

The Senate Public Safety Committee offered the following substitute to HB 878:

A BILL TO BE ENTITLED
AN ACT

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

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7 Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to
8 general provisions for abandoned motor vehicles, is amended by revising Code Section
9 40-11-4, relating to the creation of liens and court authority to foreclose, as follows:
10

11 "40-11-4.

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

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

SECTION 2.

21 Said article is further amended by revising Code Section 40-11-5, relating to lien foreclosure
22 procedure for abandoned motor vehicles, as follows:
23

24 "40-11-5.

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

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

28 (2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by
29 certified or registered mail or statutory overnight delivery, make a demand upon the
30 owners for the payment of the reasonable fees for removal and storage plus the costs of
31 any notification or advertisement up to the date of retrieval or public sale of such vehicle.

32 Such written demand shall include an itemized statement of all charges and may be made
33 concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such
34 demand shall be made on a form prescribed by rule or regulation of the Department of
35 Revenue and shall notify the owner of his or her right to a judicial hearing to determine
36 the validity of the lien. The demand shall further state that failure to return the written
37 demand to the lien claimant, file with a court of competent jurisdiction a petition for a
38 judicial hearing, and provide the lien claimant with a copy of such petition, all within ten
39 days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's
40 right to such a hearing prior to sale. The form shall also provide the suspected owner
41 with the option of disclaiming any ownership of the vehicle, and his or her affidavit to
42 that effect shall control over anything contrary in the records of the Department of
43 Revenue. No such written demand shall be required if the identity of the owner cannot
44 be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2
45 have been complied with;

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

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

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

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

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

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

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

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

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

94 **SECTION 3.**

95 Said article is further amended by revising Code Section 40-11-8, relating to the disposition
96 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.