The House Committee on Motor Vehicles offers the following substitute to HB 417:

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions relative to abandoned motor vehicles, so as to provide for definitions; to provide for the creation of a lien; to provide for a foreclosure process; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

As used in this article, the term:

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

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

(B) Which is left unattended on a public street, road, or highway or other public property for a period of at least five days and when it reasonably appears to a law enforcement officer that the individual who left such motor vehicle or trailer unattended does not intend to return and remove such motor vehicle or trailer. However, on the state highway system, any law enforcement officer may authorize the immediate removal of vehicles or trailers posing a threat to public health or safety or to mitigate congestion;
(C) Which has been lawfully towed onto the property of another at the request of a law
enforcement officer and left there for a period of not less than 30 days without anyone
having paid all reasonable current charges for such towing and storage;
(D) Which has been lawfully towed onto the property of another at the request of a
property owner on whose property the vehicle or trailer was abandoned and left there
for a period of not less than 30 days without anyone having paid all reasonable current
charges for such towing and storage; or
(E) Which has been left unattended on private property for a period of not less than 30
days.

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

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

(4) 'Trailer' means every vehicle with or without motive power which is not titled and
is designed for being drawn by a motor vehicle.

SECTION 2.

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

"40-11-2.

(a) Any person who removes a motor vehicle or trailer from public property at the request
of a law enforcement officer or stores such vehicle or trailer shall, if the owner of the
vehicle or trailer or some person acting for the owner is not present, seek the identity of and
address of all known owners of such vehicle or trailer from the law enforcement officer
requesting removal of such, from such officer's agency, from a local law enforcement
agency for the jurisdiction in which the remover's or storer's place of business is located,
or from the State of Georgia by direct electronic access as provided through its agencies
and authorities an authorized entity within three business days of removal. The local law
enforcement agency shall furnish such information to the person removing such vehicle or
trailer within three business days after receipt of such request.

(b) Any person who removes a motor vehicle or trailer from private property at the request
of the property owner or stores such vehicle or trailer shall, if the owner of the vehicle or
trailer or some person acting for the owner is not present, notify in writing a local law
enforcement agency of the location of the vehicle or trailer, the manufacturer's vehicle
identification number, license number, model, year, and make of the vehicle or trailer within three business days of the removal of such vehicle or trailer and shall seek from the local law enforcement agency or from the State of Georgia by direct electronic access as provided through its agencies and authorities an authorized entity the identity and address of all known owners of such vehicle or trailer and any information indicating that such vehicle or trailer is a stolen motor vehicle or trailer. The local law enforcement agency shall furnish such information to the person removing such vehicle or trailer within three business days after receipt of such request.

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

(d) If any motor vehicle or trailer removed under conditions set forth in subsection (a) or (b) of this Code section is determined not to be a stolen vehicle or trailer or is not a vehicle or trailer being repaired by a repair facility or is not being stored by an insurance company providing insurance to cover damages to the vehicle or trailer, the person removing or storing such motor vehicle or trailer shall, within seven calendar days of the day such motor vehicle or trailer was removed or one business day after the information is furnished to the remover or storer pursuant to subsection (a) or (b) of this Code section, whichever is later, notify all owners, if known, by written acknowledgment signed thereby or by certified or registered mail or statutory overnight delivery, of the location of such motor vehicle or trailer, the fees connected with removal and storage of such motor vehicle or trailer, and the fact that such motor vehicle or trailer will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle or trailer within 30 days of the day such vehicle or trailer was removed.

(e) If none of the owners redeems such motor vehicle or trailer as described in subsection (d) of this Code section, or if a vehicle or trailer being repaired by a repair facility or being stored by an insurance company providing insurance to cover damages to the vehicle or trailer becomes abandoned, the person removing or storing such motor vehicle or trailer shall, within seven calendar days of the day such vehicle or trailer became an abandoned motor vehicle or trailer, give notice by electronic means as provided by the State of Georgia through its agencies and authorities authorized entity, in writing, or by sworn statement, on the form prescribed by the state revenue commissioner, to the Department of Revenue with a research fee as fixed by rule or regulation payable to the Department of Revenue, stating the manufacturer's vehicle identification number, the license number, the fact that such vehicle or trailer is an abandoned motor vehicle or trailer.
the model, year, and make of the vehicle, the date the vehicle or trailer became an
abandoned motor vehicle or trailer, the date the vehicle or trailer was removed, and the
present location of such vehicle or trailer and requesting the name and address of all
owners of such vehicle or trailer. If the form submitted is rejected because of inaccurate
or missing information, the person removing or storing the vehicle or trailer shall resubmit,
within seven calendar days of the date of the rejection, a corrected notice form together
with an additional research fee as fixed by rule or regulation payable to the Department of
Revenue. Each subsequent corrected notice, if required, shall be submitted with an
additional research fee as fixed by rule or regulation payable to the Department of
Revenue. If a person removing or storing the vehicle or trailer has knowledge of facts
which reasonably indicate that the vehicle or trailer is registered or titled in a certain other
state, such person shall check the motor vehicle or trailer records of that other state in the
attempt to ascertain the identity of the owner of the vehicle or trailer. Research requests
may be submitted and research fees made payable to the office of the tax commissioner and
deposited in the general fund for the county in which the remover's or storer's place of
business is located in lieu of the Department of Revenue, but in like manner, if such office
processes motor vehicle records of the Department of Revenue.

(f) Upon ascertaining the owners of such motor vehicle or trailer, the person removing or
storing such vehicle or trailer shall, within five calendar days, by certified or registered
mail or statutory overnight delivery, notify all known owners of the vehicle or trailer of the
location of such vehicle or trailer and of the fact that such vehicle or trailer is deemed
abandoned and shall be disposed of if not redeemed.

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

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

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

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

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

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

SECTION 3.

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

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

SECTION 4.

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

“40-11-5.

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

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(1) Any proceeding to foreclose a lien on an abandoned motor vehicle or trailer must be instituted within one year from the time the lien is recorded or is asserted by retention; (2) The person desiring to foreclose a lien on an abandoned motor vehicle or trailer shall, by certified or registered mail or statutory overnight delivery, make a demand upon the owners for the payment of the reasonable fees for removal and storage plus the costs of any notification or advertisement up to the date of retrieval or public sale of such vehicle or trailer. Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation of the Department of Revenue and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant, file with a court of competent jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle or trailer, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Revenue. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with; (3)(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle or trailer fails to pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this Code section, or if the owner of the abandoned motor vehicle or trailer cannot be ascertained, the person removing or storing the abandoned motor vehicle or trailer may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction, including a magistrate court, on a standard form prescribed by rule or regulation of the Department of Revenue, showing all facts necessary approved by the Judicial Council of Georgia attesting that all requirements of this article to constitute such lien have been complied with and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment in accordance with paragraph (2) of this Code section has been made without satisfaction or without a timely filing of a petition for a judicial hearing or that the identity of the owner cannot be ascertained. Documentation demonstrating that the required notices have been sent by the lien
claimant or an authorized entity shall be attached to such affidavit. The person
foreclosing shall verify the statement by oath or affirmation and shall affix his or her
signature thereto.

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

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

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

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

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

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

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

SECTION 5.

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