708 constructed or loaded or covered so as to prevent any of its load from dropping, escaping,
 709 or shifting in such a manner as to:

710 (1) Create a safety hazard; or

711 (2) Deposit litter on public or private property while such vehicle is on a public road.

712 However, this Code section shall not prohibit the necessary spreading of any substance in
 713 public road maintenance or construction operations.

714 (b) No person shall operate or load for operation, on any public road, any vehicle with any
 715 load unless such load and any covering thereon is securely fastened so as to prevent ~~said~~
 716 such covering or load from:

717 (1) Becoming loose, detached, or in any manner becoming a hazard to other users of the
 718 public road; or

719 (2) Depositing litter on public or private property while such vehicle is on a public road.

720 (c) No motor carrier shall allow a commercial motor vehicle to be driven and no person
 721 shall operate a commercial motor vehicle with a load that is not secure. Loads shall be
 722 secured as required by state and federal law, rule, and regulation. As used in this
 723 subsection, the term 'load' shall include loads consisting of liquids and gases as well as
 724 solid materials.

725 ~~(e)(d)~~ Nothing in this Code section nor any regulations based thereon shall conflict with
 726 federal, Georgia Department of Public Safety, or Georgia Board of Public Safety
 727 regulations applying to the securing of loads on motor vehicles.

728 ~~(d) The provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b)~~
 729 ~~of this Code section and regulations based thereon shall not apply to organic debris that~~
 730 ~~escapes during the transportation of silage from field or farm to storage and storage to~~
 731 ~~feedlot or during the transportation of agricultural or farm products or silvicultural products~~
 732 ~~from farm or forest to a processing plant or point of sale or use."~~

733 **SECTION 23.**

734 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
735 revising paragraph (2) of subsection (d) of Code Section 44-1-13, relating to the removal of
736 improperly parked cars or trespassing personal property, concurrent jurisdiction, procedure,
737 automatic surveillance prohibited, and penalties, as follows:

738 "(2) Towing and storage firms operating within a municipality's corporate limits shall
739 obtain a nonconsensual towing permit from the department and shall file its registered
740 agent's name and address with the department. The department may assess, collect, and
741 retain an application fee in an amount to be determined by the commissioner."

742 **SECTION 24.**

743 This Act shall become effective on July 1, 2013.

744 **SECTION 25.**

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