

House Bill 417

By: Representatives Willard of the 51st, Gravley of the 67th, and Powell of the 32nd

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 relative to abandoned motor vehicles, so as to provide for
3 definitions; to provide for duties for a person removing or storing a motor vehicle or trailer;
4 to provide for the sending of notices by the Department of Revenue or authorized entities to
5 owners of abandoned motor vehicles or trailers prior to foreclosure of a lien; to provide for
6 the creation of a lien; to provide for a foreclosure process; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to
11 general provisions relative to abandoned motor vehicles, is amended by revising Code
12 Section 40-11-1, relating to definitions, as follows:

13 "40-11-1.

14 As used in this article, the term:

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

16 (A) Which has been left by the owner or some person acting for the owner with an
17 automobile dealer, repairman, or wrecker service for repair or for some other reason
18 and has not been called for by such owner or other person within a period of 30 days
19 after the time agreed upon; or within 30 days after such vehicle or trailer is turned over
20 to such dealer, repairman, or wrecker service when no time is agreed upon; or within
21 30 days after the completion of necessary repairs;

22 (B) Which is left unattended on a public street, road, or highway or other public
23 property for a period of at least five days and when it reasonably appears to a law
24 enforcement officer that the individual who left such motor vehicle or trailer unattended
25 does not intend to return and remove such motor vehicle or trailer. However, on the
26 state highway system, any law enforcement officer may authorize the immediate

27 removal of vehicles or trailers posing a threat to public health or safety or to mitigate
28 congestion;

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

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

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

38 (2) ~~'Motor vehicle' or 'vehicle' means a motor vehicle or trailer~~ 'Authorized entity' means
39 a public or private entity approved by the state revenue commissioner and given access
40 to owner records through contract or agreement with the State of Georgia.

41 (3) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title,
42 lessor, lessee, security interest holders, and all lienholders of a motor vehicle or trailer as
43 shown on the records of the Department of Revenue or the records from the vehicle's or
44 trailer's state of registration.

45 (4) 'Trailer' means every vehicle with or without motive power designed for being drawn
46 by a motor vehicle.'

47 SECTION 2.

48 Said article is further amended by revising Code Section 40-11-2, relating to duty of person
49 removing or storing motor vehicle, as follows:

50 "40-11-2.

51 (a)(1) Any person who removes a motor vehicle or trailer from public property at the
52 request of a law enforcement officer or ~~stores such vehicle shall, if the owner of the~~
53 ~~vehicle or some person acting for the owner is not present, seek the identity of and~~
54 ~~address of all known owners of such vehicle from the law enforcement officer requesting~~
55 ~~removal of such, from such officer's agency, from a local law enforcement agency for the~~
56 ~~jurisdiction in which the remover's or storer's place of business is located, or from the~~
57 ~~State of Georgia by direct electronic access as provided through its agencies and~~
58 ~~authorities within three business days of removal. The local law enforcement agency~~
59 ~~shall furnish such information to the person removing such vehicle within three business~~
60 ~~days after receipt of such request.~~ stores a motor vehicle or trailer which has been
61 removed from public property at the request of a law enforcement officer, or both, shall,
62 within three business days of such removal or storage, request from the Department of

63 Revenue or an authorized entity the name of all known owners and provide the
 64 Department of Revenue or authorized entity with the location of the motor vehicle or
 65 trailer. Further, such person shall, within three business days of such removal or storage,
 66 check with local law enforcement for any information which would indicate that the
 67 motor vehicle or trailer is stolen.

68 (2) Any person who removes a motor vehicle or trailer from private property at the
 69 request of the property owner or stores a motor vehicle or trailer which has been removed
 70 from private property at the request of a property owner, or both, shall, within three
 71 business days of such removal or storage, request from the Department of Revenue or an
 72 authorized entity the name of all known owners and provide the Department of Revenue
 73 or the authorized entity with the location of the motor vehicle or trailer. Such request
 74 shall be accompanied by a payment of \$5.00 for each motor vehicle or trailer. Further,
 75 such person shall, within three business days of such removal or storage, check with local
 76 law enforcement for any information which would indicate that the motor vehicle or
 77 trailer is stolen.

78 ~~(b) Any person who removes a motor vehicle from private property at the request of the~~
 79 ~~property owner or stores such vehicle shall, if the owner of the vehicle or some person~~
 80 ~~acting for the owner is not present, notify in writing a local law enforcement agency of the~~
 81 ~~location of the vehicle, the manufacturer's vehicle identification number, license number,~~
 82 ~~model, year, and make of the vehicle within three business days of the removal of such~~
 83 ~~vehicle and shall seek from the local law enforcement agency or from the State of Georgia~~
 84 ~~by direct electronic access as provided through its agencies and authorities the identity and~~
 85 ~~address of all known owners of such vehicle and any information indicating that such~~
 86 ~~vehicle is a stolen motor vehicle. The local law enforcement agency shall furnish such~~
 87 ~~information to the person removing such vehicle within three business days after receipt~~
 88 ~~of such request. Within three business days of a receipt of a request provided for in~~
 89 ~~subsection (a) of this Code section, the Department of Revenue or an authorized entity shall~~
 90 ~~provide the names of all known owners to the requesting party and shall notify all known~~
 91 ~~owners of the location of the motor vehicle or trailer and that such motor vehicle or trailer~~
 92 ~~shall be deemed abandoned if not redeemed within 30 days of the removal date. Such~~
 93 ~~notification shall be by certified or registered mail or by statutory overnight delivery.~~

94 (c) If any motor vehicle or trailer removed under conditions set forth in subsection (a) ~~or~~
 95 ~~(b)~~ of this Code section is determined to be a stolen motor vehicle or trailer, the local law
 96 enforcement officer or agency shall notify the Georgia Crime Information Center of the
 97 location of such motor vehicle or trailer within 72 hours ~~after receiving~~ of receipt of the
 98 notice that such motor vehicle or trailer is a stolen ~~vehicle~~.

99 ~~(d) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this~~
 100 ~~Code section is determined not to be a stolen vehicle or is not a vehicle being repaired by~~
 101 ~~a repair facility or is not being stored by an insurance company providing insurance to~~
 102 ~~cover damages to the vehicle, the person removing or storing such motor vehicle shall,~~
 103 ~~within seven calendar days of the day such motor vehicle was removed or one business day~~
 104 ~~after the information is furnished to the remover or storer pursuant to subsection (a) or (b)~~
 105 ~~of this Code section, whichever is later, notify all owners, if known, by written~~
 106 ~~acknowledgment signed thereby or by certified or registered mail or statutory overnight~~
 107 ~~delivery, of the location of such motor vehicle, the fees connected with removal and~~
 108 ~~storage of such motor vehicle, and the fact that such motor vehicle will be deemed~~
 109 ~~abandoned under this chapter unless the owner, security interest holder, or lienholder~~
 110 ~~redeems such motor vehicle within 30 days of the day such vehicle was removed.~~
 111 ~~(e) If none of the owners redeems such motor vehicle as described in subsection (d) of this~~
 112 ~~Code section, or if a vehicle being repaired by a repair facility or being stored by an~~
 113 ~~insurance company providing insurance to cover damages to the vehicle becomes~~
 114 ~~abandoned, the person removing or storing such motor vehicle shall, within seven calendar~~
 115 ~~days of the day such vehicle became an abandoned motor vehicle, Within seven days after~~
 116 ~~a motor vehicle or trailer becomes an abandoned motor vehicle or trailer, the person~~
 117 ~~removing or storing such vehicle or trailer shall give notice by electronic means as~~
 118 ~~provided by the State of Georgia through its agencies and authorities, in writing, or by or~~
 119 ~~by written and sworn statement to the Department of Revenue or to an authorized entity,~~
 120 ~~on the form and by such electronic method prescribed by the state revenue commissioner,~~
 121 ~~to the Department of Revenue with a research fee as fixed by rule or regulation payable to~~
 122 ~~the Department of Revenue, stating the that such motor vehicle or trailer is considered~~
 123 ~~abandoned. Such notice shall be accompanied by a research fee as fixed by rule or~~
 124 ~~regulation by the Department of Revenue and shall provide the abandoned motor vehicle's~~
 125 ~~or trailer's manufacturer's vehicle identification number, the; license number, the fact that~~
 126 ~~such vehicle is an abandoned motor vehicle, the; and model, year, and make, where~~
 127 ~~applicable of the vehicle,. Such notice shall further include the date the vehicle such motor~~
 128 ~~vehicle or trailer became an abandoned motor vehicle or trailer, the date the vehicle when~~
 129 ~~it was removed, and the its present location of such vehicle and requesting the name and~~
 130 ~~address of all owners of such vehicle. If the form submitted is rejected because of~~
 131 ~~inaccurate or missing information, the person removing or storing the such motor vehicle~~
 132 ~~or trailer shall resubmit, within seven calendar days of the date of the rejection, a corrected~~
 133 ~~notice form together with an additional research fee as fixed by rule or regulation payable~~
 134 ~~to by the Department of Revenue. Each subsequent corrected notice, if required, shall be~~
 135 ~~submitted with an additional research fee as fixed by rule or regulation payable to by the~~

136 Department of Revenue. If a person removing or storing ~~the~~ such motor vehicle or trailer
 137 has knowledge of facts which reasonably indicate that the motor vehicle or trailer is
 138 registered or titled in ~~a certain other~~ another state, such person shall check the motor
 139 vehicle official records of that other state in the attempt to ascertain the identity of the
 140 owner of ~~the~~ such motor vehicle or trailer. Research requests may be submitted and
 141 research fees made payable to the office of the tax commissioner and deposited in the
 142 general fund for the county in which the remover's or storer's place of business is located
 143 in lieu of the Department of Revenue, but in like manner, if such office processes motor
 144 vehicle records of the Department of Revenue.

145 ~~(f)(e)(1)~~ Upon ascertaining the owners of such motor vehicle, ~~the~~ or trailer pursuant to
 146 subsection (d) of this Code section and within five calendar days:

147 (A) The person removing or storing such motor vehicle or trailer shall, within five
 148 calendar days, by certified or registered mail or statutory overnight delivery, notify send
 149 written notice to all known owners of the motor vehicle or trailer which shall include:

150 (i) of the The location of such vehicle or trailer and of;

151 (ii) the A statement informing the owner of the fact that such vehicle or trailer is
 152 deemed abandoned and shall be disposed of if not redeemed; and

153 (iii) A demand letter which includes information set forth in paragraph (2) of this
 154 subsection; or

155 (B) The authorized entity shall, by certified or registered mail, send notice to all known
 156 owners of the motor vehicle or trailer which shall include:

157 (i) The location of such vehicle or trailer;

158 (ii) A statement informing the owner of the fact that such vehicle or trailer is deemed
 159 abandoned and shall be disposed of if not redeemed; and

160 (iii) A demand letter which includes information set forth in paragraph (2) of this
 161 subsection.

162 (2) A demand letter for the payment of the reasonable fees for removal or storage, or
 163 both, plus the costs of any notification sent pursuant to paragraph (1) of this subsection
 164 shall include:

165 (A) An itemized statement of all charges;

166 (B) A statement informing the owner of his or her right to a judicial hearing to
 167 determine the validity of the lien upon payment of normal filing fees to a court of
 168 competent jurisdiction; and

169 (C) A statement informing the owner that failure to make payment or file a petition for
 170 a judicial hearing within ten days of receipt of such notice shall allow the person in
 171 possession of the abandoned motor vehicle or trailer to initiate proceedings to foreclose
 172 the title.

173 ~~(g)~~(f) If the identity of the owners of such motor vehicle or trailer cannot be ascertained,
174 the person removing or storing such vehicle or trailer shall place an advertisement in a
175 newspaper of general circulation in the county where such motor vehicle or trailer was
176 obtained or, if there is no newspaper in such county, shall post such advertisement at the
177 county courthouse in such place where other public notices are posted. Such advertisement
178 shall run in the newspaper once a week for two consecutive weeks or shall remain posted
179 at the courthouse for two consecutive weeks. The advertisement shall contain a complete
180 description of the abandoned motor vehicle or trailer, its license and manufacturer's vehicle
181 identification numbers, the location from where such motor vehicle or trailer was initially
182 removed, the present location of such motor vehicle or trailer, and the fact that ~~such~~ the
183 motor vehicle or trailer is deemed abandoned and shall be disposed of if not redeemed.

184 ~~(h)~~(g) The Department of Revenue shall provide to the Georgia Crime Information Center
185 all relevant information from sworn statements described in subsection ~~(e)~~ (d) of this Code
186 section for a determination of whether the abandoned motor vehicles or trailers removed
187 have been entered into the criminal justice information system as stolen vehicles or trailers.
188 The results of the determination shall be provided electronically to the Department of
189 Revenue.

190 ~~(i)~~(h) Any person storing a an abandoned motor vehicle or trailer under the provisions of
191 this Code section shall notify the Department of Revenue or authorized entity if the motor
192 vehicle or trailer is recovered, is claimed by the owner, is determined to be stolen, or for
193 any reason is no longer ~~an~~ abandoned motor vehicle. Such notice shall be provided within
194 seven calendar days of such event.

195 ~~(j)~~(i) If vehicle information on the abandoned motor vehicle or trailer is not in the files of
196 the Department of Revenue or authorized entity, the department or such entity may require
197 such other information or confirmation as it determines is necessary or appropriate to
198 determine the identity of the motor vehicle or trailer.

199 ~~(k)~~(j) Any person who does not provide the notice and information required by this Code
200 section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished
201 as for a misdemeanor, shall not be entitled to any storage fees, shall not be eligible to
202 contract with or serve on a rotation list providing wrecker services for this state or any
203 political subdivision thereof, and shall not be licensed by any municipal authority to
204 provide removal of improperly parked cars under Code Section 44-1-13.

205 ~~(l)~~(k) Any person who knowingly provides false or misleading information when
206 providing any notice or information as required by this Code section shall be guilty of a
207 misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor."

208

SECTION 3.

209 Said article is further amended in Code Section 40-11-4, relating to creation of lien and
210 courts authorized to foreclose lien, by revising subsection (a) as follows:

211 "(a) Any person who lawfully removes or stores any motor vehicle or trailer which is or
212 becomes an abandoned motor vehicle or trailer shall have a lien ~~on such vehicle~~ for the
213 reasonable fees connected with such removal or storage plus the cost of any notification
214 or advertisement up to the date of retrieval or public sale of such motor vehicle or trailer
215 including all costs associated with any subsequent sale. Such lien shall exist if the person
216 ~~moving~~ removing or storing such motor vehicle or trailer is in compliance with Code
217 Section 40-11-2."

218

SECTION 4.

219 Said article is further amended by revising Code Section 40-11-5, relating to lien foreclosure
220 procedure, as follows:

221 "40-11-5.

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

223 (1) Any proceeding to foreclose a lien on an abandoned motor vehicle or trailer must be
224 instituted within one year from the time the lien is recorded or is asserted by retention;
225 ~~(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by~~
226 ~~certified or registered mail or statutory overnight delivery, make a demand upon the~~
227 ~~owners for the payment of the reasonable fees for removal and storage plus the costs of~~
228 ~~any notification or advertisement up to the date of retrieval or public sale of such vehicle.~~
229 ~~Such written demand shall include an itemized statement of all charges and may be made~~
230 ~~concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such~~
231 ~~demand shall be made on a form prescribed by rule or regulation of the Department of~~
232 ~~Revenue and shall notify the owner of his or her right to a judicial hearing to determine~~
233 ~~the validity of the lien. The demand shall further state that failure to return the written~~
234 ~~demand to the lien claimant, file with a court of competent jurisdiction a petition for a~~
235 ~~judicial hearing, and provide the lien claimant with a copy of such petition, all within ten~~
236 ~~days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's~~
237 ~~right to such a hearing prior to sale. The form shall also provide the suspected owner~~
238 ~~with the option of disclaiming any ownership of the vehicle, and his or her affidavit to~~
239 ~~that effect shall control over anything contrary in the records of the Department of~~
240 ~~Revenue. No such written demand shall be required if the identity of the owner cannot~~
241 ~~be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2~~
242 ~~have been complied with;~~

243 ~~(3)(A) If, within ten days of delivery to the appropriate address of the written demand~~
 244 ~~required by paragraph (2) of this Code section, the owner of the abandoned motor~~
 245 ~~vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to~~
 246 ~~the lien claimant in accordance with the notice provided pursuant to paragraph (2) of~~
 247 ~~this Code section, or if the owner of the abandoned motor vehicle cannot be~~
 248 ~~ascertained, the person removing or storing the abandoned motor vehicle may foreclose~~
 249 ~~such lien.~~

250 (2)(A) The person asserting such lien may move to foreclose by making an affidavit
 251 to a court of competent jurisdiction, including a magistrate court, on a standard form
 252 prescribed by rule or regulation of the Department of Revenue, showing all facts
 253 necessary approved by the Judicial Council of Georgia attesting that all requirements
 254 of this article to constitute such lien have been complied with and the amount claimed
 255 to be due. Such affidavit shall aver that the notice requirements of Code Section
 256 40-11-2 have been complied with, and such affidavit shall also aver that a demand for
 257 payment in accordance with paragraph (2) of this Code section subsection (e) of Code
 258 Section 40-11-2 has been made without satisfaction or without a timely filing of a
 259 petition for a judicial hearing or that the identity of the owner cannot be ascertained.
 260 Documentation showing that a request has been made of law enforcement to determine
 261 whether the motor vehicle or trailer was stolen, and documentation demonstrating that
 262 the required notices have been sent by the lien claimant or an authorized entity shall be
 263 attached to such affidavit. The person foreclosing shall verify the statement by oath or
 264 affirmation before a duly authorized officer under the law and shall affix his or her
 265 signature thereto.

266 (B) Regardless of the court in which the affidavit required by this paragraph is filed,
 267 the fee for filing such affidavit shall only be \$10.00 per motor vehicle or trailer upon
 268 which a lien is asserted. Notwithstanding any law to the contrary, the affidavit filing
 269 fee shall not be taxed nor shall any additional fee or surcharge be assessed for such
 270 filing-;

271 (3) If the court determines that the affidavit or documentation or both were deficient in
 272 some manner, the court shall notify the lien claimant of the defects. Upon receipt of such
 273 notice from the court, a lien claimant may correct the defects noted by the court and refile
 274 the affidavit with the court to foreclose on the lien pursuant to the requirements set forth
 275 in paragraph (2) of this Code section, provided that such proceeding to foreclose the lien
 276 is instituted within one year from the time the lien was originally recorded or asserted by
 277 retention;

278 (4) If, within ten days of delivery of the written demand required pursuant to Code
 279 Section 40-11-2, an owner files a petition for a hearing with a court of competent

280 jurisdiction, the clerk having jurisdiction to preside over such hearing shall cause a copy
 281 of such petition to be sent to the lien claimant;

282 (5)(A) If no timely petition for a hearing has been filed with a court of competent
 283 jurisdiction, then, upon such affidavit's being filed by the lien claimant pursuant to
 284 paragraph (3) (2) of this Code section, the lien will conclusively be deemed a valid one
 285 and, foreclosure thereof allowed, and the court shall issue an order authorizing the sale
 286 of the motor vehicle or trailer at a public sale pursuant to Code Section 40-11-6.

287 (B) When the owner of an abandoned motor vehicle or trailer cannot be ascertained
 288 and upon the passage of ten days after the expiration of the posting or advertisement
 289 required by subsection (f) of Code Section 40-11-2, if no timely petition for a hearing
 290 has been filed with a court of competent jurisdiction, then upon such affidavit's being
 291 filed by the lien claimant pursuant to paragraph (2) of this Code section, the lien will
 292 conclusively be deemed a valid one, foreclosure thereof allowed, and the court shall
 293 issue an order authorizing the sale of the motor vehicle or trailer at a public sale
 294 pursuant to Code Section 40-11-6;

295 ~~(5)(6)~~ If a petition for a hearing is filed with a court of competent jurisdiction within ten
 296 days after delivery of the lien claimant's demand, a copy of which demand shall be
 297 attached to the petition, the court shall set such a hearing within ten days of filing of the
 298 petition;

299 ~~(6)(7)~~ Upon the filing of such petition by an owner, neither the lien claimant nor the
 300 court may sell the motor vehicle or trailer, although possession of the motor vehicle or
 301 trailer may be retained by the lien claimant or obtained by the court in accordance with
 302 the order of the court which sets the date for the hearing;

303 ~~(7)(8)~~ If, after a full hearing, the court finds that a valid debt exists, then the court shall
 304 authorize foreclosure upon and sale of the motor vehicle or trailer subject to the lien to
 305 satisfy the debt if such debt is not otherwise immediately paid;

306 ~~(8)(9)~~ If the court finds the actions of the ~~person asserting the lien~~ claimant in retaining
 307 possession of the motor vehicle or trailer were not taken in good faith, then the court, in
 308 its discretion, may award damages to the owner, any party which has been deprived of
 309 the rightful use of the motor vehicle or trailer, or the lessee due to the deprivation of the
 310 use of the motor vehicle or trailer; and

311 ~~(9)(10) The~~ If an affidavit meeting the requirements of paragraph (3) of this Code section
 312 is filed and no petition for a hearing is timely filed, or if, after a full hearing, the court
 313 determines that a valid debt exists, the court shall issue an order authorizing the sale of
 314 such motor vehicle. However, the holder of a security interest in or a lien on the motor
 315 vehicle or trailer, other than the holder of a lien created by Code Section 40-11-4, shall
 316 have the right, in the order of priority of such security interest or lien, to pay the debt and

317 court costs. If the holder of a security interest or lien does so pay the debt and court
318 costs, he or she shall have the right to possession of the motor vehicle or trailer, and his
319 or her security interest in or lien on such motor vehicle or trailer shall be increased by the
320 amount so paid. A court order shall be issued to this effect, and in this instance there
321 shall not be a sale of the motor vehicle or trailer."

322 **SECTION 5.**

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