

House Bill 878

By: Representative Powell of the 32nd

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions for abandoned motor vehicles, so as to provide that certain fees may be included in liens upon abandoned motor vehicles; to provide for the disposition of proceeds from the public sale of an abandoned motor vehicle; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions for abandoned motor vehicles, is amended by revising Code Section 40-11-4, relating to the creation of liens and court authority to foreclose, as follows:

"40-11-4.

(a) Any person who removes or stores any motor vehicle which is or becomes an abandoned motor vehicle shall have a lien on such vehicle for ~~the reasonable~~ all fees connected with such removal or storage plus the cost of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such lien shall exist if the person moving or storing such vehicle is in compliance with Code Section 40-11-2.

(b) The lien acquired under subsection (a) of this Code section may be foreclosed in any court which is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts."

SECTION 2.

Said article is further amended by revising Code Section 40-11-5, relating to lien foreclosure procedure for abandoned motor vehicles, as follows:

"40-11-5.

All liens acquired under Code Section 40-11-4 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention;

(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by certified or registered mail or statutory overnight delivery, make a demand upon the owners for the payment of ~~the reasonable~~ all fees for removal and storage plus the costs of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation of the Department of Revenue and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant, file with a court of competent jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Revenue. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with;

(3)(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this Code section, or if the owner of the abandoned motor vehicle cannot be ascertained, the person removing or storing the abandoned motor vehicle may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction, on a form prescribed by rule or regulation of the Department of Revenue, showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment in accordance with paragraph (2) of this Code section has been made without satisfaction or without a timely filing of a petition for a judicial hearing or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his or her signature thereto.

(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall only be \$10.00 per motor vehicle upon which a lien

is asserted. Notwithstanding any law to the contrary, the affidavit filing fee shall not be taxed nor shall any additional fee or surcharge be assessed for such filing.

(4) If no timely petition for a hearing has been filed with a court of competent jurisdiction, then, upon such affidavit's being filed by the lien claimant pursuant to paragraph (3) of this Code section, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(5) If a petition for a hearing is filed with a court of competent jurisdiction within ten days after delivery of the lien claimant's demand, a copy of which demand shall be attached to the petition, the court shall set such a hearing within ten days of filing of the petition;

(6) Upon the filing of such petition by an owner, neither the lien claimant nor the court may sell the motor vehicle, although possession of the motor vehicle may be retained by the lien claimant or obtained by the court in accordance with the order of the court which sets the date for the hearing;

(7) If, after a full hearing, the court finds that a valid debt exists, then the court shall authorize foreclosure upon and sale of the motor vehicle subject to the lien to satisfy the debt if such debt is not otherwise immediately paid;

(8) If the court finds the actions of the person asserting the lien in retaining possession of the motor vehicle were not taken in good faith, then the court, in its discretion, may award damages to the owner, any party which has been deprived of the rightful use of the vehicle, or the lessee due to the deprivation of the use of the motor vehicle; and

(9) If an affidavit meeting the requirements of paragraph (3) of this Code section is filed and no petition for a hearing is timely filed, or if, after a full hearing, the court determines that a valid debt exists, the court shall issue an order authorizing the sale of such motor vehicle. However, the holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle."

SECTION 3.

Said article is further amended by revising Code Section 40-11-8, relating to the disposition of proceeds from a foreclosure sale of an abandoned motor vehicle, as follows:

97 "40-11-8.

98 The clerk of the court shall retain the remaining balance of the proceeds of a sale under
99 Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period
100 of 12 months; and, if no claim has been filed against such proceeds by the owner of the
101 abandoned motor vehicle or any interested party, then he or she shall pay such remaining
102 balance as follows:

103 (1) If the abandoned motor vehicle came into the possession of the person creating the
104 lien other than at the request of a peace officer, the proceeds of the sale shall be divided
105 equally and paid into the general fund of the county in which the sale was made, ~~and~~ into
106 the general fund of the municipality, if any, in which the sale was made, and to the person
107 who placed the lien on the motor vehicle which resulted in foreclosure;

108 (2) If the abandoned motor vehicle came into the possession of the person creating the
109 lien at the request of a police officer of a municipality, the proceeds of the sale shall be
110 divided equally and paid into the general fund of the municipality and to the person who
111 placed the lien on the motor vehicle which resulted in foreclosure;

112 (3) If the abandoned motor vehicle came into the possession of the person creating the
113 lien at the request of a county sheriff, deputy sheriff, or county police officer, the
114 proceeds of the sale shall be divided equally and paid into the general fund of the county
115 in which the sale was made; and to the person who placed the lien on the motor vehicle
116 which resulted in foreclosure; or

117 (4) If the abandoned motor vehicle came into the possession of the person creating the
118 lien at the request of a member of the Georgia State Patrol or other employee of the State
119 of Georgia, the proceeds of the sale shall be divided equally and paid into the general
120 fund of the county in which the sale was made and to the person who placed the lien on
121 the motor vehicle which resulted in foreclosure."

122 **SECTION 4.**

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