

House Bill 323 (COMMITTEE SUBSTITUTE) (AM)

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 authorize the commissioner of public safety
6 to immediately suspend a motor carrier or limousine carrier certificate in emergency
7 situations; to authorize the department to retain and set certain fees imposed against motor
8 carriers and limousine carriers; to authorize the department to seize vehicles for the
9 nonpayment of assessed fines and penalties; to provide a definition for corporate sponsored
10 vanpool; to modify provisions relating to the suspension of motor carrier permits and
11 certificates; to modify provisions relating to motor carriers of passengers; to amend Code
12 Section 40-1-167, relating to required information on license plates of limousines, so as to
13 modify provisions relating to requirements on limousine license plates; to amend Code
14 Section 44-1-13, relating to the removal of improperly parked cars or trespassing personal
15 property, concurrent jurisdiction, procedure, automatic surveillance prohibited, and penalties,
16 so as to authorize the Department of Public Safety to assess an undetermined application fee
17 for towing companies; to provide for related matters; to provide for an effective date and
18 applicability; to repeal conflicting laws; and for other purposes.

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

20 **SECTION 1.**

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

25 "40-1-8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (c)(1) Regulations governing the safe operations of motor carriers, commercial motor
59 vehicles and drivers, and the safe transportation of hazardous materials may be adopted
60 by administrative order, including, but not limited to, by referencing compatible federal
61 regulations or standards without compliance with the procedural requirements of Chapter
62 13 of Title 50, the 'Georgia Administrative Procedure Act,' provided that such federal
63 regulations or standards shall be maintained on file by the department and made available

64 for inspection and copying by the public, by means including, but not limited to, posting
65 on the department's Internet site. The commissioner may comply with the filing
66 requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State
67 the name and designation of such rules, regulations, standards, and orders. The courts
68 shall take judicial notice of rules, regulations, standards, or orders so adopted or
69 published.

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

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

81 (2) A cause of action for the collection of a penalty imposed pursuant to this subsection
82 may be brought in the superior court of the county where the principal place of business
83 of the penalized company is located or in the superior court of the county where the
84 action giving rise to the penalty occurred.

85 (e) The commissioner is authorized to adopt such rules and orders as he or she may deem
86 necessary in the enforcement of this Code section. Such rules and orders shall have the
87 same dignity and standing as if such rules and orders were specifically provided in this
88 Code section. The commissioner is authorized to establish such exceptions or exemptions
89 from the requirements of this Code section, as he or she shall deem appropriate, consistent
90 with any federal program requirements, and consistent with the protection of the public
91 health, safety, and welfare.

92 (f)(1) The commissioner may designate members of the department, pursuant to Article
93 5 of Chapter 2 of Title 35, to perform regulatory compliance inspections. Members of
94 county, municipal, campus, and other state agencies may be designated by the
95 commissioner to perform regulatory compliance inspections only of vehicles, drivers, and
96 cargo in operation, and may only enforce the provisions of rules and regulations
97 promulgated under this Code section or Article 2 of this chapter subject to the provisions
98 of a valid agreement between the commissioner and the county, municipal, campus, or
99 other state agency.

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

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

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

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

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

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

(i) A person failing to comply with the requirements of paragraph (2) of subsection (h) of this Code section shall be guilty of the misdemeanor offense of failure to wear a seat safety belt while operating a commercial motor vehicle and, upon conviction thereof, shall be fined not more than \$50.00 but shall not be subject to imprisonment. The costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. No points shall be added pursuant to Code Section 40-5-57 and no additional fines or penalties shall be imposed.

120 (h)(j) Every officer, agent, or employee of any corporation and every person who violates
121 or fails to comply with this Code section or any order, rule, or regulation adopted pursuant
122 to this Code section, or who procures, aids, or abets a violation of this Code section or such
123 rule or regulation, shall be guilty of a misdemeanor. Misdemeanor violations of this Code
124 section may be prosecuted, handled, and disposed of in the manner provided for by Chapter
125 13 of this title."

SECTION 2.

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

129 "40-1-52.

130 There is created and established a division within the Department of Public Safety to be
131 known as the Motor Carrier Compliance Division which shall include a section designated
132 the Regulatory Compliance Section. The Motor Carrier Compliance Division shall consist
133 of two sections, the Motor Carrier Compliance Enforcement Section and the Motor Carrier
134 Regulation Compliance Section. Except as provided in Chapter 2 of Title 35, the members
135 of the Motor Carrier Compliance Enforcement Section Division shall be known and

136 designated as law enforcement officers. The ~~Motor Carrier Regulation Regulatory~~
137 Compliance Section shall be responsible for the regulation of the operation of motor
138 carriers and limousine carriers in accordance with this article, ~~and motor carrier safety and~~
139 ~~the transportation of hazardous materials as provided in~~ Code Section 40-1-8, and Article
140 2 of this chapter."

141 **SECTION 3.**

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

144 "40-1-53.

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

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

148 **SECTION 4.**

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

152 "40-1-56.

153 (a) Any motor carrier or limousine carrier subject to the provisions of Part 2 or Part 3 of
154 this article that fails to register as a motor carrier or limousine carrier with the department
155 or that is subject to the jurisdiction of the department and willfully violates any law
156 administered by the department or any duly promulgated regulation issued thereunder, or
157 that fails, neglects, or refuses to comply with any order after notice thereof, shall be liable
158 for a penalty not to exceed \$15,000.00 for such violation and an additional penalty not to
159 exceed \$10,000.00 for each day during which such violation continues.

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

168 (c) Notice of a violation and the assessed amount shall be made by means of personal
169 service upon the violator. The notice shall include a warning that a vehicle related to the
170 violation may be subject to suspension of the registration pursuant to Code Section

171 40-1-56.1. The respondent shall then have 60 days in which to pay the assessed penalty
172 or file with the department a written request for an administrative review. The request for
173 an administrative review shall specify whether the respondent is challenging the validity
174 of the imposition of the penalty or the amount of the assessment, or both. An
175 administrative hearing shall be conducted in accordance with the procedures for contested
176 cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

177 (d)(1) All penalties and interest thereon, at the rate of 10 percent per annum, recovered
178 by the department shall be paid into the general fund of the state treasury.

179 (2) Reissuance fees charged by the Department of Revenue shall be retained by the
180 Department of Revenue.

181 (3) Restoration fees charged by the department shall be retained by the department.

182 (e)(1) Any party who has exhausted all administrative remedies available before the
183 department and who is aggrieved by a final decision of the department made pursuant to
184 this Code section may seek judicial review of the final order of the department in the
185 Superior Court of Fulton County or in the superior court of the county in which the
186 principal place of business of the aggrieved party is located.

187 (2) Proceedings for review shall be instituted by filing a petition within 30 days after the
188 service of the final decision of the department or, if a rehearing is requested, within 30
189 days after the decision thereon. A motion for rehearing or reconsideration after a final
190 decision by the department shall not be a prerequisite to the filing of a petition for review.
191 Copies of the petition shall be served upon the department and all parties of record before
192 the department.

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

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

204 (5) The review shall be conducted by the court without a jury and shall be confined to
205 the record. The court shall not substitute its judgment for that of the department as to the
206 weight of the evidence on questions of fact. The court may affirm the decision of the
207 department or remand the case for further proceedings. The court may reverse the

decision of the department if substantial rights of the petitioner have been prejudiced because the department's findings, inferences, conclusions, or decisions are:

- (A) In violation of constitutional or statutory provisions;
 - (B) In excess of the statutory authority of the department;
 - (C) Made upon unlawful procedure;
 - (D) Clearly not supported by any reliable, probative, and substantial evidence on the record as a whole; or
 - (E) Arbitrary or capricious.

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

SECTION 5.

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

"40-1-56.1.

(a) Whenever any motor carrier or limousine carrier owes penalties to the department which were imposed for violations pursuant to Code Section 40-1-56 and the violation relates to an identifiable vehicle, then the motor carrier or limousine carrier shall have 60 days from the date of the assessed penalty or final judicial review following an appeal of the assessment. If the assessment is not paid within the 60 days, such assessment shall become a lien upon the identified motor vehicle found to be in violation, and the lien shall be superior to all liens except liens for taxes or perfected security interests established before the debt to the department was created.

(b) The department shall perfect the lien created under this Code section by sending notice thereof on a notice designated by the department, by first-class mail or by statutory overnight delivery, return receipt requested, to the owner and all holders of liens and security interests shown on the records of the Department of Revenue maintained pursuant to Chapter 3 of this title. Upon receipt of notice from the Department of Public Safety, the holder of the certificate of title shall surrender the same to the state revenue commissioner for issuance of a replacement certificate of title bearing the lien of the department unless the assessment is paid within 60 days of the receipt of notice. The Department of Revenue may append the lien to its records, notwithstanding the failure of the holder of the certificate of title to surrender such certificate as required by this subsection.

(c) Upon issuance of a title bearing the lien of the department, or the appending of the lien to the records of the Department of Revenue, the owner of the vehicle or the holder of any security interest or lien shown in the records of the Department of Revenue may satisfy such lien by payment of the amount of the assessment, including hearing costs, if any, and

244 payment of an additional reissuance fee of \$100.00 which shall be paid to the Department
245 of Revenue. Upon receipt of such amount, the department shall release its lien and the
246 Department of Revenue shall issue a new title without the lien.

247 (d)(1) The department, in seeking to foreclose its lien on the motor vehicle arising out
248 of an assessed violation pursuant to Code Section 40-1-56, may seek an immediate writ
249 of possession from the court before whom the petition is filed, if the petition contains a
250 statement of facts, under oath, by the department, its agents, its officers, or attorney
251 setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an
252 immediate writ of possession.

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

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

261 (4) When an immediate writ of possession has been granted, the department shall
262 proceed against the defendant in the same manner as provided for in Code Sections
263 44-14-265 through 44-14-269.

264 (e)(1) Whenever any motor carrier or limousine carrier fails within 60 days of the date
265 of issuance of a penalty involving an identifiable vehicle assessed pursuant to Code
266 Section 40-1-56 either to pay the assessment or appeal to the department for an
267 administrative review, the Department of Revenue may act to suspend the motor vehicle
268 registration of the vehicle involved. However, if the motor carrier or limousine carrier
269 requests an administrative review, the Department of Revenue shall act to suspend the
270 registration only after the issuance of a final decision favorable to the department and the
271 requisite failure of the motor carrier or limousine carrier to pay the assessment. Upon
272 such failure to pay the assessment, the Department of Revenue shall send a letter to the
273 owner of such motor vehicle notifying the owner of the suspension of the motor vehicle
274 registration issued to the motor vehicle involved in violation which was the basis for the
275 penalty. Upon complying with this subsection by paying the overdue assessment,
276 submitting proof of compliance, and paying a \$10.00 restoration fee to the Department
277 of Revenue, the state revenue commissioner shall reinstate any motor vehicle registration
278 suspended under this subsection. In cases where the motor vehicle registration has been
279 suspended under this subsection for a second or subsequent time during any two-year
280 period, the Department of Revenue shall suspend the motor vehicle registration for a

period of 60 days and thereafter until the owner submits proof of compliance with this subsection and pays a \$150.00 restoration fee to the Department of Revenue.

(2) Unless otherwise provided for in this Code section, notice of the effective date of the suspension of a motor vehicle registration occurs when the owner has actual knowledge or legal notice thereof, whichever first occurs. For the purposes of making any determination relating to the restoration of a suspended motor vehicle registration, no period of suspension shall be deemed to have begun until ten days after the mailing of the notice required in paragraph (1) of this subsection.

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

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

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

SECTION 6.

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

"40-1-100.

As used in this part, the term:

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

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

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

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

(5) 'Corporate sponsored vanpool' means a rideshare program sponsored by an employer in which the employer pays all or some of the costs associated with the transportation of

317 its employees to a single work reporting location and all the vehicles used in the program
318 have a manufacturer's gross vehicle weight rating of not more than 10,000 pounds and
319 are designed to carry not more than 15 passengers including the driver.

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

321 (5)(7) 'Exempt rideshare' means:

- 322 (A) Government endorsed rideshare programs;
- 323 (B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the
324 rideshare participants pool or otherwise share, rideshare costs such as fuel; or
- 325 (C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's
326 business, for rideshare purposes as part of a government endorsed rideshare program,
327 or for rideshare under a contract requiring compliance with subparagraph (B) of this
328 paragraph.

329 (6)(8) 'For compensation' or 'for hire' means ~~an activity wherein for payment or other~~
330 ~~compensation a motor vehicle and driver are furnished to a person by another person,~~
331 ~~acting directly or knowingly and willfully acting with another to provide the combined~~
332 ~~service of the vehicle and driver, and includes every person acting in concert with, under~~
333 ~~the control of, or under common control with a motor carrier who shall offer to furnish~~
334 ~~transportation for compensation or for hire, provided that no exempt rideshare shall be~~
335 ~~deemed to involve any element of transportation for compensation or for hire an activity~~
336 ~~relating to a person engaged in the transportation of goods or passengers for~~
337 ~~compensation.~~

338 (7)(9) 'Government endorsed rideshare program' means a vanpool, carpool, or similar
339 rideshare operation conducted by or under the auspices of a state or local governmental
340 transit instrumentality, such as GRTA, a transportation management association, or a
341 community improvement district, or conducted under the auspices of such transit
342 agencies, including through any form of contract between such transit instrumentality and
343 private persons or businesses.

344 (8)(10) 'GRTA' means the Georgia Regional Transportation Authority, which is itself
345 exempt from regulation as a carrier under Code Section 50-32-71.

346 (9)(11) 'Household goods' means any personal effects and property used or to be used
347 in a dwelling when a part of the equipment or supplies of such dwelling and such other
348 similar property as the commissioner may provide for by regulation; provided, however,
349 that such term shall not include property being moved from a factory or store except
350 when such property has been purchased by a householder with the intent to use such
351 property in a dwelling and such property is transported at the request of, and with
352 transportation charges paid by, the householder.

353 (10)(12) 'Motor carrier' means:

354 (A) Every person owning, controlling, operating, or managing any motor vehicle,
355 including the lessees, receivers, or trustees of such persons or receivers appointed by
356 any court, used in the business of transporting for hire persons, household goods, or
357 property; or engaged in the activity of nonconsensual towing pursuant to Code Section
358 44-1-13 for hire over any public highway in this state.

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

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

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

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

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

371 (v) Motor vehicles operated not for profit with a capacity of 15 persons or less when
372 they are used exclusively to transport elderly and disabled passengers or employees
373 under a corporate sponsored ~~van pool~~ vanpool program, except that a vehicle owned
374 by the driver may be operated for profit when such driver is traveling to and from his
375 or her place of work, provided each such vehicle carrying more than nine passengers
376 maintains liability insurance in an amount of not less than \$100,000.00 per person and
377 \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this
378 part, elderly and disabled passengers are defined as individuals over the age of 60
379 years or who, by reason of illness, injury, age, congenital malfunction, or other
380 permanent or temporary incapacity or disability, are unable to utilize mass
381 transportation facilities as effectively as persons who are not so affected;

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

384 (vii) Vehicles, owned or operated by the federal or state government; or by any
385 agency, instrumentality, or political subdivision of the federal or state government,
386 or privately owned and operated for profit or not for profit, capable of transporting not
387 more than ten persons for hire when such vehicles are used exclusively to transport
388 persons who are elderly, disabled, en route to receive medical care or prescription
389 medication, or returning after receiving medical care or prescription medication. For

390 the purpose of this part, elderly and disabled persons shall have the same meaning as
391 in division (v) of this subparagraph; or
392 (viii) Ambulances.

393 (11)(13) 'Passenger' means a person who travels in a public conveyance by virtue of a
394 contract, either express or implied, with the carrier as to the payment of the fare or that
395 which is accepted as an equivalent therefor. The prepayment of fare is not necessary to
396 establish the relationship of passenger and carrier; although a carrier may demand
397 prepayment of fare if persons enter his or her vehicle by his or her permission with the
398 intention of being carried; in the absence of such a demand, an obligation to pay fare is
399 implied on the part of the passenger, and the reciprocal obligation of carriage of the
400 carrier arises upon the entry of the passenger.

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

404 (12)(15) 'Person' means any individual, partnership, trust, private or public corporation,
405 municipality, county, political subdivision, public authority, cooperative, association, or
406 public or private organization of any character.

407 (13)(16) 'Public highway' means every public street, road, highway, or thoroughfare of
408 any kind in this state.

409 (14)(17) 'Vehicle' or 'motor vehicle' means any vehicle, machine, tractor, trailer, or
410 semitrailer propelled or drawn by mechanical power and used upon the highways in the
411 transportation of passengers or property, or any combination thereof, determined by the
412 commissioner."

SECTION 7.

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

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

SECTION 8.

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

424 "40-1-104.

425 (a) The commissioner may, at any time after notice and opportunity to be heard and for
426 reasonable cause, revoke, alter, or amend any motor carrier certificate or permit, if it shall
427 be made to appear that the holder of the certificate has willfully violated or refused to
428 observe any of the lawful and reasonable orders, rules, or regulations prescribed by the
429 commissioner or any of the provisions of this part or any other law of this state regulating
430 or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the
431 certificate is not furnishing adequate service.

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

435 (1) To protect life, health, or safety, or;

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

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

439 Certificate holders affected by such suspension may appeal to the commissioner for review
440 pursuant to Chapter 13 of Title 50, the 'Georgia Administrative ~~Procedure~~ Procedures ~~Procedure~~ Act.'
441 The commissioner may exercise his or her discretion to designate a hearing officer for such
442 appeals.

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

446 SECTION 9.

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

449 "40-1-106.

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

455 (1) The applicant's financial ability to perform the service it seeks to provide;
456 (2) The applicant's capability and willingness to perform properly and safely the
457 proposed service; and
458 (3) The applicant's willingness to comply with the laws of Georgia and the rules and
459 regulations of the department.

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

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

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

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

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

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

475 (e) The commissioner may issue a certificate without a hearing if the application is
476 unprotested or unopposed."

SECTION 10.

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

480 "40-1-110.

481 The commissioner, upon the filing of an application for a motor carrier certificate, shall fix
482 a time and place for hearing thereon and shall, at least ten days before the hearing, give
483 notice thereof by advertising the same at the expense of the applicant in a newspaper in
484 Atlanta, in which sheriffs' notices are published give notice of the pending application by
485 posting the same on the department's official website for ten days. If a protest is filed with
486 the department, the commissioner shall fix a time and place for a hearing. If no protest is
487 filed with the department or if the protest is subsequently withdrawn, the commissioner
488 may issue the motor carrier certificate without a hearing."

SECTION 11.

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

492 "40-1-117.

493 (a) Each nonresident motor carrier shall, before any certificate or permit is issued to it
494 under this part or at the time of registering as required by Code Section 40-2-140, designate

495 and maintain in this state an agent or agents upon whom may be served all summonses or
496 other lawful processes in any action or proceeding against such motor carrier growing out
497 of its carrier operations; and service of process upon or acceptance or acknowledgment of
498 such service by any such agent shall have the same legal force and validity as if duly served
499 upon such nonresident carrier personally. Such designation shall be in writing, shall give
500 the name and address of such agent or agents, and shall be filed in the office of the state
501 revenue commissioner. Upon failure of any nonresident motor carrier to file such
502 designation with the state revenue commissioner or to maintain such an agent in this state
503 at the address given, such nonresident carrier shall be conclusively deemed to have
504 designated the Secretary of State and his or her successors in office as such agent; and
505 service of process upon or acceptance or acknowledgment of such service by the Secretary
506 of State shall have the same legal force and validity as if duly served upon such nonresident
507 carrier personally, provided that notice of such service and a copy of the process are
508 immediately sent by registered or certified mail or statutory overnight delivery, return
509 receipt requested, by the Secretary of State or his or her successor in office to such
510 nonresident carrier, if its address be known. Service of such process upon the Secretary
511 of State shall be made by delivering to his or her office two copies of such process with a
512 fee of \$10.00.

513 (b) Except in those cases where the Constitution requires otherwise, any action against any
514 resident or nonresident motor carrier for damages by reason of any breach of duty, whether
515 contractual or otherwise, or for any violation of this article or of any order, decision, rule,
516 regulation, direction, demand, or other requirement established by the state revenue
517 commissioner, may be brought in the county where the cause of action or some part thereof
518 arose; and if the motor carrier or its agent shall not be found for service in the county where
519 the action is instituted, a second original may ~~issue~~ be issued and service be made in any
520 other county where the service can be made upon the motor carrier or its agent. The venue
521 prescribed by this Code section shall be cumulative of any other venue provided by law.
522 (c) Except in those cases where the Constitution requires otherwise, for the purposes of
523 venue only, any truck engaged exclusively in the transportation of agricultural or dairy
524 products, or both, between farm, market, gin, warehouse, or mill shall not be classified as
525 a motor common or contract carrier."

526

SECTION 12.

527 Said chapter is further amended in Code Section 40-1-117, relating to registered agents,
528 service, and vehicles excluded from motor common or contract carriers, as follows:
529 "40-1-117.

530 (a) Each nonresident motor carrier shall, before any certificate or permit is issued to it
531 under this part or at the time of registering as required by Code Section 40-2-140, designate
532 and maintain in this state an agent or agents upon whom may be served all summonses or
533 other lawful processes in any action or proceeding against such motor carrier growing out
534 of its carrier operations; and service of process upon or acceptance or acknowledgment of
535 such service by any such agent shall have the same legal force and validity as if duly served
536 upon such nonresident carrier personally. Such designation shall be in writing, shall give
537 the name and address of such agent or agents, and shall be filed in the office of the state
538 revenue commissioner. Upon failure of any nonresident motor carrier to file such
539 designation with the state revenue commissioner or to maintain such an agent in this state
540 at the address given, such nonresident carrier shall be conclusively deemed to have
541 designated the Secretary of State and his or her successors in office as such agent; and
542 service of process upon or acceptance or acknowledgment of such service by the Secretary
543 of State shall have the same legal force and validity as if duly served upon such nonresident
544 carrier personally, provided that notice of such service and a copy of the process are
545 immediately sent by registered or certified mail or statutory overnight delivery, return
546 receipt requested, by the Secretary of State or his or her successor in office to such
547 nonresident carrier, if its address be known. Service of such process upon the Secretary
548 of State shall be made by delivering to his or her office two copies of such process with a
549 fee of \$10.00.

550 (b) Except in those cases where the Constitution requires otherwise, any action against any
551 resident or nonresident motor carrier for damages by reason of any breach of duty, whether
552 contractual or otherwise, or for any violation of this article or of any order, decision, rule,
553 regulation, direction, demand, or other requirement established by the state revenue
554 commissioner; may be brought in the county where the cause of action or some part thereof
555 arose; and if the motor carrier or its agent shall not be found for service in the county where
556 the action is instituted, a second original may ~~issue~~ be issued and service be made in any
557 other county where the service can be made upon the motor carrier or its agent. The venue
558 prescribed by this Code section shall be cumulative of any other venue provided by law.
559 (c) ~~Except in those cases where the Constitution requires otherwise, for the purposes of~~
560 ~~venue only, any truck engaged exclusively in the transportation of agricultural or dairy~~
561 ~~products, or both, between farm, market, gin, warehouse, or mill shall not be classified as~~
562 ~~a motor common or contract carrier."~~

SECTION 13.

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

566 "40-1-119.
567 No motor carrier of household goods or ~~property passengers~~ shall charge, demand, collect,
568 or receive a greater or lesser or different compensation for the transportation of ~~property~~
569 ~~household goods or passengers~~ or for any service rendered in connection therewith than the
570 rates, fares, and charges prescribed or approved by order of the department; nor shall any
571 such motor carrier unjustly discriminate against any person in its rates, fares, or charges for
572 service. The commissioner may prescribe, by general order, to what persons motor carriers
573 of ~~household goods passengers~~ may issue passes or free transportation; may prescribe
574 reduced rates for special occasions; and may fix and prescribe rates and schedules."

575 **SECTION 14.**

576 Said chapter is further amended in paragraph (8) of Code Section 40-1-151, relating to
577 definitions for Georgia limousine carrier provisions, as follows:

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

582 **SECTION 15.**

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

585 "40-1-161.
586 The commissioner may, at any time after notice and opportunity to be heard and for
587 reasonable cause, revoke, alter, or amend any limousine certificate issued under this part,
588 or under prior law, if it shall be made to appear that the holder of the certificate has
589 willfully violated or refused to observe any of the lawful and reasonable orders, rules, or
590 regulations prescribed by the commissioner or any of the provisions of this part or any
591 other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of
592 the commissioner the holder of the certificate is not furnishing adequate service. An
593 administrative hearing shall be conducted in accordance with the procedures for contested
594 cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act' and the
595 provisions of Code Section 40-1-56."

596 **SECTION 16.**

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

599 "40-1-163.

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

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

609 **SECTION 17.**

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

612 "40-1-167.

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

616 (1) Limousine ~~limousine~~ carrier name; ;
617 (2) City ~~city~~ and state of principal domicile; ;
618 (3) Company ~~company~~ telephone number; ; and
619 (4) Motor carrier identification number if the limousine carrier is a commercial motor
620 carrier or motor carrier authorization number issued by the department if the limousine
621 carrier is a lightweight commercial vehicle ~~the vehicle classification, IE-1.~~

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

625 **SECTION 18.**

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

629 "40-6-248.1.

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

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

- 635 (1) Create a safety hazard; or
636 (2) Deposit litter on public or private property while such vehicle is on a public road.

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

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

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

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

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

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

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

658 SECTION 19.

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

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

667

SECTION 20.

668 This Act shall become effective on July 1, 2013, and shall apply to violations committed on
669 or after such date.

670

SECTION 21.

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