

The House Committee on Ways and Means offers the following substitute to HB 337:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 11, 15, 44, and 48 of the Official Code of Georgia Annotated, relating to the  
2 Uniform Commercial Code, clerks of superior courts, property, and revenue and taxation,  
3 respectively, so as to modernize provisions relating to the transmittal, filing, recording,  
4 access to, and territorial effect of tax liens issued by the Department of Revenue; to provide  
5 for definitions; to provide for modern technological advances in electronic record keeping  
6 relating to the filing and public access to state tax liens; to provide for certificates of  
7 clearance for state tax liens; to provide for duties and responsibilities of the Georgia Superior  
8 Court Clerks' Cooperative Authority; to provide a short title; to provide for related matters,  
9 to provide for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "State Tax Execution Modernization Act."

13 **SECTION 2.**

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
15 amended by revising Code Section 48-2-56, relating to priority of liens for taxes, as follows:

16 "48-2-56.

17 (a) Except as otherwise provided in this Code section, liens for all taxes due the state or  
18 any county or municipality in the state shall arise as of the time the taxes become due and  
19 unpaid and all tax liens shall cover all property in which the taxpayer has any interest from  
20 the date the lien arises until such taxes are paid.

21 (b) Except as otherwise provided in this Code section, liens for taxes are superior to all  
22 other liens and shall be paid before any other debt, lien, or claim of any kind. Liens for  
23 taxes shall rank among themselves as follows:

24 (1) Taxes due the state;

25 (2) Taxes due counties of the state;

26 (3) Taxes due school and other special tax districts of the state; and

27 (4) Taxes due municipal corporations of the state.

28 (c) The lien for taxes imposed by Article 1 of Chapter 9 of this title, relating to motor fuel  
29 taxes, shall not have priority as against:

30 (1) Any bona fide mortgagee, holder, or transferee of a deed to secure debt; or

31 (2) Any pledgee, judgment creditor, or purchaser of or from persons liable for the tax  
32 imposed by Article 1 of Chapter 9 of this title

33 where the rights of such mortgagee, holder, or transferee of a deed to secure debt, pledgee,  
34 judgment creditor, or purchaser have attached prior to the time ~~notice~~ of the lien has been  
35 filed by the commissioner in the office of the clerk of superior court of the county in which  
36 the principal place of business is located ~~or in the county where property of the person~~  
37 ~~liable for payment of the motor fuel tax is located.~~

38 (d)(1) Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax  
39 from the time fixed by law for valuation of the property in each year until such taxes are  
40 paid and shall cover the property of tax collectors or tax commissioners and their sureties  
41 from the time of giving bond until all the taxes for which they are responsible are paid.

42 (2) The lien for any ad valorem tax shall not be superior to the title and operation of a  
43 security deed when the tax represents an assessment upon property of the taxpayer other  
44 than property specifically covered by the title and operation of the security deed.

45 (3) When real property located within this state is transferred between the date on which  
46 any ad valorem tax lien on the property vests and the date on which the tax evidenced by  
47 the tax lien becomes due and payable, the ad valorem tax lien on the transferred property  
48 shall not extend to cover any other real property of the transferor.

49 (e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title,  
50 relating to certain income taxes, shall:

51 (1) Arise and ~~cover~~ attach to all property of the taxpayer within the state as of the time  
52 a tax execution for these taxes is ~~entered upon the general execution docket~~ filed with the  
53 clerk of superior court of the county of the last known address of the taxpayer appearing  
54 on the records of the department at the time the state tax execution is filed; and

55 (2) Not attach to the interest of a prior bona fide purchaser where a certificate of  
56 clearance is required and has been obtained or where a certificate of clearance is not  
57 required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded  
58 instrument securing a bona fide debt.

59 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~  
60 ~~recorded in the county where the real property is located.~~

61 (f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title,  
62 relating to withholding taxes, shall:

63 (1) Arise and attach to all property of the defaulting employer or other person required  
 64 to deduct and withhold on the date of the assessment of the taxes by operation of law or  
 65 by action of the commissioner;

66 (2) Not attach to the interest of a prior bona fide purchaser where a certificate of  
 67 clearance is required and has been obtained or where a certificate of clearance is not  
 68 required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded  
 69 instrument securing a bona fide debt; and

70 (3) ~~Not be superior to the lien~~ attach to the interest of a subsequent bona fide purchaser  
 71 ~~or where a certificate of clearance is required and has been obtained or where a certificate~~  
 72 of clearance is not required pursuant to Code Section 44-1-18, nor be superior to the lien  
 73 of a lender for value recorded prior to the time the execution for the tax has been entered  
 74 on the general execution docket filed in the office of the clerk of superior court of the  
 75 county ~~in which the property affected is located~~ of the last known address of the taxpayer  
 76 appearing on the records of the department at the time the state tax execution is filed.

77 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~  
 78 ~~recorded in the county where the real property is located.~~

79 (g)(1) The lien of a specific or occupation tax shall not be superior to the title and  
 80 operation of a security deed recorded prior to the time the execution for the tax has been  
 81 ~~entered on the general execution docket~~ filed in the office of the clerk of ~~the~~ superior  
 82 court of the county ~~in which the affected property is located~~ of the last known address of  
 83 the taxpayer appearing on the records of the department at the time the state tax execution  
 84 is filed.

85 (2) As used in this subsection, the term 'specific or occupation tax' means all state,  
 86 county, and municipal taxes and all state licenses and fees except:

- 87 (A) The taxes imposed by Article 1 of Chapter 9 of this title;
- 88 (B) Ad valorem taxes;
- 89 (C) The taxes imposed by Article 2 of Chapter 7 of this title; and
- 90 (D) The taxes imposed by Article 5 of Chapter 7 of this title.

91 The term includes, but is not limited to, sales and use taxes, corporate net worth taxes,  
 92 estate taxes, ~~real-estate~~ real estate transfer taxes, taxes on financial institutions, alcohol  
 93 and tobacco taxes, road taxes on motor carriers, excise taxes, license fees, tax liabilities  
 94 of corporate officers and business successors, and tax collections of a person who is a  
 95 dealer under Chapter 8 of this title relating to sales and use taxation.

96 (h) Liens for taxes existing prior to July 1, 1983, shall not be changed by this Code section.  
 97 On and after July 1, 1983, this Code section shall govern the time of creation of all tax liens  
 98 and the priority of all tax liens.

99 (i) All executions, liens, releases, cancellations, or other related documents issued by the  
 100 department to be filed with a superior court clerk shall be presented and filed electronically  
 101 pursuant to Code Section 48-3-42 and the appropriate filing fees shall be paid by the  
 102 department as provided in subsection (f) of Code Section 15-6-77."

103 **SECTION 3.**

104 Said title is further amended by revising subsection (b) of Code Section 48-2-59, relating to  
 105 appeals to the Georgia Tax Tribunal, as follows:

106 "(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax  
 107 Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days  
 108 from the date of decision by the commissioner or at any time after the department records  
 109 a state tax execution pursuant to Code Section 48-3-42."

110 **SECTION 4.**

111 Said title is further amended by repealing Code Section 48-3-1, relating to the issuance of  
 112 state tax executions and affidavit of illegality, and designating it as "Reserved."

113 **SECTION 5.**

114 Said title is further amended by revising Code Section 48-3-21, relating to the statute of  
 115 limitations for tax executions, as follows:

116 "48-3-21.

117 All ~~state~~, county, municipal, or other tax executions, before or after legal transfer and  
 118 record, shall be enforced within seven years from:

119 (1) The date of issue; or

120 (2) The time of the last entry upon the tax execution by the officer authorized to execute  
 121 and return the execution if the execution and entry are properly entered or reentered upon  
 122 the execution docket or books in which executions issued on judgments and entries on  
 123 executions issued on judgments are required to be entered or reentered."

124 **SECTION 6.**

125 Said title is further amended by repealing Code Section 48-3-23, relating to nulla bona and  
 126 tolling of the statute of limitations, and designating it as "Reserved."

127 **SECTION 7.**

128 Said title is further amended by revising Code Section 48-3-28, relating to entry of  
 129 satisfaction on the execution docket, as follows:

130 "48-3-28.

131 An entry of satisfaction shall be made on the execution lien docket in the office of the clerk  
 132 of superior court as soon as reasonably possible after a tax execution has been fully  
 133 satisfied, except as otherwise provided in this chapter."

134 **SECTION 8.**

135 Said title is further amended by repealing Code Section 48-3-29, relating to the publication  
 136 of state tax execution information, and designating it as "Reserved."

137 **SECTION 9.**

138 Said title is further amended by designating the current provisions as "Article 1" and adding  
 139 a new article to read as follows:

140 "ARTICLE 2

141 48-3-40.

142 (a) The purpose of this article is to provide a uniform state-wide system for filing notices  
 143 of state tax executions issued by the commissioner that are in favor of or enforced by the  
 144 department.

145 (b) This article shall only be applicable to state tax executions and to the liens of state tax  
 146 executions as against real and personal property which arise pursuant to Code Section  
 147 48-2-56 for tax liabilities administered by the department.

148 (c) As used in this article, the term:

149 (1) 'Authority' shall mean the Georgia Superior Court Clerks' Cooperative Authority.

150 (2) 'Certificate of clearance' shall mean a document issued by the department affirming  
 151 that a proper search has been conducted by the department and has yielded no active liens  
 152 associated with an individual or entity.

153 (3) 'Delinquent taxpayer' means a person owing an unpaid tax liability that is collectable  
 154 by the department.

155 (4) 'Execution' shall mean either a state tax execution or a renewed state tax execution,  
 156 as applicable.

157 (5) 'Last known address of the delinquent taxpayer' means the address of the delinquent  
 158 taxpayer appearing on the records of the department at the time the state tax execution  
 159 is filed with the superior court clerk.

160 (6) 'Renewed state tax execution' means any tax execution properly filed by the  
 161 department prior to January 1, 2018, that is refiled upon implementation of this article.

162 (7) 'State tax execution' means any execution issued by the department for the collection  
163 of any tax, fee, license, penalty, interest, or collection costs due the state.

164 (8) 'URPERA' shall mean the Uniform Real Property Electronic Recording Act found  
165 at Code Section 44-2-35, et seq.

166 (9) 'URPERA rules' shall mean the rules adopted by the Georgia Superior Court Clerks'  
167 Cooperative Authority pursuant to the Uniform Real Property Electronic Recording Act.

168 48-3-41.

169 The department may issue an execution for the collection of any tax, fee, license, penalty,  
170 interest, or collection costs due the state once a lien has arisen pursuant to Code Section  
171 48-2-56. An execution shall be a lien in favor of the department upon all property and right  
172 to property, whether real or personal, within the State of Georgia, belonging to the  
173 delinquent taxpayer named on the execution.

174 48-3-42.

175 (a) On or after January 1, 2018, the execution shall be effective as provided by law when  
176 such execution is filed by the department with the appropriate superior court clerk.

177 (b) All executions or writs of fieri facias issued by the department filed or recorded on the  
178 general execution docket or lien docket of any county shall be invalid as of December 31,  
179 2017. Any such execution or writs of fieri facias which the department does not show as  
180 satisfied, issued in error, or otherwise withdrawn and which was last recorded or rerecorded  
181 on the general execution docket within seven years before January 1, 2018, may be  
182 renewed for a period of ten years upon the department's filing a renewed state tax execution  
183 with the clerk of superior court on or after January 1, 2018. For priority purposes, a filed  
184 renewed state tax execution shall retain its original date of filing on the general execution  
185 docket or lien docket. All renewed state tax execution documents shall reflect the original  
186 date of filing.

187 (c) On or after January 1, 2018, any execution and any related releases, cancellations, or  
188 other documents submitted by the department for filing with the clerk of superior court  
189 shall be submitted for filing electronically.

190 (d) An execution filed after January 1, 2018, pursuant to this Code section shall be a lien  
191 against and attach to all existing and after-acquired property of the delinquent taxpayer,  
192 both real and personal, tangible and intangible, located in any county and in all counties  
193 within the State of Georgia, with the same force and effect as any recorded judgment on  
194 the lien docket of the superior court clerk.

195 (e) An execution electronically transmitted to the authority pursuant to this Code section  
196 shall be deemed filed and perfected upon its receipt by the authority for transmission to the

197 applicable clerk of superior court. The authority shall provide to the department  
 198 confirmation of receipt of an execution. Absent evidence of such confirmation there shall  
 199 be no presumption of filing. Executions filed shall have priority as provided by law.

200 (f) The lien of an execution filed pursuant to this Code section shall continue in effect until  
 201 released by the department or until the execution has expired.

202 (g) An execution filed after January 1, 2018, shall expire ten years from the date of filing  
 203 and shall not be subject to renewal. Said expiration period shall be tolled and suspended  
 204 for:

205 (1) The duration of an installment agreement between the taxpayer and the commissioner  
 206 for any tax liabilities contained within an execution plus an additional 90 days;

207 (2) If a timely proceeding in court for the imposition or collection of a tax is commenced,  
 208 the duration of the period until the liability for the tax or a judgment against the taxpayer  
 209 arising from such liability is satisfied or becomes unenforceable;

210 (3) The duration of any enforcement action to collect the liability contained within an  
 211 execution initiated prior to the expiration of the period of limitations and released after  
 212 such period of limitations;

213 (4) In a case under Title 11 of the United States Code, the running of the period of  
 214 limitations provided in this Code section shall be suspended and tolled for the period  
 215 during which the commissioner is prohibited from collecting any tax liability and six  
 216 months thereafter; or

217 (5) The period during which a taxpayer's offer-in-compromise is under consideration by  
 218 the commissioner.

219 48-3-43.

220 (a) The department shall maintain information on executions in its information  
 221 management system in a form that permits information related to executions to be readily  
 222 accessible in an electronic form via the Internet and available to the public. The following  
 223 shall be available within such system at no charge to the public:

224 (1) Search by delinquent taxpayer name, execution number, last four digits of the  
 225 taxpayer's social security number, or, when applicable, federal employee identification  
 226 number;

227 (2) Search by identification number assigned to the execution by the department;

228 (3) The basis for an execution, including, but not limited to, the amount of the taxes,  
 229 penalties, interest, and fees owed, and the tax periods and relevant assessment dates of  
 230 the taxes owed;

231 (4) The place, date, and time of the filing of the execution;

232 (5) The status of the execution as defined in subsection (b) of this Code section;

- 233 (6) The present balance of the execution;  
 234 (7) Provision of official electronic copies of an execution;  
 235 (8) Provision and issuance of official statements of lien pursuant to Code Section  
 236 44-1-18;  
 237 (9) Provision and issuance of official certificates of clearance pursuant to Code Section  
 238 44-1-18.  
 239 (10) Search by identification number assigned to certificates of clearance; and  
 240 (11) Provision and issuance of official payoff information as to any execution pursuant  
 241 to Code Section 44-1-18.
- 242 (b) An execution shall hold one of the following official statuses on the department  
 243 information system and such status shall be available, except as provided below, and on the  
 244 electronic printable forms of state tax executions:
- 245 (1) Active — The execution is perfected and enforceable;  
 246 (2) Withdrawn — The execution was issued in error and is not enforceable. Within two  
 247 business days from the date the department discovers an error in the filing of an  
 248 execution, it shall change the status of the execution to withdrawn. Such execution shall  
 249 be treated as though it was never filed;
- 250 (3) Released — The execution has been released or canceled and is no longer  
 251 enforceable. Within 15 business days from the department's receipt of payment in full  
 252 of an execution, the department shall change the status of the execution to released. The  
 253 department may release an unpaid execution that the department determines is not legally  
 254 or practically collectable;
- 255 (4) Refiled — If an execution is released in error, the department may file a new  
 256 execution for any outstanding, finally determined tax liability to bear an active status as  
 257 of the date of the new recording; and
- 258 (5) Expired — The execution has expired pursuant to Code Section 48-3-42 and is  
 259 unenforceable.
- 260 (c) The department shall provide to the authority such electronic linking data elements as  
 261 may be required by the authority to link filed executions found in the authority's state-wide  
 262 uniform automated information system for real and personal property records to the  
 263 matching data related to the execution in the department's information management system.
- 264 (d) The department's information management system as provided for in this Code section  
 265 shall constitute a public record and the department shall redact information in accordance  
 266 with Code Section 9-11-7.1.
- 267 (e) The department's information management system as provided for in this Code section  
 268 shall not be used for survey, marketing, or solicitation purposes. Survey, marketing, or  
 269 solicitation purposes shall not include any action by the department or its authorized agents



270 to collect a debt on an execution. The Attorney General is hereby authorized to bring an  
 271 action at law or in equity to address the unlawful use of such information for a survey,  
 272 marketing, or solicitation purpose and to recover the costs of such action, including  
 273 reasonable attorney's fees.

274 (f) The commissioner may adopt reasonable rules and regulations providing for the  
 275 maintenance, reliability, accessibility, and use of the department's information management  
 276 system. Such rules and regulations may address, among other matters, the authenticity of  
 277 the electronic printable executions and issues related to periods during which the  
 278 information system may be unavailable for use due to routine maintenance or other  
 279 activities.

280 48-3-44.

281 (a) An execution bearing a 'Released' status on the department's information management  
 282 system shall constitute a complete release of the execution by the department and of the  
 283 lien in the office of the clerk of superior court where the execution was filed.

284 (b) A certificate of clearance issued by the department shall be deemed an effective release  
 285 of an execution. The department shall provide to the delinquent taxpayer, within 30 days  
 286 of the date of payment, a notice of the release of the execution and shall cause a release of  
 287 the execution to be filed with the applicable superior court clerk."

288 **SECTION 10.**

289 Title 11 of the Official Code of Georgia Annotated, relating to the Uniform Commercial  
 290 Code, is amended by revising Code Section 11-9-333, relating to the priority of certain liens,  
 291 as follows:

292 "11-9-333.

293 **(a) Year's support; property taxes; other state taxes; other taxes or judgments.**

294 Except as is expressly provided to the contrary elsewhere in this article and in  
 295 subsection (b) of this Code section, a perfected security interest in collateral takes priority  
 296 over each and all of the liens, claims, and rights described in Code Section 44-14-320,  
 297 relating to the establishment of certain liens, as now or hereafter amended; former Code  
 298 Section 53-7-91 as such existed on December 31, 1997, if applicable; and Code Section  
 299 53-7-40, relating to the priority of debts against the estate of a decedent, as now or  
 300 hereafter amended; provided, nevertheless, that:

301 (1) Year's support to the family, duly set apart in the collateral prior to the perfection of  
 302 the subject security interest, takes priority over such security interest;

303 (2) A lien for property taxes duly assessed upon the subject collateral, either prior or  
 304 subsequent to the perfection of the subject security interest, takes priority over security  
 305 interest;

306 (3) A lien for all ~~other~~ state taxes takes priority over such security interest, except where  
 307 such security interest is perfected by filing a financing statement relative thereto prior to  
 308 such time as the execution for such state taxes shall be ~~entered on the execution docket~~  
 309 ~~in the place and~~ filed in the manner provided by law; provided, nevertheless, that, with  
 310 respect to priority rights between such tax liens and security interests where under this  
 311 article the same are perfected other than by filing a financing statement, the same shall  
 312 be determined as provided by law prior to January 1, 1964; and

313 (4) A lien for other unpaid taxes or a duly rendered judgment of a court having  
 314 jurisdiction shall have the same priority with regard to a security interest as it would have  
 315 if the tax lien or judgment were a conflicting security interest within the meaning of Code  
 316 Section 11-9-322 or an encumbrance within the meaning of Code Section 11-9-334,  
 317 which conflicting security interest was perfected by filing or which encumbrance arose  
 318 at the time the tax lien or judgment was duly recorded in the place designated by statute  
 319 applicable thereto.

320 (b) **Mechanics' liens on farm machinery.** A mechanics' lien on farm machinery or  
 321 equipment arising on or after July 1, 1985, shall have priority over any perfected security  
 322 interest in such farm machinery or equipment unless a financing statement has been filed  
 323 as provided in Code Section 11-9-501 and unless the financing statement describes the  
 324 particular piece of farm machinery or equipment to which the perfected security interest  
 325 applies. Such description may include the make, model, and serial number of the piece of  
 326 farm machinery or equipment. However, such description shall be sufficient whether or  
 327 not it is specific if it reasonably identifies what is described and a mistake in such  
 328 description shall not invalidate the description if it provides a key to identifying the farm  
 329 machinery or equipment."

### 330 SECTION 11.

331 Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to  
 332 clerks of superior courts, is amended by adding a new Code Section to read as follows:

333 15-6-97.3.

334 (a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall  
 335 revise the state-wide uniform automated information system for real and personal property  
 336 records as provided for in Code Section 15-6-97 to provide for the inclusion in such system  
 337 functionality as provided in this Code section for state tax executions and renewed state tax

338 executions electronically filed with clerks of superior court as provided for in Article 2 of  
339 Chapter 3 of Title 48.

340 (b) As used in this Code section, the term 'state tax execution' shall be inclusive of the term  
341 'renewed state tax execution.'

342 (c) Effective January 1, 2018, the state-wide uniform automated information system for  
343 real and personal property records shall be revised to provide the following function and  
344 utility related to state tax executions:

345 (1) Electronic query of the Georgia consolidated lien indexes for state tax execution  
346 instrument types by direct party name to include state-wide results of all state tax  
347 executions filed for such party regardless of any applied county limiting search filter;

348 (2) Electronic query of the Georgia consolidated lien indexes for all lien types by direct  
349 party name to include state-wide results of all state tax executions filed for such party  
350 regardless of any applied county limiting search filter;

351 (3) A secondary electronic query of the results returned by a search performed pursuant  
352 to paragraphs (1) and (2) of this subsection by the last four digits of a social security  
353 number or federal employer identification number which will render results of state tax  
354 executions associated with such number;

355 (4) An electronic link from an index data record of a state tax execution found in the  
356 system to the Department of Revenue information management system to provide users  
357 access to detailed information, status, and clearance certificates from the department  
358 system. The Department of Revenue shall provide to the authority such electronic linking  
359 data elements as may be required by the authority to link filed executions found in the  
360 state-wide uniform automated information system for real and personal property records  
361 to the matching data on the execution in the Department of Revenue information  
362 management system; and

363 (5) A searchable electronic filing submission docket or other means which allows a  
364 search by direct party name, as provided by the Department of Revenue, for state tax  
365 executions which have been submitted to the authority for filing with a clerk of superior  
366 court pending the inclusion of final index data for such execution into the Georgia  
367 consolidated lien indexes. Search features shall be available for an execution upon its  
368 receipt by the authority.

369 (d) The Georgia Superior Court Clerks' Cooperative Authority shall have authority to  
370 promulgate rules and regulations necessary to develop and implement the provisions of this  
371 Code section."

372 **SECTION 12.**

373 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by  
 374 adding a new Code section to read as follows:

375 "44-1-18.

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

377 (1) 'Certificate of clearance' or 'certificate' shall mean a document issued by the  
 378 department affirming that a proper search has been conducted by the department and has  
 379 yielded no active liens associated with an individual or entity, as provided for in Article  
 380 2 of Chapter 3 of Title 48.

381 (2) 'Current owner' means:

382 (A) The individual or entity vested with fee simple title to a parcel of real property; or

383 (B) Where fee simple title to a parcel of real property has been vested by:

384 (i) A joint tenancy with survivorship rights, then the survivor of such joint tenancy;

385 (ii) A deed in lieu of foreclosure, then the grantor of such deed;

386 (iii) An order of a probate court providing for:

387 (I) An executor, administrator, and granting an order declaring no administration  
 388 necessary, then the deceased subject party of such probate proceeding; or

389 (II) A conservator, custodian, or guardian, then the ward subject party of such  
 390 probate proceeding;

391 (iv) A deed into a trustee of a trust in which the party to an execution is the trustor,  
 392 then:

393 (I) Where an execution attaches to the trustor prior to the trustor's conveyance to  
 394 the trust, then the trustor; and

395 (II) Where an execution attaches to the trustor after the trustor's conveyance to the  
 396 trust, then the trustee of such trust in his or her capacity as trustee and the trust,  
 397 which trust shall obtain a distinct federal employee identification number;

398 (v) An order of a court providing:

399 (I) Award of real property to a spouse in a divorce proceeding, then the spouse so  
 400 awarded fee simple title to the property;

401 (II) Award of real property in a quiet title action as provided in Code Section  
 402 23-3-40, et seq., and Code Section 23-3-60, et seq., then the successful petitioner  
 403 of such action, provided proper service was effectuated upon the department; or

404 (III) Award of real property in an action to partition the property; where the  
 405 property is physically partitioned into separate parcels, then the party vested with  
 406 title to each such partitioned parcel; and where the property is ordered sold and the  
 407 proceeds of such sale partitioned, then to each party to the extent of their interest in  
 408 said proceeds;

- 409 (vi) The death of a life tenant, then the remaindermen of such life estate;  
 410 (vii) The termination of an executory trust, then the vestees of such trust;  
 411 (viii) The merger of entities wherein one or more of the entities is a party to an  
 412 execution, then both the acquired and acquiring parties; or  
 413 (ix) Voluntary deed to a condemnor for compensation as provided in Title 22, then the  
 414 grantor in such deed.
- 415 (3) 'Department' shall mean the Georgia Department of Revenue.
- 416 (4) 'Execution' shall mean either a state tax execution or a renewed state tax execution  
 417 as defined in Article 2 of Chapter 3 of Title 48.
- 418 (5) 'Statement of lien' or 'statement' shall mean a document issued by the department:
- 419 (A) Affirming that an active execution, as provided for in Article 2 of Chapter 3 of  
 420 Title 48, is associated with the current owner;
- 421 (B) Providing the identification reference number assigned to the execution by the  
 422 department; and
- 423 (C) Providing information to contact the department through the department's  
 424 information management system for payoff information of such execution.
- 425 (b) Prior to the conveyance of real property upon which a title is transferred, any holder  
 426 of a fee simple interest in real property, licensed attorney at law, or title insurance company  
 427 shall be entitled to, upon request from the department:
- 428 (1) A certificate of clearance; or  
 429 (2) A statement of lien.
- 430 (c) The department shall only require a certificate of clearance for the current owner of the  
 431 property to be conveyed at the time of the conveyance, and shall not require a certificate  
 432 of clearance as to any previous owners or title holders of such property.
- 433 (d) Subject to the provisions of subsection (n) of this Code section, all executions against  
 434 any party previously vested with title other than the current owner shall be of no force and  
 435 effect as to the title of, and shall not be a lien against, any real property owned by the  
 436 current owner.
- 437 (e) All requests for a certificate of clearance made to the department shall:
- 438 (1) Be in writing;  
 439 (2) State the name, address, e-mail address, and telephone number of the requestor;  
 440 (3) State whether the requestor is the owner of the real property, an attorney at law, or  
 441 a title insurance company;  
 442 (4) State the name of the current owner of the real property;  
 443 (5) State an e-mail address to which the certificate or statement can be directed; and  
 444 (6) Provide a certification that the information provided therein is true and correct to the  
 445 best of the requestor's knowledge.

446 (f) All requests shall be transmitted to the department by electronic means through the  
447 department's information management system or be delivered to the registered address of  
448 the department by certified mail, return receipt requested, or statutory overnight delivery.  
449 Any request transmitted by electronic means shall be considered received on the first  
450 business day following such transmission.

451 (g) The information specified in the certificate of clearance shall be binding upon the  
452 department as of the date of the certificate and for 30 days thereafter, during which time  
453 the department shall not issue any new executions against the current owner designated in  
454 the certificate.

455 (h) The department shall furnish a certificate of clearance or statement of lien, as  
456 applicable, to the requestor immediately upon request by electronic means through the  
457 department's information management system or, if not available through such system, to  
458 the e-mail address provided by the requestor within five business days of receipt of such  
459 request.

460 (i) The failure of the department to provide a certificate or statement within such five-day  
461 period shall cause any lien against real property arising from any execution against the  
462 current owner to be extinguished and to be of no force and effect as to the title. Such  
463 failure by the department to provide a certificate or statement shall be evidenced by a  
464 recorded affidavit, signed by a licensed attorney at law, containing a statement that the  
465 request was made pursuant to this Code section and that a certificate has not been issued  
466 by the department and would not be found in the records of the department or otherwise,  
467 with a copy of the acknowledgment of receipt of the request attached thereto.

468 (j) The certificate of clearance may be recorded in the superior court of the county where  
469 any real property owned by the current owner lies, and upon such recording shall be  
470 conclusive evidence that through that certain date 30 days after the date of the certificate  
471 no lien of the department attaches to the real property owned by the current owner referred  
472 to in such certificate.

473 (k) A copy of the certificate of clearance shall be maintained in the department's  
474 information management system and shall be identified by an identification number  
475 assigned to the certificate by the department, with such identification number being  
476 required to be entered on the real estate transfer tax declaration form as required in Code  
477 Section 48-6-4.

478 (l) If a statement of lien is issued and payoff information is acquired from the department  
479 pursuant to the reference information provided therein, such payoff information shall be  
480 binding upon the department as of the date such payoff information is received by any  
481 requesting party and for 30 days thereafter, during which time the department shall not

482 issue any executions against the current owner designated in the statement, and upon  
 483 payment in full of all sums due as set forth in any such payoff information:

484 (1) All liens of the department against the real property owned by the current owner in  
 485 existence as of the date of the statement shall be extinguished and all executions  
 486 encumbering such real property shall be cancelled. The department shall provide proof  
 487 of receipt of such payoff to the party remitting such payoff funds, and such proof may be  
 488 recorded in the superior court of the county where the real property lies, and upon such  
 489 recording shall be conclusive evidence that through the date of the statement no lien of  
 490 the department attaches to any real property owned by the current owner referred to in  
 491 such statement; and

492 (2) If one or more executions are for any reason not set forth on such statement or payoff  
 493 information, as to such omitted execution, said payment shall cause any lien against any  
 494 real property owned by the current owner arising from any such omitted execution to be  
 495 extinguished and to be of no force and effect as to the title.

496 (m) Any person who files a request in accordance with this Code section which request is  
 497 fraudulent shall be guilty of a misdemeanor and shall be punished by imprisonment for not  
 498 more than 12 months or by a fine of not less than \$1,000.00 nor more than \$5,000.00, or  
 499 both.

500 (n) Noncompliance with any provision of this Code section shall preserve an execution  
 501 properly executed and filed as provided for in Article 2 of Chapter 3 of Title 48 on real  
 502 property on the date of any conveyance of such property.

503 (o) This Code section shall not apply to any conveyance listed below and the grantee of  
 504 any such conveyance shall take title to the real property free and clear of any execution or  
 505 lien created from such execution existing at the time of such conveyance:

506 (1) A foreclosure of a mortgage or security deed, wherein such mortgage or security deed  
 507 has priority over any execution;

508 (2) A receiver or trustee in a bankruptcy proceeding;

509 (3) A judicial order resulting from an action regarding condemnation, forfeiture, and  
 510 judicial foreclosure, wherein the department was properly provided personal service of  
 511 such action;

512 (4) A tax sale performed by the Internal Revenue Service;

513 (5) A year's support order by operation of law; or

514 (6) A tax sale conducted by any sheriff, tax commissioner, or municipal levying officer  
 515 in this state, provided that proper service was effectuated on the department in accordance  
 516 with Code Section 48-4-45,

517 and upon such conveyance all liens of the department against the real property owned by  
 518 the current owner of such property as of the date of such conveyance shall be extinguished  
 519 and all executions encumbering such real property shall be cancelled.

520 (p) The certificate of clearance shall be signed by the state revenue commissioner, or  
 521 authorized agent thereof, and shall contain certifications from the department regarding:

522 (1) Identification of the current owner;

523 (2) That upon statutory request by a proper party in accordance with this Code section,  
 524 an examination of the department records was made by the department;

525 (3) That upon such examination by the department, the current owner as shown in the  
 526 certificate has no active liens associated with such party by an execution or lien arising  
 527 therefrom; and

528 (4) The certificate is given pursuant to this Code section.

529 (q) The state revenue commissioner shall promulgate such rules and regulations not in  
 530 conflict with this Code section as may be necessary and appropriate to implement and  
 531 administer this Code section."

532 **SECTION 13.**

533 Said title is further amended by revising Code Section 44-2-2, relating to the duties of clerks  
 534 to record property transactions, as follows:

535 "44-2-2.

536 (a)(1) The clerk of the superior court shall file, index on a computer program designed  
 537 for such purpose, and permanently record, in the manner provided constructively in Code  
 538 Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring,  
 539 encumbering, or affecting real estate and personal property:

540 (A) Deeds;

541 (B) Mortgages;

542 (C) Liens ~~of all kinds~~ as provided for by law; and

543 (D) Maps or plats relating to real estate in the county; and

544 (E) State tax executions and state tax execution renewals as provided for in Article 2  
 545 of Chapter 3 of Title 48.

546 (2) ~~For the purpose of~~ As used in this subsection, the term 'liens' shall ~~be defined~~ have  
 547 the same meaning as provided in Code Sections 15-19-14, 44-14-320, and 44-14-602 and  
 548 shall include all liens provided by state or federal statute.

549 (3) When indexing liens, the clerk shall enter the names of debtors in the index in the  
 550 manner provided for names of grantors conveying real estate in subsection (b) of Code  
 551 Section 15-6-66 and the names of creditors or claimants in the manner as provided therein  
 552 for names of grantees making such conveyances. When indexing state tax executions and



553 state tax execution renewals as provided by subparagraph (a)(1)(E) of this Code section,  
 554 the clerk shall enter the names of the taxpayers in the manner provided for names of  
 555 grantors conveying real estate in subsection (b) of Code Section 15-6-66 and the name  
 556 'GEORGIA STATE DEPT OF REVENUE' in the manner as provided therein for names  
 557 of grantees making such conveyances. For state tax executions, the clerk shall also:  
 558 (A) Index the last four characters of the taxpayer's social security number or the last  
 559 four characters of the federal employer taxpayer number, as applicable to each  
 560 taxpayer;  
 561 (B) Index such state tax execution control number as provided by rule established by  
 562 the Georgia Superior Court Clerks' Cooperative Authority;  
 563 (C) Index using instrument types as provided by rule established by the Georgia  
 564 Superior Court Clerks' Cooperative Authority; and  
 565 (D) Transmit such data to the Georgia Superior Court Clerks' Cooperative Authority  
 566 pursuant to the provisions of paragraph (15) of subsection (a) of Code Section 15-6-61.  
 567 (4) When indexing maps or plats relating to real estate in the county, the clerk of superior  
 568 court shall index the names or titles provided in the caption of the plat.  
 569 (b) Deeds, mortgages, and liens of all kinds which are required by law to be recorded in  
 570 the office of the clerk of the superior court and which are against the interests of third  
 571 parties who have acquired a transfer or lien binding the same property and who are acting  
 572 in good faith and without notice shall take effect only from the time they are filed for  
 573 record in the clerk's office.  
 574 (c) Nothing in this Code section shall be construed to affect the validity or force of any  
 575 deed, mortgage, judgment, or lien of any kind between the parties thereto."

576 **SECTION 14.**

577 This Act shall become effective on January 1, 2018.

578 **SECTION 15.**

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