

House Bill 235

By: Representatives Deffenbaugh of the 1st, Tarvin of the 2nd, Lumsden of the 12th, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to
2 abandoned motor vehicles, so as to repeal Article 1, relating to general provisions relating
3 to abandoned motor vehicles, and to enact a new Article 1; to provide for definitions; to
4 provide for unattended motor vehicle checks by peace officers; to provide for penalties for
5 placing false unattended motor vehicle check cards on motor vehicles; to prohibit the
6 removal of motor vehicles from certain areas at certain times and to provide for penalties for
7 violation; to provide for removal of unattended motor vehicles by peace officers in certain
8 instances; to provide for limits on negligence for peace officers in removal of unattended
9 motor vehicles; to provide for procedures for identification of owners of unattended motor
10 vehicles; to provide for notice to an owner or lienholder of an abandoned motor vehicle of
11 fees owed and intent to place a lien upon the vehicle; to provide for the filing of an affidavit
12 for foreclosure of an abandoned or derelict motor vehicle; to provide for notice and the filing
13 of an answer; to provide for a hearing on the validity of the lien; to provide for an order
14 authorizing the sale of an abandoned or derelict motor vehicle; to provide for the right of a
15 lienholder to pay a debt and redeem an abandoned or derelict motor vehicle; to provide for
16 the sale of derelict motor vehicles for scrap purposes only; to provide for the issuance of
17 certificate of title upon the foreclosure sale of an abandoned or derelict motor vehicle; to
18 provide for the disposition of proceeds from the foreclosure sale of an abandoned or derelict
19 motor vehicle; to provide for the disposition of contents in an abandoned motor vehicle; to
20 amend Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating
21 to disposition of property seized by law enforcement, so as to correct a cross-reference; to
22 provide for an effective date and applicability; to provide for related matters; to repeal
23 conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

25 **SECTION 1.**

26 Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to abandoned
 27 motor vehicles, is amended by repealing Article 1, relating to general provisions relating to
 28 abandoned motor vehicles, and enacting a new Article 1 to read as follows:

29 "ARTICLE 130 40-11-1.

31 As used in this article, the term:

32 (1) 'Abandoned motor vehicle' means a motor vehicle or trailer:

33 (A) Which has been left by the owner or some person acting for the owner with an
 34 automobile dealer, repairman, or wrecker service for repair or for some other reason
 35 and has not been called for by such owner or other person within a period of 30 days
 36 after the time agreed upon; or within 30 days after such vehicle is turned over to such
 37 dealer, repairman, or wrecker service when no time is agreed upon; or within 30 days
 38 after the completion of necessary repairs;

39 (B) Which is left unattended on a public street, road, or highway or other public
 40 property for a period of at least five days and when it reasonably appears to a law
 41 enforcement officer that the individual who left such motor vehicle unattended does not
 42 intend to return and remove such motor vehicle. However, on the state highway
 43 system, any law enforcement officer may authorize the immediate removal of vehicles
 44 posing a threat to public health or safety or to mitigate congestion;

45 (C) Which has been lawfully towed onto the property of another at the request of a law
 46 enforcement officer and left there for a period of not less than 30 days without anyone
 47 having paid all reasonable current charges for such towing and storage;

48 (D) Which has been lawfully towed onto the property of another at the request of a
 49 property owner on whose property the vehicle was abandoned and left there for a period
 50 of not less than 30 days without anyone having paid all reasonable current charges for
 51 such towing and storage; or

52 (E) Which has been left unattended on private property for a period of not less than 30
 53 days.

54 (2) 'Derelict motor vehicle' means a motor vehicle:

55 (A) Which has been left unattended on private or public property for not less than five
 56 days without the owner or driver making any attempt to recover such vehicle or to leave
 57 a conspicuously placed note that such owner or driver intends to return to such vehicle,
 58 and because of damage, vandalism, theft, or fire, the vehicle is damaged to the extent
 59 that it is inoperable without the replacement of a major component or part or involves

60 structural damage that would affect the ability of the vehicle to operate safely.
 61 Evidence of such inoperability or damage may include, but shall not be limited to,
 62 missing engine, transmission, or wheels, no coolant in the cooling system, no oil in the
 63 engine, or burned fluid in the transmission; and

64 (B) Which has a total appraised value of less than \$300.00 as determined by 50 percent
 65 of the wholesale value of a similar vehicle in the rough section of the *National Auto*
 66 *Research Black Book, Georgia Edition.* If a similar vehicle is not listed in such book
 67 or, regardless of the model year or book value of the vehicle, if the vehicle is
 68 completely destroyed by fire, flood, or vandalism or is otherwise damaged to the extent
 69 that restoration of the vehicle to a safe operable condition would require replacement
 70 of more than 50 percent of its major component parts, the person asserting such vehicle
 71 is a derelict motor vehicle shall obtain an appraisal of the motor vehicle from the local
 72 law enforcement agency's auto theft section with jurisdiction in the county or
 73 municipality where such vehicle is located.

74 The term 'derelict motor vehicle' shall not include a vehicle which does not bear a
 75 manufacturer's vehicle identification number plate or a vehicle identification number
 76 plate assigned by a state jurisdiction.

77 (3) 'Motor vehicle' or 'vehicle' means a motor vehicle or trailer.

78 (4) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title,
 79 lessor, lessee, security interest holders, and all lienholders as shown on the records of the
 80 Department of Revenue or the records from the vehicle's state of registration.

81 40-11-2.

82 (a) It shall be the duty of any peace officer who discovers a motor vehicle which has been
 83 left unattended on a public street, road, or highway or other public property to immediately
 84 perform an unattended vehicle check on such motor vehicle, unless there is displayed on
 85 such motor vehicle an unattended vehicle check card indicating that another peace officer
 86 has already performed such an unattended vehicle check. For purposes of this Code
 87 section, an unattended vehicle check shall consist of such actions as are reasonably
 88 necessary to determine that the unattended vehicle does not contain an injured or
 89 incapacitated person and to determine that the unattended vehicle does not pose a threat to
 90 public health or safety.

91 (b) A peace officer completing an unattended vehicle check shall complete and attach to
 92 the vehicle an unattended vehicle check card. Unattended vehicle check cards shall be in
 93 such form, and shall be attached to vehicles in such manner, as may be specified by rule
 94 or regulation of the Department of Public Safety; and to the extent that sufficient funds are
 95 available to the department, the department may distribute such forms free of charge to law

96 enforcement agencies in this state. Unattended vehicle check cards shall be serially
97 numbered; shall be of a distinctive color and shape so as to be readily visible to passing
98 motorists; and shall contain spaces for the investigating peace officer to indicate the
99 location of the vehicle, the date and time of the completion of the unattended vehicle check,
100 and the name of such peace officer's law enforcement agency. A detachable stub, which
101 shall be filed with the investigating peace officer's law enforcement agency, shall bear the
102 same serial number and shall contain the same information, together with the identity of
103 the investigating peace officer and the license plate number and other pertinent identifying
104 information relating to the abandoned vehicle.

105 (c) Nothing in the Code section shall limit the otherwise applicable authority of a peace
106 officer to have an unattended motor vehicle removed to a garage or other place of safety.

107 (d) It shall be unlawful for any person other than a peace officer to attach a genuine or
108 counterfeit unattended motor vehicle check card to a motor vehicle, and any person
109 convicted of violating this subsection shall be guilty of a misdemeanor.

110 40-11-3.

111 (a) It shall be unlawful for the owner or operator of a paid private parking lot or paid
112 private parking facility located within 500 feet of an establishment which serves alcoholic
113 beverages for consumption on the premises to remove, tow, or immobilize or cause to be
114 removed, towed, or immobilized a motor vehicle left in such lot or facility between
115 midnight and noon of the following day. Nothing in this Code section shall prohibit the
116 owner of such a parking lot or facility from charging a penalty not to exceed \$25.00 in
117 excess of normal parking fees for vehicles which remain on the property during such period
118 without authorization. No owner or operator of such a parking lot or facility shall be liable
119 for any damages to any motor vehicle remaining on the property during such period
120 without authorization. Nothing in this Code section shall prohibit a resident or a business
121 owner from towing or removing or causing to be towed or removed a motor vehicle left on
122 private property. For purposes of this subsection, the terms 'paid private parking lot' and
123 'paid private parking facility' mean private parking lots where the owner or operator of a
124 motor vehicle pays a valuable consideration for the right to park in such parking lot or
125 facility.

126 (b) Any person violating the provisions of subsection (a) of this Code section shall be
127 guilty of a misdemeanor.

128 40-11-4.

129 (a) Any peace officer who finds a motor vehicle which has been left unattended on a
130 public street, road, or highway or other public property for a period of at least five days
131 shall be authorized to cause such motor vehicle to be removed to a garage or other place
132 of safety, if such peace officer reasonably believes that the person who left such motor
133 vehicle unattended does not intend to return and remove such motor vehicle.

134 (b) Any law enforcement officer who finds a motor vehicle which has been left unattended
135 on the state highway system shall be authorized to cause such motor vehicle to be removed
136 immediately to a garage or other place of safety when such motor vehicle poses a threat to
137 public health or safety or to mitigate congestion. Any peace officer who finds a motor
138 vehicle which has been left unattended on a public street, road, or highway or other public
139 property, other than the state highway system, shall be authorized to cause such motor
140 vehicle to be removed immediately to a garage or other place of safety when such motor
141 vehicle poses a threat to public health or safety or to mitigate congestion.

142 (c) Any peace officer who, under this Code section, causes any motor vehicle to be
143 removed to a garage or other place of safety shall be liable for gross negligence only.

144 (d)(1) Any peace officer or the law enforcement agency which causes a motor vehicle
145 to be removed to a garage or other place of safety or which is notified of the removal of
146 a motor vehicle from private property shall within seven calendar days from the time of
147 removal attempt to determine vehicle ownership through official inquiries to the
148 Department of Revenue vehicle registration and vehicle title files. These inquiries shall
149 be made from authorized criminal justice information system network terminals.

150 (2) If the name and address of the last known registered owner of the motor vehicle is
151 obtained from the Georgia Crime Information Center, the peace officer who causes the
152 motor vehicle to be removed shall, within seven calendar days, make available to the
153 person removing such motor vehicle the name and address of the last known registered
154 owner of such motor vehicle, the owner of the motor vehicle as recorded on the title of
155 such vehicle, and all security interest holders or lienholders. If such information is not
156 available, the peace officer shall, within seven calendar days, notify the person removing
157 or storing such vehicle of such fact.

158 40-11-5.

159 (a) Within 30 days of removal or storage of a motor vehicle which becomes abandoned or
160 derelict or of a motor vehicle being repaired by a repair facility or being stored by an
161 insurance company providing insurance to cover the motor vehicle becoming abandoned
162 or derelict, the person removing or storing such motor vehicle shall notify all owners,
163 security interest holders, and lienholders, if known, by written acknowledgment signed

164 thereby or by certified or registered mail or statutory overnight delivery, of the location of
165 such motor vehicle, the fees connected with removal and storage of such motor vehicle,
166 and the fact that such motor vehicle will be disposed of under the authority of this article
167 unless the owner, security interest holder, or lienholder redeems such motor vehicle within
168 30 days through the payment of all fees owed. If the identity of the owners, security
169 interest holders, or lienholders of such motor vehicle cannot be ascertained, the person
170 removing or storing such vehicle shall place an advertisement in a newspaper of general
171 circulation in the county where such vehicle was obtained or, if there is no newspaper in
172 such county, shall post such advertisement at the county courthouse in such place where
173 other public notices are posted. Such advertisement shall run in the newspaper once a
174 week for two consecutive weeks or shall remain posted at the courthouse for two
175 consecutive weeks. The advertisement shall contain a complete description of the motor
176 vehicle, its license and manufacturer's vehicle identification numbers, the location from
177 where such vehicle was initially removed, the present location of such vehicle, and the fact
178 that such vehicle is deemed abandoned and shall be disposed of if not redeemed. If a
179 person removing or storing such vehicle has knowledge of facts which reasonably indicate
180 that the motor vehicle is registered or titled in another state, such person shall attempt to
181 ascertain the identity of the owner of such motor vehicle through the motor vehicle records
182 of that state.

183 (b) If an abandoned or derelict motor vehicle is not redeemed within 30 days of the notice
184 being validly sent pursuant to subsection (a) of this Code section, any person who removes
185 or stores an abandoned or derelict motor vehicle shall file an affidavit for foreclosure of an
186 abandoned or derelict motor vehicle in a court of competent jurisdiction, including but not
187 limited to a magistrate court when the amount in the affidavit does not exceed the
188 jurisdictional limits established by law for such court.

189 (c) Upon the filing of an affidavit for foreclosure of an abandoned or derelict motor
190 vehicle, the court shall mail notice by certified or registered mail or statutory overnight
191 delivery to every owner, security interest holder, and lienholder identified in the affidavit.
192 Such notice shall include a list of all fees and inform the owners, security interest holders,
193 and lienholders of their right to file an answer with the court contesting the validity of the
194 lien within ten days of receipt.

195 (d)(1) If an answer to the notice delivered pursuant to subsection (a) of this Code section
196 is timely filed, the court shall schedule a judicial hearing to determine the validity of a
197 lien within 14 calendar days of the filing of such answer. If, after a full hearing, the court
198 finds that a valid debt exists, then the court shall authorize foreclosure upon and sale of
199 the motor vehicle subject to the lien to satisfy the debt if such debt is not otherwise
200 immediately paid.

201 (2) If no answer is filed or an answer is not filed within the required ten days, the person
202 asserting the lien shall be entitled to an immediate order of the court and shall advertise
203 sale of the abandoned or derelict motor vehicle at a public sale as defined in Code Section
204 11-1-201.

205 (e) The holder of a security interest in or a lien on the vehicle, other than the holder of a
206 lien created by this article, shall have the right, in the order of priority of such security
207 interest or lien, to pay the debt and court costs. If the holder of a security interest or lien
208 does so pay the debt and court costs, he or she shall have the right to possession of the
209 vehicle, and his or her security interest in or lien on such vehicle shall be increased by the
210 amount so paid. A court order shall be issued to this effect, and in this instance there shall
211 not be a sale of the vehicle.

212 (f) A derelict motor vehicle may be sold to a person who scraps, dismantles, or demolishes
213 motor vehicles, provided that such motor vehicle may be sold for scrap and parts only and
214 shall in no event be rebuilt or sold to the general public. Any person selling a derelict
215 motor vehicle shall, prior to the sale of such vehicle, photograph such vehicle and retain
216 with such photograph the appraisal which demonstrates such vehicle is a derelict motor
217 vehicle for a period of three years after its sale. Such person shall also notify the
218 Department of Revenue of the sale of such vehicle in such manner as may be prescribed
219 by the state revenue commissioner. The Department of Revenue shall cancel the certificate
220 of title for such vehicle and shall not issue a rebuilt or salvage title for such vehicle.

221 40-11-6.

222 After satisfaction of the lien upon an abandoned or derelict motor vehicle, the person
223 selling such motor vehicle shall, not later than 30 days after the date of such sale, provide
224 the clerk of the court with a copy of the bill of sale as provided to the purchaser and turn
225 the remaining proceeds of such sale, if any, over to the clerk of the court. Any person who
226 fails to comply with the requirements of this subsection shall be guilty of a misdemeanor
227 and, upon conviction thereof, shall be punished as for a misdemeanor.

228 40-11-7.

229 The purchaser at a sale as authorized in this article shall receive a certified copy of the
230 court order authorizing such sale. Any such purchaser may obtain a certificate of title to
231 such motor vehicle by filing the required application, paying the required fees, and filing
232 a certified copy of the order of the court with the Department of Revenue. The Department
233 of Revenue shall then issue a certificate of title, which shall be free and clear of all liens
234 and encumbrances.

235 40-11-8.

236 The clerk of the court shall retain the remaining balance of the proceeds of a sale under this
 237 article, after satisfaction of liens, security interests, and debts, for a period of 12 months;
 238 and, if no claim has been filed against such proceeds by the owner of the abandoned or
 239 derelict motor vehicle or any interested party, then he or she shall pay such remaining
 240 balance as follows:

241 (1) If the abandoned or derelict motor vehicle came into the possession of the person
 242 creating the lien other than at the request of a peace officer, the proceeds of the sale shall
 243 be divided equally and paid into the general fund of the county in which the sale was
 244 made and into the general fund of the municipality, if any, in which the sale was made;

245 (2) If the abandoned or derelict motor vehicle came into the possession of the person
 246 creating the lien at the request of a police officer of a municipality, the proceeds of the
 247 sale shall be paid into the general fund of the municipality;

248 (3) If the abandoned or derelict motor vehicle came into the possession of the person
 249 creating the lien at the request of a county sheriff, deputy sheriff, or county police officer,
 250 the proceeds of the sale shall be paid into the general fund of the county in which the sale
 251 was made; or

252 (4) If the abandoned or derelict motor vehicle came into the possession of the person
 253 creating the lien at the request of a member of the Georgia State Patrol or other employee
 254 of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the
 255 county in which the sale was made.

256 40-11-9.

257 (a) As used in this Code section, the term 'contents' means only the following:

258 (1) Prescription drugs or eyewear;

259 (2) Personal documents, including, but not limited to, birth records, passports, or death
 260 records;

261 (3) Firearms;

262 (4) Medical devices;

263 (5) Child safety restraining devices; or

264 (6) Keys, except the keys to the abandoned or derelict motor vehicle.

265 (b) Any person who stores an abandoned or derelict motor vehicle pursuant to the
 266 provisions of this article shall allow the owner of such vehicle to retrieve the contents from
 267 such vehicle, and the owner of a motor vehicle shall be allowed to retrieve contents and any
 268 other item from such vehicle if such retrieval occurs within the first 30 days that such
 269 vehicle is stored.

270 (c) Prior to the sale or other final disposition of an abandoned or derelict motor vehicle,
 271 if the person who stores such vehicle locates contents, as defined in paragraphs (1) through
 272 (3) of subsection (a) of this Code section, in such vehicle, such person shall surrender such
 273 contents to the nearest law enforcement agency."

274 **SECTION 2.**

275 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
 276 disposition of property seized by law enforcement, is amended by revising subsection (a) of
 277 Code Section 17-5-54, relating to disposition of personal property in custody of a law
 278 enforcement agency, as follows:

279 "(a)(1) Except as provided in Code Sections 17-5-55 and 17-5-56 and subsections (d),
 280 (e), and (f) of this Code section, when a law enforcement agency assumes custody of any
 281 personal property which is the subject of a crime or has been abandoned or is otherwise
 282 seized, a disposition of such property shall be made in accordance with the provisions of
 283 this Code section. When a final verdict and judgment is entered finding a defendant
 284 guilty of the commission of a crime, any personal property used as evidence in the trial
 285 shall be returned to the rightful owner of the property within 30 days following the final
 286 judgment; provided, however, that if the judgment is appealed or if the defendant files a
 287 motion for a new trial and if photographs, videotapes, or other identification or analysis
 288 of the personal property will not be sufficient evidence for the appeal of the case or new
 289 trial of the case, such personal property shall be returned to the rightful owner within 30
 290 days of the conclusion of the appeal or new trial, whichever occurs last. All personal
 291 property in the custody of a law enforcement agency, including personal property used
 292 as evidence in a criminal trial, which is unclaimed after a period of 90 days following its
 293 seizure, or following the final verdict and judgment in the case of property used as
 294 evidence, and which is no longer needed in a criminal investigation or for evidentiary
 295 purposes in accordance with Code Section 17-5-55 or 17-5-56 shall be subject to
 296 disposition by the law enforcement agency. The sheriff, chief of police, or other
 297 executive officer of a law enforcement agency shall make application to the superior
 298 court for an order to retain, sell, or discard such property. In the application the officer
 299 shall state each item of personal property to be retained, sold, or discarded. Upon the
 300 superior court's granting an order for the law enforcement agency to retain such property,
 301 the law enforcement agency shall retain such property for official use. Upon the superior
 302 court's granting an order which authorizes that the property be discarded, the law
 303 enforcement agency shall dispose of the property as other salvage or nonserviceable
 304 equipment. Upon the superior court's granting an order for the sale of personal property,
 305 the officer shall provide for a notice to be placed once a week for four weeks in the legal

306 organ of the county specifically describing each item and advising possible owners of
307 items of the method of contacting the law enforcement agency; provided, however, that
308 miscellaneous items having an estimated fair market value of \$75.00 or less may be
309 advertised or sold, or both, in lots. Such notice shall also stipulate a date, time, and place
310 ~~said~~ such items will be placed for public sale if not claimed. Such notice shall also
311 stipulate whether ~~said~~ such items or groups of items are to be sold in blocks, by lot
312 numbers, by entire list of items, or separately.

313 (2) Items not claimed by the owners shall be sold at a sale which shall be conducted not
314 less than seven nor more than 15 days after the final advertised notice has been run. The
315 sale shall be to the highest bidder.

316 (3) If property has not been bid on in two successive sales, the law enforcement agency
317 may retain the property for official use or the property will be considered as salvage and
318 disposed of as other county or municipal salvage or nonserviceable equipment.

319 (4) With respect to unclaimed perishable personal property or animals or other wildlife,
320 the officer may make application to the superior court for an order authorizing the
321 disposition of such property prior to the expiration of 90 days.

322 (5) With respect to a seized motor vehicle which is not the subject of forfeiture
323 proceedings, the law enforcement agency shall be required to contact the Georgia Crime
324 Information Center to determine if such motor vehicle has been stolen and to follow
325 generally the procedures of Code Section ~~40-11-2~~ 40-11-4 to ascertain the registered
326 owner of such vehicle."

327 **SECTION 3.**

328 This Act shall become effective on July 1, 2014, and shall apply to all motor vehicles which
329 become abandoned or derelict on or after August 1, 2014.

330 **SECTION 4.**

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