

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

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 the creation of a lien; to provide for a foreclosure process; to  
4 provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

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

10 "40-11-1.

11 As used in this article, the term:

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

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

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

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

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

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

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

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

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

#### 44 SECTION 2.

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

47 "40-11-2.

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

58 (b) Any person who removes a motor vehicle or trailer from private property at the request  
 59 of the property owner or stores such vehicle or trailer shall, if the owner of the vehicle or  
 60 trailer or some person acting for the owner is not present, notify in writing a local law  
 61 enforcement agency of the location of the vehicle or trailer, the manufacturer's vehicle

62 identification number, license number, model, year, and make of the vehicle or trailer  
63 within three business days of the removal of such vehicle or trailer and shall seek from the  
64 local law enforcement agency or from the State of Georgia by direct electronic access as  
65 provided through ~~its agencies and authorities~~ an authorized entity the identity and address  
66 of all known owners of such vehicle or trailer and any information indicating that such  
67 vehicle or trailer is a stolen motor vehicle or trailer. The local law enforcement agency  
68 shall furnish such information to the person removing such vehicle or trailer within three  
69 business days after receipt of such request.

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

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

88 (e) If none of the owners redeems such motor vehicle or trailer as described in  
89 subsection (d) of this Code section, or if a vehicle or trailer being repaired by a repair  
90 facility or being stored by an insurance company providing insurance to cover damages to  
91 the vehicle or trailer becomes abandoned, the person removing or storing such motor  
92 vehicle or trailer shall, within seven calendar days of the day such vehicle or trailer became  
93 an abandoned motor vehicle or trailer, give notice by electronic means as provided by the  
94 State of Georgia through ~~its agencies and authorities~~ authorized entity, in writing, or by  
95 sworn statement, on the form prescribed by the state revenue commissioner, to the  
96 Department of Revenue with a research fee as fixed by rule or regulation payable to the  
97 Department of Revenue, stating the manufacturer's vehicle identification number, the  
98 license number, the fact that such vehicle or trailer is an abandoned motor vehicle or trailer,

99 the model, year, and make of the vehicle, the date the vehicle or trailer became an  
100 abandoned motor vehicle or trailer, the date the vehicle or trailer was removed, and the  
101 present location of such vehicle or trailer and requesting the name and address of all  
102 owners of such vehicle or trailer. If the form submitted is rejected because of inaccurate  
103 or missing information, the person removing or storing the vehicle or trailer shall resubmit,  
104 within seven calendar days of the date of the rejection, a corrected notice form together  
105 with an additional research fee as fixed by rule or regulation payable to the Department of  
106 Revenue. Each subsequent corrected notice, if required, shall be submitted with an  
107 additional research fee as fixed by rule or regulation payable to the Department of  
108 Revenue. If a person removing or storing the vehicle or trailer has knowledge of facts  
109 which reasonably indicate that the vehicle or trailer is registered or titled in a certain other  
110 state, such person shall check the motor vehicle or trailer records of that other state in the  
111 attempt to ascertain the identity of the owner of the vehicle or trailer. Research requests  
112 may be submitted and research fees made payable to the office of the tax commissioner and  
113 deposited in the general fund for the county in which the remover's or storer's place of  
114 business is located in lieu of the Department of Revenue, but in like manner, if such office  
115 processes motor vehicle records of the Department of Revenue.

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

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

132 (h) The Department of Revenue shall provide to the Georgia Crime Information Center all  
133 relevant information from sworn statements described in subsection (e) of this Code section  
134 for a determination of whether the vehicles or trailers removed have been entered into the

135 criminal justice information system as stolen vehicles or trailers. The results of the  
136 determination shall be provided electronically to the Department of Revenue.

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

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

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

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

155 **SECTION 3.**

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

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

165 **SECTION 4.**

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

168 "40-11-5.

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

170 (1) Any proceeding to foreclose a lien on an abandoned motor vehicle or trailer must be  
 171 instituted within one year from the time the lien is recorded or is asserted by retention;  
 172 (2) The person desiring to foreclose a lien on an abandoned motor vehicle or trailer shall,  
 173 by certified or registered mail or statutory overnight delivery, make a demand upon the  
 174 owners for the payment of the reasonable fees for removal and storage plus the costs of  
 175 any notification or advertisement up to the date of retrieval or public sale of such vehicle  
 176 or trailer. Such written demand shall include an itemized statement of all charges and  
 177 may be made concurrent with the notice required by subsection (f) of Code  
 178 Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation  
 179 of the Department of Revenue and shall notify the owner of his or her right to a judicial  
 180 hearing to determine the validity of the lien. The demand shall further state that failure  
 181 to return the written demand to the lien claimant, file with a court of competent  
 182 jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of  
 183 such petition, all within ten days of delivery of the lien claimant's written demand, shall  
 184 effect a waiver of the owner's right to such a hearing prior to sale. The form shall also  
 185 provide the suspected owner with the option of disclaiming any ownership of the vehicle  
 186 or trailer, and his or her affidavit to that effect shall control over anything contrary in the  
 187 records of the Department of Revenue. No such written demand shall be required if the  
 188 identity of the owner cannot be ascertained and the notice requirements of subsection (g)  
 189 of Code Section 40-11-2 have been complied with;

190 (3)(A) If, within ten days of delivery to the appropriate address of the written demand  
 191 required by paragraph (2) of this Code section, the owner of the abandoned motor  
 192 vehicle or trailer fails to pay or file with the court a petition for a judicial hearing with  
 193 a copy to the lien claimant in accordance with the notice provided pursuant to  
 194 paragraph (2) of this Code section, or if the owner of the abandoned motor vehicle or  
 195 trailer cannot be ascertained, the person removing or storing the abandoned motor  
 196 vehicle or trailer may foreclose such lien. The person asserting such lien may move to  
 197 foreclose by making an affidavit to a court of competent jurisdiction, including a  
 198 magistrate court, on a standard form ~~prescribed by rule or regulation of the Department~~  
 199 ~~of Revenue, showing all facts necessary~~ approved by the Judicial Council of Georgia  
 200 attesting that all requirements of this article to constitute such lien have been complied  
 201 with and the amount claimed to be due. Such affidavit shall aver that the notice  
 202 requirements of Code Section 40-11-2 have been complied with, and such affidavit  
 203 shall also aver that a demand for payment in accordance with paragraph (2) of this Code  
 204 section has been made without satisfaction or without a timely filing of a petition for  
 205 a judicial hearing or that the identity of the owner cannot be ascertained.  
 206 Documentation demonstrating that the required notices have been sent by the lien

207 claimant or an authorized entity shall be attached to such affidavit. The person  
208 foreclosing shall verify the statement by oath or affirmation and shall affix his or her  
209 signature thereto.

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

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

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

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

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

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

235 (9) If an affidavit meeting the requirements of paragraph (3) of this Code section is filed  
236 and no petition for a hearing is timely filed, or if, after a full hearing, the court determines  
237 that a valid debt exists, the court shall issue an order authorizing the sale of such motor  
238 vehicle or trailer. However, the holder of a security interest in or a lien on the vehicle or  
239 trailer, other than the holder of a lien created by Code Section 40-11-4, shall have the  
240 right, in the order of priority of such security interest or lien, to pay the debt and court  
241 costs. If the holder of a security interest or lien does so pay the debt and court costs, he  
242 or she shall have the right to possession of the vehicle or trailer, and his or her security  
243 interest in or lien on such vehicle or trailer shall be increased by the amount so paid. A

244 court order shall be issued to this effect, and in this instance there shall not be a sale of  
245 the vehicle or trailer."

246 **SECTION 5.**

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