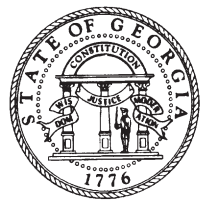
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Volume 28A

2024 Edition

Title 40. Motor Vehicles and Traffic
(Chapters 1 through 5)

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2018 edition of Volume 28A of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2018 Volume 28A and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 40 (Chapters 1 through 5) by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Regulation of motor vehicle racetracks, § 43-25-1 et seq.

Regulation of used car and car parts dealers, § 43-47-1 et seq.

Penalty for unauthorized display of sign, tag, or other documents on motor vehicle so as to convey impression that owner of motor vehicle is member of Governor's staff, § 45-1-3.

Motor fuel taxes, § 48-9-1 et seq.

JUDICIAL DECISIONS

Law on motor vehicles and traffic must be strictly construed. O'Steen v. Boone, 117 Ga. App. 174, 160 S.E.2d 229, 1968 Ga. App. LEXIS 1020 (1968).

Applicability of title to motorcycles. — Motorcycle is subject to the provisions of the law on motor vehicles and traffic (see now O.C.G.A. T. 40) in general and to those of O.C.G.A. § 40-2-20 in particular. Grange Mut. Cas. Co. v. King, 174 Ga. App. 716, 331 S.E.2d 41, 1985 Ga. App. LEXIS 1937 (1985).

Motorcycles taxed separately. — General Assembly, in providing license taxes, separated motorcycles from the general class of motor vehicles. Bullard v. Life & Cas. Ins. Co., 178 Ga. 673, 173 S.E. 855, 1934 Ga. LEXIS 132 (1934).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of motor vehicle and traffic law. — Overall primary purpose of the law on motor vehicles and traffic is to provide for the registration and licensing of motor vehicles, including providing dealers with the convenience of a special tag, transferable at will from vehicle to vehicle. 1954-56 Ga. Op. Att'y Gen. 473.

RESEARCH REFERENCES

ALR.

Liability of owner or operator of motor vehicle for injury caused thereby while it is being repaired or serviced, 15 A.L.R.3d 1387.

Criminal liability based on violation of statute or ordinance specifically regulating operation of snowmobile, 45 A.L.R.3d 1438.

Search and seizure: lawfulness of demand for driver's license, vehicle registration, or proof of insurance, pursuant to police stop to assist motorist, 19 A.L.R.5th 884.

Integration or Merger Clause in Vehicle Purchase Agreement or Installment Contract as Affecting Enforceability of Separately Executed Arbitration Clause, 52 A.L.R.7th 3.

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Cross references.

Exemption for transit service buses, motor vehicles, and rapid rail systems from requirements relating to identification and regulation of motor vehicles, § 32-10-63.1.

Editor's notes.

Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

JUDICIAL DECISIONS

Chapter applicable to self-propelled vehicles over public highways and roads. — Licensing and regulating statutes as are now contained in the motor vehicle law only apply as to those vehicles that are capable of being operated generally over the public highways and roads of this state by reason of their own self-propelled mechanical power, and not to those vehicles whose orbit of operation is limited to the length of a trolley wire constructed and maintained under a franchise. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Civil recovery not necessarily precluded by violation of provisions. — Fact that the decedent was driving an automobile in violation of the statutes regulating the use of motor vehicles would not necessarily preclude any sort of civil recovery. Seaboard Air Line Ry. v. Benton, 43 Ga. App. 495, 159 S.E. 717, 1931 Ga. App. LEXIS 445 (1931), rev'd, 175 Ga. 491, 165 S.E. 593, 1932 Ga. LEXIS 279 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Constable can make arrests for violations of the motor vehicle and traffic law; if a constable made such arrests, the constable would do so at the constable's own expense and would be entitled to no fees. 1968 Op. Att'y Gen. No. 68-324 (but see O.C.G.A. § 15-10-103).

RESEARCH REFERENCES

ALR.

Motorcycle as within contract, statute, or ordinance in relation to motor cars, motor-driven cars, etc., 48 A.L.R. 1090; 70 A.L.R. 1253.

Liability for killing or injuring, by motor vehicle, livestock or fowl on highway, 55 A.L.R.4th 822.

ARTICLE 1

GENERAL PROVISIONS

40-1-1. Definitions.

As used in this title, the term:

(1) "Alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

(3) "All-terrain vehicle" means a motorized vehicle originally manufactured for off-highway use which is equipped with three or more nonhighway tires, is 80 inches or less in width with a dry weight of 3,500 pounds or less, and is designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain.

(4) "Arterial street" means any U.S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(5) "Authorized emergency vehicle" means a motor vehicle belonging to a public utility corporation or operated by the Department of Transportation and designated as an emergency vehicle by the Department of Public Safety; a motor vehicle belonging to a fire department or a certified private vehicle belonging to a volunteer firefighter or a fire-fighting association, partnership, or corporation; an ambulance; or a motor vehicle belonging to a federal, state, or local law enforcement agency, provided such vehicle is in use as an emergency vehicle by one authorized to use it for that purpose.

(5.1) "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

(6) "Bicycle" means every device propelled by human power upon which any person may ride, having only two wheels which are in tandem and either of which is more than 13 inches in diameter.

(6.1) "Bicycle lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating bicycles and electric assisted bicycles or for travel by a personal delivery device. Bicycle lanes shall at a minimum, unless impracticable, be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials.

(6.2) "Bicycle path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by bicycle and electric assisted bicycle riders or for travel by a personal delivery device.

(6.3) "Bicycle trailer" means every device pulled by a bicycle and designed by the manufacturer of such device to carry human passengers.

(7) "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(8) "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway

there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(8.1) "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in intrastate or interstate commerce or both to transport passengers or property when the vehicle:

(A) Has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 lbs.) or more;

(B) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used to transport material determined to be hazardous by the secretary of the United States Department of Transportation under 49 U.S.C. Section 5103 and transported in a quantity that requires placards under regulations prescribed under 49 C.F.R., Subtitle B, Chapter I, Subchapter C.

(9) "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except only at such points and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(10) "Crosswalk" means:

(A) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(B) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(11) "Dealer" means a person engaged in the business of buying, selling, or exchanging vehicles who has an established place of business in this state.

(12) "Demonstrator" means any motor vehicle which has not been the subject of a sale at retail to the general public but which has been

operated on the roads of this state in the course of a motor vehicle dealer's business.

(13) "Divided highway" means a highway divided into two or more roadways by leaving an intervening space or by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic.

(14) "Driver" means every person who drives or is in actual physical control of a vehicle.

(15) "Driver's license" means any license to operate a motor vehicle issued in either a physical or electronic format under the laws of this state.

(15.1) "DUI Alcohol or Drug Use Risk Reduction Program" means a program certified by the Department of Driver Services in accordance with subsection (e) of Code Section 40-5-83.

(15.2) "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, including without limitation:

(A) Lateral vehicle motion control via steering;

(B) Longitudinal motion control via acceleration and deceleration;

(C) Monitoring the driving environment via object and event detection, recognition, classification, and response preparation;

(D) Object and event response execution;

(E) Maneuver planning; and

(F) Enhancing conspicuity via lighting, signaling, and gesturing.

(15.3) "Electric assisted bicycle" means a device with two or three wheels which has a saddle and fully operative pedals for human propulsion and also has an electric motor having a power output of not more than 750 watts.

(15.4) "Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem wheeled device designed to transport only one person and having an electric propulsion system with average power of 750 watts (1 horsepower) and a maximum speed of less than 20 miles per hour on a paved level surface when powered solely by such propulsion system and ridden by an operator who weighs 170 pounds.

(16) "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of

producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(17) "Flammable liquid" means any liquid which has a flash point of 141 degrees Fahrenheit or less.

(17.1) "Former military motor vehicle" means a motor vehicle which operates on the ground, including a trailer, that was manufactured for use in any country's military forces and is maintained to represent its military design, regardless of the vehicle's size, weight, or year of manufacture. Such term shall not include motor vehicles armed for combat or vehicles owned or operated by this state, the United States, or any foreign government.

(17.2) "Fully autonomous vehicle" means a motor vehicle equipped with an automated driving system that has the capability to perform all aspects of the dynamic driving task without a human driver within a limited or unlimited operational design domain and will not at any time request that a driver assume any portion of the dynamic driving task when the automated driving system is operating within its operational design domain.

(17.3) "Golf car" or "golf cart" means any motorized vehicle designed for the purpose and exclusive use of conveying one or more persons and equipment to play the game of golf in an area designated as a golf course. For such a vehicle to be considered a golf car or golf cart, its average speed shall be less than 15 miles per hour (24 kilometers per hour) on a level road surface with a 0.5 percent grade (0.3 degree) comprising a straight course composed of a concrete or asphalt surface that is dry and free from loose material or surface contamination with a minimum coefficient of friction of 0.8 between tire and surface.

(18) "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

(18.1) "Hazardous material" means a substance or material as designated pursuant to the Federal Hazardous Materials Law, 49 U.S.C. Section 5103(a).

(19) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(20) "House trailer" means:

(A) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place or living abode (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(B) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subparagraph (A) of this paragraph, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(20.1) "Identification card" means any document in either a physical or electronic format issued by the Department of Driver Services under the laws of this state for purposes of proving identity of the holder.

(21) "Implement of husbandry" means a vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(21.1) "Infant sling" means every device which is designed by the manufacturer to be worn by a person for the purpose of carrying an infant either on the chest or back of the wearer.

(22)(A) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(B) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(C) The junction of an alley with a street or highway shall not constitute an intersection.

(23) "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(24) "License" or "license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor

vehicle issued in either a physical or electronic format under, or granted by, the laws of this state, including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege as defined in this Code section.

(24.1) "Lightweight commercial vehicle" means a motor vehicle which does not meet the definition of a commercial motor vehicle and which, in the furtherance of a commercial enterprise:

(A) Is used to transport hazardous materials in a type and quantity for which placards are not required in accordance with the Hazardous Materials Regulations prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, Subpart F, or compatible rules prescribed by the commissioner of public safety;

(B) Is used to transport property for compensation;

(C) Is used to transport passengers for compensation, other than a taxicab; or

(D) Is a wrecker or tow truck.

(24.2) "Limousine" has the same meaning as provided in paragraph (4) of Code Section 40-1-151.

(25) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the Constitution and laws of this state.

(25.1) "Low-speed vehicle" means any four-wheeled vehicle whose top speed attainable in one mile is greater than 20 miles per hour but not greater than 25 miles per hour on a paved level surface and which is manufactured or converted to comply with standards based upon those federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. Section 571.500, as amended.

(25.2) "Managed lane" means a designated lane or series of designated lanes which utilize tolls payable to the State Road and Tollway Authority and which may use other lane management strategies in order to manage the flow of traffic. Such additional lane management strategies may include, but are not limited to, value pricing, vehicle occupancy requirements, or vehicle type restrictions, or any combination thereof.

(26) "Manufacturer" means a person engaged in the manufacture of vehicles and who has an established place of business in this state.

Pertaining to PTVs only, the term "manufacturer" also means any person engaged in the manufacture of vehicles who does business in this state, including but not limited to any person who makes modifications to a vehicle that are not approved by the original equipment manufacturer and which may adversely affect the safe operation and performance of the vehicle.

(26.1) "Manufacturer headquarters" means the headquarters operation of:

(A) A manufacturer as defined in paragraph (26) of this Code section; or

(B) An affiliate of a person engaged in the manufacture of vehicles in this or any other state and which operation is conducted primarily at an established place of business in this state.

(27) "Metal tire" means every tire of which the surface in contact with the highway is wholly or partly of metal or other hard, nonresilient material. A vehicle shall be considered equipped with metal tires when metal tires are used on two or more wheels.

(27.1) "Minimal risk condition" means a low-risk operating mode in which a fully autonomous vehicle operating without a human driver achieves a reasonably safe state, such as bringing the vehicle to a complete stop, upon experiencing a failure of the vehicle's automated driving system that renders the vehicle unable to perform the entire dynamic driving task.

(28) "Moped" means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters) regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour (48.28 kilometers per hour) on level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

(28.1) "Motor carrier" shall have the same meaning as provided for in Code Section 40-2-1, and the terms "carrier" and "motor carrier" are synonymous.

(29) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, and moped.

(30) "Motor driven cycle" means every motorcycle, with a motor which produces not to exceed five brake horsepower, and every moped.

(31) "Motor home" means every motor vehicle designed, used, or maintained primarily as a mobile dwelling, office, or commercial space.

(32) Reserved.

(33) "Motor vehicle" means every vehicle which is self-propelled other than a personal delivery device, an electric assisted bicycle, or an electric personal assistive mobility device (EPAMD).

(33.1) "Multipurpose off-highway vehicle" means any motorized vehicle having features specifically intended for utility use and having the following characteristics:

(A) Has the capability to transport persons or cargo or both;

(B) Operates between 25 miles per hour (40.2 kilometers per hour) and 65 miles per hour (104.6 kilometers per hour);

(C) Has an overall width of 80 inches (2,030 millimeters) or less, exclusive of accessories or attachments;

(D) Is designed to travel on four or more wheels;

(E) Uses a steering wheel for steering control;

(F) Contains a nonstraddle seat;

(G) Has a gross vehicle weight rating of less than 4,000 pounds (1,814 kilograms); and

(H) Has a minimum cargo capacity of 350 pounds (159 kilograms).

(34) "New motor vehicle" means any motor vehicle which is not a demonstrator and has never been the subject of a sale at retail to the general public.

(35) "Nonresident" means every person who is not a resident of this state.

(36) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle or the use of a vehicle owned by such person in this state.

(37) "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title which are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(37.1) "Operational design domain" means a description of the specific operating domains in which an automated driving system is designed to effectively operate, including but not limited to geographic limitations, roadway types, speed range, and environmental conditions such as weather and limited visibility.

(38) "Operator" means any person who drives or is in actual physical control of a motor vehicle or who causes a fully autonomous vehicle to move or travel with the automated driving system engaged.

(39) "Owner" means a person, other than a lienholder or security interest holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in or lien by another person but excludes a lessee under a lease not intended as security except as otherwise specifically provided in this title.

(40) "Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(41) "Passenger car" means every motor vehicle, except all-terrain vehicles, motorcycles, motor driven cycles, multipurpose off-highway vehicles, personal transportation vehicles, and low-speed vehicles, designed for carrying ten passengers or less and used for the transportation of persons.

(42) "Pedestrian" means any person afoot.

(42.1) "Pedestrian hybrid beacon" means a special type of hybrid beacon used to warn and control traffic at locations without a traffic-control signal to assist pedestrians in crossing a street or highway at a marked crosswalk.

(43) "Person" means every natural person, firm, partnership, association, corporation, or trust.

(43.1) "Personal delivery device" means a powered vehicle that utilizes an automated driving system to transport cargo, is not designed to transport passengers, and has a maximum unladen weight of 500 pounds or a maximum weight of 600 pounds when carrying any cargo.

(43.2) "Personal delivery device operator" means a person or an agent of a person that exercises control or monitoring over the operation of a personal delivery device; provided, however, that a person or an agent of a person shall not be considered a personal delivery operator solely because such person or agent:

(A) Requests or receives the delivery or services of a personal delivery device;

(B) Arranges for or dispatches the requested services of a personal delivery device; or

(C) Stores, charges, or maintains a personal delivery device.

(43.3) "Personal delivery device owner" means a person, individual, firm, company, association, corporation, or other business entity who owns a personal delivery device or, in the event that the personal delivery device is leased, the lessee and may include a personal delivery device operator.

(43.4) "Personal transportation vehicle" or "PTV" means:

(A) Any motor vehicle having no fewer than three wheels and an unladen weight of 1,300 pounds or less and which cannot operate at more than 20 miles per hour if such vehicle was authorized to operate on local roads by a local authority prior to January 1, 2012. Such vehicles may also be referred to as "motorized carts" in such local ordinances; and

(B) Any motor vehicle:

(i) With a minimum of four wheels;

(ii) Capable of a maximum level ground speed of less than 20 miles per hour;

(iii) With a maximum gross vehicle unladen or empty weight of 1,375 pounds; and

(iv) Capable of transporting not more than eight persons.

The term does not include mobility aids, including electric personal assistive mobility devices, power wheelchairs, and scooters, that can be used indoors and outdoors for the express purpose of enabling mobility for a person with a disability. The term also does not include any all-terrain vehicle or multipurpose off-highway vehicle.

(43.5) "Personal transportation vehicle path" or "PTV path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by personal transportation vehicle drivers.

(44) "Pneumatic tire" means every tire in which compressed air is designed to support the load. A vehicle shall be considered equipped with pneumatic tires when pneumatic tires are used on all wheels.

(45) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural

members capable, generally, of sustaining themselves as beams between the supporting connections.

(46) "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(47) "Private road or driveway" means every way or place in private ownership and used for vehicular traffic by the owner and those having express or implied permission from the owner, but not by other persons.

(48) "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

(49) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(50) "Railroad train" means a steam engine or electric engine or other motor, with or without cars coupled thereto, operated upon rails.

(50.01) "Recreational off-highway vehicle" means a motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 65 inches or less in width.

(50.1) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of business or enterprise operations.

(51) "Residential district" means the territory contiguous to and including a highway not comprising a business district, when the property on such highway for a distance of 300 feet or more is improved with residences or residences and buildings in use for business.

(52) "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(53) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to any such roadway separately, but not to all such roadways collectively.

(54) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(55) "School bus" means:

(A) A motor vehicle operated for the transportation of school children to and from school or school activities or for the transportation of children to and from church or church activities. Such term shall not include a motor vehicle with a capacity of 15 persons or less operated for the transportation of school children to and from school activities or for the transportation of children to and from church or church activities if such motor vehicle is not being used for the transportation of school children to and from school or any vehicle used for the transport of students to and from school and school related activities pursuant to Code Section 20-2-1076; or

(B) A motor vehicle operated by a local transit system which meets the equipment and identification requirements of Code Section 40-8-115; provided, however, that such vehicle shall be a school bus only while transporting school children and no other passengers to or from school.

(56) "Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(56.1) "Shared use path" means a pathway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right of way or within an independent right of way and used by bicycles, pedestrians, manual and motorized wheelchairs, and other authorized motorized and nonmotorized users.

(57) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a railway, and the adjacent property lines, primarily intended for use by pedestrians.

(58) "Solid tires" means tires of rubber or similarly elastic material that do not depend on confined air for the support of the load. A vehicle shall be considered equipped with solid tires when solid tires are used on two or more wheels.

(59) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not

limited to: ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(60) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(61) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

(62) "Stop" or "stopping":

(A) When required, means complete cessation from movement; or

(B) When prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(63) "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(63.1) "Taxicab" means a motor vehicle for hire which conveys passengers between locations of their choice and is a mode of public transportation for a single passenger or small group for a fee. Such term shall also mean taxi or cab, but not a bus or school bus, limousine, passenger car, or commercial motor vehicle.

(64) "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right of way to vehicles on such through highway in obedience to a stop sign, yield sign, or other official traffic-control device, when such signs or devices are erected as provided in this title.

(65) "Tractor" means any self-propelled vehicle designed for use as a traveling power plant or for drawing other vehicles but having no provision for carrying loads independently.

(66) "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

(67) "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(68) "Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(69) "Tripper service" means regularly scheduled mass transportation service which is open to the fare-paying public but which is also designed or modified to accommodate the needs of elementary or secondary school students and school personnel.

(70) "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) "Truck camper" means any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space.

(72) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(73) "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

(74) "Used motor vehicle" means any motor vehicle which has been the subject of a sale at retail to the general public.

(75) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(76) "Wrecker" means a vehicle designed, equipped, or used to tow or carry other motor vehicles by means of a hoist, crane, sling, lift, or roll-back or slide back platform, by a mechanism of a like or similar character, or by any combination thereof, and the terms "tow truck" and "wrecker" are synonymous.

History.

Ga. L. 1927, p. 226, § 2; Code 1933, § 68-101; Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 1-9, 11, 13-21; Ga. L. 1966, p. 183, § 1; Ga. L. 1970, p. 586, § 1; Ga. L. 1973, p. 595, § 1; Ga. L. 1973, p. 598, § 1; Code 1933, § 68A-101, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 1; Ga.

L. 1978, p. 2241, §§ 1, 3, 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1983, p. 633, § 1; Ga. L. 1988, p. 691, §§ 1, 2; Ga. L. 1988, p. 1893, § 1; Ga. L. 1989, p. 1792, § 1; Ga. L. 1990, p. 2048, § 1; Ga. L. 1993, p. 518, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 236, § 1; Ga. L. 1997, p. 419, § 1; Ga. L. 1999, p. 334, § 1; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 506, § 2; Ga. L. 2002, p. 512, §§ 2, 3; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2002, p. 1378, § 1; Ga. L. 2003, p. 308, §§ 1, 2, 3; Ga. L. 2004, p. 67, § 1; Ga. L. 2004, p. 746, § 1; Ga. L. 2006, p. 428, § 1/HB 654; Ga. L. 2007, p. 652, § 1/HB 518; Ga. L. 2010, p. 143, § 1/HB 1005; Ga. L. 2010, p. 442, § 4/HB 1174; Ga. L. 2011, p. 247, § 1/SB 240; Ga. L. 2011, p. 426, § 1/HB 101; Ga. L. 2011, p. 479, §§ 6, 7, 8/HB 112; Ga. L. 2012, p. 726, §§ 1, 2, 3/HB 795; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2014, p. 409, § 1/SB 392; Ga. L. 2014, p. 710, § 1-5/SB 298; Ga. L. 2014, p. 745, § 1/HB 877; Ga. L. 2015, p. 5, § 40/HB 90; Ga. L. 2015, p. 60, § 4-1/SB 100; Ga. L. 2015, p. 1058, § 4/SB 125; Ga. L. 2015, p. 1219, § 1/HB 202; Ga. L. 2017, p. 549, § 1/SB 219; Ga. L. 2019, p. 264, § 2/HB 454; Ga. L. 2019, p. 277, § 1/HB 101; Ga. L. 2020, p. 19, § 1/HB 861; Ga. L. 2020, p. 199, § 3-1/HB 463; Ga. L. 2020, p. 349, § 1/HB 877; Ga. L. 2021, p. 241, § 3/SB 159; Ga. L. 2022, p. 286, § 1/HB 1055; Ga. L. 2022, p. 543, § 1/HB 1009; Ga. L. 2023, p. 352, § 2-1/HB 121, effective July 1, 2023; Ga. L. 2024, p. 1052, § 4(1)/SB 448, effective July 1, 2024.

Amendments.

The first 2022 amendment, effective July 1, 2022, substituted "3,500 pounds" for "2,500 pounds" in the middle of paragraph (3).

The second 2022 amendment, effective July 1, 2022, added "or for travel by a personal delivery device" at the end of the first sentence in paragraph (6.1) and at the end of paragraph (6.2); in paragraph (33), inserted "a personal delivery device," and a comma following "bicycle"; redesignated former paragraphs (43.1) and (43.2) as present paragraphs (43.4) and (43.5), respectively; added paragraphs (43.1), (43.2), and (43.3); and inserted "primarily" in paragraph (57).

The 2023 amendment, effective July 1, 2023, substituted "65 miles per hour (104.6 kilometers)" for "50 miles per hour (80.4 kilometers)" in subparagraph (33.1)(B).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "0.5 percent grade" for "0.5% grade" in paragraph (17.3); and, in paragraph (51), substituted "'Residential district'" for "'Residence district'" at the beginning, and deleted "in the main" preceding "improved".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, a hyphen was deleted from "motor driven" in paragraphs (28), (30), and (41).

Pursuant to Code Section 28-9-5, in 1989, "side" was substituted for "sides" in paragraph (2).

Pursuant to Code Section 28-9-5, in 1993, paragraph (6.3) was redesignated as paragraph (21.1) to place it in alphabetical order.

Pursuant to Code Section 28-9-5, in 1996, "or" was inserted following the semicolon at the end of subparagraphs (10)(A) and (62)(A) and "49 C.F.R. Section 571, et seq." was substituted for "49 CFR 571 et seq." in paragraph (15.5) (now paragraph (15.3)).

Pursuant to Code Section 28-9-5, in 1997, a comma was deleted following "another person" in the second sentence of paragraph (39).

The amendment of this Code section by Ga. L. 2002, p. 506, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Both Ga. L. 2014, p. 409, § 1/SB 392 and Ga. L. 2014, p. 745, § 1/HB 877 enacted a new paragraph (17.1). Pursuant to Code Section 28-9-5, the paragraph enacted by Ga. L. 2014, p. 745, § 1/HB 877 was redesignated as paragraph (17.2) (now paragraph (17.3)).

Editor's notes.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2020, p. 19, HB 861, contains two sections numbered as "2". The language in the second Section 2 of the Act provided an effective date for the Act.

U.S. Code.

Provisions concerning the Transportation of Hazardous Materials are codified at 49 U.S.C. § 5101 et seq.

Law reviews.

For article surveying Georgia cases in the area of insurance from June 1977 through May 1978, see 30 Mercer L. Rev. 105 (1978).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 198 (2003).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 231 (2017).

For comment, "Death of the DUI: Should Autonomous Vehicles Be Considered Synonymous to Designated Drivers Under Georgia Law?," see 70 Mercer L. Rev. 1113 (2019).

For article, "HB 1009: Remote Operation of Personal Delivery Devices," see 39 Georgia St. U.L. Rev. 211 (2022).

For article "Regulating Driving Automation Safety" see 73 Emory L.J. 505 (2024).

JUDICIAL DECISIONS

Analysis

General Consideration
Alcohol Concentration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13, are included in the annotations for this Code section.

City ordinance did not impair operation of O.C.G.A. § 40-1-1(57). — Definition of "public sidewalk" found in City of Forest Park, Ga., Ordinance § 9-8-45(f) is not unconstitutional as conflicting with state law because nothing in § 9-8-45 impairs the operation of O.C.G.A. § 40-1-1(57); by the statute's specific terms, § 40-1-1(57), is not intended to be a definition of general application, but defines the term "sidewalk" in the context of Title 40 of the Georgia Code, which is labeled "Motor Vehicles and Traffic," and it does not appear that the definition set forth in § 40-1-1(57) would apply elsewhere in the Code in which the word "sidewalk" is used in other contexts. Braley v. City of Forest Park, 286 Ga. 760, 692 S.E.2d 595, 2010 Ga. LEXIS 268 (2010).

Directing traffic is official police function. — Because a police officer was directing traffic and this activity necessarily is a police function, the officer was acting in the officer's official capacity at the time of a traffic accident, and the officer was entitled to assert official immunity as a defense to a claim of negligent conduct. Sommerfield v. Blue

Cross & Blue Shield, Inc., 235 Ga. App. 375, 509 S.E.2d 100.

Parking restrictions do not apply in business districts. — Georgia Court of Appeals concludes that the parking restrictions in O.C.G.A. § 40-6-202 do not apply within a business district and because a business district is comprised of the territory contiguous to and including a highway, the parking restrictions in § 40-6-202 cannot be read to apply to roadways within areas meeting the criteria in O.C.G.A. § 40-1-1(8). Granger v. MST Transp., LLC, 329 Ga. App. 268, 764 S.E.2d 872, 2014 Ga. App. LEXIS 670 (2014).

Alcohol Concentration

Blood to alcohol ratio. — Charges regarding the use of the blood to alcohol ratio have been held to be harmless so long as those charges are given in conjunction with a qualifying instruction regarding the inconclusiveness of the ratio. Therefore, the burden of proof is not shifted to the defendant. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, 1992 Ga. App. LEXIS 916 (1992), cert. denied, No. S92C1204, 1992 Ga. LEXIS 702 (Ga. Sept. 8, 1992).

Charging the statutory definition of alcohol concentration was not error since the trial court charged the jury that the jury could give the breath test results the weight that the jury deemed fit, including no weight at all. Rindone v. State, 210 Ga. App. 639, 437 S.E.2d 338, 1993 Ga. App. LEXIS 1289 (1993), cert. denied, No. S94C0224, 1994 Ga. LEXIS 160 (Ga. Jan. 21, 1994), superseded by statute as stated in Berkow v. State, 243 Ga. App. 698, 534 S.E.2d 433, 2000 Ga. App. LEXIS 535 (2000).

Alcohol concentration. — Since the defendant was charged with a crime wherein the "alcohol concentration" of defendant's blood was an element of the offense, and the trial court charged the jury on the statutory definition of "alcohol concentration," the trial court did not err in so charging the jury on the definition of "alcohol concentration." Close v. State, 195 Ga. App. 652, 394 S.E.2d 563, 1990 Ga. App. LEXIS 643 (1990).

Person "driving" vehicle while guiding vehicle down road. — Person has actual physical control of a vehicle which is unable to move under the vehicle's own power while guiding the vehicle down a road as the vehicle operates under the force of gravity. Harris v. State, 97 Ga. App. 495, 103 S.E.2d 443, 1958 Ga. App. LEXIS 807 (1958), overruled in part, New v. State, 171 Ga. App. 392, 319 S.E.2d 542, 1984 Ga. App. LEXIS 2212 (1984), overruled in part, Luke v. State, 177 Ga. App. 518, 340 S.E.2d 30, 1986 Ga. App. LEXIS 1470 (1986) and Luke v. State, 177 Ga. App. 518, 340 S.E.2d 30, 1986 Ga. App. LEXIS 1470 (1986) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13).

Explanation of test results by witness not necessary. — Testing officer's failure to explain the officer's testimony that the defendant's test results were .121 and .116, in terms of the "alcohol concentration" definitions of O.C.G.A. § 40-1-1, did not require reversal since the officer also testified that the machine tested specifically for alcohol and the jury was properly instructed on statutory definitions. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63, 1998 Ga. App. LEXIS 1093 (1998), cert. denied, No. S99C0499, 1999 Ga. LEXIS 343 (Ga. Apr. 9, 1999).

Evidence supports a verdict of drunken "driving" since, at the time the troopers arrived at the scene of the alleged crime, the defendant was sitting under the steering wheel of the automobile and attempting to get the car in gear, the motor of the automobile was running, and the automobile rolled backwards when the witness started to get out of the patrol car. Echols v. State, 104 Ga. App. 695, 122 S.E.2d 473, 1961 Ga. App. LEXIS 773 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13).

Crosswalk

"Crosswalk" at other than intersection must be marked. — Acceptance of any definition of an unmarked "crosswalk" other than that in Ga. L. 1953, Nov.- Dec. Sess., p. 556, §§ 14-21, or holding that simply because people do cross, even "normally," in order to get to a place of business on the opposite side of a crosswalk would, in

Crosswalk (Cont'd)

effect, make the whole roadway a "crosswalk." If there is to be one other than at the intersection, it must be marked in some manner so that motorists may know of it. Wells v. Alderman, 117 Ga. App. 724, 162 S.E.2d 18, 1968 Ga. App. LEXIS 1209 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

A "T" intersection did not qualify as an unmarked crosswalk for purposes of a negligence suit brought by pedestrians who were struck at the intersection. McKenzie v. Detenber, 226 Ga. App. 742, 487 S.E.2d 497, 1997 Ga. App. LEXIS 758 (1997).

Pedestrian proceeding without care in unmarked crosswalk. — Trial court did not err in finding that the defendant violated O.C.G.A. § 40-6-92(a) as it was undisputed that there was no marked crosswalk where the defendant was crossing the road, that the defendant was crossing other than at either a marked crosswalk or an unmarked crosswalk, and that the defendant entered the roadway when it was not safe to do so, given the traffic and weather conditions, and failed to yield to motor vehicle traffic. Hill v. State, 341 Ga. App. 409, 801 S.E.2d 87, 2017 Ga. App. LEXIS 212 (2017).

Highway

Meaning of "highway." — "Highways" are created by legislative authority by dedication, or by prescription. The construction of the term "highway," when used in a statute, depends upon the legislative intent, and no fixed rule in regard to the word's meaning can be given. Powell v. Barker, 96 Ga. App. 592, 101 S.E.2d 113, 1957 Ga. App. LEXIS 645 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Every thoroughfare which is used by the public, and, in the language of the English books, is common to all the king's subjects, is a "highway." Powell v. Barker, 96 Ga. App. 592, 101 S.E.2d 113, 1957 Ga. App. LEXIS 645 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Road which leads only to the residence of a single individual may be a "highway." Powell v. Barker, 96 Ga. App. 592, 101 S.E.2d 113, 1957 Ga. App. LEXIS 645 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Since the term "highway" meant the entire width between the boundary lines of every way publicly maintained when any part thereof was open to the use of the public for purposes of vehicular travel, the term "highway" included the city streets on which defendant was traveling when it was discovered by police that the defendant was driving without a license; thus, the defendant's conviction for that offense had to be upheld. Scott v. State, 254 Ga. App. 728, 563 S.E.2d 554, 2002 Ga. App. LEXIS 451 (2002).

Berm or shoulder not part of roadway. — O.C.G.A. § 40-1-1(53) defines the term "roadway" as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term 'roadway' shall refer to any such roadway separately, but not to all such roadways collectively." The statutory definition excludes the berm or shoulder from being a part of the roadway. Nelson v. State, 317 Ga. App. 527, 731 S.E.2d 770, 2012 Ga. App. LEXIS 755 (2012), cert. denied, No. S13C0049, 2013 Ga. LEXIS 356 (Ga. Apr. 15, 2013).

Need for public invitation for highway opening. — Highway is not open for travel until there has been extended to public an invitation, express or implied, to use the highway. When a highway is open for travel may, under certain circumstances, be a question of law for the court; on the other hand, cases may arise where it would be a question of fact for the jury to determine under all the circumstances of the particular case. Powell v. Barker, 96 Ga. App. 592, 101 S.E.2d 113, 1957 Ga. App. LEXIS 645 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Publicly maintained highway under construction and open to traffic "public highway." — For a highway under construction to be a "public highway," it would be necessary to show only that the highway was publicly maintained, and that the part in question

was open for vehicular traffic. Powell v. Barker, 96 Ga. App. 592, 101 S.E.2d 113, 1957 Ga. App. LEXIS 645 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Intersection

Place where private way joins public road. — Area within which private driveway or private way joins with public road is not "intersection" as defined by law. Howard v. Hall, 112 Ga. App. 247, 145 S.E.2d 70, 1965 Ga. App. LEXIS 656 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Jury authorized to find drivers grossly negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the two defendant drivers were grossly negligent in causing the plaintiff's injuries. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102, 1955 Ga. App. LEXIS 713 (1955) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Motorcycle

Motorcycles taxed separately. — General Assembly, in providing license taxes, separated "motorcycles" from the general class of "motor vehicles." Bullard v. Life & Cas. Ins. Co., 178 Ga. 673, 173 S.E. 855, 1934 Ga. LEXIS 132 (1934).

Trail bike is a "motorcycle." Addison v. Southern Guar. Ins. Co., 155 Ga. App. 536, 271 S.E.2d 674, 1980 Ga. App. LEXIS 2661 (1980).

Motor Vehicle

Scope of definition. — Paragraph defining "motor vehicle" includes only those vehicles operated or drawn by their own self-propelled power. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Applicability to tractor. — Tractor comes within the definition of a "motor vehicle" under O.C.G.A. § 40-1-1. Browning v. State, 207 Ga. App. 547, 428 S.E.2d 441, 1993 Ga. App. LEXIS 241 (1993).

Golf cart. — Since a golf cart was a "motorized vehicle" under O.C.G.A. § 40-1-1(33), (75), the defendant had to have a driver's license when driving the golf cart on a highway; the motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331(b), (c), authorized licensing of the vehicle, not the driver. Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498, 2003 Ga. App. LEXIS 732 (2003), cert. denied, No. S03C1522, 2003 Ga. LEXIS 864 (Ga. Oct. 6, 2003).

Because: (1) O.C.G.A. § 40-6-391(a), by the statute's plain language, applied to any moving vehicle, and, a golf cart was a "vehicle" within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a "moving vehicle" within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant's DUI conviction was upheld on appeal. Simmons v. State, 281 Ga. App. 252, 635 S.E.2d 849, 2006 Ga. App. LEXIS 1060 (2006).

Evidence regarding theft of a four-wheeler from a dealership was sufficient for a jury to determine that the four-wheeler fit within the definition of a self-propelled vehicle within O.C.G.A. § 40-1-1(33); further, the evidence supported defendant's conviction for theft by taking a motor vehicle after a witness saw two men loading the four-wheeler into the back of a truck, the dealership's door looked like the door was pried open or kicked in, and defendant and others were stopped with the four-wheeler, bolt cutters, and a crowbar in the back of the truck. Norwood v. State, 265 Ga. App. 862, 595 S.E.2d 537, 2004 Ga. App. LEXIS 169 (2004), cert. denied, No. S04C1104, 2004 Ga. LEXIS 509 (Ga. June 7, 2004).

Named driver exclusion endorsement precluded coverage since the term "motor vehicle," which does not include all-terrain vehicles, was limited to the policy provisions providing coverage, the language used in the endorsement encompassed the all-terrain vehicle in-

Motor Vehicle (Cont'd)

volved in the accident, and since the insured exercised the insured's right to reject uninsured motorist coverage for the named driver. Fountain v. Atlanta Cas. Co., 204 Ga. App. 165, 419 S.E.2d 67, 1992 Ga. App. LEXIS 795 (1992).

Official Traffic-Control Devices

Turns made in compliance with "official traffic control devices." — Turns should be made from the roadway, but, more particularly, in compliance with the patterns established by the markings ("official traffic control devices") on the road. State v. Williams, 156 Ga. App. 813, 275 S.E.2d 133, 1980 Ga. App. LEXIS 3210 (1980).

No-parking signs. — Properly erected no-parking sign within a municipality is an "official traffic-control device." Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858, 1980 Ga. App. LEXIS 2623 (1980).

Owner

Natural person, not business, found to be "owner" of vehicle. Purcell v. Allstate Ins. Co., 168 Ga. App. 863, 310 S.E.2d 530, 1983 Ga. App. LEXIS 2942 (1983).

Pedestrian

"Pedestrian" defined. — Defining "pedestrian" under motor vehicle accident insurance provisions involves an examination of the primary purpose or design of the vehicle involved in the accident. Cotton States Mut. Ins. Co. v. Statiras, 157 Ga. App. 169, 276 S.E.2d 853, 1981 Ga. App. LEXIS 1758 (1981).

Rights of pedestrian and driver. — Pedestrian and person with an automobile each have the right to use the public highway; but the right of an operator of an automobile upon the highways is not superior to the right of the pedestrian, and it is the duty of each to exercise their right with due regard to the corresponding rights of the other. Roseberry v. Freeman, 97 Ga. App. 545, 103 S.E.2d 745, 1958 Ga. App. LEXIS 820 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Duties of automobile driver and pedestrian. — Driver of an automobile is bound to use reasonable care and to anticipate the presence on the streets of other persons having equal rights with the driver to be there; and a pedestrian, when lawfully using the public highways, is not bound to be continually looking and listening to ascertain if auto cars are approaching, under the penalty that if the pedestrian fails to do so, and is injured, it must be conclusively presumed that the pedestrian was negligent. Roseberry v. Freeman, 97 Ga. App. 545, 103 S.E.2d 745, 1958 Ga. App. LEXIS 820 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Right of Way

"Right of way" construed. — At a particular time or place a pedestrian may not have the "right of way" to travel over or across the highway. Roseberry v. Freeman, 97 Ga. App. 545, 103 S.E.2d 745, 1958 Ga. App. LEXIS 820 (1958).

Pattern charges on yielding the right of way and the duty to yield when entering or crossing a roadway from a private road were proper since, although the defendant did not at first see the plaintiff approaching, the defendant continued into the roadway after the defendant saw the plaintiff. Claxton v. Lee, 229 Ga. App. 357, 494 S.E.2d 80.

School Bus

Common carrier for hire. — Bus otherwise being operated as a common carrier for hire is not converted into a school bus simply because school children are incidental passengers thereon. Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878, 1982 Ga. App. LEXIS 2426 (1982).

Special Mobile Equipment

Excavator. — Caterpillar 977L Traxcavator does not fall under the definition of "motor vehicle" found either in O.C.G.A. § 10-1-31(a)(4) or general definition of "motor vehicle" under paragraph (29) (now paragraph (33)) of O.C.G.A. § 40-1-1 but does fit the definition of "special mobile equipment" under paragraph (54) (now paragraph (59)) of § 40-1-1. Battle v. Yancey Bros.

Co., 157 Ga. App. 277, 277 S.E.2d 280, 1981 Ga. App. LEXIS 1779 (1981).

Landfill compactor. — Landfill compactor is not a "motor vehicle" as that term is defined in O.C.G.A. § 33-34-2. Pate v. Turner County, 162 Ga. App. 463, 291 S.E.2d 400, 1982 Ga. App. LEXIS 2231 (1982).

Motor cranes propelled by the separate motor on a truck are not special mobile equipment within the meaning of paragraph (54) (now paragraph (59)) of O.C.G.A. § 40-1-1. Citizens & S. Nat'l Bank v. Georgia Steel, Inc., 25 B.R. 796, 1982 Bankr. LEXIS 5163 (Bankr. M.D. Ga. 1982).

Trailer. — Term "motor vehicle," as used in former Code 1933, § 68-101, (see now O.C.G.A. § 40-1-1), did not include a trailer without motive power not hitched to or being drawn by a motor vehicle. O'Steen v. Boone, 117 Ga. App. 174, 160 S.E.2d 229, 1968 Ga. App. LEXIS 1020 (1968).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Highway
Motor Vehicle
Tractor
Trailer
Vehicle

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Highway

Reserving city street for officially sanctioned event. — City street which has been closed to the public for purposes of an officially sanctioned activity (such as a drag race) ceases to be a "highway" as defined by paragraph (16) (now paragraph (19)) of O.C.G.A. § 40-1-1. 1983 Op. Att'y Gen. No. U83-53.

Traffic enforcement by use of cameras. — Municipalities are not prohibited by Georgia's Constitution or laws from enacting ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U2000-7.

All-terrain vehicles operating on the highways of the State of Georgia are governed by the Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq. 2007 Op. Att'y Gen. No. 2007-3.

Motor Vehicle

Applicability to motor scooter. — Motor scooter came within the definition of a "motor vehicle" under former Code 1933, § 68-101. 1954-56 Ga. Op. Att'y Gen. 471 (see now O.C.G.A. § 40-1-1).

Applicability to golf cart. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power; it thus fell within the definition of "motor vehicle" set out in former Code 1933, § 68-101 (see now O.C.G.A. § 40-1-1); if the golf cart was to be operated upon a public road, the operator must comply with all registration, inspection, and equipment requirements. 1972 Op. Att'y Gen. No. U72-78.

Purchase by political subdivision of governmental license plate. — When the exclusive use and possession of a "motor vehicle" is donated to a municipality or political subdivision for use in a driver education program for a period of more than 30 days, the municipality or political subdivision is entitled to purchase, for use on that vehicle, a governmental license plate. 1969 Op. Att'y Gen. No. 69-246.

State-owned vehicles. — Any state-owned vehicle, including maintenance or construction-type vehicles, comes within definition of term

"motor vehicle." 1969 Op. Att'y Gen. No. 69-448.

Go-cart is a "motor vehicle," and the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Tractor

Neither four-wheel tanks nor trailers qualify as "tractors." — Since neither tanks which are mounted on four wheels and used to haul anhydrous ammonia (liquid fertilizer) over public highways nor four-wheel trailers used to haul cotton over public highways to farms can qualify as "tractors," the tanks must be registered and have license plates. 1965-66 Op. Att'y Gen. No. 66-149.

Trailer

Trailer cannot qualify for sales tax exemption under former Code 1933, § 91A-4503 (see now O.C.G.A. § 48-8-3). 1980 Op. Att'y Gen. No. 80-164.

Air compressor mounted on wheels and drawn by another vehicle is a "trailer." 1958-59 Ga. Op. Att'y Gen. 211.

Vehicle

Classification of a "vehicle" depends upon the object's use, rather than upon the method by which the owner is compensated for the use, or the ownership of the vehicle. 1954-56 Ga. Op. Att'y Gen. 484.

Both a truck and a trailer are included in the use of the word "vehicle." 1957 Ga. Op. Att'y Gen. 188.

"Log grapple loader" operated on public highway. — "Log grapple loader" is a truck body with a log loading machine mounted on its back, and the only time that it is used on a highway is in transporting it from one forest to another; if such a "vehicle" is to be operated on the public highways, it must be registered, licensed, and inspected in accordance with the motor vehicle laws. 1973 Op. Att'y Gen. No. U73-82.

Operation of construction equipment by habitual violator. — Driver declared to be a habitual violator and given notice as provided by law is not guilty of the offense of operating a vehicle after having been declared a habitual violator when the driver operates self-propelled road construction equipment which is not designed or used primarily for the transportation of persons or property so long as such a vehicle is not operated on the highways of this state. 1990 Op. Att'y Gen. No. U90-14.

Responsibility for registering "vehicle" under permanent lease. — When a "vehicle" is under a permanent lease (for more than a 30-day period), the state may hold either the legal title holder or the lessee responsible for registration, but primary liability is upon the lessee-operator. 1960-61 Ga. Op. Att'y Gen. 305.

State defined and application to testing requirements. — The term "state" as used specifically in O.C.G.A. § 40-5-27(a)(3)(A) includes territories of the United States such that persons from the territories who are applying for a driver's license and who otherwise satisfy the conditions of the statute may be exempted from the on-the-road driving test and the knowledge test. 2020 Op. Att'y Gen. 20-3.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1 et seq., 29, 90, 222 et seq., 304, 346. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 811. 31A Am. Jur. 2d, Explosions and Explosives, § 1. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 1 et seq., 90. 54 Am. Jur. 2d, Mobile Homes and Trailer Parks, § 1. 65 Am. Jur. 2d, Railroads, §§ 2 et seq., 363. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 1.

C.J.S.

35 C.J.S., Explosives, § 2. 60 C.J.S., Motor Vehicles, §§ 1 et seq., 55, 98 et seq., 164. 60A C.J.S., Motor Vehicles, §§ 819, 827, 839 et seq., 870, 871, 895, 896. 61 C.J.S., Motor Vehicles, §§ 949 et seq. 74 C.J.S., Railroads, § 1.

ALR.

Injury to one while coasting in the street, 20 A.L.R. 1433; 109 A.L.R. 941.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 A.L.R. 1446.

Liability for forcing trespasser from moving automobile, 58 A.L.R. 617.

Motorcycle as within contract, statute, or ordinance in relation to motor cars, motor-driven cars, etc., 70 A.L.R. 1253.

Applicability of regulations or rules governing vehicular traffic to driveways or other places not legal highways, 80 A.L.R. 469.

Airplane as within terms "vehicle," "motor vehicle," etc., 165 A.L.R. 916.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorists, 48 A.L.R.2d 1283.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 A.L.R.2d 1146.

What is "motor vehicle" within automobile guest statute, 98 A.L.R.2d 543.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117.

What is "temporary" building or structure within meaning of restrictive covenant, 49 A.L.R.4th 1018.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute, 71 A.L.R.4th 1129.

Validity, construction, and effect of statutes or ordinances forbidding automotive "cruising"—practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110.

Validity, construction, and application of "named driver exclusion" in automobile insurance policy, 33 A.L.R.5th 121.

40-1-2. Horsepower standards.

The Society of Automotive Engineers horsepower rating formula is adopted as the standard for determining the horsepower of passenger-carrying vehicles.

History.

Ga. L. 1927, p. 226, § 2; Code 1933, § 68-102; Ga. L. 1990, p. 2048, § 1.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 277, 311.

40-1-3. Requiring or permitting unlawful operation of vehicle.

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly permit the operation of such vehicle upon a highway in any manner contrary to law.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 122; Ga. L. 1990, p. 2048, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(1), are included in the annotations for this Code section.

"Automobile" defined. — Term "automobile" has a definite popular significance and is understood to refer to a wheeled vehicle, propelled by gasoline, steam, or electricity, and used for the transportation of persons or merchandise. Carter v. State, 12 Ga. App. 430, 78 S.E. 205, 1913 Ga. App. LEXIS 586 (1913) (decided under former Code 1910, § 1770(1)).

Words, "propelled by steam, gas, gasoline, electricity, or any other power than muscular," referred to the phrase "any other vehicle," and not to the word "automobile." Carter v. State, 12 Ga. App. 430, 78 S.E. 205, 1913 Ga. App. LEXIS 586 (1913) (decided under former Code 1910, § 1770(1)).

Former Code 1910, § 1770 included a motorcycle propelled by gasoline. Bonds v. State, 16 Ga. App. 401, 85 S.E. 629, 1915 Ga. App. LEXIS 646 (1915) (decided under former Code 1910, § 1770(1)).

Use of intoximeter results obtained from driver. — If the state wants to prosecute a party who allowed an intoxicated driver to operate an automobile in violation of the statute governing driving under the influence, the state can use the intoximeter results obtained from the accused operator only if the state can prove that the state's evidence meets the statutory requirements for admissibility under O.C.G.A. § 40-6-392. Munda v. State, 172 Ga. App. 857, 324 S.E.2d 799, 1984 Ga. App. LEXIS 2690 (1984).

Standing to contest admissibility of intoximeter test. — Person charged with permitting another person to operate an automobile contrary to the law governing driving under the influence has standing to contest the admissibility of an intoximeter test under the statute governing the introduction of such evidence. Munda v. State, 172 Ga. App. 857, 324 S.E.2d 799, 1984 Ga. App. LEXIS 2690 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Unsafe bus on highways for purpose other than repairs. — Once a school bus has been declared unsafe, a misdemeanor citation may be issued each time the bus is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att'y Gen. No. 74-31.

Issuance of citation to persons other than driver of unsafe vehicle. — Citations may be issued not only to the driver of an unsafe vehicle, but also to any person who knew the vehicle to be in an unsafe condition and yet ordered or directed the driver to take the vehicle upon the highways, and to the owner of the vehicle if the owner knew of the unsafe condition and yet permitted continued operation of the vehicle. 1974 Op. Att'y Gen. No. 74-31.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 223, 236, 268, 285, 286.

C.J.S.

61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1639, 1640, 1751 et seq.

40-1-4. Stickers, decals, or emblems containing profane or lewd words describing sexual acts, excretory functions, or parts of the human body.

No person owning, operating, or using a motor vehicle in this state shall knowingly affix or attach to any part of such motor vehicle any sticker, decal, emblem, or other device containing profane or lewd words describing sexual acts, excretory functions, or parts of the human body. Any person who violates any part of this Code section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed $100.00.

History. Code 1981, § 40-1-4, enacted by Ga. L. 1988, p. 1561, § 1; Ga. L. 1990, p. 2048, § 1.

JUDICIAL DECISIONS

Section unconstitutional. — O.C.G.A. § 40-1-4 unconstitutionally restricts freedom of expression as guaranteed by the First and Fourteenth Amendments of the United States Constitution and by the Georgia Constitution. Cunningham v. State, 260 Ga. 827, 400 S.E.2d 916, 1991 Ga. LEXIS 70 (1991).

40-1-5. Disclosure of damage to new motor vehicles.

(a) As used in this Code section, the terms "dealer," "distributor," "manufacturer," and "new motor vehicle" shall have the same meaning as set forth in Code Section 40-2-39.

(b) Except as provided in this subsection and in subsection (c) of this Code section, prior to the sale of a new motor vehicle, a dealer must disclose to the buyer any damage which has occurred to the vehicle of which the dealer has actual knowledge and which costs more than 5 percent of the manufacturer's suggested retail price to repair. Prior to the sale of a new motor vehicle, a dealer must also disclose to the buyer any damage which has occurred to the paint of which the dealer has actual knowledge and which costs more than $500.00 to repair. Damages shall be calculated at the actual cost of such repair.

(c) Notwithstanding anything to the contrary in subsection (b) of this Code section, in calculating the amount of damage for purposes of disclosure under subsection (b) of this Code section, a dealer shall not be required to take into account nor shall a dealer be required to disclose damage to glass, tires, wheels, bumpers, radio, or in-dash audio equipment, regardless of cost, so long as the item is replaced with original or reasonably comparable equipment.

(d) Prior to the delivery of a new motor vehicle, each manufacturer, distributor, carrier, or motor vehicle importer must disclose to the dealer any damage which has occurred to the vehicle of which the manufacturer, distributor, carrier, or importer has actual knowledge

and which is required to be disclosed to a buyer under subsections (b) and (c) of this Code section. If a manufacturer, distributor, carrier, or motor vehicle importer fails to make any disclosure required by this subsection, then such shall be liable to the dealer for any liability imposed on such dealer for a failure on the part of the dealer to comply with the requirements of this Code section.

(e) Prior to the delivery of a new motor vehicle, each manufacturer, carrier, or motor vehicle importer must disclose to the distributor any damage which has occurred to the vehicle of which the manufacturer, carrier, or importer has actual knowledge and which is required to be disclosed to a buyer under subsections (b) and (c) of this Code section. If a manufacturer, carrier, or motor vehicle importer fails to make any disclosure required by this subsection, then such shall be liable to the distributor for any liability imposed on such distributor for a failure on the part of the distributor to comply with the requirements of this Code section.

(f) If disclosure is not required under this Code section, a buyer may not revoke or rescind a sales contract, and relief may not be sought under this or any other provision of this Code, including Part 2 of Article 15 of Chapter 1 of Title 10 due to the fact that the new motor vehicle was damaged and repaired prior to the sale.

(g) A violation of this Code section shall be a per se violation of Code Section 10-1-393, and the penalties, procedures, and remedies applicable to violations of Code Section 10-1-393 shall be applicable to a violation of this Code section.

History.

Code 1981, § 40-1-5, enacted by Ga. L. 1990, p. 1657, § 1; Ga. L. 1994, p. 97, § 40.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "40-2-39" was substituted for "40-2-36.1" in subsection (a), since Code Section 40-2-36.1 was redesignated as Code Section 40-2-39 by Ga. L. 1990, p. 2048, § 2.

Law reviews.

For note on 1990 enactment of this Code section, see 7 Georgia St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Demonstrator qualifies as a "new motor vehicle" under O.C.G.A. § 40-1-5. Neal Pope, Inc. v. Garlington, 245 Ga. App. 49, 537 S.E.2d 179, 2000 Ga. App. LEXIS 904 (2000), cert. denied, No. S00C1893, 2001 Ga. LEXIS 7 (Ga. Jan. 5, 2001).

Repairs that are necessary to fix damage to a vehicle, regardless of whether those repairs involve replacing damaged car parts, are included in the definition of "repair." Neal Pope, Inc. v. Garlington, 245 Ga. App. 49, 537 S.E.2d 179, 2000 Ga. App. LEXIS 904 (2000), cert. denied, No. S00C1893, 2001 Ga. LEXIS 7 (Ga. Jan. 5, 2001).

Repair costs less than five percent of retail price. — When the dealer's undisputed actual repair costs were less than five percent of the manufacturer's suggested retail price of the car, the dealer was not required to disclose the damage to plaintiff prior to the sale and O.C.G.A.

§ 40-1-5(f) applied to bar relief to plaintiff. Nall v. Bill Heard Chevrolet Co., 238 Ga. App. 365, 518 S.E.2d 164, 1999 Ga. App. LEXIS 752 (1999), cert. denied, No. S99C1414, 1999 Ga. LEXIS 884 (Ga. Oct. 22, 1999).

Repair costs more than five percent of retail price. — Because the undisputed facts showed that repairs to the car which were performed before the sale totaled more than five percent of the original manufacturer's suggested retail price and that the dealer's salesperson said that there had been no problems with the car, grant of summary judgment on the plaintiff's Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., claim was proper. Neal Pope, Inc. v. Garlington, 245 Ga. App. 49, 537 S.E.2d 179, 2000 Ga. App. LEXIS 904 (2000), cert. denied, No. S00C1893, 2001 Ga. LEXIS 7 (Ga. Jan. 5, 2001).

40-1-6. Uniforms of law enforcement officers.

Uniformed law enforcement officers of an agency who are assigned routinely or primarily to traffic law enforcement or other traffic safety duties on the roadways or highways of this state shall wear the same type uniform as other members of the assigned division of such officers' respective agencies. Officers assigned to special operations activities may wear other identifiable uniforms or other clothing appropriate to an operation upon approval of the sheriff, chief of police, or other agency head. An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section.

History.
Code 1981, § 40-1-6, enacted by Ga. L. 2000, p. 1313, § 1.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, § 1519.

40-1-7. Blue light required for officers enforcing traffic; exception.

Whenever pursuing a person in violation of a traffic related offense, a uniformed law enforcement officer who is assigned routinely or primarily to traffic law enforcement or other traffic safety duties on the roadways or highways of this state shall place a visible blue light on the roof of his or her vehicle if such vehicle is not equipped with permanent exterior mounted roof blue lights; provided, however, that the provisions of this Code section shall not apply to law enforcement officers operating vehicles manufactured prior to 2001. This Code section shall not apply to any officer assigned to special operations activities or responding to an immediate threat to public safety as a result of an accident or other emergency. This Code section shall not apply to vehicles of the Georgia State Patrol or of a sheriff's office or police department which office or police department provides law enforcement services by certified peace officers 24 hours a day, seven days a week

where the vehicles are marked in accordance with Code Section 40-8-91, with flashing or revolving lights, primarily blue in color, visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicles, and which also have illuminating agency identifiers reasonably visible to a driver of a vehicle subject to a traffic stop; provided, however, that a sheriff's office or police department shall not be permitted to have more than one vehicle per agency without such exterior mounted roof lights. An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section.

History.

Code 1981, § 40-1-7, enacted by Ga. L. 2000, p. 1313, § 1; Ga. L. 2006, p. 231, § 1/SB 64; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2022, p. 295, § 1/HB 1146.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "shall place" for "must place" in the first sentence, and, in the third sentence, substituted "lights, primarily blue in color," for "colored lights" and substituted "such vehicles, and which also have illuminating agency identifiers reasonably visible to a driver of a vehicle subject to a traffic stop; provided, however, that a sheriff's office" for "such vehicle, and which also has an illuminating agency identifier reasonably visible to a driver of a vehicle subject to a traffic stop; provided, however, that the Georgia State Patrol shall not be permitted to have more than two vehicles per post without such exterior mounted roof lights; and provided, further, that a sheriff's office".

Administrative rules and regulations.

Flashing and Revolving Lights on Motor Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Public Safety, Rule 570-11-.01 et seq.

40-1-8. Safe operations of motor carriers, commercial motor vehicles, and drivers; safe transportation of hazardous materials.

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

(1) "Commissioner" means the commissioner of public safety.

(2) "Department" means the Department of Public Safety.

(3) "Present regulations" means the regulations promulgated under 49 C.F.R. in force and effect on January 1, 2024.

(b) The commissioner shall have the authority to promulgate rules and regulations for the safe operation of motor carriers, the safe operation of commercial motor vehicles and drivers, and the safe transportation of hazardous materials. Any such rules and regulations promulgated or deemed necessary by the commissioner shall include, but are not limited to, the following:

(1) Every commercial motor vehicle and all parts thereof shall be maintained in a safe condition at all times; and the lights, brakes, equipment, and all other parts or accessories shall meet such safety

requirements designated by present regulations under Parts 393 and 396;

(2) Every driver employed to operate a motor vehicle for a motor carrier shall:

(A) Be at least 18 years of age to operate a motor vehicle for a motor carrier intrastate and at least 21 years of age to operate a motor vehicle for a motor carrier interstate;

(B) Meet the qualification requirements the commissioner shall from time to time promulgate;

(C) Be of temperate habits and good moral character;

(D) Possess a valid driver's license;

(E) Not use or possess prohibited drugs or alcohol while on duty; and

(F) Be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;

(3) Accidents arising from or in connection with the operation of commercial motor vehicles shall be reported to the commissioner of transportation in such detail and in such manner as the commissioner of transportation may require;

(4) The commissioner shall require each commercial motor vehicle to have attached such distinctive markings as shall be adopted by the commissioner. Such identification requirements shall comply with the applicable provisions of the federal Unified Carrier Registration Act of 2005; and

(5) The commissioner shall provide distinctive rules for the transportation of unmanufactured forest products in intrastate commerce to be designated the "Georgia Forest Products Trucking Rules."

(c)(1) Regulations governing the safe operations of motor carriers, commercial motor vehicles and drivers, and the safe transportation of hazardous materials may be adopted by administrative order, including, but not limited to, by referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's website. The commissioner may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State the name and designation of such rules, regulations, standards, and orders. The courts shall take

judicial notice of rules, regulations, standards, or orders so adopted or published.

(2) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in full force and effect until such time as the commissioner of public safety adopts, issues, or promulgates new rules, regulations, or orders pursuant to the provisions of this Code section.

(d)(1) The commissioner may, pursuant to rule or regulation, specify and impose civil monetary penalties for violations of laws, rules, and regulations relating to driver and motor carrier safety and transportation of hazardous materials. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005.

(2) A cause of action for the collection of a penalty imposed pursuant to this subsection may be brought in the superior court of the county where the principal place of business of the penalized company is located or in the superior court of the county where the action giving rise to the penalty occurred.

(e) The commissioner is authorized to adopt such rules and orders as he or she may deem necessary in the enforcement of this Code section. Such rules and orders shall have the same dignity and standing as if such rules and orders were specifically provided in this Code section. The commissioner is authorized to establish such exceptions or exemptions from the requirements of this Code section, as he or she shall deem appropriate, consistent with any federal program requirements, and consistent with the protection of the public health, safety, and welfare.

(f)(1) The commissioner may designate members of the department, pursuant to Article 5 of Chapter 2 of Title 35, to perform regulatory compliance inspections. Members of county, municipal, campus, and other state agencies may be designated by the commissioner to perform regulatory compliance inspections only of vehicles, drivers, and cargo in operation, and may only enforce the provisions of rules and regulations promulgated under this Code section or Article 2 of this chapter subject to the provisions of a valid agreement between the commissioner and the county, municipal, campus, or other state agency.

(2) Unless designated and authorized by the commissioner, no members of county, municipal, campus, and other state agencies may perform regulatory compliance inspections.

(g) No person shall drive or operate, or cause the operation of, a

vehicle in violation of an out-of-service order. As used in this subsection, the term "out-of-service order" means a temporary prohibition against operating as a motor carrier or driving or moving a vehicle, freight container or any cargo thereon, or any package containing a hazardous material.

(h) Unless otherwise provided by law, a motor carrier or operator of a commercial motor vehicle shall comply with present regulations as follows:

(1) Motor carrier safety standards found in 49 C.F.R. Part 391;

(2) Motor carrier safety standards found in 49 C.F.R. Part 392, including but not limited to the seatbelt usage requirements in 49 C.F.R. Section 392.16; and

(3) Hours of service and record of duty status requirements of 49 C.F.R. Part 395.

(i) A person failing to comply with the requirements of paragraph (2) of subsection (h) of this Code section shall be guilty of the misdemeanor offense of failure to wear a seat safety belt while operating a commercial motor vehicle and, upon conviction thereof, shall be fined not more than $50.00 but shall not be subject to imprisonment. The costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. No points shall be added pursuant to Code Section 40-5-57 and no additional fines or penalties shall be imposed.

(j) Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this Code section or any order, rule, or regulation adopted pursuant to this Code section, or who procures, aids, or abets a violation of this Code section or such rule or regulation, shall be guilty of a misdemeanor. Misdemeanor violations of this Code section may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title.

History.

Code 1981, § 40-1-8, enacted by Ga. L. 2011, p. 479, § 9/HB 112; Ga. L. 2013, p. 838, § 1/HB 323; Ga. L. 2014, p. 807, § 2/HB 753; Ga. L. 2015, p. 60, § 4-2/SB 100; Ga. L. 2016, p. 374, § 1/HB 747; Ga. L. 2017, p. 141, § 1/HB 58; Ga. L. 2018, p. 206, § 1/HB 714; Ga. L. 2019, p. 865, § 1/HB 225; Ga. L. 2020, p. 19, § 2/HB 861; Ga. L. 2021, p. 509, § 1/HB 174; Ga. L. 2021, p. 922, § 40/HB 497; Ga. L. 2022, p. 300, § 1/HB 1194; Ga. L. 2023, p. 285, § 1/SB 120, effective July 1, 2023; Ga. L. 2024, p. 517, § 1/HB 1058, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "January 1, 2022" for "January 1, 2021" at the end of paragraph (a)(3).

The 2023 amendment, effective July 1, 2023, substituted "January 1, 2023" for "January 1, 2022" at the end of paragraph (a)(3).

The 2024 amendment, effective July 1, 2024, substituted "January 1, 2024" for "January 1, 2023" at the end of paragraph (a)(3).

Editor's notes.

Ga. L. 2013, p. 838, § 20/HB 323, not

codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2020, p. 19, HB 861, contains two sections numbered as "2". The language in the second Section 2 of the Act provided an effective date for the Act.

Administrative rules and regulations.

Rules of General Applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Public Safety, Rule 570-1-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 40-1-8 do not, at this time, appear to be offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

40-1-9. Electronic notifications and communications by Department of Revenue.

(a) For purposes of this Code section, the term:

(1) "Department" means the Department of Revenue.

(2) "Owner" means a person having an interest in or title to a vehicle. Such term shall include a lienholder, security interest holder, and any person entitled to the use or possession of a vehicle subject to a security interest or lien by another person and includes a lessee under a lease not intended as security.

(b)(1) Notice required by the department upon an owner of a lapse of minimum motor vehicle insurance coverage pursuant to Code Section 40-2-137 shall be satisfied by electronic means when:

(A) The owner consents to receive notifications and communications electronically pursuant to the conditions set forth in paragraph (2) of this subsection; and

(B) The department provides notifications and communications electronically to the owner 30 days, 20 days, and ten days prior to the date of any suspension.

(2) The department shall be authorized to utilize electronic notifications and communications pursuant to this subsection for any owner who agrees to a statement which reads:

"I AGREE TO RECEIVE NOTIFICATIONS AND COMMUNICATIONS ELECTRONICALLY OF A LAPSE OF INSURANCE COVERAGE AND POSSIBLE SUSPENSION OF MY VEHICLE REGISTRATION."

(c)(1) The department shall be authorized to utilize electronic notifications and communications for notice required pursuant to Chapter 3 of this title with respect to any certificate of title for any owner who has elected to maintain certificate of title records in electronic format in a system maintained pursuant to subsection (g) of Code Section 40-3-23 and for any security interest holder or lienholder with a security interest or lien recorded on such electronically maintained certificate of title record. Notice required by the department pursuant to such chapter shall be satisfied by electronic means when the owner consents to receive notifications and communications electronically upon submission of a certificate of title electronically pursuant to subsection (g) of Code Section 40-3-23 and pursuant to the conditions set forth in paragraph (2) of this subsection.

(2) The department shall be authorized to utilize electronic notifications and communications pursuant to this subsection for any owner who agrees to a statement which reads:

"I AGREE TO RECEIVE NOTIFICATIONS AND COMMUNICATIONS ELECTRONICALLY. SUCH ELECTRONIC NOTIFICATIONS OR COMMUNICATIONS MAY INCLUDE SUSPENSION, CANCELLATION, OR REVOCATION OF VEHICLE TITLE NOTICES."

(d) If the department becomes aware that an electronic notification or communication issued pursuant to this Code section was not transmitted to an owner, the department shall send the notification or communication as otherwise required by applicable law.

(e) The department shall include any record of transmission of any electronic notification or communication sent to an owner pursuant to this Code section in the motor vehicle title and registration records for such owner. The department shall retain a record pursuant to Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," of any electronic notification or communication sent pursuant to this Code section. Such record shall be retrievable by the department for a period of ten years after the date such electronic notification or communication was sent.

(f) An owner may withdraw his or her consent to receive notifications and communications by electronic means authorized by this Code section upon notifying the department in a method established by the department for such purpose pursuant to rule or regulation.

(g) Any notification or communication sent by electronic means pursuant to this Code section shall comply with the requirements set forth in Chapter 12 of Title 10, the "Uniform Electronic Transactions Act."

History.
Code 1981, § 40-1-9, enacted by Ga. L. 2024, p. 147, § 1/HB 1100, effective April 22, 2024.
Effective date.
This Code section became effective April 22, 2024.
Editor's notes.
This Code Section formerly related to analysis on elimination of revalidation decal requirement for motor vehicle registration. The former Code section was based on Ga. L. 2017, p. 742, § 1/HB 412, and was repealed by Ga. L. 2017, p. 742, § 1/HB 412, effective January 1, 2020.

ARTICLE 2

TRANSPORTATION OF HAZARDOUS MATERIALS

Editor's notes.
This article is comparable to former O.C.G.A. 46-11-1 et seq., which was repealed by Ga. L. 2011, p. 479, § 25.
Administrative rules and regulations.
Motor Carrier Safety Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Public Service Commission, Transportation, Rule 515-16-4-.01 et seq.

40-1-20. Short title.

This article shall be known and may be cited as the "Transportation of Hazardous Materials Act."

History.
Code 1981, § 40-1-20, enacted by Ga. L. 2011, p. 479, § 10/HB 112.

40-1-21. Legislative findings; construction.

The General Assembly finds that the transportation of hazardous materials on the public roads of this state presents a unique and potentially catastrophic hazard to the public health, safety, and welfare of the people of Georgia and that the protection of the public health, safety, and welfare and the secure transportation of hazardous materials requires control and close regulation of such transportation to minimize that hazard and to that end this article is enacted. This is a remedial law and shall be liberally construed. The Department of Public Safety is designated as the agency to implement and enforce this article.

History.
Code 1981, § 40-1-21, enacted by Ga. L. 2011, p. 479, § 10/HB 112.

40-1-22. Definitions.

As used in this article, the term:

(1) "Anhydrous ammonia" means the materials identified as "ammonia, anhydrous," or "ammonia solutions with more than 50 percent

ammonia and relative density less than 0.880 at 15 degrees Centigrade in water," in federal hazardous materials regulations contained in Title 49 C.F.R.

(2) "C.F.R." means the United States Code of Federal Regulations, as it may be amended from time to time in the Federal Register.

(3) "Commissioner" means the commissioner of public safety.

(4) "Department" means the Department of Public Safety.

(5) "Liquefied natural gas" or "LNG" means methane or natural gas in the form of a cryogenic or refrigerated liquid, as identified in federal hazardous materials regulations contained in Title 49 C.F.R.

(6) "Permit" means an instrument of whatever character or nature including, but not limited to, electronic format, issued by the department pursuant to this article.

(7) "Person," in addition to the meaning provided in paragraph (43) of Code Section 40-1-1, means and includes any individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency or instrumentality of the United States government, or any other entity and includes any officer, agent, or employee of any of the above, who offers, ships, or carries a hazardous material in the furtherance of a commercial or business enterprise, whether or not such transportation is for-hire, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages designed, used, or intended for the transportation of hazardous materials.

(8) "Polychlorinated biphenyl" or "PCB" has the same meaning as the material identified in federal hazardous materials regulations contained in Title 49 C.F.R.

(9) "Radioactive material" has the same meaning as the term is used in federal hazardous materials regulations contained in Title 49 C.F.R.

(10) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, equipment, drivers, employees, cargo, packaging, records, books, or supporting documentation kept or required to be kept in the normal course of offering or transporting hazardous materials, or in the normal course of manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing packages designed, used, or intended for the transportation of hazardous materials.

(11) "Shipper" means any person who arranges for, provides for, solicits a carrier for, consigns to a carrier for, or contracts with a

carrier for shipment or transport of goods, property, or persons. The terms "shipper" and "offeror" are synonymous.

History.
Code 1981, § 40-1-22, enacted by Ga. L. 2011, p. 479, § 10/HB 112.

40-1-23. Regulatory compliance inspections; notification; jurisdiction; permit required; escorts or inspections; exceptions; recovery for damage or discharge; civil monetary penalties; department authority.

(a) Notwithstanding any other provision of law to the contrary, any person transporting, shipping, or offering for transportation hazardous material on the public roads of this state shall be subject to the requirements of this article. Persons who ship, offer, transport, or store incidental to transportation hazardous materials, or who manufacture, fabricate, mark, maintain, recondition, repair, or test packages used or intended for the transportation of hazardous materials, shall be deemed to have given consent to regulatory compliance inspections.

(b) No person, including the state or any agency thereof, shall transport hazardous material in, to, or through this state on the public roads of this state, whether or not the hazardous material is for delivery in this state and whether or not the transportation originated in this state; nor shall any person deliver in this state any hazardous material to any person for transportation; nor shall any such person accept any hazardous material for transportation in this state without compliance with the following requirements: such materials shall be packaged, marked, labeled, handled, loaded, unloaded, stored, detained, transported, placarded, certified, secured, and monitored in compliance with rules and regulations promulgated by the commissioner pursuant to this article and consistent with federal law. Compliance with such rules and regulations shall be in addition to and supplemental of other regulations of the United States Department of Energy, United States Department of Transportation, United States Nuclear Regulatory Commission, Georgia Department of Natural Resources, and state fire marshal, applicable to such persons.

(c)(1) The commissioner shall promulgate rules and regulations such that no person shall arrange for the transportation of or cause to be transported in, to, or through this state on the public roads of this state any hazardous material unless such person shall notify the commissioner or his or her designee in accordance with such rules and regulations; provided, however, that such notification requirements shall comply with applicable federal hazardous materials transportation law.

(2) Prior to the transport of spent nuclear fuel or high-level

radioactive waste, as those terms are defined in 42 U.S.C. Chapter 108 as amended by the Federal Nuclear Waste Policy Act of 1982, the shipper shall notify the commissioner or his or her designee in the manner required by Title 10 C.F.R. Part 71 or Part 73.

(d) Knowledge by a shipper that a carrier proposes to transport hazardous material in or through this state on the public roads of this state shall be sufficient contact with this state to subject such shipper to the jurisdiction of the commissioner and the courts of this state with respect to such transport.

(e)(1) No transportation of hazardous material shall take place in or through this state until the commissioner or his or her designee issues a permit authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles which carry hazardous materials. The commissioner or his or her designee may require changes in the proposed dates, times, routes, detention, holding, or storage of such materials during transport as necessary to maximize protection of the public health, safety, welfare, or the environment. The commissioner is authorized to promulgate reasonable rules and regulations which are necessary or desirable in governing the issuance of permits, provided that such rules and regulations are not in conflict with other provisions of law.

(2) Notwithstanding any provision of law to the contrary, pursuant to uniform permitting provisions of Federal Hazardous Materials Law, 49 U.S.C. Section 5119, the commissioner is authorized to adopt rules and regulations to bring state regulations into compliance with said federal law.

(f) Every such permit and all other documentation required by the commissioner shall be carried in the vehicles or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer, firefighter, emergency responder, or employee of the department who has been given enforcement authority by the commissioner.

(g) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner may refuse to issue or may cancel, suspend, or revoke the permit of an applicant or permittee.

(h)(1) The commissioner or the official designated by the commissioner, pursuant to this Code section and the rules and regulations developed by the commissioner, may issue annual permits which shall allow vehicles transporting hazardous materials to be operated on the public roads of this state for 12 months from the date such permit is issued.

(2) The commissioner or the official designated by the commissioner, pursuant to this Code section and the rules and regulations

developed by the commissioner, may issue a single-trip permit to any vehicle.

(3) Pursuant to this article, the commissioner may charge a fee for the issuance of such permits and may develop and adopt an apportionment schedule for fees to be established by rules and regulations promulgated by the commissioner. The fee for the issuance of an annual trip permit shall be not more than $100.00.

(i) The commissioner may arrange for escorts or inspections which comply with Code Section 35-2-101.

(j) For purposes of this article, the commissioner is expressly authorized to contract with any other state or local agency or department to perform any activities necessary to implement this article. Enforcement of this article and any rules, regulations, or orders promulgated, adopted, or issued hereunder shall be the sole province of the department and those entities the commissioner authorizes in writing, except for provisions relating to anhydrous ammonia.

(k)(1) Notwithstanding any other provisions of this article, the commissioner is authorized to establish such exceptions or exemptions from the requirements of this article, or any provision hereof, for such kinds, quantities, types, or shipments of hazardous materials as he or she shall deem appropriate, consistent with the protection of the public health, safety, and welfare.

(2) Specifically, but without limitation, the commissioner shall continue in force the agricultural exceptions in 49 C.F.R. Section 173.5, and the tank exceptions in 49 C.F.R. Section 173.8, as originally adopted in Public Service Commission Appendix "A" File MCA 1-3, Docket No. 16632-M, effective June 1, 1998.

(l) This article shall not apply to the transportation, delivery, or acceptance for delivery of radioactive materials inside the confines of a single contiguous authorized location of use of any person authorized to use, possess, transport, deliver, or store radioactive materials by the Department of Natural Resources pursuant to Chapter 13 of Title 31 or by the United States Nuclear Regulatory Commission; nor shall this article apply to the transportation, delivery, or acceptance for transportation of radioactive materials under the direction or supervision of the United States Nuclear Regulatory Commission, United States Department of Energy, United States Department of Defense, or other federal agency authorized to possess or transport such material where such transportation, delivery, or acceptance for transportation is escorted by personnel designated by or under the authority of those agencies.

(m) This article shall not apply to interstate pipeline facilities which are subject to the jurisdiction of the United States Department of Transportation under the Natural Gas Pipeline Safety Act of 1968.

(n)(1) In the event of any damage to state property or any discharge of hazardous materials from the authorized shipping package or container or any threat of such discharge which results from the transportation, storage, holding, detention, delivery for transportation, or acceptance for transportation of hazardous materials in this state, the state may recover from any shipper, carrier, bailor, bailee, or any other person responsible for such storage, transportation, holding, detention, delivery, or acceptance all costs incurred by the state in the reparation of the damage and all costs incurred in the prevention, abatement, or removal of any such discharge or threatened discharge, including reasonable attorney's fees incurred with respect to recovery.

(2) The commissioner is expressly authorized to charge reasonable fees for time, equipment, materials, and supplies used or incurred by the department in the implementation of this article.

(3) The commissioner may issue civil penalties against any person found in violation of this article or any regulations promulgated or adopted for the safe and secure transportation of hazardous materials. Such penalties shall not exceed the limits established by 49 U.S.C. Chapter 51.

(o) Any person, firm, or corporation transporting methamphetamine, amphetamine, any mixture containing either methamphetamine or amphetamine, anhydrous ammonia, or any mixture containing anhydrous ammonia, shall be subject to all rules and regulations promulgated by the commissioner pursuant to this article governing the safe operation of motor vehicles and drivers and the safe transportation of hazardous materials.

(p) Notwithstanding the provisions of this Code section, the commissioner may impose civil monetary penalties in an amount not to exceed the maximum amounts for penalties established by 49 U.S.C. Chapter 51 for each violation of any rules and regulations promulgated pursuant to this article with respect to persons transporting methamphetamine, amphetamine, any mixture containing either methamphetamine or amphetamine, anhydrous ammonia, or any mixture containing anhydrous ammonia.

(q) The department is designated as the routing agency as defined in Title 49 C.F.R. Part 397, Subpart E. Routing determinations for hazardous materials shall be made in accordance with the provisions of Federal Hazardous Materials Law, 49 U.S.C. Section 5112. The commissioner or his or her designee shall consult with Georgia Department of Transportation, Georgia Department of Natural Resources, Georgia Emergency Management and Homeland Security Agency, Georgia Department of Homeland Security, or other agencies as necessary to carry out these responsibilities.

(r) Drivers who transport hazardous materials shall be trained at least to the minimum standards required by federal law. Upon request by the commissioner, proof of such federally required driver training shall be made available to the commissioner or his or her staff.

(s) For the transportation of spent nuclear fuel, high-level radioactive waste, and other hazardous materials, the commissioner may take action to ensure that motor vehicles, drivers, and packages used in such transportation have been inspected to show compliance with the federal motor carrier safety regulations and federal hazardous materials regulations, and compatible state regulations adopted pursuant to this article.

(t) Notwithstanding any other provisions of law, a bond or indemnity insurance required of carriers shall be established by rules and regulations of the commissioner and shall for all persons subject to this article, whether intrastate or interstate carriers, be at least in the maximum amount or amounts authorized or required by federal law or regulations.

(u) No person shall transport or cause the transportation of hazardous materials in violation of an out-of-service order.

(v) In addition to any other liability imposed by law, any person who violates or fails to comply with any provision of this article, or any rule, regulation, or order promulgated, adopted, or issued hereunder, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title.

(w)(1) The commissioner is authorized and empowered to adopt, promulgate, amend, repeal, or modify such standards, rules, and regulations and to issue such orders, authorizations, or amendments or modifications thereof as are necessary to implement this article. Any standards, rules, or regulations adopted pursuant to this article, if consistent with the applicable laws relating to adoption of such standards, rules, or regulations, shall have the force and effect of law. Any such rules and regulations shall be compatible with federal motor carrier safety regulations and federal hazardous materials regulations in Title 49 C.F.R.

(2) Regulations governing the safe operations of motor carriers, commercial motor vehicles, and drivers and the safe and secure transportation of hazardous materials may be adopted by administrative order, including, but not limited to, referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such compatible federal regulations or standards shall be maintained on file by the department

and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's Internet site. The commissioner of public safety may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State merely the name and designation of such rules, regulations, standards, and orders. The courts shall take judicial notice of rules, regulations, standards, or orders so adopted or published.

(3) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in full force and effect until such time as the commissioner adopts, issues, or promulgates new rules, regulations, or orders pursuant to the provisions of this article.

(4) The department shall, to the extent practicable, engage in education, outreach, and customer service activities to reach persons and entities affected by these regulations and to assist the competitiveness of Georgia citizens and businesses engaged in regulated activities.

History.
Code 1981, § 40-1-23, enacted by Ga. L. 2011, p. 479, § 10/HB 112; Ga. L. 2016, p. 91, § 18/SB 416; Ga. L. 2017, p. 774, § 40/HB 323.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 40-1-23 are offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

40-1-24. Enforcement; use of funds; regulatory compliance inspections by others; examination of facilities.

(a) The commissioner is authorized to employ such persons as may be necessary, in the discretion of the commissioner, for the proper enforcement of this article, as provided for in this article and Chapter 2 of Title 35. It is the intent of the General Assembly, subject to the appropriations process, that funds derived under this article shall be used to further the department's hazardous materials transportation safety programs; provided, however, that the department shall retain those funds derived specifically for inspection or escort.

(b) The commissioner is vested with police powers and authority to designate, deputize, and delegate to employees of the commissioner the necessary authority to enforce this article, including the power to stop and inspect all motor vehicles using the public highways and to enter upon and inspect shipper and carrier facilities for purposes of determining whether such vehicles and facilities have complied with and are

complying with the provisions of this article and all other laws regulating the use of the public highways by motor vehicles, and to arrest all persons found in violation thereof, and to issue out-of-service orders to carriers, vehicles, and drivers in accordance with criteria which shall be established or adopted by the commissioner.

(c) As designated by the commissioner, by way of agreement, members of county, municipal, campus, and other state agencies may only perform regulatory compliance inspections of vehicles, drivers, and cargo in operation, and enforce the provisions of this article and rules and regulations promulgated hereunder subject to the terms and conditions of that agreement.

(d) The commissioner is vested with powers to designate, deputize, and delegate to employees of the department the necessary authority to enter upon and examine the facilities where hazardous materials are filled, offered, shipped, or stored incidental to transportation, or where packages are manufactured, fabricated, marked, maintained, reconditioned, repaired, or tested for purposes of regulatory compliance inspections for determining compliance with this article and other laws the administration or enforcement of which is the responsibility of the department.

History.
Code 1981, § 40-1-24, enacted by Ga. L. 2011, p. 479, § 10/HB 112; Ga. L. 2024, p. 1052, § 4(2)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department's" for "Department of Public Safety's" in subsection (a).

40-1-25. Severability.

In the event that any section, paragraph, or other part of this article, or any requirement thereunder, or any rule, regulation, or order of the commissioner promulgated hereunder, is found to be preempted by federal law, or otherwise found to be improper, null or otherwise void, all other requirements not so preempted or otherwise so found shall remain in full force and effect.

History.
Code 1981, § 40-1-25, enacted by Ga. L. 2011, p. 479, § 10/HB 112.

ARTICLE 3

MOTOR CARRIERS

Administrative rules and regulations.
General Provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Public Service Commission, Transportation, Rule 515-16-5-.01 et seq.

Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

RESEARCH REFERENCES

ALR.
Obligation of Private Transportation or Travel Services to Provide Accommodations Under Americans with Disabilities Act (42 U.S.C.A. §§ 12181 et seq.), 68 A.L.R. Fed.3d 2.

Part 1

Georgia Motor Carrier Act of 2012

Law reviews.
For annual survey on commercial transportation, see 71 Mercer L. Rev. 951 (2020).

40-1-50. Short title.

This article shall be known and may be cited as the "Georgia Motor Carrier Act of 2012."

History.
Code 1981, § 40-1-50, enacted by Ga. L. 2012, p. 580, § 1/HB 865.
Cross references.
Standard of care to be observed by common carriers generally, § 46-9-1.
Creation of Railway Passenger Service Corridor System, § 46-8A-1 et seq.
Road tax on motor carriers, § 48-9-30 et seq.
Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-50 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-51. Legislative findings; construction.

The General Assembly finds that the for-hire transportation of persons and property are a privilege that require close regulation and control to protect public welfare, provide for a competitive business environment, and provide for consumer protection. To that end, the provisions of this article are enacted. This is a remedial law and shall be liberally construed. The Department of Public Safety is designated as the agency to implement and enforce this article. Exceptions contained in this article shall have no effect on the applicability of any other provision of law applicable to motor vehicles, commercial motor vehicles, operators of motor vehicles, or carrier operations.

History.
Code 1981, § 40-1-51, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-51 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-52. Establishment of Motor Carrier Compliance Division.

There is created and established a division within the Department of Public Safety to be known as the Motor Carrier Compliance Division which shall include a section designated the Regulatory Compliance Section. Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance Division shall be known and designated as law enforcement officers. The Regulatory Compliance Section shall be responsible for the regulation of the operation of motor carriers and limousine carriers in accordance with this article, Code Section 40-1-8, and Article 2 of this chapter.

History.
Code 1981, § 40-1-52, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 2/HB 323.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-52 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-53. "Department" defined; methods of enforcement.

(a) As used in this article, the term "department" means the Department of Public Safety.

(b) The department is authorized to enforce this article by instituting actions for injunction, mandamus, or other appropriate relief.

History.
Code 1981, § 40-1-53, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 3/HB 323.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1931, p. 199, § 29, former Code 1933, § 68-632, and former O.C.G.A. § 46-7-31 are included in the annotations for this Code section.

The 1931 law was regulatory in nature, and all persons proposing to conduct the business of a motor carrier as defined thereby must submit themselves to the jurisdiction and control of the commission. McKinney v. Patton, 176 Ga. 719, 169 S.E. 16, 1933 Ga. LEXIS 265 (1933) (decided under Ga. L. 1931, p. 199, § 29).

Meaning of language "or any individual." — Words "or any individual" mean any other person having an interest in the subject matter, such as any individual who competed with the common carrier, and would not authorize the grant of an injunction at the instance of individuals whose only interest was as citizens and taxpayers. Gulledge v. Augusta Coach Co., 210 Ga. 377, 80 S.E.2d 274, 1954 Ga. LEXIS 312 (1954) (decided under former Code 1933, § 68-632).

"Required certificate" necessary. — Mere fact that a carrier was a certificate holder would afford the carrier no protection. The question was did the carrier have the required certificate that was one under the terms of which the carrier's particular operation was authorized. Bass v. Georgia Public-Service Comm'n, 192 Ga. 106, 14 S.E.2d 740, 1941 Ga. LEXIS 430 (1941) (decided under former Code 1933, § 68-632).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-53 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, §§ 33, 125, 146.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 262, 264, 265.

40-1-54. Rules and regulations for implementation and administration.

(a) The department shall promulgate such rules and regulations as are necessary to effectuate and administer the provisions of this article pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The commissioner is authorized to issue such orders, authorizations, and modification thereof as necessary to implement this article.

(c) A court shall take judicial notice of all rules and regulations promulgated by the department pursuant to this Code section.

History.
Code 1981, § 40-1-54, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-54 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-55. Penalty for violations.

Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this article relating to the regulation of motor carriers and limousine carriers or any order, rule, or regulation of the department, or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title.

History.

Code 1981, § 40-1-55, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(3)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department," for "Department of Public Safety," in the first sentence.

OPINIONS OF THE ATTORNEY GENERAL

Editor's note. In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-39 are included in the annotations for this Code section.

Fingerprinting not required. — Offense arising from a violation of former O.C.G.A. § 46-7-39 did not, at this time, appear to be an offense for which fingerprinting was required; thus, this offense was not designated as one for which those charged were to be fingerprinted. 2010 Op. Att'y Gen. No. 2010-2. (decided under former O.C.G.A. § 46-7-39).

Misdemeanor offenses arising under O.C.G.A. § 40-1-55 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-56. Financial penalty for violations; suspension of certificate or permit; notice; review.

(a) Any motor carrier or limousine carrier subject to the provisions of Part 2 or Part 3 of this article that fails to register as a motor carrier or limousine carrier with the department or that is subject to the jurisdiction of the department and willfully violates any law administered by the department or any duly promulgated regulation issued thereunder, or that fails, neglects, or refuses to comply with any order after notice thereof, shall be liable for a penalty not to exceed $15,000.00 for such violation and an additional penalty not to exceed $10,000.00 for each day during which such violation continues.

(b) Following a reasonable attempt to notify a holder of a certificate,

the commissioner is authorized to immediately suspend a motor carrier or limousine carrier certificate or permit if the commissioner finds that such suspension is necessary to protect against an immediate threat to the life, health, or safety of others. An emergency suspension made pursuant to this subsection may be appealed by filing a request for administrative review with the department within 30 days of receipt of notice of the department's decision. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Notice of a violation and the assessed amount shall be made by means of personal service upon the violator. The notice shall include a warning that a vehicle related to the violation may be subject to suspension of the registration pursuant to Code Section 40-1-56.1. The respondent shall then have 60 days in which to pay the assessed penalty or file with the department a written request for an administrative review. The request for an administrative review shall specify whether the respondent is challenging the validity of the imposition of the penalty or the amount of the assessment, or both. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) All penalties and interest thereon, at the rate of 10 percent per annum, recovered by the department shall be paid into the general fund of the state treasury.

(2) Reissuance fees charged by the Department of Revenue shall be retained by the Department of Revenue.

(3) Restoration fees charged by the department shall be retained by the department.

(e)(1) Any party who has exhausted all administrative remedies available before the department and who is aggrieved by a final decision of the department made pursuant to this Code section may seek judicial review of the final order of the department in the Superior Court of Fulton County or in the superior court of the county in which the principal place of business of the aggrieved party is located.

(2) Proceedings for review shall be instituted by filing a petition within 30 days after the service of the final decision of the department or, if a rehearing is requested, within 30 days after the decision thereon. A motion for rehearing or reconsideration after a final decision by the department shall not be a prerequisite to the filing of a petition for review. Copies of the petition shall be served upon the department and all parties of record before the department.

(3) The petition shall state the nature of the petitioner's interest,

the facts showing that the petitioner is aggrieved by the decision, and the ground upon which the petitioner contends the decision should be reversed. The petition may be amended by leave of court.

(4) Within 30 days after service of the petition or within such further time as is stipulated by the parties or as is allowed by the court, the agency shall have transmitted to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate that the record be limited may be taxed for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse the decision of the department if substantial rights of the petitioner have been prejudiced because the department's findings, inferences, conclusions, or decisions are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the statutory authority of the department;

(C) Made upon unlawful procedure;

(D) Clearly not supported by any reliable, probative, and substantial evidence on the record as a whole; or

(E) Arbitrary or capricious.

(6) A party aggrieved by an order of the court may appeal to the Supreme Court or to the Court of Appeals in accordance with Article 2 of Chapter 6 of Title 5, the "Appellate Practice Act."

History.

Code 1981, § 40-1-56, enacted by Ga. L. 2013, p. 838, § 4/HB 323.

Editor's notes.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

Ga. L. 2013, p. 838, § 4/HB 323 repealed former Code Section 40-1-56, pertaining to a penalty for a failure to register, administrative procedures, and judicial review, effective July 1, 2013, and enacted the present Code section. The former Code section was based on Ga. L. 2012, p. 580, § 1/HB 865.

Administrative rules and regulations.

Nonconsensual Towing, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Public Safety, MCCD Regulatory Compliance Section, Rule 570-38-7-.01 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-621 are included in the annotations for this Code section.

No provision for unconditional review. — There was no provision in former Code 1933, § 68-621 for unconditional review, but it was to be under the conditions and subject to the limitations as now prescribed by law as related to the commission. Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n, 181 Ga. 75, 181 S.E. 834, 1935 Ga. LEXIS 30 (1935) (decided under former Code 1933, § 68-621).

No right to review order of commission by writ of certiorari. — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier and, thereafter such certificate is revoked and canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier's failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n, 52 Ga. App. 35, 182 S.E. 204, 1935 Ga. App. LEXIS 21 (1935) (decided under former Code 1933, § 68-621).

No interference with order of commission unless showing of unreasonableness. — Neither the trial court, nor the Supreme Court on review, will substitute the court's own discretion and judgment for that of the commission when the commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and neither court will interfere with a valid order of the commission unless it be clearly shown that the order was unreasonable, arbitrary, or capricious. Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n, 212 Ga. 625, 94 S.E.2d 706, 1956 Ga. LEXIS 472 (1956) (decided under former Code 1933, § 68-621).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-56 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, §§ 140 et seq., 146.

C.J.S.

13 C.J.S., Carriers, § 352. 60 C.J.S., Motor Vehicles, §§ 125 et seq., 201, 223 et seq.

ALR.

Right to maintain action against carrier on ground that rates which were filed and published by carrier pursuant to law were excessive, 97 A.L.R. 406.

40-1-56.1. Unpaid assessments; liens on identifiable vehicles; perfection; suspension of registration.

(a) Whenever any motor carrier or limousine carrier owes penalties to the department which were imposed for violations pursuant to Code Section 40-1-56 and the violation relates to an identifiable vehicle, then

the motor carrier or limousine carrier shall have 60 days from the date of the assessed penalty or final judicial review following an appeal of the assessment. If the assessment is not paid within the 60 days, such assessment shall become a lien upon the identified motor vehicle found to be in violation, and the lien shall be superior to all liens except liens for taxes or perfected security interests established before the debt to the department was created.

(b) The department shall perfect the lien created under this Code section by sending notice thereof on a notice designated by the department, by first-class mail or by statutory overnight delivery, return receipt requested, to the owner and all holders of liens and security interests shown on the records of the Department of Revenue maintained pursuant to Chapter 3 of this title. Upon receipt of notice from the Department of Public Safety, the holder of the certificate of title shall surrender the same to the state revenue commissioner for issuance of a replacement certificate of title bearing the lien of the department unless the assessment is paid within 60 days of the receipt of notice. The Department of Revenue may append the lien to its records, notwithstanding the failure of the holder of the certificate of title to surrender such certificate as required by this subsection.

(c) Upon issuance of a title bearing the lien of the department, or the appending of the lien to the records of the Department of Revenue, the owner of the vehicle or the holder of any security interest or lien shown in the records of the Department of Revenue may satisfy such lien by payment of the amount of the assessment, including hearing costs, if any, and payment of an additional reissuance fee of $100.00 which shall be paid to the Department of Revenue. Upon receipt of such amount, the department shall release its lien and the Department of Revenue shall issue a new title without the lien.

(d)(1) The department, in seeking to foreclose its lien on the motor vehicle arising out of an assessed violation pursuant to Code Section 40-1-56, may seek an immediate writ of possession from the court before whom the petition is filed, if the petition contains a statement of facts, under oath, by the department, its agents, its officers, or attorney setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an immediate writ of possession.

(2) The department shall allege under oath specific facts sufficient to show that it is within the power of the defendant to conceal, encumber, convert, convey, or remove from the jurisdiction of the court the property which is the subject matter of the petition.

(3) The court before whom the petition is pending shall issue a writ for immediate possession upon finding that the petitioner has complied with paragraphs (1) and (2) of this subsection. If the

petitioner is found not to have made sufficient showing to obtain an immediate writ of possession, the court may, nevertheless, treat the petition as one being filed under Code Section 44-14-231 and proceed accordingly.

(4) When an immediate writ of possession has been granted, the department shall proceed against the defendant in the same manner as provided for in Code Sections 44-14-265 through 44-14-269.

(e)(1) Whenever any motor carrier or limousine carrier fails within 60 days of the date of issuance of a penalty involving an identifiable vehicle assessed pursuant to Code Section 40-1-56 either to pay the assessment or appeal to the department for an administrative review, the Department of Revenue may act to suspend the motor vehicle registration of the vehicle involved. However, if the motor carrier or limousine carrier requests an administrative review, the Department of Revenue shall act to suspend the registration only after the issuance of a final decision favorable to the department and the requisite failure of the motor carrier or limousine carrier to pay the assessment. Upon such failure to pay the assessment, the Department of Revenue shall send a letter to the owner of such motor vehicle notifying the owner of the suspension of the motor vehicle registration issued to the motor vehicle involved in violation which was the basis for the penalty. Upon complying with this subsection by paying the overdue assessment, submitting proof of compliance, and paying a $10.00 restoration fee to the Department of Revenue, the state revenue commissioner shall reinstate any motor vehicle registration suspended under this subsection. In cases where the motor vehicle registration has been suspended under this subsection for a second or subsequent time during any two-year period, the Department of Revenue shall suspend the motor vehicle registration for a period of 60 days and thereafter until the owner submits proof of compliance with this subsection and pays a $150.00 restoration fee to the Department of Revenue.

(2) Unless otherwise provided for in this Code section, notice of the effective date of the suspension of a motor vehicle registration occurs when the owner has actual knowledge or legal notice thereof, whichever first occurs. For the purposes of making any determination relating to the restoration of a suspended motor vehicle registration, no period of suspension shall be deemed to have begun until ten days after the mailing of the notice required in paragraph (1) of this subsection.

(3) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to a motor carrier or limousine carrier at the name and address shown in records of the Department of Revenue maintained under Chapter 3 of this title shall, with

respect to the holders of liens and security interests, be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(4) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to owners and operators of vehicles involved in a penalty assessed pursuant to 40-1-56 shall be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(5) The state revenue commissioner may suspend the motor vehicle registration of any offending vehicle for which payment of an assessment is made by a check that is returned for any reason.

History.
Code 1981, § 40-1-56.1, enacted by Ga. L. 2013, p. 838, § 5/HB 323.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2013, a misspelling of "reissuance" was corrected in subsection (c).

Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-57. Applicability of prior action of Public Service Commission.

Rules, orders, and regulations previously adopted which relate to functions performed by the Public Service Commission which were transferred under this article to the Department of Public Safety shall remain of full force and effect as rules, orders, and regulations of the Department of Public Safety until amended, repealed, or superseded by rules or regulations adopted by the department.

History.
Code 1981, § 40-1-57, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2012, a misspelling of "Public" was corrected.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68-629 and 68-523, and former O.C.G.A. § 46-7-27 are included in the annotations for this Code section.

Rule of the commission is not "law of the state" within the meaning of that term as used in the provisions of the Constitution giving exclusive jurisdiction on appeal to Supreme Court to pass on constitutionality of state law. Reliable Transf. Co. v. May, 70 Ga. App. 613, 29 S.E.2d 187, 1944 Ga. App. LEXIS 63 (1944) (decided under former Code 1933, § 68-629).

Commission acts in quasi-legislative manner. — As the commission was authorized to adopt such rules and orders as the commission may deem necessary in the enforcement of the provisions of the statutory law regarding motor common carriers, the commission, therefore, acts in a quasi-legislative manner. Georgia Pub. Serv. Comm'n v. Smith Transf. Co., 207 Ga. 658, 63 S.E.2d

653, 1951 Ga. LEXIS 486 (1951) (decided under former Code 1933, § 68-629).

Commission rules have same force and effect as statute. — Rule passed by the commission in pursuance of the statutory law regarding motor common carriers had the force and effect of a law or statute of this state. Maner v. Dykes, 52 Ga. App. 715, 184 S.E. 438, 1936 Ga. App. LEXIS 234, transferred, 183 Ga. 118, 187 S.E. 699, 1936 Ga. LEXIS 178 (1936) (decided under former Code 1933, § 68-629).

Commission had authority and power to adopt such rules and regulations within the scope of the legislative enactment, and as an effective means of enforcing the statutory law respecting motor common carriers, and such rules and regulations have the same force and effect as that of a statute. Georgia Pub. Serv. Comm'n v. Jones Transp., Inc., 213 Ga. 514, 100 S.E.2d 183, 1957 Ga. LEXIS 427 (1957) (decided under former Code 1933, § 68-629).

Delegation of regulatory power by General Assembly proper. — General Assembly could clearly designate the Public Service Commission to act for the legislature in seeing that public service motor vehicles conformed to the regulatory laws applicable to those vehicles, leaving to that body the working out of the minor details regarding such regulations. Maner v. Dykes, 55 Ga. App. 436, 190 S.E. 189, 1937 Ga. App. LEXIS 123 (1937) (decided under former Code 1933, § 68-629).

Commission not bound by strict rules of evidence in conducting hearings. — Commission was authorized by former Code 1933, § 68-523 to adopt rules of evidence and procedure in carrying out the Commission's duties in the administration of the law, and was not bound by strict rules of evidence in conducting the commission's hearings. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-523).

Effect of introduction of ex parte affidavits at hearing upon commission order. — Upon a hearing by the commission on an application for a certificate of public convenience and necessity, the mere introduction before that body of ex parte affidavits does not invalidate the order of the commission. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-523).

Judicial notice required. — Courts are required to judicially notice rules and regulations promulgated or adopted by the Commissioner of the Department of Motor Vehicle Safety under former O.C.G.A. §§ 46-7-26 and 46-7-27. State v. Ponce, 279 Ga. 651, 619 S.E.2d 682, 2005 Ga. LEXIS 518 (2005) (decided under former O.C.G.A. § 46-7-27).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-57 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, §§ 21 et seq., 27 et seq., 130, 140 et seq.

ALR.

State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

40-1-58. Determining employment status based upon a motor carrier safety improvement.

(a) For purposes of this Code section, the term "motor carrier safety improvement" means any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with traffic safety or motor carrier safety laws, safety of a motor vehicle, safety of the operator of a motor vehicle, or safety of third-party users of highways of this state.

(b) The deployment, implementation, or use of a motor carrier safety improvement by or as required by a motor carrier or its related entity, including by contract, shall not be considered when evaluating an individual's status as an employee or independent contractor, or as a jointly employed employee, under any state law.

History.
Code 1981, § 40-1-58, enacted by Ga. L. 2020, p. 318, § 1/HB 758.

Part 2

Certification of Motor Carriers

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, §§ 68-504, 68-604, and 68-605 and former O.C.G.A. §§ 46-7-3 and 46-7-53, are included in the annotations for this Code section.

Construction with other provisions. — Provisions of former Code 1933, § 68-504 were the same as provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609 were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227, 1961 Ga. LEXIS 433 (1961) (decided under former Code 1933, § 68-504).

Public interest embraces more than five elements contained in subsection (f). — Both former Code 1933, § 68-504, which related to "motor contract carriers" and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public convenience and necessity from the commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements yet comprehends much more. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227, 1961 Ga. LEXIS 433 (1961) (decided under former Code 1933, § 68-504).

No right to be free from competition. — Former Code 1933,

§ 68-504 did not afford the right to be free from competition. Wells Fargo Armored Serv. Corp. v. Georgia Pub. Serv. Comm'n, 547 F.2d 938, 1977 U.S. App. LEXIS 14530 (5th Cir. 1977) (decided under former Code 1933, § 68-504).

Publisher not liable for unknowingly using unlicensed distributor. — Since there is no duty on the part of a newspaper publisher to inquire and ascertain if a distributor is properly licensed by the Public Service Commission, a publisher cannot be held liable for the negligent driving of its distributor's delivery vehicle on the ground that the driver was not licensed. Tanner v. USA Today, 179 Ga. App. 722, 347 S.E.2d 690, 1986 Ga. App. LEXIS 1998 (1986) (decided under former O.C.G.A. § 46-7-53).

Power to select, limit, and prohibit uses of highways by carriers for hire, which is implied in the requirement of a certificate of public convenience and necessity, is justified both as a regulation of the business, and as a regulation for the protection and safety of the highways. There is thereby no unequal protection of law, but a reasonable classification. Southern Motorways, Inc. v. Perry, 39 F.2d 145, 1930 U.S. Dist. LEXIS 1936 (D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

Doing business on highways is privilege which may be conditioned or withheld. — Motor carriers are engaged in a business that is regulatable, and doing that business on the highways by a privilege which may be conditioned or withheld. Southern Motorways, Inc. v. Perry, 39 F.2d 145, 1930 U.S. Dist. LEXIS 1936 (D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

Certificate and annual license fee are legally demandable by state. — Certificate of public convenience and necessity, with a reasonable fee therefor, and an annual license fee for the trucks are legally demandable by a state as a nondiscriminatory prerequisite of the use of the highway for carrier purposes, even though the commerce involved is wholly interstate. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900, 1931 U.S. Dist. LEXIS 1197 (D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Authority of state to regulate use of roads. — State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from their common uses and purposes to the carrier's business. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900, 1931 U.S. Dist. LEXIS 1197 (D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Interstate carrier to pay for use of highway. — Interstate carrier has no better right than any other to use the state's improved highway without the state's consent, or without paying for the use. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900, 1931 U.S. Dist. LEXIS 1197 (D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Directory or advisory nature of statutory elements of proof of public convenience and necessity. — In determining whether the public interest required the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not mandatory that each be proved before the commission was authorized to grant a certificate, reviewing courts recognize that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-604).

Notice of cancellation. — Former O.C.G.A. § 46-7-3 required motor carriers to obtain a certificate of public convenience which may not be issued until a surety bond or evidence of a policy of indemnity insurance is filed with the Public Service Commission (PSC). Under PSC Rule 1-8-1-.07, policies of insurance evidenced by a Form E certificate filed with the PSC remain in effect until cancelled as prescribed by that rule. The filing of a Form E certificate of insurance establishes that a specified policy of insurance has been issued to the motor carrier and that the policy continues in effect until canceled by giving notice to the

PSC. Progressive Preferred Ins. Co. v. Ramirez, 277 Ga. 392, 588 S.E.2d 751, 2003 Ga. LEXIS 1004 (2003) (decided under former O.C.G.A. § 46-7-3).

Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former O.C.G.A. § 46-7-3 to operate as carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. Kolencik v. Stratford Ins. Co., No. 1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-604, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Exception to requirements of this section. — Temporary emergency authority granted under former Code 1933, § 68-611.1 was an exception to the general requirement of former Code 1933, § 68-604 that no motor common carrier can operate without first obtaining a certificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-604)

Unconstitutional delegation of authority. — If the commission issued a certificate of public convenience and necessity which automatically terminated upon the decision of the municipality to terminate the contract with the certificate holder, the commission would have unlawfully delegated its authority to issue certificates to that municipality. 1980 Op. Att'y Gen. No. 80-162 (decided under former Code 1933, § 68-605).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, § 125 et seq.
Am. Jur. Pleading and Practice Forms.
3B Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic, § 602.
C.J.S.
60 C.J.S., Motor Vehicles, § 214 et seq.

40-1-100. Definitions.

As used in this part, the term:

(1) "Carrier" means a person who undertakes the transporting of goods or passengers for compensation.

(2) "Certificate" or "motor carrier certificate" means a certificate of public convenience and necessity issued pursuant to this part or under the "Motor Carrier Act of 1929," under the "Motor Carrier Act of 1931," or under prior law.

(3) "Commissioner" means the commissioner of public safety.

(4) "Company" shall include a corporation, a firm, a partnership, an association, or an individual.

(5) "Corporate sponsored vanpool" means a rideshare program sponsored by an employer in which the employer pays all or some of

the costs associated with the transportation of its employees to a single work reporting location and all the vehicles used in the program have a manufacturer's gross vehicle weight rating of not more than 10,000 pounds and are designed to carry not more than 15 passengers including the driver.

(6) "Department" means the Department of Public Safety.

(7) "Exempt rideshare" means:

(A) Government endorsed rideshare programs;

(B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the rideshare participants pool or otherwise share, rideshare costs such as fuel; or

(C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's business, for rideshare purposes as part of a government endorsed rideshare program, or for rideshare under a contract requiring compliance with subparagraph (B) of this paragraph.

(8) "For compensation" or "for hire" means an activity relating to a person engaged in the transportation of goods or passengers for compensation.

(9) "Government endorsed rideshare program" means a vanpool, carpool, or similar rideshare operation conducted by or under the auspices of a state or local governmental transit instrumentality, such as GRTA, a transportation management association, or a community improvement district, or conducted under the auspices of such transit agencies, including through any form of contract between such transit instrumentality and private persons or businesses.

(10) "GRTA" means the Georgia Regional Transportation Authority, which is itself exempt from regulation as a carrier under Code Section 50-32-71.

(11) "Household goods" means any personal effects and property used or to be used in a dwelling when a part of the equipment or supplies of such dwelling and such other similar property as the commissioner may provide for by regulation; provided, however, that such term shall not include property being moved from a factory or store except when such property has been purchased by a householder with the intent to use such property in a dwelling and such property is transported at the request of, and with transportation charges paid by, the householder.

(12) "Motor carrier" means:

(A) Every person owning, controlling, operating, or managing any motor vehicle, including the lessees, receivers, or trustees of such persons or receivers appointed by any court, used in the business of transporting for hire persons, household goods, or property or engaged in the activity of nonconsensual towing pursuant to Code Section 44-1-13 for hire over any public highway in this state.

(B) Except as otherwise provided in this subparagraph, the term "motor carrier" shall not include:

(i) Motor vehicles engaged solely in transporting school children and teachers to and from public schools and private schools;

(ii) Taxicabs which operate within the corporate limits of municipalities and are subject to regulation by the governing authorities of such municipalities; the provisions of this division notwithstanding, vehicles and the drivers thereof operating within the corporate limits of any city shall be subject to the safety regulations adopted by the commissioner of public safety pursuant to Code Section 40-1-8;

(iii) Limousine carriers as provided for in Part 3 of this article;

(iv) Hotel passenger or baggage motor vehicles when used exclusively for patrons and employees of such hotel;

(v) Motor vehicles operated not for profit with a capacity of 15 persons or less when they are used exclusively to transport elderly and disabled passengers or employees under a corporate sponsored vanpool program, except that a vehicle owned by the driver may be operated for profit when such driver is traveling to and from his or her place of work, provided each such vehicle carrying more than nine passengers maintains liability insurance in an amount of not less than $100,000.00 per person and $300,000.00 per accident and $50,000.00 property damage. For the purposes of this part, elderly and disabled passengers are defined as individuals over the age of 60 years or who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable to utilize mass transportation facilities as effectively as persons who are not so affected;

(vi) Motor vehicles owned and operated exclusively by the United States government or by this state or any subdivision thereof;

(vii) Vehicles, owned or operated by the federal or state government or by any agency, instrumentality, or political

subdivision of the federal or state government, or privately owned and operated for profit or not for profit, capable of transporting not more than ten persons for hire when such vehicles are used exclusively to transport persons who are elderly, disabled, en route to receive medical care or prescription medication, or returning after receiving medical care or prescription medication. For the purpose of this part, elderly and disabled persons shall have the same meaning as in division (v) of this subparagraph; or

(viii) Ambulances.

(13) "Passenger" means a person who travels in a public conveyance by virtue of a contract, either express or implied, with the carrier as to the payment of the fare or that which is accepted as an equivalent therefor. The prepayment of fare is not necessary to establish the relationship of passenger and carrier, although a carrier may demand prepayment of fare if persons enter his or her vehicle by his or her permission with the intention of being carried; in the absence of such a demand, an obligation to pay fare is implied on the part of the passenger, and the reciprocal obligation of carriage of the carrier arises upon the entry of the passenger.

(14) "Permit" means a written or electronic authorization issued by the department to motor carriers of passengers and nonconsensual towing companies for the purpose of providing services in accordance with the rules and guidelines of the department.

(15) "Person" means any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

(16) "Public highway" means every public street, road, highway, or thoroughfare of any kind in this state.

(17) "Vehicle" or "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner.

History.

Code 1981, § 40-1-100, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 6/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, "Code Section 40-1-8" was substituted for "Code Section 60-1-8" at the end of division (10)(B)(ii) (now division (12)(B)(ii)) and "division (v) of this subparagraph" was substituted for "division (iv) of this subparagraph" near the end of division (10)(B)(vii) (now division (12)(B)(vii)).

Editor's notes.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly,

provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

Law reviews.

For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

JUDICIAL DECISIONS

Vehicle was a public conveyance. — In an accident victim's action brought under the Georgia Motor Carrier Act, O.C.G.A. § 40-1-50 et seq., against the employer of the driver of the Dodge caravan that collided with the victim's truck and the employer's insurance company, there was no genuine issue of material fact as to whether the employer's Dodge caravan was a public conveyance as that term is used in the definition of passenger in O.C.G.A. § 40-1-100. Hughes v. Ace American Insurance Company, 368 Ga. App. 650, 888 S.E.2d 341, 2023 Ga. App. LEXIS 361 (2023).

Vehicle used for medical transport not motor carrier. — Survivors of a deceased patient could not bring a direct action against a transporting van's insurer under O.C.G.A. § 40-1-112(c) of the Georgia Motor Carriers Act because the van was exempt from the motor carrier definition under O.C.G.A. § 40-1-100(12)(B)(vii): the van was used exclusively to transport individuals to receive medical care and was not capable of transporting more than 10 people, although the van had originally been designed to carry 12 people. Mornay v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 331 Ga. App. 112, 769 S.E.2d 807, 2015 Ga. App. LEXIS 111 (2015), cert. denied, No. S15C1077, 2015 Ga. LEXIS 474 (Ga. June 15, 2015).

40-1-101. Regulatory compliance inspections; regulation of business; requirements of motor carriers.

(a) Notwithstanding any other provision of law to the contrary, all motor carriers operating on the public roads of this state shall be subject to the requirements of this part and shall be deemed to have given consent to regulatory compliance inspections.

(b) Unless expressly prohibited by federal law, the commissioner is vested with power to regulate the business of any person engaged in the transportation as a motor carrier of persons or property, either or both, for hire on any public highway of this state.

(c) The commissioner is authorized to employ and designate a person or persons as necessary to implement and carry out the functions contained in this part.

(d) All motor carriers shall:

(1) Obtain a certificate as required by this part;

(2) Maintain liability insurance as provided in the rules and regulations of the department;

(3) Act in compliance with Georgia's workers' compensation laws as provided in Chapter 9 of Title 34; and

(4) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Home-

land Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.
Code 1981, § 40-1-101, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.
Editor's notes.
Ga. L. 2013, p. 141, § 40(4)/HB 79, which amended this Code section, purported to amend paragraph (3) of this Code section, but actually amended paragraph (d)(3) of this Code section.
Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

40-1-102. Certificate or permit prerequisite to operation; minimum insurance requirement.

(a) No motor carrier of passengers or household goods shall, except as otherwise provided in this part, operate without first obtaining from the commissioner a certificate or permit.

(b) Before a motor carrier may enter into any contract for the transportation of passengers, the motor carrier shall provide to all parties to the agreement a copy of the motor carrier's proof of legally required minimum insurance coverage and a valid certification number demonstrating that the motor carrier is currently certified by the commissioner, the Federal Motor Carrier Safety Administration, or any other similarly required certifying agency. Any contract entered into in violation of this Code section shall be void and unenforceable.

History.
Code 1981, § 40-1-102, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 756, § 1/HB 255; Ga. L. 2013, p. 838, § 7/HB 323.
Editor's notes.
Ga. L. 2013, p. 141, § 54(f)/HB 79, not codified by the General Assembly, provides that: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict."
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-103. Application form for certificate; issuance to qualified applicant.

(a) The department shall prescribe the form of the application for a motor carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its judgment, be necessary and may establish fees as part of such certificate process.

(b) A motor carrier certificate shall be issued to any qualified

applicant, provided that such applicant is a motor carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle.

History.
Code 1981, § 40-1-103, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-104. Revocation, alteration, or amendment of certificate or permit; suspension; out-of-service orders.

(a) The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any motor carrier certificate or permit, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the certificate is not furnishing adequate service.

(b) The commissioner may, at any time, after reasonable attempt at notice, immediately suspend any motor carrier certificate or permit, if the commissioner finds such suspension necessary:

(1) To protect life, health, or safety;

(2) For the protection of consumers; or

(3) Based upon a finding that the carrier no longer meets the qualification or fitness requirements of Code Section 40-1-103 or 40-1-106.

Certificate holders affected by such suspension may appeal to the commissioner for review pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commissioner may exercise his or her discretion to designate a hearing officer for such appeals.

(c) The commissioner, or his or her designated employees, may issue an out-of-service order or orders to a certificate or permit holder, pursuant to the provisions of this article or the department's rules.

History.
Code 1981, § 40-1-104, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 8/HB 323.

Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply

to violations committed on or after such date."

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-607 are included in the annotations for this Code section.

No right to review revocation order of commission by writ of certiorari. — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier to operate a passenger, baggage, and express service by motor vehicles over a specified route between certain named cities in this state, and, thereafter such certificate is revoked and canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier's failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n, 181 Ga. 75, 181 S.E. 834, 1935 Ga. LEXIS 30 (1935) (decided under former Code 1933, § 68-607).

Authority of commission to transfer truck operations. — When a Class "B" certificate authorizing a holder to transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to "suspend, revoke, alter, or amend," and under former Code 1933, § 68-608, was authorized to transfer, was altered or amended and transferred, being limited to between all points within a 20 mile radius of Atlanta, there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in the metropolis of Atlanta. Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n, 212 Ga. 625, 94 S.E.2d 706, 1956 Ga. LEXIS 472 (1956) (decided under former Code 1933, § 68-607).

Control of pedestrians and motor vehicles within police power of municipality. — Control of pedestrians and motor vehicles on municipal streets, including those on and around school grounds was a governmental function within the police power of the municipality. Fletcher v. Russell, 151 Ga. App. 229, 259 S.E.2d 212, 1979 Ga. App. LEXIS 2509, rev'd, 244 Ga. 854, 262 S.E.2d 138, 1979 Ga. LEXIS 1440 (1979) (decided under former Code 1933, § 68-607).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-607, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Former Code 1933, § 68-607 was plain and unambiguous, and hence not subject to legal interpretation; it clearly authorized the commission to revoke or amend a certificate if the carrier was not furnishing adequate service. The only question to be determined in such a case was whether or not the service was inadequate from any cause; it made no difference whether that inadequacy may have resulted from abandonment of other services by the applicant or any other carrier, or whether it arises from gradual population shifts. 1957 Ga. Op. Att'y Gen. 222 (decided under former Code 1933, § 68-607).

Public convenience and necessity determinative factor concerning continuation of service. — In determining whether a branch line should be discontinued, public convenience and

necessity — not loss to the utility — when the operation as a whole is profitable, is the determinative factor, and the commission may consider the return from the entire system rather than just the branch line. Of course, under the guise of regulation the property of a carrier may not be taken by requiring it to furnish services or facilities not reasonably necessary to serve the public. 1957 Ga. Op. Att'y Gen. 222 (decided under former Code 1933, § 68-607).

Effect of revocation of certificate by commission. — When the commission, under former Code 1933, § 68-607, after notice and opportunity to be heard, and for reasonable cause, revoked and canceled a certificate of public convenience and necessity, such certificate became forever dead and the original holder thereof had no further privileges thereunder, and before the holder of such canceled and revoked certificate can again enjoy the privileges the holder formerly enjoyed under the certificate, the holder must first file a new application and it then became the duty of the commission to assign the application for a hearing so that the commission may determine that the public interest required such operations. 1945-47 Ga. Op. Att'y Gen. 403 (decided under former Code 1933, § 68-607).

Duty of utility to furnish adequate service correlative of right to serve. — Former Code 1933, § 68-607 was simply one expression of the principle which permeated all public utility regulations — the duty of the utility to furnish adequate service, which was a correlative of its right to serve. 1957 Ga. Op. Att'y Gen. 222 (decided under former Code 1933, § 68-607).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, §§ 140 et seq., 155.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 258 et seq., 300, 301.

40-1-105. Transfer of certificate.

Any motor carrier certificate issued pursuant to this part may be transferred upon application to and approval by the commissioner, and not otherwise.

History.
Code 1981, § 40-1-105, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-608 are included in the annotations for this Code section.

Authority of commission to transfer truck operations. — When a Class "B" certificate authorizing a holder to transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to "suspend, revoke, alter, or amend," and under former Code 1933, § 68-608, was authorized to transfer was altered or amended and transferred, being limited to between all points within a 20 mile radius of Atlanta there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in the metropolis of Atlanta. Woodside Transf. & Storage Co. v. Georgia Pub.

Serv. Comm'n, 212 Ga. 625, 94 S.E.2d 706, 1956 Ga. LEXIS 472 (1956) (decided under former Code 1933, § 68-608).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, § 135 et seq.
C.J.S.
60 C.J.S., Motor Vehicles, § 201 et seq.
ALR.
Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 A.L.R.2d 883.

40-1-106. Fitness of applicant; protest of application by certificate holder.

(a) The commissioner shall issue a motor carrier certificate to a person authorizing transportation as a motor carrier of passengers or household goods subject to the jurisdiction of the department if the commissioner finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with regulations of the department. Fitness encompasses three factors:

(1) The applicant's financial ability to perform the service it seeks to provide;

(2) The applicant's capability and willingness to perform properly and safely the proposed service; and

(3) The applicant's willingness to comply with the laws of Georgia and the rules and regulations of the department.

(b) The initial burden of making out a prima-facie case that an applicant is fit to provide such service rests with the applicant.

(c) Upon an applicant making out a prima-facie case as to the motor carrier's ability to provide the service, the burden shifts to a protestant to show that the authority sought should not be granted.

(d) A protest of a motor carrier of passengers or of household goods to an application shall not be considered unless the protesting motor carrier:

(1) Possesses authority from the department to handle, in whole or in part, the authority which is being applied for and is willing and able to provide service and has performed service during the previous 12 month period or has actively in good faith solicited service during such period;

(2) Has pending before the department an application previously filed with the department for substantially the same authority; or

(3) Is granted by the commissioner leave to intervene upon a

showing of other interests which in the discretion of the commissioner would warrant such a grant.

(e) The commissioner may issue a certificate without a hearing if the application is unprotested or unopposed.

History.

Code 1981, § 40-1-106, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 9/HB 323; Ga. L. 2024, p. 1052, § 4(4)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "to a protestant" for "to protestant" in subsection (c).

Editor's notes.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-609 and former O.C.G.A. § 46-7-7 are included in the annotations for this Code section.

Principles generally accepted as elements of proof of public convenience and necessity. — In determining whether the public interest requires the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not mandatory that each be proved before the commission was authorized to grant a certificate, this court recognized that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-609).

Provisions of this Code section are advisory. — Each of the five specific subjects set forth in former Code 1933, § 68-609, which the law said the commission must consider, was intended for the guidance of the commission and to define the fields in which the commission should give consideration, but was merely advisory, irrespective of what the evidence might disclose in respect to each of the five subjects. Petroleum Carrier Corp. v. Davis, 210 Ga. 568, 81 S.E.2d 805, 1954 Ga. LEXIS 373 (1954) (decided under former Code 1933, § 68-609).

Provisions not applicable to grant or denial of Class "B" certificates. — Provisions of former Code 1933, § 68-609 declaring that the commission must consider whether existing transportation service of all kinds was adequate to meet the reasonable public needs, the volume of existing traffic over such route, and whether such traffic and that reasonably to be anticipated in the future can support already existing transportation agencies and also the applicant, the effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate would or may seriously impair essential existing public service, was advisory only and, irrespective of what the evidence might be upon the subjects there mentioned, the commission may grant or deny a Class "B" certificate without offending the law. Petroleum Carrier Corp. v. Davis, 210 Ga. 568, 81 S.E.2d 805, 1954 Ga. LEXIS 373 (1954) (decided under former Code 1933, § 68-609); Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n, 212 Ga. 625, 94 S.E.2d 706, 1956 Ga. LEXIS 472 (1956) (decided under former Code 1933, § 68-609).

The 1950 amendment to former Code 1933, § 68-609 was expressly

limited to certificates over fixed routes, and had no application to Class "B" certificates. Petroleum Carrier Corp. v. Davis, 210 Ga. 568, 81 S.E.2d 805, 1954 Ga. LEXIS 373 (1954) (decided under former Code 1933, § 68-609); Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n, 212 Ga. 625, 94 S.E.2d 706, 1956 Ga. LEXIS 472 (1956) (decided under former Code 1933, § 68-609).

Use of term "public." — The use of the term "public" in former O.C.G.A. § 46-7-7 was intended to distinguish private carriage operations which require no certificate of public convenience and necessity. Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n, 194 Ga. App. 340, 390 S.E.2d 283, 1990 Ga. App. LEXIS 84, cert. vacated, 260 Ga. 470, 397 S.E.2d 709, 1990 Ga. LEXIS 374 (1990), cert. vacated, No. S90G0656, 1990 Ga. LEXIS 528 (Ga. Oct. 19, 1990) (decided under former O.C.G.A. § 46-7-7).

Primary concern is public interest and welfare and grant of certificate is discretionary. — In the hearing on an application for a certificate, the commission merely conducts an investigation of fact, authorized by statute, in the determination of which the primary concern is the public interest and welfare. Whether or not the commission grants an application for a certificate is purely a matter of discretion and not one of absolute right. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-609).

Five factors enumerated to be considered by commission. — Former O.C.G.A. § 46-7-7 enumerated five factors, among others, that the Public Service Commission must consider in determining whether a certificate of public convenience and necessity should be granted. RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n, 165 Ga. App. 539, 301 S.E.2d 896, 1983 Ga. App. LEXIS 1939 (1983) (decided under former O.C.G.A. § 46-7-7).

Public interest comprehends much more than five elements contained in this section. — Both former Code 1933, § 68-504, which related to "motor contract carriers" and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public convenience and necessity from the commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements, comprehends much more. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227, 1961 Ga. LEXIS 433 (1961) (decided under former Code 1933, § 68-609).

No error to refuse injunction when evidence supports discretion of commission. — When it appears that the commission had evidence authorizing the commission in the exercise of the commission's discretion to issue the certificate applied for, the trial judge did not err in refusing to enjoin the commission or the applicant. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227, 1961 Ga. LEXIS 433 (1961) (decided under former Code 1933, § 68-609).

Commission free to exercise its judgment to grant or deny applications. — Commission, as respects Class "B" certificates, is free to exercise the commission's own judgment and to grant or deny the applications for such certificates. Petroleum Carrier Corp. v. Davis, 210 Ga. 568, 81 S.E.2d 805, 1954 Ga. LEXIS 373 (1954) (decided under former Code 1933, § 68-609).

Error for trial judge to enjoin certificate holder from operating. — It was error for the trial judge to enjoin the holder of a Class "B" certificate from operating thereunder upon the theory that the evidence failed to show inadequacy of existing transportation service. Petroleum Carrier Corp. v. Davis, 210 Ga. 568, 81 S.E.2d 805, 1954 Ga. LEXIS 373 (1954) (decided under former Code 1933, § 68-609).

No interference with order of commission unless showing of unreasonableness. — Neither the trial court, nor a court on review, will substitute the court's own discretion and judgment for that of the commission when

the commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and will not interfere with a valid order of the commission unless it be clearly shown that the order is unreasonable, arbitrary, or capricious. Brown Transp. Corp. v. Pilcher, 222 Ga. 276, 149 S.E.2d 670, 1966 Ga. LEXIS 456 (1966) (decided under former Code 1933, § 68-609).

Commission's order supported by some evidence will not be overturned on appeal. — When the record reflects that the Public Service Commission's order denying the requested certificates was supported by some evidence and was not unreasonable, arbitrary, or capricious, the Court of Appeals will not substitute the court's own decision for that of the commission. RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n, 165 Ga. App. 539, 301 S.E.2d 896, 1983 Ga. App. LEXIS 1939 (1983) (decided under former O.C.G.A. § 46-7-7).

Applicability of decisions of Supreme Court construing comparable provisions. — Provisions of former Code 1933, § 68-504 were in all respects the same as the provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609, were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227, 1961 Ga. LEXIS 433 (1961) (decided under former Code 1933, § 68-609).

So long as certificate remained unrevoked, commission could authorize certificate's transfer. — Question of public convenience and necessity having been determined by the commission at the time the certificate was issued, the commission would not be required on an application for transfer to consider that question again before granting a transfer of the certificate. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-609).

When existing certificate holder not entitled to notice and opportunity required by this section. — When the proposed route was not the same as that used by a certificate holder, that company was not entitled to notice and an opportunity to remedy inadequate service as required by former Code 1933, § 68-609. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-609).

Existing certificate holder must have opportunity to improve service. — Competing motor carrier certificate cannot be granted until after the existing certificate holder has had an opportunity to improve service. Statesboro Tel. Co. v. Georgia Pub. Serv. Comm'n, 235 Ga. 179, 219 S.E.2d 127, 1975 Ga. LEXIS 815 (1975), superseded by statute as stated in Georgia Public Service Com. v. Southern Bell, 254 Ga. 244, 327 S.E.2d 726, 1985 Ga. LEXIS 667 (1985) (decided under former Code 1933, § 68-609).

"Route" defined. — Word "route," as used in former Code 1933, § 68-609, meant the particular highway or road, or series of highways or roads, over which a carrier is authorized by the commission to operate the carrier's vehicles between terminal points. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225, 1957 Ga. LEXIS 404 (1957) (decided under former Code 1933, § 68-609).

"Route" and "highway" distinguished. — A "route" is a direction of travel from one place to another. It may be over one or more named or numbered highways or paths. A "highway" is a road for travel, and may be a portion of one or more different routes. When numbered or named as a highway running from one point to another, it becomes a route. Brown Transp. Corp. v. Pilcher, 222 Ga. 276, 149 S.E.2d 670, 1966 Ga. LEXIS 456

(1966) (decided under former Code 1933, § 68-609).

When two routes can be same route. — Two routes cannot be the same unless the highways, the certificates of convenience and necessity, and the terminal points are the same. Brown Transp. Corp. v. Pilcher, 222 Ga. 276, 149 S.E.2d 670, 1966 Ga. LEXIS 456 (1966) (decided under former Code 1933, § 68-609).

Certificate amendment based on need expressed by single shipper. — Certificate amendment, which was sought on the basis of a need expressed by a single shipper, was properly granted since the evidence established that the proposed service would serve a useful public purpose and be responsive to a public demand or need. Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n, 194 Ga. App. 340, 390 S.E.2d 283, 1990 Ga. App. LEXIS 84, cert. vacated, 260 Ga. 470, 397 S.E.2d 709, 1990 Ga. LEXIS 374 (1990), cert. vacated, No. S90G0656, 1990 Ga. LEXIS 528 (Ga. Oct. 19, 1990) (decided under former O.C.G.A. § 46-7-7).

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, § 130 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 201, 214 et seq., 223 et seq.

ALR.

State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 A.L.R. 957.

40-1-107. Information in application.

The commissioner shall adopt rules prescribing the manner and form in which motor carriers of passengers or household goods or property shall apply for certificates required by this part. Such rules shall require that the application be in writing, under oath, and that the application:

(1) Contains full information concerning the applicant's financial condition, the equipment proposed to be used, including the size, weight, and capacity of each vehicle to be used, and other physical property of the applicant;

(2) States the complete route or routes over which the applicant desires to operate and the proposed time schedule of the operation; and

(3) Contains any such other or additional information as the commissioner may order or require.

History.

Code 1981, § 40-1-107, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-108. Transportation of persons under age 21 drinking alcohol.

Any motor carrier subject to the jurisdiction of the commissioner that

transports passengers shall comply with the provisions of Code Section 3-3-23, concerning consumption of alcoholic beverages by persons under the age of 21. The commissioner shall provide to all motor carriers, at the time of registration or renewal of a certificate, an informational packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the motor carrier.

History.
Code 1981, § 40-1-108, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-109. Fees upon initial application.

The commissioner shall collect the following one-time fees upon initial application of a motor carrier pursuant to this part:

(1) A fee of $75.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six motor vehicles;

(2) A fee of $150.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 motor vehicles;

(3) A fee of $200.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 motor vehicles;

(4) A fee of $75.00 to accompany each application for transfer of a motor carrier certificate; and

(5) A fee of $50.00 to accompany each application for intrastate temporary emergency authority under Code Section 40-1-114.

History.
Code 1981, § 40-1-109, enacted by Ga. L. 2012, p. 580, § 1/HB 865.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2012, "Code Section 40-1-114" was substituted for "Code Section 40-1-104" at the end of paragraph (5).

40-1-110. Hearing and notice of pending application.

The commissioner, upon the filing of an application for a motor carrier certificate, shall give notice of the pending application by posting the same on the department's official website for ten days. If a protest is filed with the department, the commissioner shall fix a time and place for a hearing. If no protest is filed with the department or if the protest is subsequently withdrawn, the commissioner may issue the motor carrier certificate without a hearing.

History.
Code 1981, § 40-1-110, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 10/HB 323.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-111. Limitation upon reapplication for denied applicants.

When an application for a motor carrier certificate under this part has been in whole or in part denied by the commissioner, or has been granted by the commissioner, and the order of the commissioner granting same has been quashed or set aside by a court of competent jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the department within three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order.

History.
Code 1981, § 40-1-111, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-112. Insurance requirements; joinder.

(a) No motor carrier of household goods or property or passengers shall be issued a motor carrier certificate unless there is filed with the department a certificate of insurance for such applicant or holder on forms prescribed by the commissioner evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state that provides for the protection, in case of passenger vehicles, of passengers and the public against injury proximately caused by the negligence of such motor carrier, its servants, or its agents; and, in the case of vehicles transporting household goods, to secure the owner or person entitled to recover against loss or damage to such household goods for which the motor common carrier may be legally liable. The department shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. The failure to file any form required by the department shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer.

(b) The department shall have power to permit self-insurance, in lieu of a policy of indemnity insurance, whenever in its opinion the financial ability of the motor carrier so warrants.

(c)(1) It shall be permissible under this part for any person having a cause of action arising under this part to join in the same action the motor carrier and the insurance carrier, whether arising in tort or contract, only when:

(A) One or more motor carriers related to the cause of action are insolvent or bankrupt; or

(B) Personal service, as provided in subsection (e) of Code Section 9-11-4, cannot after reasonable diligence be effected:

(i) Against the driver of the vehicle of the motor carrier giving rise to the cause of action; or

(ii) Against the motor carrier.

(2) Pursuant to paragraph (1) of this subsection, when one or more motor carriers related to the cause of action are insolvent or bankrupt, or personal service cannot after reasonable diligence be effected against the driver or motor carrier, then the insurance carrier may be joined in the action as a matter of right, without motion or order of the court, by filing an amended complaint joining the insurance carrier. The amended complaint shall be served on the insurance carrier pursuant to Code Section 9-11-4 and such insurance carrier shall file an answer with the court within 30 days of service.

(3) For purposes of paragraph (2) of this subsection, the amended complaint shall relate back to the date of filing of the original pleading.

History.

Code 1981, § 40-1-112, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 966, § 1/SB 426, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(5)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, rewrote subsection (c), which read: "It shall be permissible under this part for any person having a cause of action arising under this part to join in the same action the motor carrier and the insurance carrier, whether arising in tort or contract." See Editor's notes for applicability.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "state that provides" for "state, which policy must provide" in subsection (a).

Editor's notes.

Ga. L. 2024, p. 966, § 4/SB 426, not codified by the General Assembly, makes subsection (c) of this Code section applicable to causes of action accruing on or after July 1, 2024.

Law reviews.

For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

For annual survey on insurance law, see 69 Mercer L. Rev. 117 (2017).

For annual survey on commercial transportation, see 73 Mercer L. Rev. 47 (2021).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, § 68-612, and former O.C.G.A. §§ 46-7-12 and 46-7-58 are included in the annotations for this Code section.

Purpose of Code section. — Former Code 1933, § 68-612 did not have as the statute's purpose protecting the insured from loss, but in the protection of the public against carrier-inflicted injuries. Farley v. Continental Ins. Co., 150 Ga. App. 389, 258 S.E.2d 8, 1979 Ga. App. LEXIS 2327 (1979) (decided under former Code 1933, § 68-612).

Constitutionality. — Last sentence in subsection (e) (now subsection (c)) of former Code 1933, § 68-612 considered with the statute's context, was not a special law, but a general law applicable alike to all motor carriers and indemnity-insurance companies filing bonds and insurance policies under provisions of the act in all parts of the state, and being of such character was not violative of Ga. Const. 1976, Art. I, Sec. II, Para. VII, (Ga. Const. 1983, Art. I, Sec. II, Para. X) inhibiting passage of special laws for which provision has been made by an existing general law. Lloyds Am. v. Brown, 187 Ga. 240, 200 S.E. 292, 1938 Ga. LEXIS 783 (1938) (decided under former Code 1933, § 68-612).

Former Code 1933, § 68-612 was not void as violative of Ga. Const. 1976, Art. I, Sec. II, Para. III (Ga. Const. 1983, Art. I, Sec. II, Para. IV) or U.S. Const., art. XIV, sec. 1. Lloyds Am. v. Brown, 187 Ga. 240, 200 S.E. 292, 1938 Ga. LEXIS 783 (1938) (decided under former Code 1933, § 68-612).

Joinder of the motor carrier and the carrier's insurer or surety in the same action does not violate the equal protection or due process clauses of the Georgia Constitution. Grissom v. Gleason, 262 Ga. 374, 418 S.E.2d 27, 1992 Ga. LEXIS 560 (1992) (decided under former O.C.G.A. § 46-7-12).

Joinder provision did not violate the equal protection clause of the Constitution of the State of Georgia of 1983. Edwards v. Kessler, 262 Ga. 346, 419 S.E.2d 21, 1992 Ga. LEXIS 553 (1992) (decided under former O.C.G.A. § 46-7-58).

Any issue as to the constitutionality of former O.C.G.A. § 46-7-12 was in the exclusive jurisdiction of the Supreme Court on appeal and, in any case, could not be properly raised on appeal when the trial court did not expressly consider and rule upon the issue. Wright v. Transus, Inc., 209 Ga. App. 771, 434 S.E.2d 786 (1993), cert. denied, No. S93C1799, 1993 Ga. LEXIS 1057 (Ga. Oct. 29, 1993) (decided under former O.C.G.A. § 46-7-12).

Section must be strictly construed. — Former O.C.G.A. § 46-7-12 was in derogation of the common law and must be strictly construed. National Indem. Co. v. Tatum, 193 Ga. App. 698, 388 S.E.2d 896, 1989 Ga. App. LEXIS 1650 (1989) (decided under former O.C.G.A. § 46-7-12).

Duty to indemnify motoring public for carrier's negligence. — When an insurer purports to issue coverage to an insured which the insurer knows is a motor carrier, the insurer assumes responsibility to indemnify the motoring public for injuries sustained by virtue of the carrier's negligence in at least the minimum amount statutorily required under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-1 et seq., and up to the policy limits, notwithstanding any provisions in the insurance policy to the contrary; any negative consequences arising from noncompliance with the Act by the insured motor carrier or the insurer should be suffered by one or both of the noncompliant parties rather than by the innocent motoring public. Sapp v.

General Consideration (Cont'd)

Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644, 2011 Ga. LEXIS 160 (2011) (decided under former O.C.G.A. § 46-7-12).

Insurer's liability for unsatisfied judgment against insured. — An insurer is absolutely liable for any unsatisfied judgment which may be obtained against its insured whether or not its insured breached the conditions of the policy. Seawheels, Inc. v. Bankers & Shippers Ins. Co., 175 Ga. App. 528, 333 S.E.2d 650, 1985 Ga. App. LEXIS 2153 (1985) (decided under former O.C.G.A. § 46-7-12).

Carrier's liability for operation by lessee of truck with trailer removed. — Public policy independently intended motor carrier to bear full responsibility to public for the operation by its lessee of a "bobtailed" truck (tractor with trailer removed) which the lessee was driving on the lessee's way home. Nationwide Mut. Ins. Co. v. Holbrooks, 187 Ga. App. 706, 371 S.E.2d 252, 1988 Ga. App. LEXIS 843 (1988) (decided under former O.C.G.A. § 46-7-12).

Trial court properly denied the insurer's summary judgment motions claiming that the direct actions against the insurer were not authorized because, although it was apparent that the plain language of O.C.G.A. § 40-1-126 evinced the legislative intent that the direct action provision of O.C.G.A. § 40-1-112(c) did not apply to purely interstate commerce or to a carrier engaged exclusively in interstate commerce, and the tractor-trailer driver and the trucking company were engaged in an interstate trip at the time of the accident, the joinder of the insurer as a defendant was authorized by the direct action provision of O.C.G.A. § 40-2-140(d)(4) as that statute indicated that injured parties were able to join the insurers of interstate motor carriers. Daily Underwriters of America v. Williams, 354 Ga. App. 551, 841 S.E.2d 135, 2020 Ga. App. LEXIS 195 (2020), cert. denied, No. S20C1251, 2020 Ga. LEXIS 882 (Ga. Nov. 16, 2020).

Preemption by federal law. — Former O.C.G.A. § 46-7-12 was not preempted by 49 U.S.C. § 10927 which provided for payment of a claim by an insurer after a final judgment had been recovered against the motor carrier the insurer insures. Watkins v. H.O. Croley Granary, 555 F. Supp. 458, 1982 U.S. Dist. LEXIS 17976 (N.D. Ga. 1982) (decided under former O.C.G.A. § 46-7-12).

Liability Risk Retention Act, 15 U.S.C. § 3901 et seq., preempted Georgia's motor carrier and insurance carrier direct action statutes, O.C.G.A. §§ 40-1-112(c) and 40-2-140(d)(4), in regard to a risk retention group that was not chartered in Georgia, thus precluding injured passengers from bringing a direct action against the risk retention group. The court rejected the passengers' contention that the statutes were financial responsibility laws and not preempted under 15 U.S.C. § 3905. Reis v. OOIDA Risk Retention Group, Inc., 303 Ga. 659, 814 S.E.2d 338, 2018 Ga. LEXIS 294 (2018).

No direct action against insurer of exempt vehicle. — When an insured commercial motor vehicle was acting as a timber hauler at the time of an accident, it was not within the definition of a common carrier or contract carrier, and no direct action could be maintained against an insurer because the insurer was outside the ambit of former O.C.G.A. § 46-7-12. Smith v. Southern Gen. Ins. Co., 222 Ga. App. 582, 474 S.E.2d 745, 1996 Ga. App. LEXIS 917 (1996), cert. denied, No. S96C1976, 1997 Ga. LEXIS 114 (Ga. Jan. 17, 1997) (decided under former O.C.G.A. § 46-7-12).

Since former O.C.G.A. § 46-1-1 (9)(C)(xiv), as it existed prior to the 2002 amendment, exempted dump trucks from the definition of motor contract or common carrier, the insurer for a dump truck that was involved in a motor vehicle collision could not be subjected to a direct action. The insurer was properly dismissed from a counterclaim against the driver in the driver's personal injury action against the other driver. Morgan Driveaway, Inc. v. Canal Ins. Co., 266 Ga. App. 765, 598 S.E.2d 38, 2004 Ga. App. LEXIS 410 (2004), cert. denied, No. S04C1411, 2004 Ga. LEXIS 729 (Ga. Sept. 7, 2004) (decided under former O.C.G.A. § 46-7-12).

Medical van exempt. — Survivors of a deceased patient could not bring a direct action against a transporting van's insurer under O.C.G.A. § 40-1-112(c) of the Georgia Motor Carriers Act because the van was exempt from the motor carrier definition under O.C.G.A. § 40-1-100(12)(B)(vii): the van was used exclusively to transport individuals to receive medical care and was not capable of transporting more than 10 people, although the van had originally been designed to carry 12 people. Mornay v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 331 Ga. App. 112, 769 S.E.2d 807, 2015 Ga. App. LEXIS 111 (2015), cert. denied, No. S15C1077, 2015 Ga. LEXIS 474 (Ga. June 15, 2015).

"Actionable injury" defined. — "Actionable injury" means an injury to a person who could sue the carrier and obtain a judgment for the injuries sustained. Such definition by its nature broadly includes all third-parties injured by the negligence of the motor carrier, or by the negligence of its servants, and necessarily excludes employees of the carrier who could not sue the employer. Likewise, if the motor carrier could not be liable for a failure of agency of a particular employee in the accident in question, the insurance company may be protected thereby. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Under the laws of this state, a master is not liable for damages for the negligence of a fellow servant generally, and if a case is such that a master is so liable at common law generally, the master would not be subject to action and judgment if the carrier and employee came under the provisions of the workers' compensation law (see O.C.G.A. 34-9-1 et seq.). Combs v. Carolina Cas. Ins. Co., 90 Ga. App. 90, 82 S.E.2d 32, 1954 Ga. App. LEXIS 643 (1954) (decided under former Code 1933, § 68-612).

No "actionable injury" against motor carrier for which insurer could be held liable. — See Mathews v. Rail Express, Inc., 836 F. Supp. 873, 1993 U.S. Dist. LEXIS 15857 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-12).

Injury refers to person and loss refers to baggage or property. — In former Code 1933, § 68-612, the word "injury" seems to refer to the person, and the word "loss" to baggage or property. Laster v. Maryland Cas. Co., 46 Ga. App. 620, 168 S.E. 128, 1933 Ga. App. LEXIS 150 (1933) (decided under former Code 1933, § 68-612); LaHatte v. Walton, 53 Ga. App. 6, 184 S.E. 742, 1936 Ga. App. LEXIS 2 (1936) (decided under former Code 1933, § 68-612).

Accident on highways not prerequisite to cause of action. — Mere reference to use of Georgia highways in some sections of the Code does not mean that a person has a cause of action under former O.C.G.A. § 46-7-12 only if an injury occurs on Georgia highways. Johnson v. Woodard, 208 Ga. App. 41, 429 S.E.2d 701, 1993 Ga. App. LEXIS 426 (1993) (decided under former O.C.G.A. § 46-7-12).

Until proper notice given to commission, insurance policy effective only for benefit of public. — Commission rules can only provide that until proper notice is given to the commission, an insurance policy is effective for the benefit of the public, not the insured in cases when the policy between the insured and the insurer has lapsed. Smith v. National Union Fire Ins. Co., 127 Ga. App. 752, 195 S.E.2d 205, 1972 Ga. App. LEXIS 1015 (1972) (decided under former Code 1933, § 68-612).

Legislature's purpose in giving commission right to fix bond amount. — Legislature's purpose to obviate necessity for double litigation by giving commission right to fix the amount of the bond and to prescribe provision thereof. Laster v. Maryland Cas. Co., 46 Ga. App. 620, 168 S.E. 128, 1933 Ga. App. LEXIS 150 (1933) (decided under former Code 1933, § 68-612).

Extent of coverage under policy issued pursuant to former provisions. — Provision in a policy issued pursuant to the provisions of former Code 1933, § 68-612, that the policy covered the operation of automobiles and motor vehicles which were used only for the

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transportation of passengers for compensation purposes and operated on schedule over routes authorized by the commission covered motor vehicles not only when actually engaged in the transportation of passengers over scheduled routes, but covered such motor vehicles when used for any purpose or engaged in any act essential to the operation of the motor vehicle as a motor common carrier in the transportation of passengers for compensation over scheduled routes. American Fid. & Cas. Co. v. McWilliams, 55 Ga. App. 658, 191 S.E. 191, 1937 Ga. App. LEXIS 440 (1937) (decided under former Code 1933, § 68-612).

Evidence of policy limit. — Trial court did not abuse the court's discretion in denying appellees' motion for mistrial when counsel incorrectly asked witness about policy limit but before witness could answer opposing counsel objected; no evidence of the insurance policy limit was introduced by the unanswered question, and the trial court gave prompt curative instructions. Ashley v. Goss Bros. Trucking, 269 Ga. 449, 499 S.E.2d 638, 1998 Ga. LEXIS 519 (1998) (decided under former O.C.G.A. § 46-7-12).

Failure to list vehicle limited liability. — When the truck involved in a collision was not listed as a covered auto under an insurance policy issued by the insurer that filed a certificate of insurance for a carrier, the insurer's liability was limited to the minimum compulsory liability limits as established pursuant to former O.C.G.A. § 46-7-12, not the maximum limits of the policy. Kinard v. National Indem. Co., 225 Ga. App. 176, 483 S.E.2d 664, 1997 Ga. App. LEXIS 356 (1997), aff'd sub nom. Ross v. Stephens, 269 Ga. 266, 496 S.E.2d 705, 1998 Ga. LEXIS 284 (1998) (decided under former O.C.G.A. § 46-7-12).

Former Code 1933, § 68-612 was designed to protect strangers to motor carriers, not those who, although receiving paychecks from a lessor are involved in the operations of the carrier as if they were employees. White v. Excalibur Ins. Co., 599 F.2d 50, 1979 U.S. App. LEXIS 13071 (5th Cir.), cert. denied, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377, 1979 U.S. LEXIS 3829 (1979) (decided under former Code 1933, § 68-612).

Personnel deemed statutory employees to ensure carrier's responsibility for public safety. — Because the carrier now has both a legal right and duty to control vehicles operated for the carrier's benefit, the employees of the vehicle-lessor are deemed statutory employees of the lessee-carrier to the extent necessary to insure the carrier's responsibility for the public safety just as if the lessee-carrier were the owner of the vehicles. White v. Excalibur Ins. Co., 599 F.2d 50, 1979 U.S. App. LEXIS 13071 (5th Cir.), cert. denied, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377, 1979 U.S. LEXIS 3829 (1979) (decided under former Code 1933, § 68-612).

Contractual release and indemnity provision. — Application of the release and indemnity provision in an independent contractor agreement between a first driver and a common carrier did not violate the public policy of Georgia as it was not the purpose of former O.C.G.A. § 46-7-12, which was similar to 49 C.F.R. § 387.15, to make an insurer for a common carrier liable when a judgment could not be recovered against the carrier itself; based on the first driver's contractual relationship with the common carrier, the first driver was not a member of the general public meant to be protected by former § 46-7-12. Coleman v. B-H Transfer Co., 284 Ga. 624, 669 S.E.2d 141, 2008 Ga. LEXIS 857 (2008) (decided under former O.C.G.A. § 46-7-12).

Insurer subject to direct action by third parties injured by virtue of motor carrier's negligence. — Court of appeals erred in affirming an order granting an insurer's motion for summary judgment in the insurer's action seeking a declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver's employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the

motor carrier's negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer's status as a motor carrier and of the insurer's need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any provisions in the insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. Sapp v. Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644, 2011 Ga. LEXIS 160 (2011) (decided under former Code 1933, § 68-612).

Nature of liability of carrier and insurer. — Liability against the insurance carrier is ex contractu and the liability against (the insured) is ex delicto. The insurer and the carrier are neither joint tort-feasors nor joint contractors. Farley v. Continental Ins. Co., 150 Ga. App. 389, 258 S.E.2d 8, 1979 Ga. App. LEXIS 2327 (1979) (decided under former Code 1933, § 68-612).

Permissibility of joinder of tort and contract actions. — Former Code 1933, § 68-612 allowed the joinder of a tort action against a carrier with a contract action against the carrier's insurer-in-lieu-of-bond. The only condition precedent to the joinder of the latter was that there be a viable action against the former. Farley v. Continental Ins. Co., 150 Ga. App. 389, 258 S.E.2d 8, 1979 Ga. App. LEXIS 2327 (1979) (decided under former Code 1933, § 68-612).

Independent action on policy itself. — An action on the policy itself against the insurer of a motor carrier was cognizable as an independent suit without joinder of the motor carrier. Such a suit was an independent ex contractu action on the policy itself and was nonancillary to the ex delicto action against the motor carrier. Employers Ins. v. Dawson, 194 Ga. App. 247, 390 S.E.2d 261, 1990 Ga. App. LEXIS 21 (1990) (decided under former O.C.G.A. § 46-7-12).

Direct action not authorized when accident occurred outside state. — Former O.C.G.A. § 46-7-12 did not authorize direct causes of action when the accident giving rise to the suit occurs outside the state of Georgia. National Union Fire Ins. Co. v. Marty, 197 Ga. App. 642, 399 S.E.2d 260, 1990 Ga. App. LEXIS 1432 (1990) (decided under former O.C.G.A. § 46-7-12).

Even if underlying acts of negligence occur in Georgia, the purposes of former O.C.G.A. § 46-7-12 and the state's interest in ensuring and expediting compensation of injured parties were not implicated when the accident does not occur in the state. Liberty Mut. Ins. Co. v. Dehart, 206 Ga. App. 858, 426 S.E.2d 592, 1992 Ga. App. LEXIS 1815 (1992) (decided under former O.C.G.A. § 46-7-12).

Permissibility of direct action against insurer of interstate carrier. — When a motor common carrier held certificates of public convenience and necessity from both the Interstate Commerce Commission for operation as an interstate carrier and the Georgia Public Service Commission as an intrastate carrier, an action for damages arising from an accident occurring in the carrier's intrastate operation and proceeding upon the insurance policy filed with the Georgia Public Service Commission could be brought against the motor carrier's insurer in the first instance under former Code 1933, § 68-612. The requirement of 49 U.S.C. § 315 that final judgment first be obtained against the carrier was not applicable. Tucker v. Casualty Reciprocal Exch., 40 F. Supp. 383, 1941 U.S. Dist. LEXIS 2946 (D. Ga. 1941) (decided under former O.C.G.A. § 46-7-12).

Amendment of complaint permissible to add liability insurer as defendant. — With leave of the court, a complaint can be amended to bring in an additional defendant, a liability insurer for a defendant motor carrier when counsel did not learn that the defendant was a common carrier and required to furnish adequate security until after the discovery was commenced. Crews v.

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Blake, 52 F.R.D. 106, 1971 U.S. Dist. LEXIS 13786 (D. Ga. 1971) (decided under former Code 1933, § 68-612).

Effect on insurer of improper service on carrier. — Because the action against the insurance carrier was based on a contract with the public as the third party beneficiary of the contract and because subsection (e) of former O.C.G.A. § 46-7-12 authorized the joinder of the motor carrier and the insurer in the same action, it was error to dismiss the action against the insurer on the basis that the motor carrier was not properly served. Ellerbee v. Interstate Contract Carrier Corp., 183 Ga. App. 828, 360 S.E.2d 280, 1987 Ga. App. LEXIS 2087 (1987), overruled in part, Giles v. State Farm Mut. Ins. Co., 330 Ga. App. 314, 765 S.E.2d 413, 2014 Ga. App. LEXIS 717 (2014) (decided under former O.C.G.A. § 46-7-12).

Burden of proving vehicle exempt from definition of "motor contract carrier." — On the question of whether a carrier was a "motor contract carrier" under former O.C.G.A. § 46-1-1(8) such that the carrier's insurer was subject to the joinder provisions of subsection (e) of former O.C.G.A. § 46-7-12, the burden of proof was on the truck owner to show that the owner's truck came within the exemption from the definition of "motor contract carrier" in former § 46-1-1(8)(c) and there was no burden on plaintiffs to prove that the truck was not within the exemption. Georgia Cas. & Sur. Co. v. Jernigan, 166 Ga. App. 872, 305 S.E.2d 611, 1983 Ga. App. LEXIS 3289 (1983) (decided under former O.C.G.A. § 46-7-12).

Exemption from motor contract carrier status must be established prior to liability. — If at any time up to and including the time of the collision with plaintiff, any of the requirements for the exemption from motor contract carrier status under former § 46-1-1(8)(c) had not been met, that motor vehicle would not have been engaged "exclusively" in the transportation of exempted products and would not qualify the owner for exemption from application of former O.C.G.A. § 46-7-12. Georgia Cas. & Sur. Co. v. Jernigan, 166 Ga. App. 872, 305 S.E.2d 611, 1983 Ga. App. LEXIS 3289 (1983) (decided under former O.C.G.A. § 46-7-12).

Essential elements for allowing direct action against insurer. — Proof of filing of the insurance policy and approval by the public service commission was essential to allowing a direct action against the insurer of a motor contract carrier. Progressive Cas. Ins. Co. v. Scott, 188 Ga. App. 75, 371 S.E.2d 881, 1988 Ga. App. LEXIS 893 (1988) (decided under former O.C.G.A. § 46-7-12); Kennedy v. Georgia-Carolina Refuse & Waste Co., 739 F. Supp. 604, 1990 U.S. Dist. LEXIS 7118 (S.D. Ga. 1990). (decided under former O.C.G.A. § 46-7-12).

Step van used exclusively by the van's owner to transport its own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in former O.C.G.A. § 46-7-12. National Union Fire Ins. Co. v. Sorrow, 202 Ga. App. 517, 414 S.E.2d 731, 1992 Ga. App. LEXIS 56 (1992) (decided under former O.C.G.A. § 46-7-12).

Pleadings and Practice

1. In General

Section established independent cause of action against insurer. — In addition to a suit in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. Thomas v. Bobby Stevens Hauling Contractors, 165 Ga. App. 710, 302 S.E.2d 585, 1983 Ga. App. LEXIS 1996 (1983) (decided under former O.C.G.A. § 46-7-12).

Cause of action against insurer is in contract not tort. Gates v. L.G. DeWitt, Inc., 528 F.2d 405, 1976 U.S. App. LEXIS

12400 (5th Cir. 1976) (decided under former Code 1933, § 68-612).

Distinction between liability of common carrier and obligation of insurer to injured. — Common carrier that negligently injures a person, and the insurance company that issues the carrier an indemnity policy under the provisions of former Code 1933, § 68-612, were neither joint tortfeasors nor joint contractors, so as to bring them within the provisions of Ga. Const. 1976, Art. VI, Sec. XIV, Para. IV (see now Ga. Const. 1983, Art. VI, Sec. II, Para. IV) permitting suit to be instituted against joint obligors or joint tortfeasors in the county of either, since the liability of the carrier to the injured person arose from a tort in the commission of which the insurance company was not concerned, while the insurance company's obligation to pay the damages caused by the carrier's negligence was a contractual duty not assumed by the carrier. Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co., 92 Ga. App. 726, 89 S.E.2d 831, 1955 Ga. App. LEXIS 698 (1955) (decided under former Code 1933, § 68-612).

Venue in action when party is natural person engaged in business of common carrier. — While joinder of the carrier and insurance company in the same action was permitted by former Code 1933, § 68-612, a natural person engaged in the business of a common carrier cannot be joined with the insurance company in an action instituted elsewhere than in the county where the carrier resides. Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co., 92 Ga. App. 726, 89 S.E.2d 831, 1955 Ga. App. LEXIS 698 (1955) (decided under former Code 1933, § 68-612).

Statute of limitations commenced to run at time of commission of alleged tort. — In an action based upon the insurance contract, the statute of limitation commenced running at the time of the commission of the alleged tort, which was the basis of the insurer's contractual liability. Addington v. Ohio S. Express, Inc., 118 Ga. App. 770, 165 S.E.2d 658, 1968 Ga. App. LEXIS 1521 (1968) (decided under former Code 1933, § 68-612).

Not a special statutory proceeding. — Former Code 1933, § 68-612 was not a special statutory proceeding excluded from the purview of O.C.G.A. T. 9, C. 11. Continental Ins. Co. v. Mercer, 130 Ga. App. 339, 203 S.E.2d 297, 1973 Ga. App. LEXIS 1317 (1973) (decided under former Code 1933, § 68-612).

Effect on insurer of improper service on carrier. — Fact that an interstate motor carrier had not been properly served did not mandate that the carrier's insurer also be dismissed. Ellerbee v. Interstate Contract Carrier Corp., 183 Ga. App. 828, 360 S.E.2d 280, 1987 Ga. App. LEXIS 2087 (1987), overruled in part, Giles v. State Farm Mut. Ins. Co., 330 Ga. App. 314, 765 S.E.2d 413, 2014 Ga. App. LEXIS 717 (2014) (decided under former O.C.G.A. § 46-7-12).

2. Proof Requirements

Coverage must be proved in actions when insurer is joined; if not, no verdict and judgment can be sustained against the insurer. St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co., 116 Ga. App. 606, 158 S.E.2d 476, 1967 Ga. App. LEXIS 905 (1967) (decided under former Code 1933, § 68-612).

Sustaining of actionable injury is condition precedent to action on policy. — Sustaining of actionable injury was, under former O.C.G.A. § 46-7-12, the only condition precedent to an action on the policy. When actionable injury was alleged in an action on the policy, the terms of the statute were complied with, and the petitioner upon proper proof of the injury is entitled to recover on the policy. The cause of action was not on the tort, but on the contract by alleging the occurrence of the condition precedent required by the statute, which statute was an integral part of the contract of insurance. Great American Indem. Co. v. Vickers, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936) (decided under former Code 1933, § 68-612); Addington v. Ohio S. Express, Inc., 118 Ga. App. 770, 165 S.E.2d 658, 1968 Ga. App. LEXIS

Pleadings and Practice (Cont'd)
2. Proof Requirements (Cont'd)

1521 (1968) (decided under former Code 1933, § 68-612).

Proof required for direct action against insurer. — Proof that a policy was filed and approved by the Public Service Commission was required in order to maintain a direct action against the insurer of a contract motor carrier. Canal Ins. Co. v. Farmer, 222 Ga. App. 539, 474 S.E.2d 732, 1996 Ga. App. LEXIS 903 (1996), cert. denied, No. S96C1974, 1996 Ga. LEXIS 1147 (Ga. Nov. 22, 1996) (decided under former O.C.G.A. § 46-7-12).

In a case arising from an automobile crash, while former O.C.G.A. § 46-7-12 provided a direct action against an insurer of a common carrier, and served as a sort of surety bond to protect the public, a plaintiff's claim against the insurer of the other driver's employer failed because the plaintiff did not plead that the employer was a common carrier or that the insurer's policy had been filed with, much less approved by, the Public Service Commission. Lee v. Huttig Bldg. Prods., No. 1:04-CV-195, 2005 U.S. Dist. LEXIS 22364 (M.D. Ga. Sept. 16, 2005) (decided under former O.C.G.A. § 46-7-12).

Applicability and interstate commerce. — In an action against the driver of a tractor-trailer and the driver's insurer, when neither a bond nor an insurance policy had been filed with the commission and the driver was not registered with the commission as a motor carrier, no direct action against the insurer was allowable. Lockhart v. Southern Gen. Ins. Co., 231 Ga. App. 311, 498 S.E.2d 161, 1998 Ga. App. LEXIS 438 (1998), cert. denied, No. S98C1071, 1998 Ga. LEXIS 845 (Ga. Sept. 11, 1998) (decided under former O.C.G.A. § 46-7-12).

Direct action statute did not apply to plaintiff's cause of action because the action arose out of interstate commerce, and even if the statute had applied, the plaintiff would not have been able to prove that the Public Service Commission had approved the insurance policy, a prerequisite to a direct action under former O.C.G.A. § 46-7-12. Dundee Mills, Inc. v. John Deere Ins. Co., 248 Ga. App. 39, 545 S.E.2d 604, 2001 Ga. App. LEXIS 164 (2001) (decided under former O.C.G.A. § 46-7-12).

For recovery, necessary to show injury was caused by negligence of principal or agents. — In order to authorize a recovery in an action brought on a bond or insurance policy it would be necessary to show that the injury complained of was caused by the negligence of the principal in the bond, the principal's agents, or representatives, in the operation of the described automobile. Zachry v. City Council, 78 Ga. App. 746, 52 S.E.2d 339, 1949 Ga. App. LEXIS 971 (1949) (decided under former Code 1933, § 68-612).

Mere proof of liability coverage insufficient. — Since former O.C.G.A. § 46-7-12 created a direct pre-judgment cause of action in contract against an insurer and did not merely provide a statutory exception to the procedural prohibition against joinder of a liability insurer as a party defendant in a tort action against its insured, it follows that mere proof that the allegedly negligent tortfeasor had liability coverage was not necessarily sufficient proof of the direct cause of action against the insurer itself. Such proof would fail to show that the injured party was a third-party beneficiary who had a direct pre-judgment cause of action in contract against the insurer itself. Glenn McClendon Trucking Co. v. Williams, 183 Ga. App. 508, 359 S.E.2d 351, 1987 Ga. App. LEXIS 2037 (1987), cert. denied, 183 Ga. App. 905 (decided under former O.C.G.A. § 46-7-12).

Submission of policy limits to the jury. — Since the plaintiff in a motor collision suit against a common carrier and the carrier's insurer can prove the limits of coverage so as to sustain a judgment against the insurer without submitting the policy limits to the jury and since submission of the policy limits to the jury tended to prejudice the defendants, the Supreme Court of Georgia concluded that the objection of a defendant common carrier and the carrier's insurer to the submission of

policy limits to the jury should have been sustained. Unless it was necessary, the amount of insurance coverage should not be placed before the jury. Carolina Cas. Ins. Co. v. Davalos, 246 Ga. 746, 272 S.E.2d 702, 1980 Ga. LEXIS 1254 (1980) (decided under former Code 1933, § 68-612).

Status as "carrier." — Step van used exclusively by the van's owner to transport the owner's own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people, was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in former O.C.G.A. §§ 46-7-12 and 46-7-58. National Union Fire Ins. Co. v. Sorrow, 202 Ga. App. 517, 414 S.E.2d 731, 1992 Ga. App. LEXIS 56 (1992) (decided under former O.C.G.A. § 46-7-12).

Prescribed forms. — Summary judgment for the insurer was reversed, and the amended version of former O.C.G.A. § 46-7-12(c), requiring a common carrier to file prescribed forms evidencing insurance, was applied retroactively, permitting a direct action against the insurer by an injured party for injuries suffered in a motor vehicle accident, despite the failure to file the prescribed form evidencing the insurance policy. Devore v. Liberty Mut. Ins. Co., 257 Ga. App. 7, 570 S.E.2d 87, 2002 Ga. App. LEXIS 1438 (2002) (decided under former O.C.G.A. § 46-7-12).

3. Joinder Issues

Joint action against carrier and insurer permissible. — Person who had been injured by the alleged negligence of the driver of a motor common carrier truck can maintain a joint action at law against the motor common carrier and the indemnity company from which such motor common carrier had procured a policy of indemnity insurance, and such action was not controlled by the general rule that an action ex delicto cannot be joined with an action ex contractu. LaHatte v. Walton, 53 Ga. App. 6, 184 S.E. 742, 1936 Ga. App. LEXIS 2 (1936) (decided under Ga. L. 1929, pp. 293, 297, § 5).

Former Code 1933, § 68-612 permitted a motor carrier and the carrier's insurance company to be joined in the same action as defendants. Har-Pen Truck Lines v. Mills, 378 F.2d 705, 1967 U.S. App. LEXIS 6172 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

Responsibility of insurance carrier. — Insurer was neither a joint tortfeasor nor responsible for the carrier's negligent conduct under a theory of vicarious liability; consequently, plaintiff's attempts to impute the carrier's negligence to the insurer were improper and prejudicial, as was the argument that the jury should base the jury's award on the insurer's treatment of plaintiff independent of the collision. Myrick v. Stephanos, 220 Ga. App. 520, 472 S.E.2d 431, 1996 Ga. App. LEXIS 263 (1996) (decided under former O.C.G.A. § 46-7-12).

Joinder not required. — While former O.C.G.A. § 46-7-12 permited joinder of the carrier and the insurer in a suit by a member of the public who was injured by the negligence of a carrier, it did not require it. Griffin v. Johnson, 157 Ga. App. 657, 278 S.E.2d 422, 1981 Ga. App. LEXIS 1955 (1981) (decided under former O.C.G.A. § 46-7-12).

Purpose of joinder. — Erroneous dismissal of motor carrier's liability insurer did not entitle accident victim to a new trial on liability and damages; provision allowing joinder of insurer was not intended to enhance the value of a third party's claim for damages; plaintiff had no separate claim against a motor carrier's insurer; the purpose of permitting joinder of the insurer in a claim against the carrier was to further the policy of the former Motor Carrier Act to protect the public against injuries caused by the carrier's negligence. Andrews v. Yellow Freight Sys., 262 Ga. 476, 421 S.E.2d 712, 1992 Ga. LEXIS 898 (1992) (decided under former O.C.G.A. § 46-7-12).

Relationship to other statutes. — Insurer failed to meet the insurer's burden of showing that a company the insurer insured was not a "motor common carrier" or a "motor contract carrier" under former O.C.G.A. § 46-1-1(9)(C) when a tractor-trailer the company owned

Pleadings and Practice (Cont'd)
3. Joinder Issues (Cont'd)

was involved in an accident because, although the insurer showed that the tractor-trailer was being used to haul timber products when the accident occurred, the insurer did not show that the tractor-trailer was used exclusively for that purpose, and the trial court erred when the court granted the insurer's motion for summary judgment on plaintiff's personal injury claims. Jarrard v. Clarendon Nat'l Ins. Co., 267 Ga. App. 594, 600 S.E.2d 689, 2004 Ga. App. LEXIS 723 (2004) (decided under former O.C.G.A. § 46-7-12).

Joinder of insurer permitted but no limitation on amount of damages pled. — Former Code 1933, § 68-612 allowed the commission to fix the amount of bond or insurance coverage required of a carrier and the statute allowed a plaintiff to join as a party the insurance carrier who had issued a policy to meet the coverage requirement. However, when an insurer was joined as a party in an action against a carrier, the section did not limit the amount of damages which can be pled against the insurer to the minimum coverage required of carriers by the commission. Herring v. Rabun Trucking Co., 147 Ga. App. 713, 250 S.E.2d 167, 1978 Ga. App. LEXIS 2917 (1978) (decided under former Code 1933, § 68-612).

Existence of approved policy necessary for joinder. — Unless the applicability of former O.C.G.A. § 46-7-12 was shown by evidence of the existence of a policy issued with the approval of the Public Service Commission, the general rule, that an insurer may not be joined as a party defendant with the insurer's insured when there had been no judgment previously obtained against the insured, was applicable. Glenn McClendon Trucking Co. v. Williams, 183 Ga. App. 508, 359 S.E.2d 351, 1987 Ga. App. LEXIS 2037 (1987), cert. denied, 183 Ga. App. 905 (decided under former O.C.G.A. § 46-7-12).

Joinder for out-of-state collision. — Joinder was not prohibited merely because a collision occurred on a highway in another state. Johnson v. Woodard, 208 Ga. App. 41, 429 S.E.2d 701, 1993 Ga. App. LEXIS 426 (1993) (decided under former O.C.G.A. § 46-7-12).

Joinder of interstate carrier. — Insurer of motor carrier was joined in an action against a carrier operating under a certificate of convenience issued by the state and who was required to be, or could have been sued in Georgia. Johnson v. Woodard, 208 Ga. App. 41, 429 S.E.2d 701, 1993 Ga. App. LEXIS 426 (1993) (decided under former O.C.G.A. § 46-7-12).

When joinder of motor carrier's insurer was authorized. — In actions against a motor carrier, required by former Code 1933, § 68-612 to file such bond or insurance with the commission, joinder of the motor carrier's insurer was authorized, regardless of whether the carrier was operating in interstate or intrastate commerce at the time of the injury. Harper Motor Lines v. Roling, 218 Ga. 812, 130 S.E.2d 817, 1963 Ga. LEXIS 337 (1963) (decided under former Code 1933, § 68-612).

Effect of concession to liability. — In a suit arising from a motor vehicle accident, when an insurance company provided liability insurance coverage for a tractor-trailer unit, the insurance company was not entitled to summary judgment on the grounds that the company's admission of liability under the company's insurance contract removed the company from the purview of the direct action statutes because, once the insurance company was joined under the direct action statutes, the insurance company had to remain in the case until final judgment or until the judgment was later dismissed by the plaintiff or the court. McGill v. Am. Trucking & Transp., Ins. Co., 77 F. Supp. 3d 1261, 2015 U.S. Dist. LEXIS 3742 (N.D. Ga. 2015).

Motor carrier not exempt. — Insurer was properly joined in action against transportation company when the truck involved in the accident was registered as a motor carrier and at times hauled loads which were not exempt despite the truck's exempt cargo of produce at the time of the accident. Smith v. Commercial Transp., 220 Ga. App. 866, 470 S.E.2d 446, 1996 Ga. App. LEXIS 236 (1996), cert. denied,

No. S96C1241, 1996 Ga. LEXIS 805 (Ga. May 31, 1996), cert. denied, No. S96C1208, 1996 Ga. LEXIS 807 (Ga. May 31, 1996) (decided under former O.C.G.A. § 46-7-12).

In a wrongful death case, a motor carrier's insurer was subject to direct suit under the direct action statute, former O.C.G.A. § 46-7-12(c). The exemption for motor vehicles used exclusively to carry dairy or agricultural products, former O.C.G.A. § 46-1-1(9)(C)(x), did not apply because the insured used a tractor to haul other products besides logs, although the insured hauled logs exclusively in the weeks prior to the accident. Occidental Fire & Cas. Co. of N.C. v. Johnson, 302 Ga. App. 677, 691 S.E.2d 589, 2010 Ga. App. LEXIS 206 (2010) (decided under former O.C.G.A. § 46-7-12).

Joinder not authorized. — Truck which was engaged exclusively in the transportation of potting soil was not a "motor common carrier" and former O.C.G.A. § 46-7-12(e) did not, therefore, authorize joinder of the truck's insurer as a defendant in a suit against the insured. National Indem. Co. v. Tatum, 193 Ga. App. 698, 388 S.E.2d 896, 1989 Ga. App. LEXIS 1650 (1989) (decided under former O.C.G.A. § 46-7-12).

Truck which was engaged exclusively in the transportation of gravel, crushed stone, plant mix road material or road base materials was not a "motor common carrier" and former O.C.G.A. § 46-7-12(e) did not, therefore, afford plaintiff the right to join the truck's insurer as a defendant in a suit against the insured. Bailey v. Occidental Fire & Cas. Co., 193 Ga. App. 710, 388 S.E.2d 899, 1989 Ga. App. LEXIS 1628 (1989) (decided under former O.C.G.A. § 46-7-12).

Although former O.C.G.A. § 46-7-12 provided for joinder of an insurer when that insurer had potential liability under an insurance policy, the statute did not create a cause of action against an insurer which, under the terms of the insurer's policy, cannot be liable with respect to the accident in question. McMillon v. Empire Fire & Marine Ins. Co., 209 Ga. App. 378, 433 S.E.2d 429, 1993 Ga. App. LEXIS 894 (1993) (decided under former O.C.G.A. § 46-7-12).

When joinder of parties not permissible. — In the absence of statutory provisions to the contrary, an insurance company, issuing an ordinary indemnity policy, cannot be joined as a party defendant with a tortfeasor in order to "fix the liability" of the insurance company. Arnold v. Walton, 205 Ga. 606, 54 S.E.2d 424, 1949 Ga. LEXIS 555 (1949) (decided under former Code 1933, § 68-612).

No joinder of defendant not in privity with insurance company when carrier and company joined. — When a motor carrier and the carrier's insurance company were joined as defendants, no other defendant may be joined who was not in privity with the insurance company. Har-Pen Truck Lines v. Mills, 378 F.2d 705, 1967 U.S. App. LEXIS 6172 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

No joinder of insurer in action against carrier for injuries caused in another state. — Insurance carrier may not be joined under former Code 1933, § 68-612 as a defendant with a motor common carrier licensed to do intrastate and interstate business in an action brought in this state by a passenger on an interstate journey for personal injuries caused by the carrier's negligence in another state. Rogers v. Atlantic Greyhound Corp., 50 F. Supp. 662, 1943 U.S. Dist. LEXIS 2461 (D. Ga. 1943).

Petition not subject to dismissal on misjoinder grounds. — Petition for damages joining as defendants a common carrier for hire by motor truck, the truck's driver, and the truck's insurer, under former Code 1933, § 68-612, was not subject to demurrer (now motion to dismiss) on the ground that there was a misjoinder of parties and causes of action. Pilot Freight Carriers, Inc. v. Parks, 80 Ga. App. 137, 55 S.E.2d 746, 1949 Ga. App. LEXIS 792 (1949) (decided under former Code 1933, § 68-612).

No misjoinder when action against proper parties. — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver's employment as a driver for common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was

Pleadings and Practice (Cont'd)
3. Joinder Issues (Cont'd)

properly brought against the three named defendants, and there was no misjoinder. Atlanta-Asheville Motor Express v. Dooley, 78 Ga. App. 265, 50 S.E.2d 822, 1948 Ga. App. LEXIS 725, 1948 Ga. App. LEXIS 726 (1948) (decided under former Code 1933, § 68-612).

Construction of joinder provisions. — The 1937 amendment (Ga. L. 1937, p. 730) to the original statute must also be strictly construed, and it does not expressly or otherwise provide for the joining in one action of an action ex contractu against an insurance company and an action in tort against a third person in no way connected with the insurance company. Reeves v. McHan, 78 Ga. App. 305, 50 S.E.2d 787, 1948 Ga. App. LEXIS 733 (1948) (decided under former Code 1933, § 68-612).

4. Other Procedural Issues

Suing insurance carrier first despite policy provisions to contrary. — Insurance carrier could be sued without first obtaining judgment against common carrier notwithstanding provisions in the policy to the contrary. Maryland Cas. Co. v. Dobson, 57 Ga. App. 594, 196 S.E. 300, 1938 Ga. App. LEXIS 345 (1938) (decided under former Code 1933, § 68-612).

Bringing suit against carrier's insurer. — Member of public who was injured by negligence of motor common carrier need not obtain judgment against the carrier as condition precedent to bringing suit against carrier's insurer, any contractual agreement between the insurer and the carrier to the contrary notwithstanding. Griffin v. Johnson, 157 Ga. App. 657, 278 S.E.2d 422, 1981 Ga. App. LEXIS 1955 (1981) (decided under former O.C.G.A. § 46-7-12).

Suit against insurer did not require joinder of motor carrier. — An action on the policy itself against the insurer of a motor carrier was cognizable as an independent suit without joinder of the motor carrier. Thomas v. Bobby Stevens Hauling Contractors, 165 Ga. App. 710, 302 S.E.2d 585, 1983 Ga. App. LEXIS 1996 (1983) (decided under former O.C.G.A. § 46-7-12).

Insurer subject to action on policy by injured member of public directly. — Since bond or policy under former Code 1933, § 68-612 was given for the protection of the public, and the policy was one against liability, and since the intent and meaning of the statute permitted an action thereon jointly against the motor carrier and the surety on the bond or the insurer in the policy, the provisions of the section were read into the policy and supersede any provision therein to the contrary. Accordingly, the insurer was subject to action by an injured member of the public directly on the policy, without the necessity of first suing and obtaining judgment against the carrier. Great Am. Indem. Co. v. Durham, 54 Ga. App. 353, 187 S.E. 891, 1936 Ga. App. LEXIS 577 (1936) (decided under former Code 1933, § 68-612).

Joint or separate actions against parties. — All three parties — the driver, the carrier, and the insurance company — may be joined and any one of such parties may be sued alone and thereby bind the company for payment of eventual judgment. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Breach of policy conditions may not defeat claims when actual notice to company of actions. — Under former Code 1933, § 68-612 a breach of the policy conditions between the insured and the company, may not defeat the public third-parties claims, when there was actual notice to the company of the actions. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Insurer was absolutely liable for any unsatisfied judgment which may be obtained against the insurer's insured whether or not the insurer's insured breached the conditions of the policy. Seawheels, Inc. v. Bankers & Shippers Ins. Co., 175 Ga. App. 528, 333 S.E.2d 650,

1985 Ga. App. LEXIS 2153 (1985) (decided under former O.C.G.A. § 46-7-12).

Bond or Indemnity Insurance

Filing of bond or indemnity insurance with commissioner required. — Former Code 1933, § 68-612 required a motor common carrier to file a bond or policy of indemnity insurance with commission to protect the public against injury caused by its negligence, and permits suit against the motor carrier and the insurer in the same action. Gates v. L.G. DeWitt, Inc., 528 F.2d 405, 1976 U.S. App. LEXIS 12400 (5th Cir. 1976) (decided under former Code 1933, § 68-612).

Named insured. — Trial court properly found that a corporation was the named insured, notwithstanding the policy's identification of the named insured as an individual, doing business as a trade name, as the insurer filed a certificate of insurance with the Georgia Public Service Commission pursuant to former O.C.G.A. § 46-7-12(a) stating that the insurer had insured the corporation, doing business as the trade name. Hartford Cas. Ins. Co. v. Smith, 268 Ga. App. 224, 603 S.E.2d 298, 2004 Ga. App. LEXIS 803 (2004), cert. denied, No. S04C1893, 2004 Ga. LEXIS 862 (Ga. Sept. 27, 2004) (decided under former O.C.G.A. § 46-7-12).

Approved policy is in nature of substitute surety bond. — If the carrier's insurance policy was approved by the commission in accordance with former O.C.G.A. § 46-7-12, the policy was in the nature of a substitute surety bond, and the insurer was absolutely liable for any loss occasioned by the insurer's insured, any provisions in the policy, or in any rider attached thereto, to the contrary notwithstanding. American Motorists Ins. Co. v. King Shrimp Co., 199 Ga. App. 847, 406 S.E.2d 273, 1991 Ga. App. LEXIS 718 (1991) (decided under former O.C.G.A. § 46-7-12).

Independent cause of action against insurer. — In addition to a suit in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. Thomas v. Bobby Stevens Hauling Contractors, 165 Ga. App. 710, 302 S.E.2d 585, 1983 Ga. App. LEXIS 1996 (1983) (decided under former O.C.G.A. § 46-7-12).

Purpose of Code section. — Purposes of former Code 1933, § 68-612 were to protect the members of the public who were injured by the operation of the common carrier's vehicles and the insurance contract may not defeat this public policy by conditions to which the state and public were not a party. This was a prerequisite to doing business in this state and on the state's highways either directly or by agent employees. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Indemnity insurance policy was not for the benefit of the insured but for the sole benefit of those who may have a cause of action for damages for the negligence of the motor common carrier. Such a policy was in the nature of a substitute surety bond and created liability in the insurer regardless of the insured's breach of the conditions of the policy. Progressive Cas. Ins. Co. v. Bryant, 205 Ga. App. 164, 421 S.E.2d 329, 1992 Ga. App. LEXIS 1079 (1992), cert. denied, No. S92C1416, 1992 Ga. LEXIS 869 (Ga. Oct. 8, 1992) (decided under former O.C.G.A. § 46-7-12).

Three classes of protection. — Former Code 1933, § 68-612 was designed to protect three classes against financial liability of motor common carriers to respond in damages for the negligent conduct of the business of motor common carriers. First, motor common carriers of passengers; second, motor common carriers of freight; and third, the public (when neither the relationship of carrier and passenger or carrier and shipper exists). American Cas. Co. v. Southern Stages, 70 Ga. App. 22, 27 S.E.2d 227, 1943 Ga. App. LEXIS 225 (1943) (decided under former Code 1933, § 68-612).

Protection of public is primary purpose of requiring bond or security. — Primary purpose of requiring a bond, policy of insurance, or other

Bond or Indemnity Insurance (Cont'd)

security as a condition to the operation of public service motor vehicles for hire was for the protection of the public, by assuring those who were injured, in person or property, through the negligent operation of such vehicles, compensation for the injuries or damages sustained. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Bonds provided for are for benefit of public. — Bond or indemnity insurance was required for benefit of passengers and public; the passengers and the public being beneficiaries which the statute sought to protect and insure, the indemnity insurance policy required by former Code 1933, § 68-612 was one of insurance against liability, and not insurance against loss by common carrier. Laster v. Maryland Cas. Co., 46 Ga. App. 620, 168 S.E. 128, 1933 Ga. App. LEXIS 150 (1933); LaHatte v. Walton, 53 Ga. App. 6, 184 S.E. 742, 1936 Ga. App. LEXIS 2 (1936) (decided under former Code 1933, § 68-612).

According to the language and patent intendment of former Code 1933, § 68-612, the bonds provided for herein are solely for the benefit of those persons who by reason of the negligence of the carrier, the carrier's servants or agents, may have a cause of action for damages, such bonds being "for the benefit of and subject to action thereon by any person who shall sustain actionable injury or loss protected thereby." Great American Indem. Co. v. Vickers, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936) (decided under former Code 1933, § 68-612).

Definition of indemnity insurance policy. — Policy of insurance under former Code 1933, § 68-612 was not one of indemnity against loss as that term was generally understood; but was a direct and primary obligation to any person who shall sustain actionable injury or loss by reason of the negligence of the insured in the operation of the insured's motor vehicles insured under the policy. The sustaining of actionable injury was, under the statute, the only condition precedent to an action on the policy. Great American Indem. Co. v. Vickers, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936); Shapiro v. Aetna Cas. & Sur. Co., 234 F. Supp. 41, 1963 U.S. Dist. LEXIS 6749 (N.D. Ga. 1963), aff'd, 337 F.2d 237, 1964 U.S. App. LEXIS 4236 (5th Cir. 1964); Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Indemnity and not liability insurance required. — If the insurer issued a single policy for more than the statutory minimum, the plaintiff suing under former Code 1933, § 68-612 was not limited to a judgment against that insurer for the minimum. The insurance required by that section was indemnity insurance, not liability insurance. It would create multiple litigation to require the plaintiffs to recover from the indemnitor the statutory minimum in the initial action and file later actions for excess amounts. Herring v. Rabun Trucking Co., 147 Ga. App. 713, 250 S.E.2d 167, 1978 Ga. App. LEXIS 2917 (1978) (decided under former Code 1933, § 68-612).

Former statute referred to direct liability policy. — In spite of the use of the phrase "indemnity insurance," former Code 1933, § 68-612 referred to a direct liability policy rather than indemnity in the true sense. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968) (decided under former Code 1933, § 68-612).

Policy issued is policy of insurance against liability. — Insurance policy issued to a motor common carrier, with the approval of the commission, under the provisions of former Code 1933, § 68-612, which provided that the policy was one "for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents," was a policy of insurance against liability, any provisions in the policy, or in any rider attached

thereto, to the contrary notwithstanding, and an action may be brought upon the policy directly against the insurer by any member of the public, for the recovery of damages proximately caused by the negligence of the motor common carrier in the operation of one of the carrier's motor trucks along a public highway of this state, without first having obtained a judgment establishing liability for such negligence against the motor carrier, and without making the motor carrier a party to the action. Great Am. Indem. Co. v. Vickers, 53 Ga. App. 101, 185 S.E. 150, 1936 Ga. App. LEXIS 16, aff'd, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936) (decided under former Code 1933, § 68-612).

Extent of coverage of security bond or policy. — Security bond or policy ordinarily covers only injuries or damages which result from the careless, negligent, or improper operation of the motor carrier's vehicles. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Obligations of former Code 1933, § 68-612 clearly superseded any policy provision. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

No impairment of public's statutory rights by stipulations between parties to security contract. — Under the bond or policy, the public has statutory rights which cannot be impaired by stipulations between the immediate parties to the security contract. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Incorporation of provisions into insurance policy. — Policy with a rider upon the policy placed there by the commission pursuant to the provisions of former Code 1933, § 68-612 becomes a statutory policy, and the provisions of that section respecting the character of the policy and the liability of the parties, were read into the policy and supersede any provisions, if any, to the contrary, either in the policy or in the rider attached thereto. Great Am. Indem. Co. v. Vickers, 53 Ga. App. 101, 185 S.E. 150, 1936 Ga. App. LEXIS 16, aff'd, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936) (decided under former Code 1933, § 68-612).

Incorporation of provisions into bond filed. — Provision that the bond given by the carrier must be for the protection of the public against injuries proximately caused by the carriers' negligence, must, when the bond was approved by the commission as required by former Code 1933, § 68-612 as a condition precedent to the issuance of the certificate to the carrier, be read into the bond and become one of the provisions thereof, anything in the bond or riders attached thereto to the contrary notwithstanding. Great Am. Indem. Co. v. Vickers, 53 Ga. App. 101, 185 S.E. 150, 1936 Ga. App. LEXIS 16, aff'd, 183 Ga. 233, 188 S.E. 24, 1936 Ga. LEXIS 208 (1936) (decided under former Code 1933, § 68-612).

Bond or insurance provisions contrary to former statute without force or effect. — Bond or policy of indemnity insurance given under former Code 1933, § 68-612 must conform to its requirements, and a provision contained therein contrary to such requirements was without force and effect. Maryland Cas. Co. v. Dobson, 57 Ga. App. 594, 196 S.E. 300, 1938 Ga. App. LEXIS 345 (1938) (decided under former Code 1933, § 68-612).

Substitution of indemnity policy by carrier. — When a carrier is allowed to substitute a policy of indemnity insurance, such policy must substantially conform to all of the provisions of the statute relating to bonds. Seawheels, Inc. v. Bankers & Shippers Ins. Co., 175 Ga. App. 528, 333 S.E.2d 650, 1985 Ga. App. LEXIS 2153 (1985) (decided under former O.C.G.A. § 46-7-12).

Excess insurer should have been dismissed from driver's action against insured. — Because the excess insurer's insurance policy establishes that it provided only excess insurance to the insured, and because excess insurers were not proper parties to a plaintiff's action

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against an insured, the trial court erred when the court denied the insurer's motion to dismiss the excess insurer from the driver's suit against the insured. RLI Insurance Co. v. Duncan, 345 Ga. App. 876, 815 S.E.2d 558, 2018 Ga. App. LEXIS 294 (2018).

Legislative intent that insurer stand in shoes of motor common carrier. — It was the legislative intent in passing former Code 1933, § 68-612 that the insurer carrier was to stand in the shoes of the motor common carrier and be liable in any instance of negligence when the motor common carrier was liable. St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co., 116 Ga. App. 606, 158 S.E.2d 476, 1967 Ga. App. LEXIS 905 (1967) (decided under former Code 1933, § 68-612).

When judgment creditor may recover. — One who obtains a judgment against the insured and then seeks to enforce the judgment against the insurer occupies a like status to the insured; one derives one's rights under the policy through the insured, and one is entitled to recover under the policy only if it appears that all conditions precedent have been complied with. Commercial Union Ins. Co. v. Bradley Co., 186 Ga. App. 610, 367 S.E.2d 820, 1988 Ga. App. LEXIS 422 (1988) (decided under former O.C.G.A. § 46-7-12).

Liability of surety or insurer was joint and several with the liability of the owner or operator of the motor vehicle. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968).

Liability of insurance carrier extends to existence of relation of common carrier and passenger. — When an indemnity insurance policy was executed under the provisions of former Code 1933, § 68-612, containing the words, "resulting from the negligent operation, maintenance or use of motor vehicles," such words would not be construed to limit liability for negligence of the driver of a passenger vehicle while such vehicle was in motion only. This being a statutory provision, the provisions of the policy were superseded by the terms of the statute. The endorsement of the commission of such words in a rider attached to the policy was construed to mean that the liability of the insurance carrier extended to and included injuries received by a passenger, caused by the negligence of such motor carrier, the carrier's servants or agents, during the existence of the relation of common carrier and passenger, and until such relation was terminated in some manner provided by law. American Cas. Co. v. Southern Stages, 70 Ga. App. 22, 27 S.E.2d 227, 1943 Ga. App. LEXIS 225 (1943) (decided under former Code 1933, § 68-612).

Liability of insurance carrier not limited to negligence of carrier only when vehicle in motion. — Former Code 1933, § 68-612 nowhere provided that the liability of the insurance carrier be limited to the negligence of the motor common carrier, the carrier's servants or agents, only when the vehicle was in motion. American Cas. Co. v. Southern Stages, 70 Ga. App. 22, 27 S.E.2d 227, 1943 Ga. App. LEXIS 225 (1943) (decided under former Code 1933, § 68-612).

No insurance required for carrier's vehicles while being used outside employment. — Plain reading of the statute will not support a holding that a carrier must provide individual liability coverage for the carrier's servants or agents while those agents are operating the carrier's vehicles outside the scope of their employment. Great W. Cas. Co. v. Norris, 734 F.2d 697, 1984 U.S. App. LEXIS 21431 (11th Cir. 1984) (decided under former O.C.G.A. § 46-7-12).

Liability of insurance carrier on policy is ancillary to that of common carrier. — While the "cause of action" (or statement of a claim) was not on the tort, nevertheless, the tort constituted the real cause of action, and the liability of the insurance carrier on the carrier's policy, issued as required by law, was merely ancillary to that of the common carrier. Addington v. Ohio S. Express, Inc., 118 Ga. App. 770, 165 S.E.2d 658, 1968 Ga.

App. LEXIS 1521 (1968) (decided under former Code 1933, § 68-612).

Insurance carrier may not contract for less liability than imposed by statute. — Under former Code 1933, § 68-612, it was the legislative intent that the insurance carrier was to stand in the shoes of the motor common carrier of passengers and be liable to the passenger in any instance of negligence when the motor common carrier was liable. The statute nowhere remotely expressed or implied that when an insurance carrier undertook for hire to stand sponsor for the negligent acts of a motor common carrier of passengers under the general law governing this relationship such insurance carrier may contract for a less liability than that which the statute imposed upon the motor common carrier itself. To give the statute such a construction would be to render the statute subservient to the conditions of the insurance policy and not the insurance policy subservient to the provisions of the statute. American Cas. Co. v. Southern Stages, 70 Ga. App. 22, 27 S.E.2d 227, 1943 Ga. App. LEXIS 225 (1943) (decided under former Code 1933, § 68-612).

Nothing in former Code 1933, § 68-612 limited direct liability of insurer of carrier, when joined as a defendant in an action against a carrier to the minimum bond or insurance coverage required of carriers by the commission. Herring v. Rabun Trucking Co., 147 Ga. App. 713, 250 S.E.2d 167, 1978 Ga. App. LEXIS 2917 (1978) (decided under former Code 1933, § 68-612).

No liability of insurer when insured carrier not liable. — It was not the purpose of former Code 1933, § 68-612 to make an insurance company, which had issued the carrier a policy of indemnity insurance in lieu of a bond, liable when the insured carrier itself was not liable. Robbins v. Liberty Mut. Ins. Co., 113 Ga. App. 393, 148 S.E.2d 172, 1966 Ga. App. LEXIS 1077 (1966) (decided under former Code 1933, § 68-612).

No actionable injury established as a result of insured's indemnification. — In a negligence suit arising from a tractor trailer collision, a trial court erred by failing to grant summary judgment to a transfer company's insurer because an indemnity agreement between the suing driver and the transfer company made it impossible for the suing driver to obtain a judgment against the transfer company; therefore, there was no actionable injury, pursuant to former O.C.G.A. § 46-7-12, for which the transfer company's insurer could be held liable. Coleman v. B-H Transfer Co., 290 Ga. App. 503, 659 S.E.2d 880, 2008 Ga. App. LEXIS 359, aff'd, 284 Ga. 624, 669 S.E.2d 141, 2008 Ga. LEXIS 857 (2008) (decided under former O.C.G.A. § 46-7-12).

Liability probably does not extend to punitive damages. — Liability under former Code 1933, § 68-612 would probably not extend to punitive damages. As a factual probability, attorneys fees would logically fall into the same classification as being uncollectible from the company. Spicer v. American Home Assurance Co., 292 F. Supp. 27, 1967 U.S. Dist. LEXIS 9243 (N.D. Ga. 1967), aff'd, 402 F.2d 988, 1968 U.S. App. LEXIS 4908 (5th Cir. 1968) (decided under former Code 1933, § 68-612).

Duty of issuer of liability surety bond. — Liability surety bond, when not supplanted by an insurance policy, was similar to a motor vehicle liability insurance policy in that the bond also provides protection to the general public for damage to person or property arising from negligent acts or omissions of the motor carrier for whom it was issued. The issuer of the bond was obligated to provide the minimum no-fault coverage afforded under former O.C.G.A. § 33-34-4, notwithstanding any provisions of the contract or bond. Homick v. American Cas. Co., 202 Ga. App. 831, 415 S.E.2d 669, 1992 Ga. App. LEXIS 192 (1992), cert. denied, No. S92C0669, 1992 Ga. LEXIS 309 (Ga. Apr. 6, 1992) (decided under former O.C.G.A. § 46-7-12).

Liability of insurance carrier limited. — Liability of an insurer of a motor common carrier for an actionable loss caused by a vehicle not specifically described in the insurance policy was limited to the minimum limits established by rule of the commission. Ross v. Stephens, 269 Ga. 266, 496 S.E.2d 705,

Bond or Indemnity Insurance (Cont'd)

1998 Ga. LEXIS 284 (1998) (decided under former O.C.G.A. § 46-7-12).

Bond or indemnity insurance. — Minimum compulsory liability limits established by a rule of the Public Service Commission were applicable to personal injury claims asserted by passengers in a tractor-trailer, when the passengers sought recovery up to minimum limits of $100,000/$300,000 as established by the rule; the claims were not subject to the lower limits established by former O.C.G.A. § 40-9-2(5)(A) (see now O.C.G.A. § 33-7-11(a)(1)(A)), even though the tractor-trailer was a freight carrier and not a passenger carrier. Guinn Transp. v. Canal Ins. Co., 234 Ga. App. 235, 507 S.E.2d 144, 1998 Ga. App. LEXIS 1125 (1998), cert. denied, No. S99C0026, 1999 Ga. LEXIS 85 (Ga. Jan. 15, 1999), cert. denied, No. S99C0030, 1999 Ga. LEXIS 84 (Ga. Jan. 15, 1999) (decided under former O.C.G.A. § 46-7-12).

Notice of cancellation. — When a Form E endorsement filed with the Georgia Public Service Commission provided that an insurance company had issued the insurer's insured an insurance policy and the policy lapsed before an incident giving rise to liability on the part of the insured and before proper notice of cancellation was given to the Commission, the insurer's liability to a third party injured by the insured was based on the policy itself as opposed to liability based on the minimum coverage imposed by law. Progressive Preferred Ins. Co. v. Ramirez, 277 Ga. 392, 588 S.E.2d 751, 2003 Ga. LEXIS 1004 (2003) (decided under former O.C.G.A. § 46-7-12).

Failure to file notice of cancellation. — Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former O.C.G.A. § 46-7-3 to operate as a carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. Kolencik v. Stratford Ins. Co., No. 1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-12).

If state court lacked jurisdiction over declaratory issues, it should transfer to superior court. — In an injured driver's action against a motor carrier and its insurer in a county's state court, in which the insurer filed a counterclaim and cross-claim for a declaratory judgment as to its duties and obligations under the insurance policy, if the state court determined that it lacked jurisdiction over questions raised in the insurer's motion for summary judgment, it was error to deny summary judgment, and the state court should instead have transferred the action to the superior court pursuant to Ga. Unif. Transfer R. T-4. Nat'l Indem. Co. v. Lariscy, 352 Ga. App. 446, 835 S.E.2d 307, 2019 Ga. App. LEXIS 586 (2019).

Interstate Carriers

Section applicable to interstate carriers. — Subsection (e) of former O.C.G.A. § 46-7-12 applied to interstate as well as intrastate carriers; thus, a motorist injured in an accident with a tractor trailer owned by a motor carrier engaged solely in interstate commerce could maintain a direct action against the insurer of the motor carrier. Williams v. Southern Drayage, Inc., 213 Ga. App. 895, 446 S.E.2d 758, 1994 Ga. App. LEXIS 802 (1994), cert. denied, No. S94C1706, 1994 Ga. LEXIS 1135 (Ga. Oct. 28, 1994) (decided under former Code 1933, § 68-612).

Carrier registered with the Public Service Commission was not exempt from subsection (e) of former O.C.G.A. § 46-7-12 simply because it engaged only in interstate commerce. Additionally, the federal law did not preempt the Georgia definition of motor carrier for purposes of a personal injury action against the carrier. Xpress Cargo Sys. v. McMath, 225 Ga. App. 32, 481 S.E.2d 885, 1997 Ga. App. LEXIS 227 (1997), cert. denied, No.

S97C0954, 1997 Ga. LEXIS 567 (Ga. May 30, 1997) (decided under former O.C.G.A. § 46-7-12).

Section inapplicable to causes arising out of interstate commerce. — Although former O.C.G.A. § 46-7-12 authorized a shipper to bring a direct action against the insurer who provided liability coverage to a motor common carrier, the section did not apply to a cause of action which arose out of interstate commerce. Commercial Union Ins. Co. v. Bradley Co., 186 Ga. App. 610, 367 S.E.2d 820, 1988 Ga. App. LEXIS 422 (1988) (decided under former O.C.G.A. § 46-7-12).

No conflict with congressional regulation of motor carriers. — Former Code 1933, § 68-612 did not conflict with congressional regulation of motor carriers engaged in interstate commerce, but was a reasonable and valid requirement imposed upon those who seek to do an intrastate motor carrier business in Georgia. Acme Freight Lines v. Blackmon, 131 F.2d 62, 1942 U.S. App. LEXIS 4863 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

Federal Aviation Administration Authorization Act did not preempt statute. — Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c), prohibited a state from enacting or enforcing a law or regulation related to "a price, route, or service" of any motor carrier, but did not invalidate insurance requirements imposed by the statute and Public Service Commission Rule 1-8-1-.01 as the act did not restrict a state's authority to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements. Driskell v. Empire Fire & Marine Ins. Co., 249 Ga. App. 56, 547 S.E.2d 360, 2001 Ga. App. LEXIS 393 (2001), cert. denied, No. S01C1101, 2001 Ga. LEXIS 712 (Ga. Sept. 7, 2001) (decided under former O.C.G.A. § 46-7-12).

Section designed to protect public. — Former Code 1933, § 68-612 was designed to protect the "public" whose safety may be endangered by the carrier's operations as distinguished from those having an interstate relationship. It cannot be assumed that the state attempted to enact legislation having an extraterritorial effect by applying to interstate passengers and cargoes. Rogers v. Atlantic Greyhound Corp., 50 F. Supp. 662, 1943 U.S. Dist. LEXIS 2461 (D. Ga. 1943) (decided under former O.C.G.A. § 46-7-12).

Provision allowing for direct actions against insurance carriers applied to interstate carriers. — Proper interpretation of the provision in former Code 1933, § 68-612, allowing for direct actions against insurance carriers, was that the statute applied to interstate carriers as well as intrastate carriers. Kimberly v. Bankers & Shippers Ins. Co., 490 F. Supp. 93, 1980 U.S. Dist. LEXIS 13109 (N.D. Ga. 1980) (decided under former Code 1933, § 68-612).

Persons injured by negligence of carrier were entitled to rely upon required protection of Code section. — When people were injured upon the highways of this state by the negligence of a carrier, the individuals were properly entitled to rely upon the protection required by former Code 1933, § 68-612, and this was true whether the particular vehicle was at the time of the accident engaged in interstate or intrastate commerce. Acme Freight Lines v. Blackmon, 131 F.2d 62, 1942 U.S. App. LEXIS 4863 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-612, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Purpose of Code section. — It was the purpose of former Code 1933, § 68-612 to protect the public against injury which may be caused by the negligence of the motor common carrier, the carrier's servants or agents. 1948-49

Ga. Op. Att'y Gen. 585 (decided under former Code 1933, § 68-612).

Commission had discretion concerning bond or indemnity insurance. — Former Code 1933, § 68-612 placed a discretion in the commission as to whether or not a bond or a policy of indemnity insurance shall be required of carriers coming under its jurisdiction. 1948-49 Ga. Op. Att'y Gen. 585 (decided under former Code 1933, § 68-612).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 223 et seq., 286.

ALR.

Validity of municipal ordinance requiring indemnity insurance as condition of operating taxicab, 95 A.L.R. 1224.

Territorial coverage of motor carrier's public liability policy required by statute or ordinance as coextensive with area of authorized operation, 154 A.L.R. 520.

Liability of motor carrier for injuries to passengers from accident occasioned by blowout or other failure of tire, 44 A.L.R.2d 835.

Owning, leasing, or otherwise engaging in business of furnishing services for taxicabs as basis of tort liability for acts of taxi driver under respondeat superior doctrine, 8 A.L.R.3d 818.

40-1-113. Transportation contracts limiting liability.

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

(1) "Motor carrier transportation contract" means a contract, agreement, or understanding covering:

(A) The transportation of property for compensation or hire by the motor carrier;

(B) Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

(C) A service incidental to activity described in subparagraph (A) or (B) of this paragraph, including, but not limited to, storage of property.

Such term shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(2) "Promisee" means the person promising to provide transportation of property and any agents, employees, servants, or independent contractors who are directly responsible to such person but shall not include a motor carrier party to a motor carrier transportation contract with such person and such motor carrier's agents, employees, servants, or independent contractors directly responsible to such motor carrier.

(b) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

History.

Code 1981, § 40-1-113, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(6)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "Motor carrier transportation contract" in the undesignated text at the end of paragraph (a)(1).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 46-7-12.1, are included in the annotations for this Code section.

Failure to obtain permit had no impact on status as motor carrier of property. — Motor carrier's noncompliance with the carrier's responsibility to obtain a permit had no impact on the carrier's status as a Georgia "motor carrier of property" under former paragraph (8) of O.C.G.A. § 46-1-1 because while the failure to get a permit rendered the motor carrier in violation of the Act, that failure did not render the motor carrier any less a "motor carrier of property" under applicable law. Sapp v. Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644, 2011 Ga. LEXIS 160 (2011) (decided under former O.C.G.A. § 46-7-12.1).

Policy triggers coverage, not technical filings with state. — Insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence, notwithstanding the carrier's failure to file a certificate of insurance as required under the Act; the statute was a clear expression of the legislature's intent to prevent insurers from insulating themselves from liability under the Motor Carrier Act by failing to comply with the Act's technical requirements, and the insurer's duty to the public stems from the Act as triggered through the insurance policy rather than from the insurer's filings with the state. Sapp v. Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644, 2011 Ga. LEXIS 160 (2011) (decided under former O.C.G.A. § 46-7-12.1).

Insurer's attempt to reduce or negate obligations invalid. — Court of appeals erred in affirming an order granting an insurer's motion for summary judgment in the insurer's action seeking a declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver's employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer's status as a motor carrier and of the insurer's need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any

provisions in the insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. Sapp v. Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644, 2011 Ga. LEXIS 160 (2011) (decided under former O.C.G.A. § 46-7-12.1).

40-1-114. Temporary emergency motor carrier authority.

Notwithstanding any other provision of law to the contrary, in order to authorize the provision of passenger or household goods service for which there is an immediate and urgent need to a point or points, or within a territory, with respect to which there is no motor carrier service capable of meeting such need, upon receipt of an application for temporary emergency authority and upon payment of the appropriate fee as fixed by statute, the department may, in its discretion and without a hearing or other prior proceeding, grant to any person temporary motor carrier authority for such service. The order granting such authority shall contain the department's findings supporting its determination that there is an unmet immediate and urgent need for such service and shall contain such conditions as the commissioner finds necessary with respect to such authority. Emergency temporary motor carrier authority, unless suspended or revoked for good cause within such period, shall be valid for such time as the department shall specify but not for more than an aggregate of 30 days. Such authority shall in no case be renewed and shall create no presumption that corresponding permanent authority will be granted thereafter, except that, where a motor carrier granted temporary emergency motor carrier authority under the provisions of this Code section makes application during the period of said temporary emergency authority for permanent motor carrier authority corresponding to that authorized in its temporary emergency authority, the temporary emergency motor carrier authority will be extended to the finalization of the permanent authority application unless sooner suspended or revoked for good cause within the extended period.

History.
Code 1981, § 40-1-114, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-611.1 are included in the annotations for this Code section.

Prior application for certificate of public necessity not required. — Applicant for this authority is not required to first make application for certificate of public convenience and necessity. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

Commission need not issue certificate of public necessity. — Commission need not issue certificate of

public convenience and necessity to applicant for temporary authority. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

Construction with former provisions. — Temporary emergency authority granted under former Code 1933, § 68-611.1 (see former O.C.G.A. § 46-7-13) was exception to general requirement of former Code 1933, § 68-604 (see former O.C.G.A. § 46-7-3) that no motor common carrier can operate without first obtaining a certificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

40-1-115. Notice of discontinuance of route.

A motor carrier of passengers may discontinue its entire service on any route upon 30 days' published notice to be prescribed by the department, and thereupon its certificate therefor shall be canceled. A motor carrier of passengers may discontinue any part of its service on any route upon 30 days' published notice, subject, however, to the right of the department to withdraw its certificate for such route if, in the opinion of the commissioner, such diminished service is not adequate or is no longer compatible with the public interest.

History.
Code 1981, § 40-1-115, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-116. Local taxation prohibited.

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a motor carrier to operate equipment, or on the equipment, or on any incidents of the business of a motor carrier.

History.
Code 1981, § 40-1-116, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

Law reviews.
For article, "Commercial Transportation," see 74 Mercer L. Rev. 51 (2022).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, Ga. L. 1931, p. 199, § 18, former Code 1933, § 68-623, and former O.C.G.A. §§ 46-7-15 and 46-7-60, are included in the annotations for this Code section.

This Code section not violative of constitutional rights. — Former Code 1933, § 68-623 did not violate Ga. Const. 1976, Art. I, Sec. I, Para. I and Art. I, Sec. II, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I; Art. I, Sec. I, Para. II), which declared that protection to person and property was the paramount duty of government and shall be impartial and complete, and no person shall be deprived of life, liberty, or property, except by due process of law. City of Albany v. Ader, 176 Ga. 391, 168 S.E. 1, 1933 Ga. LEXIS 85 (1933) (decided under former Code 1933, § 68-623); Mayor of Savannah v. V.C. Ellington Co., 177 Ga. 149, 170 S.E. 38, 1933 Ga. LEXIS 134 (1933) (decided under former Code 1933, § 68-623).

Former Code 1933, § 68-623 was not

unconstitutional on grounds that the statute referred to more than one subject matter or contained matter different from what was expressed in the statute's title. City of Albany v. Ader, 176 Ga. 391, 168 S.E. 1, 1933 Ga. LEXIS 85 (1933) (decided under former Code 1933, § 68-623); Mayor of Savannah v. V.C. Ellington Co., 177 Ga. 149, 170 S.E. 38, 1933 Ga. LEXIS 134 (1933) (decided under former Code 1933, § 68-623); V.C. Ellington Co. v. City of Macon, 177 Ga. 541, 170 S.E. 813, 1933 Ga. LEXIS 352 (1933) (decided under former Code 1933, § 68-623).

Collection of taxes from limousine company. — Trial court's grant of summary judgment to the Georgia Department of Revenue on a limousine company's petition for a refund and declaration was upheld as no part of the Georgia Limousine Carrier Act, including O.C.G.A. § 40-1-168, barred the imposition and collection of state or local-option sales taxes from for-hire car services such as the limousine company for the rental of its limousines or cars. Exec. Limousine Transp., Inc. v. Curry, 361 Ga. App. 626, 865 S.E.2d 217, 2021 Ga. App. LEXIS 522 (2021).

Private and common carriers for hire covered. — Former Code 1933, § 68-623 applied to both private carriers for hire and common carriers for hire, and a municipal road-use tax on these motor carriers was void. Mayor of Savannah v. V.C. Ellington Co., 177 Ga. 149, 170 S.E. 38, 1933 Ga. LEXIS 134 (1933) (decided under former Code 1933, § 68-623).

Reasonable classification exempts producer from prescribed fee. — Language "So long as the title remains in the producer" limited the operation of the statutory exemption to such an extent that the only property in the class mentioned which was exempted was property where the "title remains in the producer." This was a reasonable classification in favor of the producer, which will enable movement of the products over the highways so long as title remains in the producer without exaction of the prescribed fee. Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm'n, 179 Ga. 431, 176 S.E. 487, 1934 Ga. LEXIS 301 (1934), aff'd, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439, 1935 U.S. LEXIS 1114 (1935) (decided under Ga. L. 1931, p. 199, § 18).

Annual license fee not unreasonable or oppressive. — As the annual license fee was for the privilege for a use as extensive as the carrier wills that it shall be, there was nothing unreasonable or oppressive in the burden so imposed. Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm'n, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439, 1935 U.S. LEXIS 1114 (1935) (decided under Ga. L. 1931, p. 199, § 18).

Exemption from municipal taxation covers incidents of carrier business. — Former Code 1933, § 68-623 set up an exemption of a motor common carrier from municipal taxation, not only on the carrier's equipment and the right to operate the equipment, but also on "any incidents of said motor carrier business." Acme Freight Lines v. City of Vidalia, 193 Ga. 334, 18 S.E.2d 540, 1942 Ga. LEXIS 386 (1942) (decided under former Code 1933, § 68-623).

"Incidents" of the business of a motor common carrier did not mean those things without which the business cannot be carried on. Such would be more properly classified as the business itself, rather than an incident thereof. Acme Freight Lines v. City of Vidalia, 193 Ga. 334, 18 S.E.2d 540, 1942 Ga. LEXIS 386 (1942) (decided under former Code 1933, § 68-623).

Incident of the business of a motor common carrier of freight would be something naturally associated as pertinent to such transportation and necessarily dependent upon it, but without which the business of transportation might nevertheless be carried on, i.e., the incidental operation would be necessarily dependent upon the transportation, but the business of transportation would not be necessarily dependent upon the incidental operation. Acme Freight Lines v. City of Vidalia, 193 Ga. 334, 18 S.E.2d 540, 1942 Ga. LEXIS 386 (1942) (decided under Ga. L. 1931, p. 199, § 18).

Operation of service is incident of carrier's business within statute. — Operation by a motor common carrier, at a municipality lying on the carrier's route,

of a truck to pick up and deliver freight which was to be or had been shipped from or to patrons at such municipality, was an incident of the carrier's business of transporting freight, within former Code 1933, § 68-623, and by virtue of that section it was exempt from local taxation. Acme Freight Lines v. City of Vidalia, 193 Ga. 334, 18 S.E.2d 540, 1942 Ga. LEXIS 386 (1942) (decided under former Code 1933, § 68-623).

Operation of motor common carrier in and around municipality not exempt. — Operation of a motor common carrier in and immediately around a municipality lying on the carrier's route of a pick-up and delivery service of freight that had been shipped or was to be shipped to or by patrons at the municipality, was a service, within the classification of an incident of the business of a motor common carrier, and the operation cannot be termed "local draying," such as was exempted from the operation of Ga. L. 1931, pp. 197 and 207, and to which the exemption from local taxation, under former Code 1933, § 68-602, would not apply. Acme Freight Lines v. City of Vidalia, 193 Ga. 334, 18 S.E.2d 540, 1942 Ga. LEXIS 386 (1942) (decided under former Code 1933, § 68-602).

City tax ordinance held invalid. — Taxing ordinance of city was invalid because it was in conflict with former Code 1933, § 68-623, it being evident that the General Assembly's purpose was to reserve to the state the exclusive right to tax common carrier. City of Albany v. Ader, 176 Ga. 391, 168 S.E. 1, 1933 Ga. LEXIS 85 (1933) (decided under former Code 1933, § 68-623).

City without power to pass tax ordinance contrary to statute. — In view of the provisions of subsection (d) of former Code 1933, § 68-623, the mayor and council of the City of Atlanta were without power to pass an ordinance imposing an occupational license tax of $300.00 for the operation of a bus terminal. Southeastern Greyhound Lines v. City of Atlanta, 177 Ga. 181, 170 S.E. 43, 1933 Ga. LEXIS 142 (1933) (decided under former Code 1933, § 68-623).

Entire municipal ordinance fails when repugnant to statute. — When a municipal corporation attempted to lay a charge indifferently against motor common carriers and motor carriers for hire other than common carriers for the use of the municipality's streets by such carriers, and the portion of the ordinance relating to common carriers was invalid because the ordinance was repugnant to state law, the entire ordinance will necessarily fail, since the objectionable portion as to common carriers was so connected with the general legislative scheme that, if it should be stricken out, effect could not be given to the intention of the mayor and council in adopting the ordinance. V.C. Ellington Co. v. City of Macon, 177 Ga. 541, 170 S.E. 813, 1933 Ga. LEXIS 352 (1933) (decided under former Code 1933, § 68-623).

Control of state over streets and highways of entire commonwealth is paramount and supreme. — Municipal ordinances which conflict with legislative enactments must yield to the superior authority of the state. Silence on the part of the state, while the state may concede for the time being to municipalities the control and regulation of the streets and highways within the corporate limits of a municipality, was no bar to the exercise of the supreme authority whenever the state sees fit, by legislative enactment, to exercise authority and control. Mayor of Savannah v. V.C. Ellington Co., 177 Ga. 149, 170 S.E. 38, 1933 Ga. LEXIS 134 (1933) (decided under Ga. L. 1931, p. 199, § 18).

"Highway" construed. — Word "highways" as used in former Code 1933, § 68-623 included streets. Southeastern Greyhound Lines v. City of Atlanta, 177 Ga. 181, 170 S.E. 43, 1933 Ga. LEXIS 142 (1933) (decided under Ga. L. 1931, p. 199, § 18).

Fees charged are in nature of tax for use of highways. — Fees charged motor carriers for certificate of public convenience and necessity and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use of the highways for the purpose of gain. Southern Motorways, Inc. v. Perry, 39 F.2d 145, 1930 U.S. Dist. LEXIS 1936 (D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

No right of interstate carrier to use highway without paying. — Interstate carrier had no better right than any other

to use the state's improved highway without the state's consent, or without paying for the use. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900, 1931 U.S. Dist. LEXIS 1197 (D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Regulation of use or roads by state. — State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from the roads' common uses and purposes to the carrier's business. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900, 1931 U.S. Dist. LEXIS 1197 (D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-518, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Lessor exempt from purchasing tags for vehicles leased to postal service. — Lessors relieved of liability of purchasing registration tags for vehicles leased to postal service, when said leases are longer than 30 days duration and the postal service has exclusive use of the vehicles during the lease periods; when the lessors regain the use of vehicles on the termination of the leases or before their termination, they will again be responsible for the purchase of registration tags for the vehicles. 1974 Op. Att'y Gen. No. U74-16 (decided under former Code 1933, § 68-518).

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, §§ 300, 305, 313.

ALR.

State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

40-1-117. Registered agents of nonresident motor carrier; service; venue and exclusions; covered farm vehicles.

(a) Each nonresident motor carrier shall, before any certificate or permit is issued to it under this part or at the time of registering as required by Code Section 40-2-140, designate and maintain in this state an agent or agents upon whom may be served all summonses or other lawful processes in any action or proceeding against such motor carrier growing out of its carrier operations; and service of process upon or acceptance or acknowledgment of such service by any such agent shall have the same legal force and validity as if duly served upon such nonresident carrier personally. Such designation shall be in writing, shall give the name and address of such agent or agents, and shall be filed in the office of the state revenue commissioner. Upon failure of any nonresident motor carrier to file such designation with the state revenue commissioner or to maintain such an agent in this state at the address given, such nonresident carrier shall be conclusively deemed to have designated the Secretary of State and his or her successors in office as such agent; and service of process upon or acceptance or acknowledgment of such service by the Secretary of State shall have the

same legal force and validity as if duly served upon such nonresident carrier personally, provided that notice of such service and a copy of the process are immediately sent by registered or certified mail or statutory overnight delivery, return receipt requested, by the Secretary of State or his or her successor in office to such nonresident carrier, if its address be known. Service of such process upon the Secretary of State shall be made by delivering to his or her office two copies of such process with a fee of $10.00.

(b) Except in those cases where the Constitution requires otherwise, any action against any resident or nonresident motor carrier for damages by reason of any breach of duty, whether contractual or otherwise, or for any violation of this article or of any order, decision, rule, regulation, direction, demand, or other requirement established by the state revenue commissioner may be brought in the county where the cause of action or some part thereof arose; and if the motor carrier or its agent shall not be found for service in the county where the action is instituted, a second original may be issued and service be made in any other county where the service can be made upon the motor carrier or its agent. The venue prescribed by this Code section shall be cumulative of any other venue provided by law.

(c) Except in those cases where the Constitution requires otherwise, for the purposes of venue only, any truck engaged exclusively in the transportation of agricultural or dairy products, or both, between farm, market, gin, warehouse, or mill shall not be classified as a motor common or contract carrier.

(d)(1) As used in this subsection, the term "covered farm vehicle" means a motor vehicle with a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,000 pounds or less; or a motor vehicle with a gross vehicle weight rating or gross vehicle weight that is greater than 26,000 pounds and which is traveling within the registered state or within 150 miles of the farm or ranch for which it is used. To qualify as a covered farm vehicle either type of motor vehicle listed in this paragraph must also be:

(A) Registered in this or another state;

(B) Operated by a farmer, rancher, or tenant under a crop share farm lease agreement or a family member or employee of a farmer, rancher, or crop share tenant;

(C) Used primarily for the transportation of farm supplies, crops, livestock, or farm machinery; and

(D) Not used in a for hire motor carrier operation; provided, however, that this requirement shall not apply to a motor vehicle operated under a tenant crop share agreement used primarily for transporting crops of the landlord.

(2) A covered farm vehicle is not a motor carrier; provided, however, that any motor vehicle required by federal law to be designated as either a covered farm vehicle or a motor carrier shall be so designated as required by federal law.

(3) A covered farm vehicle must be equipped with either a license plate or possess such other special designation issued by the state where such vehicle is registered and the license plate or special designation must indicate that such vehicle is a covered farm vehicle.

History.

Code 1981, § 40-1-117, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, §§ 11, 12/HB 323.

Editor's notes.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date; provided, however, that Section 12 of this Act shall not be effective until January 1, 2014."

Law reviews.

For annual survey on business associations, see 70 Mercer L. Rev. 19 (2018).

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

For annual survey on commercial transportation: a two-year survey, see 71 Mercer L. Rev. 39 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-618 and former O.C.G.A. §§ 46-7-17 and 46-7-62 are included in the annotations for this Code section.

Strict construction. — Former Code 1933, § 68-618, being in derogation of the common law, will not be extended beyond the mode fixed by the legislature and shall be strictly and literally construed. Norris Candy Co. v. Dixie Hwy. Express, Inc., 102 Ga. App. 665, 117 S.E.2d 250, 1960 Ga. App. LEXIS 712 (1960) (decided under former Code 1933, § 68-618).

The provisions of former Code 1933, § 68-618 as to service on nonresident motor carriers were in derogation of common law and were to be strictly construed. Record Truck Line v. Harrison, 109 Ga. App. 653, 137 S.E.2d 65, 1964 Ga. App. LEXIS 947, aff'd, 220 Ga. 289, 138 S.E.2d 578, 1964 Ga. LEXIS 526 (1964) (decided under former Code 1933, § 68-618).

Former Code 1933, § 68-618, being in derogation of common-law and granting extraterritorial jurisdiction, must be strictly construed. Taylor v. Jones, 123 Ga. App. 476, 181 S.E.2d 506, 1971 Ga. App. LEXIS 1269 (1971) (decided under former Code 1933, § 68-618).

Code section was not mandatory. — Former Code 1933, § 68-618 was not to be construed as mandatory as respected the venue of a tort action against a motor common carrier being in the county in which the cause of action originated. De Loach v. Southeastern Greyhound Lines, 49 Ga. App. 662, 176 S.E. 518, 1934 Ga. App. LEXIS 524 (1934) (decided under former Code 1933, § 68-618).

Applicability of former subsection (a). — Provisions of subsection (a) of former Code 1933, § 68-618 were applicable only to those situations in which the cause of action arose out of the carrier's operations in this state. Record Truck Line v. Harrison, 110 Ga. App. 520, 139 S.E.2d 153, 1964 Ga. App. LEXIS 688 (1964) (decided under former Code 1933, § 68-618); Mathews v. Rail Express, Inc., 836 F. Supp. 873, 1993 U.S. Dist. LEXIS 15857 (N.D. Ga. 1993). (decided under former O.C.G.A. § 46-7-17).

Venue of personal injury action. — Even though a nonresident interstate

motor common carrier was registered in Georgia and had a registered agent for service of process, venue of a personal injury action against the carrier and nonresident driver was proper only in the county in which the accident occurred, not where the carrier's registered office was maintained. Southern Drayage, Inc. v. Williams, 216 Ga. App. 721, 455 S.E.2d 418, 1995 Ga. App. LEXIS 241 (1995) (decided under former O.C.G.A. § 46-7-17).

Payment of money determines applicability of subsection (a). — In determining whether an entity is a "motor contract or common carrier" such that the substituted service provisions of subsection (a) of former O.C.G.A. §§ 46-7-17 and 46-7-62(a) applied, the inquiry must focus on the payment of money for the transportation of the goods or people. Ellerbee v. Interstate Contract Carrier Corp., 183 Ga. App. 828, 360 S.E.2d 280, 1987 Ga. App. LEXIS 2087 (1987), overruled in part, Giles v. State Farm Mut. Ins. Co., 330 Ga. App. 314, 765 S.E.2d 413, 2014 Ga. App. LEXIS 717 (2014) (decided under former O.C.G.A. § 46-7-17).

Language refers to carrier operations upon highways of this state. — When the words "motor common carrier" were used in subsection (a) of former Code 1933, § 68-618, the words referred to motor common carriers using the public highways of this state; and in providing that such nonresident motor common carrier shall designate an agent for service in this state upon whom service may be perfected "in any action or proceeding against such motor common carrier growing out of its carrier operations," it necessarily referred to carrier operations upon the highways of this state. Record Truck Line v. Harrison, 220 Ga. 289, 138 S.E.2d 578, 1964 Ga. LEXIS 526 (1964) (decided under former Code 1933, § 68-618).

Out-of-state accident. — Georgia court had no personal jurisdiction over a trucking company licensed in Georgia as a nonresident motor common carrier, where it was undisputed that the traffic accident involving the trucking company occurred outside the State of Georgia. Tuck v. Cummins Trucking Co., 171 Ga. App. 485, 320 S.E.2d 265, 1984 Ga. App. LEXIS 2246 (1984) (decided under former O.C.G.A. § 46-7-62); Mathews v. Rail Express, Inc., 836 F. Supp. 873, 1993 U.S. Dist. LEXIS 15857 (N.D. Ga. 1993). (decided under former O.C.G.A. § 46-7-62).

Burden of proving vehicle exempt from definition of "motor contract carrier." — On the question of whether a carrier was a "motor contract carrier" subject to suit in the county of the accident pursuant to subsection (b) of former O.C.G.A. § 46-7-62 the burden of proof was on the truck owner to show that its truck came within the exemption from the definition of "motor contract carrier" found in former O.C.G.A. § 46-1-1(8)(c) and there was no burden on plaintiffs to prove that the truck was not within the exemption. Georgia Cas. & Sur. Co. v. Jernigan, 166 Ga. App. 872, 305 S.E.2d 611, 1983 Ga. App. LEXIS 3289 (1983) (decided under former O.C.G.A. § 46-7-62).

Venue provision is permissive and cumulative. — Former Code 1933, § 68-618 did not make mandatory the bringing of such action against a motor common carrier in the county where the cause of action originated, but was purely permissive and cumulative. Harrison v. Neel Gap Bus Line, 51 Ga. App. 120, 179 S.E. 871, 1935 Ga. App. LEXIS 592 (1935) (decided under former Code 1933, § 68-618).

Venue provision inapplicable to vehicles of state or political subdivision. — In action against county hospital authority and ambulance driver by automobile accident victim, the hospital authority was exempt from the venue provision of former O.C.G.A. § 46-7-17 under the exemption provided for vehicles operated by any state or subdivision thereof in former O.C.G.A. § 46-1-1(7)(C)(viii). Calhoun County Hosp. Auth. v. Walker, 205 Ga. App. 259, 421 S.E.2d 777, 1992 Ga. App. LEXIS 1122 (1992), cert. denied, No. S92C1467, 1992 Ga. LEXIS 885 (Ga. Oct. 16, 1992) (decided under former O.C.G.A. § 46-7-17).

Not all venue options applicable to nonresident carrier. — Last sentence of subsection (b) of former O.C.G.A.

§ 46-7-17 did not mean that any and all venue provisions relative to an action against an insurer were applicable, at the election of the plaintiff, in a tort action against a motor carrier. What the sentence did mean was that the statute's venue provisions were not exclusive with regard to a suit against a motor carrier and that venue can be predicated upon any statute which was otherwise applicable. Thomas v. Bobby Stevens Hauling Contractors, 165 Ga. App. 710, 302 S.E.2d 585, 1983 Ga. App. LEXIS 1996 (1983) (decided under former O.C.G.A. § 46-7-17).

Venue in action arising out of transaction in this state against nonresident carrier. — It was provided that an action against a nonresident motor common carrier may be brought in the county where the cause of action or some part thereof arose, this did not have the effect of restricting or limiting the venue in that respect; this provision contemplated an action arising out of a transaction in this state, but even then it did not require that the action be brought in the county where it arose. Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18, 1979 Ga. App. LEXIS 2167 (1979) (decided under former Code 1933, § 68-618).

Venue proper in county of registered office. — In an action against a trucking company, venue was proper in the county in which the company had the company's office properly registered with the secretary of state, not in the county of residence of the company's designated registered agent for service of process. Rock v. Ready Trucking, Inc., 218 Ga. App. 774, 463 S.E.2d 355, 1995 Ga. App. LEXIS 879 (1995), cert. denied, No. S96C0254, 1996 Ga. LEXIS 271 (Ga. Jan. 26, 1996) (decided under former O.C.G.A. § 46-7-17).

Residence of foreign carrier where cause of action originated. — Foreign motor common carrier, engaged in the business of trucking, hauling, and transporting freight over the various public highways within the state, and having designated a resident agent upon whom service of process can be made, under the clear mandate of former Code 1933, § 68-618, was, so far as the right to sue was concerned, a resident of this state, and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county was concerned. Southeastern Truck Lines v. Rann, 214 Ga. 813, 108 S.E.2d 561, 1959 Ga. LEXIS 355 (1959) (decided under former Code 1933, § 68-618).

Alternative venue for actions against carriers. — Under former Code 1933, § 68-618, a motor carrier "may be" sued in the county where the cause of action originated or may be sued in the county where the carrier maintained the carrier's principal office and place of business, and this was so, regardless of whether the motor carrier had an agent in the jurisdiction wherein the cause of action originated. Modern Coach Corp. v. Faver, 87 Ga. App. 221, 73 S.E.2d 497, 1952 Ga. App. LEXIS 654 (1952).

Permissible venue in county where cause of action originated despite residence of defendants. — Motor common carrier may be a nonresident corporation, yet since the carrier is engaged in doing business in this state, and has agents in the state for that purpose, the carrier is a resident of this state and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county is concerned, and, being a resident of that county for the purpose of an action, a joint tort feasor, notwithstanding that the joint tort feasor may reside in another county of this state, may be sued jointly with the motor common carrier in the county in which the cause of action originated. A.G. Boone Co. v. Owens, 51 Ga. App. 739, 181 S.E. 519, 1935 Ga. App. LEXIS 455 (1935) (decided under former Code 1933, § 68-618).

A joint cause of action against a motor common carrier, which is a domestic corporation, against the carrier's servant and employee, and against the insurance carrier of the motor common carrier, a nonresident corporation with an agent for service in this state, for damages alleged to have been sustained by the negligent

operation of the motor vehicle of the motor common carrier, may be brought in the county wherein the cause of action originated, although none of the defendants were residents of such county or have agents therein. Atlanta-Asheville Motor Express v. Dooley, 78 Ga. App. 265, 50 S.E.2d 822, 1948 Ga. App. LEXIS 725, 1948 Ga. App. LEXIS 726 (1948) (decided under former Code 1933, § 68-618).

In a wrongful death action based on a motor vehicle accident, the state court of one county erred in denying the plaintiff's motion to remand the case to another county because the general provision for venue for a defendant corporation provided that a plaintiff could file certain causes of action against a corporation in the county where a plaintiff's cause of action originated; if there was a separate basis for venue, the plain language of the general provision precluded a corporation from removing the case to the county where its principal place of business was located; and the Georgia Motor Carrier Act, O.C.G.A. § 40-1-50, et seq., supplied an independent basis for venue against a motor carrier in the county where the cause of action or some part thereof arose. Blakemore v. Dirt Movers, Inc., 344 Ga. App. 238, 809 S.E.2d 827, 2018 Ga. App. LEXIS 11 (2018), cert. denied, No. S18C0731, 2018 Ga. LEXIS 469 (Ga. Aug. 2, 2018).

Lack of agent in county where action originated does not preclude venue therein. — Action against a motor common carrier, except when the Constitution of this state otherwise provides, may be brought and maintained in any county in this state in which the cause of action originated, for damages for an injury to person or property by the operation of the vehicles of such motor common carrier, although the carrier may not have an agent in that county upon whom service of the suit may be perfected. A.G. Boone Co. v. Owens, 51 Ga. App. 739, 181 S.E. 519, 1935 Ga. App. LEXIS 455 (1935) (decided under former Code 1933, § 68-618).

Same venue principles applicable to carriers as to railroad companies. — Under former Code 1933, § 94-1101, a joint and several action can be brought against a railroad company and another tort feasor, and as against the railroad company and the company's employee, a conductor or engineer, and the suit can be brought in the county where the cause of action originated and service perfected by second original, and this was true even though neither defendant resided or had an agent in that county; the same principle was applicable to a suit against a motor common carrier and the driver of the carrier's motor vehicle for a tort. Atlanta-Asheville Motor Express v. Dooley, 78 Ga. App. 265, 50 S.E.2d 822, 1948 Ga. App. LEXIS 725, 1948 Ga. App. LEXIS 726 (1948) (decided under former Code 1933, § 68-618).

Venue as to nonresidents. — Venue of action against nonresidents may be maintained under Ga. L. 1959, p. 120, § 1 (see now O.C.G.A. § 40-12-3) as well as former Code 1933, § 68-618. Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18, 1979 Ga. App. LEXIS 2167 (1979) (decided under former Code 1933, § 68-618).

Conferring of qualified residence upon nonresident motor carrier. — Former Code 1933, § 68-514 controlled qualified residence upon nonresident motor contract carrier for purposes of action such that a resident joint tortfeasor may be joined in an action against it in the county where the injury occurred although the joint tortfeasor was a nonresident of such county, and although the defendant corporation had no office or place of doing business therein. Pate v. Brock, 95 Ga. App. 594, 98 S.E.2d 404, 1957 Ga. App. LEXIS 864 (1957) (decided under former Code 1933, § 68-514).

No misjoinder when proper action brought against parties. — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver's employment as a driver for a common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was properly brought against the three named defendants, and there was no misjoinder. Atlanta-Asheville Motor Express v. Dooley, 78 Ga. App. 265, 50 S.E.2d 822, 1948 Ga. App. LEXIS 725, 1948 Ga. App.

LEXIS 726 (1948) (decided under former Code 1933, § 68-514).

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, § 287. 14 Am. Jur. 2d, Carriers, §§ 595, 1130.

C.J.S.

61 C.J.S., Motor Vehicles, §§ 1127 et seq., 1158, 1159.

ALR.

State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

Constitutionality of statutes which permit action against trucking or bus company for injury to person or property to be brought in any county through or into which the route passes, and providing for the service of process in such cases, 81 A.L.R. 777.

40-1-118. Establishment of rates, fares, and charges for transportation of household goods.

The commissioner shall prescribe just and reasonable rates, fares, and charges for transportation by motor carriers of household goods and for all services rendered by motor carriers in connection therewith. The tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the department may prescribe. Such tariffs shall also be subject to change on such notice and in such manner as the department may prescribe. In order to carry out the purposes of this Code section, including the publication and maintenance of just, reasonable, and nondiscriminatory rates and charges, the department shall establish a rate-making procedure for all carriers of household goods. Failure on the part of any motor carrier to comply with this Code section or the rules and regulations promulgated under this Code section may result in suspension or cancellation of said carrier's operating authority by the department.

History.

Code 1981, § 40-1-118, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-614 and former O.C.G.A. §§ 46-7-18 and 46-7-19 are included in the annotations for this Code section.

Collective ratemaking activities by "rate bureaus" immune from antitrust liability. — Collective ratemaking activities carried on by "rate bureaus" composed of motor common carriers operating in several states, although not compelled by the states involved, "clearly articulated state policy" and thus were immune from antitrust liability. Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36, 1985 U.S. LEXIS 196 (1985) (decided under former O.C.G.A. § 46-7-18).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, §§ 157, 158.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 214 et seq., 223 et seq.

40-1-119. Charges by motor carriers; unjust discrimination by carriers prohibited.

No motor carrier of household goods or passengers shall charge, demand, collect, or receive a greater or lesser or different compensation for the transportation of household goods or passengers or for any service rendered in connection therewith than the rates, fares, and charges prescribed or approved by order of the department; nor shall any such motor carrier unjustly discriminate against any person in its rates, fares, or charges for service. The commissioner may prescribe, by general order, to what persons motor carriers of passengers may issue passes or free transportation; may prescribe reduced rates for special occasions; and may fix and prescribe rates and schedules.

History.
Code 1981, § 40-1-119, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 13/HB 323.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-120. Size and rates for passenger baggage.

Motor carriers of passengers shall not be compelled to carry baggage of passengers, except hand baggage, the character, amount, and size of which the motor carrier may limit by its rules and regulations, subject to the approval of the department; and the department may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor carrier shall elect to carry the personal baggage of passengers, other than hand baggage, the department shall prescribe just and reasonable rates therefor and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor.

History.
Code 1981, § 40-1-120, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions,

decisions under former Code 1933, § 68-617 are included in the annotations for this Code section.

Ignorance of commission rules no excuse. — Rules of the commission made pursuant to former Code 1933, § 68-617 were presumed to be known or ascertainable by the public, and ignorance thereof excused no one. Myers v. Atlantic Greyhound Lines, 52 Ga. App. 698, 184 S.E. 414, 1936 Ga. App. LEXIS 228 (1936) (decided under former Code 1933, § 68-617).

RESEARCH REFERENCES

Am. Jur. 2d.
14 Am. Jur. 2d, Carriers, §§ 1181, 1232, 1248 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 291.

40-1-121. Inspection of books and records.

The department shall prescribe the books and the forms of accounts to be kept by the holders of certificates under this part, which books and accounts shall be preserved for such reasonable time as may be prescribed by the department. The books and records of every certificate holder shall be at all times open to the inspection of any agent of the department for such purpose. The department shall have the power to examine the books and records of all motor carriers to whom it has granted certificates or permits to operate under this part and to examine under oath the officers and agents of any motor carrier with respect thereto.

History.
Code 1981, § 40-1-121, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, §§ 31, 43, 91, 112, 113.

C.J.S.
60 C.J.S., Motor Vehicles, § 125 et seq.

ALR.
State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

40-1-122. Observing laws; schedule of operation.

Motor carriers shall observe the laws of this state in respect to size, weight, and speed of their vehicles. Intrastate motor carriers of passengers shall, and interstate motor carriers of passengers may, file with the department the schedules upon which they propose to operate their vehicles, which schedules shall be such that the net running time of vehicles between terminal points shall not exceed the lawful speed limit; and any motor carrier of passengers filing such a schedule shall be allowed to operate his or her vehicles on the highway at a rate of

speed not exceeding the lawful speed limit in order to maintain a schedule so filed.

History.
Code 1981, § 40-1-122, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-634 are included in the annotations for this Code section.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, §§ 263, 265, 267, 284.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 28 et seq., 47, 48, 111 et seq., 153 et seq., 162, 166.
ALR.
State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.
Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway, 134 A.L.R. 550.

40-1-123. Enjoining operation of motor carriers.

Any motor carrier which operates on the public highways of this state without the required certificate or permit, or after such certificate or permit has been canceled, or without having registered its vehicle or vehicles as provided for in this part or which operates otherwise than is permitted by the terms of such certificate or permit or the laws of this state may be enjoined from operating on the public highways of this state upon the bringing of a civil action by the department, by a competing motor carrier or rail carrier, or by any individual.

History.
Code 1981, § 40-1-123, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(7)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

40-1-124. Perpetual franchise over public highways prohibited.

Nothing in this part or any other law shall be construed to vest in the owner, holder, or assignee of any certificate or permit issued under this part any vested right to use the public highways of this state and shall not be construed to give to any motor carrier any perpetual franchise over such public highways.

History.
Code 1981, § 40-1-124, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-631 are included in the annotations for this Code section.

No certificate holder acquires vested right or perpetual franchise. — No holder of a certificate of public convenience and necessity issued by the commission shall acquire any vested right to use the public roads or any perpetual franchises. Bass v. Georgia Public-Service Comm'n, 192 Ga. 106, 14 S.E.2d 740, 1941 Ga. LEXIS 430 (1941) (decided under former Code 1933, § 68-631).

No right to review of commission order by writ of certiorari. — After a certificate of public convenience and necessity had been granted by the commission to a motor common carrier, and thereafter, by order of the commission, and after a hearing such certificate was revoked and canceled because the evidence adduced at such hearing showed that such motor common carrier had abandoned the passenger service along the route in question, the motor common carrier, whose certificate of public convenience had thus been revoked and canceled by the commission did not have the right to review such judgment or order of the commission by the writ of certiorari in the superior court having jurisdiction. Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n, 181 Ga. 75, 181 S.E. 834, 1935 Ga. LEXIS 30 (1935) (decided under former Code 1933, § 68-631).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d., Carriers, §§ 125 et seq., 148, 149, 151.

40-1-125. Hearing upon suspension or revocation of motor carrier certificate; judicial review.

(a) Upon issuance by the commissioner of an order suspending or revoking a motor carrier certificate, such motor carrier shall be afforded a hearing to be held in accordance with the procedures set forth in Code Section 40-1-56.

(b) Any person whose motor carrier certificate has been suspended or revoked and who has exhausted all administrative remedies available within the Department of Public Safety is entitled to judicial review in accordance with Code Section 40-1-56.

History.
Code 1981, § 40-1-125, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-126. Carriers engaged in interstate and intrastate commerce.

In circumstances where a motor carrier is engaged in both interstate

and intrastate commerce, it shall nevertheless be subject to all the provisions of this part so far as it separately relates to commerce carried on exclusively in this state. It is not intended that the department shall have the power of regulating the interstate commerce of such motor carrier, except to the extent expressly authorized by this part as to such commerce. The provisions of this part do not apply to purely interstate commerce nor to carriers exclusively engaged in interstate commerce. When a motor carrier is engaged in both intrastate and interstate commerce, it shall be subject to all the provisions of this part so far as they separately relate to commerce carried on in this state.

History.

Code 1981, § 40-1-126, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

Law reviews.

For annual survey on insurance law, see 69 Mercer L. Rev. 117 (2017).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-633 and former O.C.G.A. § 46-7-36 are included in the annotations for this Code section.

Direct action against insurers of interstate carriers allowed. — Proper interpretation of the provision in former Code 1933, § 68-612 allowing for direct actions against insurance carriers, in conjunction with former Code 1933, § 68-633, was that the statute applied to interstate carriers as well as intrastate carriers. Kimberly v. Bankers & Shippers Ins. Co., 490 F. Supp. 93, 1980 U.S. Dist. LEXIS 13109 (N.D. Ga. 1980) (decided under former Code 1933, § 68-633).

Direct action against carrier's insurer not authorized. — Trial court properly denied the insurer's summary judgment motions claiming that the direct actions against it were not authorized because, although it was apparent that the plain language of O.C.G.A. § 40-1-126 evinced the legislative intent that the direct action provision of O.C.G.A. § 40-1-112(c) did not apply to purely interstate commerce or to a carrier engaged exclusively in interstate commerce, and the tractor-trailer driver and the trucking company were engaged in an interstate trip at the time of the accident, the joinder of the insurer as a defendant was authorized by the direct action provision of O.C.G.A. § 40-2-140(d)(4) as that statute indicated that injured parties were able to join the insurers of interstate motor carriers. Daily Underwriters of America v. Williams, 354 Ga. App. 551, 841 S.E.2d 135, 2020 Ga. App. LEXIS 195 (2020), cert. denied, No. S20C1251, 2020 Ga. LEXIS 882 (Ga. Nov. 16, 2020).

Cause of action for tort occurring out-of-state. — Since, under former O.C.G.A. § 46-7-16(e), a certificate and bond or insurance was not required at all when carrier was engaged solely in interstate commerce over the public highways of Georgia, the certificate of convenience which permitted joinder of the insurer in a suit against a carrier "subject to action" in Georgia applied specifically to causes of action for a tort which occurred on public highways of other states. Johnson v. Woodard, 208 Ga. App. 41, 429 S.E.2d 701, 1993 Ga. App. LEXIS 426 (1993) (decided under former O.C.G.A. § 46-7-36).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Carriers, § 36 et seq.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 201 et seq., 206 et seq., 226.
ALR.
State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 A.L.R. 230; 49 A.L.R. 1203; 62 A.L.R. 52; 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

40-1-127. Actions for recovery of overcharges; rates, charges, and claims for loss or damage.

(a) All actions at law against motor carriers operating in this state, which actions seek to recover overcharges accruing on intrastate shipments, shall be initiated within a period of three years after the time the cause of action accrues, and not thereafter, provided that, if a claim for the overcharge is presented in writing to the carrier within the three-year period of limitation, the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim or any part thereof.

(b) A motor carrier of property may, upon notice to the commissioner, elect to be subject to the following requirements regarding rates, charges, and claims for loss or damage:

(1) A motor carrier of property shall provide to the shipper, upon request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate agreed to between the shipper and carrier may have been based. When the applicability or reasonableness of the rates and related provisions billed by a carrier is challenged by the person paying the freight charges, the commissioner shall determine whether such rates and provisions are reasonable or applicable based on the record before it. In cases where a carrier other than a carrier providing transportation of household goods seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the commissioner determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the original bill in order to have the right to collect such charges;

(2) If a shipper seeks to contest the charges originally billed by a motor carrier of property, the shipper may request that the commissioner determine whether the charges originally billed must be paid. A shipper must contest the original bill within 180 days in order to have the right to contest such charges; and

(3) Claims for loss of or damage to property for which any motor

carrier of property may be liable must be filed within nine months after the delivery of the property, except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed.

(c) The commissioner shall adopt rules regarding rates, charges, and claims for loss or damage applicable to carriers of household goods.

History.
Code 1981, § 40-1-127, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(8)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "commissioner," for "commissioner of public safety," in subsection (b) and substituted "commissioner" for "commissioner of public safety" throughout paragraphs (b)(1) and (b)(2) and subsection (c).

40-1-128. Accepting or receiving rebates or drawbacks; prima-facie evidence of intentional violation; burden of claiming exception.

(a) Any officer, agent, or employee of any corporation, and any other person, who knowingly accepts or receives any rebate or drawback from the rates, fares, or charges established or approved by the department for motor carriers of passengers or household goods, or who procures, aids, or abets therein, or who uses or accepts from such motor carrier any free pass or free transportation not authorized or permitted by law or by the orders, rules, or regulations of the department, or who procures, aids, or abets therein, shall be guilty of a misdemeanor.

(b) The possession of goods, wares, or merchandise loaded on a motor vehicle consigned to any person, firm, or corporation, being transported or having been transported over the public highways in this state, without the authority of a permit or certificate for so transporting having been issued by the department under this article, shall be prima-facie evidence that such transportation of such goods, wares, or merchandise was an intentional violation of the law regulating the transportation of persons and property over the public highways in this state.

(c) Any person claiming the benefit of any exception made in this article shall have the burden of proving that he or she falls within the exception.

History.
Code 1981, § 40-1-128, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-38 are included in the annotations for this Code section.

Intent of Code sections prescribing penalties for violations of laws concerning motor common and contract carriers. — Former O.C.G.A. § 46-7-38 and O.C.G.A. §§ 32-1-10, 32-6-23 and 32-6-24 were intended to promote the safety of the traveling public and protect the public's investment in public roads and highways. 1981 Op. Att'y Gen. No. U81-17 (decided under former O.C.G.A. § 46-7-38).

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-128 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, § 285. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S.

13 C.J.S., Carriers, §§ 312, 314, 315, 325, 334. 61A C.J.S., Motor Vehicles, § 1504 et seq.

40-1-129. Fines for violating certificate requirement; advertising services without certificate prohibited.

(a) Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person, firm, or corporation is operating as a household goods carrier for hire without a valid certificate issued by the department or is holding itself out as such a carrier without such a certificate in violation of this part, the department may impose a fine of not more than $5,000.00 for each violation. The department may assess the person, firm, or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the department. The department may also assess interest at the rate specified in Code Section 40-1-56 on any fine or assessment imposed, to commence on the day the fine or assessment becomes delinquent. All fines, assessments, and interest collected by the department shall be paid into the general fund of the state treasury. Any party aggrieved by a decision of the department under this subsection may seek judicial review as provided in Code Section 40-1-56.

(b) Any person, firm, or corporation who knowingly and willfully issues, publishes, or affixes or causes or permits the issuance, publishing, or affixing of any oral or written advertisement, broadcast, or other holding out to the public, or any portion thereof, that the person, firm, or corporation is in operation as a household goods carrier for hire without having a valid certificate issued by the department is guilty of a misdemeanor. Any fine or assessment imposed by the department pursuant to the provisions of subsection (a) of this Code section shall

not bar criminal prosecution pursuant to the provisions of this subsection.

History.
Code 1981, § 40-1-129, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-129 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-130. Inclusion of motor carrier authorization number in advertising.

In any advertisement for a motor carrier, whether by print, radio, television, other broadcast, or electronic media including but not limited to Internet advertising and any listing or sites on any website, the motor carrier shall include the motor carrier authorization number issued to it by the Department of Public Safety. The requirements of this Code section shall not apply to nonconsensual towing motor carriers providing services pursuant to Code Section 44-1-13. The department shall be required to issue a motor carrier authorization number to each registered motor carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than $500.00 for an initial violation and not more than $15,000.00 for a second or subsequent violation.

History.
Code 1981, § 40-1-130, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

PART 3

GEORGIA LIMOUSINE CARRIERS

40-1-150. Short title.

This part shall be known and may be cited as the "Georgia Limousine Carrier Act."

History.
Code 1981, § 40-1-150, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Collection of state or local-option sales taxes. — Trial court's grant of summary judgment to the Georgia Department of Revenue on a limousine

company's petition for a refund and declaration was upheld as no part of the Georgia Limousine Carrier Act, including O.C.G.A. § 40-1-168, barred the imposition and collection of state or local-option sales taxes from for-hire car services such as the limousine company for the rental of its limousines or cars. Exec. Limousine Transp., Inc. v. Curry, 361 Ga. App. 626, 865 S.E.2d 217, 2021 Ga. App. LEXIS 522 (2021).

40-1-151. Definitions.

As used in this part, the term:

(1) "Certificate" or "limousine carrier certificate" means a certificate issued by the department for the operation of limousines or limousine services under this part and such certificates issued by the Public Service Commission on or before June 30, 2012.

(2) "Chauffeur" means any person with a Georgia state driver's license who meets the qualifications as prescribed in this part and who is authorized by the commissioner of driver services to drive a motor vehicle of a limousine carrier.

(3) "Department" means the Department of Public Safety.

(4) "Limousine" means any motor vehicle that meets the manufacturer's specifications for a luxury limousine with a designed seating capacity for no more than ten passengers and with a minimum of five seats located behind the operator of the vehicle, and which does not have a door at the rear of the vehicle designed to allow passenger entry or exit; further, no vehicle shall be permitted to be operated both as a taxicab and a limousine.

(5) "Limousine carrier" means any person owning or operating a prearranged service regularly rendered to the public by furnishing transportation as a motor carrier for hire, not over fixed routes, by means of one or more unmetered:

(A) Limousines;

(B) Extended limousines;

(C) Sedans;

(D) Extended sedans;

(E) Sport utility vehicles;

(F) Extended sport utility vehicles;

(G) Other vehicles with a capacity for seating and transporting no more than 15 persons for hire including the driver; or

(H) Any combination of subparagraphs (A) through (G) of this paragraph on the basis of telephone contract or written contract. A limousine carrier shall not use per capita rates or charges.

(6) "Person" means any individual, firm, partnership, private or public corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(7) "Public highway" means every public street, road, highway, or thoroughfare of any kind in this state.

(8) "Vehicle" or "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner.

History.
Code 1981, § 40-1-151, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 14/HB 323; Ga. L. 2024, p. 1052, § 4(9)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "as provided in paragraph (5) of this Code section" from the end of paragraph (2).

Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-152. Operation in accordance with article; certificate required.

(a) No limousine carrier shall operate any motor vehicle owned or operated by a limousine carrier for the transportation of passengers for compensation on any public highway in this state except in accordance with the provisions of this article.

(b) No person may engage in the business of a limousine carrier over any public highway in this state without first having obtained from the department a certificate to do so.

History.
Code 1981, § 40-1-152, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-153. Application form and requirements; issuance standards for certificate.

(a) The department shall prescribe the form of the application for a limousine carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its judgment, be necessary and may establish fees as part of such certificate process.

(b) A limousine carrier certificate shall be issued to any qualified applicant, provided that such applicant is a limousine carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle.

History.
Code 1981, § 40-1-153, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-154. Compliance with Code Section 40-1-8.

Limousine carriers shall comply with the applicable provisions of Code Section 40-1-8.

History.
Code 1981, § 40-1-154, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2016, p. 767, § 1/SB 320.

40-1-155. Transferring or encumbering certificates.

No limousine carrier certificate issued under this part may be leased, assigned, or otherwise transferred or encumbered unless authorized by the department.

History.
Code 1981, § 40-1-155, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-156. Grounds for cancellation, revocation, or suspension of limousine carrier certificate.

(a) The department may cancel, revoke, or suspend any limousine carrier certificate issued under this part on any of the following grounds:

(1) The violation of any of the provisions of this part;

(2) The violation of an order, decision, rule, regulation, or requirement established by the department;

(3) Failure of a limousine carrier to pay a fee imposed on the carrier within the time required by law or by the department;

(4) Failure of a limousine carrier to maintain required insurance in full force and effect; and

(5) Failure of a limousine carrier to operate and perform reasonable services.

(b) After the cancellation or revocation of a certificate or during the period of its suspension, it is unlawful for a limousine carrier to conduct any operations as such a carrier.

History.
Code 1981, § 40-1-156, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-157. Validity of certificates.

Limousine certificates shall be valid unless suspended, revoked, or canceled by the commissioner, or surrendered to the commissioner by the holder.

History.
Code 1981, § 40-1-157, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.

40-1-158. For-hire license endorsement or private background check certification required.

Pursuant to rules and regulations prescribed by the commissioner of driver services, each chauffeur employed by a limousine carrier shall secure from the Department of Driver Services a for-hire license endorsement or private background check certification pursuant to Code Section 40-5-39.

History.
Code 1981, § 40-1-158, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2015, p. 1262, § 2/HB 225.

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

40-1-159. Application fees.

The commissioner shall collect the following one-time fees upon initial application of a limousine carrier pursuant to this part:

(1) A fee of $75.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six limousines;

(2) A fee of $150.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 limousines;

(3) A fee of $200.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 limousines; and

(4) A fee of $75.00 to accompany each application for transfer of a certificate.

History.
Code 1981, § 40-1-159, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, are included in the annotations for this Code section.

Fees charged are in nature of tax. — Fees charged motor carriers for certificate of public convenience and necessity and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use, for the purpose of gain, of the highways. Southern Motorways, Inc. v. Perry, 39 F.2d 145, 1930 U.S. Dist. LEXIS 1936 (D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 59, 74, 80 et seq. 13 Am. Jur. 2d, Carriers, §§ 148, 149, 151.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 307, 308.

40-1-160. Transportation of persons under age 21 drinking alcohol.

Any limousine carrier subject to the jurisdiction of the commissioner that transports passengers shall comply with the provisions of paragraph (1) of subsection (a) of Code Section 3-3-23 and Code Section 3-9-6, concerning consumption of alcoholic beverages. The commissioner shall provide to all such limousine carriers, at the time of registration a certificate, an informational packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the limousine carrier.

History.
Code 1981, § 40-1-160, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

40-1-161. Revocation, alteration, or amendment of limousine certificate.

The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any limousine certificate issued under this part, or under prior law, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of

the certificate is not furnishing adequate service. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the provisions of Code Section 40-1-56.

History.
Code 1981, § 40-1-161, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 15/HB 323; Ga. L. 2014, p. 866, § 40/SB 340.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2012, the subsection (a) designation was deleted as there was no subsection (b).
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-162. State regulates limousine carriers; preemption; limousine carrier doing business at a county or municipal airport.

The State of Georgia fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this part; provided, however, that the governing authority of any county or municipal airport shall be authorized to permit any limousine carrier doing business at any such airport and may establish fees as part of such permitting process; provided, further, that such fees shall not exceed the airport's approximate cost of permitting and regulating limousine carriers; and provided, further, that such governing authorities of such airports shall accept a chauffeur's endorsement issued by the Department of Driver Services to the driver and evidence of a certificate issued to the limousine carrier by the department as adequate evidence of sufficient criminal background investigations and shall not require any fee for any further criminal background investigation. The list of licensed limousine carriers on the website of the department shall be sufficient evidence that a limousine carrier has a certificate issued by the department.

History.
Code 1981, § 40-1-162, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(10)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" throughout this Code section.
Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

40-1-163. Rates and charges.

(a) Notwithstanding the powers granted to the department regarding tariffs of other motor carriers, the department is not authorized to set, adjust, or change rates or charges for transportation of passengers,

property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier.

(b) Any tariff issued by the department that exists as of June 30, 2007, that regulates the rates or charges for transportation of passengers, property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier shall be void.

History.
Code 1981, § 40-1-163, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 16/HB 323.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-164. Notice and opportunity to be heard by carriers.

Before the department shall enter any order, regulation, or requirement directed against any limousine carrier, such carrier shall first be given reasonable notice and an opportunity to be heard on the matter.

History.
Code 1981, § 40-1-164, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

40-1-165. Motor carrier authorization number of limousine carriers included in advertisement.

In any advertisement for a limousine carrier, whether by print, radio, television, other broadcast, or electronic media including but not limited to internet advertising and any listing or sites on any website, the limousine carrier shall include the motor carrier authorization number issued to it by the department. The department shall be required to issue a motor carrier authorization number to each registered limousine carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than $500.00 for an initial violation and not more than $15,000.00 for a second or subsequent violation.

History.
Code 1981, § 40-1-165, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2024, p. 1052, § 4(11)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in the first sentence, revised capitalization and substituted "department" for "Department of Public Safety" at the end.

40-1-166. Commercial indemnity and liability insurance.

Each limousine carrier shall obtain and maintain commercial indemnity and liability insurance with an insurance company licensed under Title 33 or through a surplus line broker licensed under Title 33, which policy shall provide for the protection of passengers and property carried and of the public against injury proximately caused by the negligence of the limousine carrier, its servants, and its agents. The minimum amount of such insurance shall be:

(1) For capacity of 12 passengers or less, $300,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of $100,000.00 for bodily injuries to or death of one person, and $50,000.00 for loss of damage in any one accident to property of others, excluding cargo; or

(2) For capacity of more than 12 passengers, $500,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of $100,000.00 for bodily injuries to or death of one person, and $50,000.00 for loss of damage in any one accident to property of others, excluding cargo.

History.
Code 1981, § 40-1-166, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2015, p. 1262, § 2.1/HB 225.

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

40-1-167. Required information on license plates of limousines.

Each limousine carrier which registers any vehicle under this part shall, for each such certificated vehicle, affix to the center of the front bumper of each such certificated vehicle a standard size license plate bearing the following information:

(1) Limousine carrier name;

(2) City and state of principal domicile;

(3) Company telephone number; and

(4) Motor carrier identification number if the limousine carrier is a commercial motor carrier or motor carrier authorization number issued by the department if the limousine carrier is a lightweight commercial vehicle.

The cost for such license plate shall be the sole responsibility of the limousine carrier and must be placed on each certificated vehicle prior to such vehicle being placed in service.

History.
Code 1981, § 40-1-167, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 17/HB 323; Ga. L. 2024, p. 1052, § 4(12)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "part" for "article" in the introductory language.
Editor's notes.
Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date."

40-1-168. Local taxation prohibited.

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a limousine carrier to operate equipment, or on the equipment, or on any incidents of the business of a limousine carrier.

History.
Code 1981, § 40-1-168, enacted by Ga. L. 2012, p. 580, § 1/HB 865.
Law reviews.
For article, "Commercial Transportation," see 74 Mercer L. Rev. 51 (2022).

JUDICIAL DECISIONS

Collection of state or local–option sales taxes. — Trial court's grant of summary judgment to the Georgia Department of Revenue on a limousine company's petition for a refund and declaration was upheld as no part of the Georgia Limousine Carrier Act, including O.C.G.A. § 40-1-168, barred the imposition and collection of state or local-option sales taxes from for-hire car services such as the limousine company for the rental of its limousines or cars. Exec. Limousine Transp., Inc. v. Curry, 361 Ga. App. 626, 865 S.E.2d 217, 2021 Ga. App. LEXIS 522 (2021).

40-1-169. Enforcement.

The department is authorized to enforce the provisions of this part. Additionally, the department may hear a petition by a third party asserting that a limousine carrier has violated Code Section 40-1-152 and may impose the penalties and seek the remedies set out in Code Section 40-1-56 if the department finds such a violation.

History.
Code 1981, § 40-1-169, enacted by Ga. L. 2012, p. 580, § 1/HB 865.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2012, in the second sentence, "Code Section" was inserted twice and "of this title" was deleted following "40-1-56".

40-1-170. Application to every vehicle controlled by limousine carrier.

The provisions of this part and the powers granted to the department by this part to regulate limousine carriers shall apply to every vehicle

of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier.

History.
Code 1981, § 40-1-170, enacted by Ga. L. 2012, p. 580, § 1/HB 865.

Administrative rules and regulations.
Transportation Network Companies and Taxi Services, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Public Safety, MCCD Regulatory Compliance Section, Rule 570-38-6-.01 et seq.

Part 4

Ride Share Network Services and Transportation Referral Services

Law reviews.
For article on the 2015 enactment of this part, see 32 Georgia St. U.L. Rev. 213 (2015).

For article, "The Uber Million Dollar Question: Are Uber Drivers Employees or Independent Contractors?," see 68 Mercer L. Rev. 461 (2017).

For article, "The Code of the Platform," see 54 Ga. L. Rev. 605 (2020).

RESEARCH REFERENCES

ALR.
Liability and regulation of ride-sharing services using social media, 6 A.L.R.7th 1.

40-1-190. Definitions.

As used in this part, the term:

(1) "Limousine carrier" means any limousine company or provider which is licensed with the state pursuant to paragraph (5) of Code Section 40-1-151.

(2) "Metering device" means an instrument or device which is utilized for the purpose of calculating for-hire fares based upon distance, time, mileage, and administrative fees and which is not a taximeter.

(3) "Ride share driver" means an individual who uses his or her personal passenger car to provide transportation for passengers arranged through a ride share network service.

(4) "Ride share network service" means any person or entity that uses a digital network or internet network to connect passengers to ride share drivers for the purpose of prearranged transportation for hire or for donation. The term "ride share network service" shall not include any corporate sponsored vanpool or exempt rideshare as such terms are defined in Code Section 40-1-100, provided that such corporate sponsored vanpool or exempt rideshare is not operated for the purpose of generating a profit.

(5) "Taxi service" means any taxicab company or provider which utilizes a motor vehicle or similar vehicle, device, machine, or

conveyance to transport passengers; uses a taximeter; and is authorized to provide taxicab services pursuant to an ordinance of a local government in this state.

(6) "Taximeter" means an instrument or device approved by the applicable local government which is utilized by a taxi service for the purpose of calculating fares based upon distance, time, and mileage.

(7) "Transportation referral service" means any person or entity that books, refers clients to, collects money for, or advertises transportation services provided by a limousine carrier or taxi service by means of a telephone, through cellular telephone software, through the Internet, in person, by written instrument, by any person, or by any other means, and does not own or lease any motor vehicle required to be registered with the Department of Public Safety as a limousine carrier or a taxi service. A transportation referral service shall not include emergency or nonemergency medical transports.

(8) "Transportation referral service provider" means any person or entity that books, refers clients to, collects money for, or advertises transportation services provided by a limousine carrier or taxi service by means of a telephone, through cellular telephone software, through the Internet, in person, by written instrument, by any person, or by any other means and owns or leases one or more motor vehicles required to be registered with the Department of Public Safety as a limousine carrier or a local government in this state as a taxi service. A transportation referral service provider shall not include emergency or nonemergency medical transports.

History.

Code 1981, § 40-1-190, enacted by Ga. L. 2015, p. 1262, § 3/HB 225; Ga. L. 2024, p. 1052, § 4(13)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted ", as defined in paragraph (41) of Code Section 40-1-1," following "car" in paragraph (3) and revised capitalization in paragraph (4).

40-1-191. Legislative findings; preemption; ride share network service, transportation referral service, transportation referral service provider, and taxi service doing business at a county or municipal airport.

The General Assembly finds that it is in the public interest to provide uniform administration and parity among ride share network services, transportation referral services, and transportation referral service providers, including taxi services, that operate in this state for the safety and protection of the public. The General Assembly fully occupies and preempts the entire field of administration and regulation over ride share network services, transportation referral services, transportation

referral service providers, and taxi services as governed by this part; provided, however, that the governing authority of any county or municipal airport shall be authorized to regulate any ride share network service, transportation referral service, transportation referral service provider, and taxi service consistent with the process used for limousine carriers, as set forth in Code Section 40-1-162, who are doing business at any such airport and may establish fees as part of such regulation process; provided, further, that such fees shall not exceed the airport's approximate cost of permitting and regulating ride share network services, transportation referral services, transportation referral service providers, and taxi services; and provided, further, that such governing authorities of such airports shall accept a for-hire license endorsement or private background check certification pursuant to Code Section 40-5-39 as adequate evidence of sufficient criminal background investigations and shall not require any fee for any further criminal background investigation; and provided, further, that local governments may maintain certificates of public necessity and convenience and medallion requirements and company requirements for taxi services as provided in this part and may establish maximum fares for taxi services. The list of ride share network services, transportation referral services, transportation referral service providers, and taxi services on the website of the department shall be sufficient evidence that such services have licenses issued by the department.

History.
Code 1981, § 40-1-191, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-192. Transportation referral service provider registration requirement; licensure; exemptions; additional requirements.

(a) A transportation referral service or transportation referral service provider that only refers business to limousine carriers and taxi services that are licensed or registered as transportation referral service providers shall be exempt from registration under this Code section.

(b) Each transportation referral service provider doing business, operating, or providing transportation services in this state shall register with the department. Upon receipt of registration by the department, the department shall issue a license to such transportation referral service provider which shall be renewed on an annual basis. The department may charge a fee for such license and registration not to exceed $100.00. Limousine carriers, as a part of the licensure and permitting process for limousine carriers, shall be registered and licensed as a transportation referral service provider under this part. A

transportation referral service provider that receives referrals from a transportation referral service or a transportation referral service provider shall be required to disclose to the department that it is receiving referrals from such transportation referral service or transportation referral service provider; provided, however, that the limousine carrier or taxi service shall be required to comply with the requirements of this part.

(c) Each transportation referral service provider doing business, operating, or providing transportation services in this state shall file and keep current monthly with the department a list of all limousine carriers and taxi services which it utilizes to provide transportation services in this state. Such lists shall not be subject to inspection or disclosure under Article 4 of Chapter 18 of Title 50.

(d) Each transportation referral service provider doing business, operating, or providing transportation services in this state shall:

(1) Either obtain directly or determine that each taxi service to which it refers business possesses either a certificate of public necessity and convenience or medallion authorizing the provision of taxicab services in such local government if the certificate of public necessity and convenience or medallion is required by an ordinance of the local government where such taxi service is to be provided;

(2) Either obtain directly or determine that each taxi service to which it refers business is registered with the department and possesses and maintains a permit authorizing the provision of taxicab services in such local government if a company permit is required by an ordinance of the local government where such taxi service is to be provided;

(3) Either obtain directly or determine that each limousine carrier to which it refers business is properly and currently registered and licensed pursuant to Part 3 of this article;

(4) Take all necessary steps to determine that:

(A) Any driver either directly employed by or contracted with a limousine carrier which the limousine carrier contracts with or utilizes for the provision of transportation services in this state possesses and maintains any required permits or licenses required by the federal government or this state; and

(B) Any driver either directly employed by or contracted with a taxi service which the taxi service contracts with or utilizes for the provision of transportation services in this state possesses and maintains any required permits or licenses required by the federal government or the local government where the transportation services are to be provided;

(5) Ensure that each driver utilized by such transportation referral service provider, whether such driver is employed directly by the transportation referral service provider or by a limousine carrier or taxi service which the transportation referral service provider contracts with or utilizes for the provision of transportation services in this state, has a current for-hire license endorsement or current private background check certification pursuant to Code Section 40-5-39;

(6) Have a zero tolerance policy with regard to the use of drugs or alcohol while on duty in place for drivers utilized by such limousine carrier or taxi service in the provision of transportation services, whether such driver is employed directly by the transportation referral service provider or by a limousine carrier or taxi service which the transportation referral service provider contracts with or utilizes for the provision of transportation services in this state;

(7) Shall ensure that each limousine carrier with which such transportation referral service provider contracts or utilizes for the provision of transportation services in this state has the commercial indemnity and liability insurance required by Code Section 40-1-166 or each taxi service with which such transportation referral service provider contracts or utilizes for the provision of transportation services in this state has the minimum amount of commercial liability insurance prescribed by state law;

(8) Have, as to taxi services, complied with or ensured that any taxi service which it contracts with or utilizes for the provision of transportation services complies with any fare structure or regulation prescribed by ordinance of the local government where such taxi service is to be provided; provided, however, that any fares specified in local ordinances shall be the maximum fare which may be charged but shall not prohibit a taxi service from charging lower fares;

(9) Have complied with or determined that the limousine carrier or taxi service with which the provider contracts with or utilizes for the provision of transportation services in this state is in compliance with any and all other applicable requirements prescribed by the laws of the state, the rules and regulations of the department, and the ordinances of local governments where such transportation services are provided; and

(10) Comply with the provisions of Code Section 40-8-7. No additional vehicle inspections shall be required for taxi services or limousine carriers.

(e) Failure to register according to the provisions of this Code section shall be a misdemeanor.

History.
Code 1981, § 40-1-192, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-193. Ride share network service registration requirement; licensure; list of ride share drivers; additional requirements; law enforcement access to smartphone of ride share driver.

(a) Each ride share network service doing business or operating in this state shall register with the department. Upon receipt of registration by the department, the department shall issue a license to such ride share network service which shall be renewed on an annual basis. The department may charge a fee for such license and registration not to exceed $100.00.

(b) Each ride share network service doing business or operating in this state shall maintain a current list of all ride share drivers who are enrolled in its network in this state. Such lists shall not be subject to inspection or disclosure under Article 4 of Chapter 18 of Title 50 but shall be made available for inspection by law enforcement officers and representatives of other government agencies upon request to ascertain compliance with this title.

(c) Each ride share network service doing business or operating in this state shall:

(1) Take all necessary steps to determine that each driver contracted with such ride share network service possesses and maintains any required permits or licenses required by the federal government or this state;

(2) Ensure that each driver utilized by such ride share network service, whether such driver is employed directly by the ride share network service or operates as an independent contractor, has a current for-hire license endorsement or current private background check certification pursuant to Code Section 40-5-39;

(3) Have a zero tolerance policy with regard to the use of drugs or alcohol while on duty in place for drivers contracted with such ride share network service;

(4) Have for each ride share driver contracted with such ride share network service in this state insurance coverage in effect with respect to personal injury liability, property damage liability, and personal injury protection liability benefits available to drivers, passengers, pedestrians, and others in the same coverage amounts as required by law; and

(5) Comply with the provisions of Code Section 40-8-7. No vehicle inspections shall be required for vehicles used by ride share drivers.

(d) Each ride share driver utilized by such ride share network service, whether such driver is employed directly by the ride share network service or operates as an independent contractor, shall maintain on his or her smartphone digital identification containing the following information while active on the ride share network service's digital network:

(1) The name and photograph of the driver;

(2) The make and model of the motor vehicle being driven;

(3) The license plate number of the motor vehicle being driven;

(4) Certificates of insurance for the motor vehicle being driven; and

(5) Such other information as may be required by the Department of Public Safety.

Upon reasonable suspicion of a law enforcement officer of improper operation by a ride share driver, the ride share driver, upon request, shall provide the law enforcement officer with access to the smartphone containing the digital information required by this subsection and the electronic record of the trips sufficient to establish that the trip in question was prearranged through digital dispatch of the ride share network service. The ride share driver shall not be required to relinquish custody of the smartphone containing the digital information required by this subsection and the electronic record of the trips arranged through digital dispatch of the ride share network service.

(e) A violation of this Code section shall be a misdemeanor.

History.
Code 1981, § 40-1-193, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-193.1. Registration of taxi services; list of drivers; additional requirements.

(a) Each taxi service doing business or operating in this state shall register with the department. Upon receipt of registration by the department, the department shall issue a license to such taxi service which shall be renewed on an annual basis. The department may charge a fee for such license and registration not to exceed $100.00.

(b) Each taxi service doing business or operating in this state shall maintain a current list of all drivers utilized by such taxi service in this state, whether as employees or independent contractors. Such lists shall not be subject to inspection or disclosure under Article 4 of Chapter 18 of Title 50 but shall be made available for inspection by law

enforcement officers and representatives of other government agencies upon request to ascertain compliance with this title.

(c) Each taxi service doing business or operating in this state shall:

(1) Take all necessary steps to determine that each driver utilized by such taxi service, whether as an employee or independent contractor, possesses and maintains any required permits or licenses required by the federal government or this state;

(2) Ensure that each driver utilized by such taxi service, whether as an employee or independent contractor, has a current for-hire license endorsement or current private background check certification pursuant to Code Section 40-5-39;

(3) Have a zero tolerance policy with regard to the use of drugs or alcohol while on duty in place for drivers utilized by such taxi service, whether as an employee or independent contractor;

(4) Obtain and maintain personal injury and property damage liability insurance, which shall provide for the protection of passengers and property carried and of the public against injury in the coverage amounts as required by law; and

(5) Comply with the provisions of Code Section 40-8-7. No vehicle inspections shall be required for vehicles used by taxi services.

(d) The department or any county, municipality, or consolidated government may require proof of insurance or proof of payment of such insurance in the coverage amounts as required by law and may verify such insurance when issuing or renewing a certificate of public necessity and convenience or medallion.

History.
Code 1981, § 40-1-193.1, enacted by Ga. L. 2016, p. 767, § 2/SB 320.

Administrative rules and regulations.
Transportation Network Companies and Taxi Services, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Public Safety, MCCD Regulatory Compliance Section, Rule 570-38-6-.01 et seq.

40-1-194. Prohibited contracts and referrals.

(a)(1)(A) No transportation referral service or transportation referral service provider subject to this part shall contract with, utilize, or refer individuals or entities to limousine carriers that are not properly licensed by this state or are not properly insured under state law.

(B) No ride share network service subject to this part shall contract with, utilize, or refer individuals or entities to ride share drivers who are not properly licensed by this state or are not properly insured under state law.

(2) No transportation referral service or transportation referral service provider subject to this part shall contract with, utilize, or refer individuals or entities to taxi services that are not registered with the department and properly licensed by the applicable political subdivision of this state, are not properly insured under local law, or use drivers that are not properly licensed under state and local law to carry passengers for hire.

(b)(1)(A) No person who is not licensed under the laws of this state to provide limousine services shall contract with or accept referrals from a transportation referral service, transportation referral service provider, or ride share network service for transportation services. This paragraph shall not apply to passengers.

(B) No ride share driver who does not have an appropriate driver's license and either a for-hire endorsement or current private background check certification pursuant to Code Section 40-5-39 shall contract with or accept referrals from a transportation referral service, transportation referral service provider, or ride share network service for transportation services.

(2) No person who does not have the licensing required by the appropriate local government of this state to provide taxi services shall contract with or accept referrals from a transportation referral service or transportation referral service provider for transportation services. This paragraph shall not apply to passengers.

(c)(1) A transportation referral service that violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(2) A transportation referral service provider or ride share network service that violates subsection (a) of this Code section shall be guilty of a misdemeanor and additionally shall be subject to having such provider's or service's registration suspended or revoked by the department.

(d) A person who violates subsection (b) of this Code section shall be guilty of a misdemeanor and additionally may be subject to a suspension for one year or revocation of such person's driver's license.

History.
Code 1981, § 40-1-194, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-195. Inclusion of license number in advertising; display of signage or emblem.

(a) Each taxi service, transportation referral service, transportation referral service provider, and ride share network service doing busi-

ness, operating, or providing transportation services in this state shall include its license number issued by the department in any advertising in this state; provided, however, that this Code section shall not apply to Internet advertisements. Limousine carriers which register as transportation referral service providers under this part shall be subject to the advertising requirements of this Code section and not the provisions of Code Section 40-1-165. Failure to provide such license number shall result in the imposition of a civil penalty not to exceed $5,000.00 for each violation.

(b) Each ride share driver shall display a consistent and distinctive signage or emblem that is approved by the Department of Public Safety on such ride share driver's vehicle at all times while the ride share driver is active on the ride share network service's digital network. The signage or emblem shall be:

(1) Sufficiently large and color contrasted to be readable during daylight hours from a distance of at least 50 feet;

(2) Reflective, illuminated, or otherwise visible in darkness; and

(3) Sufficient to identify a vehicle as being associated with the ride share network service with which the ride share driver is affiliated.

Any person who violates this subsection shall be guilty of a misdemeanor.

History. Code 1981, § 40-1-195, enacted by Ga. L. 2015, p. 1262, § 3/HB 225; Ga. L. 2016, p. 864, § 40/HB 737.

40-1-196. Rates charged.

(a) Rates for taxi services set by a local government shall constitute the maximum fare which may be charged but shall not prohibit a taxi service from charging lower fares. Transportation services provided by taxi services and arranged by a transportation referral service or transportation referral service provider doing business in this state shall be billed in accordance with the fare rates prescribed by the local government where such taxi services are to be provided. The use of Internet or cellular telephone software to calculate rates shall not be permitted unless such software complies with and conforms to the weights and measures standards of the local government that licenses such taxi service.

(b) Transportation services provided by limousine carriers and arranged by a transportation referral service or transportation referral service provider shall only be billed in accordance with the rates of such limousine carriers on an hourly basis or upon one or more of the following factors: distance, flat fee, base fee, waiting time, cancellation fee, stop fee, event pricing, demand pricing, or time. The charge for such

transportation services may be calculated by the use of a metering device in or affixed to the motor vehicle.

(c) A ride share driver contracted with a ride share network service may offer transportation services at no charge, suggest a donation, or charge a fare. If a ride share driver contracted with a ride share network service charges a fare, such fare shall be calculated based upon one or more of the following factors: distance, flat fee, base fee, waiting time, cancellation fee, stop fee, event pricing, demand pricing, or time. The fare may be calculated by the use of a metering device in or affixed to the motor vehicle.

(d) Each transportation referral service, transportation referral service provider, and ride share network service shall make available to the person being transported prior to receiving transportation services either the amount of the charge for such services or the rates under which the charge will be determined.

(e) A violation of this Code section shall be a misdemeanor.

History.
Code 1981, § 40-1-196, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-197. Promulgation of rules and regulations.

The department is authorized to promulgate such rules and regulations as the department shall find necessary to implement the provisions of this part.

History.
Code 1981, § 40-1-197, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-198. Requirement to maintain current list of drivers.

(a) Each transportation referral service provider shall maintain a current list of all drivers that such provider employs directly or as independent contractors in this state. Such lists shall not be subject to inspection or disclosure under Article 4 of Chapter 18 of Title 50 but shall be made available for inspection by law enforcement officers and representatives of other government agencies upon request to ascertain compliance with this title.

(b) A violation of this Code section shall be punished by the imposition of a civil penalty not to exceed $5,000.00 for each violation.

History.
Code 1981, § 40-1-198, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

40-1-199. Waivers.

A waiver of any rights with regard to personal injuries as the result of any transportation services provided by such ride share network service, transportation referral service, transportation referral service provider, limousine carrier, or taxi service by any person utilizing the services of a ride share network service, transportation referral service, transportation referral service provider, limousine carrier, or taxi service in this state shall not be valid unless such person is given written or electronic notice of such waiver prior to receiving such services and knowingly and willfully agrees to such waiver.

History.
Code 1981, § 40-1-199, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

Law reviews.
For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

40-1-200. Inapplicability to equine drawn or other nonmotorized vehicles.

This part shall not be applicable to equine drawn vehicles or nonmotorized vehicles.

History.
Code 1981, § 40-1-200, enacted by Ga. L. 2015, p. 1262, § 3/HB 225.

Part 5

Peer-to-Peer Car-Sharing Program

Editor's notes.
Ga. L. 2020, p. 310, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Peer-to-Peer Car-Sharing Program Act.'"

40-1-220. Definitions.

As used in this part, the term:

(1) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented in the records of a peer-to-peer car-sharing program.

(2) "Car-sharing period" means the period of time that commences with the car-sharing delivery period or, if there is no car-sharing delivery period, the period of time that commences with the car-sharing start time and in either case ends at the car-sharing termination time.

(3) "Car-sharing program agreement" means the terms and con-

ditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car-sharing program. Such term shall not include a rental agreement as defined in Code Section 40-2-167 or a lease or rental as defined in paragraph (17) of Code Section 48-8-2.

(4) "Car-sharing start time" means the time when a shared vehicle becomes subject to the control of a shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(5) "Car-sharing termination time" means the earliest of the following events:

(A) The expiration of the agreed period of time established for the use of a shared vehicle according to the car-sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car-sharing program agreement;

(B) When a shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car-sharing program; or

(C) When the shared vehicle owner takes possession and control of the shared vehicle.

(6) "Department" means the Department of Insurance of the State of Georgia established by Code Section 33-2-1.

(7) "Peer-to-peer car-sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. Such term shall not include a rental motor vehicle or rental agreement as defined in Code Section 40-2-167.

(8) "Peer-to-peer car-sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. Such term shall not mean a service provider who is solely providing hardware or software as a service to an individual or entity that is not effectuating payment of financial consideration for use of a shared vehicle. Such term shall not include a motor vehicle rental company as defined in Code Section 40-2-167.

(9) "Shared vehicle" means a used vehicle that is available for sharing through a peer-to-peer car-sharing program. Such term shall not include a rental motor vehicle as defined in Code Section 40-2-167.

(10) "Shared vehicle driver" means an individual who has been authorized by a shared vehicle owner to drive a shared vehicle under a car-sharing program agreement.

(11) "Shared vehicle owner" means the registered owner of a vehicle made available for sharing through a peer-to-peer car-sharing program or a person or entity designated by the registered owner of such a vehicle.

(12) "Used vehicle" means any vehicle which has been the subject of a sale at retail to the general public.

History.
Code 1981, § 40-1-220, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-221. Assumption of liability; insurance.

(a)(1) A peer-to-peer car-sharing program shall assume liability, except as provided in paragraph (2) of this subsection, of a shared vehicle owner for any bodily injury or property damage to third parties or an uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the car-sharing program agreement, which amount may not be less than those set forth in paragraph (1) of subsection (a) of Code Section 33-7-11.

(2) The assumption of liability under paragraph (1) of this subsection shall not apply if a shared vehicle owner:

(A) Made an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurred; or

(B) Acted or acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car-sharing program agreement.

(3) The assumption of liability under paragraph (1) of this subsection applies to bodily injury, property damage, and uninsured and underinsured motorist or personal injury protection losses by damaged third parties as required under subsection (a) of Code Section 33-7-11.

(b) A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that:

(1) Either:

(A) Recognizes that the vehicle insured under the policy is

made available and used through a peer-to-peer car-sharing program; or

(B) Does not exclude the use of a shared vehicle by a shared vehicle driver;

(2) Provides insurance coverage in amounts no less than the minimum amounts set forth in subparagraph (a)(1)(A) of Code Section 33-7-11; and

(3) Provides that in the event an accident occurs outside of this state in a jurisdiction that has a financial responsibility law or similar law specifying limits of liability higher than those required in this state, such motor vehicle liability insurance policy will provide the higher specified limits.

(c) The insurance requirement described under subsection (b) of this Code section may be satisfied by motor vehicle liability insurance maintained by:

(1) A shared vehicle owner;

(2) A shared vehicle driver;

(3) A peer-to-peer car-sharing program; or

(4) Any combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

(d) The insurance described in subsection (c) of this Code section that is satisfying the insurance requirement of subsection (b) of this Code section shall be primary during each car-sharing period.

(e) The peer-to-peer car-sharing program shall assume primary liability for a claim when:

(1) Such program is in whole or in part providing the insurance required under subsections (b) and (c) of this Code section;

(2) A dispute exists as to who was in control of the shared vehicle at the time of the loss; and

(3) Such program does not have available, did not retain, or fails to provide the information required by Code Section 40-1-224.

(f) The shared vehicle's insurer shall indemnify the car-sharing program to the extent of its obligation under, if any, the applicable insurance policy, if it is determined that the shared vehicle's owner was in control of the shared vehicle at the time of the loss.

(g) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (c) of this Code section has lapsed or does not provide the required coverage, insurance maintained

by a peer-to-peer car-sharing program shall provide the coverage required by subsection (b) of this Code section beginning with the first dollar of a claim and shall have the duty to defend such claim except under the circumstances set forth in paragraph (2) of subsection (a) of this Code section.

(h) Coverage under an automobile insurance policy maintained by the peer-to-peer car-sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(i) If the insurance described in subsection (b) of this Code section is maintained by a peer-to-peer car-sharing program, it must be placed with an insurer admitted to do business in this state for the purpose of writing insurance and licensed under Title 33, or with a surplus lines insurer who is a nonadmitted insurer and eligible under Chapter 5 of Title 33, that has a credit rating from a rating agency in the highest rating category as approved by the department.

(j) A shared vehicle driver must at all times during the car-sharing period carry proof of coverage satisfying subsection (b) of this Code section. In the event of an accident, a shared vehicle driver shall disclose that he or she was driving a shared vehicle at the time of such accident and shall, pursuant to Code Section 40-6-10, provide the insurance coverage information satisfying subsection (b) of this Code section to the directly interested parties, automobile insurers, and law enforcement officers.

(k) Nothing in this chapter:

(1) Limits the liability of the peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car-sharing program; or

(2) Limits the ability of the peer-to-peer car-sharing program to, by contract, seek indemnification from a shared vehicle owner or shared vehicle driver for economic loss sustained by the peer-to-peer car-sharing program resulting from a breach of the terms and conditions of the car-sharing program agreement.

History.

Code 1981, § 40-1-221, enacted by Ga. L. 2020, p. 310, § 2/HB 337; Ga. L. 2024, p. 1052, § 4(14)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (c)(4), substituted "Any combination of" for "Both" and "car sharing" for "car-sharing".

40-1-222. Notification of lien on vehicle.

At the time a vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner makes the vehicle available for sharing on such program, the peer-to-peer car-sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of such shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

History.
Code 1981, § 40-1-222, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-223. Exclusion of insurance coverage for shared vehicle.

(a) An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Personal injury protection coverage;

(3) Uninsured and underinsured motorist coverage;

(4) Medical payments coverage;

(5) Comprehensive coverage; and

(6) Collision coverage.

(b) Nothing in this part shall be construed to invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

History.
Code 1981, § 40-1-223, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-224. Collection, verification, and retention of records.

A peer-to-peer car-sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner, and shall provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer,

or the shared vehicle driver's insurer to facilitate a claim coverage investigation. The peer-to-peer car-sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

History.
Code 1981, § 40-1-224, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-225. Exemption from vicarious liability.

A peer-to-peer car-sharing program and a shared vehicle owner shall be exempt from vicarious liability consistent with 49 U.S.C. Section 30106, as such existed on January 1, 2020, and under any state or local law that imposes liability solely based on vehicle ownership.

History.
Code 1981, § 40-1-225, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

U.S. Code.
Section 30106 of 49 U.S.C., referred to in this Code section, concerns rented or leased motor vehicle safety and responsibility.

40-1-226. Right to seek contribution.

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

(1) Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

(2) Excluded under the terms of its policy.

History.
Code 1981, § 40-1-226, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-227. Insurable interests.

(a) Notwithstanding any other provision of law, a peer-to-peer car-sharing program shall have an insurable interest in a shared vehicle during the car-sharing period.

(b) Except as provided in Code Section 40-1-226, nothing in this part creates a liability on a peer-to-peer car-sharing program to maintain the coverage mandated by this part.

(c) A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

(1) Liabilities assumed by the peer-to-peer car-sharing program under a car-sharing program agreement;

(2) Any liability of the shared vehicle owner;

(3) Damage or loss to the shared motor vehicle; or

(4) Any liability of the shared vehicle driver.

History.
Code 1981, § 40-1-227, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-228. Required disclosures in car-sharing program agreements.

Each car-sharing program agreement made in this state shall disclose to the shared vehicle owner and the shared vehicle driver:

(1) Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car-sharing program resulting from a breach of the terms and conditions of the car-sharing program agreement;

(2) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;

(3) That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time or use by a driver not disclosed in the car-sharing program agreement, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;

(4) The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;

(5) That the shared vehicle owner's motor vehicle liability insurance may specifically exclude or otherwise may not provide coverage for a shared vehicle;

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries; and

(7) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to reserve or use a shared motor vehicle.

History.
Code 1981, § 40-1-228, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-229. Requirements for drivers in peer-to-peer car-sharing program; record keeping.

(a) A peer-to-peer car-sharing program may not enter into a car-sharing program agreement with a driver unless the driver who will operate the shared vehicle:

(1) Holds a driver's license issued under Code Section 40-5-28 that authorizes the driver to operate vehicles of the class of the shared vehicle;

(2) Is a nonresident who:

(A) Has a driver's license issued by the state or country of such driver's residence that authorizes such driver in that state or country to drive vehicles of the class of the shared vehicle; and

(B) Is at least the same age as that required of a Georgia resident to drive; or

(3) Otherwise is specifically authorized by the Department of Driver Services to drive vehicles of the class of the shared vehicle.

(b) A peer-to-peer car-sharing program shall keep a record of the:

(1) Name and address of the shared vehicle driver;

(2) Driver's license number of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

(3) Date and place of issuance of the driver's license.

History.
Code 1981, § 40-1-229, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

40-1-230. Vehicle equipment.

A peer-to-peer car-sharing program shall have sole responsibility for any equipment, such as a global positioning system or other special equipment, that is put in or on the vehicle to monitor or facilitate the car-sharing transaction and shall agree to indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period not caused by such owner. The peer-to-peer car-sharing program shall have the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the car-sharing period.

History.
Code 1981, § 40-1-230, enacted by Ga. L. 2020, p. 310, § 2/HB 337; Ga. L. 2024, p. 1052, § 4(15)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "global positioning system" for "GPS system" in the first sentence.

40-1-231. Prerequisites for sharing vehicles; impact of safety recalls.

(a) At the time a vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner makes the vehicle available for sharing on such program, the peer-to-peer car-sharing program shall:

(1) Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

(2) Notify the shared vehicle owner of the requirements under subsection (b) of this Code section.

(b)(1) If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car-sharing program unless and until such safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, the shared vehicle owner shall remove such shared vehicle as available on the peer-to-peer car-sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving such notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car-sharing program regarding such safety recall so that the shared vehicle owner may address the safety recall repair.

History.
Code 1981, § 40-1-231, enacted by Ga. L. 2020, p. 310, § 2/HB 337.

CHAPTER 2

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40-2-30. Purchase by mail.

40-2-31. License plate design; retention of manufacturing and delivery costs; revalidation, county, and "In God We Trust" decals.

40-2-31.1. (Repealed effective January 1, 2032.) Design and selec-

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tion of United States of America's semiquincentennial license plate.
40-2-32. [Reserved] Commemoration of college or university.
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40-2-34. Reports and remittances by tag agents.
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40-2-43. Certificate of registration; replacement of lost registration certificate; issuing of duplicates.
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40-2-74.1. Temporary, permanent, and special permanent parking permits for persons with disabilities.
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40-2-86. License plates promoting or supporting certain agencies, funds, or nonprofit corporations with proceeds disbursed to the general fund and the agency, fund, or nonprofit corporation.
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Motor Vehicle License Fees and Classes

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40-2-151. Annual license fees for operation of vehicles; fee for permanent licensing of certain trailers; fee for new passenger car with paid title ad valorem taxes.
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40-2-151.2. Transportation Trust Fund established; funding; accounting.
40-2-152. Fees for apportionable vehicles; restricted license plates for vehicles.
40-2-153. [Reserved] Registration and licensing of makers and dealers of motor vehicles; application; fee; dealer's number plate; prohibited uses; licensing of persons transporting motor vehicles, mobile homes, or house trailers; exemption of farm tractors.
40-2-154. License plates for different classes of vehicles; distinguishing markings.
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40-2-156. Proportional license fees for certain vehicles registered during specific months.
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40-2-161. Rate of annual license fee for vehicles carrying passengers over route of 50 miles or less.
40-2-162. Apportionment of cost of annual license fees of motor buses to motor common carriers of passengers for hire operating partially outside state; formula; rules.
40-2-163. Purchase by truck or tractor owner of higher weight license plate; payment of difference between fees.
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40-2-166. Violation of article; penalty.
40-2-167. Separately stated fees in a rental agreement; recoverable fees and taxes.
40-2-168. Registration and licensing of taxicabs and limousines; issuance of distinctive license plate.

Cross references.

General duty of Georgia State Patrol to check motor vehicles for proper licensing, § 35-2-33.

Procedure when date for payment of tax or license fee falls on Saturday, Sunday, or legal holiday, § 48-2-39.

Ad valorem taxation of motor vehicles, § 48-5-440 et seq.

Motor vehicle license fees, T. 48, C. 10.

Editor's notes.

Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

OPINIONS OF THE ATTORNEY GENERAL

Probate courts lack jurisdiction as to violations. — Probate courts have no authority or jurisdiction in violations arising under the motor vehicle and traffic law. 1965-66 Op. Att'y Gen. No. 65-18.

Constable can make arrests for violations of the motor vehicle and traffic law; if a constable made such arrests, the constable would do so at the constable's own expense and would be entitled to no fees. 1968 Op. Att'y Gen. No. 68-324 (but see O.C.G.A. § 15-10-103).

RESEARCH REFERENCES

ALR.

License tax or fee on automobiles as affected by interstate commerce clause, 25 A.L.R. 37; 52 A.L.R. 533; 115 A.L.R. 1105.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

Validity of automobile registration or license fee as affected by classification or discrimination, 126 A.L.R. 1419.

Unlicensed automobile owned by insured as "owned automobile" within language of automobile liability insurance, 21 A.L.R.4th 918.

ARTICLE 1

GENERAL PROVISIONS

40-2-1. Definitions.

As used in this chapter, the term:

(1) "Cancellation of vehicle registration" means the annulment or termination by formal action of the department of a person's vehicle registration because of an error or defect in the registration or because the person is no longer entitled to such registration. The cancellation of registration is without prejudice, and application for a new registration may be made at any time after such cancellation.

(2) "Commissioner" means the state revenue commissioner.

(3) "Department" means the Department of Revenue.

(3.1) "Digital license plate" means a license plate which receives wireless data communication to display information electronically.

(3.2) "Digital license plate provider" means a person approved by the commissioner as a vendor of digital license plate hardware and services to motor vehicle owners pursuant to this article.

(4) "For-hire intrastate motor carrier" means an entity engaged in the transportation of goods or ten or more passengers for compensation wholly within the boundaries of this state.

(5) "Intrastate motor carrier" means any self-propelled or towed

motor vehicle operated by an entity that is used on a highway in intrastate commerce to transport passengers or property and:

(A) Has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 lbs.) or more, whichever is greater;

(B) Is designed or used to transport more than ten passengers, including the driver, and is not used to transport passengers for compensation; or

(C) Is used to transport material found by the United States Secretary of Transportation to be hazardous pursuant to 49 U.S.C. Section 5103 and is transported in any quantity.

(5.1) "License plate" means a sign affixed to a motor vehicle which displays a series of letters or numbers or both indicating that the vehicle has been registered with this state. Such sign may be in a material made of metal or paper or a device which allows information to be presented electronically in a digital format.

(6) "Motor carrier" means:

(A) Any entity subject to the terms of the Unified Carrier Registration Agreement pursuant to 49 U.S.C. Section 14504a whether engaged in interstate or intrastate commerce, or both; or

(B) Any entity defined by the commissioner or commissioner of public safety who operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both.

(7) "Operating authority" means the registration required by 49 U.S.C. Section 13902, 49 C.F.R. Part 365, 49 C.F.R. Part 368, and 49 C.F.R. Section 392.9a.

(8) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of motor carrier business or enterprise operations.

(9) "Resident" means a person who has a permanent home or domicile in Georgia and to which, having been absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that any person who, except for infrequent, brief absences, has been present in the state for 30 or more days is a resident.

(10) "Revocation of vehicle registration" means the termination by formal action of the department of a vehicle registration, which

registration shall not be subject to renewal or reinstatement, except that an application for a new registration may be presented and acted upon by the department after the expiration of the applicable period of time prescribed by law.

(11) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department of a vehicle registration, which temporary withdrawal shall be for a period specifically designated by the department.

History.
Code 1981, § 40-2-1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 327, § 1; Ga. L. 2000, p. 951, § 3-1; Ga. L. 2002, p. 1024, § 1; Ga. L. 2005, p. 334, § 14-1/HB 501; Ga. L. 2009, p. 629, § 1/HB 57; Ga. L. 2012, p. 580, § 8/HB 865; Ga. L. 2015, p. 60, § 4-3/SB 100; Ga. L. 2016, p. 864, § 40/HB 737; Ga. L. 2021, p. 124, § 1/SB 210.

Editor's notes.
This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

40-2-2. Violations of chapter generally; penalties.

Except as otherwise provided in this chapter, any person who violates any provision of this chapter shall be guilty of a misdemeanor.

History.
Ga. L. 1925, p. 315, § 2; Ga. L. 1927, p. 226, § 26; Ga. L. 1931, p. 7, § 84; Code 1933, §§ 68-9902, 68-9908; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 5; Ga. L. 1990, p. 2048, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Probate courts lack jurisdiction as to violations. — Probate courts have no authority or jurisdiction in violations arising under the motor vehicle and traffic law. 1965-66 Op. Att'y Gen. No. 65-18.

Dealer using tags for other than demonstrating or transporting vehicles. — Dealer who permits dealer tags to be used for purposes other than demonstrating or transporting dealer-owned vehicles for sale may and should be prosecuted for a misdemeanor under the provision of former Code 1933, §§ 68-9902 and 66-9908, (see now O.C.G.A. § 40-2-2), but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Ga. Op. Att'y Gen. 472.

RESEARCH REFERENCES

Am. Jur. 2d.
21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.
C.J.S.
61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1748 et seq.
ALR.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-2-3. False statements in application constitute false swearing.

Any person who shall make any false statement in any application for the registration of any vehicle, or in transferring any certificate of registration, or in applying for a new certificate of registration, shall be guilty of false swearing, whether or not an oath is actually administered to him, if such statement shall purport to be under oath. On conviction of such offense, such person shall be punished as provided by Code Section 16-10-71.

History.
Ga. L. 1925, p. 315, § 2; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-9902; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 5; Ga. L. 1990, p. 2048, § 2.

JUDICIAL DECISIONS

Lesser included offenses. — Operating motor vehicle without insurance is not lesser included offense of false swearing. Bowen v. State, 173 Ga. App. 361, 326 S.E.2d 525, 1985 Ga. App. LEXIS 2625 (1985).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 255. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

40-2-4. Manufacture, sale, or issuance of license plate or revalidation decal prohibited.

(a) Except as otherwise provided for in Article 2B of this chapter, it shall be unlawful for any person, firm, or corporation to make, sell, or issue any license plate or revalidation decal.

(b) Any person, firm, or corporation violating subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1921, p. 255, § 11; Code 1933, §§ 68-216, 68-9905; Ga. L. 1990, p. 2048, § 2; Ga. L. 2021, p. 124, § 2/SB 210.

OPINIONS OF THE ATTORNEY GENERAL

Only the State of Georgia may manufacture license tags, and the supervisor of purchases (now Department of Administrative Services) is not

authorized to process a requisition for license plates to any individual person, firm, or corporation. 1960-61 Ga. Op. Att'y Gen. 297.

RESEARCH REFERENCES

Am. Jur. 2d.
21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.
C.J.S.
61A C.J.S., Motor Vehicles, § 1636 et seq.

ALR.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-2-5. Unlawful actions relating to license plate; use of expired prestige license plate.

(a) Except as otherwise provided in this chapter, it shall be unlawful:

(1) To remove or transfer a license plate from the motor vehicle for which such license plate was issued;

(2) To sell or otherwise transfer or dispose of a license plate upon or for use on any motor vehicle other than the vehicle for which such license plate was issued;

(3) To buy, receive, use, or possess for use on a motor vehicle any license plate not issued for use on such motor vehicle; or

(4) To operate a motor vehicle bearing a license plate which was improperly removed or transferred from another vehicle.

(b) Any person who shall knowingly violate any provision of subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not less than $500.00 or by confinement for not more than 12 months, or both.

(c) It shall not be unlawful for any person to place an expired prestige license plate on the front of a motor vehicle provided that such vehicle also bears a current valid license plate on the rear of such vehicle.

History.
Ga. L. 1918, p. 264, §§ 1, 2; Code 1933, § 68-9916; Ga. L. 1966, p. 10, § 1; Ga. L. 1990, p. 1657, § 2; Ga. L. 1990, p. 2048, § 2.

Law reviews.
For note on 1990 amendment of this Code section, see 7 Georgia St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Revalidation decal not covered by statute. — Although the revalidation decal found on the defendant's vehicle had been stolen from another vehicle the prior month, the offense of use of a license plate to conceal the identity of a vehicle in O.C.G.A. § 40-2-5 covered license plates but not revalidation decals; and there was

no evidence that the license plate on the defendant's vehicle was removed or transferred from another vehicle, or that the defendant committed any other act addressed in the statute. Kea v. State, 344 Ga. App. 251, 810 S.E.2d 152, 2018 Ga. App. LEXIS 13 (2018).

Traffic stop based on suspicion of license plate violation. — Trial court did not err in denying motions to supress filed by the two defendants because the officer: (1) had a reasonable and sufficient basis for initiating a traffic stop of the car the defendants were traveling in based on a belief that the license plate on the subject vehicle might have belonged on another car, and hence, was illegally transferred; and (2) did not improperly prolong the stop once the defendants told conflicting stories of the defendants' travels and one declined to grant the officer consent to search. Andrews v. State, 289 Ga. App. 679, 658 S.E.2d 126, 2008 Ga. App. LEXIS 103 (2008), cert. denied, No. S08C0963, 2008 Ga. LEXIS 507 (Ga. June 2, 2008).

Lesser included offenses. — Misdemeanor offense of affixing to a vehicle a license plate not authorized for use on that vehicle is not a lesser included offense of the felony of using a motor vehicle license plate upon a vehicle for which the plate was not issued. Dismuke v. State, 142 Ga. App. 381, 236 S.E.2d 12, 1977 Ga. App. LEXIS 1624 (1977).

Nondisclosure that vehicle was rebuilt. — When the certificate of title which defendant obtained for automobile did not disclose on the title's face that the vehicle had been rebuilt, the jury was authorized to conclude that the defendant had knowingly concealed or misrepresented the identity thereof. Martin v. State, 160 Ga. App. 275, 287 S.E.2d 244, 1981 Ga. App. LEXIS 2971 (1981).

Jury to decide tag issue. — Court of Appeals of Georgia rejected a defendant's sufficiency of the evidence challenge as it was for the jury to accept or reject the defendant's explanations as to whether the operation of a Mercury bearing a Ford tag was improper and knowing. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239, 2007 Ga. App. LEXIS 1204 (2007).

Rule of lenity did not apply. — Because the defendant was convicted and sentenced for a violation of No. S08C0963, O.C.G.A. § 40-2-5, and not of a violation of O.C.G.A. § 40-2-7, for the single and distinct offense of operating a motor vehicle bearing an improper tag, the Court of Appeals of Georgia had no occasion to apply the rule of lenity. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239, 2007 Ga. App. LEXIS 1204 (2007).

RESEARCH REFERENCES

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-2-6. Alteration of license plates; operation of vehicle with altered or improperly transferred plate.

Except as otherwise provided in this chapter, any person who shall willfully mutilate, obliterate, deface, alter, change, or conceal any numeral, letter, character, county designation, or other marking of any license plate issued under the motor vehicle registration laws of this state; who shall knowingly operate a vehicle bearing a license plate on which any numeral, letter, character, county designation, or other marking has been willfully mutilated, obliterated, defaced, altered, changed, or concealed; or who shall knowingly operate a vehicle bearing a license plate issued for another vehicle and not properly transferred as provided by law shall be guilty of a misdemeanor.

History.
Code 1933, § 68-9929, enacted by Ga. L. 1957, p. 626, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 1145, § 1; Ga. L. 1997, p. 419, § 2.

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Traffic stop based on suspicion of license plate violation. — Trial court did not err in denying motions to supress filed by the two defendants because the officer: (1) had a reasonable and sufficient basis for initiating a traffic stop of the car the defendants were traveling in based on a belief that the license plate on the subject vehicle might have belonged on another car, and hence, was illegally transferred; and (2) did not improperly prolong the stop once the defendants told conflicting stories of the defendants' travels and one declined to grant the officer consent to search. Andrews v. State, 289 Ga. App. 679, 658 S.E.2d 126, 2008 Ga. App. LEXIS 103 (2008), cert. denied, No. S08C0963, 2008 Ga. LEXIS 507 (Ga. June 2, 2008).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 257. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S.
61A C.J.S., Motor Vehicles, § 1636 et seq.

ALR.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R.3d 606.

40-2-6.1. Obscuring license plate in order to impede surveillance equipment.

Any person who willfully covers any license plate with plastic, other material, or any part of his or her body in order to prevent or impede the ability of surveillance equipment to clearly photograph or otherwise obtain a clear image of the license plate is guilty of a misdemeanor and shall be punished by a fine not to exceed $1,000.00.

History.
Code 1981, § 40-2-6.1, enacted by Ga. L. 2005, p. 691, § 1/SB 93.

JUDICIAL DECISIONS

Violation allowed law enforcement officer to make valid traffic stop. — Defendant's commission of a traffic offense pursuant to O.C.G.A. § 40-2-6.1 allowed an officer to make a valid traffic stop of the defendant's vehicle. Thomas v. State, 289 Ga. App. 161, 657 S.E.2d 247, 2008 Ga. App. LEXIS 26 (2008), cert. dismissed, No. S08C0959, 2008 Ga. LEXIS 491 (Ga. May 19, 2008).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — This offense is not one for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

40-2-7. Removing or affixing license plate with intent to conceal or misrepresent.

A person who removes a license plate from a vehicle or affixes to a vehicle a license plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor. As used in this Code section, "remove" includes deface or destroy.

History.
Ga. L. 1961, p. 68, § 34; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1966, p. 10, § 1 are included in the annotations for this Code section.

Intent to misrepresent. — Evidence was ample to support defendant's conviction for intending to misrepresent or conceal the identity of the stolen vehicle the defendant possessed or the vehicle's owner as the evidence showed that the defendant knew that the license tag did not belong on the vehicle and that the defendant affixed that license plate to keep the city from learning that the vehicle was abandoned. Rose v. State, 258 Ga. App. 232, 573 S.E.2d 465, 2002 Ga. App. LEXIS 1406 (2002).

Not lesser included offense of O.C.G.A. § 40-2-5 offense. — Misdemeanor offense of affixing to a vehicle a license plate not authorized for use on that vehicle is not a lesser included offense of the felony offense of using a motor vehicle license plate upon a vehicle for which the plate was not issued. Dismuke v. State, 142 Ga. App. 381, 236 S.E.2d 12, 1977 Ga. App. LEXIS 1624 (1977) (decided under Ga. L. 1966, p. 10, § 1).

Rule of lenity did not apply. — Because the defendant was convicted and sentenced for a violation of O.C.G.A. § 40-2-5, and not for a violation of O.C.G.A. § 40-2-7, for the single and distinct offense of operating a motor vehicle bearing an improper tag, the Court of Appeals of Georgia had no occasion to apply the rule of lenity. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239, 2007 Ga. App. LEXIS 1204 (2007).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 257, 392.
ALR.
Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R.3d 606.

40-2-8. Operation of unregistered vehicle or vehicle without current license plate, revalidation decal, or county decal; temporary operating permit issued by dealers of new or used motor vehicles.

(a) Any person owning or operating any vehicle described in Code Section 40-2-20 on any public highway or street without complying with that Code section shall be guilty of a misdemeanor, provided that a person shall register his or her motor vehicle within 30 days after becoming a resident of this state. Any person renting, leasing, or loaning any vehicle described in Code Section 40-2-20 which is being used on any public highway or street without complying with that Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of $100.00 for each violation; and each day that such vehicle is operated in violation of Code Section 40-2-20 shall be deemed to be a separate and distinct offense.

(b)(1) It shall be a misdemeanor to operate any vehicle required to be registered in this state without a valid numbered license plate properly validated, unless such operation is otherwise permitted under this chapter; and provided, further, that the purchaser of a new vehicle or a used vehicle from a dealer of new or used motor vehicles who displays a temporary operating permit issued as provided by paragraph (2) of this subsection may operate such vehicle on the public highways and streets of this state without a current valid license plate during the period within which the purchaser is required by Code Section 40-2-20. An owner acquiring a motor vehicle from an entity that is not a new or used vehicle dealer shall register such vehicle as provided for in Code Section 40-2-29 unless such vehicle is to be registered under the International Registration Plan pursuant to Article 3A of this chapter.

(2)(A) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless such vehicle is to be registered under the International Registration Plan, a temporary operating permit as provided for by department rules or regulations which may bear the dealer's name and location and shall bear an expiration date 45 days from the date of purchase. The expiration date of such a temporary operating permit may be revised and extended by the county tag agent upon application by the dealer, the purchaser, or the transferee if an extension of the purchaser's initial registration period has been granted as provided by Code Section 40-2-20. Such temporary operating permit shall not resemble a license plate issued by this state and shall be issued without charge or fee. The requirements of this paragraph shall not apply to a dealer whose primary business is the sale of salvage motor vehicles and other vehicles on which total loss claims have been paid by insurers.

(B) All temporary operating permits issued by dealers to purchasers of vehicles shall be of a standard design prescribed by regulation promulgated by the department. The department may provide by rule or regulation for the sale and distribution of such temporary operating permits by third parties in accordance with paragraph (3) of this subsection.

(3) All sellers and distributors of temporary operating permits shall maintain an inventory record of temporary operating permits by number and name of the dealer.

(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration of such vehicle. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the penalties enumerated in this subsection.

(c) It shall be unlawful and punishable as for a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid county decal designating the county where the vehicle was last registered, unless such operation is otherwise permitted under this chapter. Any person convicted of such offense shall be punished by a fine of $25.00 for a first offense and $100.00 for a second or subsequent such offense. However, a county name decal shall not be required if there is no space provided for a county name decal on the current license plate.

History.

Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 2; Code 1933, §§ 68-214, 68-9901; Ga. L. 1943, p. 341, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1969, p. 266, § 3; Ga. L. 1977, p. 1039, § 1; Ga. L. 1980, p. 746, § 1; Ga. L. 1981, p. 714, § 4; Ga. L. 1982, p. 1584, §§ 2, 5; Ga. L. 1986, p. 1053, § 1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2785, § 1.3; Ga. L. 1993, p. 1260, § 1; Ga. L. 1995, p. 809, § 1; Ga. L. 1996, p. 1118, § 1; Ga. L. 1997, p. 419, § 3; Ga. L. 1998, p. 1179, § 3; Ga. L. 2000, p. 523, § 1; Ga. L. 2001, p. 1173, § 1-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 321, § 1/HB 455; Ga. L. 2005, p. 334, § 14-2/HB 501; Ga. L. 2010, p. 143, § 2/HB 1005; Ga. L. 2011, p. 479, § 10.1/HB 112; Ga. L. 2012, p. 804, § 1/HB 985; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2018, p. 287, § 2/HB 329; Ga. L. 2020, p. 669, § 1/HB 819; Ga. L. 2023, p. 554, § 2/HB 183, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, rewrote subsection (b).

Cross references.

Jurisdiction over offenses under this Code section, § 40-13-22.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date on this Act;

provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section 40-2-21 as enacted by this Act and not as provided in such local Act."

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21, and 48-2-59 provide plaintiff challenging automobile "title transfer fee" with "plain, speedy and efficient" pre-tax and post-tax remedies by which a taxpayer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

Vehicle in custody not subject to levy and sale. — Vehicle being in custody of the law while held pursuant to former Code 1933, §§ 68-214 and 68-9901 (see O.C.G.A. § 40-2-8), a levy of execution by a sheriff was void and no valid sale could be made pursuant thereto. Oxford v. Sanders, 217 Ga. 820, 125 S.E.2d 483, 1962 Ga. LEXIS 404 (1962).

Investigatory stops for registration law violations. — Stopping a car with a drive-out tag solely to ascertain whether the driver was complying with Georgia's vehicle registration laws is not authorized; Burtts v. State, 211 Ga. App. 840, 440 S.E.2d 727 (1994) is expressly overruled along with any other cases which would authorize a traffic stop solely because a vehicle was being operated with a dealer's drive-out tag. Bius v. State, 254 Ga. App. 634, 563 S.E.2d 527, 2002 Ga. App. LEXIS 439 (2002).

Investigative stop justified. — Police officer was justified in approaching defendant to determine if the operation of defendant's vehicle with an expired out-of-state tag was in violation of O.C.G.A. § 40-2-8. Jordan v. State, 223 Ga. App. 176, 477 S.E.2d 583, 1996 Ga. App. LEXIS 1042 (1996), cert. denied, No. S97C0238, 1997 Ga. LEXIS 234 (Ga. Feb. 14, 1997).

Trial court properly denied the defendant's motion to suppress as the search was valid under Ga. Const. 1983, Art. I, Sec. I, Para. XIII; the officer stopped the defendant based on a reasonable suspicion that the defendant was driving with an invalid drive-out tag in violation of O.C.G.A. § 40-2-8, and the defendant's tag was suspicious because the tag did not have a strip on the bottom to prevent tampering with the expiration date. Green v. State, 282 Ga. App. 5, 637 S.E.2d 498, 2006 Ga. App. LEXIS 1285 (2006).

State need not prove period of residence. — Allegation that the defendant had resided in the state for a period of 30 days or more was mere surplusage, and failure to prove the allegation did not constitute a fatal variance. Gibson v. State, 187 Ga. App. 769, 371 S.E.2d 413, 1988 Ga. App. LEXIS 857 (1988).

State need not prove current owner of vehicle. — State presented sufficient evidence that the defendant had operated a motor vehicle with an expired Mississippi tag on a public street of Georgia in violation of O.C.G.A. § 40-2-8(a). Although the evidence did not show to whom the vehicle had been

registered in Mississippi or whether the defendant had recently purchased the vehicle, the statute did authorize a finding that, regardless of who the current owner of the vehicle might actually be, the vehicle was not an automobile which was otherwise exempt from the requirement of registration in this state. Keyser v. State, 187 Ga. App. 95, 369 S.E.2d 309, 1988 Ga. App. LEXIS 582 (1988).

Traffic stop for compliance not unreasonably prolonged. — As an officer's questioning of the defendant after a traffic stop about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642, 2009 Ga. App. LEXIS 925 (2009).

Evidence sufficient to sustain conviction. — Because the defendant admittedly lacked a driver's license, the tag on the car being driven was expired, and the defendant produced no evidence that the car had been recently purchased, and thus fell within the initial 30-day registration period during which a numbered license plate was not required, defendant's convictions were upheld on appeal. Arellano v. State, 289 Ga. App. 148, 656 S.E.2d 264, 2008 Ga. App. LEXIS 22 (2008).

Evidence insufficient for conviction of driving without current license plate. — Testimony by officers that defendant's car had a temporary dealer tag was insufficient to support the charge of driving without a current license plate because the state presented no evidence that the tag on the car was not a valid temporary tag issued by a dealer at the time of sale. Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775, 2001 Ga. App. LEXIS 630 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Vehicles registered in another state required to obtain Georgia use permit. — Vehicles traveling in Georgia, registered in another state where the fees imposed are of such a nature as to be considered merely registration fees, should be required to obtain a Georgia highway use permit and identification tags and stickers pertinent thereto. 1954-56 Ga. Op. Att'y Gen. 477.

Mail order applicant not penalized until April 2, or 15 days after money order issued. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Ga. Op. Att'y Gen. 209.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 60, 67, 84, 256 et seq. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 196, 282. 61A C.J.S., Motor Vehicles, § 1628 et seq.

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 16 A.L.R. 1108; 35 A.L.R. 62; 38 A.L.R. 1038; 43 A.L.R. 1153; 54 A.L.R. 374; 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

Applicability of motor vehicle regulations to public officials or employees, 23 A.L.R. 418.

Improper use of automobile license plates as affecting liability or right to

recover for injuries, death, or damages in consequence of automobile accident, 99 A.L.R.2d 904.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

40-2-8.1. Operation of vehicle without revalidation decal on license plate.

Notwithstanding Code Section 40-2-8 or any other provision of law, a person who operates a vehicle which is required to be registered in this state and which has attached to the rear thereof a valid numbered license plate without having the required revalidation decal affixed upon that plate, which person is otherwise guilty of a misdemeanor for not having such decal affixed to the plate, shall be subject for that offense only to a fine not to exceed $25.00 if that person shows to the court having jurisdiction of the offense that the proper revalidation decal had been obtained prior to the time of the offense.

History.

Code 1981, § 40-2-8.1, enacted by Ga. L. 1993, p. 698, § 1.

40-2-9. Space for county name decal; display of "In God We Trust" decal in lieu of county name decal.

(a) Any special, distinctive, or prestige license plate, except those provided for in Code Sections 40-2-61, 40-2-62, 40-2-74, 40-2-82, and 40-2-85.1 or as otherwise expressly provided in this chapter, shall contain a space for a county name decal. The provisions of this chapter relative to county name decals shall be applicable to all such license plates.

(b) The department shall make available to all license plates recipients a decal with the same dimensions as the county name decal that contains the words, "In God We Trust." The department shall provide such decal free of charge to any person requesting it. Such decal may be displayed in the space reserved for the county name decal in lieu of the county name decal.

History.

Code 1981, § 40-2-77, enacted by Ga. L. 1985, p. 261, § 8; Ga. L. 1986, p. 1333, § 5; Ga. L. 1989, p. 1186, § 4; Code 1981, § 40-2-81, as redesignated by Ga. L. 1990, p. 2048, § 2; Code 1981, § 40-2-9, as redesignated by Ga. L. 2001, p. 479, § 3; Ga. L. 2008, p. 835, § 1/SB 437; Ga. L. 2010, p. 9, § 1-64/HB 1055; Ga. L. 2010, p. 143, § 2.1/HB 1005; Ga. L. 2012, p. 1070, § 1/SB 293.

Editor's notes.

Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date."

40-2-10. Voluntary cancellation of vehicle registration.

A vehicle registrant may voluntarily cancel the registration on a vehicle when such vehicle is not in use for any reason, including without limitation if the vehicle is stolen, repossessed but not redeemed by the registrant, junked, inoperable, in storage, used seasonally for agricultural or other purposes, or if the owner is on active duty in the armed forces of the United States and is transferred to a duty station away from the location of the vehicle or is on active sea duty. A registration that has been voluntarily cancelled may be reinstated upon payment of all accrued ad valorem taxes and license fees, if any.

History.
Code 1981, § 40-2-10, enacted by Ga. L. 2003, p. 261, § 1.

Law reviews.
For note on the 2003 enactment of this Code section, see 20 Georgia St. U.L. Rev. 208 (2003).

40-2-11. Administration of chapter.

(a) The commissioner shall be responsible for the administration of this chapter and may employ such clerical assistants and agents as may be necessary from time to time to enable the commissioner to speedily and efficiently perform the duties conferred on the commissioner in this chapter. The commissioner shall be authorized to delegate any administrative responsibility for retention of applications, certificates of registration, and any other forms or documents relating to the application and registration process to the appropriate authorized tag agent for the county in which the application is made or the registration is issued.

(b) The commissioner shall prescribe and provide suitable forms of applications and all other notices and forms necessary to administer this chapter.

(c) The commissioner may:

(1) Perform any investigation necessary to procure information required to carry out this chapter; and

(2) Adopt and enforce reasonable rules and regulations to administer this chapter.

History.
Code 1981, § 40-2-11, enacted by Ga. L. 2008, p. 835, § 2/SB 437.

ARTICLE 2

REGISTRATION AND LICENSING GENERALLY

Cross references.
Further provisions regarding motor vehicle registration and licensing, § 40-2-150 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770 (26), are included in the annotations for this article.

Constitutionality. — Statutes providing for licensing of motor vehicles are not unconstitutional on grounds that the statutes are an unauthorized tax on personal property to raise funds for public roads or on grounds that the statutes violate provisions that all taxation shall be uniform on the same class of subjects and ad valorem on all property taxed. Lee v. State, 163 Ga. 239, 135 S.E. 912, 1926 Ga. LEXIS 53 (1926) (decided under former Code 1910, § 1770).

Provisions for license fees do not constitute a property tax. Lee v. State, 163 Ga. 239, 135 S.E. 912, 1926 Ga. LEXIS 53 (1926) (decided under former Code 1910, § 1770).

40-2-20. Registration and license requirements; certificate of registration and temporary operating permit; two-year registration option for new motor vehicles.

(a)(1)(A) Except as provided in subsections (b) and (d) of this Code section and subsection (a) of Code Section 40-2-47, every owner of a motor vehicle, including a tractor or motorcycle, and every owner of a trailer shall, during the owner's registration period in each year, register such vehicle as provided in this chapter and obtain a license plate or revalidation decal to operate it for the 12 month period until such person's next registration period.

(B)(i) The purchaser or other transferee owner of every new or used motor vehicle, including tractors and motorcycles, or trailer shall register such vehicle as provided in Code Section 40-2-8 and obtain or transfer as provided in this chapter a license to operate it for the period remaining until such person's next registration period which immediately follows such initial registration period, without regard to whether such next registration period occurs in the same calendar year as the initial registration period or how soon such next registration period follows the initial registration period; provided, however, that this registration and licensing requirement does not apply to a dealer which acquires a new or used motor vehicle and holds it for resale. The commissioner may provide by rule or regulation for one 30 day extension of such initial registration period which may be granted by the county tag agent if the transferor has not provided such purchaser or other transferee owner with a title to the motor vehicle more

than five business days prior to the expiration of such initial registration period. The county tag agent shall grant an extension of the initial registration period when the transferor, purchaser, or transferee can demonstrate by affidavit in a form provided by the commissioner that title has not been provided to the purchaser or transferee due to the failure of a security interest or lienholder to timely release a security interest or lien in accordance with Code Section 40-3-56.

(ii) No person, company, or corporation, including, but not limited to, used motor vehicle dealers and auto auctions, shall sell or transfer a motor vehicle without providing to the purchaser or transferee of such motor vehicle the last certificate of registration on such vehicle at the time of such sale or transfer; provided, however, that, in the case of a salvage motor vehicle or a motor vehicle which is stolen but subsequently recovered by the insurance company after payment of a total loss claim, the salvage dealer or insurer, respectively, shall not be required to provide the certificate of registration for such vehicle; and provided, further, that in the case of a repossessed motor vehicle or a court ordered sale or other involuntary transfer, the lienholder or the transferor shall not be required to provide the certificate of registration for such vehicle but shall, prior to the sale of such vehicle, surrender the license plate of such vehicle to the commissioner or the county tag agent by personal delivery or by certified mail or statutory overnight delivery for cancellation.

(C) Upon application for renewal of a vehicle registration, the county tag agent may issue a temporary operating permit for any vehicle that fails to comply with applicable federal emission standards, provided that the owner of such vehicle has provided verification of the existence of minimum motor vehicle liability insurance coverage and paid all applicable taxes, penalties, insurance lapse fees, and fees other than the registration fee. Such temporary operating permit shall be valid for 30 days and shall not be renewable.

(2) An application for the registration of a motor vehicle may not be submitted separately from the application for a certificate of title for such motor vehicle, unless a certificate of title has been issued in the owner's name, has been applied for in the owner's name, or the motor vehicle is not required to be titled. An application for a certificate of title for a motor vehicle may be submitted separately from the application for the registration of such motor vehicle.

(b) Subsection (a) of this Code section shall not apply:

(1) To any motor vehicle or trailer owned by the state or any

municipality or other political subdivision of this state except to the extent provided by Code Section 40-2-37;

(2) To any tractor or three-wheeled motorcycle used only for agricultural purposes;

(2.1) To any vehicle or equipment used for transporting cargo or containers between and within wharves, storage areas, or terminals within the facilities of any port under the jurisdiction of the Georgia Ports Authority when such vehicle or equipment is being operated upon any public road not part of The Dwight D. Eisenhower System of Interstate and Defense Highways by the owner thereof or his or her agent within a radius of ten miles of the port facility of origin and accompanied by an escort vehicle equipped with one or more operating amber flashing lights that are visible from a distance of 500 feet;

(3) To any trailer which has no springs and which is being employed in hauling unprocessed farm products to their first market destination;

(4) To any trailer which has no springs, which is pulled from a tongue, and which is used primarily to transport fertilizer to a farm;

(5) To any electric powered personal transportation vehicle;

(6) To any moped; or

(7) To any golf car.

(c) Any person who fails to register a new or used motor vehicle as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $100.00.

(d) Upon the payment of the requisite fee, the purchaser of a new motor vehicle which is a passenger car, for which such purchaser has paid state and local title ad valorem taxes may choose to register such passenger car for an initial period of two years instead of the annual registration provided for in this Code section, provided that the motor vehicle owner does not elect a prestige or special license plate. Thereafter, such passenger car shall be subject to the annual registration requirements of this Code section.

History.

Ga. L. 1927, p. 226, § 3; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 1; Code 1933, § 68-201; Ga. L. 1943, p. 341, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 392, § 2; Ga. L. 1957, p. 590, § 1; Ga. L. 1960, p. 777, § 1; Ga. L. 1966, p. 252, § 1; Ga. L. 1969, p. 266, § 1; Ga. L. 1973, p. 595, § 2; Ga. L. 1973, p. 781, § 1; Ga. L. 1974, p. 414, § 1; Ga. L. 1974, p. 451, § 1; Ga. L. 1978, p. 2241, § 2; Ga. L. 1984, p. 603, § 1; Ga. L. 1984, p. 1329, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 1053, § 2; Ga. L. 1987, p. 949, § 1; Ga. L. 1990, p. 1657, § 3; Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1260, § 2; Ga. L. 1994, p. 352, § 1; Ga. L. 1995, p. 809, § 2; Ga. L. 1996, p. 1118, § 2; Ga. L. 1997, p. 419, § 4; Ga. L. 1998, p. 1179, § 4; Ga. L.

1999, p. 81, § 40; Ga. L. 1999, p. 784, § 1; Ga. L. 2000, p. 136, § 40; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 1173, § 1-2; Ga. L. 2002, p. 506, § 3; Ga. L. 2002, p. 512, § 4; Ga. L. 2009, p. 449, § 1/SB 128; Ga. L. 2010, p. 143, § 3/HB 1005; Ga. L. 2012, p. 804, § 2/HB 985; Ga. L. 2014, p. 745, § 2/HB 877; Ga. L. 2015, p. 60, § 4-4/SB 100; Ga. L. 2015, p. 836, § 1/HB 147; Ga. L. 2016, p. 864, § 40/HB 737; Ga. L. 2023, p. 554, § 3/HB 183, effective July 1, 2023; Ga. L. 2024, p. 147, § 2/HB 1100, effective April 22, 2024; Ga. L. 2024, p. 1052, § 4(16)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, inserted "plate or revalidation decal" near the end of subparagraph (a)(1)(A), and substituted "Upon application for renewal of a vehicle registration, the county" for "The county" at the beginning of subparagraph (a)(1)(C).

The first 2024 amendment, effective April 22, 2024, deleted "and used exclusively for governmental functions" in the middle of paragraph (b)(1).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in division (a)(1)(B)(ii) and substituted "motor vehicle which is a passenger car," for "motor vehicle passenger car, as such terms are defined in paragraphs (34) and (41) of Code Section 40-1-1," in subsection (d).

Cross references.

Schedule of fees for registration and licensing of motor vehicles, § 40-2-152.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following "chapter" in the first sentence of subsection (a).

The amendment of this Code section by Ga. L. 2002, p. 506, § 3, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 4. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For note on 1990 amendment of this Code section, see 7 Georgia St. U.L. Rev. 329 (1990).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

For note on the 2002 amendment of this chapter, see 19 Georgia St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1915, p. 107 are included in the annotations for this Code section.

Motorcycle is subject to this statute. — Motorcycle is subject to the provisions of O.C.G.A. Title 40, motor vehicles and traffic law, in general, and to those of O.C.G.A. § 40-2-20 in particular. Grange Mut. Cas. Co. v. King, 174 Ga. App. 716, 331 S.E.2d 41, 1985 Ga. App. LEXIS 1937 (1985).

Trail bike ridden on streets. — Trail

bike shown to have been ridden on a public street was subject to registration and was excluded from coverage under the homeowner's policy, despite policy language exempting from the exclusion vehicles "not subject to motor vehicle registration because . . . used exclusively on the resident premises." Addison v. Southern Guar. Ins. Co., 155 Ga. App. 536, 271 S.E.2d 674, 1980 Ga. App. LEXIS 2661 (1980).

Recovery against railroad. — When a person driving a motor truck on a public highway over a railroad crossing is struck by a passenger train and injured, the mere fact that the vehicle has not been registered, a license obtained, and a license fee paid, as required by Ga. L. 1915, p. 107, will not render the person so injured a trespasser, and bar the person's right of recovery against the railroad company for negligence. Central of Ga. Ry. v. Moore, 149 Ga. 581, 101 S.E. 668, 1919 Ga. LEXIS 328 (1919) (decided under Ga. L. 1915, p. 107).

Same rule is applicable when a passenger in an automobile is injured by reason of the negligence of a railroad company in failing to keep the railroads crossing in repair. Hines v. Wilson, 25 Ga. App. 63, 102 S.E. 646, 1920 Ga. App. LEXIS 597 (1920) (decided under Ga. L. 1915, p. 107).

Accusation making no reference to "owner." — Accusation of violation which makes no reference to the "owner" is not an error. Cumbie v. State, 38 Ga. App. 744, 145 S.E. 667, 1928 Ga. App. LEXIS 428 (1928).

Variance between accusation and proof at trial showing trailer operation. — Defendant's conviction of operating a motor vehicle without a tag, O.C.G.A. § 40-2-20, was improper as there was a fatal variance between the accusation and the proof at trial. There was no evidence that the defendant operated a motor vehicle without a license plate; the evidence established the defendant was towing a trailer which did not have a plate displayed. Younger v. State, 293 Ga. App. 20, 666 S.E.2d 460, 2008 Ga. App. LEXIS 898 (2008).

Officer's procedure justified. — An officer's refusal to entrust a car sought to be impounded to the defendant's passenger was justified because the passenger did not have a valid Georgia driver's license in apparent violation of O.C.G.A. § 40-2-20(a). Lopez v. State, 286 Ga. App. 873, 650 S.E.2d 430, 2007 Ga. App. LEXIS 863 (2007).

Sentence not unconstitutional. — Defendant's sentence of 12 months confinement to be served on probation following 60 days of confinement, $1,500 in fines, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving without insurance, and failing to register a vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. Smith v. State, 311 Ga. App. 184, 715 S.E.2d 434, 2011 Ga. App. LEXIS 617 (2011).

Ineffective assistance of counsel for failing to object to officer's hearsay testimony. — Appellate court reversed the trial court's denial of the defendant's motion for a new trial with respect to the two misdemeanor traffic violations because the prejudice from trial counsel's failure to object was clear as the officer's hearsay testimony was the only evidence offered to prove the elements of the traffic offenses and had the evidence been excluded, there would not have been sufficient evidence to convict on those offenses. Taylor v. State, 337 Ga. App. 486, 788 S.E.2d 97, 2016 Ga. App. LEXIS 357 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Motor scooter is a motor vehicle which must be licensed before operation in Georgia. 1954-56 Ga. Op. Att'y Gen. 485.

Air compressor mounted on wheels which is not self-propelled, but designed so as to be moved from one job to another by pulling the compressor over the public highways of this state attached to some other motor vehicle, has been classified as a trailer and, as such, should have a license. 1958-59 Ga. Op. Att'y Gen. 211.

Four-wheel tanks and trailers used to haul goods over public highways. — Since neither tanks mounted on four wheels and used to haul anhydrous ammonia (liquid fertilizer) over public highways, nor four-wheel trailers used to haul cotton over public highways to farms, can qualify as a tractor, those items must be registered and have license plates. 1965-66 Op. Att'y Gen. No. 66-149.

Go-cart is a motor vehicle; and the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194 (rendered under former Code 1933, § 68-201, prior to amendment by Ga. L. 1973, p. 781, § 1).

Operation of golf cart upon public road. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power; the golf cart thus fell within the definition of "motor vehicle" set out in former Code 1933, § 68A-101 (see now O.C.G.A. § 40-1-1); if the golf cart was to be operated upon a public road, the operator must comply with all registration requirements. 1972 Op. Att'y Gen. No. U72-78.

Operation of "log grapple loader" upon public road. — "Log grapple loader" is a truck body with a log loading machine mounted on its back, and the only time that the vehicle is used on a highway is in transporting it from one forest to another; if such a vehicle is to be operated on the public highways, it must be registered, licensed, and inspected in accordance with the motor vehicle laws. 1973 Op. Att'y Gen. No. U73-82.

Nonresident student must register vehicle within 30 days. — Nonresident student is required to register a vehicle owned or operated by the student and obtain a license tag within 30 days from the time the student enters the state. 1970 Op. Att'y Gen. No. 70-40.

Owner applying for tag in May not entitled to three-quarter-year rate. — When a vehicle operated during January, February, and March of the current year under an extension granted for use of the previous year's tag is not used in April, but the owner thereof makes application for a tag therefor in May, the owner is not entitled to a three-quarter-year rate. 1952-53 Ga. Op. Att'y Gen. 470.

Endorsement of delinquent application for tags. — Delinquent application for an automobile tag may be endorsed by the county tag agent, rather than the sheriff. 1954-56 Ga. Op. Att'y Gen. 469.

Surrender of plates and registrations of salvage vehicles. — Owners and insurers are required to surrender to the state revenue commissioner the license plates and registrations of vehicles which become salvage or total loss vehicles. 1997 Op. Att'y Gen. No. 97-24.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 57 et seq., 110, 113 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 24 et seq., 36, 38, 180, 181, 273 et seq.

ALR.

Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 A.L.R. 1446.

Registration of automobile as affected by the name used to identify owner, 47 A.L.R. 1103.

Construction and application of statutes requiring "chauffeur's" licenses, 105 A.L.R. 69; 139 A.L.R. 950.

Applicability of motor vehicle registration laws to corporation domiciled in state but having branch trucking bases in other state, 16 A.L.R.2d 1414.

What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843.

40-2-21. Registration periods.

(a) As used in this chapter, the term:

(.1) "Initial registration period" means the 30 day period immediately following the date of purchase or other acquisition of a new or used motor vehicle, including tractors and motorcycles, or trailer.

(.2) "Owner" shall have the same meaning as set forth in Code Section 40-1-1 except that such term shall mean a lessee of a vehicle when the vehicle is operated under a lease agreement.

(1) "Registration period" means:

(A) In all counties except those for which a local Act has been enacted pursuant to this Code section:

(i) For natural persons, the 30 day period ending at midnight on the birthday of the owner whose surname appears first on the certificate of title or other record of ownership; or

(ii) For entities other than natural persons:

(I) The month of January for the owner whose name begins with the letter A or B;

(II) The month of February for the owner whose name begins with the letter C or D;

(III) The month of March for the owner whose name begins with the letter E or F;

(IV) The month of April for the owner whose name begins with the letter G or H;

(V) The month of May for the owner whose name begins with the letter I or J;

(VI) The month of June for the owner whose name begins with the letter K or L;

(VII) The month of July for the owner whose name begins with the letter M or N;

(VIII) The month of August for the owner whose name begins with the letter O or P;

(IX) The month of September for the owner whose name begins with the letter Q or R;

(X) The month of October for the owner whose name begins with the letter S or T;

(XI) The month of November for the owner whose name begins with the letter U, V, or W; and

(XII) The month of December for the owner whose name begins with the letter X, Y, or Z; or

(iii) The provisions of divisions (i) and (ii) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons; or

(B) In those counties which are authorized by a local Act enacted pursuant to this Code section to have a four-month staggered registration period:

(i) For natural persons:

(I) The month of January for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of January, February, or March;

(II) The month of February for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of April, May, or June;

(III) The month of March for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of July, August, or September; and

(IV) The month of April for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of October, November, or December; or

(ii) For entities other than natural persons:

(I) The month of January for the owner whose name begins with the letter A, B, C, or D;

(II) The month of February for the owner whose name begins with the letter E, F, G, H, I, J, or K;

(III) The month of March for the owner whose name begins with the letter L, M, N, O, P, Q, or R; and

(IV) The month of April for the owner whose name begins with the letter S, T, U, V, W, X, Y, or Z; or

(iii) The provisions of divisions (i) and (ii) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons; or

(C)(i) In those counties which are authorized by a local Act enacted pursuant to this Code section not to have staggered registration periods, January 1 through April 30.

(ii) The provisions of division (i) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons.

For purposes of determining the registration period of an owner which is an entity other than a natural person in subparagraphs (A) and (B) of this paragraph, the owner shall be deemed to be the owner whose name appears first on the certificate of title or other record of ownership. Any other provision of this paragraph notwithstanding, registration of vehicles under the International Registration Plan shall be as provided by Code Section 40-2-88, and registration of vehicles under the fleet registration plan shall be as provided by Article 2A of this chapter.

(2) "Vehicle" means every motor vehicle, including a tractor or motorcycle, and every trailer required to be registered and licensed under Code Section 40-2-20.

(b) The owner of every vehicle registered in the previous calendar year shall register and obtain a license to operate such vehicle not later than the last day of the owner's registration period.

(c) The owner of any vehicle registered in the previous calendar year who moves his or her residence from a county which does not have staggered registration to a county which has a four-month or 12 month staggered registration period or who moves his or her residence from a county which has a 12 month staggered registration period to a county which has a four-month staggered registration period or to a county which does not have staggered registration shall register and obtain a license to operate such vehicle prior to the last day of such new registration period or, if such registration period has passed for that

year at the time of the change of residence, not later than 30 days following the date of the change of residence.

(d) The transferee owner of a new or used vehicle shall register and obtain or transfer a license to operate such vehicle as provided in subsection (a) of Code Section 40-2-20.

(e) Any local law enacted pursuant to this Code section shall specify either a staggered registration period of four months or a nonstaggered registration period of four months. If such local law is conditioned upon approval in a referendum, the results of such referendum shall be verified to the commissioner.

(f) On and after January 1, 2000, no local Act shall be enacted pursuant to this Code section authorizing a staggered system of motor vehicle registration. This subsection shall not apply to any county in which such a local Act has been enacted prior to January 1, 2000.

History.

Code 1981, § 40-2-20.1, enacted by Ga. L. 1986, p. 1053, § 3; Ga. L. 1987, p. 1, §§ 1, 2; Ga. L. 1988, p. 380, § 1; Code 1981, § 40-2-21, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 3; Ga. L. 1996, p. 1118, § 3; Ga. L. 1997, p. 419, § 5; Ga. L. 1998, p. 1179, § 4A; Ga. L. 1999, p. 667, § 1; Ga. L. 1999, p. 741, § 1; Ga. L. 2000, p. 951, § 3-2; Ga. L. 2024, p. 1052, § 4(17)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall have the same meaning as set forth in" for "has the meaning provided by paragraph (39) of" in paragraph (a)(.2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "the" was substituted for "hte" in division (a)(1)(A)(iii).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act; provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section 40-2-21 as enacted by this Act and not as provided in such local Act."

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-22. Application to local tag agents or commissioner.

License plates and revalidation decals shall be issued only upon applications made to the local tag agent or the commissioner in accordance with the terms of this chapter.

History.
Ga. L. 1955, p. 659, § 6; Ga. L. 1957, p. 197, § 4; Ga. L. 1966, p. 508, § 6; Code 1981, § 40-2-21; Code 1981, § 40-2-22, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 9, § 1-65/HB 1055.

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Ga. Op. Att'y Gen. 479.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 93.

C.J.S.
61A C.J.S., Motor Vehicles, §§ 1745, 1746.

40-2-23. County tax collectors and tax commissioners designated tag agents.

(a) The tax collectors of the various counties of this state and the tax commissioners of those counties in which the duties of the tax collector are performed by a tax commissioner shall be designated as tag agents of the commissioner for the purpose of accepting applications for the registration of vehicles. The commissioner is authorized to promulgate rules and regulations for the purpose of delegating to such tag agents the custodial responsibility for properly receiving, processing, issuing, and storing motor vehicle titles or registrations, or both.

(b) The duties and responsibilities of agents of the commissioner designated under this Code section shall be a part of the official duties and responsibilities of the county tax collectors and tax commissioners.

History.
Ga. L. 1955, p. 659, § 1; Ga. L. 1957, p. 197, § 1; Ga. L. 1965, p. 5, § 1; Ga. L. 1966, p. 508, § 1; Code 1981, § 40-2-22; Code 1981, § 40-2-23, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1815, § 1; Ga. L. 1997, p. 739, § 1; Ga. L. 2000, p. 951, § 3-3; Ga. L. 2012, p. 257, § 1-1/HB 386.

Cross references.
Further provisions regarding designation of tax collectors and tax commissioners as agents for acceptance of applications for registration of motor vehicles, § 48-5-475.

Administrative rules and regulations.
Payment to Agent: Remittance by Agent to State Revenue Commissioner, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, County Tag Agent's Fees and Commissions, Rule 560-10-3-.04.

Law reviews.
For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Ga. Op. Att'y Gen. 479.

Cause of action against applicant where check dishonored. — When a tax commissioner accepts a check as payment for a motor vehicle license plate, which is not honored by the bank but returned marked "insufficient funds," the commissioner does not have the authority to seize or cancel the license plate which the commissioner issued; the tag agent accepts checks for motor vehicle license fees at the agent's own risk; consequently, the tag agent has a cause of action against the applicant for the amount of the license fee and the possibility of criminal action against the applicant. 1968 Op. Att'y Gen. No. 68-215.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 58 et seq., 71 et seq., 84.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 307 et seq., 314 et seq., 344 et seq.

40-2-24. Bonds of tag agents.

Each tag agent shall give bond conditioned as the commissioner may require, and in such amount as the commissioner may deem necessary and proper, not exceeding $250,000.00, to protect the state adequately. Such bond shall be executed by a surety corporation licensed to do business in the State of Georgia, as surety, and the premiums shall be paid by the department. The bond shall run to the Governor and his or her successors in office and shall be approved as to conditions, form, and sufficiency by the commissioner.

History.
Ga. L. 1955, p. 645, § 4; Ga. L. 1957, p. 197, § 3; Ga. L. 1966, p. 508, § 5; Code 1981, § 40-2-23; Code 1981, § 40-2-24, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-4; Ga. L. 2005, p. 334, § 14-3/HB 501.

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Ga. Op. Att'y Gen. 479.

Revenue commissioner does not pay premium on the bond that is payable to the state under former Code 1933, § 92-4801.1969 Op. Att'y Gen. No. 69-91 (see now O.C.G.A. § 48-5-122).

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Bonds, § 1 et seq.

40-2-25. Processing by private persons of applications for registration.

(a) The commissioner is authorized and directed to promulgate rules and regulations governing the processing by private persons, in any manner whatsoever, of applications for the registration of vehicles.

(b)(1) The tax commissioner of each county shall be authorized to require any private person processing applications for the registration of vehicles pursuant to subsection (a) of this Code section to give an annual fidelity bond in the amount of $50,000.00 with good and sufficient surety or sureties licensed to do business in this state payable to, in favor of, and for the protection of either the payee, taxpayer, or the tax commissioner of the county in which such person processes such applications. Such bond shall be posted prior to the beginning of business operations each year and satisfactory proof of such bond shall be filed in the office of the tax commissioner requiring such bond prior to the beginning of business operations each year.

(2) Any person who violates any provision of paragraph (1) of this subsection shall be guilty of a misdemeanor.

History.
Ga. L. 1977, p. 697, § 1; Code 1981, § 40-2-24; Ga. L. 1988, p. 892, § 1; Ga. L. 1989, p. 1403, § 1; Code 1981, § 40-2-25, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2002, p. 838, § 1.

Administrative rules and regulations.
Tag Service Companies, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-28-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 21 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 273 et seq.

40-2-26. Form and contents of application for registration; heavy vehicle tax; satisfactory proof of insurance coverage.

(a) All applicants to register a vehicle shall apply to the tag agent of the county wherein such vehicle is required to be returned for ad valorem taxation.

(b)(1) Application shall be made by the owner of the vehicle upon a form prepared by the commissioner for such purposes setting forth

the name, place of residence, and address of the applicant; a brief description of the vehicle to be registered, including its name and model, the name of the manufacturer, the manufacturer's vehicle identification number, and its shipping weight and carrying capacity; from whom, where, and when the vehicle was purchased; the total amount of all liens, if any, thereon, with the name and address of the lienholder; and such other information as the commissioner may require. Such application shall include a method for indicating whether the application is for a digital license plate issued pursuant to Article 2B of this chapter.

(2) The commissioner shall further include on such form a place which provides an applicant an opportunity to:

(A) Designate an alternative emergency contact telephone number that shall be made available to a law enforcement officer making a vehicle tag inquiry with the records of the department or criminal justice information system in the course of conducting official law enforcement business; and

(B) Indicate that the applicant or an expected driver of the vehicle has a physical, mental, or neurological condition which impedes the applicant's ability to communicate which shall be made available to a law enforcement officer making a vehicle tag inquiry with the records of the department or criminal justice information system in the course of conducting official law enforcement business.

(3) Any applicant electing to submit information for subparagraph (B) of paragraph (2) of this subsection shall submit an affidavit which attests to the following information:

(A) A description of the condition or diagnosis which impedes the ability to communicate, including whether such impediment is temporary, intermittent, or triggered by certain events; and

(B) Whether such condition exists for the applicant or an expected driver of the vehicle, including the name of the expected driver if other than the applicant.

(c)(1) As used in this subsection, the term "heavy vehicle tax" means that tax imposed by Subchapter D of Chapter 36 of the Internal Revenue Code.

(2) On or after September 30, 1984, no vehicle registration or renewal thereof shall be issued to any motor vehicle subject to the heavy vehicle tax unless the owner of the motor vehicle provides satisfactory proof that the heavy vehicle tax has been paid for the federal tax year during which the application for registration or renewal thereof is made or that a heavy motor vehicle tax return has

been filed with the United States Internal Revenue Service for the federal tax year during which the application for registration or renewal thereof is made.

(3) The commissioner is authorized to promulgate rules and regulations consistent with paragraph (2) of this subsection which are necessary to ensure that the state complies with the requirements of the Surface Transportation Assistance Act of 1982, Section 143, 23 U.S.C. Section 141d.

(4) The requirements of this subsection are in addition to any requirements of this chapter relative to the registration of motor vehicles.

(d)(1) As used in this subsection, for the purpose of issuing or renewing motor vehicle registration, the term "satisfactory proof" means:

(A) Any type of proof that is satisfactory or sufficient proof of the owner's insurance coverage under subsection (a) of Code Section 40-6-10;

(B) Information obtained from the records or data base of the department regarding the owner's insurance coverage which information is derived from notice provided to the department pursuant to Code Section 40-2-137; or

(C) Such other type of proof of the owner's insurance coverage as may be approved for purposes of this Code section by rule or regulation of the department.

(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle unless the tag agent receives satisfactory proof that the motor vehicle is subject to a policy of insurance that provides the minimum motor vehicle insurance coverage required by Chapter 34 of Title 33 or an approved self-insurance plan and, in the case of a private passenger vehicle, that such coverage was initially issued for a minimum term of six months; provided, however, that the owner's inability to register or renew the registration of any motor vehicle due to lack of proof of insurance shall not excuse or defer the timely payment of ad valorem taxes due and payable upon said vehicle.

History.

Ga. L. 1927, p. 226, § 3; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-202; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 1; Ga. L. 1957, p. 452, § 1; Ga. L. 1966, p. 508, § 3; Code 1981, § 40-2-25; Ga. L. 1984, p. 609, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 191, § 9; Code 1981, § 40-2-26, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2002, p. 1024, § 2; Ga. L. 2003, p. 261, § 2; Ga. L. 2010, p. 143, § 3.1/HB 1005; Ga. L. 2014, p. 704, § 4/SB 23; Ga. L. 2021, p. 124, § 3/SB 210; Ga. L. 2021, p. 221, § 2/HB 43; Ga. L. 2024, p. 1052, § 4(18)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modern-

ize, and correct the Code, substituted "this chapter" for "this Code" in paragraph (c)(4).

Code Commission notes.

Ga. L. 2021, p. 124, § 3/SB 210 and Ga. L. 2021, p. 221, § 2/HB 43 both amended subsection (b) of this Code section. The amendments have been harmonized by inserting the sentence added by Ga. L. 2021, p. 124, § 3/SB 210 to the end of paragraph (b)(1), as amended by Ga. L. 2021, p. 221, § 2/HB 43.

Editor's notes.

Ga. L. 1984, p. 609, § 1, not codified by the General Assembly, provides: "The General Assembly declares that it is the purpose of this Act to ensure that this state receives its full apportionment of federal-aid highway funds and to enable the state revenue commissioner and his officers, agents, and employees to comply with the requirements of the federal government in order for this state to receive all possible federal aid and assistance in the construction and maintenance of the public roads of Georgia."

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, interest liabilities, and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as those statutes become effective for federal purposes.

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2021, p. 221, § 1/HB 43, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Walker's Law.'"

U.S. Code.

Subchapter D of Chapter 36 of the Internal Revenue Code, referred to in paragraph (c)(1), is codified at 26 U.S.C. § 4481 et seq.

Administrative rules and regulations.

Tag Forms, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-19-.01 et seq.

JUDICIAL DECISIONS

Effect of purchase site for voting purposes. — Purchase by a Georgia resident of an automobile tag in a Georgia county other than the county in which the resident sought to register to vote was a declaration of residence in that particular county of the state for purposes of former Code 1933, § 34-602. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972).

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Determination of nonresidency of service person. — Local officers determine what is sufficient to show the nonresidency of a service person, keeping in mind the only question involved is one of residency. 1967 Op. Att'y Gen. No. 67-2.

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Ga. Op. Att'y Gen. 479.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 71 et seq., 94, 100.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 273, 294.

40-2-26.1. (Repealed effective July 1, 2029.) Voluntary contributions to Back the Blue Fund.

(a) This Code section shall be known and may be cited as the "Back the Blue Act."

(b) The General Assembly finds that:

(1) It is in the best interest of this state to provide a mechanism to support a program that encourages the hiring and retaining of law enforcement officers and promotes public safety for the benefit of the citizens of Georgia;

(2) Hiring and retaining experienced law enforcement officers increases public safety, builds stronger communities, and restores trust and goodwill between communities and law enforcement officers;

(3) Evidence shows that supplementing pay and enhancing benefits attract better job applicants and improve the retention of experienced law enforcement officers; and

(4) Retaining experienced law enforcement officers means fewer hiring and training expenses for law enforcement agencies.

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

(1) "Back the Blue Fund" means the fund established by this Code section.

(2) "Sheriff" means the duly elected or appointed sheriff of each county in this state.

(d) There is created the Back the Blue Fund for the purpose of providing bonus payments to certified peace officers employed under a sheriff in this state. The state revenue commissioner shall be the custodian of the Back the Blue Fund and shall administer such fund as further provided in this Code section.

(e) No later than January 1, 2025, the state revenue commissioner shall include on the form provided for in Code Section 40-2-26 a place

for an applicant to elect to contribute an amount of $5.00 to the Back the Blue Fund. Any such voluntary contribution shall be made at the discretion of the applicant at the time of application in addition to the payment of any other fees required under this chapter.

(f) County tag agents shall hold voluntary contributions to the Back the Blue Fund collected pursuant to this Code section in a fiduciary capacity, and such money received shall be promptly accounted for, separated from other moneys received, and reasonably ascertainable. Such collected voluntary contributions shall be included in the weekly reports and remittances provided for in Code Section 40-2-34; provided, however, that any funds collected pursuant to this Code section shall not be deposited in the general fund of the state treasury.

(g) No later than January 1, 2026, and annually thereafter, the state revenue commissioner shall distribute moneys from the Back the Blue Fund to the Georgia Sheriffs' Association, which shall distribute such moneys in equal portions to the sheriff of each county in this state on a per county basis. The state revenue commissioner shall determine a reasonable amount, not to exceed 1 percent of the fund annually, that may be retained for actual administrative costs.

(h) Money distributed from the Back the Blue Fund shall only be used for bonus payments to certified peace officers employed under a sheriff and shall be distributed equitably and fairly. Such fund shall not be used to supplement a sheriff's salary nor to supplant or replace funding by the county governing authority for the operation of the office of sheriff.

(i) Each sheriff shall have sole discretion in determining the allocation of bonus payments to certified peace officers employed under such sheriff in accordance with this Code section.

(j) The state revenue commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section.

(k) This Code section shall stand repealed by operation of law on July 1, 2029.

History.
Code 1981, § 40-2-26.1, enacted by Ga. L. 2024, p. 657, § 1/HB 935, effective May 6, 2024.

Effective date.
This Code section became effective May 6, 2024.

40-2-27. Registration of motor vehicles not manufactured to comply with federal emission and safety standards; certificate of registration for an assembled motor vehicle or motorcycle or a converted motor vehicle; former military motor vehicles.

(a) No application shall be accepted and no certificate of registration shall be issued to any motor vehicle which was not manufactured to comply with applicable federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, known as the Clean Air Act, as amended, and applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs Service or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards and unless all documents required by the commissioner for processing an application for a certificate of registration or title are printed and filled out in the English language or are accompanied by an English translation.

(b) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of registration for such motor vehicles that have a manufactured date that is 25 years or older at the time of application. Certification of compliance shall only be required at the time of application for the issuance of the initial Georgia certificate of registration.

(c) Applications for registration of such motor vehicles shall be accompanied by a Georgia certificate of title, proof that an application for a Georgia certificate of title has been properly submitted, or such other information and documentation of ownership as the commissioner shall deem proper.

(d)(1) Before a certificate of registration is issued for an assembled motor vehicle or motorcycle as such term is defined in Code Section 40-3-30.1, such assembled motor vehicle or motorcycle shall have been issued a certificate of title in Georgia and shall comply with the provisions of such Code section.

(2) Before a certificate of registration is issued for a converted motor vehicle as such term is defined in Code Section 40-3-30.1, such converted motor vehicle shall have been issued a certificate of title in Georgia upon compliance with the inspection provisions of such Code section.

(e) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of registration for former military motor vehicles that are less than 25 years old and manufactured for the United States military or multipurpose off-highway vehicles manufactured after January 1, 2000.

History.

Code 1981, § 40-2-25.1, enacted by Ga. L. 1985, p. 693, § 1; Code 1981, § 40-2-27, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 3-5; Ga. L. 2002, p. 512, § 5; Ga. L. 2002, p. 1378, § 2; Ga. L. 2008, p. 835, § 3/SB 437; Ga. L. 2014, p. 409, § 2/SB 392; Ga. L. 2020, p. 349, § 2/HB 877; Ga. L. 2021, p. 922, § 40/HB 497; Ga. L. 2023, p. 352, § 2-2/HB 121, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, added "or multipurpose off-highway vehicles manufactured after January 1, 2000" at the end of subsection (e).

JUDICIAL DECISIONS

O.C.G.A. § 40-2-27 violates the preemption clause of the federal Clean Air Act, 42 U.S.C. § 7543(a), but does not preempt 15 U.S.C. § 1392(d) of the National Traffic and Motor Vehicle Safety Act, does not violate the Commerce Clause and is not unconstitutionally vague. Georgia Auto. Importers Compliance Ass'n v. Bowers, 639 F. Supp. 352, 1986 U.S. Dist. LEXIS 24185 (N.D. Ga. 1986).

40-2-28. Proof of ownership.

(a) Initial applications for registration shall contain such information of ownership as the commissioner shall deem proper, and no vehicle shall be registered unless the commissioner shall be satisfied that the applicant for registration is entitled to have the vehicle registered in his name. Proof of purchase at a judicial sale or previous registration in this state by the applicant may be accepted as evidence of ownership by the commissioner.

(b) Applications for registration of vehicles brought into this state and previously registered in other states shall be accompanied by an affidavit from the motor vehicle registering official of that state, or other satisfactory evidence indicating that the applicant is the lawful owner of the vehicle, including the date, name, and address of the person from whom it was purchased.

History.

Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-205; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 2; Ga. L. 1955, p. 424, § 1; Ga. L. 1973, p. 455, § 1; Code 1981, § 40-2-26; Code 1981, § 40-2-28, as redesignated by Ga. L. 1990, p. 2048, § 2.

Law reviews.

For comment on Blalock v. Brown, 78 Ga. App. 537, 51 S.E.2d 610 (1949), see 1 Mercer L. Rev. 128 (1949).

JUDICIAL DECISIONS

Innocent purchaser for value. — In a prosecution for felony theft by taking of a van, the trial court was entitled to conclude that the victim was an innocent purchaser for value, believing the seller to be the owner, the defendant's claim to the contrary notwithstanding; moreover, pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish

this fact. Coursey v. State, 281 Ga. App. 494, 636 S.E.2d 669, 2006 Ga. App. LEXIS 1021 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Refusal to issue plates when ownership not proven. — Commissioner of revenue may refuse to issue plates to applicants who cannot submit satisfactory proof of ownership. 1952-53 Ga. Op. Att'y Gen. 224.

Nonresident entitled to tag upon proof of ownership. — Nonresident who sufficiently establishes ownership of vehicle is entitled to be issued license tag therefor, notwithstanding the fact that the nonresident may not use or intend to use the vehicle in Georgia. 1952-53 Ga. Op. Att'y Gen. 465.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 93 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 180, 273, 282.

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle or licensing of operator, 111 A.L.R. 1258; 163 A.L.R. 1375.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

40-2-29. Registration and license plate required; timing; required documentation; issuance of temporary operating permit for vehicles failing emission inspection; extensions.

(a) Except as otherwise provided in this chapter, any person purchasing or acquiring a vehicle shall register and obtain, or transfer, a license plate to operate such vehicle from the county tag agent in their county of residence no later than seven business days after the date of purchase or acquisition of the vehicle by presenting to the county tag agent the following:

(1) If applicable, a motor vehicle certificate of title or an application therefor as provided in Chapter 3 of this title;

(2) Satisfactory proof of owner's insurance coverage as provided for in subsection (d) of Code Section 40-2-26;

(3) If applicable, satisfactory proof of compliance with Article 2 of Chapter 9 of Title 12, the "Georgia Motor Vehicle Emission Inspection and Maintenance Act"; and

(4) Satisfactory proof that all fees, permits, and taxes have been paid.

(b) An application for registration shall be accompanied by check; cash; certified or cashier's check; bank, postal, or express money order;

or other similar bankable paper for the required fee or any taxes required by law.

(c) Upon application for renewal of a vehicle registration, a person unable to fully comply with the requirements of paragraph (3) of subsection (a) of this Code section shall receive a temporary operating permit that shall be valid for 30 days.

(d) The commissioner may provide by rule or regulation for one 30 day extension of the initial registration period which may be granted by the county tag agent if the transferor has not provided such purchaser or other transferee owner with a title to the motor vehicle more than five business days prior to the expiration of such initial registration period. The county tag agent shall grant an extension of the initial registration period when the transferor, purchaser, or transferee can demonstrate by affidavit in a form provided by the commissioner that title has not been provided to the purchaser or transferee due to the failure of a security interest holder or lienholder to timely release a security interest or lien in accordance with Code Section 40-3-56.

(e) A conviction for displaying a license plate or temporary operating permit not provided for in this chapter shall be punished as a misdemeanor.

History.

Ga. L. 1925, p. 315, § 1; Ga. L. 1927, p. 226, § 6; Ga. L. 1931, p. 7, § 84; Code 1933, §§ 68-208, 68-212; Ga. L. 1960, p. 943, § 1; Code 1981, § 40-2-27; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 537, § 2; Code 1981, § 40-2-29, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 143, § 4/HB 1005; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2018, p. 287, § 3/HB 329; Ga. L. 2023, p. 554, § 4/HB 183, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (a), substituted "If applicable, a motor" for "A motor" and inserted "or an application therefor" in paragraph (a)(1), and deleted "the" following "compliance with" in paragraph (a)(3); in subsection (b), substituted "the required fee" for "the amount of the license plate or temporary permit fee"; rewrote subsection (c) as present subsections (c) and (d); redesignated former subsection (d) as present subsection (e); and substituted "temporary operating permit" for "temporary license plate" in subsection (e).

Cross references.

Schedule of annual license fees, § 40-2-151.

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"Or other similar bankable paper" construed. — Words "or other similar bankable paper," found in former Code 1933, §§ 68-208 and 68-212 (see now O.C.G.A. § 40-2-29), include personal and company checks, as provided in Ga. L. 1960, p. 211 (see O.C.G.A. § 48-2-32). 1963-65 Ga. Op. Att'y Gen. 607.

Post-dated, nonpar, and qualified checks prohibited. — Words "free of any expense to the state" found in former Code 1933, § 92-5706 (see now O.C.G.A. § 48-2-31) restrict the term "bankable paper" found in former Code 1933, §§ 68-208 and 68-212 (see now O.C.G.A. § 40-2-29) in that this provision would prohibit accepting post-dated checks, checks drawn on nonpar banks, and any

check which was so qualified or conditioned that an expense to the state would necessarily be incurred. 1963-65 Ga. Op. Att'y Gen. 607.

Old tag valid only for 15 days from date of remittance. — Mailing application prior to April 1 cannot authorize car's operation without tag until April 15 because the old tag is valid only for "a period of 15 days from the date of such remittance" — not for such a period after April 1. 1970 Op. Att'y Gen. No. U70-70.

When mail order applicant penalized. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Ga. Op. Att'y Gen. 209.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 60, 72 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 144 et seq.

40-2-30. Purchase by mail.

An applicant may purchase a vehicle license plate or revalidation decal by mail, by mailing a properly completed application form to the tag agent of the county of his or her residence along with a bank check or money order in the amount of the license fee and all ad valorem taxes due thereon plus an additional fee of $1.00.

History.
Ga. L. 1957, p. 454, § 1; Ga. L. 1966, p. 508, § 4; Ga. L. 1968, p. 1386, § 1; Code 1981, § 40-2-28; Ga. L. 1982, p. 964, § 1; Ga. L. 1987, p. 655, § 1; Code 1981, § 40-2-30, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 9, § 1-66/HB 1055.

Cross references.
Schedule of annual license fees, § 40-2-151.

OPINIONS OF THE ATTORNEY GENERAL

Effect of remittance of proper fee. — Money order receipt, or similar evidence, showing a remittance to a county tag agent or to the state revenue commissioner for the proper fee entitles an applicant to the use and operation of the motor vehicle sought to be licensed and registered for a period of 15 days from the date of such remittance without penalty of any kind, assuming, of course, that the date of such remittance is on or before April 1. 1958-59 Ga. Op. Att'y Gen. 209.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 60.

C.J.S.
60 C.J.S., Motor Vehicles, § 282.

40-2-31. License plate design; retention of manufacturing and delivery costs; revalidation, county, and "In God We Trust" decals.

(a) If the applicant meets the requirements set forth in this chapter, the commissioner shall issue to the applicant a license plate bearing a distinctive number or a distinctive number to be displayed electronically upon a license plate by a digital license plate provider pursuant to Article 2B of this chapter.

(b) License plates issued pursuant to this chapter shall be at least six inches wide and not less than 12 inches in length, except that motorcycle license plates shall be at least four inches wide and not less than seven inches in length and license plates for low-speed vehicles and multipurpose off-highway vehicles shall be a size determined by the commissioner. All license plates shall show in boldface characters the month and year of expiration, the serial number, and either the full name or the abbreviation of the name of the state, shall designate the county from which the license plate was issued unless specifically stated otherwise in this chapter, and shall show such other distinctive markings as in the judgment of the commissioner may be deemed advisable, so as to indicate the class of weight of the vehicle for which the license plate was issued. Any license plate for a low-speed vehicle or multipurpose off-highway vehicle shall designate the vehicle as such. Such plates may also bear such figures, characters, letters, or combinations thereof as in the judgment of the commissioner will to the best advantage advertise, popularize, and otherwise promote Georgia as the "Peach State." Plates issued during the years 2026 through 2030 shall include the design approved pursuant to Code Section 40-2-31.1. Except for license plates issued pursuant to Article 2B of this chapter, any license plate issued pursuant to this chapter shall be of such strength and quality that the plate shall provide a minimum service period of at least five years. The commissioner shall adopt rules and regulations, pursuant to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the design and issuance of new license plates and to implement the other provisions of this Code section.

(b.1) Notwithstanding the provisions of Code Sections 40-2-131 and 48-2-17, the commissioner shall retain the costs of manufacturing and delivery of license plates, revalidation decals, and county name decals from the registration fee as set forth in Code Section 40-2-151; provided, however, that this subsection shall not apply to license plates issued pursuant to Article 2B of this chapter.

(c) Except for license plates issued pursuant to Article 2B of this chapter, the face of the license plate to be displayed shall be treated

completely with a retroreflective material which will increase the nighttime visibility and legibility of the plate. The department shall prepare the specifications which such retroreflective material shall meet.

(d) In those years in which a new license plate is not issued and the license plate was not issued pursuant to Article 2B of this chapter, a revalidation decal with a distinctive serial number shall be issued and affixed in the space provided on the license plate issued to the applicant which shall indicate the year and month through which the registration of the vehicle shall be valid; provided, however, that, if the commissioner determines that it is necessary, two revalidation decals shall be issued for each license plate to reflect the required information. When an applicant is issued a revalidation decal and such applicant registered the vehicle in another county the previous year, the applicant shall also be issued a new county decal which shall be properly affixed to the license plate and shall replace the other county decal.

(e) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the name of the agent's county. Such a decal shall be issued with each metal license plate and shall be affixed in the space provided on the license plate without obscuring any number or other information required to be present on the plate. A tag agent shall offer, upon such issuance of a new metal license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust."

(f) A county tag agent shall issue a county name decal, upon request, for the agent's county only if:

(1) The applicant is a resident of or a business located in the county named on the decal;

(2) The applicant is registering a new vehicle in such county, is renewing a current vehicle registration, or is transferring registration of a vehicle to the county named on the decal;

(3) The application for registration of the vehicle is being made in the county named on the decal; and

(4) The license plate was not issued pursuant to Article 2B of this chapter.

(g) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the nation's motto, "In God We Trust." A tag agent shall offer, upon such issuance of a new metal license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust." Such a decal shall be issued, upon request and free of charge, by a county tag agent with each new metal license plate.

History.

Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1943, p. 341, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1955, p. 659, § 7C; Ga. L. 1969, p. 266, §§ 2, 3; Ga. L. 1979, p. 615, § 1; Ga. L. 1981, p. 714, §§ 1, 2; Code 1981, § 40-2-29; Ga. L. 1982, p. 1584, §§ 2A, 5A; Ga. L. 1986, p. 1333, § 1; Ga. L. 1987, p. 949, § 2; Ga. L. 1988, p. 380, § 3; Code 1981, § 40-2-31, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 4; Ga. L. 1996, p. 1118, § 4; Ga. L. 1997, p. 419, § 6; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 512, § 6; Ga. L. 2006, p. 434, § 1/HB 363; Ga. L. 2010, p. 9, § 1-67/HB 1055; Ga. L. 2012, p. 1070, § 2/SB 293; Ga. L. 2021, p. 124, § 4/SB 210; Ga. L. 2023, p. 352, § 2-3/HB 121, effective July 1, 2023; Ga. L. 2024, p. 392, § 1/SB 369, effective April 23, 2024; Ga. L. 2024, p. 1052, § 4(19)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (b), in the first sentence, substituted "License plates issued pursuant to this chapter" for "Such license plates" at the beginning, substituted "except that motorcycle license plates shall" for "except motorcycle license plates which shall", deleted a comma following "seven inches in length", inserted "license plates for low-speed vehicles and multipurpose off-highway vehicles shall be a size determined by the commissioner. All license plates", substituted "was issued. Any license plate for a low-speed vehicle or multipurpose off-highway vehicle shall" for "was issued; and any license plate for a low-speed vehicle shall", and, in the present fifth sentence, substituted "this chapter, any license plate issued pursuant to this chapter shall" for "this chapter, the license plate shall".

The first 2024 amendment, effective April 23, 2024, added the fifth sentence in subsection (b).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, a period was deleted at the beginning of subsection (b.1).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date."

Ga. L. 2024, p. 392, § 4/SB 369 provides for the repeal of the amendment to subsection (b), effective January 1, 2032.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Evidence obtained from search after legal stop. — When any one of the traffic violations observed by a police officer would have provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an allegedly improper traffic stop, was not clearly erroneous. Tukes v. State, 236 Ga. App. 77, 511 S.E.2d 534, 1999 Ga. App. LEXIS 53 (1999), cert. denied, No. S99C0736, 1999 Ga. LEXIS 466 (Ga. May 14, 1999).

OPINIONS OF THE ATTORNEY GENERAL

All classes and types of plates should be seven-year plates. — All classes and types of motor vehicle license plates issued, except those issued to motor vehicles in excess of 24,000 pounds, should be five-year (now seven-year) license plates. 1970 Op. Att'y Gen. No. 70-195.

Legislative intent as to treatment of plate surface. — Legislature intended, and provided for, the treatment of the entire surface of the plate, not a limitation of the treatment to the numerals and/or embossments appearing on the face of the plate. 1969 Op. Att'y Gen. No. 69-345.

Department of Corrections not required to manufacture stickers. — Former Code 1933, § 68-214 (see now O.C.G.A. § 40-2-31), did not expressly require the Department of Offender Rehabilitation (now Department of Corrections) to undertake the manufacture of revalidation stickers and county-designation stickers. 1969 Op. Att'y Gen. No. 69-435.

Revalidation stickers must be of reflective material. 1969 Op. Att'y Gen. No. 69-461.

Responsibility of owner as to county decals. — Vehicle owner has mandatory responsibility to affix county name decal to plates in space provided. 1971 Op. Att'y Gen. No. U71-21.

40-2-31.1. (Repealed effective January 1, 2032.) Design and selection of United States of America's semiquincentennial license plate.

In coordination with the Department of Education, the department shall establish parameters for the design of and a selection process for a license plate which commemorates the United States of America's semiquincentennial. The design of such plate shall be selected from designs submitted by students in grades six through eight as part of a civics education and engagement program which shall include feedback from the Georgia Commission on Civics Education, Georgia Center for Civic Engagement, Georgia Historical Society, Sons of the American Revolution, and Daughters of the American Revolution.

History.
Code 1981, § 40-2-31.1, enacted by Ga. L. 2024, p. 392, § 2/SB 369, effective April 23, 2024.

Effective date.
This section became effective April 23, 2024.

Editor's notes.
Ga. L. 2024, p. 392, § 4/SB 369 provides for the repeal of this Code section effective January 1, 2032.

40-2-32. [Reserved] Commemoration of college or university.

History.
Ga. L. 1987, p. 658, § 1A; Ga. L. 1989, p. 921, § 1; Code 1981, § 40-2-32, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 1; Ga. L. 1997, p. 419, § 7; repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes.
Ga. L. 2010, p. 9, § 1-74/HB 1055 repealed and reserved this Code section, effective May 12, 2010.

40-2-33. Issuance of license plates and decals; transfer of registration to a digital license plate; compensation of tag agents; required identification.

(a)(1) Upon compliance with the provisions of this chapter and the payment of the license fee required by law, the tag agent shall accept the application for registration and, except as otherwise provided for in this chapter, if the license plate or revalidation decal applied for is in such tag agent's inventory, he or she shall issue the appropriate plate or revalidation decal.

(2) If the metal license plate applied for is not in inventory, the application shall be approved and forwarded to the commissioner, who, upon receipt of a proper and approved application, shall issue the license plate applied for by mailing or delivering the plate to the applicant. Until the license plate is received by the applicant from the commissioner, the applicant may operate the vehicle without a license plate therefor upon the receipt issued to him or her by the tag agent.

(2.1) The commissioner may provide for the issuance of a temporary operating permit for any multipurpose off-highway vehicle, to be displayed until such time as a license plate of the design required by Code Section 40-2-31 has been issued to the registrant as a replacement for such temporary operating permit; provided, however, that any such temporary operating permit shall designate the multipurpose off-highway vehicle as such; and provided, further, that the commissioner shall make available for issuance multipurpose off-highway vehicle license plates of the design required by Code Section 40-2-31 not later than January 1, 2024.

(3) At the time of initial application for registration or at any time during the registration period, a vehicle owner may file with the county tag agent, on a form or electronic form prescribed by the commissioner, a request to have a vehicle license plate duplicated on a digital license plate purchased from a digital license plate provider. Such request to the county tag agent shall include all applicable registration fees. Upon approving the application provided in this paragraph, the commissioner or county tag agent shall furnish the digital license plate provider with the appropriate licensing information to be displayed upon the digital license plate. In accordance with Code Section 40-2-8, a 45 day temporary operating permit shall be issued by the commissioner or county tag agent to an applicant for a digital license plate until such license plate is received by the applicant.

(b) Except as provided for in Code Section 40-2-22, the amount of commission permitted as compensation to tag agents under this Code

section shall be $1.00 per license plate or revalidation decal issued during any calendar year. Twenty-five cents for each license plate or revalidation decal sold in excess of 4,000 during any one calendar year shall become the property of the county and shall be turned over to the fiscal authorities of the county by the tag agent. The remaining portion of such commissions shall be disposed of as provided in Code Section 40-2-34.

(c)(1) Any other provisions of any law of this state, whether general, special, or local, to the contrary notwithstanding, and except as provided in subsection (b) of this Code section and paragraph (2) of this subsection, the fees prescribed in subsection (b) of this Code section shall be retained by the tag agent appointed by the commissioner under this chapter and shall be his or her own personal compensation for the services rendered in the administration of this chapter, regardless of whether such agent may otherwise be an elected or appointed official of the county, and regardless of whether as such county officer he or she is compensated for the performance of the duties of such office on a fee basis or salary basis, or combination thereof. It shall be his or her duty, however, as agent for the commissioner in the administration of the purposes of this chapter, to compensate any additional personnel which may be necessary to enable said agent to effectuate the provisions of this chapter and the rules and regulations promulgated under this chapter by the commissioner.

(2) If such tag agent shall be a salaried employee of the county and at a salary in excess of $7,999.00 per annum, the amount of such fees so collected shall go into the general treasury of the county. In such cases, it shall be the duty of the governing authorities of the county to furnish to the tag agent such additional clerical help as is necessary to carry out the provisions of this chapter.

(d) The initial issuance of any tag, on or after July 1, 2007, shall not be made unless the applicant presents at the time of application a valid driver's license or identification card. This subsection shall not apply to those applicants expressly exempted in Code Section 40-5-21.

History.

Ga. L. 1955, p. 659, § 3; Ga. L. 1957, p. 197, § 2; Ga. L. 1966, p. 508, § 3; Ga. L. 1970, p. 728, § 1; Code 1981, § 40-2-30; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 377, § 1; Ga. L. 1989, p. 857, § 1; Ga. L. 1990, p. 159, § 1; Code 1981, § 40-2-33, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 2; Ga. L. 1997, p. 419, § 8; Ga. L. 2000, p. 951, § 3-6; Ga. L. 2002, p. 512, § 7; Ga. L. 2007, p. 531, § 1/SB 38; Ga. L. 2010, p. 9, § 1-68/HB 1055; Ga. L. 2021, p. 124, § 5/SB 210; Ga. L. 2023, p. 352, § 2-4/HB 121, effective July 1, 2023; Ga. L. 2023, p. 554, § 5/HB 183, effective July 1, 2023; Ga. L. 2024, p. 1052, § 4(20)/SB 448, effective July 1, 2024.

Amendments.

The first 2023 amendment, effective July 1, 2023, added paragraph (a)(2.1).

The second 2023 amendment, effective July 1, 2023, deleted former paragraph (a)(2), which read: "(2) The commis-

sioner may provide for the issuance of a temporary license plate for any low-speed vehicle, to be displayed until such time as a license plate of the design required by Code Section 40-2-31 has been issued to the registrant as a replacement for such temporary license plate; provided, however, that any such temporary license plate shall designate the low-speed vehicle as such; and provided, further, that the commissioner shall make available for issuance low-speed vehicle license plates of the design required by Code Section 40-2-31 not later than September 1, 2002."; redesignated former paragraphs (a)(3) and (a)(4) as present paragraphs (a)(2) and (a)(3), respectively; and, in paragraph (a)(3), substituted "vehicle license plate duplicated on" for "vehicle license transferred to" in the first sentence and inserted "plate" near the end of the last sentence.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "driver's license or identification card" for "Georgia driver's license or Georgia identification card" in subsection (d).

Cross references.

Schedule of annual license fees, § 40-2-151.

Minimum salaries of tax collectors and tax commissioners, § 48-5-183.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Compensation of county tax commissioner. — There is no conflict between Ga. Const. 1983, Art. IX, Sec. I, Para. III authorizing compensation for tax commissioners based on fees, salaries, or a combination thereof, and O.C.G.A. § 40-2-33(c)(2) which simply constitutes a statutory exception to those fees which otherwise may comprise the compensation paid to a county tax commissioner. Weldon v. Board of Comm'rs, 212 Ga. App. 885, 443 S.E.2d 513, 1994 Ga. App. LEXIS 420 (1994), cert. denied, No. S94C1180, 1994 Ga. LEXIS 855 (Ga. July 14, 1994), cert. denied, No. S94C1208, 1994 Ga. LEXIS 856 (Ga. July 14, 1994).

O.C.G.A. § 48-5-183 controlled over a local act upon which a tax commissioner relied when, for during the commissioner's entire tenure, the commissioner's minimum salary under that section was higher than that provided in the local act, as well as higher than the maximum salary permitted in order to receive fees pursuant to O.C.G.A. §§ 40-2-33 and 48-5-180. Brown v. Liberty County, 271 Ga. 634, 522 S.E.2d 466, 1999 Ga. LEXIS 947 (1999).

Salary in excess of $7,999.00. — Tax commissioner is entitled to an incentive commission for selling license tags as long as the commissioner's salary is less than $7,999.00. Belcher v. Sumter County, 145 Ga. App. 173, 243 S.E.2d 110, 1978 Ga. App. LEXIS 1909 (1978).

Limitation of O.C.G.A. § 40-2-33(c)(2) necessarily applies to county officers, such as county tax commissioners, since every tag agent is either a tax collector or a tax commissioner and, thus, a county officer. Brown v. Liberty County, 271 Ga. 634, 522 S.E.2d 466, 1999 Ga. LEXIS 947 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Salary in excess of $7,999.00. — Commissioner salaried in excess of $7,999.00 per year is not entitled to claim tag fees. 1973 Op. Att'y Gen. No. U73-6.

40-2-34. Reports and remittances by tag agents.

(a) All county tag agents accepting license applications shall endeavor to submit to the commissioner on at least a weekly basis reports of license applications handled and remit with such reports related

sums of money to which the state is entitled. All tag reports of license applications handled and related sums of money to which the state is entitled must be submitted to the commissioner within seven calendar days from the close of the business week during which the aforementioned license applications were handled and related sums of money received. The term "business week" shall mean Monday through Friday (or Saturday if applicable).

(b) Funds received as a result of the handling of license applications shall be considered trust funds in the hands of such tag agents until such time as paid over to the commissioner.

(c) Failure to submit the reports or remit the funds within the period required by this Code section shall result in the penalties imposed by Code Section 48-2-44.

(d) Before the expiration of the time period within which a tag report is required to be filed with the commissioner or related funds remitted to the commissioner, application may be made to the commissioner for an extension. The commissioner shall be authorized, upon a showing of justifiable cause, to grant up to a 30 day extension from the deadline provided for the performance of the above duties. Only one such extension may be granted with regard to any reports or funds due the commissioner for a specific business week.

(e) Proof of mailing within the appropriate time periods provided for in this Code section, as evidenced by a United States Postal Service postmark, shall be prima-facie proof that the county tag agent has complied in a timely manner with the duties enumerated by this Code section.

(f) All funds derived from motor vehicle registrations or the sale of any license plates and remitted to the state shall be deposited in the general fund of the state treasury unless otherwise specifically authorized by the Constitution and provided for in this chapter.

History.

Ga. L. 1980, p. 1050, § 2; Code 1981, § 40-2-31; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-34, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 5; Ga. L. 2000, p. 951, § 3-7; Ga. L. 2001, p. 1173, §§ 2-1, 3-1; Ga. L. 2006, p. 1094, § 2/HB 1053.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 2001, p. 1173, effective January 1, 2002, amended this Code section twice so as to specifically apply that amendment to those versions of this Code section in effect both before and after the amendment made to this Code section by Ga. L. 2000, p. 951, becomes effective.

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides that the 2006 amendment becomes effective January 1, 2007, only upon ratification of a constitutional

amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

Administrative rules and regulations.

County Tag Agent's Reports, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-4-.01 et seq.

40-2-35. Commissioner to have license plates and decals by December 1.

The commissioner shall have in his possession on or before December 1 of each year, for distribution, the license plates and revalidation decals provided for in this chapter.

History.

Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 3; Code 1933, § 68-209; Code 1981, § 40-2-32; Code 1981, § 40-2-35, as redesignated by Ga. L. 1990, p. 2048, § 2.

40-2-36. Commissioner to furnish license plates and decals to tag agents; inventories and affidavits of missing plates; sale of plates for vehicles weighing more than 26,000 pounds.

(a) The commissioner shall furnish to each tag agent such number of motor vehicle license plates, revalidation decals, and decals as he may deem necessary for issuance by such agent, together with such forms and other supplies as are necessary to enable such agent to perform the duties required of him by this chapter.

(b) The county tag agent shall, immediately upon receipt of the motor vehicle license plates from the commissioner, take a full and complete inventory of the arriving shipment of license plates for motor vehicles over 26,000 pounds. The affidavit of lost or missing plates which the county tag agents are required to file with the commissioner shall be filed within ten days of the county tag agents' receipt of the license plates for motor vehicles over 26,000 pounds in weight. Failure to submit the required affidavit within ten days shall result in a denial of credit for any lost or missing license plates and the receiving county shall be responsible for full payment of said license plates.

(c) The county is responsible for providing a secure storage area for all license plates and revalidation decals.

(d) Notwithstanding any other provision of law, should a county desire to maintain an inventory of license plates for vehicles weighing in excess of 26,000 pounds and sell said license plates for vehicles weighing in excess of 26,000 pounds, the county shall first request permission in writing from the commissioner. Permission shall be granted at the discretion of the commissioner and, once granted, the permission may be revoked should the county fail to file tag and title

reports with the commissioner in a timely and proper manner and fail to remit to the commissioner in a timely manner sums of money collected.

(e) The commissioner shall prescribe such reasonable rules and regulations as in his discretion may be necessary to effectuate the purposes of this Code section.

History.
Ga. L. 1955, p. 659, § 2; Ga. L. 1966, p. 508, § 2; Ga. L. 1980, p. 1050, § 1; Code 1981, § 40-2-33; Ga. L. 1990, p. 1883, § 1; Code 1981, § 40-2-36, as redesignated by Ga. L. 1990, p. 2048, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Dealership registration in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Ga. Op. Att'y Gen. 479.

Cost of motor vehicle license plates is an expense of the Department of Revenue. 1969 Op. Att'y Gen. No. 69-461.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 67.

40-2-37. Registration and licensing of vehicles of state and political subdivisions.

(a) Except as otherwise provided in subsection (c) of this Code section, all vehicles of the type required to be registered by Code Section 40-2-20 owned by the State of Georgia or any municipality or other political subdivision of this state shall be registered with the commissioner by the fiscal officers or other proper officials of the respective departments and agencies of the state, municipality, or political subdivision to which such vehicles belong prior to operation and use thereof. Such registration shall be made upon forms prescribed and prepared by the commissioner for such purpose and shall contain a brief description of the vehicle to be registered; its name and model; the name of the manufacturer; the manufacturer's vehicle identification number; the department, agency, political subdivision, or branch thereof to which such vehicle is to be registered; and such other information as to identity as the commissioner may require. Upon the filing of the properly executed application for registration, the commissioner, upon being satisfied that such vehicle is bona fide owned by the state or a municipality or political subdivision thereof and upon payment by such applicant of an initial license fee of $3.00, shall issue a license plate which shall be displayed upon such vehicle in the same manner as provided for private vehicles. The license fee shall be

deposited in the general fund of the state treasury. Such license plates shall be replaced at such time as other license plates issued for private vehicles are required to be replaced.

(b) Except as otherwise provided for in subsection (c) of this Code section, the license plates issued pursuant to subsection (a) of this Code section shall be identical in appearance to regular license plates issued for private vehicles, except that such license plates shall not display any registration expiration and shall be marked in such a manner as to indicate the specific type of governmental unit operating the vehicle. These markings shall be prominently displayed and shall consist of one of the following appropriate legends: "STATE," "CITY," "COUNTY," "AUTHORITY," or "BOARD." In addition, each such license plate shall bear a county identification strip indicating the county in which the vehicle is based, except that vehicles owned by the state shall not be required to bear such county identification strip.

(c) Vehicles owned by the State of Georgia, any municipality of this state, or any other political subdivision of this state that are utilized in covert or secret investigatory police functions, assigned for the transportation of employees of the Georgia Lottery Corporation, or owned by the Department of Public Safety, shall be issued regular license plates upon the filing of the properly executed application for registration and payment of the applicable license fee. The commissioner shall be authorized to grant a waiver of the requirements of subsection (b) of this Code section such that regular license plates may be issued for any vehicle or vehicles owned by the State of Georgia, any municipality of this state, or any other political subdivision of this state upon finding issuance of such waiver to be in the best interest of public safety, public welfare, or efficient administration.

(d) Any license plate issued pursuant to this Code section shall remain displayed and affixed upon such vehicle so long as such vehicle continues to be owned by the state or such municipality or political subdivision. Upon cessation of ownership by the state or a municipality or political subdivision thereof, the license plate issued pursuant to this Code section shall be removed from such vehicle and returned to the commissioner or the county tag agent for destruction. In the event of a transfer of a vehicle to a department or agency, or branch thereof, other than the specific one to which such vehicle is registered, the commissioner shall be notified in writing by the department or agency from which the same is being transferred upon a form prepared and furnished for such purpose by the commissioner. On due proof of loss of any such license plate, or of mutilation due to accidental or natural causes, another license plate may be issued upon application of the fiscal officer or other proper official of the department, agency, or political subdivision to which any such lost plate is registered.

(e) No person, firm, or corporation owning or operating a motor vehicle shall display upon such motor vehicle any license plate provided for in this Code section unless at the time of such ownership or operation such vehicle is properly registered under this Code section and is owned by the state or a municipality or political subdivision of this state. Any person who violates this subsection shall be guilty of a misdemeanor.

History.

Ga. L. 1960, p. 777, §§ 3, 4; Ga. L. 1971, p. 667, § 1; Ga. L. 1980, p. 357, §§ 1, 2; Code 1981, § 40-2-35; Code 1981, § 40-2-37, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 1302, § 5; Ga. L. 2000, p. 951, § 3-8; Ga. L. 2001, p. 1173, §§ 2-2, 3-2; Ga. L. 2006, p. 434, § 2/HB 363; Ga. L. 2007, p. 652, § 2/HB 518; Ga. L. 2018, p. 908, § 1/HB 695; Ga. L. 2024, p. 147, § 3/HB 1100, effective April 22, 2024; Ga. L. 2024, p. 1052, § 4(21)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective April 22, 2024, rewrote this Code section.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "license plates" for "Georgia license plates" throughout subsections (b) and (c).

Cross references.

Local governments; Waiver of Immunity for Motor Vehicle Claims, § 36-92-1 et seq.

Purchase and use of motor vehicles by state generally, § 50-19-1 et seq.

Editor's notes.

Ga. L. 2024, p. 1052, § 7(e)/SB 448, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 6 of this Act and a provision of another Act enacted at the 2024 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 6 of this Act to the extent of such conflict." Accordingly, the amendment to subsections (b) and (c) of this Code section by Ga. L. 2024, p. 1052, § 4(21)/SB 448, was not given effect.

OPINIONS OF THE ATTORNEY GENERAL

State agencies entitled to governmental license tags. — Agency of the State of Georgia is entitled to a Georgia governmental license tag, should one ever be needed. 1979 Op. Att'y Gen. No. 79-14.

Because the historic Chattahoochee Commission is an agency of the State of Georgia, the commission would be entitled to a Georgia governmental license tag. 1985 Op. Att'y Gen. No. 85-24.

Exclusive possession of motor vehicle basis for purchase of governmental license plate. — When the exclusive use and possession of a motor vehicle is donated to a municipality or political subdivision for use in a driver education program for a period of more than 30 days, the municipality or political subdivision is entitled to purchase, for use on that vehicle, a governmental license plate. 1969 Op. Att'y Gen. No. 69-246.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 85, 97, 98. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 28 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 189, 307 et seq.

ALR.

Civil rights and liabilities as affected by

failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-2-38. Registration and licensing of manufacturers, distributors, and dealers; issuance of manufacturer, manufacturer headquarters, distributor, and dealer plates.

(a)(1) Manufacturers, distributors, and dealers engaged in the manufacture, sale, or leasing of vehicles required to be registered under Code Section 40-2-20 shall register by electronic means with the commissioner, making application for a distinguishing dealer's number, specifying the name and make of motor vehicle, tractor, or trailer manufactured, sold, or leased by them, upon forms prepared by the commissioner for such purposes, and pay therefor a fee of $62.00, which shall accompany such application. Upon payment of such fee by a dealer, the commissioner shall furnish to the dealer one master number plate to expire each year in accordance with subsection (f) of this Code section, to be known as a dealer's number and to be distinguished from the number plates provided for in this chapter by different and distinguishing colors to be determined by the commissioner. The dealer plate for a franchise motor vehicle dealer shall be distinguishable from the dealer plate for a used car dealer and from the dealer plate for a motor vehicle wholesaler. A dealer's number plate is for the purpose of demonstrating or transporting the dealer's vehicles or trailers for sale or lease. Persons engaged in the business of transporting vehicles for a dealer under a vehicle's own power shall be permitted to use such dealer's plate for the purpose of transporting a vehicle.

(2) No dealer may use or permit to be used a dealer's number for private use, on cars for hire or lease, or in any other manner not provided for in this Code section. A dealer may use or permit to be used a dealer's number for private use on vehicles owned by the dealership, regardless of whether such vehicle has been issued a certificate of title or registered, when such vehicles are operated by an employee or corporate officer of the dealer which has been issued such number. A distinguishing dealer's number used by an employee or officer for private use shall authorize such person to operate the vehicle to which the number is attached on the public highways and streets. For purposes of this paragraph, "employee" means a person who works a minimum of 36 hours per week at the dealership.

(3) The manufacturer's or distributor's license plate is limited to no longer than six months' use per vehicle. Upon payment of such a fee by a manufacturer or distributor, the commissioner shall issue to manufacturers and distributors number plates with the word "Manu-

facturer" or "Distributor" on such plates. Nothing in this subsection shall preclude a manufacturer or distributor from using a "Manufacturer" or "Distributor" number plate on motor vehicles it owns when such vehicles are used for evaluation or demonstration purposes, notwithstanding incidental personal use by a manufacturer or distributor. A dealer may apply for one or more distinguishing dealer's numbers. In the event the dealers, distributors, or manufacturers desire more than one tag, they shall so state on the application, and, in addition to the fee of $62.00 provided in this Code section, shall pay $12.00 for each and every additional number plate furnished.

(4)(A) Upon application and payment of the required fee, the commissioner shall issue to manufacturer headquarters or its affiliate number license plates with the words "Manufacturer HQ" on such plates. The manufacturer headquarters' license plates must be used exclusively on motor vehicles owned or in possession of a manufacturer headquarters or its affiliate. Such manufacturer headquarters' license plates are limited to no longer than 24 months' use per vehicle.

(B) A manufacturer headquarters or its affiliate shall apply on a form prescribed by the commissioner and shall provide proof that the applicant:

(i) Is a bona fide manufacturer headquarters; and

(ii) Maintains a system of records regarding use of such license plates. The manufacturer headquarters shall state in each application the number of manufacturer headquarters' license plates requested.

(C) The manufacturer headquarters or its affiliate shall pay an application fee of $62.00 per application as provided in this Code section and shall pay $12.00 for each and every plate furnished. With respect to any manufacturer headquarters' license plate issued to a manufacturer headquarters or its affiliate, notwithstanding anything to the contrary in this title or Code Section 48-5C-1, such manufacturer headquarters or its affiliate, and any person operating or possessing a motor vehicle using a manufacturer headquarters' license plate pursuant to this paragraph, shall not be subject to state or local title ad valorem tax fees with respect to such vehicle or manufacturer headquarters' license plate.

(D) The manufacturer headquarters or its affiliate shall maintain a system of records regarding the motor vehicle to which the manufacturer headquarters' license plate will be attached. Such record shall, at a minimum, contain the:

(i) Vehicle Identification Number (VIN);

(ii) Name and address of the primary individual operating the vehicle; and

(iii) Manner of use of the vehicle selected from the alternative uses referenced in subparagraph (E) of this paragraph.

(E) Vehicles with manufacturer headquarters' license plates may be operated by persons authorized by the manufacturer headquarters or its affiliate on vehicles of its brand for the following manners of use:

(i) Evaluation, marketing, or demonstration purposes, notwithstanding incidental personal use by a manufacturer headquarters' authorized employee or other authorized person designated by such manufacturer headquarters or its affiliate; or

(ii) As part of a vehicle leasing program operated by such manufacturer headquarters or its affiliate for the benefit of employees. Any operation of a motor vehicle by a person for an approved use pursuant to this subparagraph shall be deemed to be a demonstration of the motor vehicle for purposes of Code Section 48-8-39.

(5) The commissioner shall include a distinctive logo or emblem for any manufacturer's, distributor's, or manufacturer headquarters' license plate to be attached to an alternative fueled vehicle, as such term is defined in paragraph (7) of subsection (l) of Code Section 40-2-86.1. Alternative fuel vehicles bearing a special license plate pursuant to this subsection shall be subject to the alternative fuel vehicle fees as set forth in paragraph (19) of subsection (a) of Code Section 40-2-151 at the time of initial issuance and annually thereafter in a manner prescribed by the commissioner. Display of a special license plate issued pursuant to this paragraph shall authorize travel by such alternative fueled vehicle in lanes for exclusive or preferential use designated pursuant to Code Section 32-9-4.

(b)(1) Dealer plates shall be issued in the following manner:

(A) Dealers shall be issued a master plate and two additional plates, for a total of three initial plates; and

(B) In addition to the three dealer plates issued in accordance with subparagraph (A) of this paragraph, each dealer may also be issued one additional dealer plate for every 20 units sold in a calendar year.

(2) In order to determine the additional number and classification of plates to be issued to a dealer, a dealer shall be required to certify by affidavit to the department the number of retail and wholesale

units sold in the prior calendar year using the past motor vehicle sales history of the dealer as identified by department records or documentation approved by the department. If no sales history is available, the department shall issue a number of plates based on an estimated number of sales for the coming calendar year. The department may, in its discretion, request documentation supporting sales history and may increase or decrease the number and classification of plates issued based on actual sales.

(3) Until January 1, 2025, the allocation of the additional number and classification of plates to a dealer shall be no less than the amount such dealer qualified for as of January 1, 2020. This paragraph shall stand repealed on January 1, 2025.

(c) This Code section shall not apply in any manner to mopeds.

(d) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that such dealer, distributor, manufacturer, or manufacturer headquarters has unlawfully used such license plates in violation of this Code section.

(e) If a license plate issued pursuant to this Code section is lost or stolen, the dealer, manufacturer, distributor, manufacturer headquarters, or other party to whom the license plate was issued must immediately report the lost or stolen plate to local law enforcement agencies. If a replacement license plate is sought, the dealer, manufacturer, distributor, manufacturer headquarters, or other party to whom the license plate was issued shall file a notarized affidavit with the department requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the license plate has been lost or stolen and that the loss has been reported to a local law enforcement agency.

(f)(1) The expiration of a license plate issued pursuant to this Code section shall be the last day of the registration period as provided in division (a)(1)(A)(ii) of Code Section 40-2-21, except that for the purposes of this subsection, the registration period shall be determined by the first letter of the legal name of the business listed on the application for registration or renewal of registration. An application for renewal of registration shall not be submitted earlier than 90 days prior to the last day of the registration period. A penalty of 25 percent of the total registration fees due shall be assessed any person registering pursuant to this Code section who, prior to the expiration of such person's registration period, fails to apply for renewal or if having applied fails to pay the required fees.

(2) A transition period shall commence on October 1, 2007, and conclude on December 31, 2007, for all existing registrations and any new registration applications presented prior to January 1, 2008. On or after January 1, 2008, new applications for registration shall be

submitted and remain valid until the expiration of such registration as specified in paragraph (1) of this subsection.

(g) The commissioner shall adopt rules and regulations for the implementation of this Code section.

History.

Ga. L. 1927, p. 226, § 7; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-213; Ga. L. 1963, p. 529, § 1; Ga. L. 1977, p. 591, § 1; Ga. L. 1978, p. 2241, § 2A; Code 1981, § 40-2-36; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-38, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 1; Ga. L. 1993, p. 296, § 1; Ga. L. 1997, p. 1559, § 1; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 321, § 2/HB 455; Ga. L. 2006, p. 465, § 1/HB 1052; Ga. L. 2007, p. 652, §§ 3, 4/HB 518; Ga. L. 2015, p. 1219, § 2/HB 202; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2019, p. 486, § 2/SB 227; Ga. L. 2021, p. 358, § 1/HB 207; Ga. L. 2021, p. 922, § 40/HB 497; Ga. L. 2022, p. 658, § 1/HB 1481; Ga. L. 2024, p. 1052, § 4(22)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 9, 2022, added the paragraphs (b)(1) and (b)(2) designations; redesignated former paragraphs (b)(1) and (b)(2) as present subparagraphs (b)(1)(A) and (b)(1)(B), respectively; in subparagraph (b)(1)(B), substituted "subparagraph (A) of this paragraph" for "paragraph (1) of this subsection"; and added paragraph (b)(3).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "the dealer's vehicles" for "dealer's vehicles" in the fourth sentence in paragraph (a)(1); substituted "use, on cars for hire or lease, or in any" for "use or on cars for hire, for lease, or" in the first sentence in paragraph (a)(2); substituted "records or documentation" for "records of documentation" near the end of the first sentence in paragraph (b)(2); and, deleted "as such term is defined in Code Section 40-1-1" from the end of subsection (c).

JUDICIAL DECISIONS

Former Code 1933, § 68-213 (see now O.C.G.A. § 40-2-38), was a license certificate law and a revenue measure. Cambron v. Cogburn, 116 Ga. App. 373, 157 S.E.2d 534, 1967 Ga. App. LEXIS 820 (1967).

Liability for vehicle driver's negligence. — Dealer is not liable as a matter of public policy for the negligence of a driver of a vehicle to whom the dealer has illegally provided a dealer's tag. Cambron v. Cogburn, 116 Ga. App. 373, 157 S.E.2d 534, 1967 Ga. App. LEXIS 820 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Mandatory registration for automobile dealer. — It is mandatory for automobile dealer to register with commissioner and obtain a dealer tag, even though the dealer has no use for such. 1954-56 Ga. Op. Att'y Gen. 473.

Used car dealers were required to buy dealer's tags since there was no distinction between used car dealers and new car dealers in former Code 1933, § 68-213 (see now O.C.G.A. § 40-2-38). 1952-53 Ga. Op. Att'y Gen. 221.

Dealers in motor scooters are required to register and secure dealer's tags. 1954-56 Ga. Op. Att'y Gen. 471.

Tax commissioner accepting check returned by bank. — When a tax commissioner accepts a check as payment for a motor vehicle license plate, which is not honored by the bank but returned marked "insufficient funds," the commissioner does not have the authority to seize or cancel the license plate which the commissioner issued; the tag agent

accepts checks for motor vehicle license fees at the agent's own risk; consequently, the tag agent has a cause of action against the applicant for the amount of the license fee and the possibility of criminal action against the applicant. 1968 Op. Att'y Gen. No. 68-215.

Dealer using tags for other than demonstrating or transporting vehicles. — Dealer who permits dealer's tags to be used for purposes other than demonstrating or transporting dealer-owned vehicles for sale may and should be prosecuted as for a misdemeanor, but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Ga. Op. Att'y Gen. 472.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 161 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 186.

40-2-38.1. Transporter license plate.

(a) A person engaged in the business of the limited operation of a motor vehicle or trailer for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the delivery of new or used motor vehicles, trucks, trailers, or buses between manufacturers, distributors, dealers, sellers, or purchasers;

(2) To move a mobile office, a mobile classroom, a mobile or manufactured home, or a house trailer;

(3) To drive a motor vehicle or pull a trailer that is part of the inventory of a dealer to and from a motor vehicle or trailer trade show or exhibition or to, during, and from a parade in which the motor vehicle or trailer is used; or

(4) To drive special mobile equipment in any of the following circumstances:

(A) From the manufacturer of the equipment to a facility of a dealer; or

(B) From one facility of a dealer to another facility of a dealer.

(b) This Code section shall not be construed to require a motor vehicle or trailer dealer to obtain transporter plates in order to transport vehicles for sale or lease.

(c) A person may obtain a transporter plate by filing an application with the department and paying the required fee. The fee for an initial transporter plate shall be $62.00 and the fee for all additional plates shall be $12.00. An application for a transporter plate must be on a form

provided by the department and must contain the information required by the department. The department is authorized to promulgate regulations consistent with this Code section.

(d) Transporter plates issued under this Code section shall be distinguishable from dealer, wholesaler, manufacturer, or distributor plates, as provided for in Code Section 40-2-38.

(e) During the year for which it is issued, a person may transfer a transporter plate from one vehicle to another so long as the vehicle is driven or pulled only for a purpose authorized by subsection (a) of this Code section. In order to obtain a transporter plate, an applicant must demonstrate to the department compliance with all applicable federal and state laws.

(f) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that an applicant has unlawfully used such license plates for purposes other than those expressly permitted by this Code section.

(g) If a license plate issued pursuant to this Code section is lost or stolen, the dealer, manufacturer, distributor, or other party to whom the license plate was issued must immediately report the lost or stolen plate to local law enforcement agencies. If a replacement license plate is sought, the dealer, manufacturer, distributor, or other party to whom the license plate was issued shall file a notarized affidavit with the department requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the license plate has been lost or stolen and that the loss has been reported to a local law enforcement agency.

(h) This Code section shall not apply to farm tractors.

(i)(1) The expiration of a license plate issued pursuant to this Code section shall be the last day of the registration period as provided in division (a)(1)(A)(ii) of Code Section 40-2-21, except that for the purposes of this subsection, the registration period shall be determined by the first letter of the legal name of the business listed on the application for registration or renewal of registration. An application for renewal of registration shall not be submitted earlier than 90 days prior to the last day of the registration period. A penalty of 25 percent of the total registration fees due shall be assessed any person registering pursuant to this Code section who, prior to the expiration of such person's registration period, fails to apply for renewal or if having applied fails to pay the required fees.

(2) A transition period shall commence on October 1, 2007, and conclude on December 31, 2007, for all existing registrations and any new registration applications presented prior to January 1, 2008. On or after January 1, 2008, new applications for registration shall be

submitted and remain valid until the expiration of such registration as specified in paragraph (1) of this subsection.

(j) The commissioner shall adopt rules and regulations for the implementation of this Code section.

History.

Code 1981, § 40-2-38.1, enacted by Ga. L. 2006, p. 465, § 2/HB 1052; Ga. L. 2007, p. 652, § 5/HB 518; Ga. L. 2012, p. 155, § 1/HB 732; Ga. L. 2024, p. 1052, § 4(23)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Revenue" in subsection (c), and deleted "in any way" following "not" in subsection (h).

40-2-39. Registration and licensing of new motor vehicle dealers; temporary site permits; administrative fines; penalty.

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

(1) "Dealer" means any person engaged in the business of selling or leasing or offering to sell or lease new motor vehicles and who is licensed or otherwise authorized to utilize trademarks or service marks associated with one or more makes of motor vehicles in connection with such sales or leases. The term "dealer" shall not mean any person engaged solely in the business of selling used motor vehicles and shall not mean any person engaged in the solicitation, advertising, or financing of the sale of new motor vehicles and shall not mean any person engaged solely in activities as a manufacturer or distributor of new motor vehicles.

(2) "Distributor" means any person who, pursuant to a contract with a manufacturer, sells or offers to sell new motor vehicles to new motor vehicle dealers.

(3) "Established place of business" means a permanent salesroom or sales office of a new motor vehicle dealer, which permanent salesroom or sales office is located in a permanent building on an open lot and which is marked by an appropriate sign and at which a permanent business of bartering, trading, or selling of new motor vehicles is carried on in good faith.

(4) "Manufacturer" means any person who makes or assembles new motor vehicles.

(5) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways, except farm tractors and other machines and tools used in the production,

harvesting, and care of farm products and except construction equipment.

(6) "New motor vehicle" means a motor vehicle which has been sold to a dealer and on which the original motor vehicle title has not been issued.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(8) "Temporary site" means a location at which new or used motor vehicles are sold or offered for sale for which a temporary site permit has been issued by the department in accordance with paragraph (4) of subsection (b) of this Code section and which location is:

(A) Used for a period not to exceed 96 hours in any 30 day period of time;

(B) Used not more than three times in any calendar year; and

(C) Located in the county in which the established place of business of the new motor vehicle dealer using the temporary site is located or an adjoining county.

(9) "Trade shows" means the display or solicitation for sale of new motor vehicles at a location other than the established place of business at which the sales transaction is accomplished or at which delivery of the new motor vehicle is completed.

(b)(1) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer unless and until such person has registered with the commissioner and obtained a dealer's number license plate under Code Section 40-2-38 for each established place of business at which the person engages in such activity. The commissioner shall not accept such application for registration and shall not issue a dealer's number license plate unless and until the applicant establishes to the satisfaction of the commissioner, under criteria established by rules or regulations promulgated by the commissioner, that the applicant shall not engage in any activity of a new motor vehicle dealer except at an established place of business, a temporary site, or a properly licensed auto auction or licensed facility. This paragraph shall not be construed to prohibit a new motor vehicle dealer from delivering a vehicle off site if the transaction is initiated at an established place of business under this chapter.

(2) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer except at an established place of business which has been registered as such under this Code section and Code Section 40-2-38 or at a temporary site.

(3) This subsection shall not apply to new motor vehicle trade shows and shall not be construed to prohibit new motor vehicle trade shows or properly licensed auctions.

(4)(A) At least 60 days prior to the opening of a sale at a temporary site, a new motor vehicle dealer must make application to the department for a temporary site permit.

(B) To be eligible for a temporary site permit, a new motor vehicle dealer must be registered with the department as required by Code Section 40-2-38. In order to obtain a temporary site permit, a new motor vehicle dealer must provide, on a form promulgated by the department, the following:

(i) The address, including county, of the new motor vehicle dealer's established place of business;

(ii) The address, including county, of the temporary site location;

(iii) The dates and hours of the temporary site sale;

(iv) The number of temporary site sales already conducted by the new motor vehicle dealer during the calendar year in which the requested temporary site sale is to occur; and

(v) The name, address, and contact person of any sponsors, promoters, and lending institutions involved in or to be represented at the temporary site sale.

(C) As part of the application, a new motor vehicle dealer must submit written documentation demonstrating that the new motor vehicle dealer has complied with any licensing requirements applicable in the local jurisdiction in which the temporary site sale will occur and a copy of a written agreement with the owner of the real property where the sale is to occur.

(D) A temporary site permit issued pursuant to this paragraph shall be valid only for the dates and hours of the sale as indicated in the application submitted to the department and must be prominently displayed at the temporary site at all times during the sale. No new motor vehicle dealer may purchase more than three temporary site permits within a calendar year. A temporary site permit is not transferable to any other dealer or location.

(E) The filing fee for each application for a temporary site permit shall be $100.00.

(c) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant thereto, may issue an adminis-

trative fine not to exceed $1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated thereunder. If, after a hearing, the commissioner determines that any person has violated this Code section more than once, the commissioner may suspend a dealer's registration for a period not to exceed ten days. Any hearing and any administrative review held pursuant to this Code section shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its established place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto. For purposes of this subsection, the sale of each motor vehicle while not in compliance with temporary site permit requirements shall constitute a separate violation.

(d) Any person who violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed $1,000.00 or imprisonment for a period not to exceed 12 months, or both.

History.

Code 1981, § 40-2-36.1, enacted by Ga. L. 1988, p. 854, § 1; Code 1981, § 40-2-39, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1998, p. 1179, § 6; Ga. L. 2005, p. 321, § 3/HB 455; Ga. L. 2006, p. 72, § 40/SB 465.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, "section" was made lower case in paragraph (a)(8) and "department" was substituted for "Department of Motor Vehicle Safety" in paragraph (a)(8) and in subparagraph (b)(4)(A).

JUDICIAL DECISIONS

Effect of noncompliance on Commercial Code transaction. — Noncompliance with O.C.G.A. § 40-2-39 does not void a commercial transaction that is otherwise valid under the Commercial Code. Perimeter Ford, Inc. v. Edwards, 197 Ga. App. 747, 399 S.E.2d 520, 1990 Ga. App. LEXIS 1487 (1990).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 161 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 186.

40-2-39.1. Restrictions on sale or advertising of used motor vehicles displayed or parked; exceptions; enforcement; penalty.

(a)(1) An owner or lessee of any real property shall not authorize more than five used motor vehicles within any 12 month period displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles.

(2) An owner or lessee of any real property shall not authorize more than two used motor vehicles at the same time displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles.

(3) An owner or lessee of any used motor vehicle shall not display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle if the display or parking of such vehicle will cause the owner or lessee of the real property to be in violation of paragraph (1) or (2) of this subsection.

(4) An owner or lessee of any used motor vehicle shall not display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle unless the owner or lessee of such vehicle has the prior permission of the owner or lessee of the real property.

(b) The provisions of subsection (a) of this Code section shall not apply:

(1) If the owner or lessee of the vehicle displayed or parked is employed by the owner or lessee of the real property on which the vehicle is displayed or parked;

(2) If the owner or lessee of the vehicle displayed or parked is conducting business with the owner or lessee of the real property on

which the vehicle is parked or displayed at the time such vehicle is displayed or parked; or

(3) If the real property on which a vehicle is parked is a parking lot for which a fee is charged for the use of such parking lot, the owner or lessee of the parked vehicle has paid the fee for the use of such parking lot, and such vehicle is legitimately parked on the property for purposes other than displaying, selling, or advertising the sale of such vehicle.

(c)(1) An owner or lessee of any real property shall not authorize any used motor vehicle to be displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicle if such vehicle is not lawfully titled and registered in the name of the individual or entity offering such vehicle for sale in accordance with the applicable provisions of this chapter and Chapter 3 of this title.

(2) A person shall not advertise, display, sell, or offer for sale any used motor vehicle unless such vehicle is lawfully titled and registered in such person's name in accordance with the applicable provisions of this chapter and Chapter 3 of this title.

(d) Any law enforcement officer or agency, the board, or the owner or lessee of any real property upon which a vehicle is displayed or parked in violation of subsection (a) or (c) of this Code section for longer than 24 consecutive hours may have any such vehicle towed from such real property and stored at the expense of the owner or lessee of such vehicle and may then dispose of said vehicle in accordance with Chapter 11 of this title.

(e) A violation of this Code section shall constitute an unfair or deceptive act or practice and shall be a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." A violation of this Code section may be penalized as provided in Code Section 43-47-21 or any other applicable provision of this Code, including, but not limited to, the "Fair Business Practices Act of 1975."

(f) This Code section shall not apply to any person licensed under Chapter 47 of Title 43 or to any franchised motor vehicle dealer or any subsidiary wholly owned or controlled by such dealer. This Code section shall not eliminate or change the requirement for any person to obtain a license under Chapter 47 of Title 43 if such person engages in any conduct or activity for which a license is required under Chapter 47 of Title 43.

(g) Any person who violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed $1,000.00 for each violation or imprisonment for a period not to exceed 12 months, or both.

History.
Code 1981, § 40-2-39.1, enacted by Ga. L. 2007, p. 214, § 2/HB 144.
Editor's notes.
Ga. L. 2007, p. 214, § 4/HB 144, not codified by the General Assembly, provides, in part, that prosecutions for or cases involving any violation of law occurring prior to July 1, 2007, shall not be affected by the repeals or amendments made by it or abated by reason thereof.

40-2-40. Registration of delinquent vehicles; collection and disposition of penalties.

(a) The owner of a vehicle required to be registered under Code Section 40-2-20 which was registered for the previous year, who has failed to comply with Code Section 40-2-20 for the current year shall be deemed and held to be a delinquent under this Code section; and the registration of such vehicle shall, after the expiration of the owner's registration period, be subject to a penalty of 25 percent of the registration fee for such vehicle in addition to the fee provided by law, provided that such penalty shall in no event be levied prior to the expiration of the owner's registration period, notwithstanding that the owner failed to register such vehicle within an initial registration period.

(b) All applications for the registration of a delinquent vehicle shall, before being accepted by a tag agent, be first endorsed by a sheriff or a deputy sheriff, a chief of police or his or her designated representative, a state law enforcement officer, a tax commissioner, or a tax collector. The officer endorsing the delinquent application shall indicate, with his or her endorsement on the application, the total amount of the prescribed registration fee together with the 25 percent penalty provided in this Code section, and the full total of such amount shall be paid to the tag agent before any license plate or revalidation decal as provided for in this chapter shall be assigned to the applicant.

(c) All penalties assessed under this Code section shall be accredited in the office of the tag agent when received in the name of the officer making the endorsement, without regard to the residence of the applicant, whether such penalty is received through the exercise of such officer's authority as an arresting officer or through appearance of the applicant at his office for proper endorsement on an application.

(d) Between the first and fifth days of each calendar month, the tag agent shall remit to the respective fiscal authorities of the counties or cities employing the endorsing officers the full amount of such penalties accredited to such officers during and for the preceding calendar month. All sums accredited to state law enforcement officers shall be paid to the fiscal authorities of the county where the vehicle is registered.

History.
Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 1; Code 1933, § 68-201; Ga. L. 1943, p. 341, § 2; Ga. L. 1953, Jan.-Feb.

Sess., p. 392, § 2; Ga. L. 1959, p. 351, § 1; Ga. L. 1969, p. 266, § 1; Ga. L. 1973, p. 595, § 2; Ga. L. 1973, p. 781, § 1; Ga. L. 1974, p. 414, § 1; Code 1981, § 40-2-37; Ga. L. 1986, p. 1053, § 4; Code 1981, § 40-2-40, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 6; Ga. L. 1996, p. 1118, § 5; Ga. L. 1997, p. 419, § 9; Ga. L. 2000, p. 523, § 2; Ga. L. 2001, p. 4, § 40; Ga. L. 2005, p. 334, § 14-3.1/HB 501.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Sheriff formerly personally paid for services. — County sheriff was, for the performance of the endorsement service, only an agent of the state revenue commissioner and, as such an agent, the sheriff was personally paid for the services the sheriff rendered; there was no provision at that time which required the sheriff to pay such funds to the fiscal authority of the county. DeKalb County v. Broome, 215 Ga. 203, 109 S.E.2d 769, 1959 Ga. LEXIS 435 (1959); Howell v. Muscogee County, 105 Ga. App. 515, 125 S.E.2d 139, 1962 Ga. App. LEXIS 966 (1962).

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Operation by resident of vehicle licensed in another state. — Operation in the State of Georgia by a resident of the State of Georgia of a motor vehicle owned by the operator or another Georgia resident and licensed in another state was a violation of former Code 1933, § 68-201 (see now O.C.G.A. § 40-2-40). 1968 Op. Att'y Gen. No. 68-258.

When mail order applicant penalized. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Ga. Op. Att'y Gen. 209.

No discretion vested in sheriff in collection of penalty. — Former Code 1933, § 68-201 (see now O.C.G.A. § 40-2-40), was not in itself a tax statute, but rather one of a regulatory nature, and from the words employed, no discretion was vested in the sheriff in collecting or not collecting the penalty or the fee as the words employed are those of command and not discretion. 1950-51 Ga. Op. Att'y Gen. 189.

Fee received by sheriff for delinquent application for automobile tag is remitted to the commissioner. 1954-56 Ga. Op. Att'y Gen. 469 (decided under former Code 1933, § 68-201, prior to amendment by Ga. L. 1974, p. 414, § 1).

Penalties and the endorsement fees should be paid to officers in addition to compensation they receive as officers. 1957 Ga. Op. Att'y Gen. 216 (decided under former Code 1933, § 68-201, prior to amendment by Ga. L. 1974, p. 414, § 1).

Impoundment of vehicles. — Chief of police is authorized to seize and impound vehicles owned by residents of this state which are based in this state and for which no Georgia license plates have been issued. 1962 Ga. Op. Att'y Gen. 323.

Jurisdiction of probate court. — Probate court is without jurisdiction to try offense of operating motor vehicle with expired tags. 1958-59 Ga. Op. Att'y Gen. 67.

RESEARCH REFERENCES

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or licensing of operator, 35 A.L.R. 62; 38 A.L.R. 1038; 43 A.L.R. 1153; 54 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

40-2-41. Display of license plates.

Unless otherwise permitted under this chapter, every vehicle required to be registered under this chapter, which is in use upon the highways, shall at all times display the license plate issued to the owner for such vehicle, and the plate shall be fastened to the rear of the vehicle in a position so as not to swing and shall be at all times plainly visible. No person shall display on the rear of a motor vehicle any temporary or permanent plate or tag not issued by the State of Georgia which is intended to resemble a license plate which is issued by the State of Georgia. The commissioner is authorized to adopt rules and regulations so as to permit the display of a license plate on the front of certain vehicles. It shall be the duty of the operator of any vehicle to keep the license plate legible at all times. No license plate shall be covered with any material unless the material is colorless and transparent. No apparatus that obstructs or hinders the clear display and legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state. Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1927, p. 226, § 8; Code 1933, § 68-215; Ga. L. 1977, p. 596, § 1; Code 1981, § 40-2-38; Ga. L. 1982, p. 1584, §§ 3, 6; Code 1981, § 40-2-41, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 779, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1997, p. 419, § 10; Ga. L. 2000, p. 523, § 3.

Administrative rules and regulations.

Display of Tags, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-10-.01 et seq.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(28) are included in the annotations for this Code section.

Constitutionality. — Former Code

1910, § 1770 was not open to attack on the ground that the statute was not one of the subjects included in the Governor's proclamation convening the legislature in extraordinary session. Lee v. State, 163 Ga. 239, 135 S.E. 912, 1926 Ga. LEXIS 53 (1926) (decided under former Code 1910, § 1770 (28)).

License plate covering. — There was clear evidence of a violation of O.C.G.A. § 40-2-41 since the defendant's license plate was heavily obscured by a smoky covering. Knight v. State, 234 Ga. App. 359, 506 S.E.2d 245, 1998 Ga. App. LEXIS 1191 (1998), cert. denied, No. S99C0067, 1999 Ga. LEXIS 66 (Ga. Jan. 15, 1999).

Trial court erred in granting the suppression motions filed by both the first and second defendant, who occupied the vehicle stopped, as a violation of O.C.G.A. § 40-2-41 provided a sufficient reason for the traffic stop; moreover, the trial court erred in ruling that some portions of O.C.G.A. § 40-2-41 did not apply to the out-of-state license plate on the subject vehicle and by ruling that even though the word "Carolina" on the license plate was not legible, and hence, there was no violation of the statute because the police officer testified about an inability to recognize the tag as a South Carolina license plate. State v. Davis, 283 Ga. App. 200, 641 S.E.2d 205, 2007 Ga. App. LEXIS 11 (2007), cert. denied, No. S07C0707, 2007 Ga. LEXIS 322 (Ga. Apr. 24, 2007), cert. denied, No. S07C0706, 2007 Ga. LEXIS 323 (Ga. Apr. 24, 2007).

Stop of vehicle justified by obscured plate. — Although the defendant's car had license plates from South Carolina, a state trooper was still justified in making a stop of the defendant's car because the visibility and display portions of O.C.G.A. § 40-2-41 were applicable to all vehicles, and the defendant's license plate had a bracket around the plate that blocked the view of the registration expiration date. Wilson v. State, 306 Ga. App. 286, 702 S.E.2d 2, 2010 Ga. App. LEXIS 853 (2010).

Obstruction of one number on the defendant's license plate by the ball of a trailer hitch violated O.C.G.A. § 40-2-41 as the officer testified that the officer was unable to read the entire license plate and the video from the officer's car showed the hitch concealing at least one number. Worlds v. State, 328 Ga. App. 827, 762 S.E.2d 829, 2014 Ga. App. LEXIS 581 (2014).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 283, 284, 285.

ALR.

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R.3d 606.

40-2-41.1. Authentic historical Georgia license plates.

(a) As used in this Code section, the term "authentic historical Georgia license plate" means a license plate originally issued in the year 1989 or earlier and originally required to be displayed on motor vehicles operated upon the streets and highways of this state in the

year 1989 or earlier pursuant to former motor vehicle registration laws of this state.

(b) The owner of any antique motor vehicle manufactured in 1989 or earlier shall be authorized to display in lieu of and in the same manner as the license plate otherwise required under Code Section 40-2-41 an authentic historical license plate which clearly represents the model year within four years of any such antique motor vehicle, provided that the owner has properly registered such antique motor vehicle for the current year as otherwise required under this chapter and has obtained a current license plate or revalidation decal for such antique motor vehicle. Such currently valid license plate shall be kept in such antique motor vehicle at all times but need not be displayed in a manner to be visible from outside the vehicle.

(c) For purposes of this Code section, the authentic historical license plate shall be furnished by the owner of any such antique motor vehicle.

(d) No later than January 1, 2006, the commissioner shall have installed within the department's computer information system applicable to the registration of motor vehicles the necessary program which will include in the information relating to the current license plate or revalidation decal issued for an antique motor vehicle the information relating to the authentic historical license plate authorized to be displayed on such antique motor vehicle.

History.
Code 1981, § 40-2-41.1, enacted by Ga. L. 1999, p. 791, § 2; Ga. L. 2001, p. 1021, § 2; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 593, § 1/SB 117; Ga. L. 2018, p. 305, § 1/HB 671; Ga. L. 2024, p. 1052, § 4(24)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "license plate" for "Georgia license plate" throughout subsections (b), (c), and (d).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 59.

40-2-42. Transfer of license plates and revalidation decals.

(a) A license plate or revalidation decal, when issued, shall be transferred from one vehicle to another vehicle of the same class acquired by the same person as provided in this chapter. Any use of a license plate or revalidation decal by any other person or persons in any manner not provided for in this chapter shall be a violation of this chapter.

(b) The commissioner shall provide by rules and regulations appro-

priate procedures whereby, upon the payment of a fee of $5.00, and, upon preparation and filing of an appropriate application therefor, currently valid annual and five-year license plates and revalidation decals shall be transferred from one vehicle to another vehicle of the same class of which ownership is acquired following that person's or those persons' ceasing to own or operate on the public roads the vehicle for which such plate was originally issued and during the initial registration period for the acquired vehicle. If such acquired vehicle is of a different class than the vehicle no longer owned or operated by such person, he or she shall submit the license plate currently issued to him or her for cancellation and, upon payment of any additional fee for registering such acquired vehicle, the commissioner shall issue a new license plate to such person for use on such acquired vehicle. License plates and revalidation decals may be transferred in accordance with the provisions of this subsection at any time after issuance or renewal thereof and until the expiration of the period for which issued.

(c) The commissioner shall provide appropriate procedures whereby, when the registered owner of a jointly owned motor vehicle is deceased, the license plate issued for the motor vehicle may, upon appropriate application and payment of fees, be transferred to the surviving owner's name, provided that the surviving owner acquires a new certificate of title under subsection (d) or paragraph (1) of subsection (e) of Code Section 40-3-34 and makes the payment of appropriate ad valorem taxes.

History.

Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1969, p. 266, § 3; Ga. L. 1972, p. 178, § 1; Ga. L. 1979, p. 615, § 2; Ga. L. 1981, p. 714, § 3; Code 1981, § 40-2-39; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-2-42, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 3; Ga. L. 1997, p. 419, § 11; Ga. L. 1998, p. 1179, § 7.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

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Payment of fee is essential for transfer. — Change of registration of motor vehicle is accomplished only by payment of fee of $1.00 (now $5.00); this is true even though there is no actual change in the ownership of the vehicle but merely a change in the name of the owner. 1954-56 Ga. Op. Att'y Gen. 486.

Transferring of plates between trailers. — Company in sign business which employs number of portable electric sign trailers cannot transfer plates from one trailer to another as the trailers are used. 1972 Op. Att'y Gen. No. U72-9.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 35 et seq., 44 et seq., 50 et seq.

40-2-43. Certificate of registration; replacement of lost registration certificate; issuing of duplicates.

(a) Upon an applicant's compliance with all laws relevant to the registration of his vehicle, the appropriate licensing authority shall issue to such applicant a certificate of registration for his vehicle. If a registration certificate issued under this chapter is lost, stolen, mutilated, or destroyed or becomes illegible, the registered owner shall promptly make application for a duplicate registration certificate to the commissioner. The commissioner, upon receipt of an application and a fee of $1.00, shall issue the registered owner a duplicate registration certificate. If the application for a duplicate registration certificate is submitted to the same county that issued the current certificate of registration, the county tag agent may issue the duplicate registration certificate and may retain the application fee as compensation for issuing such duplicate certificate of registration.

(b) Any dealer or owner of a vehicle may apply to the commissioner or any county tag agent for a duplicate of the last registration certificate issued to the previous or current owner for that vehicle. The commissioner or county tag agent, upon receipt of an application and a fee of $1.00, shall provide the duplicate registration certificate.

History.

Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-206; Ga. L. 1978, p. 901, § 1; Code 1981, § 40-2-41; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1276, § 1; Ga. L. 1986, p. 1333, § 2; Code 1981, § 40-2-43, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1997, p. 419, § 11A; Ga. L. 1998, p. 1179, § 8.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

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Refusal of plates to applicants who cannot prove ownership. — State Revenue Commissioner may refuse to issue motor vehicle license plates to firms or individuals who cannot submit satisfactory proof of ownership. 1952-53 Ga. Op. Att'y Gen. 224.

Dealer using tags for other than demonstrating or transporting vehicles. — Dealer who permits dealer tags to be used for purposes other than demonstrating or transporting dealer-owned vehicles for sale may, and should, be prosecuted as for a misdemeanor, but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Ga. Op. Att'y Gen. 472.

40-2-44. Reporting of theft, loss, or mutilation of license plates or revalidation decals; issuance of duplicates or replacements.

(a) Except as provided in subsection (b) of this Code section, the owner of a motor vehicle shall immediately report the theft, loss, or

mutilation of a license plate or revalidation decal to the appropriate law enforcement agency or official, including but not limited to a municipal or county police department or officer, the county sheriff, the Department of Public Safety, or the Georgia State Patrol. Said owner shall obtain a copy of the police report and shall submit such copy to the commissioner with a fee of $8.00 to obtain a duplicate license plate or revalidation decal. Alternatively, the copy of the police report may be submitted to the applicant's county tag agent with a fee of $8.00 in which case the county tag agent is authorized to issue a replacement license plate or decal. In those instances in which a vehicle owner is unable to obtain a police report of such theft, loss, or mutilation of a license plate or revalidation decal, the owner shall be authorized to submit to the appropriate law enforcement agency or official and to either the commissioner or to the county tag agent a sworn affidavit as to such theft, loss, or mutilation in lieu of a police report and obtain a replacement license plate or decal. The county tag agent shall be entitled to retain as compensation for issuance of a replacement license plate or decal the same commission as provided for issuance of a new license plate or decal under the terms and conditions provided in subsection (b) of Code Section 40-2-33.

(b) If the license plate or revalidation decal is mutilated but still legible and if such license plate or revalidation decal is surrendered with the application for the duplicate, the requirements of subsection (a) of this Code section, relating to reporting the theft, loss, or mutilation of a license plate or decal and submitting a copy of a police report, shall not apply.

(c) A duplicate county decal when the original has been lost, defaced, or destroyed may be obtained from the commissioner at no cost. A replacement license plate or revalidation decal when the original has been lost in the mail prior to receipt by the registered owner shall be issued by the commissioner without charge upon application and completion of the form and affidavit prescribed by the commissioner setting forth the circumstances of nonreceipt of the license plate or decal. The owner shall report the nonreceipt or loss of the license plate or decal to the appropriate law enforcement agency or official, including, but not limited to, a municipal or county police department or officer, the county sheriff, or the Department of Public Safety. Said owner shall obtain a copy of the police report on which the license plate or decal number is listed and shall submit such copy to the commissioner. The owner shall not be charged a fee by the Department of Public Safety or the local law enforcement agency or official for a copy of such police report.

(d) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section.

History.
Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1969, p. 266, § 3; Ga. L. 1974, p. 397, § 1; Ga. L. 1979, p. 615, § 2; Ga. L. 1981, p. 714, § 3; Code 1981, § 40-2-40; Ga. L. 1982, p. 1584, §§ 1, 4; Code 1981, § 40-2-42, enacted by Ga. L. 1983, p. 676, § 1; Ga. L. 1985, p. 1278, § 1; Ga. L. 1988, p. 380, § 2; Code 1981, § 40-2-44, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 2; Ga. L. 1993, p. 91, § 40; Ga. L. 1994, p. 1851, § 1; Ga. L. 1995, p. 742, § 1; Ga. L. 2000, p. 951, § 3-9.

40-2-45. Transferring license plate or revalidation decal for "salvage", "rebuilt", damaged, or demolished motor vehicles.

(a) No person shall transfer a license plate or decal from one vehicle to any other motor vehicle which is a "salvage" or "rebuilt" motor vehicle as provided in Chapter 3 of this title unless the owner of such vehicle submits satisfactory proof to the commissioner that the motor vehicle inspection required by Code Section 40-3-37 has been performed and such vehicle has been determined to be in full compliance with the law.

(b) Notwithstanding subsection (a) of this Code section, if a vehicle is damaged, scrapped, dismantled, or demolished and transferred to an insurance company or licensed rebuilder and the transferor of such vehicle has a current, unexpired license plate and registration issued therefor, such license plate shall be transferred to another vehicle acquired by such transferor according to the provisions of Code Section 40-2-42 or 40-2-80, as applicable.

History.
Code 1981, § 40-2-43, enacted by Ga. L. 1989, p. 1186, § 1; Code 1981, § 40-2-45, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1997, p. 419, § 12; Ga. L. 1998, p. 1179, § 9.

Cross references.
Certificates of title for salvage or rebuilt motor vehicles, §§ 40-3-35, 40-3-36.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1998, the spelling of "transferred" was corrected in subsection (b).

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

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Surrender of plates and registrations of salvage vehicles. — Owners and insurers are required to surrender to the commissioner the license plates and registrations of vehicles which become salvage or total loss vehicles. 1997 Op. Att'y Gen. No. 97-24.

40-2-46. [Reserved] License plate commemorating 1996 Olympic Games.

History.
Ga. L. 1991, p. 1683, § 1; Ga. L. 1993, p. 972, § 1; repealed by Ga. L. 1998, p. 128, § 40, effective March 27, 1998, and by Ga.

L. 1998, p. 1179, § 10, effective May 1, 1998.

Editor's notes.

Ga. L. 1998, p. 128, § 40 repealed and reserved this Code section, effective March 27, 1998, and by Ga. L. 1998, p. 1179, § 10, effective May 1, 1998.

40-2-47. Permanent registration and license plates for certain trailers.

(a) Notwithstanding any other provision of this chapter to the contrary, the owner of any trailer, including:

(1) Any leased or rented trailer and including single pole and twin-beam trailers and other trailers used in commercial logging or commercial trailers used for the hauling of unprocessed farm products used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire, a private carrier, or a motor carrier of property; or

(2) Any boat trailer, utility trailer, or noncommercial cattle and livestock trailer,

shall have the option of obtaining a permanent registration and license plate for such trailer, in lieu of an annual registration and license plate, upon the payment of the one-time fee specified in Code Section 40-2-151 and compliance with the provisions of this Code section.

(b) The certificate of registration and license plate issued for a specific trailer under this Code section shall continue to be valid for the duration of the owner's interest in such trailer. No registration or license plate issued for any trailer under this Code section shall be transferred for any reason and a new registration and license plate shall be required when ownership of the trailer is transferred to a new owner. The payment of the fee for a permanent registration and license plate shall be in addition to and not in lieu of the payment of annual ad valorem taxes on such trailer during the period of December 1 to February 15.

(c) As used in this Code section, the term "leased or rented trailer" means any utility trailer that is owned by and leased or rented out by a person, firm, or corporation in the business of leasing or renting out such trailers.

History.

Code 1981, § 40-2-47, enacted by Ga. L. 1994, p. 1373, § 1; Ga. L. 1995, p. 742, § 2; Ga. L. 1997, p. 419, § 12A; Ga. L. 2002, p. 1074, § 5; Ga. L. 2009, p. 449, § 2/SB 128.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1994, "one-time" was substituted for "one time" in the first sentence of subsection (a) (now the ending undesignated paragraph).

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action

related to any violation of law committed prior to the effective date of this Act." This Act became effective July 1, 2002.

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

ARTICLE 2A

FLEET VEHICLES

40-2-50. Definitions.

As used in this article, the term:

(1) "Fleet" means 100 or more motor vehicles or trailers.

(2) "Fleet registration plan" means the method of registering the motor vehicles of a fleet as provided in this article.

History.

Code 1981, § 40-2-50, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898; Ga. L. 2024, p. 147, § 4/HB 1100, effective April 22, 2024.

Amendments.

The 2024 amendment, effective April 22, 2024, in paragraph (1), added "or trailers" at the end.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, the subsection (a) designation was deleted and a period was substituted for "; and" at the end of paragraph (1).

40-2-51. Fleet enrollment.

(a) A corporation or firm which has an established place of business in this state or which is controlled by a parent corporation which has an established place of business in this state and which owns or operates under a lease agreement a fleet which is not required to be registered under the International Registration Plan in accordance with Article 3A of this chapter may enroll in the fleet registration plan and register and obtain licenses to operate the motor vehicles in such fleet as provided in this article.

(b)(1) Applications for enrollment of a fleet under the fleet registration plan may be submitted to the department in the form and manner prescribed by the commissioner.

(2) An applicant for enrollment of a fleet under the fleet registration plan shall pay a fleet enrollment fee of $50.00 for initial enrollment of the fleet.

(3) If the department determines that the applicant is eligible for fleet registration and proper application has been made, the department shall enroll the fleet, indicate the amount of license fees due for

the fleet, and assign a unique registration account number to the applicant.

History. Code 1981, § 40-2-51, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898.

40-2-52. Registration and licensing of fleet motor vehicles.

(a) Within 30 days of receipt of a validated fleet enrollment form, the owner or operator of the enrolled fleet shall register and obtain licenses to operate the motor vehicles by submitting properly completed certificates of title for each vehicle in a fleet and any supporting documents required by the commissioner. The owner or operator of the enrolled fleet which acquires a vehicle after approval of fleet enrollment shall submit the properly completed certificates of title and required supporting documentation for any additional vehicles within 30 days from the date of acquisition of such vehicle.

(b) All certificates of title by the owner or operator of an enrolled fleet required under this article shall be submitted to the department electronically and in a manner prescribed by the commissioner.

(c) Any applicable state and local title and ad valorem taxes required pursuant to Code Section 48-5C-1 shall be paid for any new motor vehicle to be included in an enrolled fleet.

(d) The provisions of Article 2 of this chapter for registering and licensing motor vehicles generally which are not inconsistent with the provisions of this article shall apply to the registration and licensing of each vehicle of an enrolled fleet.

History. Code 1981, § 40-2-52, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898.

40-2-53. License plates for fleet motor vehicles.

(a) Upon electronic submission of all applicable requirements of this article, the department shall send notification of such to the county tag agent. Upon receipt of such notification from the department, the county tag agent shall issue to the applicant a fleet motor vehicle license plate for each vehicle of the fleet to be registered and licensed in such county.

(b) Fleet motor vehicle license plates shall be similar in design to regular license plates issued under Code Section 40-2-31, except that such fleet motor vehicle license plates shall contain such words or symbols, in addition to the numbers and letters otherwise prescribed by law, so as to distinctively identify the motor vehicles on which they are placed as fleet motor vehicles. Such motor vehicle license plates shall

contain the word "FLEET" in the location of and in lieu of the revalidation decal required under Code Section 40-2-8 so as to distinctly identify the motor vehicle as part of an enrolled fleet.

(c) License plates issued under this Code section shall be renewed annually upon payment of a renewal fee to the department. Such fee shall be the same amount that would be charged for a revalidation decal for such vehicle.

(d) License plates issued under this Code section may be transferred between vehicles of the same class upon electronic submission to the department of the information required under Code Section 40-2-51 for any vehicle added to an enrolled fleet and the payment of the required registration fees for such additional vehicle.

History. Code 1981, § 40-2-53, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898.

40-2-54. Audits; regulatory authority.

(a) The department or its designated agent may perform an audit of any fleet registrant to ensure compliance with the requirements of this article which may include, without limitation, examination of records of all vehicles in a fleet, additions to or deletions from a fleet since the most recent such audit, and proof of proper payment of or exemption from ad valorem taxes on fleet vehicles.

(b) The department is authorized to promulgate such rules and regulations as the department shall find necessary to implement the provisions of this article.

History. Code 1981, § 40-2-54, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898.

40-2-55. Termination of participation in fleet registration plan.

An enrollment of a fleet in the fleet registration plan shall be terminated by the department in the event:

(1) The department determines on the basis of an audit that fees for registration and licensing are not paid as required for 5 percent or more of the total vehicles in the fleet which are registered in this state;

(2) Of the conviction of the fleet registrant for any unlawful use of any license plate issued for a fleet vehicle;

(3) Of the failure of the fleet registrant to pay title and ad valorem taxes as required for any fleet vehicle; or

(4) Of the failure of the fleet registrant to pay enrollment fees as required.

History.
Code 1981, § 40-2-55, enacted by Ga. L. 1998, p. 1179, § 12A; Ga. L. 2018, p. 677, § 1/HB 898.

ARTICLE 2B

DIGITAL LICENSE PLATES

40-2-57. Application for digital license plate; renewals; fees.

(a) Any county tag agent with a satisfactory application for registration pursuant to Code Section 40-2-26 which indicates preference for a digital license plate shall inform the commissioner of such request. Upon a request by a digital license plate provider, the department shall transmit any required data to be displayed upon a digital license plate for an applicant to the digital license plate provider. A county tag agent shall ensure an applicant complies with the requirements for registration pursuant to this chapter.

(b) A motor vehicle owner with a digital license plate shall renew the registration annually as provided by this chapter. The department shall notify the digital license plate provider upon satisfactory renewal. Evidence of such renewal shall be displayed upon the digital license plate in a manner that indicates the year and month through which the registration of the vehicle shall be valid. Compliance with this subsection shall satisfy the revalidation decal requirements of this chapter.

(c) A digital license plate provider shall be authorized to collect fees for the provision of digital license plate hardware and for services to such license plate. Such fees may include the cost for the manufacture of the digital license plate, the installation of the digital license plate, and any service or repair plan an applicant may elect to purchase.

(d) Except as provided for in subsection (b) of this Code section, nothing in this article shall exempt an applicant for a digital license plate from the requirements of Code Sections 40-2-8 and 40-2-20.

History.
Code 1981, § 40-2-57, enacted by Ga. L. 2021, p. 124, § 6/SB 210.

40-2-58. Duties and privileges of digital license plate providers.

(a) A digital license plate provider shall maintain an inventory of digital license plates in an amount determined to be adequate by the commissioner.

(b) The commissioner shall enter in agreements with any digital license plate provider that has been selected by the state to manufacture digital license plates for the State of Georgia. Such agreements shall grant a selected digital license plate provider the authorization to

utilize any copyright or copyrights for special license plates as permitted under Code Sections 40-2-60.1, 40-2-86, and 40-2-86.1.

(c) Upon notice from the commissioner of a cancelled or revoked registration, a digital license plate provider shall terminate the electronic data transmitted to a digital license plate for such vehicle.

(d) Upon express written consent of a vehicle owner, a digital license plate provider shall be authorized to collect and disseminate data relating to the location of a motor vehicle in accordance with the terms of any such agreement.

History.
Code 1981, § 40-2-58, enacted by Ga. L. 2021, p. 124, § 6/SB 210.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2021, "the" was inserted before "location" in subsection (d).

40-2-59. Cancellation of digital license plate by owner.

The owner of a motor vehicle with a digital license plate may cancel a digital license plate by applying for a metal license plate with the county tag agent as provided for in this chapter and upon notification of cancellation to a digital license plate provider.

History.
Code 1981, § 40-2-59, enacted by Ga. L. 2021, p. 124, § 6/SB 210.

40-2-59.1. Provider authority to change display of digital license plate.

A digital license plate provider shall be authorized to change the digital display or messaging of a digital license plate in compliance with rules and regulations of the department or upon request by a local authority or the department. The commissioner shall be authorized to develop rules and regulations relating to the digital displays, messaging, and personalization of digital license plates. Any rules and regulations relating to the display of emergency messages for the public or Levi's Call: Georgia's Amber Alert Program shall be adopted in consultation with the Department of Public Safety, the Georgia Bureau of Investigation, the Georgia Emergency Management and Homeland Security Agency, and the Georgia Association of Broadcasters.

History.
Code 1981, § 40-2-59.1, enacted by Ga. L. 2021, p. 124, § 6/SB 210.

40-2-59.2. Report on implementation.

On or before January 1, 2024, the commissioner shall submit a report

on the implementation of this article to the chairpersons of the Senate Public Safety Committee and the House Committee on Motor Vehicles.

History.
Code 1981, § 40-2-59.2, enacted by Ga. L. 2021, p. 124, § 6/SB 210.

40-2-59.3. Regulation; authority for testing or studying digital license plates.

(a) On or before July 1, 2022, and prior to the issuance of any digital license plate, the commissioner shall promulgate and adopt rules and regulations necessary and appropriate to carry out this article and any other provisions of law relating to the issuance of digital license plates, including, but not limited to, approval of applications and fee collection. Such rules and regulations shall not become effective until October 1, 2022.

(b) The commissioner shall be authorized to issue digital license plates for the purpose of testing or studying the effectiveness of digital license plates.

History.
Code 1981, § 40-2-59.3, enacted by Ga. L. 2021, p. 124, § 6/SB 210.

ARTICLE 3

PRESTIGE LICENSE PLATES AND SPECIAL PLATES FOR CERTAIN PERSONS AND VEHICLES

Administrative rules and regulations.
Issuance of Special Prestige License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-22-.01 et seq.

Title and Registration Record Provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-30-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 59.

40-2-60. Prestige license plates.

(a) Motor vehicle owners who are residents of Georgia, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and, except as provided in subsection (c) of this Code section, upon the payment of a fee of $35.00 in addition to the regular

motor vehicle registration fee, shall be issued special personalized prestige license plates by the commissioner. Special personalized license plates issued pursuant to this Code section shall be subject to an additional annual registration fee of $35.00 as a condition of obtaining an annual revalidation decal for such license plate which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(b) For the purpose of this Code section, a license plate with a low number or special number may also be considered as a prestige or personalized plate.

(c) Additional fees for special or distinctive license plates issued pursuant to this article shall be as prescribed in the Code section authorizing such plate, and, when no additional fee is specified, no additional fee shall be required.

(d) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section.

History. Ga. L. 1968, p. 1404, §§ 2, 3, 5; Ga. L. 1985, p. 261, § 1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4; Ga. L. 2010, p. 9, § 1-69/HB 1055.

40-2-60.1. Standardized administrative process for special license plates; designs; fees; application process.

(a) The General Assembly finds that in recent years numerous laws were enacted providing for the issuance of special license plates for certain persons and vehicles. The General Assembly finds that there exists a need for a standardized administrative process to provide for the authorization of issuance of such special license plates and that the public interest will be best served by such a standardized administrative process. While recognizing that the legislature may not abridge or delegate its powers, the General Assembly declares that it is in the public interest of this state for future proposals for special license plates to be governed by the administrative process established by this Code section rather than by the legislative process.

(b)(1) The General Assembly determines that the issuance of special license plates to support an agency, fund, or program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and the dedication of a portion of the funds raised from the issuance of these special license plates is in the best interests of the people of this state and is authorized by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) The commissioner is authorized to adopt rules and regulations

for the issuance of special license plates for groups of individuals and vehicles. All special license plates issued pursuant to this paragraph shall not be subject to the provisions of subsection (e) of this Code section.

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

(1) "Manufacturing fee" means a $25.00 fee paid at the time an application is submitted or upon the issuance of a special license plate.

(2) "Registration fee" means the fees as set forth in Code Section 40-2-151.

(3) "Special license plate" means a license plate that is authorized under this Code section that commemorates an event or supports an agency, fund, or program beneficial to the people of this state or is specifically authorized by the General Assembly for certain persons or vehicles.

(4) "Special license plate fee" means a $35.00 fee paid at the time a special license plate is issued.

(5) "Special license plate renewal fee" means a $35.00 fee paid at the time a special license plate is renewed and a revalidation decal is issued.

(c.1) Any special license plate issued under the provisions of this Code section shall be subject to the manufacturing fee, special license plate fee, and special license plate renewal fee provided for in this Code section.

(d) The agency, fund, or nonprofit corporation sponsoring a special license plate, in cooperation with the commissioner, shall design a special distinctive license plate appropriate to promote the program benefited by the issuance of the special license plate. Special license plates for groups of individuals and vehicles shall be readily recognizable by the insertion of an appropriate logo or graphic identifying the special nature of the license plate. All special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. Spaces for county name labels or other authorized labels, including the "In God We Trust" label, are required for all special license plates unless expressly eliminated under this chapter.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the issuance of special license plates, the agency, fund, or nonprofit corporation must provide a written statement

stating the manner in which such funds will be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) Notwithstanding the other provisions of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The department shall not utilize any graphic that is copyrighted unless a sponsoring organization has secured for the state the authority to utilize the copyrighted design at no cost to the state and the sponsoring organization has agreed to hold the state harmless against any related claim of copyright violation or infringement. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(g) Any Georgia resident who is the owner of a motor vehicle, except a commercial vehicle as defined in 49 C.F.R. Section 390.5, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and payment of the appropriate fees as set forth in this Code section in addition to the required motor vehicle registration fee, shall be able to apply for a special license plate as provided in this Code section.

(h) Any party requesting a special license plate not previously authorized by this chapter shall make application with the department. The application shall include a design of the proposed license plate and a bond of $50,000.00 to serve as surety for moneys collected from applicants by the sponsor. The commissioner shall review and approve or disapprove all applications within 30 days of receipt by the department. Upon approval of the design by the commissioner, the special

license plate authorized pursuant to this subsection shall not be issued except upon the receipt by the department of at least 1,000 prepaid applications together with the manufacturing fees within two years after the date of approval by the commissioner. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees held by the department and the sponsor shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(i) Upon the receipt of 1,000 applications together with manufacturing fees, the commissioner shall provide a letter of certification to the sponsor verifying that the sponsor has satisfied the requirements of the provisions of this Code section. Upon receipt of the letter of certification, the sponsor, if necessary, shall seek enactment of the appropriate legislation required to authorize manufacture of the special license plate.

(j) The department shall not be required to continue to manufacture a special license plate or accept renewals and applications if the number of active registrations falls below 500 registrations at any time during a calendar year. A current registrant may continue to renew such special license plate during his or her annual registration period. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the number of active registrations for the special license plate falls below 500 at any time during a calendar year, the sponsoring agency, fund, or nonprofit corporation shall be required to obtain 1,000 applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(k) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(l) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(m) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section. The rules and regulations to be promulgated by the commissioner may provide for exceptions whereby a special license plate will not be issued if the issuance of the plate would adversely affect public safety.

History.

Code 1981, § 40-2-60.1, enacted by Ga. L. 1997, p. 1559, § 2; Ga. L. 1998, p. 1179, § 12B; Ga. L. 2000, p. 951, § 3-10; Ga. L. 2002, p. 1215, § 3; Ga. L. 2005, p. 1159, § 1/SB 168; Ga. L. 2006, p. 72, § 40/SB

465; Ga. L. 2007, p. 180, § 1/HB 457; Ga. L. 2010, p. 9, § 1-70/HB 1055; Ga. L. 2012, p. 1070, § 3/SB 293; Ga. L. 2013, p. 141, § 40/HB 79.

Editor's notes.

Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, renumbered former Code Section 40-2-60.1 as present Code Section 40-2-61.

Ga. L. 1997, p. 1559, § 5, not codified by the General Assembly, provides that no special license plate shall be issued under that Act prior to January 1, 1998.

Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date."

RESEARCH REFERENCES

ALR.

Conduct Constituting Innocent or Non-Willful Copyright Infringement Under 17 U.S.C.A. § 504(c)(2), 79 A.L.R. Fed. 3d 3.

40-2-61. License plates for U.S. Senators and Congressmen, state constitutional officers, Speaker of the House of Representatives, Justices of Supreme Court, Judges of Court of Appeals, and Public Service Commission members.

The commissioner shall design and issue distinctive license plates to each United States Senator and Congressman elected from the State of Georgia, each state constitutional officer, the Speaker of the House of Representatives, each Justice of the Supreme Court and each Judge of the Court of Appeals, and each member of the Public Service Commission to be placed on such official's personal motor vehicle. Each such distinctive license plate shall indicate the individual's elected office and no county name decal need be affixed to such plate as required pursuant to Code Section 40-2-9. The special license plate authorized by this Code section shall be issued to such elected official upon application and payment of a manufacturing fee of $25.00 and upon compliance with the state laws relating to registration and licensing of motor vehicles and shall be transferred as provided in Code Section 40-2-80. Distinctive license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of $35.00 which shall be collected by the county tag agent at the time for collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. For purposes of this Code section, the term "state constitutional officer" means the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor.

History.

Code 1981, § 40-2-60.1, enacted by Ga. L. 1989, p. 1186, § 2; Ga. L. 1990, p. 1902, § 1; Code 1981, § 40-2-61, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4.1; Ga. L. 1997, p. 419, § 14; Ga. L. 2010, p. 9, § 1-71/HB 1055; Ga. L. 2023, p. 61, § 1/HB 175, effective January 1, 2024.

Amendments.

The 2023 amendment, effective January 1, 2024, substituted "each state constitutional officer" for "the Governor, the Lieutenant Governor" and inserted ", and each member of the Public Service Commission" in the first sentence, inserted "as required pursuant to Code Section 40-2-9" at the end of the second sentence, and added the last sentence.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-62. License plates for current and former members of the General Assembly.

The commissioner shall mail special and distinctive license plates printed for members of the General Assembly and former members of the General Assembly who are hereby deemed to have emeritus status after having served in the General Assembly eight or more years to the local tag agent in the counties wherein such members or former members reside on or before the owner's registration period each year. Such special and distinctive license plates shall be issued only upon applications made to the local tag agent and payment of a $25.00 manufacturing fee. License plates may be issued by the local tag agent upon a proper application and in accordance with the terms of this chapter. License plates issued pursuant to this Code section need not contain a place for the county name decal, and no county name decal need be affixed to a license plate issued pursuant to this Code section. Special and distinctive license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of $35.00 which shall be collected by the county tag agent at the time for collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The special license plates issued pursuant to this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80.

History.

Ga. L. 1968, p. 1216, § 1; Code 1981, § 40-2-61; Ga. L. 1986, p. 1333, § 3; Code 1981, § 40-2-62, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4.1; Ga. L. 1995, p. 809, § 7; Ga. L. 1997, p. 419, § 15; Ga. L. 2010, p. 9, § 1-72/HB 1055; Ga. L. 2013, p. 265, § 1/SB 121.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 2013, p. 265, § 4/SB 121, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall only apply to members of the General Assembly who have eight or more years of service as of December 31, 2013.

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-63. License plates for sheriffs.

The commissioner shall mail to the local tag agents special and distinctive license plates for the elected sheriffs in the counties of this state on or before the owner's registration period of each sheriff. The sheriffs shall make application with the local tag agent and shall pay a fee of $25.00. Special sheriffs' license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of $25.00 which shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. License plates shall be issued by the local tag agents upon proper application and in accordance with the terms of Article 2 of this chapter. Only one special and distinctive license plate shall be issued to each elected sheriff; however, a sheriff may choose to use the sheriff's distinctive license plate either on the law enforcement vehicle assigned to such sheriff or on his or her personal vehicle.

History.
Ga. L. 1978, p. 1530, § 1; Code 1981, § 40-2-62; Ga. L. 1985, p. 261, § 2; Ga. L. 1990, p. 159, § 2; Code 1981, § 40-2-63, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 5; Ga. L. 1995, p. 809, § 8.

Editor's notes.
Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this act." The act became effective January 1, 1997.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 282.

40-2-63.1. License plates for public safety first responders injured in the line of duty.

(a) Any law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder who has sustained a major injury through no fault of his or her own during the competent performance of his or her official duties shall, upon application therefor, be issued a free special and distinctive motor vehicle license plate upon presentation of proof that such individual is entitled to receive such special license plate. For purposes of this Code section, a major injury shall be one that was of sufficient seriousness as to require hospitalization or comparable medi-

cal treatment and which resulted in permanent disability or disfigurement of the body.

(b) License plates issued pursuant to this Code section need not contain a place for the county name decal as required pursuant to Code Section 40-2-9, and a county name decal need not be affixed to a license plate issued pursuant to this Code section. Special and distinctive license plates issued pursuant to this Code section shall be renewed annually, and free revalidation decals shall be issued upon compliance with the laws relating to registration and licensing. The special license plates issued pursuant to this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) The commissioner is authorized and directed to design the license plate, establish procedures, establish standards for proof of eligibility, and promulgate rules and regulations to effectuate the purposes of this Code section.

History. Code 1981, § 40-2-63.1, enacted by Ga. L. 2015, p. 816, § 1/HB 48; Ga. L. 2019, p. 908, § 1/SB 138.

40-2-64. License plates for honorary consuls.

(a) Honorary consuls, upon application and compliance with the state motor vehicle laws relative to the registration and licensing of motor vehicles, payment of the regular license fees for license plates as provided by law, payment of a manufacturing fee of $25.00, and payment of an additional annual registration fee of $25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted as provided in Code Section 40-2-34, shall be issued license plates as prescribed in Code Section 40-2-31 in duplicate for use on their official or private passenger automobiles. Such license plates shall be fastened to both the front and the rear of the vehicle. No more than two sets of honorary consular corps license plates shall be issued to any country. Such plates shall not be used by any person after his or her appointment has ended.

(b) License plates issued under this Code section shall not be transferred so as to be used by any person other than the person to whom such plate was originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section.

History. Ga. L. 1976, p. 215, §§ 2-4; Code 1981, § 40-2-63; Ga. L. 1985, p. 261, § 3; Code 1981, § 40-2-64, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1998, p. 1179, § 13.

40-2-64.1. License plates for official representatives of the Taipei Economic and Cultural Representatives Office.

(a) In accordance with the Taiwan Relations Act as provided for in Code Section 50-1-2, the commissioner shall design a distinctive Foreign Organization license plate.

(b) Upon application and compliance with the state motor vehicle laws relating to the registration and licensing of motor vehicles and the payment of any registration fees, including the $25.00 manufacturing fee and the $35.00 special license plate fee or the $35.00 special license plate renewal fee, as applicable, official representatives of the Taipei Economic and Cultural Representatives Office in the United States who maintain a presence in Georgia shall be issued Foreign Organization license plates as prescribed in Code Section 40-2-31 in duplicate. Such license plates shall be fastened to both the front and the rear of the vehicle.

(c) Official representatives of the Taipei Economic and Cultural Representatives Office in Atlanta accredited by the Georgia Department of Economic Development shall be entitled to Foreign Organization license plates for the representative's privately owned motor vehicle. Such license plates shall not be used by any representative after his or her presence in Georgia has terminated.

(d) License plates issued under this Code section shall not be transferred so as to be used by any person other than the person to whom such plates were originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80.

(e) The commissioner is authorized to establish procedures and promulgate rules and regulations for implementing this Code section.

History. Code 1981, § 40-2-64.1, enacted by Ga. L. 2005, p. 334, § 14-4/HB 501; Ga. L. 2010, p. 9, § 1-73/HB 1055.

40-2-65. License plates for active and retired reservists and certain members of the National Guard.

(a)(1) Motor vehicle owners who are assigned or attached members of troop program units of any branch of the active reserve components of the United States inside or outside the State of Georgia shall be eligible to receive free motor vehicle license plates for private passenger cars, motorcycles, or trucks used for personal transportation. Motor vehicle owners who are members of any National Guard unit in a state adjoining the State of Georgia and for whom there is no National Guard unit in the county of their residence shall be eligible to receive free motor vehicle plates for private passenger cars, motorcycles, or trucks used for personal transportation to identify

such vehicle owner as a reservist. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter. No person shall be entitled to more than one free motor vehicle license plate for any calendar year; provided, however, that, upon payment of the regular license fee provided for in Code Section 40-2-151 and a manufacturing fee of $25.00, a reservist shall be entitled to receive one additional such license plate. For each additional license plate for which an initial $25.00 fee was required, there shall be an additional annual registration fee of $25.00, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. Additional words or symbols in addition to numbers and letters prescribed by law shall be inscribed upon such license plates so as to identify distinctively the owner as a member of one of the following branches of the United States military reserve: Army, Navy, Marines, Air Force, Space Force, or Coast Guard. The commanding officer of each active reserve component program unit or the adjutant general of the National Guard unit of each neighboring state shall, upon request of any reserve member or National Guard member of that unit, respectively, furnish to that member approved documentation supporting the member's current membership in the respective reserve or National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the reserve member or National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(2) Motor vehicle owners who are retired from any branch of the active reserve components whose active reservists are eligible to obtain free motor vehicle license plates under paragraph (1) of this subsection, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each such retired member shall be entitled to no more than one such free plate for any calendar year; provided, however, that, upon payment of the regular license fee provided for in Code Section 40-2-151 and a manufacturing fee of $25.00, a retired member shall be entitled to receive one additional such license plate. For each additional license plate for which an initial $25.00 fee was required, there shall be an additional annual registration fee of $25.00, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The license plates

issued pursuant to this paragraph shall, in addition to the numbers and letters prescribed by law, be identical to those issued pursuant to paragraph (1) of this subsection to members of the branch of the active reserve component from which that person retired. The commanding officer of each active reserve component program unit shall, upon request of any retired reserve member from that unit, furnish to that retired member approved documentation supporting the retired member's current retired membership status from that reserve unit. This documentation shall be presented to the tax commissioner of the county in which the retired reserve member applies for the special license plate under this Code section.

(3) The license plates issued pursuant to paragraph (2) of this subsection shall contain the word "RETIRED" in the location of and in lieu of the name of the county of issuance.

(b)(1) Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate distinctively identifying the owner thereof as a member of one of the components of the United States military reserve, whether the owner is an active or retired reservist, and acquisition by the reservist of another motor vehicle, the license plate issued pursuant to this Code section shall be placed on such newly acquired motor vehicle, and such reservist shall notify the commissioner of such transfer of the license plate to such newly acquired motor vehicle in such manner as the commissioner may prescribe by regulation. No transfer or cancellation fee shall be charged for the transfer of free reservist license plates. There shall be a transfer and cancellation fee of $5.00 for the transfer of any other reservist license plate.

(2) Should an active reservist who has been issued a license plate or license plates be discharged or otherwise separated, except by retirement, from his or her reserve unit, the immediate commanding officer of such active reservist shall obtain the discharged member's license plate or license plates at the time of the discharge and shall forward same to the commissioner along with a certificate to the effect that such person has been discharged, and thereupon the commissioner shall issue a regular license plate, at no additional charge, to such former reservist to replace the reservist plate or plates. Should an active reservist enlist or be commissioned after purchasing a regular license plate for his or her current registration period, the commanding officer of the unit in which such person enlists or is commissioned shall likewise secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has been enlisted or commissioned in a troop program unit of the reserve components, and the effective date thereof, whereupon the commissioner shall issue a

reservist license plate, at no extra charge, to such new member to replace the returned regular plate. Upon such request for a change in plate for a discharged reservist or a newly enlisted reservist, the commanding officer shall furnish such member with a copy of the commanding officer's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(c) The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles and trucks before issuing these plates in lieu of the regular Georgia license plates, and all applications for such plates shall be made to the commissioner. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (b) of this Code section, such plates shall be nontransferable.

(d) The spouse of a member of the active reserve of the United States military who is killed while serving in a combat arena shall continue to be eligible to be issued a distinctive license plate as provided in this Code section so long as such spouse does not remarry.

History.

Ga. L. 1978, p. 2205, §§ 1-3; Code 1981, § 40-2-64; Ga. L. 1989, p. 14, § 40; Code 1981, § 40-2-65, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 6; Ga. L. 1992, p. 2785, § 1; Ga. L. 1992, p. 3311, § 1; Ga. L. 1995, p. 809, § 9; Ga. L. 1996, p. 1118, § 6; Ga. L. 1997, p. 419, § 16; Ga. L. 2000, p. 830, § 1; Ga. L. 2002, p. 838, § 2; Ga. L. 2002, p. 1074, § 5; Ga. L. 2006, p. 803, § 2/SB 538; Ga. L. 2023, p. 61, § 2/HB 175, effective January 1, 2024; Ga. L. 2024, p. 81, § 12/HB 299, effective July 1, 2024.

Amendments.

The 2023 amendment, effective January 1, 2024, added paragraph (a)(3).

The 2024 amendment, effective July 1, 2024, inserted "Space Force," near the end of the sixth sentence in paragraph (a)(1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following "motorcycles" in the second sentence in paragraph (a)(1) and in the first sentence in paragraph (a)(2).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Administrative rules and regulations.

Free United States Military Reserve Tags, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-29-.01.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-66. License plates for active and retired members of the Georgia National Guard.

(a)(1) Motor vehicle owners who are members of the Georgia National Guard, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate, as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each member of the Georgia National Guard shall be entitled to no more than one such free plate at a time; provided, however, that, upon payment of the regular license fee provided for in Code Section 48-10-2 and a manufacturing fee of $25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which an initial $25.00 fee was required, there shall be an additional annual registration fee of $25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a member of the Georgia National Guard. The adjutant general of Georgia shall, upon request of any member of that National Guard unit, furnish to that member approved documentation supporting the member's current membership in that National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(2) Motor vehicle owners who are retired members of the Georgia National Guard, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each retired member of the Georgia National Guard shall be entitled to no more than one such free plate at a time; provided, however, that, upon payment of the regular license fee provided for in Code Section 48-10-2 and a manufacturing fee of $25.00, a member shall be entitled to one additional such

license plate. For each additional license plate for which an initial $25.00 fee was required, there shall be an additional annual registration fee of $25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The license plates issued pursuant to this paragraph shall, in addition to the numbers and letters prescribed by law, be identical to those issued pursuant to paragraph (1) of this subsection. The adjutant general of Georgia shall, upon request of any member retired from that National Guard unit, furnish to that retired member approved documentation supporting the member's retired membership status in that National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the retired National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(3) The license plates issued pursuant to paragraph (2) of this subsection shall contain the word "RETIRED" in the location of and in lieu of the name of the county of issuance.

(b) Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate bearing the words "National Guard" and acquisition by the member or retired member of the National Guard of another motor vehicle, the license plate issued pursuant to this Code section shall be placed on such newly acquired motor vehicle and such member or retired member shall notify the commissioner of such transfer of the license plate to such newly acquired motor vehicle in such manner as the commissioner may prescribe by regulation and shall pay a transfer and cancellation fee of $5.00 and shall also pay license fees in an amount, if any, that the license fee for the newly acquired vehicle exceeds the license fee of the original vehicle. No transfer or cancellation fee shall be charged for the transfer of free National Guard license plates. There shall be a transfer and cancellation fee of $5.00 for the transfer of any other National Guard license plate. Should a member of the National Guard who has been issued a National Guard license plate be discharged or otherwise separated except by retirement from the National Guard, the immediate commanding officer of such member shall obtain the discharged member's National Guard license plate or plates at the time of the discharge and shall forward same to the commissioner along with a certificate to the effect that such member has been discharged, and thereupon the commissioner shall issue a regular license plate or plates, at no additional charge, to such former National Guard member to replace the National Guard plate. Should a member of the National Guard enlist or be commissioned in the National Guard after purchasing a regular license plate for the current year, the commanding officer of the

unit in which such member enlists or is commissioned shall likewise secure the regular license plate of such new member and return same to the commissioner, along with a certificate to the effect that such new member has been enlisted or commissioned in the National Guard and the effective date thereof, whereupon the commissioner shall issue a National Guard license plate, at no extra charge, to such new member to replace the returned regular plate. Upon such request for a change in plate for a discharged member of the National Guard or a newly enlisted member of the National Guard, the commanding officer shall furnish such member with a copy of the commanding officer's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(c) The commissioner shall furnish to the sheriff of each county in the state an alphabetical arrangement of the list of names, addresses, and license plate letters of each person to whom a license plate is issued under this Code section, and it shall be the duty of the sheriffs of the state to maintain and to keep current such lists for public information and inquiry.

(d) The commissioner shall make such rules and regulations as necessary to enforce compliance with all state license laws relating to the use and operation of a private passenger car before issuing National Guard plates in lieu of the regular Georgia license plates, and all applications for such plates shall be made to the commissioner. The commissioner is specifically authorized to make all rules and regulations necessary to make adequate provision for instances where such vehicles have been transferred or sold. Except as provided in subsection (b) of this Code section, such plates shall be nontransferable.

(e) The spouse of a member of the National Guard who is killed while serving in a combat arena shall continue to be eligible to be issued a distinctive license plate as provided in this Code section so long as such spouse does not remarry.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 57, §§ 1-4; Ga. L. 1958, p. 642, § 2; Ga. L. 1973, p. 457, § 1; Ga. L. 1977, p. 593, § 1; Code 1981, § 40-2-65; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 854, § 2; Ga. L. 1989, p. 14, § 40; Code 1981, § 40-2-66, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 7; Ga. L. 1993, p. 1260, § 3; Ga. L. 1994, p. 1848, § 1; Ga. L. 1995, p. 809, § 10; Ga. L. 1996, p. 1118, § 7; Ga. L. 1997, p. 419, § 17; Ga. L. 2000, p. 830, § 2; Ga. L. 2006, p. 803, § 3/SB 538; Ga. L. 2023, p. 61, § 3/HB 175, effective January 1, 2024.

Amendments.

The 2023 amendment, effective January 1, 2024, added paragraph (a)(3).

Cross references.

Organized militia, § 38-2-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following "paragraph" in the fourth sentence of paragraph (a)(2).

Pursuant to Code Section 28-9-5, in

2001, a comma was inserted following "motorcycles" in the first sentence of paragraph (a)(1) and "motorcycles, or" was substituted for "motorcycle or" in the first sentence of paragraph (a)(2).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Administrative rules and regulations.

Free National Guard License Plate, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-24-.01.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-67. License plates for state commanders of nationally chartered veterans' organizations.

(a) The state commanders of nationally chartered veterans' organizations, upon application and compliance with the state motor vehicle laws relative to the registration and licensing of motor vehicles, upon payment of the regular license fees for license plates as provided by law, and upon the payment of an additional initial fee of $25.00 and an additional annual registration fee of $25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted as provided in Code Section 40-2-34, shall be issued license plates as prescribed in Code Section 40-2-31 for use on their official or private passenger automobiles, upon which, in lieu of the numbers prescribed by said Code section, shall be such figures or symbols indicative of the office held by such individuals as may be prescribed by the commissioner.

(b) License plates issued under this Code section may not be transferred so as to be used by any person other than the person to whom such plate was originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80, except that such plates shall not be used by any person after vacating the office of commander of any of the organizations enumerated in this Code section.

History.

Ga. L. 1960, p. 3; Code 1981, § 40-2-66; Ga. L. 1985, p. 261, § 4; Code 1981, § 40-2-67, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 8; Ga. L. 1994, p. 413, § 1; Ga. L. 1996, p. 1118, § 8; Ga. L. 1997, p. 419, § 18.

Editor's notes.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of

motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-68. License plates for Medal of Honor recipients.

(a) Motor vehicle owners who have been awarded the Medal of Honor and who are residents of this state, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, shall be issued two distinctive personalized license plates free of charge. Such license plates shall be fastened to both the front and the rear of the vehicle. Such license plates shall be transferred to another vehicle as provided in Code Section 40-2-80. In the event of the death of the person who received the special license plates pursuant to this Code section, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her surviving spouse may retain the special license plates and continue to display such plates on the vehicle.

(b) The commissioner may begin issuing distinctive personalized license plates to such Medal of Honor winners for the year 1980 and thereafter.

(c) The commissioner is authorized and directed to design the license plate, establish procedures, and promulgate rules and regulations to effectuate the purposes of this Code section.

History.

Ga. L. 1979, p. 887, §§ 2-4; Code 1981, § 40-2-67; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-68, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 1118, § 9; Ga. L. 1997, p. 419, § 19; Ga. L. 1998, p. 1179, § 14; Ga. L. 2005, p. 1159, § 2/SB 168.

Cross references.

Tax exemption for veterans awarded Medal of Honor, § 48-5-478.3.

Editor's notes.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-69. License plates for veterans qualifying as totally disabled.

(a) Any disabled veteran who is a citizen and resident of this state shall, upon application therefor, be issued a free motor vehicle license plate. As used in this Code section, the term "disabled veteran" shall

have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48.

(b) Any disabled veteran shall, upon application therefor, be issued a free motor vehicle license plate upon presentation of proof that he or she qualifies as a disabled veteran. A disabled veteran who claims that his or her disability is permanent shall furnish proof of such permanent disability through a letter from the United States Department of Veterans Affairs.

(c)(1) Once a disabled veteran has established his or her eligibility to receive free motor vehicle license plates as a result of being permanently disabled, he or she shall be entitled to receive free plates or free revalidation decals in succeeding years on any automobile, private passenger pickup truck, motorcycle, station wagon, or van type vehicle of three-quarter tons or less that he or she may own or jointly with his or her spouse or minor child own or acquire in the future.

(2) Once a disabled veteran has established his or her eligibility to receive free motor vehicle license plates but his or her disability has not been determined to be a permanent disability, he or she shall be entitled to receive free plates or free revalidation decals in succeeding years upon furnishing, on an annual basis, proof of his or her status as a disabled veteran through a letter from the United States Department of Veterans Affairs. Such free plates or free revalidation decals shall apply to any automobile, private passenger pickup truck, motorcycle, station wagon, or van type vehicle of three-quarter tons or less that he or she may own or jointly with his or her spouse or minor child own or acquire in the future.

(3)(A) Two license plates or revalidation decals each year shall be furnished for vehicles other than motorcycles to disabled veterans qualifying under this Code section unless the originals are lost. Such plates shall be fastened to both the front and the rear of the vehicle.

(B) One license plate or revalidation decal each year shall be furnished for motorcycles to disabled veterans qualifying under this Code section unless the original is lost. Such plate shall be fastened to the rear of the vehicle.

(4) In the event of the death of the person who received the special license plates pursuant to this Code section, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her unremarried surviving spouse or minor child may continue to receive the free special license plates and revalidation decals until the remarriage of the surviving spouse or death of the surviving spouse or minor child.

History.

Ga. L. 1956, p. 336, § 1; Ga. L. 1957, p. 69, § 1; Ga. L. 1959, p. 349, § 1; Ga. L. 1961, p. 554, § 1; Ga. L. 1965, p. 325, § 1; Ga. L. 1968, p. 1211, § 1; Ga. L. 1970, p. 315, § 1; Ga. L. 1970, p. 316, § 1; Ga. L. 1975, p. 720, § 1; Code 1981, § 40-2-68; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 45, § 1; Code 1981, § 40-2-69, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 1498, § 1; Ga. L. 1994, p. 393, §§ 1, 2; Ga. L. 1997, p. 1559, § 3; Ga. L. 2007, p. 668, § 1/SB 81; Ga. L. 2015, p. 816, § 2/HB 48; Ga. L. 2016, p. 166, § 2/SB 258; Ga. L. 2016, p. 770, § 1/HB 862.

Cross references.

Veterans', honorary, and distinctive drivers' licenses, § 40-5-36.

Administrative rules and regulations.

Free Veterans License Plate, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-27-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Qualifications for vehicle exemption. — For disabled veteran to be entitled to vehicle exemption, veteran's disability must be service connected. 1979 Op. Att'y Gen. No. 79-19.

40-2-70. License plates for veterans not qualifying as totally disabled.

(a) Any citizen and resident of the State of Georgia who has been discharged from the armed forces under conditions other than dishonorable or who is currently serving in the armed forces, who is disabled to any degree specified and enumerated in Code Section 40-2-69, and who is the owner of a private passenger motor vehicle, but who cannot qualify under Code Section 40-2-69, shall be entitled to a special and distinctive automobile license plate. Such license plate shall be transferred to another vehicle acquired by such veteran or jointly by such veteran and his or her spouse as provided in Code Section 40-2-80. Such veteran shall be entitled to such plate regardless of whether he or she is suffering from a service connected or nonservice connected disability.

(b) Such veteran must apply for such license plate and, upon compliance with the state motor vehicle laws for licensing of motor vehicles and without payment of the regular license fee for plates as prescribed under Article 7 of this chapter, such veteran shall be issued similar license plates as prescribed in Code Section 40-2-71 for private passenger cars. There shall be no charge for the additional plate issued such veteran under this Code section. There shall be no charge for revalidation decals for such plates.

(c) If a veteran has not been certified as disabled by the United States Department of Veterans Affairs, such veteran may submit to the Department of Veterans Service such veteran's discharge papers and a certified statement from a physician, licensed under Chapter 34 of Title 43, certifying that in the opinion of such physician such veteran is

disabled to a degree enumerated in Code Section 40-2-69. If the certificate from the physician indicates the qualifying disabilities which meet the standards of the United States Department of Veterans Affairs, the commissioner of veterans service shall submit a letter to the state revenue commissioner indicating that the veteran meets the requirements of this Code section and qualifies for a special license plate as provided in this Code section.

History.

Ga. L. 1967, p. 539, § 1; Code 1981, § 40-2-69; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-70, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 467, § 1; Ga. L. 1996, p. 1118, § 10; Ga. L. 1997, p. 419, § 20; Ga. L. 1998, p. 1179, § 15; Ga. L. 2000, p. 951, § 3-11; Ga. L. 2002, p. 1074, § 6; Ga. L. 2005, p. 334, § 14-5/HB 501; Ga. L. 2012, p. 155, § 2/HB 732.

Editor's notes.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-71. Design of disabled veteran license plates; restrictions on issuance and transfer.

(a) The commissioner is directed to furnish the license plates provided for in Code Sections 40-2-69 and 40-2-70. Such plates shall be printed in three colors: red, white, and blue. The commissioner is authorized and directed to design the license plate. Each plate shall contain, in bold characters, the name of the state, or abbreviation thereof, the year, the serial number, either the words "Disabled Veteran" or "Disabled Vet," and an image of the International Symbol of Access which is at least one inch in height and is white on a blue background.

(b) Such license plates so issued shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) No disabled veteran shall be entitled to own or operate more than one vehicle with the free license plates provided by Code Sections 40-2-69, 40-2-70, and this Code section.

History.

Ga. L. 1956, p. 336, §§ 2, 3, 5; Ga. L. 1957, p. 69, § 2; Ga. L. 1959, p. 349, § 2; Code 1981, § 40-2-70; Ga. L. 1990, p. 1476, § 1; Code 1981, § 40-2-71, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1118, § 11; Ga. L. 1997, p. 419, § 21; Ga. L.

1998, p. 1179, § 16; Ga. L. 2012, p. 155, § 3/HB 732.

Editor's notes.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-72. Penalty for violation of Code Sections 40-2-69 through 40-2-71.

Any person evading or violating any provision of Code Sections 40-2-69 through 40-2-71 or attempting to secure benefits under those Code sections to which he is not entitled shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than five years.

History.

Ga. L. 1956, p. 336, § 6; Ga. L. 1957, p. 69, § 6; Code 1981, § 40-2-71; Code 1981, § 40-2-72, as redesignated by Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-2-73. License plates for former prisoners of war.

(a) As used in this Code section, the term "prisoners of war" means those veterans of the armed forces of the United States who were discharged under honorable conditions and who were captured and held prisoner by forces hostile to the United States while serving in the armed forces of the United States in World War I, World War II, the Korean War, or the Vietnam War.

(b) Owners of motor vehicles who are veterans of the armed forces of the United States, who have been prisoners of war, who were discharged under honorable conditions, and who are residents of this state, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, shall be issued one distinctive personalized license plate free of charge and, upon the payment of the appropriate taxes and registration fees, shall be issued additional distinctive personalized license plates. Such license plates shall be transferred to another vehicle acquired by such person individually or jointly with his or her spouse as provided in Code Section 40-2-80. Such license plates shall be fastened to the rear of the vehicles.

(c) The spouse of a deceased former prisoner of war shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section so long as such person does not remarry.

(d) The commissioner is authorized and directed to design the license plate, establish procedures, and promulgate rules and regulations to effectuate the purposes of this Code section.

(e) The commissioner may begin issuing distinctive personalized license plates to such prisoners of war for the year 1982 and thereafter.

History.

Ga. L. 1981, p. 516, §§ 1-5; Code 1981, § 40-2-71.1; Ga. L. 1984, p. 423, § 1; Ga. L. 1985, p. 1278, § 2; Ga. L. 1986, p. 626, § 1; Code 1981, § 40-2-73, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 1118, § 12; Ga. L. 1997, p. 419, § 22; Ga. L. 1998, p. 1179, § 17.

Cross references.

Veterans', honorary, and distinctive drivers' licenses, § 40-5-36.

Editor's notes.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act; provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act. No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section 40-2-21 as enacted by this Act and not as provided in such local Act."

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 188, 284, 285.

40-2-74. License plates for persons with disabilities.

(a) Any owner of a private passenger motor vehicle who is a resident of Georgia, upon complying with the motor vehicle laws relating to registration, licensing, and payment of fees and upon submitting an affidavit of a practitioner of the healing arts stating that the owner or his or her spouse, child, or ward is a person with disabilities, as defined in paragraph (5) of Code Section 40-6-221, whose disability or incapacity can be expected to last for more than 180 days and stating the specific disability that limits or impairs the ability to walk, shall be issued a specially designated disabled person's license plate from the

commissioner. As used in this Code section, the term "practitioner of the healing arts" means a person holding a license to practice medicine, podiatric medicine, or chiropractic issued pursuant to Article 2 of Chapter 34 of Title 43, Chapter 35 of Title 43, or Chapter 9 of Title 43, respectively.

(a.1) Any business registered in Georgia that is a sole proprietorship, a Subchapter "S" Corporation under Subchapter S of Chapter 1 of the Internal Revenue Code, or a single principal limited liability corporation or limited liability partnership which assigns or makes available a passenger motor vehicle for the use of an employee of such business, upon complying with the motor vehicle laws relating to registration, licensing, and payment of fees and upon submitting an affidavit of a practitioner of the healing arts stating that such employee is a person with disabilities, as defined in paragraph (5) of Code Section 40-6-221, whose disability or incapacity can be expected to last for more than 180 days and stating the specific disability that limits or impairs the ability to walk, shall be issued a specially designated disabled person's license plate from the commissioner. The affidavit shall also state that such business vehicle shall be used only or primarily by such disabled employee. If such disabled employee leaves the employment of the company, the company shall surrender the plate to the commissioner within 60 days. In the event that an employee or other person that is not a disabled person uses a business vehicle which has been issued a special plate pursuant to this subsection, he or she shall not avail himself or herself of the privileges afforded under this title to a disabled person with a special plate. Any person who is not a disabled person as prescribed by this Code section and who willfully and falsely avails himself or herself of the privileges afforded to such special plate under this title shall be guilty of a misdemeanor. Any business to which one or more special plates are issued pursuant to this subsection which is determined by the commissioner to have repeated violations of this subsection by an employee or employees or other person or persons that are not disabled as prescribed by this Code section shall be subject to revocation of such special plate or plates.

(b) A hearing impaired person otherwise qualified under this subsection shall be eligible to have issued to him or her a specially designated disabled person's license plate in accordance with this Code section. As used in this Code section, "hearing impaired person" shall have the same meaning as defined in Code Section 24-6-651, except that the term "hearing impaired person" shall not include any person who is not qualified for a driver's license pursuant to Code Section 40-5-35. For purposes of this subsection, presentation of an identification card for persons with disabilities issued pursuant to Article 8 of Chapter 5 of this title shall constitute proof of hearing impairment.

(c) Upon complying with the motor vehicle laws relating to registra-

tion, licensing, and payment of fees and upon submission of proof of disability as provided in subsection (a) of this Code section, as applicable:

(1) Any resident person who is the joint owner of a motor vehicle with a disabled person as prescribed in this Code section shall be authorized to obtain such specialized plates for such jointly owned vehicle; and

(2) Any resident motor vehicle owner who is the spouse, parent, or legal guardian of a person who is disabled as prescribed in this Code section shall be authorized to obtain such specialized plates for such vehicle.

Upon the death of the disabled person or if the joint ownership of such vehicle ceases for any reason, the specialized license plate shall be canceled and the owner of such motor vehicle shall be issued a regular license plate for such vehicle.

(d) The commissioner is directed to furnish such license plates as provided for in this Code section, which shall bear the official international wheelchair symbol or a reasonable facsimile thereof, or such other symbols as the commissioner may deem appropriate.

(e) Any license plate issued pursuant to the provisions of this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80.

(f) Any person who is not a disabled person as prescribed in this Code section or a person otherwise entitled to obtain such special license plates and who willfully and falsely represents himself or herself as having the qualifications to obtain the special plates prescribed by this Code section shall be guilty of a misdemeanor.

(g) Any practitioner of the healing arts who knowingly and willfully makes a false or misleading statement in his or her affidavit stating that an applicant is a disabled person as prescribed in this Code section shall be guilty of a misdemeanor.

(h) Any person owning a vehicle bearing the special plates and not entitled to do so under this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1973, p. 576, §§ 2-5; Ga. L. 1978, p. 1653, § 1; Code 1981, § 40-2-72; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 1186, § 3; Code 1981, § 40-2-74, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1994, p. 413, §§ 2, 3; Ga. L. 1995, p. 1302, § 6; Ga. L. 1996, p. 1118, § 13; Ga. L. 1997, p. 419, § 23; Ga. L. 1998, p. 1179, § 18; Ga. L. 2000, p. 1182, § 1; Ga. L. 2005, p. 1159, § 3/SB 168; Ga. L. 2008, p. 286, § 1/SB 517; Ga. L. 2011, p. 99, § 56/HB 24.

Cross references.

Handicapped persons, § 30-1-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1994, "pursuant to Article 8" was

substituted for "pursuant Article 8" in the last sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2008, "person" was deleted following "are not disabled" in the last sentence of subsection (a.1).

Editor's notes.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Administrative rules and regulations.

Disabled Persons License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-26-.01 et seq.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

For article, "Evidence," see 27 Georgia St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.

8 Am. Jur. 2d, Automobiles and Highway Traffic, § 735 et seq.

C.J.S.

60A C.J.S., Motor Vehicles, § 634 et seq.

61 C.J.S., Motor Vehicles, § 956 et seq.

40-2-74.1. Temporary, permanent, and special permanent parking permits for persons with disabilities.

(a) The department shall issue parking permits for persons with disabilities and may delegate to county tag agents the responsibility for issuance of such permits to residents of the county served by the tag agent. The department shall receive applications for and issue parking permits by mail to persons with disabilities upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, licensed chiropractor, licensed advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, or licensed physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103 stating that such person is a disabled person, the specific disability that limits or impairs the person's ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. Permits shall be in such form as the department prescribes but shall be of sufficient size and sufficiently distinctively marked to be easily visible when placed on or affixed to the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle. Permits shall be made of a substrate as determined by

the commissioner and shall be of sufficient quality to ensure that the coloring of the permit and the ink used thereon will resist fading for a period of at least four years. Permits shall be issued to individuals, and the name of the individual and an identification number shall appear on the permit. The individual to whom a permit is issued may use the permit for any vehicle he or she is operating or in which he or she is a passenger. Permits shall also be issued to institutions when the primary purpose of a vehicle operated by the institution is to transport individuals with disabilities. The name of the institution, the license number of the particular vehicle, and an identification number shall appear on the permit. The institution shall use such permit only for a vehicle which is operated by the institution and which is used primarily to transport individuals with disabilities.

(b) The department shall issue a temporary permit to any temporarily disabled person upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, licensed chiropractor, licensed advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, or licensed physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103 stating that such person is a temporarily disabled person, the specific disability that limits or impairs the person's ability to walk, that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221, and a date until which such person is likely to remain disabled. The temporary permit shall show prominently on its face an expiration date the same as the date specified by such doctor for the likely termination of the disability, which date shall not be more than 180 days after the date the permit is issued. The expiration date shall be printed with permanent ink and in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.

(c) The department shall issue a permanent permit to any permanently disabled person upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, licensed chiropractor, licensed advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, or licensed physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103 stating that such person is a permanently disabled person. The affidavit shall further state the specific disability that limits or impairs the person's ability to walk or that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. The department shall also issue a permanent permit to an institution which operates vehicles used primarily for the transportation of individuals with disabilities upon presentation of a certification from the

institution regarding use of its vehicles. The institution shall receive permits only for the number of vehicles so used and shall affix the permits to the driver's side of the dashboards of such vehicles. The permanent permit shall be predominantly blue in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be machine printed, not handwritten, in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.

(d) Any individual to whom a specially designated disabled veteran's license plate has been issued pursuant to Code Sections 40-2-69 through 40-2-72 and any individual to whom a specially designated disabled person's license plate has been issued pursuant to Code Section 40-2-74 shall be authorized to park the passenger motor vehicle on which the specially designated license plate is attached in a parking place for persons with disabilities without the necessity of obtaining a parking permit for persons with disabilities pursuant to this Code section.

(e) The department shall issue a special permanent permit to any person who:

(1) Because of a physical disability drives a motor vehicle which has been equipped with hand controls for the operation of the vehicle's brakes and accelerator; or

(2) Is physically disabled due to the loss of, or loss of use of, both upper extremities.

This special permanent permit shall be gold in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be printed in a size of print that is legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror. Such a special permit shall be used in the same manner as, and shall be subject to the provisions of this Code section relating to, other permanent parking permits for persons with disabilities and shall also be used as provided in Code Section 10-1-164.1. In addition to any other required printing, the following shall be printed upon this special gold permit:

"Code Section 10-1-164.1 of the Official Code of Georgia Annotated requires that any owner or operator of a gasoline station that sells full-service gasoline at one price and self-service at a lower price shall provide the service of dispensing gasoline at the self-service price for the holder of this special permit when such holder requests such service and is the operator of the vehicle and is not accompanied by another person 16 years of age or older who is not mobility impaired or blind."

(f) The department and county tag agents shall not charge or collect any fee for issuing parking permits for persons with disabilities under this Code section.

(g) Any special disabled person decal issued under the former provisions of this Code section shall be valid until its expiration date but shall not be reissued.

(h) For purposes of this Code section, an active duty military physician shall be entitled to submit an affidavit in support of the application of active duty or retired military personnel for parking permits for persons with disabilities whether or not such physician is licensed to practice in Georgia. Such affidavit shall state that the applicant is in active military service and is stationed in Georgia pursuant to military orders or is retired from the military and is a resident of Georgia and that such person is a disabled person, the specific disability that limits or impairs the person's ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221.

(i) For purposes of this Code section, the department shall accept, in lieu of an affidavit, a signed and dated statement from the doctor, advanced practice registered nurse, or physician assistant which includes the same information as required in an affidavit written upon security paper as defined in paragraph (38.5) of Code Section 26-4-5.

History.

Code 1981, § 40-2-74.1, enacted by Ga. L. 2005, p. 1159, § 4/SB 168; Ga. L. 2006, p. 659, § 1/HB 1217; Ga. L. 2008, p. 147, § 1/HB 961; Ga. L. 2008, p. 369, § 1/SB 369; Ga. L. 2012, p. 804, § 3/HB 985; Ga. L. 2014, p. 710, § 3-1/SB 298; Ga. L. 2024, p. 95, § 4/HB 557, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(25)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, substituted "licensed chiropractor, licensed advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, or licensed physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103" for "or licensed chiropractor" in the second sentence of subsection (a), the first sentence of subsection (b), and the first sentence of subsection (c); and, in subsection (i), inserted a comma following "Code section" near the beginning and inserted ", advanced practice registered nurse, or physician assistant" in the middle.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (i).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, "person who is" was deleted following "permit to any" in the first sentence of subsection (c).

Editor's notes.

Ga. L. 2024, p. 95, § 1/HB 557, not codified by the General Assembly, provides: "The General Assembly finds:

"(1) Governor Kemp created the Georgia Healthcare Workforce Commission in 2022;

"(2) The commission recognized that Georgia is now in the minority of states with restrictions on certain healthcare occupations, such as nurse practitioners and physician assistants, and that research also suggests that in appropriate circumstances, revising practice restrictions on

certain healthcare occupations and granting increased practice authority have the potential to improve access to care without compromising quality or increasing costs;

"(3) The commission believes that exploring updating scope of practice limitations could potentially ease pressure on the healthcare workforce by allowing certain healthcare occupations to perform more advanced work in healthcare settings which could decrease work burden on other clinical providers;

"(4) Georgia is one of only three states that forbids physician assistants and nurse practitioners from prescribing any Schedule II medications; and

"(5) A more streamlined process at the Georgia Composite Medical Board will allow already licensed and certified practitioners to more quickly begin work."

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur 2d, Automobiles and Highway Traffic, § 128 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 820.

C.J.S.

60 C.J.S., Motor Vehicles, § 62.

40-2-75. [Reserved] Special license plates for amateur radio operators.

History.

Ga. L. 1951, p. 653, §§ 1-4; Ga. L. 1970, p. 699, § 1; Code 1981, § 40-2-73; Ga. L. 1982, p. 1075, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 433, § 1; Ga. L. 1985, p. 261, § 5; Ga. L. 1986, p. 1333, § 4; Code 1981, § 40-2-75, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 9; Ga. L. 1994, p. 1848, § 2; Ga. L. 1995, p. 809, § 11; Ga. L. 1996, p. 1118, § 14; Ga. L. 1997, p. 419, § 24; Ga. L. 1998, p. 1179, § 19. For current provisions regarding this license plate, see Code Section 40-2-86.1(l)(6); repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes.

Ga. L. 2010, p. 9, § 1-74/HB 1055 repealed and reserved this Code section, effective May 12, 2010.

40-2-76 through 40-2-78. [Reserved].

History.

Ga. L. 1958, p. 302, §§ 1-5; Ga. L. 1977, p. 596, § 1; Ga. L. 1982, p. 2298, §§ 1-4; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 261, § 7; Ga. L. 1986, p. 427, § 1; Ga. L. 1989, p. 921, § 3; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 10; Ga. L. 1992, p. 779, § 11; Ga. L. 1993, p. 1678, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 1853, § 1; Ga. L. 1995, p. 809, § 12; Ga. L. 1997, p. 419, §§ 25-26; Ga. L. 1997, p. 1589, § 2; Ga. L. 1998, p. 1179, § 20-22; Ga. L. 1999, p. 791, § 3; Ga. L. 2000, p. 951, § 3-12; Ga. L. 2003, p. 450, § 3; Ga. L. 2008, p. 832, § 1/HB 1220. For current provisions regarding these license plates, see Code Section 40-2-86.1(l)(7) (alternative fueled vehicles); Code Section 40-2-86.1(l)(8) (antique or hobby vehicles); and Code Section 40-2-86.1(l)(9) (firefighters); repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes.

Ga. L. 2010, p. 9, § 1-74/HB 1055 repealed and reserved these code sections, effective May 12, 2010.

40-2-79. [Reserved] Leased or rented trailers.

History.
Ga. L. 1987, p. 949, § 3; Code 1981, § 40-2-79, as redesignated by Ga. L. 1990, p. 2048, § 2; repealed by Ga. L. 1997, p. 419, § 26A, effective May 1, 1997.

Editor's notes.
Ga. L. 1997, p. 419, § 26A repealed and reserved this Code section, effective May 1, 1997.

40-2-80. Transfer of special license plates.

Except as otherwise provided by law, the commissioner shall provide by rules and regulations appropriate procedures whereby, upon the payment of the fee prescribed in Code Section 40-2-42 for transfer of license plates and revalidation decals, currently valid special and distinctive license plates and special personalized prestige license plates authorized by this article shall be transferred from one vehicle to another vehicle of the same class of which ownership is acquired following that person's or those persons' ceasing to own or operate on the public roads the vehicle for which such plate was originally issued and during the initial registration period for the acquired vehicle. If the vehicle acquired by such person is of a different class than the vehicle no longer owned or operated by such person, then upon payment by such person of any additional fee for registering such acquired vehicle, the commissioner shall issue a new license plate to such person for use on such vehicle. Special license plates and revalidation decals for such plates may be transferred in accordance with the provisions of this Code section at any time after issuance or renewal thereof and until the expiration of the period for which issued.

History.
Ga. L. 1969, p. 266, § 3; Code 1981, § 40-2-76; Code 1981, § 40-2-80, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 12; Ga. L. 1997, p. 419, § 27; Ga. L. 1998, p. 1179, § 23.

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-81. License plates for members of the Georgia State Defense Force.

(a) For purposes of this Code section, the term "Georgia State Defense Force" means that organization established pursuant to Part 3 of Article 1 of Chapter 2 of Title 38.

(b)(1) Motor vehicle and trailer owners who are members of the Georgia State Defense Force shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, motorcycles, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2)(A) Motor vehicle and trailer owners who are members of the Georgia State Defense Force shall be issued upon application for and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles a Georgia State Defense Force member license plate. One such license plate shall be issued without the requisite registration fee, manufacturing fee, or annual registration fee.

(B) Each member of the Georgia State Defense Force shall be entitled to no more than one such free license plate at a time; provided, however, that, upon payment of a manufacturing fee of $25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which a $25.00 manufacturing fee is required, there shall be an additional annual registration fee of $25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(c) The commissioner shall design a Georgia State Defense Force member license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, trucks, motorcycles, and trailers before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Such plates shall be nontransferable.

(d) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, trucks, motorcycles, and trailers used for personal transportation. Such plates shall contain such words or symbols, in addition to the numbers and letters prescribed by law, so as to identify distinctively the owners as members of the Georgia State Defense Force.

(e) The license plate issued pursuant to this Code section may be transferred between vehicles as provided in Code Section 40-2-80.

(f) Special license plates issued under this Code section, except as provided in subparagraph (b)(2)(A) of this Code section, shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31 without payment of an additional $25.00 annual registration fee.

(g) Should a member of the Georgia State Defense Force who has been issued a license plate or license plates be discharged or otherwise

separated from the Georgia State Defense Force, the member shall forward his or her Georgia State Defense Force member license plate or plates to the commissioner along with a certificate to the effect that such person has been discharged or otherwise separated from the Georgia State Defense Force, and thereupon the commissioner shall issue a regular license plate, at no additional charge, to such former member of the Georgia State Defense Force to replace the Georgia State Defense Force member plate or plates.

History.
Code 1981, § 40-2-81, enacted by Ga. L. 2015, p. 816, § 2.1/HB 48; Ga. L. 2024, p. 1052, § 4(26)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(2)(B).

Editor's notes.
Ga. L. 2001, p. 479, § 3, redesignated former Code Section 40-2-81 as Code Section 40-2-9, effective January 1, 2002. Ga. L. 2001, p. 479, § 4, effective January 1, 2002, reserved the designation of Code Section 40-2-81.

40-2-82. License plates for Department of Public Safety vehicles operated by Georgia State Patrol or Motor Carrier Compliance Division.

The commissioner of public safety shall be issued distinctive license plates to be used on motor vehicles assigned to the Department of Public Safety and operated by troopers of the Georgia State Patrol or law enforcement officers of the Motor Carrier Compliance Division. The distinctive plates shall be issued free of charge in accordance with procedures agreed upon by the commissioner of public safety and the state revenue commissioner. License plates issued pursuant to this Code section need not contain a place for the county name decal and no county name decal need be affixed to a license plate issued pursuant to this Code section.

History.
Code 1981, § 40-2-78, enacted by Ga. L. 1989, p. 1186, § 5; Code 1981, § 40-2-82, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-13; Ga. L. 2005, p. 334, § 14-6/HB 501.

40-2-83. Special or prestige license plates for jointly owned vehicles; surrendering when joint ownership ceases.

(a) Notwithstanding any other provision of law, any resident person who is authorized to obtain a special or prestige license plate pursuant to this article may, upon complying with the motor vehicle laws relating to licensing, registration, and fees, obtain such special or prestige license plate in his or her own name and the name of any other person with whom he or she jointly owns a motor vehicle.

(b) Special or prestige license plates issued pursuant to this article to

joint owners shall be transferred to another vehicle having the same joint owners as provided by Code Section 40-2-80.

(c) If any resident person who is authorized to obtain a special or prestige license plate and who has been issued a special or prestige plate for a jointly owned vehicle dies or for any other reason is no longer a joint owner of such vehicle, the surviving owner of such vehicle shall surrender the license plate to the commissioner and shall obtain a regular license plate or some other type of special or prestige license plate upon complying with the motor vehicle laws relating to registration, licensing, and fees.

History.
Code 1981, § 40-2-83, enacted by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 2.1; Ga. L. 1997, p. 419, § 28; Ga. L. 1998, p. 1179, § 24.

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-84. License plates for Purple Heart recipients.

(a)(1) Motor vehicle or motorcycle owners who are veterans of the armed forces of the United States who have been awarded the Purple Heart citation shall be eligible to receive a special and distinctive vehicle license plate for a private passenger car, motorcycle, trailer, or truck used for personal transportation, provided that the requisite number of applications is received by the commissioner as provided in subsection (b) of this Code section. Such license plate shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2) For purposes of this Code section, the term "veteran" shall include a member of the armed forces or reserves who is still serving on active duty after being awarded the Purple Heart citation.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. Said applicant may apply for and be limited to not more than one free license plate at a time; provided, however, that, upon payment of the regular license fee provided for in Code Section 40-2-151 and payment of the manufacturing fee provided for in this Code section, a veteran may obtain an additional such license plate. The commissioner shall retain all applications received for such special and distinctive license plate until a minimum of 250 applications have been received. After receipt of 250 applications for such distinctive license plate, the commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to present and future qualifying applicants. If the commissioner

does not receive the required minimum 250 applications no later than July 31 of the year preceding the year of issuance of such plates, the commissioner shall not accept any applications for nor issue such distinctive license plates and all fees shall be refunded to applicants. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles, and trucks before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for each additional special and distinctive license plate shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (d) of this Code section, such plates shall be nontransferable.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, motorcycles, or trucks used for personal transportation. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a Purple Heart recipient. For any redesigned plates issued on or after January 1, 2006, such inscription shall include the designation "Combat Wounded."

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the armed forces of the United States who was awarded the Purple Heart citation shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) For each additional special license plate issued under this Code section there shall be an additional $25.00 annual registration fee which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

History.

Code 1981, § 40-2-84, enacted by Ga. L. 1990, p. 1316, § 1; Ga. L. 1991, p. 1145, § 2; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 13; Ga. L. 1993, p. 1793, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 564, § 1; Ga. L. 1997, p. 419, § 29; Ga. L. 1998, p. 1179, § 25; Ga. L. 2000, p. 830, § 3; Ga. L. 2002, p. 1074, § 5; Ga. L. 2005, p. 1159, § 5/SB 168; Ga. L. 2012, p. 110, § 1/SB 473; Ga. L. 2012, p. 155, § 4/HB 732; Ga. L. 2024, p. 1052, § 4(27)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

Cross references.

Purple Heart Day, § 1-4-21.

Veterans awarded Purple Heart exempt from ad valorem taxes provided license plate issued under Code Section 40-2-84, § 48-5-478.2.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-75.3, was renumbered as Code Section 40-2-84, and a reference to Code Section 40-2-80 was substituted for a reference to Code Section 40-2-76 in subsection (d).

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." The act became effective July 1, 2002.

Administrative rules and regulations.

Purple Heart Recipient License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Issuance of Special Prestige License Plates, Rule 560-10-22-.07.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-85. License plates for veterans who survived attack on Pearl Harbor.

(a) Motor vehicle owners who are veterans of the armed forces of the United States who survived the Japanese attack on Pearl Harbor on December 7, 1941, shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, or recreational vehicles used for personal transportation, provided that the requisite number of applications are received by the commissioner as provided in subsection (b) of this Code section. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. The commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to present and future qualifying applicants. There shall be no minimum required number of applicants for such distinctive license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars and trucks before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (d) of this Code section, such plates shall be nontransferable.

(c) The special and distinctive vehicle license plates shall be as

prescribed in Article 2 of this chapter for private passenger cars or trucks used for personal transportation. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a survivor of the Japanese attack on Pearl Harbor on December 7, 1941.

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased survivor of the Japanese attack on Pearl Harbor on December 7, 1941, shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) Special license plates issued under this Code section shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31. It shall be a requirement that a county name decal shall be affixed and displayed on license plates issued under this Code section.

(f) Any resident motor vehicle owner who is the spouse or legal guardian of a person who is disabled as prescribed in this Code section shall be authorized to obtain such specialized plates for such vehicle.

History.

Code 1981, § 40-2-85, enacted by Ga. L. 1990, p. 797, § 1; Ga. L. 1992, p. 779, § 14; Ga. L. 1994, p. 558, § 1; Ga. L. 1994, p. 564, § 2; Ga. L. 1996, p. 1259, § 1; Ga. L. 1997, p. 419, § 30; Ga. L. 1997, p. 1515, § 1; Ga. L. 1998, p. 1179, § 26.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-75.4, was renumbered as Code Section 40-2-85, and references to Code Sections 40-2-80 and 40-2-31 were substituted for references to Code Sections 40-2-76 and 40-2-29, respectively, in subsections (d) and (e).

Administrative rules and regulations.

Survivor of Pearl Harbor License Plate, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Issuance of Special Prestige License Plates, Rule 560-10-22-.06.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-85.1. License plates for certain veterans.

(a) For purposes of this Code section, the term:

(1) "Military medal award" means the following medals, decorations, or other recognition of honor for military service awarded by a branch of the United States military:

(A) Medal of Honor;

(B) Bronze Star Medal;

(C) Silver Star Medal;

(D) Distinguished Service Cross;

(E) Navy Cross;

(F) Air Force Cross;

(G) Defense Distinguished Service Medal;

(H) Homeland Security Distinguished Service Medal;

(I) Distinguished Service Medal;

(J) Navy Distinguished Service Medal;

(K) Air Force Distinguished Service Medal;

(L) Coast Guard Distinguished Service Medal;

(M) Defense Superior Service Medal;

(N) Legion of Merit;

(O) Distinguished Flying Cross;

(P) Purple Heart;

(Q) Air Medal;

(R) Soldier's Medal; and

(S) Meritorious Service Medal.

(2) "Served during active military combat" means active duty service in World War I, World War II, the Korean War, the Vietnam War, Operation Desert Storm, the Global War on Terrorism as defined by Presidential Executive Order 13289, Section 2, the war in Afghanistan, or the war in Iraq, which includes either Operation Iraqi Freedom or Operation Enduring Freedom.

(3) "Veteran" means:

(A) A former member of the armed forces of the United States who is discharged from the armed forces under conditions other than dishonorable; or

(B) An individual who served in the armed forces of an ally of the United States during active military combat in the Korean War, the Vietnam War, Operation Desert Storm, or the Global War on Terrorism and who is discharged or separated under conditions other than dishonorable.

(4) "Woman veteran" and "women veterans" means former members of the armed forces of the United States who are female and

discharged from the armed forces under conditions other than dishonorable.

(b)(1) Motor vehicle and trailer owners who are veterans or women veterans, who have received a military medal award, or who served during active military combat shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, motorcycles, trucks, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2)(A) Motor vehicle and trailer owners who are veterans or women veterans, who have received a military medal award, or who served during active military combat shall be issued upon application for and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles a veteran's license plate, a woman veteran's license plate, a military medal award recipient license plate, or a commemorative service license plate for service during active military combat. One such license plate shall be issued without the requisite registration fee, manufacturing fee, or annual registration fee.

(B) Each member or former member of the armed forces of the United States listed in this subsection shall be entitled to no more than one such free license plate at a time; provided, however, that, upon payment of a manufacturing fee of $25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which a $25.00 manufacturing fee is required, there shall be an additional annual registration fee of $25.00, and such fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(c) The commissioner shall design a veteran's license plate, a woman veteran's license plate, a military medal award recipient license plate, and a license plate to commemorate service with the United States armed forces during active military combat. The design of a veteran's license plate issued to a veteran defined in subparagraph (a)(3)(B) of this Code section shall be distinctive in nature by inclusion of the legend "Allied Veteran" in lieu of the name of the county of issuance and display such other distinctive design as determined by the commissioner. The commissioner shall promulgate such rules and regulations as may be necessary relating to design and issuance of such distinctive "Allied Veteran" plates. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles, trucks, and trailers before issuing such license plates

in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (e) of this Code section, such plates shall be nontransferable.

(d) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, motorcycles, trucks, recreational vehicles, and trailers used for personal transportation. Such plates shall contain words or symbols, in addition to the numbers and letters prescribed by law, so as to identify distinctively the owners who are veterans, who are recipients of a military medal award, or who served during active military combat and shall additionally identify distinctively the owner as a current or former member of one of the following branches of the armed forces of the United States: Army, Navy, Marines, Air Force, Space Force, or Coast Guard.

(e) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran or of a deceased person who received a military medal award or who served during active military combat shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such person, ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying person's death or acquired thereafter, so long as such surviving spouse does not remarry.

(e.1) The spouse of any person eligible to be issued a special license plate under this Code section shall also be eligible for such license plate, provided that no motor vehicle is registered in the name of the eligible person and all other requirements relating to registration and licensing relative to motor vehicles as prescribed in Article 2 of this chapter have been satisfied.

(f) Special license plates issued under this Code section, except as provided in subparagraph (b)(2)(A) of this Code section, shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31 without payment of an additional $25.00 annual registration fee.

History.

Code 1981, § 40-2-85.1, enacted by Ga. L. 1991, p. 1036, § 1; Ga. L. 1992, p. 779, § 15; Ga. L. 1992, p. 2785, § 1.1; Ga. L. 1994, p. 413, § 4; Ga. L. 1994, p. 564, § 3; Ga. L. 1997, p. 419, § 31; Ga. L. 1998, p. 1179, § 27; Ga. L. 2001, p. 479, § 1; Ga. L. 2007, p. 668, § 2/SB 81; Ga. L. 2012, p. 155, § 5/HB 732; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 265, § 2/SB 121; Ga. L. 2015, p. 816, § 3/HB 48; Ga. L. 2016, p. 79, § 1/HB 736; Ga. L. 2020, p.

639, § 1/SB 336; Ga. L. 2021, p. 208, § 1/SB 225; Ga. L. 2024, p. 81, § 13/HB 299, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(28)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, inserted "Space Force," near the end of subsection (d).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(2)(B).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1994, "in subsection (a) of this Code section" was substituted for "above" in the first sentence in subsection (b).

Pursuant to Code Section 28-9-5, in 2012, "subsection (e)" was substituted for "subsection (d)" in the last sentence of subsection (c) and "subparagraph (b)(2)(A)" was substituted for "subparagraph (a)(2)(A)" in the first sentence of subsection (f).

Administrative rules and regulations.

Veteran license Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Issuance of Special Prestige License Plates, Rule 560-10-22-.08.

40-2-85.2. License plates for veterans of the Chosin Reservoir Campaign.

(a) On and after January 1, 1999, motor vehicle owners who are United States armed forces veterans of the Chosin Reservoir Campaign of 1950 in North Korea shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks under 14,000 pounds gross vehicle weight, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. The commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to qualifying applicants. There shall be no minimum required number of applicants for such distinctive license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars and trucks before issuing these license plates in lieu of the regular Georgia license plates. The additional manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars or trucks used for personal transportation, except that the word "CHOSIN" and no other letters shall be placed horizontally immedi-

ately to the left of the numbers on the license plate so as to distinctively identify the owner as a veteran of the Chosin Reservoir Campaign of 1950 in North Korea.

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the Chosin Reservoir Campaign of 1950 in North Korea shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) Special license plates issued under this Code section shall be renewed annually with a revalidation decal, as provided in Code Section 40-2-31, without payment of an additional $25.00 annual registration fee. Special license plates issued under this Code section shall be transferred between vehicles as provided in Code Section 40-2-80.

History. Code 1981, § 40-2-85.2, enacted by Ga. L. 1998, p. 1179, § 27A; Ga. L. 2007, p. 668, § 3/SB 81.

40-2-85.3. License plates for Gold Star family members.

(a) Special license plates honoring the family members of service members who have been killed in action while serving in the armed forces of the United States shall be issued in this state. The license plate shall be officially designated as the Gold Star license plate.

(b) The commissioner, in cooperation with supporters of this license plate, shall design a special license plate for the family members of service members who have been killed in action while serving in the armed forces of the United States. The license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. The license plate shall bear in a conspicuous place a gold star with blue fringe on a white background with a red border. This is the symbol for a fallen service member. In the indented area normally used for the county of residence decal, the words "Gold Star Family" shall be displayed.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Code section, this Code section shall not be implemented until such time as the State of Georgia has, through a licensing agreement or otherwise, received such license or other permission as may be required to implement this Code section. The design of the initial edition of such

special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any motor vehicle owner who is a resident of Georgia, other than one registering under the International Registration Plan, upon complying with state laws relating to registration and licensing of motor vehicles shall be issued such a special license plate upon application therefor. Special license plates issued under this Code section shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31. Upon payment of all ad valorem taxes and other fees due at registration of a motor vehicle, an eligible family member may apply for a Gold Star license plate. In order to qualify as an eligible family member for purposes of this Code section, the person must be related to the fallen service member as a spouse, mother, father, sibling, child, stepparent, or surviving spouse of such service member's sibling. Up to two free license plates shall be allowed for any eligible family member and they may purchase additional license plates for each motor vehicle they register in this state. If a Gold Star license plate is lost, damaged, or stolen, the eligible family member must pay the reasonable cost, to be established by the department, but not to exceed the cost of other specialty license plates, to replace the Gold Star license plate.

(e) Whether a service member is deemed to have been killed in action shall be determined by the classification of death as listed by the United States Department of Defense and may be verified from documentation directly from the Department of Defense.

(f) Free Gold Star license plates shall be issued only to eligible family members who resided in Georgia at the time of the death of the service member. However, an eligible family member who was not a resident of Georgia at the time of the death of the service member may purchase a Gold Star license plate, at a cost to be established by the department, not to exceed the cost of other specialty license plates.

(g) Renewal decals shall be issued at no cost to any person that received a free license plate under the provisions of this Code section upon the payment of ad valorem taxes and other registration fees, provided that the renewal is applied for on or within 30 days prior to the renewal date of the eligible person. If the eligible person fails to renew within such time, he or she shall pay a standard renewal fee and be

subject to the standard penalties for late payment of ad valorem taxes due on the motor vehicle.

(h) An eligible family member may request a Gold Star license plate at any time during his or her registration period. If such a license plate is to replace a current valid license plate, the license plate shall be issued with appropriate renewal decals attached.

(i) License plates issued pursuant to this Code section shall not be transferred between vehicles as provided in Code Section 40-2-42, unless the transfer is to another motor vehicle owned by the eligible family member.

(j) Gold Star license plates shall be issued within 30 days of application.

(k) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section.

History.

Code 1981, § 40-2-86.18, enacted by Ga. L. 2006, p. 741, § 1/SB 523; Code 1981, § 40-2-85.3, as redesignated by Ga. L. 2010, p. 9, § 1-76; Ga. L. 2010, p. 141, § 1; Ga. L. 2015, p. 816, § 4/HB 48; Ga. L. 2018, p. 159, § 1/HB 287.

Cross references.

Exemption from ad valorem taxation for state, county, municipal, and school purposes of homesteads of unremarried surviving spouses of U.S. service members killed in action, § 48-5-52.1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.18, as enacted by Ga. L. 2006, p. 801, § 1/SB 539, was redesignated as Code Section 40-2-86.19; Code Section 40-2-86.18 as enacted by Ga. L. 2006, p. 803, § 1/SB 538, was redesignated as Code Section 40-2-86.20; and Code Section 40-2-86.18 as enacted by Ga. L. 2006, p. 1094, § 12/HB 1053, was redesignated as Code Section 40-2-86.21.

The amendment of subsection (a) of this Code section by Ga. L. 2010, p. 9, § 1-76/HB 1055, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 141, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2018, "stepparent" was substituted for "stepparrent" in subsection (d).

40-2-85.4. License plates for United States Army Rangers.

(a) Motor vehicle and trailer owners who are designated to United States Army Ranger units, past or present, or are graduates of the United States Army Ranger School shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, motorcycles, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(b) A person who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. The

commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to qualifying applicants. There shall be no minimum required number of applicants for such distinctive license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars and trucks before issuing these license plates in lieu of the regular Georgia license plates. The additional manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars or trucks used for personal transportation, except that the commissioner shall include a special design to identify the owner as a United States Army Ranger.

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80.

History.
Code 1981, § 40-2-85.4, enacted by Ga. L. 2020, p. 639, § 2/SB 336.

40-2-86. License plates promoting or supporting certain agencies, funds, or nonprofit corporations with proceeds disbursed to the general fund and the agency, fund, or nonprofit corporation.

(a)(1) As used in this Code section, except as otherwise provided in subsection (n) of this Code section, the term:

(A) "Manufacturing fee" means a $25.00 fee paid at the time a special license plate is issued.

(B) "Special license plate fee" means a $35.00 fee paid at the time a special license plate is issued.

(C) "Special license plate renewal fee" means a $35.00 fee paid at the time a revalidation decal is issued for a special license plate.

(2) In accordance with Article III, Section IX, Paragraph VI(n) of the Constitution, the General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and dedicating a portion of the funds

raised from the sale of these special license plates is in the best interests of the people of this state.

(b) The agency, fund, or nonprofit corporation sponsoring the special license plate, in cooperation with the commissioner, shall design special distinctive license plates appropriate to promote the program benefited by the sale of the special license plate. The special license plates shall include a design to be of the same size as general issue motor vehicle license plates and a design to be of the same size as motorcycle license plates. Such special license plates shall also include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. If so specified in the design description contained in this Code section for any special license plate, such license plate need not contain a place for the county name decal as required by Code Section 40-2-9. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of $25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of the appropriate fees in addition to the regular motor vehicle registration fee shall be able to apply for a special license plate listed in this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency,

fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation shall provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized shall be the same as those specified in this Code section authorizing the dedication to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. Any agency, fund, or nonprofit corporation which receives funds under subsection (n) of this Code section shall submit annually to the members of the Senate Natural Resources and the Environment Committee, the House Committee on Game, Fish, and Parks, the House Committee on Appropriations, and the Senate Appropriations Committee, and to the commissioner of natural resources a detailed audit containing the disposition and expenditure of all funds received pursuant to such subsection. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached upon payment of the manufacturing fee and the special license plate renewal fee.

(g) On or after July 1, 2010, no special license plate authorized pursuant to subsections (l), (m), and (n) of this Code section shall be issued except upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fees. The special license plate shall have an application period of two years after the date on which the application period becomes effective for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees shall be refunded to applicants; provided, however, that, once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(h) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to renew such special license plate during his or her annual registration

period upon payment of the special license plate renewal fee which shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fees to continue to manufacture the special license plate.

(i) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(j) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(k) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section.

(l)(1) The General Assembly has determined that special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — $25.00 of which $24.00 is to be deposited into the general fund and $1.00 to be paid to the local county tag agent;

(B) Special license plate fee — $35.00 of which $25.00 is to be deposited into the general fund and $10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution; and

(C) Special license plate renewal fee — $35.00 of which $25.00 is to be deposited into the general fund and $10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(5) Special license plates promoting the conservation of wildflowers within this state. The funds raised by the sale of these special license plates shall be disbursed to the Department of Transportation to be deposited in the Roadside Enhancement and Beautification Fund established by Code Section 32-6-75.2 and shall be expended only for the purposes enumerated in Code Section 32-6-75.2 and Article III, Section IX, Paragraph VI(l) of the Constitution of the State of Georgia.

(6) Reserved.

(7) Special license plates to honor Georgia educators. The funds raised by the sale of these special license plates shall be disbursed to a charitable foundation designated by the State School Superintendent and used to fund educational programs, grants to teachers, and scholarships. The license plates shall display the phrase "Georgia Educators Make A Difference" and a ripe Red Delicious apple shall be depicted to the left of the identifying number of each plate.

(8)(A) The commissioner in cooperation with a college or university may design a special license plate to be issued commemorating that college or university, which license plate shall be similar in design to the license plate issued to all other residents of the state except that the logo or emblem of the college or university shall be placed on the license plate along with the letters and numbers on the license plate. The name of the college or university shall be imprinted on such special license plate in lieu of the county name decal.

(B) Any college or university that enters into an agreement with the commissioner pursuant to this paragraph shall waive any royalty fees to which it might otherwise be entitled for use of its seal, symbol, emblem, or logotype as provided in this paragraph.

(C) Each college or university located in Georgia that enters into an agreement with the commissioner pursuant to this paragraph shall designate a charitable foundation which shall annually receive an allocation from the special license plate and special license plate renewal fees collected as provided in paragraph (1) of this subsection. Special license plates issued under this paragraph shall be transferred between vehicles as provided in Code Section 40-2-42.

(D) The funds allocated for colleges and universities located in Georgia shall be delivered by the department to the charitable foundation designated by the particular college or university to

support needs based, academic, financial aid scholarships for eligible undergraduate students enrolled in the college or university. The funds otherwise allocated for colleges and universities located outside the State of Georgia shall be placed into the general fund.

(E) Each college or university shall review and approve plans for the implementation of these scholarship programs by the applicable charitable foundation. These plans shall include, but need not be limited to, criteria for the awarding of the scholarships and procedures for determining the recipients.

(9) A special license plate for the Georgia Center for the Book to support the purchase of books for public libraries in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Center for the Book.

(10) A special license plate for Children's Healthcare of Atlanta to support the work this pediatric hospital system does in the State of Georgia. The funds raised by the sale of this special license plate shall be disbursed to Children's Healthcare of Atlanta.

(11) A special license plate for the Georgia War Veterans Nursing Home to support the implementation and operation of the Georgia War Veterans Nursing Home. The funds raised by the sale of this special license plate shall be disbursed to the Department of Veterans Service for use in operating the Georgia War Veterans Nursing Home.

(12) A special license plate for the Georgia Automobile Racing Hall of Fame Association to promote the Georgia Automobile Racing Hall of Fame Association, which is devoted to preserving the history of automobile racing in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Automobile Racing Hall of Fame Association.

(13) A special license plate for the Alzheimer's Association, Georgia Chapter, to help eliminate Alzheimer's disease through the advancement of research and to enhance care and support for individuals, their families, and caregivers. The funds raised by the sale of this special license plate shall be disbursed to the Alzheimer's Association, Georgia Chapter.

(14) A special license plate for the school health and physical education program to help fund school health and physical education programs. The funds raised by the sale of this special license plate shall be disbursed to the Department of Education.

(15) A special license plate for stroke awareness, treatment, and prevention to support programs aiding stroke victims in Georgia. Such license plate shall not include a space for a county name decal

but shall instead bear the legend "Stroke Awareness" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Center for Telehealth of the Georgia Health Sciences University.

(16) A special license plate for Project Lifesaver promoting the establishment of a Project Lifesaver or similar type of program by local law enforcement agencies. Project Lifesaver's mission is to use state of the art technology in assisting those who care for victims of Alzheimer's disease and other related mental dysfunction disorders and victims who become lost. The funds raised by the sale of this special license plate shall be disbursed to the Department of Public Safety or a nonprofit corporation organized exclusively for the purpose of establishing a Project Lifesaver or similar type of program by local law enforcement agencies.

(17) A special license plate for pediatric cancer to raise funds to support the treatment of pediatric cancer. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Cure Kids' Cancer" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Department of Community Health to be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund pediatric cancer screening and treatment related programs for those children who are medically indigent and may have cancer.

(18) A special license plate for the child care industry to promote the child care industry by encouraging higher educational standards and providing for professional camaraderie for child care providers. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Support Improved Child Care" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Minority Alliance for Child Care Development Advocates, Inc., for the development of programs to help improve child care.

(19) A special license plate to display the motto, "In God We Trust." The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(20) A special license plate for child abuse prevention. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Prevent Child Abuse" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Foster Family Foundation of Georgia for the development of programs to help victims of child abuse.

(21) A special license plate for the Thanks Mom and Dad Fund. The funds raised by the sale of this special license plate shall be disbursed to the Department of Human Services to address the key needs of the state's older population or a nonprofit corporation organized to serve the needs of the state's older population.

(22) A special license plate for pediatric cancer research. The funds raised by the sale of this special license plate shall be disbursed to the Joanna McAfee Childhood Cancer Foundation for support of pediatric cancer research. The design of the special license plate provided for in this paragraph shall include the words "Joanna McAfee Childhood Cancer Foundation" horizontally across the bottom of the plate in lieu of the county name.

(23) A special license plate for supporting beautification projects in Cobb County. The funds raised by the sale of this special license plate shall be disbursed to Keep Cobb Beautiful, Inc., for support of beautification projects in Cobb County.

(24) A special license plate for AID Atlanta. The funds raised by the sale of this special license plate shall be disbursed to AID Atlanta which is committed to providing people living with HIV the information and support they need to live healthy and productive lives.

(25) A special license endorsing "Support Our Troops." The funds raised by the sale of this special license plate shall be disbursed to the Georgia National Guard Family Support Foundation, Incorporated.

(26) A special license plate for the Sons of Confederate Veterans. The funds raised by the sale of this special license plate shall be disbursed to Georgia Sons of Confederate Veterans.

(27) A special license plate for amyotrophic lateral sclerosis (ALS), also known as "Lou Gehrig's disease," to support research and education on amyotrophic lateral sclerosis. The funds raised by the sale of this special license plate shall be disbursed to the ALS Association of Georgia.

(28) A special license plate for foster parents to support programs for foster parents in Georgia. The funds raised by the sale of this special license plate shall be disbursed to The Adoptive and Foster Parent Association of Georgia, Inc., for support of foster parents in Georgia.

(29) A special license plate for the Atlanta Braves Foundation to assist the charities supported by the foundation. The funds raised by the sale of this special license plate shall be disbursed to the Department of Community Affairs or such other public agency or nonprofit corporation as may be designated.

(30) A special license plate for the Atlanta Falcons Youth Foun-

dation to assist the charities supported by the foundation. The funds raised by the sale of this special license plate shall be disbursed to the Atlanta Falcons Youth Foundation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Atlanta Falcons" in lieu of the name of the county of issuance.

(31) A special license plate for supporting beautification projects in Georgia. The funds raised by the sale of this special license plate shall be disbursed to Keep Georgia Beautiful Foundation, Inc., for support of beautification projects in Georgia.

(32) A special license plate displaying the logo of Choose Life, Inc. The words "Choose Life" must appear at the bottom. The funds raised by the sale of this special license plate shall be disbursed to Choose Life of Georgia, Inc., to be distributed among nonprofit corporations in Georgia that counsel women to consider adoption.

(33) A special license plate supporting education on the maritime history of Georgia's coast. The funds raised by the sale of this special license plate shall be disbursed to The Georgia Maritime Foundation, Inc., for use in programs supporting education on the maritime history of Georgia.

(34) A special license plate supporting programs for persons with brain related disorders and disabilities. The funds raised by the sale of this special license plate shall be disbursed to Pilot International for support of programs for persons with brain related disorders in Georgia.

(35) A special license plate supporting agriculture in Georgia. The funds raised by the sale of this special license plate shall be evenly split between Georgia 4-H and the Georgia Association of Future Farmers of America to fund projects promoting agriculture in Georgia.

(36) A special license plate promoting the Georgia equine industry. The funds raised by the sale of this special license plate shall be disbursed to the Agricultural Commodity Commission for Equines.

(37) A special license plate promoting African American history and tourism in Georgia. The funds raised by the sale of this special license plate shall be disbursed to organizations dedicated to the preservation of African American history in Georgia.

(38) A special license plate honoring veterans who have been awarded the Bronze Star. The funds raised by the sale of this special license plate shall be disbursed to the National Guard Family Foundation.

(39) A special license plate promoting the arts in Georgia. The

funds raised by the sale of this special license plate shall be disbursed to the Georgia Council for the Arts.

(40) A special license plate supporting programs for the treatment of autism. The funds raised by the sale of this special license plate shall be disbursed to the Department of Behavioral Health and Developmental Disabilities for the support of programs for the treatment of autism in Georgia.

(41) A special license plate honoring the work of The Garden Club of Georgia, Inc. The funds raised by the sale of this special license plate shall be disbursed to The Garden Club of Georgia, Inc., and used to fund scholarships that are awarded by the club.

(42) A special license plate promoting the Georgia Junior Golf Foundation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Junior Golf Foundation.

(43) A special license plate commemorating 100 years of scouting in the United States. The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(44) A special license plate supporting Cobb County Public Schools. The funds raised by the sale of this special license plate shall be disbursed to the Cobb County Public Schools Educational Foundation and used to fund educational programs, grants to teachers, and scholarships in the Cobb County Public School System.

(45) A special license plate supporting the Georgia Sea Turtle Center. The funds raised by the sale of this special license plate shall be charged and disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund and used to fund nongame wildlife conservation and education programs. The design of the license plate provided for in this paragraph shall include the words "Jekyll Island — Georgia's Jewel" horizontally across the bottom of the plate in lieu of the county name, with a diamond jewel symbol in place of the dash.

(46) A special license plate commemorating and supporting the sport of soccer in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia State Soccer Association, Inc., for the development and promotion of soccer programs in the State of Georgia. Such license plate shall not include a space for a county decal but shall instead bear the legend "gasoccer.org".

(47) Reserved.

(48) A special license plate for Zoo Atlanta to support its mission to inspire the citizens of Atlanta and Georgia and all visitors to the zoo to value wildlife on Earth; to help safeguard existing species

through conservation by providing for an informative, educational, and engaging experience to all visitors; to carry out the responsible stewardship of the animals and the zoo facility; and to engage in related conservation activities and research. The funds raised by the sale of this special plate shall be disbursed to the Atlanta-Fulton County Zoo, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Protect Wildlife" in lieu of the name of the county of issuance.

(49) A special license plate supporting the Appalachian Trail. The funds raised by the sale of this special license plate shall be disbursed to the Appalachian Trail Conservancy and used to protect, maintain, and conserve the Georgia portion of the Appalachian Trail and connecting trails, and to promote awareness of wilderness, hiking, and back country recreation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "www.appalachiantrail.org".

(50) A special license plate supporting the Atlanta Braves Foundation. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Atlanta Braves Foundation and used in the foundation's philanthropic activities and charitable sponsorships. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Go Braves."

(51) A special license plate for the Grady Health Foundation to support and improve the quality of healthcare services. The funds raised by the sale of this special license plate shall be disbursed to the Grady Health Foundation.

(52) A special license plate honoring the Omega Psi Phi Fraternity, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Georgia State Omega Psi Phi Foundation.

(53) A special license plate honoring Hampton University. The funds raised by the sale of this special license plate shall be disbursed to the Hampton University Atlanta Chapter Alumni Association.

(54) A special license plate honoring Zeta Phi Beta Sorority, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Zeta National Education Foundation, Inc.

(55) A special license plate honoring Georgia law enforcement officers, with the words "Back the Badge" to be displayed across the bottom. The funds raised by the sale of this special license plate shall be disbursed to the Peace Officers' Annuity and Benefit Fund.

(56) A special license plate honoring the Georgia electric utility linemen, with the words "Thank a Lineman" to be displayed across

the bottom. The funds raised by the sale of this special license plate shall be disbursed to the Southeastern Firefighters Burn Foundation.

(57) A special license plate honoring Georgia Masonic Charities Foundation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Masonic Charities Foundation, Inc.

(58) A special license plate supporting the Georgia Alliance of Boys & Girls Clubs, Inc. The funds raised by the sale of this special license plate shall be disbursed as provided for in paragraph (1) of this subsection to the Georgia Alliance of Boys & Girls Clubs, Inc.

(59) A special license plate promoting autism awareness. The funds raised by the sale of this special license plate shall be disbursed to the Autism Alliance of Georgia. Such special license plate shall include the phrase "Autism Awareness" in lieu of the name of the county of issuance.

(60) A special license plate supporting the Atlanta United Foundation. The funds raised by the sale of this special license plate shall be disbursed as provided for in paragraph (1) of this subsection to the Atlanta United Foundation and used for the foundation's philanthropic activities. Such special license plate shall not include a space for the county name decal but shall instead bear the phrase "Unite & Conquer".

(61) A special license plate honoring Alabama A&M University. The funds raised by the sale of this special license plate shall be disbursed to the Alabama A&M University Alumni Association, Inc., and used to provide scholarships and financial assistance to Georgia residents attending the university. Such special license plate shall include the phrase "Go Bulldogs" in lieu of the county of issuance.

(62) A special license plate honoring Alpha Kappa Alpha Sorority, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Ivy Community Foundation, Inc., of Alpha Kappa Alpha Sorority, Inc.

(63) A special license plate honoring Tuskegee University. The funds raised by the sale of this special license plate shall be disbursed to the Atlanta Tuskegee Alumni Club, Inc.

(64) A special license plate honoring the Georgia Tennis Foundation, with the words "Play Tennis!" to be displayed across the bottom. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Tennis Foundation.

(65) A special license plate honoring the Georgia Council on Substance Abuse, Inc., and the Georgia Mental Health Consumer Network, Inc. The funds raised by the sale of this special license plate

shall be disbursed equally to the Georgia Council on Substance Abuse, Inc., and the Georgia Mental Health Consumer Network, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Georgia Recovers" in lieu of the name of the county of issuance.

(66) A special license plate supporting members of the United States Army Rangers. The funds raised by the sale of this special license plate shall be disbursed to the National Ranger Memorial Foundation, Inc.

(67) A special license plate to support members of the United States armed forces. The funds raised by the sale of this special license plate shall be disbursed to Support Our Troops, Inc.

(68) A special license plate supporting the Tybee Island Historical Society. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Tybee Island Historical Society.

(69) A special license plate to support members of the Kappa Alpha Psi Fraternity, Inc. The funds raised by the sale of this special license plate shall be disbursed to Southeastern Education & Leadership Foundation (SELF).

(70) A special license plate honoring Alpha Phi Alpha Fraternity, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Alpha Georgia Education Foundation, Inc.

(m)(1) The General Assembly has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — $25.00 of which $24.00 is to be deposited into the general fund and $1.00 to be paid to the local county tag agent;

(B) Special license plate fee — $35.00 of which $13.00 is to be deposited into the general fund and $22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(C) Special license plate renewal fee — $35.00 of which $13.00 is to be deposited into the general fund and $22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) A special license plate promoting the United States Disabled Athletes Fund, for the support of disabled athletes. The funds raised

by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the United States Disabled Athletes Fund.

(3) A special license plate commemorating Civil War battlefields and historic sites. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Civil War Commission for the acquisition of Civil War battlefields and associated Civil War historic sites in this state and for the maintenance, protection, and interpretation of the same as provided by Article 5 of Chapter 7 of Title 50.

(4) A special license plate promoting historic preservation efforts. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Community Affairs to fund historic preservation programs in the state through the Georgia historic preservation grant program as otherwise authorized by law.

(5) A special license plate promoting bicycle safety. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(6) A special license plate honoring families with a member serving in the military. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(7) A special license plate promoting "Support Georgia Troops." The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(8) A special license plate promoting NASCAR. The provisions of paragraph (1) of this subsection notwithstanding, from the additional $35.00 special license plate renewal fee charged for the issuance and renewal of the NASCAR license plates authorized under this paragraph, $10.25 shall be used by the department for purchasing plates from the supplier of the plates, as designated by NASCAR, and royalty costs, $10.00 shall be deposited in the general fund, and $14.75 shall be disbursed to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(9) A special license plate to support breast cancer related programs for the medically indigent. The provisions of paragraph (1) of this subsection notwithstanding, from the additional $35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of breast cancer license plates authorized under this paragraph, $12.95 shall be deposited in the general fund and $22.05 shall be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund cancer screening and treatment related to programs for those persons who are medically indigent and may have breast cancer. To the extent consistent with Article III, Section IX, Paragraph VI(i) of the Constitution and Article 6 of Chapter 8 of Title 31, such programs may include education, breast cancer screening, grants-in-aid to breast cancer victims, pharmacy assistance programs for breast cancer victims, and other projects to encourage public support for the special license plate and the activities which it funds. Any such special license plate issued for the first time on or before June 30, 2021, shall include a logo the same as the United States postal stamp supporting breast cancer research and bearing the slogan "Fund the Fight. Find A Cure." over the sketch of a woman and the breast cancer awareness pink ribbon symbol. Any special license plate featuring such postal stamp design may be renewed after June 30, 2021, as otherwise provided for by this chapter. On and after July 1, 2021, any special license plate issued for the first time pursuant to this paragraph shall include the pink ribbon symbol which designates the fight against breast cancer and such other design as may be approved by the commissioner without the slogan "Fund the Fight. Find a Cure."

(10) A special license plate to support prostate cancer related awareness and research programs. The provisions of paragraph (1) of this subsection notwithstanding, from the additional $35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of prostate cancer license plates authorized under this paragraph, $13.00 shall be deposited in the general fund and $22.00 shall be disbursed to the Georgia Prostate Cancer Coalition to fund prostate cancer awareness, research, screening, and treatment related programs.

(11) A special license plate to support lung cancer related awareness and research programs. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Joan Gaeta Lung Cancer Fund to fund lung cancer awareness, screening, research, and treatment related programs.

(12) A special license plate to support Georgia nurses and charitable and philanthropic efforts to support, advance, and promote the

nursing profession. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Georgia Nurses Foundation of the Georgia Nurses Association for carrying out such programs and purposes.

(13) A special license plate to support the law enforcement division of the Department of Natural Resources in its protection of wildlife and natural and cultural resources of this state, enforcement of boating, litter, and waste laws, teaching of hunter and boater education classes, and provision of other public safety services to the citizens of this state. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Natural Resources for use by the law enforcement division for the purposes provided for in this paragraph.

(14) A special license plate promoting the conservation and protection of the official insect of this state, the honey bee. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Beekeepers Association and shall be used to increase public awareness of the importance of the conservation of the honey bee and for funding and supporting numerous association programs, including but not limited to the training and education of both new and experienced beekeepers, prison beekeeper programs, grants to beekeeping related nonprofit corporations, beekeeping research facilities in this state, and projects that encourage public support for the license plate and the activities it funds. Such special license plate shall include the phrase "Save the Honey Bee" in lieu of the county of issuance.

(15) A special license plate honoring Georgia's working forests and the benefits they provide to Georgians, with the words "#1 in Forestry" to be displayed across the bottom. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Georgia Forestry Foundation.

(16) A special license plate to support the Sickle Cell Foundation of Georgia, Inc. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Sickle Cell Foundation of Georgia, Inc.

(17) A special license plate to support the fight against cancer. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Center for Oncology Research and Education, Inc.

(n)(1) The General Assembly recognizes that Code Section 12-3-600 mandates that the best interests of the state are served by providing for the conservation of nongame species of wildlife and has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection

shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a special license plate fee and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Special license plate fee — $25.00 of which $5.00 is to be deposited into the general fund, $1.00 is to be paid to the local county tag agent, and $19.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(B) Special license plate renewal fee — $25.00 of which $5.00 is to be deposited into the general fund and $20.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) A special license plate promoting the Nongame-Endangered Wildlife Program of the Department of Natural Resources. The funds raised by the sale of this special license plate shall be disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund of the Department of Natural Resources for the purposes enumerated in subsection (b) of Code Section 12-3-602. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Give Wildlife a Chance" in lieu of the name of the county of issuance.

(3) A special license plate promoting conservation and enhancement of trout populations. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to supplement trout restoration and management programs.

(4) A special license plate supporting the Bobwhite Quail Restoration Initiative. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to conduct programs designed to enhance the bobwhite quail population in this state. Such programs may include the creation of habitat demonstration areas on state managed wildlife lands, education programs, technical assistance to private landowners in the creation and maintenance of bobwhite quail habitats on their lands, and projects to encourage public support for the license plate and the activities it funds. The Department of Natural Resources may enter into such contractual agreements as may be appropriate to further the objectives of the Bobwhite Quail Restoration Initiative, including entering into contractual agreements whereby private landowners, public agencies, or corporate entities create, preserve, or enhance habitat for bobwhite quail in return for the payment of incentives. Such license plate shall not include a space for a county decal but shall instead bear the legend "Support Wildlife" in lieu of the name of the county of issuance.

(5) A special license plate promoting marine habitat conservation, restoration, and enhancement. The funds raised by the sale of this special license plate shall be disbursed to the Coastal Resources Division of the Department of Natural Resources to supplement marine habitat conservation, restoration, and enhancement projects undertaken to increase the abundance of marine fish and invertebrate species.

(6) A special license plate promoting a dog and cat reproductive sterilization program for a nonprofit corporation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Pet Foundation to be used for dog and cat reproductive sterilization, including, but not limited to, grants to nonprofit corporations and vouchers for discounted veterinary sterilization services.

(7) A special license plate promoting the conservation and enhancement of waterfowl populations and their habitats. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources for the purposes of waterfowl habitat restoration, waterfowl research, and waterfowl management programs.

(8) A special license plate promoting the dog and cat reproductive sterilization support program of the Department of Agriculture. The funds raised by the sale of this special license plate shall be disbursed to the Department of Agriculture and shall be deposited in the special fund for support of the dog and cat reproductive sterilization support program created by Code Section 4-15-1 and Article III, Section IX, Paragraph VI(m) of the Constitution of the State of Georgia.

(9) A special license plate for the Georgia Aquarium to support its mission as an entertaining, educational, and scientific institution and to promote the conservation of aquatic biodiversity throughout the world. The funds raised by the sale of this special plate shall be disbursed to Georgia Aquarium, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Georgia Aquarium" in lieu of the name of the county of issuance.

History.

Code 1981, § 40-2-86.21, enacted by Ga. L. 2006, p. 1094, § 12/HB 1053; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 668, §§ 4-6/SB 81; Ga. L. 2008, p. 832, §§ 2, 3/HB 1220; Ga. L. 2008, p. 1191, § 1/HB 963; Ga. L. 2009, p. 453, § 2-18/HB 228; Ga. L. 2009, p. 833, § 1/HB 639; Code 1981, § 40-2-86, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2010, p. 143, § 4.1/HB 1005; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 155, § 6/HB 732; Ga. L. 2013, p. 265, § 3/SB 121; Ga. L. 2014, p. 74, §§ 1-3/HB 881; Ga. L. 2015, p. 816, § 5/HB 48; Ga. L. 2016, p. 79, § 2/HB 736; Ga. L. 2016, p. 864, § 40/HB 737; Ga. L. 2017, p. 681, § 1/SB 169; Ga. L. 2017, p. 696, § 1/HB 260; Ga. L. 2018, p. 305, § 2/HB 671; Ga. L. 2018, p. 311, § 1/HB 784; Ga. L. 2018, p. 715, § 1/HB 815; Ga. L. 2018, p. 908, §§ 2-4/HB 695; Ga. L. 2019, p. 486,

§ 3/SB 227; Ga. L. 2019, p. 647, § 1/SB 8; Ga. L. 2019, p. 891, § 1/HB 339; Ga. L. 2019, p. 908, § 2/SB 138; Ga. L. 2019, p. 911, § 1/SB 137; Ga. L. 2020, p. 38, § 6/SB 473; Ga. L. 2020, p. 639, § 3/SB 336; Ga. L. 2021, p. 471, § 1/SB 237; Ga. L. 2021, p. 539, § 1/HB 179; Ga. L. 2022, p. 184, § 1/HB 203; Ga. L. 2023, p. 61, § 4/HB 175, effective January 1, 2024; Ga. L. 2024, p. 1052, § 4(29)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 2, 2022, added paragraph (l)(68).

The 2023 amendment, effective January 1, 2024, added paragraphs (l)(69) and (l)(70).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (g) and substituted "healthcare" for "health care" in paragraph (k)(51).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.18, as enacted by Ga. L. 2006, p. 1094, § 12/HB 1053, was redesignated as Code Section 40-2-86.

The enactment of this Code section by Ga. L. 2006, p. 1092, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 1094, § 12/HB 1053. See County of Butts v. Strahan, 151 Ga. 417 (1920).

The amendment of this Code section by Ga. L. 2007, p. 47, § 40/SB 103, irreconcilably conflicted with and was treated as superseded by Ga. L. 2007, p. 668, §§ 4-6/SB 81. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2010, paragraph (o)(41), as enacted by Ga. L. 2010, p. 143, § 4.1/HB 1005, was redesignated as paragraph (l)(48).

Pursuant to Code Section 28-9-5, in 2017, paragraph (l)(55), as added by Ga. L. 2017, p. 696, § 1/HB 260, was redesignated as paragraph (l)(56), and in paragraph (l)(55), "Back the Badge" was substituted for "back the badge".

Pursuant to Code Section 28-9-5, in 2018, paragraph (m)(14), as enacted by Ga. L. 2018, p. 908, § 3/HB 695, and paragraph (n)(7), as enacted by Ga. L. 2018, p. 908, § 4/HB 695, were redesignated as paragraphs (m)(15) and (n)(8), respectively.

Pursuant to Code Section 28-9-5, in 2019, paragraph (l)(58), as enacted by Ga. L. 2019, p. 647, § 1/SB 8, was redesignated as paragraph (l)(60); paragraphs (l)(58) and (l)(60), as enacted by Ga. L. 2019, p. 891, § 1/HB 339, were redesignated as paragraphs (l)(61) and (l)(62), respectively; and, paragraph (l)(58), as enacted by Ga. L. 2019, p. 911, § 1/SB 137, was redesignated as paragraph (l)(63). Furthermore, Ga. L. 2019, p. 486, § 3/SB 227 and Ga. L. 2019, p. 891, § 1/HB 339 both enacted identical provisions on Autism Alliance license plates which have been set out as paragraph (l)(59).

Pursuant to Code Section 28-9-5, in 2021, paragraph (l)(66), as added by Ga. L. 2021, p. 539, § 1/HB 179, was redesignated as paragraph (l)(67).

Editor's notes.

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides the enactment of this Code section became effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

This Code section formerly pertained to special license plates for emergency medical technicians. The former Code section was based on Code 1981, § 40-2-86, enacted by Ga. L. 1992, p. 2785, § 1.2; Ga. L. 1997, p. 419, § 32. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section.

Ga. L. 2016, p. 79, § 3/HB 736, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, Section 2 of this Act amending subsections (l), (m), and (n) of Code Section 40-2-86 of the Official Code of Georgia Annotated shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives." The legislation received the requisite two-thirds' majority vote.

Ga. L. 2017, p. 681, § 2/SB 169, not codified by the General Assembly, provides that: "In accordance with the requirements of Article III, Section IX, Paragraph (VI)(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives." The legislation received the requisite two-thirds' majority vote.

Ga. L. 2017, p. 696, § 2/HB 260, not codified by the General Assembly, provides that: "In accordance with the requirements of Article III, Section IX, Paragraph (VI)(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives." The legislation received the requisite two-thirds' majority vote.

Ga. L. 2019, p. 486, § 3/SB 227, which amended this Code section, purported to add one new paragraph to subsection (l) but actually added two new paragraphs.

Ga. L. 2019, p. 891, § 1/HB 339, which amended this Code section, purported to add two new paragraphs to subsection (l) but actually added three new paragraphs.

Ga. L. 2021, p. 471, § 2/SB 237, not codified by the General Assembly, provides that: "In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives."

Ga. L. 2022, p. 184, § 2/HB 203, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives." The legislation received the requisite two-thirds' majority vote.

Ga. L. 2024, p. 1052, § 4(29)/SB 448, purported to amend paragraph (k)(51) of this Code section but, in fact, amended paragraph (l)(51); this Code section contains no paragraph (k)(51).

40-2-86.1. License plates promoting or supporting certain agencies, funds, or nonprofit corporations or issued to qualified motor vehicles or owners with proceeds deposited in the general fund.

(a) The General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and, subject to the appropriation process of the General Assembly, appropriating a portion of the funds raised from the sale of these special license plates is in the best interests of the people of this state. Therefore, the license plates listed in subsection (l) of this Code section shall be issued by the department if all of the requirements of subsections (b) through (k) of this Code section have been satisfied.

(b) The commissioner, in cooperation with the agency, fund, or nonprofit corporation sponsoring the special license plate, shall design special distinctive license plates intended to promote the program benefited by the sale of the special license plate. The special license plates shall include a design to be of the same size as general issue motor vehicle license plates and a design to be of the same size as motorcycle license plates. Such special license plates shall also include

a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. If so specified in the design description contained in this Code section for any special license plate, such license plate need not contain a place for the county name decal as required by Code Section 40-2-9. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of $25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of a manufacturing fee of $25.00 and a special license plate fee of $35.00, in addition to the regular motor vehicle registration fee, shall be able to apply for a special license plate listed in subsection (l) of this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates, with the addition of a $35.00 special license plate renewal fee, provided that special license plates issued pursuant to paragraph (9) of subsection (l) of this Code section shall be exempt from such special license plate renewal fee.

(e) The manufacturing fee, special license plate fee, and special license plate renewal fee derived from the sale of special license plates contained in subsection (l) of this Code section shall be deposited into the general fund. The sponsoring agency, fund, or nonprofit corporation, subject to the appropriation process of the General Assembly, may request that the funds derived from the sale of special license plates be appropriated to the department for disbursement to such agency, fund, or nonprofit corporation.

(f) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized must be the same as those specified in subsection (l) of this Code section authorizing the potential appropriation to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(g) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached, upon the payment of any applicable registration fees, the manufacturing fee, and the special license plate fee.

(h) No special license plate authorized pursuant to subsection (l) of this Code section shall be issued except upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fee. The special license plate shall have an application period of two years from the date of authorization for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fee, and all fees shall be refunded to applicants; provided, however, that, once the department has received 1,000 prepaid applications along with the manufacturing fee, the sponsor shall not be entitled to a refund.

(i) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to renew such special license plate during his or her annual registration period upon payment of an additional $35.00 special license plate renewal fee, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory

to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(j) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(k) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(l)(1) The General Assembly has determined that license plates promoting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated and the revenue shall be deposited in the general fund, subject to the appropriation process of the General Assembly.

(2) A special license plate identifying persons with diabetes. The main purpose of the special license plate is that law enforcement officers and emergency personnel will be alerted to the potential for special needs before they approach the driver of a vehicle, especially if the vehicle has been involved in an accident. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(3) A special license plate honoring all veterans who have served in the armed services of the United States. All of these men and women have sacrificed a portion of their lives in order to serve their country and protect our freedom. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(4) A special license plate honoring the Georgia Association of Realtors. The Association is being honored for its long-standing support of housing opportunities for all citizens of this state, private property rights, and all organizations that assist people in achieving the American dream of home ownership. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(5) A special license plate honoring Georgia municipal clerks. The municipal clerk's office provides the professional link connecting citizens with their local governing bodies and agencies of government at other levels. The funds raised by the sale of this license plate shall be deposited in the general fund.

(6) A special license plate identifying residents of the State of Georgia who hold an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission.

The special license plate shall be inscribed with the official amateur radio call letters of such applicant as assigned by the Federal Communications Commission. The funds raised by the sale of this license plate shall be deposited in the general fund.

(7)(A) A special license plate to be issued for alternative fueled vehicles, which license plate shall be similar in design to the license plate issued to all other residents of this state except that the commissioner shall place a distinctive logo or emblem on the license plate which shall distinguish the vehicle as an alternative fueled vehicle eligible to travel in travel lanes designated for such vehicles under paragraph (4) of subsection (a) of Code Section 32-9-4. The words "alternative fueled vehicle" shall be imprinted on such special license plate in lieu of the county name decal. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) As used in this paragraph, the term:

(i) "Alternative fuel" means electricity, natural gas, and propane.

(ii) "Alternative fueled vehicle" means any vehicle fueled solely by alternative fuel as defined in division (i) of this subparagraph, bi-fuel, or dual fuel.

(C) Pursuant to paragraph (19) of subsection (a) of Code Section 40-2-151, the applicant for a special license plate for any alternative fueled vehicle shall provide proof that he or she has paid the registration fee prescribed therein prior to the issuance of any special license plate under this paragraph.

(8) A special license plate for antique or hobby or special interest vehicles. As used in this paragraph, the term "antique or hobby or special interest vehicle" means any motor vehicle or motor cycle or a motor vehicle which has been designed and manufactured to resemble an antique or historical vehicle and which is owned as a collector's item and for participation in club activities, exhibitions, tours, parades and similar uses but which may be used for general transportation. No owner of such antique vehicle or hobby or special interest vehicle shall be required to obtain any special permits for its operation on the roads of this state. The funds raised by the sale of this license plate shall be deposited in the general fund.

(9)(A) A special license plate for owners of a private passenger car or truck used for transportation purposes unrelated to their role as a firefighter, who are firefighters certified pursuant to Chapter 4 of Title 25 and who are members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and motor vehicle

owners who are firefighters of legally organized volunteer fire departments which have been certified pursuant to Article 2 of Chapter 3 of Title 25. Such license plate shall be inscribed with such letters, numbers, words, symbols, or a combination thereof as determined by the commissioner to identify the owner as a firefighter. The chiefs of the various fire departments shall furnish to the commissioner a list of the certified firefighters and volunteer firefighters of their fire departments who reside in Georgia, which list shall be updated as necessary. Such list shall be made available to county tag agents and shall be the means by which eligibility of an applicant shall be determined; provided, however, that an applicant not appearing on the list may prove qualification by presenting proof of retirement or current certification from his or her chief. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) Should a certified firefighter or volunteer firefighter who has been issued a special and distinctive license plate be separated from such firefighter's department for any reason other than retirement from employment, the separated firefighter shall, within 14 days of such separation, return such special and distinctive license plate to the issuing county tag agent. Upon receipt of such special and distinctive license plate, a county tag agent shall reissue a regular license plate and the appropriate revalidation decal for the applicable registration period, at no additional charge, to such former firefighter to replace the special and distinctive license plate. Should a firefighter return to service with the same or another fire department, the chief of the fire department employing such firefighter shall secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has become a member of the fire department, and the effective date thereof, whereupon the commissioner shall, upon application and upon the payment of a $35.00 manufacturing fee and all other applicable registration and licensing fees at the time of registration, reissue a special and distinctive license plate to such new member to replace the returned regular license plate.

(C) Motor vehicle owners who were firefighters certified pursuant to Chapter 4 of Title 25 or were members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and who retired from employment as such shall continue to be eligible for the firefighter license plates issued under this paragraph the same as if they continued to be certified and employed as firefighters. Whenever such a certified firefighter who has been issued a special and distinctive license plate is retired from employment with such firefighter's department, the chief of such

fire department shall forward to the commissioner a certificate to the effect that such person has been retired. The name of such retired firefighter shall be added to the list described in subparagraph (A) of this paragraph and made available to county tag agents.

(D) The spouse of a deceased firefighter shall continue to be eligible to be issued a distinctive special firefighter's license plate as provided in this paragraph so long as such person does not remarry.

(10) A special license plate supporting Rotary International. The design of the special license plate, excepting only the Rotary International logo and motto "Service Above Self" and the years 1905-2005 and any other part of the design owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The funds raised by the sale of this license plate shall be deposited in the general fund.

(11) A special license plate for any Georgia resident who is the owner of a private passenger motor vehicle and provides proof of certification or licensure by the State of Georgia as an emergency medical technician, paramedic, or owner of a licensed ambulance service in the State of Georgia promoting the EMS Star of Life Symbol. Such license plate shall display the National Highway Traffic Safety Administration's EMS Star of Life Symbol and the initials "EMS." The funds raised by the sale of this license plate shall be deposited in the general fund.

History.

Code 1981, § 40-2-86.22, enacted by Ga. L. 2006, p. 421, § 1/HB 710; Ga. L. 2007, p. 668, § 7/SB 81; Code 1981, § 40-2-86.1, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2012, p. 155, § 7/HB 732; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2015, p. 236, § 3-1/HB 170; Ga. L. 2018, p. 677, § 2/HB 898; Ga. L. 2020, p. 639, § 4/SB 336; Ga. L. 2021, p. 400, § 1/HB 453; Ga. L. 2024, p. 1052, § 4(30)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (h).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.19, as enacted by Ga. L. 2006, p. 421, § 1/HB 710, was redesignated as Code Section 40-2-86.1.

Pursuant to Code Section 28-9-5, in 2006, "period" was inserted following "during the" in the first sentence of subsection (i).

Pursuant to Code Section 28-9-5, in 2010, "which has been" was substituted for "which as been" in the second sentence of paragraph (l)(8).

Editor's notes.

Ga. L. 2007, p. 668, § 7/SB 81, which amended this Code section, purported to add paragraphs (l)(5) and (l)(6) but actually only added paragraph (l)(5).

This Code section formerly pertained to license plates commemorating square and round dancers. The former Code section was based on Code 1981, § 40-2-86.1, enacted by Ga. L. 1997, p. 1559, § 4, and was repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly,

provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

ARTICLE 3A

RECIPROCAL AGREEMENTS FOR REGISTRATION OF COMMERCIAL VEHICLES

40-2-87. Definitions.

As used in this article, the term:

(1) "Allocated vehicle" means a vehicle to which a particular jurisdiction's basic registration plate or apportioned registration plate is attached upon payment of the jurisdiction's full basic registration fee. A portion of each fleet of one-way vehicles is allocated to each jurisdiction into or through which the fleet travels although each vehicle of the fleet need not enter every jurisdiction.

(2) "Apportionable fee" means any periodic recurring fee required for licensing or registering vehicles, including, but not limited to, registration fees, license fees, or weight fees.

(3) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and which is:

(A) A power unit having a gross vehicle weight in excess of 26,000 pounds;

(B) A power unit having three or more axles, regardless of weight; or

(C) Used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles or combinations thereof having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant.

(4) "Auxiliary axle" means an auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semitrailer to a full trailer.

(5) "Axle" means an assembly of a vehicle consisting of two or more wheels whose centers are in one horizontal plane, by means of which a portion of the weight of a vehicle and its load, if any, is continually transmitted to the roadway. For purposes of registration under the International Registration Plan, an axle is any such assembly whether or not it is load-bearing only part of the time. For example, a single-unit truck with a steering axle and two axles in a rear-axle assembly is an apportionable vehicle even though one of the rear axles is a so-called dummy, drag, tag, or pusher type axle.

(6) "Base jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet, and where operational records of such fleet are maintained or can be made available in accordance with the provisions of this article.

(7) "Base plate" means the plate issued by the base jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction. Base plates shall be identified by having the word "apportioned" or "PRP" and the jurisdiction's name on the plate. The numbering system and color shall be determined by the issuing jurisdiction.

(8) "Chartered party" means a group of persons who, pursuant to a common purpose and under a single contract and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Interstate Commerce Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(9) "Commissioner" means the jurisdiction official in charge of registration of vehicles and means, for the State of Georgia, the state revenue commissioner.

(10) "Established place of business" means a physical structure owned, leased, or rented by the fleet registrant. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it:

(A) A telephone or telephones publicly listed in the name of the fleet registrant;

(B) A person or persons conducting the fleet registrant's business; and

(C) The operational records of the fleet, unless such records can be made available in accordance with the provisions of this article.

(11) "Fleet" means one or more apportionable vehicles.

(12) "In-jurisdiction miles" means the total number of operating miles accrued by a fleet of apportioned vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of apportioned vehicles in jurisdictions that require no apportionment and grant reciprocity, the base jurisdiction may add such miles to the in-jurisdiction miles.

(13) "Interjurisdictional movement" means vehicle movement between or through two or more jurisdictions.

(14) "Intrajurisdictional movement" means vehicle movement from one point within a jurisdiction to another point within the same jurisdiction.

(15) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a state, province, or territory of another country.

(16) "Long term" means any period of time exceeding 29 days.

(17) "Motor carrier audit" means a physical examination of a motor carrier's operational records including source documentation to verify fleet mileage and accuracy of a carrier's record-keeping system.

(18) "Operational records" means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets, and drivers' logs.

(19) "Owner-operator" means an equipment lessor who leases his vehicular equipment with driver to a carrier.

(20) "Pool fleet" means a fleet of rental company trailers and semitrailers having a gross weight in excess of 26,000 pounds and used solely in pool operation with no permanent base.

(21) "Preceding year" means the period of 12 consecutive months immediately prior to July 1 of the year immediately preceding the commencement of the registration or license year for which apportioned registration is sought.

(22) "Reciprocity" means that an apportionable vehicle properly registered under this article shall be exempt from further registration by any other member jurisdiction.

(23) "Reciprocity agreement" means an agreement, arrangement, or understanding governing the reciprocal grant of rights and privileges to vehicles which are based in and properly registered under the applicable laws of the jurisdictions which are parties to such an agreement, arrangement, or understanding.

(24) "Recreational vehicle" means as used in this article a vehicle used for personal pleasure or travel by an individual or his family.

(25) "Registrant" means a person, firm, or corporation in whose name or names a vehicle is properly registered.

(26) "Registration year" means the 12 month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(27) "Restricted plate" means a license plate that has time (less than a registration year), geographic area, mileage, or commodity restrictions.

(28) "Service representative" means a person who furnishes facilities and services including sales, warehousing, motorized equipment, and drivers under contract or other arrangements to a carrier for transportation of property by a household goods carrier.

(29) "Total distance" means the total number of miles or kilometers traveled by a fleet of apportioned vehicles in all jurisdictions during the preceding year. For purposes of motor bus apportionment, total distance shall be calculated as provided for fleets.

(30) "Trip-lease" means a lease of vehicular equipment to a carrier or lessee for a single interjurisdictional movement. The term may also include a similar intrajurisdictional movement where such movement is authorized under the laws of the jurisdiction.

History.

Code 1981, § 40-2-87, enacted by Ga. L. 1990, p. 1883, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 3-14; Ga. L. 2005, p. 334, § 14-7/HB 501; Ga. L. 2006, p. 72, § 40/SB 465.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-80, was renumbered as Code Section 40-2-87, since Ga. L. 1990, p. 2048, § 2, also enacted a Code Section 40-2-80.

40-2-88. Reciprocal agreements for registration of commercial vehicles on apportionment basis; registration under the International Registration Plan.

(a) In addition to and regardless of the provisions of Article 3 of this chapter or any other provisions of law relating to the operation of motor vehicles over the public highways of this state, the commissioner is authorized to enter into reciprocal agreements or plans on behalf of the State of Georgia with the appropriate authorities of any of the states of the United States, the District of Columbia, a state or province of any foreign country or any political subdivision of a foreign country, or a territory or possession of the United States or any foreign country or any political subdivision of a foreign country providing for the registration of commercial vehicles on an apportionment basis and may, in the exercise of this authority, enter and become a member of the International Registration Plan developed by the American Association of Motor Vehicle Administrators. Any such reciprocal agreement or plan may provide for but shall not be limited to the following provisions: (1) full reciprocity in accordance with such agreement or plan for commercial vehicles not based in Georgia, which vehicles are operated in interstate commerce or a combination of interstate and intrastate commerce and are of specified types or weights, in exchange for equivalent reciprocity for Georgia based commercial vehicles; (2) reciprocal exchange of audits of records of the owners of such commercial vehicles by the states participating in any such agreement or plan; and (3) any other matters which would facilitate the administration of such agreement or plan, including exchange of information for audits enforcement activities and collection and disbursement of proportional registration fees for other jurisdictions in the case of Georgia based commercial vehicles.

(b) Any reciprocity agreement, arrangement, or declaration relating to commercial vehicles in effect between this state and any jurisdiction not a party to such reciprocal agreement or plan or which relates to any matters not covered in such reciprocal agreement or plan shall continue in force and effect until specifically revoked or amended as provided by law.

(c)(1) Applications for registration or renewal of registration under the International Registration Plan shall be submitted electronically during the applicable registration period specified in division (a)(1)(A)(ii) of Code Section 40-2-21.

(2) Any owner of a vehicle required to be registered under the International Registration Plan who does not apply for registration on or before the first day of the registration period for such vehicle as prescribed in paragraph (1) of this subsection, in addition to any

other penalty which may be imposed if such vehicle is not timely registered in accordance with paragraph (1) of this subsection, shall be subject to a late application penalty of 10 percent of the total registration fees due this state. Additionally, the owner of a vehicle required to be registered under the International Registration Plan who does not pay to the commissioner the registration fees due this state on or before the last day of the registration period shall be subject to a late payment penalty in accordance with Code Section 40-2-40. The commissioner may provide by rule or regulation for waiver of penalties provided by this paragraph in cases where failure to timely make application or timely pay fees is due to force majeure.

(d) The provisions of Code Sections 40-2-9, 40-2-22, 40-2-23, 40-2-24, and 40-2-26 shall not apply to vehicles registered under this Code section, except that:

(1) Registration under the International Registration Plan shall not relieve a registrant from any other taxes due, except as otherwise provided in subsection (h) of Code Section 40-2-152, and registration shall be denied any such vehicle if any Georgia ad valorem property taxes due upon such vehicle are unpaid;

(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle subject to the heavy vehicle tax unless the owner of the motor vehicle provides satisfactory proof that the heavy vehicle tax imposed by Subchapter D of Chapter 36 of the Internal Revenue Code has been paid for the federal tax year during which the application for registration or renewal thereof is made or that a heavy motor vehicle tax return has been filed with the Internal Revenue Service for the federal tax year during which the application for registration or renewal thereof is made; and

(3) No vehicle registration or renewal thereof shall be issued without the commissioner's having first received certification that the vehicle sought to be licensed is insured in compliance with the mandatory provisions of Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act."

(e) In the event of conflict between the provisions of this Code section or any agreement entered into under the provisions of this Code section and any other law or provision on this subject, the provisions of this Code section or any agreement entered into under the provisions of this Code section shall prevail.

(f) Each motor carrier registered under the International Registration Plan shall maintain and keep, for the current year and the three preceding years, such pertinent records and papers as may be required by the commissioner for the reasonable administration of this chapter. If a registrant fails to make records available to the commissioner upon

proper request or if any registrant fails to maintain records from which its true liability may be determined, the commissioner may, 30 days after written demand for production of or access to the records or notification of insufficient records, impose an assessment of liability based on the commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the commissioner at his or her own instance, information available to the commissioner concerning operations by similar registrants, and such other pertinent information as may be available to the commissioner.

(g) The commissioner or any authorized agent of the commissioner is authorized to examine the records, books, papers, and equipment of any motor carrier that are deemed necessary to verify the truth and accuracy of any statement or report and ascertain whether the tax imposed by Code Section 40-2-152 and the International Registration Plan has been properly paid. The duties and powers of the commissioner as specified in Code Sections 48-2-7 through 48-2-11 are expressly made applicable to this Code section.

(h) In lieu of full registration under the International Registration Plan, trip permit registration may be issued for any vehicle or combination of vehicles which could be lawfully operated in the state if full registration or apportioned registration were obtained. A person desiring a trip permit shall make application therefor as prescribed by the commissioner. A trip permit shall be issued for the sum of $30.00. Any vehicle or combination of vehicles for which a trip permit has been issued may be operated in interstate or intrastate commerce in Georgia for a period of 72 hours from the time of issuance.

(i) The department is authorized and empowered to promulgate and to enforce such rules and regulations, including without limitation rules and regulations providing for appointment and regulation of private tag agents and use of electronic and direct registration methods, and to publish such forms as may be necessary to carry out the provisions of the International Registration Plan or any other agreement entered into under the authority set forth in this Code section.

(j) Any person who violates any provision of this Code section shall, in addition to any other penalties provided by any other law, be punished by a fine of not less than $100.00 and not more than $250.00.

History.

Code 1981, § 40-2-88, enacted by Ga. L. 1990, p. 1883, § 2; Ga. L. 1992, p. 2978, § 3; Ga. L. 1999, p. 741, § 2; Ga. L. 2000, p. 951, § 3-15; Ga. L. 2001, p. 1173, § 1-3; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2013, p. 32, § 1/HB 463; Ga. L. 2017, p. 742, § 2/HB 412; Ga. L. 2020, p. 199, § 2-1/HB 463.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-81, was renumbered as Code Section 40-2-88,

since Ga. L. 1990, p. 2048, § 2, also enacted a Code Section 40-2-80 and references to Code Sections 40-2-22, 40-2-23, 40-2-24, and 40-2-26 were substituted for references to Code Sections 40-2-21, 40-2-22, 40-2-23, and 40-2-25 in subsection (d).

Pursuant to Code Section 28-9-5, in 1992, "commissioner's" was substituted for "commissioner" in paragraph (d)(3).

Editor's notes.

Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

40-2-88.1. Electronic application for registration of commercial vehicles under the International Registration Plan.

On and after January 1, 2018, the commissioner shall require any applicant for a commercial vehicle registration under the International Registration Plan to submit such application electronically. The commissioner shall adopt rules and regulations which provide for denial of an application, which shall include the denial of registration to applicants previously prohibited by any federal or state agency from operating interstate or intrastate.

History.

Code 1981, § 40-2-88.1, enacted by Ga. L. 2007, p. 639, § 1/SB 77; Ga. L. 2017, p. 742, § 3/HB 412.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, Ga. L. 2007, p. 639, § 1/SB 77, was designated as Code Section 40-2-88.1 and the subsection (d) designation was deleted.

40-2-89. Vehicle ineligible for registration if prohibited from being operated in interstate commerce.

Any vehicle which is prohibited by any federal agency acting pursuant to federal law, rule, or regulation from being operated in interstate commerce shall not be eligible for registration under this article, and the commissioner shall suspend or revoke such registration for any vehicle so prohibited from operating.

History.

Code 1981, § 40-2-89, enacted by Ga. L. 2001, p. 1173, § 1-4; Ga. L. 2005, p. 334, § 14-8/HB 501.

ARTICLE 4

VEHICLES OF NONRESIDENTS

40-2-90. Operation of vehicles registered in other states.

(a) For purposes of this Code section:

(1) "Nonresident" means any person who does not reside in the State of Georgia but who accepts employment or engages in any

trade, profession, or occupation in the state or enters his children in the public schools of this state.

(2) "Visitor" means any person who does not reside in the State of Georgia and who is not a nonresident as defined in this subsection.

(b)(1) Motor vehicles owned by nonresidents may be used and operated on the public streets and highways for a period of 30 days without registering said motor vehicles in the State of Georgia.

(2) Motor vehicles owned by visitors may be used and operated on the public streets and highways, for pleasure purposes only, for a period of 90 days without registering said motor vehicles in the State of Georgia.

(3) To be eligible for the exemptions provided for in paragraph (1) or (2) of this subsection, a nonresident or visitor shall have fully complied with the laws relating to the registration of motor vehicles of the state or territory wherein he resides, and the registration number and initial letter of such state or territory shall be displayed and plainly visible on such motor vehicles.

(4) No resident of Georgia shall be entitled to the exemptions provided for in paragraph (1) or (2) of this subsection.

(c) Notwithstanding subsection (a) of this Code section, a nonresident student who is a resident of a state which is a member of the Multistate Reciprocity Agreement shall be exempt from the requirement of registering his motor vehicle in this state in accordance with the provisions of said Multistate Reciprocity Agreement.

History.
Ga. L. 1927, p. 226, § 10; Code 1933, § 68-221; Ga. L. 1973, p. 342, § 1; Ga. L. 1978, p. 927, § 1; Ga. L. 1982, p. 720, § 1; Ga. L. 1983, p. 638, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 2.

Cross references.
Rights of citizens of other states while in Georgia generally, § 1-2-9.

JUDICIAL DECISIONS

Regularly driving out-of-state vehicles evidence of nonresidency. — Since residents of Georgia are prohibited from operating out-of-state licensed motor vehicles in Georgia, a person who regularly drives an out-of-state licensed motor vehicle in Georgia has already determined and was evidencing the person's determination that the person was not a resident of Georgia for purposes of voting. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972).

Stopping visiting motorists for traffic violations. — Paragraph (b)(2) of O.C.G.A. § 40-2-90 gives visitors to the state the right to use and operate motor vehicles on the public streets and highways for pleasure purposes only for 90 days without registering the vehicle, but this does not restrict a law enforcement officer from performing the

officer's duty when stopping a visiting motorist for a traffic violation. Coop v. State, 186 Ga. App. 578, 367 S.E.2d 836, 1988 Ga. App. LEXIS 413 (1988).

State need not prove current owner of vehicle. — State presented sufficient evidence that the defendant operated a motor vehicle with an expired Mississippi tag on a public street of Georgia in violation of O.C.G.A. § 40-2-8(a). Although the evidence did not show to whom the vehicle had been registered in Mississippi or whether the defendant had recently purchased the vehicle, the evidence did authorize a finding that, regardless of who the current owner of the vehicle might actually be, the vehicle was not an automobile which was otherwise exempt from the requirement of registration in this state. Keyser v. State, 187 Ga. App. 95, 369 S.E.2d 309, 1988 Ga. App. LEXIS 582 (1988).

OPINIONS OF THE ATTORNEY GENERAL

"License" construed. — License as referred to in former Code 1933, § 68-221 (see O.C.G.A. § 40-2-90), was the operator's permit or license which was issued by the Georgia State Patrol (now Department of Public Safety). 1969 Op. Att'y Gen. No. 69-156.

Nonresident returning to residence each night. — Person entering the State of Georgia daily, but returning to the state of the person's residence each night, is not required to purchase a Georgia motor vehicle license. 1958-59 Ga. Op. Att'y Gen. 211.

Subjecting nonresidents to fees. — Motor vehicles owned by nonresidents are not subject to motor vehicle license fees for a period of 30 days after coming within the state, provided the vehicle is properly registered in the state of their residence; this 30-day period would apply to all motor vehicles owned by nonresidents, regardless of whether or not the nonresident was a contractor engaged in road building within this state. 1950-51 Ga. Op. Att'y Gen. 195.

Nonresident's vehicle used in same manner as other vehicles. — When the owner of a motor vehicle driven in this state is not a resident of this state, and the motor vehicle is in this state for use here, and is, in fact, used in much the same manner as other motor vehicles are used in Georgia, that motor vehicle is taxable in Georgia. 1968 Op. Att'y Gen. No. 68-39.

Foreign country plates prohibited. — Automobile cannot be operated upon state public highways under license plate issued by foreign country. 1960-61 Ga. Op. Att'y Gen. 295.

Operation by resident of vehicle owned by nonresident and registered in another state was a violation of former Code 1933, § 68-221 (see now O.C.G.A. § 40-2-90). 1968 Op. Att'y Gen. No. 68-258.

Nonresident basing automobile in Georgia. — An out-of-state resident basing one's automobile in Georgia pursuant to a consultant contract with a Georgia business must purchase a Georgia license for that person's vehicle in the county in which the vehicle is based. 1962 Ga. Op. Att'y Gen. 322.

Civilian employees of government assigned to duty in Georgia are not exempt from section's provisions. 1958-59 Ga. Op. Att'y Gen. 208.

Duties of nonresident students. — Nonresident student is required to register vehicle owned or operated by the student and obtain license within 30 days from the time the student enters the state. 1970 Op. Att'y Gen. No. 70-40 (decided prior to 1982 amendment).

Student returning home on daily basis. — If a student nonresident who drives the student's parents' automobile while attending a private school in Georgia returns home on a daily basis, no purchase of a Georgia license is required. 1975 Op. Att'y Gen. No. U75-12.

Nonresident service personnel stationed in Georgia. — Federal provision removes nonresident service personnel stationed in Georgia from the operation of former Code 1933, § 68-221 (see now O.C.G.A. § 40-2-90) and exempts service personnel from the obligation of securing license plates in Georgia so long as the service personnel obtain license plates from the state of their domicile. 1957 Ga. Op. Att'y Gen. 186.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 61 et seq., 90.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 180, 184, 191.

40-2-91. Commissioner authorized to negotiate reciprocal agreements with adjoining states.

The commissioner is directed to negotiate with the proper authorities of adjoining states and consummate, as speedily as is practicable, reciprocal agreements, whereby residents of such states operating motor vehicles licensed in their respective states may have such privileges and exemptions in the operation of such motor vehicles as residents of this state may have and enjoy in such adjoining states in the operation of motor vehicles duly licensed in this state. In the making of such agreements, the commissioner shall have due regard for the advantage and convenience of the motor vehicle owners and other citizens of this state and particularly those who reside near the borders of adjoining states.

History.
Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, §§ 1, 2; Code 1933, § 68-217; Ga. L. 1990, p. 2048, § 2.

Cross references.
Cooperation between Georgia and other states generally, § 28-6-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

License plate required for intrastate undertaking. — When use of highways is purely intrastate undertaking, vehicle must have Georgia license plate affixed. 1962 Ga. Op. Att'y Gen. 321.

Foreign-state taxicabs in interstate commerce. — Under the "Multi-State Reciprocity Agreement," Alabama-based taxicabs engaged in purely interstate commerce in bringing passengers over the border are not required to obtain Georgia licenses. 1962 Ga. Op. Att'y Gen. 321.

Conduct of trucking association's mother state determinative. — Conduct of the licensing authorities of Georgia in relation to out-of-state truck lines operating in Georgia depends wholly and entirely upon the conduct of the mother state of the trucking association, that is, the state under whose laws the trucking association is operating; the reciprocal agreement between that state and the State of Georgia determines acts of the state agents in either requiring or not requiring the trucks to obtain a Georgia for hire tag. 1950-51 Ga. Op. Att'y Gen. 188.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 190, 307 et seq.

40-2-92. Reciprocal agreements subject to confirmation by General Assembly.

Any and all reciprocal agreements entered into by the commissioner shall be subject to confirmation by Act or resolution of the General Assembly and shall not be of force or effect until the passage of such Act or resolution and its approval by the Governor except such agreement or agreements as may be entered into while the General Assembly is not in session.

History. Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 3; Code 1933, § 68-218; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 190, 307 et seq.

40-2-93. Reciprocal agreements while General Assembly not in session.

All reciprocal agreements entered into by the commissioner while the General Assembly is not in session shall be approved by the Governor. Such agreements shall be submitted by the commissioner to the General Assembly not later than the tenth day of its next session, whereupon the General Assembly may confirm or reject such agreement or agreements by appropriate Act or resolution approved by the Governor. Pending passage and approval of such Act or resolution of confirmation or rejection, the agreement or agreements made during the adjournment of the General Assembly shall be of full force and effect according to their terms.

History. Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, §§ 3, 5; Code 1933, §§ 68-218, 68-220; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 199.

40-2-94. Publication of terms of reciprocal agreements; rules and regulations for enforcement.

The commissioner shall give proper publicity to the terms of every agreement entered into pursuant to Code Sections 40-2-91 through 40-2-93 and is authorized and empowered to promulgate rules and regulations for the observance and enforcement of the terms of such agreement, which rules and regulations shall have the force and effect of law.

History. Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 4; Code 1933, § 68-219; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 190, 307 et seq.

40-2-95. Code Sections 40-2-91 through 40-2-93 inapplicable to motor vehicles for hire.

No reciprocal agreement shall be made or approved under Code Sections 40-2-91 through 40-2-93 which relate to motor vehicles operated for hire, nor shall Code Sections 40-2-91 through 40-2-93 apply to such vehicles.

History. Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 5; Code 1933, § 68-220; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

ALR.
State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

ARTICLE 5

UNREGISTERED MOTOR TRUCKS

OPINIONS OF THE ATTORNEY GENERAL

Other state not in reciprocity imposing highway use tax. — Truck or trailer must carry the license plate of the state from which the truck or trailer operates and should not be allowed to carry plates of other states; however, if the trucks or trailers do operate with license plates from more than one state and one of the states imposes a highway use tax and is not in reciprocity with the State of Georgia, then the tax imposed under the unregistered motor truck provisions is applicable to that truck or trailer. 1954-56 Ga. Op. Att'y Gen. 475.

Reciprocity determined by examining agreement. — In order to determine whether or not a motor vehicle is entitled to reciprocity while operating in Georgia, it is necessary to examine the reciprocity agreement that this state has with the state in which that vehicle is based. 1965-66 Op. Att'y Gen. No. 66-227.

Trucks which are not subject to registration. — Motor trucks employed by a person, firm, or corporation for the transportation of merchandise in the conduct of that person's or its own business, and which are not for hire, are not subject to or required to be registered. 1954-56 Ga. Op. Att'y Gen. 484.

Trailers not entitled to tax reduction. — Trailers liable for tax are not entitled to reduction in this tax under Ga. L. 1937-38, Ex. Sess., p. 259. 1954-56 Ga. Op. Att'y Gen. 476 (see now O.C.G.A. § 40-2-151).

Jury trial for violation of article. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6 (see now O.C.G.A. § 40-2-114) contemplated a trial by jury and a conviction or acquittal of persons accused of violating the provisions of the unregistered motor trucks law (see now O.C.G.A. Art. 5, Ch. 2, T. 40); therefore, it

would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Ga. Op. Att'y Gen. 476.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 27 et seq.

40-2-110. "Motor truck" defined.

As used in this article, the term "motor truck" means any motor vehicle having a gross weight of 18,000 pounds or over which is designed and used for the transportation of merchandise or freight.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 5; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 183 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 8.

40-2-111. Highway use permit required for certain unregistered motor trucks; application; fee; identification tag to be displayed and permit to be carried in truck.

In addition to any other provision of law relating to registration of motor vehicles or fees paid therefor, a person owning or operating a motor truck, as defined in Code Section 40-2-110, upon the highways of this state, which is not registered in this state, shall apply to the commissioner for a highway use permit for each such motor truck to be so operated. Application shall be made upon a form prescribed by the commissioner and shall set forth such information as the commissioner may require. The application shall be accompanied by a permit fee of not more than $200.00, as determined under the rules and regulations of the commissioner, using a comparison of such fees charged by the state or province of registration of the motor truck, for each motor truck listed in the application. The commissioner shall issue a permit and an identification tag, plate, or decal for each such motor truck, which tag, plate, or decal shall be of such size and design and contain such information as the commissioner shall prescribe. Any such permit and tag, plate, or decal shall be valid for the same period of time as provided by law for license plates issued to motor vehicles in Georgia. Such permits shall be carried in the motor truck and the tag, plate, or decal shall be affixed to the motor truck and at all times be visible and legible.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 1; Ga. L. 1984, p. 1199, § 1; Ga. L. 1990, p. 2048, § 2.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 40-2-111 and 40-2-112 unconstitutionally discriminate against intrastate commerce because the statutes impose taxes on vehicles registered in certain states which are not imposed on vehicles registered in the State of Georgia. State v. Private Truck Council of Am., Inc., 258 Ga. 531, 371 S.E.2d 378, 1988 Ga. LEXIS 358 (1988).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 85 et seq.

C.J.S.
60 C.J.S., Motor Vehicles, § 8.

40-2-112. Additional fee for each round trip into state.

In addition to the permit fee provided in Code Section 40-2-111, a person operating a motor truck on the highways of this state, which truck is registered in a state or province which imposes upon motor trucks registered in this state a tax, fee, or toll for the privilege of operating such truck upon the highways of such state or province, which is in addition to any tax, fee, or toll imposed upon gasoline or other motor fuel purchased within such state or province, or registration fee, shall pay a fee of not more than $25.00, as determined under the rules and regulations of the commissioner, using a comparison of such taxes, fees, or tolls charged by the state or province of registration of the motor truck, for each round trip into this state in lieu of a tax computed and applied in the same manner as the tax, fee, or toll of such other state or province so long as such tax, fee, or toll imposed by such other state or province shall remain in force.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 2; Ga. L. 1984, p. 1199, § 2; Ga. L. 1990, p. 2048, § 2.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 40-2-111 and 40-2-112 unconstitutionally discriminate against interstate commerce because the statutes impose taxes on vehicles registered in certain states which are not imposed on vehicles registered in the State of Georgia. State v. Private Truck Council of Am., Inc., 258 Ga. 531, 371 S.E.2d 378, 1988 Ga. LEXIS 358 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Vehicles registered in state imposing mere registration fees. — Vehicles traveling in Georgia, registered in another state where the fees imposed are of such a nature as to be considered merely registration fees, and are not in addition to any tax, fee, or toll imposed upon gasoline or motor fuel purchased

within that state, should be required to obtain a Georgia highway use permit and identification tags and stickers pertinent thereto, but should not be required to pay the additional fee for each round trip as imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 2. 1954-56 Ga. Op. Att'y Gen. 477 (see now O.C.G.A. § 40-2-112).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 90.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 8, 307 et seq.

40-2-113. Collection of taxes and fees; rules and regulations.

The commissioner shall collect the taxes and fees imposed by this article and he is authorized to make such rules and regulations and prescribe such forms as are necessary to carry out this article.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 3; Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 90.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 6, 307 et seq.

40-2-114. Unlawful acts; penalties.

(a) It shall be unlawful for any person:

(1) To operate a motor truck subject to this article upon any public highway in this state without first obtaining the permit required under Code Section 40-2-111;

(2) To violate any regulation issued by the commissioner pursuant to the authority granted under this article;

(3) To fail to file any return or report required by the commissioner;

(4) To make a false return or fail to keep records of operations as may be required by the commissioner; or

(5) To make knowingly any false statement in any application for registration.

(b) Any person who violates any provision of this Code section, upon first conviction, shall be punished by a fine of not less than $100.00 nor more than $250.00; and upon a second or subsequent conviction, by a fine of not less than $250.00 nor more than $500.00, or by imprisonment for not more than 30 days, or both.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 949, § 4; Ga. L. 1990, p. 2048, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Jury trial for violation of statute. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6 (see now O.C.G.A. § 40-2-114) contemplates a trial by jury and a conviction or acquittal of persons accused of violating the law on unregistered motor trucks (see now O.C.G.A. § 40-2-110 et seq.); therefore, it would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Ga. Op. Att'y Gen. 476.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 41, 42.

ARTICLE 6

ADMINISTRATION AND ENFORCEMENT OF CHAPTER

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 218.

40-2-130. Records of certificates of registration.

(a) A record of certificates of registration shall be maintained by the commissioner or the commissioner's duly authorized county tag agent. All certificates of registration shall be issued:

(1) Under a distinctive tag registration number assigned to the vehicle;

(2) Under the identifying number of the vehicle;

(3) Alphabetically, under the name of the owner;

(4) Under the vehicle title number; and

(5) In the discretion of the commissioner, in any other method the commissioner determines.

(b) The commissioner is authorized and empowered to provide for photographic and photostatic recording of certificate of registration records in such manner as he may deem expedient. The photographic or photostatic copies authorized in this subsection shall be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted.

(c) The motor vehicle registration records which the commissioner is

required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that, subject to subsection (d) of this Code section, the records may be disclosed for use as provided in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, and by the following:

(1) Any licensed dealer of new or used motor vehicles;

(2) Any tax collector, tax receiver, or tax commissioner;

(3) The director of the Environmental Protection Division of the Department of Natural Resources or his or her designee;

(4) Any private person who has met the requirements of Code Section 40-2-25, provided that the information shall be used for the sole purpose of effectuating the registration or renewal of motor vehicles by electronic or similar means and that the private person requesting the information has entered into an agreement to provide electronic services to the commissioner or a county tag agent; provided, further, that the information made available pursuant to this paragraph for such purpose shall be limited to the vehicle identification number, the license tag number, the date of expiration of registration, and the amount of tax owed; and

(5) A person or entity authorized by the commissioner for use in providing notice to the owners of towed or impounded vehicles.

(d) Except as otherwise required in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, personal information furnished under subsection (c) of this Code section shall be limited to the natural person's name, address, and driver identification number. The personal information obtained by a business under this Code section shall not be resold or redisclosed for any purposes other than those permitted under the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, without the written consent of the individual. Furnishing of information to a business under this Code section shall be pursuant to a contract entered into by such business and the state which specifies the consideration to be paid by such business to the state for such information and the frequency of updates.

History.

Code 1981, § 40-2-130, enacted by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 336, § 13; Ga. L. 1997, p. 739, § 3; Ga. L. 1999, p. 334, § 2; Ga. L. 2000, p. 136, § 40; Ga. L. 2000, p. 951, § 3-16; Ga. L. 2003, p. 484, § 1; Ga. L. 2003, p. 597, § 1; Ga. L. 2004, p. 471, § 8; Ga. L. 2008, p. 803, § 1/HB 945; Ga. L. 2024, p. 1052, § 4(31)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "paragraphs (1) through (5) of" preceding "subsection (c)" in the first sentence in subsection (d).

OPINIONS OF THE ATTORNEY GENERAL

Access to information in Registration and Title Information System. — Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the purposes mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq., or to those state agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

40-2-131. Disposition of fees.

Except as provided in Code Section 40-2-33 and Code Section 40-2-88, the full amount of the fees collected under this chapter shall be turned over to the state treasury by the commissioner within 30 days after collection in such manner as the state treasurer may prescribe.

History.
Ga. L. 1927, p. 226, § 21; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-104; Code 1981, § 40-2-130; Ga. L. 1990, p. 1883, § 3; Code 1981, § 40-2-131, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "40-2-88" was substituted for "40-2-81" near the beginning of this Code section.

40-2-132. Destruction of records by commissioner.

The commissioner, in his discretion, may destroy all motor vehicle records required to be maintained under this chapter, except those of the current year and the two years immediately preceding.

History.
Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-205; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 2; Ga. L. 1955, p. 424, § 1; Ga. L. 1973, p. 455, § 1; Code 1981, § 40-2-131; Code 1981, § 40-2-132, as redesignated by Ga. L. 1990, p. 2048, § 2.

40-2-133. Enforcement of chapter.

It is the duty of every arresting officer, county, municipal, and state, to enforce this chapter.

History.
Ga. L. 1927, p. 226, § 26; Code 1933, § 68-109; Code 1981, § 40-2-132; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-133, as redesignated by Ga. L. 1990, p. 2048, § 2.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, § 1514 et seq.

40-2-134. Authority of certified law enforcement officers.

Certified law enforcement officers appointed by the commissioner are authorized to enforce the laws of this state relating to the licensing and registration of motor vehicles and are endowed with all the powers of a police officer of this state when engaged in the enforcement of said laws.

History.
Ga. L. 1976, p. 1093, § 1; Code 1981, § 40-2-133; Code 1981, § 40-2-134, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-17.

Cross references.
Authority of department, counties, and municipalities to regulate parking and unattended vehicles, § 32-6-2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 24.

40-2-135. Revocation and seizure of license plates and renewal decals.

(a) The commissioner shall revoke any regular, prestige, special, or distinctive license plate which the commissioner determines was issued in error and shall revoke the special and distinctive license plate issued to a member of the General Assembly at such time as the holder ceases to hold such public office. The commissioner or his or her designated agent may revoke any license plate purchased with a check which was returned for any reason. The commissioner shall notify the holder of such regular, prestige, special, or distinctive license plate or of such other license plate of such revocation. The holder of such revoked license plate shall return the license plate to the commissioner or the commissioner's designated agent and register his or her vehicle as otherwise required by this chapter.

(b) The commissioner shall suspend or revoke any permanent registration and license plate issued in accordance with Code Section 40-2-47 when the owner has not complied with the annual requirement of the payment of ad valorem taxes and is delinquent for more than 12 months from the last date of ad valorem tax payment.

(c) Any state or county law enforcement officer or any special agent or enforcement officer appointed under Code Section 40-2-134 may, upon the direction or request of the commissioner, go upon public or private property to seize a license plate or renewal decal which has been revoked as provided in subsection (a) of this Code section.

History.
Code 1981, § 40-2-134, enacted by Ga. L. 1988, p. 376, § 1; Code 1981, § 40-2-135, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 972, § 1.5; Ga. L. 2005, p. 334, § 14-9/HB 501.

40-2-135.1. Suspension of offender's motor vehicle registration for multiple violations of toll provisions.

As provided in subsection (c) of Code Section 32-10-64, the motor vehicle registration of any owner who has failed to pay, within 30 days of the date of notice thereof, the amount determined by the Office of State Administrative Hearings as due and payable for one or more violations of such subsection, shall be immediately suspended by operation of law.

History.
Code 1981, § 40-2-135.1, enacted by Ga. L. 2006, p. 308, § 2/HB 1190.
Cross references.
Display of driver's license for violation of certain traffic related laws; notice of failure to appear; suspension of license; arrest; seizure of license, § 17-6-11.
State tollway provisions, generally, § 32-10-60 et seq.

40-2-136. Surrender of license plates upon second or subsequent convictions of driving under the influence; special license plate for repeat driving under the influence offenders.

(a) Upon any person's second or subsequent conviction of violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the court shall issue an order requiring that the license plates of all motor vehicles registered in such person's name be surrendered to the court. The court shall notify the commissioner within ten days after issuing any such order, and the commissioner shall revoke each such license plate upon receiving such notice and, if such license plate is a digital license plate, shall inform the digital license plate provider of the revocation. The court shall issue a receipt for the surrendered license plate or plates. The court shall forward the surrendered license plate or plates to the local tag agent immediately upon receipt; provided, however, that, if the surrendered license plate is a digital license plate, the court shall allow such person to retain the digital license plate. For purposes of this subsection, a plea of nolo contendere shall constitute a conviction.

(b) Except as provided in subsection (c) of this Code section, no new license plate or plates may be issued to a person subject to a court order issued pursuant to subsection (a) of this Code section until such person has been issued a limited driving permit or probationary driver's license in accordance with Code Section 42-8-112 or the driver's license of such person has been reissued or reinstated, whichever first occurs; and, except as provided in this subsection or subsection (c) of this Code section, it shall be a misdemeanor for such person to obtain a new license plate or plates.

(c)(1) A person who is subject to a court order issued pursuant to

subsection (a) of this Code section may apply to the commissioner for authorization to obtain a new license plate or plates bearing a special series of numbers and letters so as to be identifiable by law enforcement officers. Such license plate shall not, in and of itself, constitute probable cause to authorize a traffic stop, search of a motor vehicle, or seizure. The commissioner shall authorize the issuance of such a special license plate only if he or she determines that there is another member of such person's household who possesses a valid driver's license and that a co-owner of the vehicle or a member of the offender's family, other than the offender, is completely dependent upon the motor vehicle for the necessities of life and would be subjected to undue hardship without such special license plate; in no event shall such decision take more than five business days. A local tag agent shall not issue any plates except on written approval of the commissioner, payment of a $20.00 fee for each vehicle for which a special plate is issued, and compliance by the applicant with all applicable state laws. The written authorization from the commissioner shall specify the maximum number of license plates a person may obtain.

(2) A motor vehicle owned or leased by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued subject to paragraph (1) of this subsection may not be sold or conveyed unless the commissioner determines, upon receipt of proper application, that the proposed sale or conveyance is in good faith, that the person subject to such court order will be deprived of custody or control of the motor vehicle, and that the sale or conveyance is not for the purpose of circumventing the provisions of this Code section. Upon making such determination, the commissioner shall transfer the certificate of title to such vehicle and issue a new certificate of registration and license plate.

(3) If the title to a motor vehicle owned by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued pursuant to paragraph (1) of this subsection is transferred by the foreclosure, cancellation of a conditional sales contract, sale upon execution, or order of a court of competent jurisdiction, the commissioner shall transfer the certificate of title as provided in Code Section 40-3-34 and issue a new license plate to the new registered owner.

(4) Upon full restoration of the driving privileges of a person subject to a court order under subsection (a) of this Code section, the commissioner shall authorize the person to apply for a regular issue license plate. The fee for a regular issue license plate shall be as provided by Code Section 40-2-151. As a condition of obtaining any regular issue license plate, the person shall surrender his or her special issue license plate to the local tag agent.

(5) Nothing in this Code section shall be deemed to waive any lawful requirement for the issuance of a license plate including, but not limited to, proof of financial responsibility.

(6) Display of a license plate issued pursuant to paragraph (1) of this subsection shall not constitute probable cause for stopping or detaining a vehicle.

(7) Any person aggrieved by a decision of the commissioner pursuant to paragraph (1) of this subsection may make a request in writing to the Office of State Administrative Hearings for a hearing. Such hearing shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Code 1981, § 40-2-136, enacted by Ga. L. 1997, p. 760, § 7; Ga. L. 2000, p. 951, § 3-18; Ga. L. 2001, p. 208, §§ 2-1, 3-1; Ga. L. 2002, p. 1074, § 5; Ga. L. 2021, p. 124, § 7/SB 210; Ga. L. 2024, p. 1052, § 4(32)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

Cross references.

Seizure and forfeiture of motor vehicle operated by habitual violator, § 40-6-391.2.

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Law reviews.

For article commenting on the 1997 enactment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders. — Offense covered by O.C.G.A. § 40-2-136(b) is currently designated as an offense requiring fingerprinting. 1997 Op. Att'y Gen. No. 97-330.

40-2-137. Notice of insurance coverage and termination; lapses in insurance coverage; insurance coverage for active duty military personnel.

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

(1) "Commercial vehicle policy" means a policy of motor vehicle liability insurance insuring a motor vehicle that is rated or insured as a business use or commercial use vehicle or is licensed by the state as a commercial vehicle.

(2) "Fleet policy" means a commercial vehicle policy that insures

two or more vehicles that are not identified individually by vehicle identification number on the policy or a commercial policy that is subject to adjustment by audit for vehicle changes at the end of the policy period.

(3) "Lapse" means one or more days upon which the records of the department do not reflect that a motor vehicle was covered by a policy of minimum motor vehicle insurance coverage.

(4) "Minimum motor vehicle insurance coverage" means minimum coverage as specified in Chapter 34 of Title 33.

(5) "Proof of minimum insurance coverage" means the receipt from an insurer by the department of notice of such insurance coverage by electronic transmission or other means approved by the department.

(6) "Terminate" or "termination" means actual cessation of insurance coverage after the date upon which coverage will not be restored for any reason, including without limitation cancellation, nonrenewal, and nonpayment of premium and without regard to whether such cessation was preceded by any extension or grace period allowed by the insurer.

(b)(1)(A) For purposes of aiding in the enforcement of the requirement of minimum motor vehicle liability insurance, any insurer issuing or renewing in this state any policy of motor vehicle liability insurance required by Chapter 34 of Title 33 other than a fleet policy shall within 30 days after the date the insurance agent binds the coverage or on the date such coverage was renewed, whichever is applicable, provide notice of such insurance coverage by electronic transmission to the department; except that once coverage data has been electronically transmitted to the department, there shall be no requirement to report on subsequent renewals of that coverage. Insurance coverage information included in such notice of issue or renewal shall be limited exclusively to name and contact information of insurer; vehicle identification number; the make and year of the insured motor vehicle; and policy effective date. The department shall not require the policy limits to be disclosed for purposes of this subparagraph. For the purposes of this Code section, the vehicle identification number shall be the vehicle identification number as that number is shown in the records of the department. For the purposes of this Code section, the Commissioner of Insurance shall furnish such notices to the department upon issuance of a certificate of self-insurance.

(B) In cases in which the minimum motor vehicle insurance coverage required by Chapter 34 of Title 33 terminates, the

insurer shall by electronic transmission notify the department of such coverage termination on or before the date coverage ends or, if termination is at the request of the insured, then on the date such request is processed by the insurer. Insurance coverage termination information included in such notice shall include the vehicle identification number and the date of coverage termination. For the purposes of this Code section, the Commissioner of Insurance shall furnish such notices to the department upon termination of a certificate of self-insurance.

(C) The commissioner shall notify the Commissioner of Insurance quarterly of any and all violations of the notice requirements of this paragraph by any insurer, and the Commissioner of Insurance may take appropriate action against such insurer the same as is authorized by Code Section 33-2-24 for violations of Title 33; provided, however, that there shall be no private cause of action against an insurer or the department for civil damages for providing information, failing to provide information, or erroneously providing information pursuant to this Code section. No insurer shall utilize the costs of any audit or examination conducted by the Department of Insurance pursuant to this paragraph as a cost of business in the insurer's rate base. The department shall commence the reports provided for in this Code section beginning July 1, 2010.

(D) The reports required of insurers and the Commissioner of Insurance shall not apply to any vehicle for which the vehicle coverage is provided by a fleet policy.

(2) The department shall prescribe the form and manner of electronic transmission for the purposes of insurers sending the notices required by this Code section which shall in no way be construed as modifying the provisions of Code Section 33-24-45.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, any irregularities in the notice to the department required by paragraph (1) of this subsection shall not invalidate an otherwise valid termination.

(4) The minimum liability insurance records which the department is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that the records of any particular motor vehicle may be available for inspection by any law enforcement officer for official law enforcement investigations, the insurer of record, and the owner of the vehicle in the manner prescribed by the commissioner.

(c)(1) The department shall monitor the reporting by insurers of the issuance of new and renewal policies and the termination of coverage.

(2)(A) A match is based upon the vehicle identification number as recorded on the department's motor vehicle records. When the vehicle identification number does not match the department's motor vehicle records, the department shall notify the insurer and the insurer shall, within 30 days from receipt of the returned error, correct the vehicle identification number and resubmit the transaction.

(B) After receipt of the department's notice, if the insurer determines that the vehicle identification number that it submitted to the department is in fact the accurate number on the insured vehicle, then the insurer shall so notify the department and the owner of the vehicle.

(C) Upon notification, the owner shall, in a manner prescribed by the commissioner, make a correction of such number at the appropriate county tag office.

(d)(1)(A) Upon notification of coverage termination by the insurer, the department shall send a notice to the owner of the motor vehicle stating that the department has been informed of the fact that coverage has been terminated and provide an explanation of the penalties provided for by law.

(B) The department shall send such notice to the address of the owner of the motor vehicle shown on the records of the department.

(C) The mailing of such notice by the department shall be deemed notice of such owner's duty to maintain the required minimum insurance coverage and the possible penalties and consequences for failing to do so and shall be deemed to satisfy all notice requirements of law.

(2) It shall be the duty of the owner of such motor vehicle to obtain minimum motor vehicle insurance coverage and it shall be the duty of the owner's insurer to provide proof of such coverage to the department within 30 days of the date of such notice, pursuant to the requirements of subparagraph (b)(1)(A) of this Code section.

(3) If the vehicle is covered by a fleet policy, the owner's insurer shall not be required to provide such proof electronically to the department.

(e)(1) When proof of minimum motor vehicle insurance coverage is provided within the time period specified in this Code section, but there has been a lapse of coverage for a period of more than ten days, the owner shall remit a $25.00 lapse fee to the department. Failure to remit the lapse fee to the department within 30 days of the date of such notice will result in the suspension of the owner's motor vehicle

registration by operation of law. If any lapse fee provided for in this Code section is paid to the county tax commissioner, the county shall retain $5.00 thereof as a collection fee.

(2) If proof is not provided within the time period specified in this Code section that minimum motor vehicle insurance coverage is in effect, the owner's motor vehicle registration shall be suspended immediately by operation of law by the department. When such proof is provided and the owner pays a $25.00 lapse fee and pays a $60.00 restoration fee, the suspension shall terminate; provided, however, that the commissioner may waive the lapse fee and restoration fee for any owner whose vehicle registration has been suspended pursuant to this paragraph who provides proof of continuous minimum motor vehicle insurance coverage. If any restoration fee provided for in this Code section is paid to the county tax commissioner, the county shall retain $10.00 thereof as a collection fee.

(3) In the event of a second suspension of the owner's registration under this Code section, within a five-year period of a prior suspension, the department by operation of law shall suspend the motor vehicle registration. When proof is provided that minimum motor vehicle insurance coverage is in effect and the owner pays a $25.00 lapse fee and pays a $60.00 restoration fee, the suspension shall terminate.

(4) In the event of a third or subsequent suspension of the owner's registration under this Code section, within the previous five-year period from the date of the third or subsequent suspension, the department by operation of law shall revoke the motor vehicle registration. When proof is provided that minimum motor vehicle insurance coverage is in effect and the owner pays a $25.00 lapse fee and pays a $160.00 restoration fee, the owner may apply for registration of the motor vehicle.

(f)(1) The commissioner may waive the lapse fee for any owner whose vehicle registration has been voluntarily canceled pursuant to Code Section 40-2-10.

(2) Upon being presented with a copy of official orders or other satisfactory proof of ordered duty as approved by rule or regulation of the commissioner showing that an owner of a motor vehicle was deployed outside the continental United States on active military duty in the armed forces of the United States at the time his or her minimum motor vehicle insurance coverage for such vehicle terminated, the county tag agent shall waive the lapse fee and restoration fee, suspension of the owner's motor vehicle registration under this Code section shall terminate, and application for registration of the vehicle which otherwise satisfies requirements provided by law may be accepted without delay.

(g) The county tax commissioner shall have the authority to waive a lapse fee if sufficient proof is provided that no actual lapse in coverage occurred. Such proof shall be retained by the county tax commissioner for audit purposes.

(h) Notwithstanding any provision of law to the contrary, a person on active military duty in the armed forces of the United States whose motor vehicle is registered in this state and has license plates from this state and who, as a result of his or her military duties or assignment, is required to reside in another state may meet the requirements for minimum motor vehicle liability coverage by purchasing such coverage in amounts equal to or greater than the minimum coverages required by Georgia law and providing proof of such coverage to the department. In such cases, the motor vehicle shall continue to be registered and licensed in this state as long as it otherwise meets the requirements of law.

History.

Code 1981, § 40-2-137, enacted by Ga. L. 2002, p. 1024, § 3; Ga. L. 2003, p. 261, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2004, p. 749, § 1; Ga. L. 2005, p. 334, § 14-10/HB 501; Ga. L. 2006, p. 759, § 1/SB 481; Ga. L. 2010, p. 143, § 5/HB 1005; Ga. L. 2019, p. 337, § 1-99/SB 132; Ga. L. 2020, p. 493, § 40/SB 429; Ga. L. 2024, p. 270, § 4/HB 409, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted "and contact information" near the middle of the second sentence in subparagraph (b)(1)(A).

Editor's notes.

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2024, p. 270, § 1/HB 109, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Addy's Law.'"

40-2-138. Suspension or revocation of commercial vehicle registration when not in compliance with federal regulations.

Any vehicle which is prohibited by any federal agency acting pursuant to federal law, rule, or regulation from being operated in intrastate commerce shall not be eligible for registration under this article, and the commissioner shall suspend or revoke such registration for any vehicle so prohibited from operating.

History.

Code 1981, § 40-2-138, enacted by Ga. L. 2007, p. 652, § 6/HB 518.

ARTICLE 6A

ADMINISTRATION OF FEDERAL UNIFIED CARRIER REGISTRATION ACT OF 2005

Administrative rules and regulations. Commercial Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-31-.01 et seq.

40-2-140. Department of Public Safety to administer provisions; registration, insurance, and fee requirements of motor carriers; joinder requirements.

(a) As used in this Code section, the term "commissioner" means the commissioner of public safety.

(b) The Department of Public Safety shall be the state agency responsible for the administration of the federal Unified Carrier Registration Act of 2005, which includes participating in the development, implementation, and administration of the Unified Carrier Registration Agreement.

(c) Every foreign or domestic motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in interstate commerce in this state shall register with the commissioner or a base state and pay all fees as required by the federal Unified Carrier Registration Act of 2005.

(d)(1) Any intrastate motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in intrastate commerce and operates a motor vehicle on or over any public highway of this state shall register with the commissioner and pay a fee determined by the commissioner.

(2) No for-hire intrastate motor carrier shall be issued a registration unless there is filed with the commissioner a certificate of insurance for such applicant or holder, on forms prescribed by the commissioner, evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state. Such policy shall provide for the protection of passengers in passenger vehicles and the protection of the public against the negligence of such for-hire intrastate motor carrier, and its servants or agents, when it is determined to be the proximate cause of any injury. The commissioner shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. Failure to file any form required by the commissioner shall not diminish the rights of any person to pursue an action directly against a for-hire intrastate motor carrier's insurer. The insurer may file its certificate of insurance electronically with the commissioner.

(3) The commissioner shall have the power to permit self-insurance in lieu of a policy of indemnity insurance whenever in his or her opinion the financial ability of the motor carrier so warrants.

(4)(A) Any person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier only when:

(i) One or more motor carriers related to the cause of action are insolvent or bankrupt; or

(ii) Personal service, as provided in subsection (e) of Code Section 9-11-4, cannot after reasonable diligence be effected:

(I) Against the driver of the vehicle of the motor carrier giving rise to the cause of action; or

(II) Against the motor carrier.

(B) Pursuant to subparagraph (A) of this paragraph, when one or more motor carriers related to the cause of action are insolvent or bankrupt, or personal service cannot after reasonable diligence be effected against the driver or motor carrier, then the insurance carrier may be joined in the action as a matter of right, without motion or order of the court, by filing an amended complaint joining the insurance carrier. The amended complaint shall be served on the insurance carrier pursuant to Code Section 9-11-4 and such insurance carrier shall file an answer with the court within 30 days of service.

(C) For purposes of subparagraph (B) of this paragraph, the amended complaint shall relate back to the date of filing of the original pleading.

(e) Before any intrastate motor carrier engaged in exempt passenger intrastate commerce shall operate any motor vehicle on or over any public highway of this state, the intrastate motor carrier shall register with the commissioner and pay a fee determined by the commissioner.

(f) Prior to the issuance of the initial registration to any intrastate motor carrier by the commissioner pursuant to subsection (d) or (e) of this Code section, that intrastate motor carrier shall furnish evidence to the commissioner that the intrastate motor carrier, through an authorized representative, has completed, within the preceding 12 months, an educational seminar on motor carrier operations and safety regulations that has been certified by the commissioner.

(g) In addition to any requirements under the federal Unified Carrier Registration Act of 2005, motor carriers required to have operating authority shall fulfill all applicable requirements for obtaining operating authority prior to any operation of a motor vehicle to which such requirements apply.

(h) The commissioner shall collect the fees imposed by this Code section and may establish rules and regulations and prescribe such forms as are necessary to administer this Code section and the federal Unified Carrier Registration Act of 2005. Notwithstanding the provisions of Code Section 40-2-131, the commissioner shall retain and utilize such fees for motor carrier safety programs and enforcement and administration of this article.

(i) The commissioner, and persons he or she designates pursuant to Chapter 2 of Title 35, shall have the authority to perform regulatory compliance inspections under the provisions of Article 5 of Chapter 2 of Title 35 for purposes of determining compliance with laws and regulations, the enforcement and administration of which is the responsibility of the Department of Public Safety.

(j) Every officer, agent, or employee of any corporation and every person who fails to comply with this article or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for in Chapter 13 of this title.

History.

Code 1981, § 40-2-140, enacted by Ga. L. 2009, p. 629, § 2/HB 57; Ga. L. 2011, p. 479, § 10.2/HB 112; Ga. L. 2013, p. 756, § 2/HB 255; Ga. L. 2015, p. 60, § 4-5/SB 100; Ga. L. 2024, p. 966, § 2/SB 426, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(33)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, substituted the present provisions of paragraph (d)(4) for the former provisions, which read: "Any person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier." See Editor's notes for applicability.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "commissioner" for "Department of Public Safety" twice in subsection (f).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2013, "of" was inserted near the end of subsection (a).

Pursuant to Code Section 28-9-5, in 2024, "subparagraph (B) of this paragraph" was substituted for ""paragraph (2) of this subsection" in subparagraph (d)(4)(C).

Editor's notes.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2024, p. 966, § 4/SB 426, not codified by the General Assembly, makes paragraph (d)(4) of this Code section applicable to causes of action accruing on or after July 1, 2024.

Law reviews.

For annual survey on insurance law, see 69 Mercer L. Rev. 117 (2017).

JUDICIAL DECISIONS

Preemption by federal law. — Liability Risk Retention Act, 15 U.S.C. § 3901 et seq., preempted Georgia's motor carrier and insurance carrier direct action

statutes, O.C.G.A. §§ 40-1-112(c) and 40-2-140(d)(4), in regard to a risk retention group that was not chartered in Georgia, thus precluding injured passengers from bringing a direct action against the risk retention group. The court rejected the passengers' contention that the statutes were financial responsibility laws and not preempted under 15 U.S.C. § 3905. Reis v. OOIDA Risk Retention Group, Inc., 303 Ga. 659, 814 S.E.2d 338, 2018 Ga. LEXIS 294 (2018).

No repeal by implication. — There was no repeal by implication of O.C.G.A. § 40-2-140 by the Georgia Motor Carrier Act, O.C.G.A. § 40-1-50 et seq., because that statute was not even part of the Georgia Motor Carrier Act, § 40-2-140 et seq., as it was a distinct part of the code concerning administration of the federal Unified Carrier Registration Act; and the insurer did not show that the Georgia Motor Carrier Act covered the entire subject matter of compliance with that federal act. Daily Underwriters of America v. Williams, 354 Ga. App. 551, 841 S.E.2d 135, 2020 Ga. App. LEXIS 195 (2020), cert. denied, No. S20C1251, 2020 Ga. LEXIS 882 (Ga. Nov. 16, 2020).

Direct action against carrier's insurer. — In a personal injury action arising out of an automobile accident, O.C.G.A. § 40-2-140 allowed the injured plaintiff to assert a direct action against a foreign motor carrier's insurer. Cameron v. Teeberry Logistics, No. 3:12-cv-181-TCB, 2013 U.S. Dist. LEXIS 186035 (N.D. Ga. May 21, 2013).

Former O.C.G.A. § 40-2-140(c)(4) (now O.C.G.A. § 40-2-140(d)(4)) permits a plaintiff having an action "under this Code section" to join a carrier's insurer, and "section" here is best understood as referring to § 40-2-140 as a whole. Cameron v. Teeberry Logistics, No. 3:12-cv-181-TCB, 2013 U.S. Dist. LEXIS 186035 (N.D. Ga. May 21, 2013).

In the absence of language stating otherwise, former O.C.G.A. § 40-2-140(c)(4)'s (now O.C.G.A. § 40-2-140(d)(4)'s) reference to causes of action "under this Code section" must include not only causes of actions against insurers of carriers registered in Georgia, but also the insurers of those carriers that are traveling through Georgia but whose base state is a state other than Georgia. Cameron v. Teeberry Logistics, No. 3:12-cv-181-TCB, 2013 U.S. Dist. LEXIS 186035 (N.D. Ga. May 21, 2013).

In a suit arising from a motor vehicle accident, when an insurance company provided liability insurance coverage for a tractor-trailer unit, the insurance company was not entitled to summary judgment on the grounds that its admission of liability under its insurance contract removed it from the purview of the direct action statutes, because once the insurance company was joined under the direct action statutes, the insurance company had to remain in the case until final judgment or until it was later dismissed by the plaintiff or the court. McGill v. Am. Trucking & Transp., Ins. Co., 77 F. Supp. 3d 1261, 2015 U.S. Dist. LEXIS 3742 (N.D. Ga. 2015).

Trial court properly denied the insurer's summary judgment motions claiming that the direct actions against the insurer were not authorized because, although it was apparent that the plain language of O.C.G.A. § 40-1-126 evinced the legislative intent that the direct action provision of O.C.G.A. § 40-1-112(c) did not apply to purely interstate commerce or to a carrier engaged exclusively in interstate commerce, and the tractor-trailer driver and the trucking company were engaged in an interstate trip at the time of the accident, the joinder of the insurer as a defendant was authorized by the direct action provision of O.C.G.A. § 40-2-140(d)(4) as that statute indicated that injured parties were able to join the insurers of interstate motor carriers. Daily Underwriters of America v. Williams, 354 Ga. App. 551, 841 S.E.2d 135, 2020 Ga. App. LEXIS 195 (2020), cert. denied, No. S20C1251, 2020 Ga. LEXIS 882 (Ga. Nov. 16, 2020).

If state court lacked jurisdiction over declaratory issues, it should transfer to superior court. — In an injured driver's action against a motor carrier and its insurer in a county's state court, in which the insurer filed a counterclaim and cross-claim for a declaratory judgment as to its duties and

obligations under the insurance policy, if the state court determined that the court lacked jurisdiction over questions raised in the insurer's motion for summary judgment, it was error to deny summary judgment, and the state court should instead have transferred the action to the superior court pursuant to Ga. Unif. Transfer R. T-4. Nat'l Indem. Co. v. Lariscy, 352 Ga. App. 446, 835 S.E.2d 307, 2019 Ga. App. LEXIS 586 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-2-140 does not, at this time, appear to be an offense for which fingerprinting is required; thus, this offense is not designated as one for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 2010-2.

ARTICLE 7

MOTOR VEHICLE LICENSE FEES AND CLASSES

JUDICIAL DECISIONS

Purpose. — Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-150 et seq.) is properly construed as an Act providing for the licensing and registration of motor buses, the fees charged and collected thereunder to be used primarily for the maintenance of the highways, and not as an Act to levy an occupational tax on motor bus corporations using the highways to raise revenue for general purposes. Georgia Power Co. v. Musgrove, 77 Ga. App. 880, 50 S.E.2d 118, 1948 Ga. App. LEXIS 663 (1948).

Scope and extent of Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-150 et seq.) shows a legislative intent to deal comprehensively with the registration and licensing of motor vehicles operated over the highways of this state. Its primary purpose seems to be the control and regulation of motor vehicles, and not the raising of revenue, although license and registration fees necessarily bring in revenue. Georgia Power Co. v. Musgrove, 77 Ga. App. 880, 50 S.E.2d 118, 1948 Ga. App. LEXIS 663 (1948).

Manifest purpose of Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-150 et seq.) is to require each motor vehicle capable of operating generally over the highways and roadways of this state to be registered and a license obtained for the vehicle's operation. Georgia Power Co. v. Musgrove, 77 Ga. App. 880, 50 S.E.2d 118, 1948 Ga. App. LEXIS 663 (1948).

While Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-150 et seq.) was entitled an amendatory Act, it did not purport to be merely cumulative or auxiliary to the former Act on the same subject, but it was a comprehensive Act covering the entire subject of the levying of annual license fees for the registration and licensing of the operation of motor vehicles and the Act was evidently intended by the legislature as a complete revision of and substitute for the former Acts insofar as the former Act dealt with fixing the annual license fees for the registration and licensing of the operation of motor vehicles. Georgia Power Co. v. Musgrove, 77 Ga. App. 880, 50 S.E.2d 118, 1948 Ga. App. LEXIS 663 (1948).

License fees not a tax against public property. — License fee provided for in Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-150 et seq.) is nothing more than a license fee, and is not in essence a revenue-raising measure. Therefore, it does not amount to the levying of a tax against public property. Burkett v. State, 198 Ga. 747, 32 S.E.2d 797, 1945 Ga. LEXIS 226 (1945).

OPINIONS OF THE ATTORNEY GENERAL

Classification of a vehicle depends upon the vehicle's use, rather than the method by which the owner is compensated for use, or the ownership of the vehicle. 1954-56 Ga. Op. Att'y Gen. 484.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 53, 54, 56.

ALR.

Tax on automobile or on its use for cost of road or street construction, improvement, or maintenance, 24 A.L.R. 937; 68 A.L.R. 200.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Municipality as subject to state license or excise taxes, 159 A.L.R. 365.

40-2-150. Definitions.

As used in this article, the term:

(.1) "Agricultural field use vehicle" means a commercial truck designed specifically for field applications of fertilizers, poultry litter, and crop protection chemicals which is owned and operated by a farmer or business engaged in the sale and application of fertilizers, poultry litter, and crop protection chemicals and is operated primarily off the highway.

(1) "Farm truck" or "farm trailer" means a truck or trailer for which the owner submits a sworn statement as a part of the registration application to the effect that the vehicle is used primarily on and is domiciled upon a farm primarily for the carriage of unprocessed products of the farm.

(2) "Farm vehicle" means a vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways and used exclusively to transport unprocessed agricultural or livestock products raised, owned, and grown by the owner of the vehicle to market or a place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies, or products purchased by that farmer or rancher for his own use and used in the farming or ranching operation or used by a farmer or rancher partly in transporting agricultural products or livestock from the farm or ranch of another farmer or rancher that were originally grown or raised on that farm or ranch or when used partly in transporting agricultural supplies, equipment, materials, or livestock to the farm or ranch of another farmer or rancher for use or consumption on that farm or ranch but not transported for hire.

(3) "Motor bus" means any passenger-carrying motor vehicle operated for hire and having a passenger seating capacity of eight or more persons exclusive of the driver.

(4) "Owner declared gross vehicle weight" means the empty weight of the truck or truck-trailer fully equipped and fueled and ready for operation on the road and, in the case of combinations, means the weight when ready for operation on the road of the heaviest trailer or semitrailer with which the power unit will be placed in combination, plus the heaviest load which will be carried within the licensed period.

(5) "Private truck" or "private trailer" means a truck or trailer other than a farm truck, a farm trailer, farm vehicle, or a truck or trailer operated for hire by a common or contract carrier.

(6) "Trailer" means any vehicle operated over the public roads of this state without motive power when the vehicle is designed for carrying persons or property, either partially or wholly, on its own structure and is designed for being drawn by a self-propelled vehicle.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 3; Ga. L. 1960, p. 998, § 1; Code 1933, § 91A-5301, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-1; Ga. L. 1990, p. 1883, § 4; Ga. L. 1998, p. 1580, § 3; Ga. L. 2000, p. 951, § 11-2; Code 1981, § 40-2-150, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4; Ga. L. 2005, p. 334, § 14-11/HB 501.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

JUDICIAL DECISIONS

Vehicle is any carriage or conveyance used or capable of being used as a means of transportation on land. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Word "vehicle" will not ordinarily include locomotives, cars, and streetcars, which run and are operated over and upon a permanent track or fixed way. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

"Vehicle" does include means of travel or transportation such as automobiles, buses, trucks, or wagons. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Terms "motor vehicle" and "automobile" are practically synonymous. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Trackless trolleys not within definition of "motor bus." — Since trackless trolleys do not operate upon rails but the trolley routes are limited to and coextensive with overhead electric wires, which are supported and maintained by poles, supports, guy wires, and other superstructures which extend along and over the streets and highways, do not contain any engine or motor which uses internal combustible fuel, and are used as common carriers of passengers for hire upon the public streets or public highways, trackless trolleys are not motor buses as that term is defined. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Neither former Code 1933, § 92-2001 et seq. nor Ga. L. 1937-38, Ex. Sess., p. 259,

imposing a registration and licensing fee, specifically refer to trackless trolleys, and since the trolleys did not come within these general definitions and so were not to be classed as "motor buses" as that term was defined, the trolleys were not included within the provisions of either section. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Trackless trolley was not a motor bus within the meaning of either Ga. L. 1937-38, Ex. Sess., p. 259 or former Code 1933, § 92-2901, since the trolley cannot be said to be a motor vehicle as that term was used in either section. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

Trackless trolleys are not a motor vehicle or automobile. — Since a trackless trolley is propelled by the use of power received from outside sources by means of contact with overhead electric wires, the trolley is not an automobile or a motor vehicle within the generally accepted meaning of those terms. A trackless trolley is not derived from an automobile, nor is it a kind of automobile, but is a distinct and different type of vehicle. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622, 1946 Ga. App. LEXIS 366 (1946).

OPINIONS OF THE ATTORNEY GENERAL

Dump trucks working for a construction company on the highways are liable for license tags. 1948-49 Ga. Op. Att'y Gen. 688.

Truck used primarily in hauling eggs may be classified as a farm truck if the truck is used primarily on and is domiciled upon a farm. 1965-66 Op. Att'y Gen. No. 66-54.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 85 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 1 et seq., 188, 307 et seq.

40-2-151. Annual license fees for operation of vehicles; fee for permanent licensing of certain trailers; fee for new passenger car with paid title ad valorem taxes.

(a) The annual fees for the licensing of the operation of vehicles shall be as follows for each vehicle registered:

(1) For each passenger motor vehicle not operated as a common or contract carrier for hire $20.00

(2) For each motorcycle or multipurpose off-highway vehicle $20.00

(3) (A) For each private commercial motor vehicle in accordance with the owner declared gross vehicle weight rating, as follows:

(i) Less than 18,001 lbs. 25.00

(ii) 18,001 to 26,000 lbs. 38.00

(iii) 26,001 to 30,000 lbs. 45.00

(iv) 30,001 to 36,000 lbs. 70.00

(v) 36,001 to 44,000 lbs. 115.00

(vi) 44,001 to 54,999 lbs. 190.00

(vii) 55,000 to 63,280 lbs. 300.00

(viii) 63,281 lbs. to maximum permitted 400.00

(B) Subparagraph (A) of this paragraph notwithstanding:

(i) A straight truck which is not a truck-tractor shall not be classified higher than $75.00;

(ii) A straight truck hauling fertilizer or agricultural products shall not be classified higher than $31.00; and

(iii) A truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall not be classified higher than $220.00;

(4) For each farm truck 20.00

(5) Except as otherwise specifically provided in this Code section, for each private trailer 20.00

(6) (A) For each farm trailer including, but not limited to, horse and cattle trailers, the maximum fee shall be $12.00.

(B) There shall be no fee for trailers:

(i) Used exclusively to haul agricultural products from one place on the farm to another or from one farm or field to another;

(ii) With no springs which are being employed in hauling unprocessed farm products to their market destination; and

(iii) With no springs which are pulled from a tongue and used primarily to transport fertilizer to the farm;

(7) For house trailers, auto trailers, and boat trailers, whether pulled by a private automobile or a private truck, and not used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire 12.00

(8) For trailers used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire 12.00

(9) For each motor bus or van-type vehicle used as a common or contract carrier for hire in public transportation transporting passengers, the following:

(A) Weighing 10,000 pounds or less, $1.90 per 100 pounds factory weight or fractional part of 100 pounds factory weight;

(B) Weighing more than 10,000 pounds and not over 15,000 pounds factory weight, $2.75 for each 100 pounds or fractional part of 100 pounds factory weight;

(C) Weighing more than 15,000 pounds and not more than 20,000 pounds factory weight, $3.45 for each 100 pounds or fractional part of 100 pounds factory weight; and

(D) Weighing more than 20,000 pounds factory weight, $3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee shall exceed $875.00;

(10)(A) For each commercial motor vehicle operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight rating, as follows:

(i)	Less than 18,001 lbs.	25.00
(ii)	18,001 to 26,000 lbs.	38.00
(iii)	26,001 to 30,000 lbs.	85.00
(iv)	30,001 to 36,000 lbs.	130.00
(v)	36,001 to 44,000 lbs.	215.00
(vi)	44,001 to 54,999 lbs.	365.00
(vii)	55,000 to 63,280 lbs	575.00
(viii)	63,281 lbs. to maximum permitted	725.00

(B) Subparagraph (A) of this paragraph notwithstanding, a straight truck which is not a truck-tractor shall not be classified higher than $150.00;

(11) For each commercial motor vehicle leased to a common or contract carrier without regard to the duration of the lease and in accordance with the gross vehicle weight rating, the same license fees as required under paragraph (10) of this subsection;

(12) For each motor driven hearse or ambulance 20.00

(13) For each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and the members of his immediate family, the sum of $20.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be licensed for the sum of $20.00 in the same manner as school buses when the bus complies with the laws applicable to school buses;

(14) For each motor vehicle owned by the state or by a political subdivision or municipality of the state 1.00

(15) For each motor vehicle used by carriers and operated under special franchise granted by the United States Department of Defense over a route of not more than 20 miles in length which is solely between a point in this state and a point within a United States military reservation in this state 20.00

(16) Heavy earth-moving machinery, fertilizer application equipment, and crop protection chemical application equipment, not including trucks, which are used primarily off the highway shall not be required to be licensed under this article;

(17) (A) Trucks transporting logs, pulpwood, or other forest products shall be licensed in accordance with the following annual fees:

(i) Straight trucks and truck-tractors pulling a single pole trailer hauling logs from the woods to the sawmill 38.00

(ii) Other truck-tractors 220.00

(B) Skidders, tractors, and loaders used only in the woods shall not be required to be licensed. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall be licensed in accordance with this paragraph even though the trucks or truck-tractors are also used to transport skidders, tractors, loaders, and other logging equipment. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall not be required to pay additional fees or obtain additional license plates in order to transport logging equipment owned by the owner of the trucks or truck-tractors;

(18) For each agricultural field use vehicle 31.00

(19) (A) (i) Upon registration of an alternative fueled vehicle not operated for commercial purposes 200.00

(ii) Upon registration of an alternative fueled vehicle operated for commercial purposes 300.00

(iii) Upon registration of an alternative fueled vehicle that is a low-speed vehicle 100.00

(B) (i) As used in this paragraph, the term alternative fueled vehicle shall have the same meaning as in division (l)(7)(B)(ii) of Code Section 40-2-86.1; provided, however, that the fees in this paragraph shall not be assessed on vehicles which operate primarily on compressed natural gas, liquefied natural gas, or liquefied petroleum gas.

(ii) The fees in this paragraph shall be in addition to any other fee imposed on the vehicle by this Code section.

(iii) The fees in this paragraph shall be automatically adjusted on an annual basis by multiplying the percentage of increase or decrease in fuel efficiency from the previous year as measured by using the average of combined miles per gallon published in the United States Department of Energy Fuel Economy Guide against the current fee, and the resulting increase or decrease shall be added or subtracted from the fee. This preliminary fee adjustment shall then be multiplied by the increase or decrease in the Consumer Price Index percentage for the applicable year, and the result will be added or subtracted from the preliminary fee to produce the fee for the year. The first adjustment shall be calculated and implemented on July 1, 2016.

(b) In lieu of the annual fee provided in paragraphs (6), (7) or (8) of subsection (a) of this Code section, the optional one-time fee for a permanent registration and license plate for:

(1) Any trailer used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire, a private carrier, or a motor carrier of property; or

(2) Any boat trailer, utility trailer, or noncommercial cattle and livestock trailer authorized to obtain a permanent registration and license plate under the provisions of Code Section 40-2-47 shall be $48.00.

(c) The fee for a new motor vehicle which is a passenger car for which the purchaser has paid state and local title ad valorem taxes and that is being registered as provided in subsection (d) of Code Section 40-2-20 shall be $40.00 for the two-year registration period.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1946, p. 77, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 371, § 1; Ga. L. 1955, p. 303, § 1; Ga. L. 1955, Ex. Sess., p. 38, § 1; Ga. L. 1957, p. 376, § 2; Ga. L. 1960, p. 777, § 2; Ga. L. 1960, p. 998, § 2; Ga. L. 1962, p. 450, § 1; Ga. L. 1964, p. 80, §§ 1, 2; Ga. L. 1966, p. 132, §§ 1, 2; Ga. L. 1966, p. 252, §§ 2, 3; Ga. L. 1974, p. 451, §§ 2-4; Ga. L. 1976, p. 694, § 1; Code 1933, § 91A-5302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 2210, § 1; Ga. L. 1979, p. 5, § 106; Ga. L. 1979, p. 1038, §§ 1-3; Code 1981, § 48-10-2; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 896, § 1; Ga. L. 1985, p. 1, §§ 1, 2; Ga. L. 1987, p. 348, § 1; Ga. L. 1990, p. 1883, § 5; Ga. L. 1991, p. 434, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 779, § 27; Ga. L. 1994, p. 1373, § 2; Ga. L. 1995, p. 10, § 48; Ga. L.

1995, p. 742, § 3; Ga. L. 1998, p. 1580, §§ 4, 5; Code 1981, § 40-2-151, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4; Ga. L. 2004, p. 1063, § 1; Ga. L. 2007, p. 652, § 7/HB 518; Ga. L. 2008, p. 324, § 40/SB 455; Ga. L. 2008, p. 835, § 4/SB 437; Ga. L. 2009, p. 449, § 3/SB 128; Ga. L. 2015, p. 236, § 3-2/HB 170; Ga. L. 2015, p. 836, § 2/HB 147; Ga. L. 2021, p. 456, § 1/SB 165; Ga. L. 2023, p. 352, § 2-5/HB 121, effective July 1, 2023; Ga. L. 2023, p. 376, § 4-1/SB 146, effective July 1, 2023; Ga. L. 2024, p. 147, § 5/HB 1100, effective April 22, 2024; Ga. L. 2024, p. 1052, § 4(34)/SB 448, effective July 1, 2024.

Amendments.

The first 2023 amendment, effective July 1, 2023, added "or multipurpose off-highway vehicle" in paragraph (a)(2).

The second 2023 amendment, effective July 1, 2023, deleted the former last sentence in division (a)(19)(B)(iii), which read: "The Consumer Price Index shall no longer be used after July 1, 2018."

The first 2024 amendment, effective April 22, 2024, deleted "and used exclusively for governmental functions" in paragraph (a)(14).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "new motor vehicle which is a passenger car" for "new passenger car" in subsection (c).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "motor-driven" was changed to "motor driven" in paragraph (12) (now paragraph (a)(12)).

Pursuant to Code Section 28-9-5, in 2007, "subsection" was substituted for "Code section" at the end of paragraph (a)(11).

The amendment of this Code section by Ga. L. 2008, p. 324, § 40(1)/SB 455, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 835, § 4/SB 437. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes.

Ga. L. 1994, p. 1373, § 3, not codified by the General Assembly, provides that the Act shall apply to registration and licensing of trailers on and after January 1, 1995.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2021, p. 456, § 5/SB 165, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2021, and Section 1 of this Act shall be applicable to vehicle registrations occurring on or after July 1, 2021."

Ga. L. 2023, p. 376, § 4-1/SB 146, inadvertently neglected to specify that the amendment made to this Code section was to division (a)(19)(B)(iiii).

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 261 (2015).

40-2-151.1. Highway impact fees for heavy vehicles; use of funds.

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

(1) "Transportation purposes" means activities incident to providing and maintaining an adequate system of public roads and bridges in this state and for grants to counties for road construction and maintenance.

(2) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by or funded by a public entity or quasi-public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a state agency or authority, a local government, a community improvement district, or any other similar entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services; school bus services; courtesy shuttle and intrafacility or terminal services; limousine carriers; and ride share network services, transportation referral services, and taxi services as such terms are defined in Chapter 1 of Title 40 and which are not paid for by a public entity.

(3) "Transit projects" means and includes purposes to establish, enhance, operate, and maintain, or improve access to transit, including the issuance of grants for the provision of transit, the issuance of general obligation debt and other multiyear obligations to finance such projects, the financing of operations and maintenance of such projects once constructed, and the contracted purchase of transit from providers without direct capital investment.

(b) In conjunction with the payment of fees for the licensing of the operation of vehicles pursuant to Code Section 40-2-151, certain heavy vehicles registered in Georgia shall pay a highway impact fee. The annual fees shall be as follows for each such vehicle registered:

(1) 15,500 lbs. up to 26,000 lbs. ..... $ 50.00

(2) Greater than 26,001 lbs. 100.00

(c) It is the intention of the General Assembly, subject to appropriations, that the fees collected pursuant to subsection (b) of this Code section shall be made available and used exclusively for transportation purposes in this state with up to 10 percent of the fees collected to be appropriated for transit projects.

(d) Reserved.

(e) Notwithstanding any other law to the contrary, if at any time the amount collected under this Code section is ever not appropriated for two consecutive or nonconsecutive fiscal years to transportation purposes with up to 10 percent of such fees collected appropriated for transit projects, as determined by the House Budget and Research Office and the Senate Budget and Evaluation Office, then the amount collected shall be reduced by 50 percent. Upon the conclusion of a third fiscal year in which an amount is not so appropriated, this Code section shall stand repealed and reserved and such fees shall cease to be collected, on the date the appropriations Act for such fiscal year becomes effective. Such budget offices shall certify any such lack of appropriation to the Code Revision Commission for purposes of updating the Code in accordance with this subsection.

History.

Code 1981, § 40-2-151.1, enacted by Ga. L. 2015, p. 236, § 3-3/HB 170; Ga. L. 2020, p. 903, § 3-1/HB 105; Ga. L. 2021, p. 480, § 6/HB 588; Ga. L. 2021, p. 761, § 13/HB 511; Ga. L. 2024, p. 1052, § 4(35)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "Reserved" for "Repealed" in subsection (d).

Editor's notes.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015. Continued funding was appropriated by the General Assembly in 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.

Law reviews.

For article on the 2015 enactment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

40-2-151.2. Transportation Trust Fund established; funding; accounting.

(a)(1) There shall be established a Transportation Trust Fund as a separate fund in the state treasury. The commissioner of transportation shall be the trustee of the fund.

(2) The state treasurer shall invest the money held in the Transportation Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be

credited to the trust fund to be disbursed as other moneys in the trust fund.

(b) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to paragraph (19) of subsection (a) of Code Section 40-2-151, Code Section 40-2-151.1, and subsection (b) of Code Section 48-13-50.3 shall be annually appropriated to the Transportation Trust Fund established by this Code section and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such sources during the most recently completed fiscal year.

(c) All of the money appropriated to the Transportation Trust Fund pursuant to subsection (b) of this Code section shall be dedicated for use and expended by the commissioner of transportation for transportation purposes and transit projects as such terms are defined in Code Section 40-2-151.1. Not more than ten percent of the funds shall be expended on transit projects.

(d) The commissioner of transportation shall prepare an accounting of the funds expended pursuant to this subsection during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

History.
Code 1981, § 40-2-151.2, enacted by Ga. L. 2021, p. 761, § 14/HB 511.

40-2-152. Fees for apportionable vehicles; restricted license plates for vehicles.

(a) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles not operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1)	Less than 30,001 lbs.	$ 45.00
(2)	30,001 to 36,000 lbs.	70.00
(3)	36,001 to 44,000 lbs.	115.00
(4)	44,001 to 54,999 lbs.	190.00
(5)	55,000 to 63,280 lbs	300.00
(6)	63,281 lbs. to maximum permitted	400.00

(b) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles operated as a common or contract

carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1)	Less than 30,001 lbs.	$ 85.00
(2)	30,001 to 36,000 lbs.	130.00
(3)	36,001 to 44,000 lbs.	215.00
(4)	44,001 to 54,999 lbs.	365.00
(5)	55,000 to 63,280 lbs.	575.00
(6)	63,281 lbs. to maximum permitted	725.00

(c) For each apportionable motor bus or van-type vehicle, the fee shall be $3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee amount shall exceed $875.00.

(d) Trucks transporting logs, pulpwood, or other forest products shall be issued restricted license plates, and the fees shall be as enumerated in Code Section 40-2-151.

(e) Each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and his or her immediate family shall be issued a restricted license plate for the sum of $5.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be issued a restricted license plate for the sum of $5.00 in the same manner as school buses when the bus complies with the laws applicable to school buses.

(f) A truck or a truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(g) A farm vehicle shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(h) Only for apportionable vehicles registered under subsection (a), (b), or (c) of this Code section:

(1) Each such apportionable vehicle shall be subject to an annual alternative ad valorem tax on such apportionable vehicle as authorized under Article VII, Section I, Paragraph (b)(3) of the Constitution. Such alternative ad valorem tax shall be in the amount specified in subsection (k) of this Code section and shall be collected by the commissioner at the same time as the registration fee required under subsection (a), (b), or (c) of this Code section;

(2) Notwithstanding the provisions of Code Section 48-5-442.1, no ad valorem tax shall be assessed against such apportionable vehicle

other than the alternative ad valorem tax under this Code section except that such apportionable vehicle shall not be relieved for any such ad valorem tax which accrued and was due and payable prior to registration under the International Registration Plan; and

(3) The full amount of such alternative ad valorem tax proceeds shall not constitute fees for purposes of Code Section 40-2-131. Such proceeds shall be retained by the commissioner in a separate, segregated account for the purpose of allocation and distribution under subsection (m) of this Code section.

(i) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, the apportioned value for ad valorem taxes shall be determined as provided in Code Section 48-5-442.1.

(j) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, payment of ad valorem taxes shall be accepted by the department upon request of the taxpayer regardless of the county in which such trailer is domiciled.

(k) Each apportionable vehicle identified under subsection (a), (b), or (c) of this Code section shall be subject to an alternative ad valorem tax which shall be determined by the value and rate assigned to each weight class. Each weight class shall be a separate subclass of motor vehicle, and the value of each vehicle shall remain the value for each tax year as follows:

(1) Less than 30,001 lbs. shall be valued at $15,000.00 and taxed at $50.00 per year;

(2) 30,001 to 36,000 lbs. shall be valued at $25,000.00 and taxed at $75.00 per year;

(3) 36,001 to 44,000 lbs. shall be valued at $40,000.00 and taxed at $125.00 per year;

(4) 44,001 to 54,999 lbs. shall be valued at $55,000.00 and taxed at $175.00 per year;

(5) 55,000 to 63,280 lbs. shall be valued at $75,000.00 and taxed at $225.00 per year; and

(6) 63,281 lbs. to maximum permitted shall be valued at $95,000.00 and taxed at $275.00 per year.

(l) The commissioner shall add the alternative ad valorem tax in subsection (k) of this Code section to the vehicle registration fees in subsection (a), (b), or (c) of this Code section, prior to apportionment of those fees. The alternative ad valorem tax shall be apportioned on the same basis and in the same manner as the apportionable registration fees and collected at the same time.

(m)(1) The alternative ad valorem tax imposed by this Code section shall be collected by the commissioner and shall be distributed annually from the separate, segregated fund not later than August 1 of the calendar year immediately following the calendar year in which such taxes were paid to the commissioner, in the manner provided for in this subsection.

(2)(A) One percent of the alternative ad valorem tax collected by the commissioner shall be paid into the general fund of the state treasury in order to defray costs of administration.

(B) Except for the amount provided in subparagraph (A) of this paragraph, the remaining proceeds of the alternative ad valorem tax shall be allocated by county based upon the ratio of the number of apportioned vehicles attributed by the commissioner on an annual basis to each county to the number of apportioned vehicles submitted to and approved by the commissioner state wide. The proceeds so allocated shall then be distributed to each qualified tax jurisdiction within the county based upon the ratio of the most recently submitted and approved tax digest for each such qualified tax jurisdiction to the total of all tax digests of qualified tax jurisdictions located in the county. Qualified jurisdictions include only counties, municipalities, county school districts, and independent school districts which levy or cause to be levied for their benefit a property tax on real and tangible personal property.

History.

Code 1981, § 48-10-2.1, enacted by Ga. L. 1990, p. 1883, § 6; Ga. L. 1992, p. 771, § 28; Code 1981, § 40-2-152, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5; Ga. L. 2004, p. 1063, § 2; Ga. L. 2008, p. 835, § 5/SB 437; Ga. L. 2013, p. 32, § 2/HB 463; Ga. L. 2014, p. 866, § 40/SB 340; Ga. L. 2015, p. 30, § 1/SB 82; Ga. L. 2017, p. 774, § 40/HB 323.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

Ga. L. 2015, p. 30, § 4(b)/SB 82, not codified by the General Assembly, provides that: "Section 1 of this Act shall apply to all disbursements which occur after the effective date of this Act."

40-2-153. [Reserved] Registration and licensing of makers and dealers of motor vehicles; application; fee; dealer's number plate; prohibited uses; licensing of persons transporting motor vehicles, mobile homes, or house trailers; exemption of farm tractors.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1955, Ex. Sess., p. 38, § 2; Ga. L. 1959, p. 232, § 1; Ga. L. 1969, p. 135, § 1; Code 1933, § 91A-5303, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-3; Ga. L. 1982, p. 3, § 48; Ga. L. 1992, p. 771, § 29; Ga. L. 1992, p. 2978, § 12; Code 1981, § 40-2-153, as redesignated by Ga. L. 2002, p. 1074, § 1; repealed by Ga. L. 2005, p. 321, § 4/HB 455, effective July 1, 2005.

Editor's notes.

Ga. L. 2005, p. 321, § 4/HB 455 repealed and reserved this Code section, effective July 1, 2005.

40-2-154. License plates for different classes of vehicles; distinguishing markings.

The commissioner may provide a different license plate for each different class of vehicles specified in this article and may distinguish the plate furnished to each class of vehicles by a different letter or lettering or other symbols or markings on the plates.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1955, p. 447, § 1; Code 1933, § 91A-5304, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-4; Code 1981, § 40-2-154, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.

Cross references.

Design of license plates generally, § 40-2-31.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-155. Transfers of annual licenses and plates to certain other vehicles upon application, approval, and payment of fees.

The annual license and plate issued for the operation of a vehicle described in paragraph (3), (9), or (10) of subsection (a) of Code Section 40-2-151, except those named in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151, may be transferred with the approval of the commissioner from a destroyed or retired motor vehicle to another vehicle upon payment of a transfer fee of $5.00 and upon presentation of an appropriate application for transfer. If the substituted vehicle normally calls for a higher-priced plate than the vehicle displaced, a proportionate additional fee shall be paid for the remainder of the taxable year.

History.
Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1977, p. 595, § 1; Code 1933, § 91A-5306, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-6; Ga. L. 1991, p. 94, § 48; Ga. L. 1992, p. 771, § 30; Ga. L. 1995, p. 10, § 48; Code 1981, § 40-2-155, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.

Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

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"Retired" as used in Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-159) means any motor vehicle which has been withdrawn from operation on the public roads or highways of the state. 1952-53 Ga. Op. Att'y Gen. 467.

Credit for vehicle retired in this state but put to use in another. — Owner of a bus which is being taken out of service in this state is retiring that vehicle in the sense of Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-155). Credit shall be given for the license plates of vehicles retired from operation in this state, even though the vehicle is to be put to use in another state. 1952-53 Ga. Op. Att'y Gen. 467.

Transfer of school bus license tag. — When the ownership of a school bus is transferred, the license tag thereon may be transferred provided the transfer is for school purposes. 1952-53 Ga. Op. Att'y Gen. 468.

40-2-156. Proportional license fees for certain vehicles registered during specific months.

Any person registering any of the vehicles named in paragraph (3), (9), or (10) of subsection (a) of Code Section 40-2-151, except those named in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151 between the dates of:

(1) March 1 and May 31 of any year shall pay three-fourths of the annual license fee provided in this article;

(2) June 1 and August 31 of any year shall pay one-half of the annual license fee provided in this article; or

(3) September 1 and November 30 of any year shall pay one-fourth of the annual license fee provided in this article.

History.
Ga. L. 1937-38, Ex. Sess., p. 259, § 5; Ga. L. 1960, p. 1031, § 1; Ga. L. 1963, p. 606, § 1; Code 1933, § 91A-5307, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-7; Ga. L. 1986, p. 1053, § 6; Ga. L. 1991, p. 94, § 48; Ga. L. 1995, p. 10, § 48; Ga. L. 1997, p. 419, § 40; Code 1981, § 40-2-156, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4, 5.

Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

Law reviews.
For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

40-2-157. Proportional license fees for certain vehicles registered under the International Registration Plan.

Any person initially registering under the International Registration Plan any of the vehicles named in subsection (a), (b), or (c) of Code Section 40-2-152 and whose next registration period ends less than 12 months from the date of application or first date of service of such vehicle shall pay a license fee in an amount equal to one-twelfth of the annual license fee provided by this article multiplied by the number of months remaining until the end of such next registration period.

History.
Code 1981, § 48-10-7.1, enacted by Ga. L. 1999, p. 741, § 3; Ga. L. 2001, p. 1173, § 1-7; Code 1981, § 40-2-157, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2002, "Code Section 40-2-152" was substituted for "Code Section 48-10-2.1."
Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-158. [Reserved] Fee assessment to registrants.

History.
Ga. L. 1999, p. 741, § 3; Ga. L. 2001, p. 1173, § 1-8; Code 1981, § 40-2-158, as redesignated by Ga. L. 2002, p. 1074, § 1; repealed by Ga. L. 2017, p. 742, § 4/HB 412, effective July 1, 2017.
Editor's notes.
Ga. L. 2017, p. 742, § 4/HB 412 repealed and reserved this Code section, effective July 1, 2017.

40-2-159. Time of application and payment for plate.

Each person subject to a license fee as provided in this article shall apply for and obtain the required license plate on or before the expiration of the owner's registration period each year. Payment for the license plate shall be made to the commissioner, a duly authorized agent, or any other person specified by law.

History.
Ga. L. 1937-38, Ex. Sess., p. 259, § 7; Ga. L. 1943, p. 341, § 1; Ga. L. 1960, p. 1031, § 2; Ga. L. 1963, p. 606, § 2; Code 1933, § 91A-5308, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-8; Ga. L. 1986, p. 1053, § 7; Ga. L. 1995, p. 809, § 20; Code 1981, § 40-2-159, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.
Cross references.
Further provisions regarding time for registration of and obtaining of licenses for vehicles, § 40-2-20.
Editor's notes.
Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this act." The act became effective January 1, 1997.
Ga. L. 2002, p. 1074, § 8, not codified by

the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-160. Liability of residents and nonresidents for taxes and fees; prorated fees for motor vehicles hauling seasonal state agricultural products.

(a) Each resident and nonresident person shall be liable for and shall pay the taxes and fees required by law for the operation of motor vehicles in this state.

(b) With respect to motor vehicles used solely for the purpose of hauling seasonal agricultural products grown in this state, the fees required by this article may be prorated on a daily basis in accordance with the owner declared gross vehicle weight. The commissioner may issue a special plate or other means of identification to indicate compliance with this subsection. No motor vehicle to which this subsection is applicable shall be operated in violation of this article.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 8; Ga. L. 1960, p. 248, § 1; Ga. L. 1964, p. 242, § 1; Code 1933, § 91A-5309, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-9; Code 1981, § 40-2-160, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.

Cross references.

Registration and licensing requirements for vehicles of nonresidents generally, § 40-2-90 et seq.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

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Motor vehicle owned by nonresident but used in state is taxable. — When the owner of a motor vehicle driven in this state is not a resident of this state, and the motor vehicle is in this state for use here and is, in fact, used in much the same manner as other motor vehicles are used in this state, that motor vehicle is taxable in this state. 1968 Op. Att'y Gen. No. 68-39.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 61, 87 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, § 190 et seq.

40-2-161. Rate of annual license fee for vehicles carrying passengers over route of 50 miles or less.

If a vehicle described in this article is operated as a carrier of

passengers, the rate of annual license fee shall be one-half of the amount specified in this article when the vehicle is operated over a route of 50 miles or less.

History.
Ga. L. 1937-38, Ex. Sess., p. 259, § 8B; Ga. L. 1969, p. 981, § 1; Code 1933, § 91A-5310, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-10; Code 1981, § 40-2-161, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.

Cross references.
Motor carriers generally, § 40-1-50 et seq.

Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 78 et seq.

40-2-162. Apportionment of cost of annual license fees of motor buses to motor common carriers of passengers for hire operating partially outside state; formula; rules.

(a) The commissioner shall apportion the cost of the annual fees for the licensing of motor buses to motor common carriers of passengers for hire operating a fleet of two or more motor buses either interstate, or both interstate and intrastate, under the authority of the Federal Motor Carrier Safety Administration and the Department of Public Safety of this state. The apportionment shall be done so that the total cost of the fees shall bear the same proportion to the annual fees for motor buses as the total number of miles traveled by the fleet of the carrier in this state in both interstate and intrastate operations during the preceding year bears to the total number of miles traveled by the fleet during the year in both interstate and intrastate operations.

(b) The commissioner shall promulgate rules for the apportionment required by this Code section. The rules shall provide that the apportionment apply as nearly as practicable to each class of vehicle operated by the motor common carrier of passengers for hire.

History.
Ga. L. 1957, p. 653, § 1; Code 1933, § 91A-5312, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-12; Code 1981, § 40-2-162, as redesignated by Ga. L. 2002, p. 1074, § 1; Ga. L. 2012, p. 580, § 9/HB 865.

Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed

prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 62 et seq., 85.
C.J.S.
60 C.J.S., Motor Vehicles, § 309.
ALR.
When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 A.L.R. 957.

40-2-163. Purchase by truck or tractor owner of higher weight license plate; payment of difference between fees.

A vehicle owner may voluntarily increase the allowable gross weight for which his vehicle is licensed by purchasing the appropriate weight license plate for his truck or tractor and paying the difference between the fee charged for the license which is surrendered and the fee charged for the new license, as calculated pursuant to Code Section 40-2-151.

History.
Code 1933, § 92-2918, enacted by Ga. L. 1960, p. 998, § 3; Code 1933, § 91A-5313, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-13; Code 1981, § 40-2-163, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.
Cross references.
Regulation of size, weight, and other requirements for vehicles and loads on public highways, § 32-6-20 et seq.
Permits for excess weight and dimensions, § 32-6-28.
Editor's notes.
Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 278, 311.
ALR.
Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 A.L.R.3d 9.

40-2-164. Decrease of registered vehicle weight class.

The allowable maximum weight (license class) for which a truck or tractor is registered may be decreased only once a year, at the beginning of a new license year. Trucks classified in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151 shall not be entitled to any partial year license.

History.
Code 1933, § 92-2919, enacted by Ga. L. 1960, p. 998, § 4; Code 1933, § 91A-5314, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-14; Ga. L. 1991, p. 94, § 48; Ga. L. 1995, p. 10, § 48; Code 1981, § 40-2-164, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.
Cross references.
Regulation of size, weight, and other

requirements for vehicles and loads on public highways, § 32-6-20 et seq.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 281, 310.

40-2-165. Purchase of new license plate required for vehicles with excessive weight.

If upon inspection a truck licensed under Code Section 40-2-151 is found to weigh, together with its loaded trailer, more than is permitted by the license plate which it carries, the owner shall be required to purchase immediately a new license plate for the weight of the truck so inspected. One-half credit shall be given for the surrendered underrated license plate.

History.

Code 1933, § 92-2920, enacted by Ga. L. 1960, p. 998, § 5; Code 1933, § 91A-5315, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-15; Code 1981, § 40-2-165, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.

Cross references.

Regulation of size, weight, and other requirements for vehicles and loads on public highways, § 32-6-20 et seq.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-166. Violation of article; penalty.

(a) It shall be unlawful for any person to violate any provision of this article.

(b) Any person who violates any provision of this article shall be guilty of a misdemeanor.

History.

Ga. L. 1937-38, Ex. Sess., p. 259, § 10; Code 1933, § 91A-9927, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-16; Code 1981, § 40-2-166, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-167. Separately stated fees in a rental agreement; recoverable fees and taxes.

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

(1) "Heavy-duty equipment motor vehicle" means a motor vehicle with all its attachments and parts which is self-propelled, weighs 1,500 pounds or more, and is primarily designed and used for construction, industrial, maritime, or mining uses, provided that such motor vehicles are not required to be registered and have a license plate.

(2) "Motor vehicle rental company" means an individual or business entity whose business activity is renting motor vehicles to consumers under rental agreements for periods of 90 days or less or renting heavy-duty equipment motor vehicles under rental agreements for periods of less than 365 days or under open-ended agreements.

(3) "Recoverable facility charges" means governmental and private concession fees, including airport concession fees, consolidated facility charges, and the fees and charges incurred thereon, actually paid by a motor vehicle rental company.

(4) "Recoverable fees and taxes" means costs incurred by a motor vehicle rental company to license, title, register, plate, and inspect rental motor vehicles and ad valorem taxes imposed in connection with the registration of rental motor vehicles or a 1 1/2 percent property tax recovery fee on heavy-duty equipment motor vehicles.

(5) "Rental agreement" means an agreement under which a rental motor vehicle is rented or leased.

(6) "Rental motor vehicle" means a motor vehicle that is rented or leased without a driver.

(b) Pursuant to a written rental agreement between a motor vehicle rental company and a rental customer, a motor vehicle rental company may include separately stated fees in a rental agreement, which may include, but shall not be limited to, recoverable facility charges and recoverable fees and taxes, as provided in this Code section.

(c) If a motor vehicle rental company includes a charge for recoverable fees and taxes as a separately stated fee in a rental transaction disclosed on the rental agreement, the amount of the charge shall represent the motor vehicle rental company's good faith estimate of the motor vehicle rental company's daily charge as calculated by the motor vehicle rental company to recover its actual total annual recoverable fees and taxes on its rental motor vehicle fleet for the corresponding calendar year.

(d) If the total amount of the recoverable fees and taxes collected by a motor vehicle rental company under this Code section in any calendar year exceeds the motor vehicle rental company's actual recoverable fees and taxes for that calendar year, the motor vehicle rental company shall:

(1) Retain the excess amount; and

(2) Adjust the estimated average per vehicle fee for recoverable fees and taxes for the following calendar year by a corresponding amount.

Nothing herein shall prevent a motor vehicle rental company from making adjustments to the per vehicle recoverable fees and taxes charge during the calendar year to reflect interim developments affecting the motor vehicle rental company's prior estimated per vehicle fee for such calendar year.

(e) The property tax recovery fee may be assessed if the motor vehicle rental company includes the fee as a separately stated fee on its rental agreement.

(f) The recovery fee authorized by this Code section for recoverable fees and taxes shall be subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental motor vehicle.

History.

Code 1981, § 40-2-167, enacted by Ga. L. 2008, p. 622, § 1/SB 181; Ga. L. 2022, p. 294, § 1/HB 1103.

Amendments.

The 2022 amendment, effective July 1, 2022, added paragraph (a)(1); redesignated former paragraphs (a)(1) through (a)(5) as present paragraphs (a)(2) through (a)(6), respectively; substituted "heavy-duty equipment motor vehicles under rental agreements for periods of less than 365 days or under open-ended agreements" for "'heavy-duty equipment motor vehicles' as such term is defined in Code Section 48-5-505" at the end of paragraph (a)(2); and substituted "heavy-duty equipment motor vehicles" for "'heavy-duty equipment motor vehicles' as such term is defined in Code Section 48-5-505" at the end of paragraph (a)(4).

40-2-168. Registration and licensing of taxicabs and limousines; issuance of distinctive license plate.

Owners of a taxicab or limousine, prior to commencing operation in this state, shall, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, and the payment of an annual registration fee of $25.00, be issued a distinctive license plate by the commissioner. Such distinctive license plate shall be designed by the commissioner and displayed on the vehicle as provided in Code Section 40-2-41. The certificate of registration shall be kept in the vehicle. Revalidation decals shall be issued, upon payment of fees required by law, in the same manner as provided for general issue

license plates. Such license plates shall be transferred from one vehicle to another vehicle of the same class and acquired by the same person as provided in Code Section 40-2-42. For all existing registrations, except during the owner's registration period as provided in Code Section 40-2-21, the commissioner shall exchange and replace any current and valid registration and license plate at no charge to the owner. Such license plates shall not be issued to any owner of a taxicab or limousine, as such term is defined in paragraph (4) of Code Section 40-1-151, that is not properly licensed as such by the Department of Public Safety or a political subdivision of this state.

History.

Code 1981, § 40-2-168, enacted by Ga. L. 2010, p. 143, § 6/HB 1005; Ga. L. 2015, p. 1262, § 4/HB 225.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2017, the subsection (a) designation was deleted.

Editor's notes.

Former subsection (b), relating to for-hire vehicles, was repealed on its own terms effective July 1, 2017.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

CHAPTER 3

CERTIFICATES OF TITLE, SECURITY INTERESTS, AND LIENS

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Article 3

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40-3-95. Effect on other laws.

Cross references.

Applicability of filing requirements of Uniform Commercial Code, § 11-9-310.

Liens upon motor vehicles for failure to pay overweight assessment citation, § 32-6-27.

Lien against improperly parked motor vehicle for expenses of removal and storage thereof, § 44-1-13.

Code Commission notes.

Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Administrative rules and regulations.

Scrapped Vehicles Under the Motor Vehicles Certificate of Title Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-13-.01 et seq.

Motor Vehicle Certificate of Title Forms, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Rule 560-10-21-.01 et seq.

Law reviews.

For note discussing the "Motor Vehicle Certificate of Title Act" and its impact, see 13 Mercer L. Rev. 258 (1961).

For comment on Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

For article on choice-of-law of contracts in Georgia, see 21 Mercer L. Rev. 389 (1970).

For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L. Rev. 15 (1978).

For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

JUDICIAL DECISIONS

Commercial law and motor vehicle provisions construed in pari materia. — Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) and the Uniform Commercial Code (see now O.C.G.A. T. 11) were adopted at the same session of the General Assembly, relate in part to the same subject matter, and must be construed in pari materia. GMAC v. Whisnant, 387 F.2d 774, 1968 U.S. App. LEXIS 8516 (5th Cir. 1968).

Purpose of chapter. — Manifest purpose of the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) is to provide a comprehensive system, with few specific exceptions, for the central recordation of ownership, security interests, and liens in all motor vehicles registered and regularly in use in this state. First Nat'l Bank & Trust Co. v. Smithloff, 119 Ga. App. 284, 167 S.E.2d 190, 1969 Ga. App. LEXIS 1076 (1969).

Two of the more important purposes of the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) are: (1) to prevent traffic in stolen cars by providing an exclusive means of transfer which is recorded in a central location and can be verified quickly and easily; and (2) to provide a means for purchasers of automobiles to ascertain the entire interest of the seller by referring to the face of a single instrument. Flatau v. Bank of Banks County (In re Stewart), 9 B.R. 32, 1980 Bankr. LEXIS 4578 (Bankr. M.D. Ga. 1980).

Strict construction of chapter. — Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) must be strictly construed and enforced, especially in those instances where third party interests are involved. Flatau v. Bank of Banks County (In re Stewart), 9 B.R. 32, 1980 Bankr. LEXIS 4578 (Bankr. M.D. Ga. 1980).

Effect on existing case law on proving chattel ownership. — Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) provided a simple statutory method of proving the ownership to motor vehicles, but it was not exclusive. It did not change the existing case law as to the manner in which ownership of chattels, including automobiles, could be proven. Hightower v. Berlin, 129 Ga. App. 246, 199 S.E.2d 335, 1973 Ga. App. LEXIS 962 (1973); Owensboro Nat'l Bank v. Jenkins, 173 Ga. App. 775, 328 S.E.2d 399, 1985 Ga. App. LEXIS 1688 (1985); GECC v. Catalina Homes, Inc., 178 Ga. App. 319, 342 S.E.2d 734, 1986 Ga. App. LEXIS 1646 (1986).

Applicability of general rule on personal property. — With respect to automobiles not covered by the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.), the rule applicable to personal property in general, that possession thereof constituted presumptive evidence of ownership, was applicable to automobiles. Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

Private transactions. — Even though the provisions of the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) may be mandatory in some situations, transactions between the parties themselves are excepted from those provisions. Goger v. King, 17 B.R. 64, 1981 Bankr. LEXIS 2587 (Bankr. N.D. Ga. 1981).

Perfecting of security interest in vehicles. — Only way to perfect a security in motor vehicles was by filing under the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.). Staley v. Phelan Fin. Corp., 116 Ga. App. 1, 156 S.E.2d 201, 1967 Ga. App. LEXIS 666 (1967), but see In re Chappell, 224 B.R. 507, 1998 Bankr. LEXIS 1109 (Bankr. M.D. Ga. 1998).

When bank financed purchase of car by car-leasing business, the correct avenue

for perfecting of the bank's security interest in the car was through the procedure set forth in O.C.G.A. Ch. 3, T. 40 as opposed to filing of the bank's financial statement under procedures established by the U.C.C. United Carolina Bank v. Capital Auto. Co., 163 Ga. App. 796, 294 S.E.2d 661, 1982 Ga. App. LEXIS 2653 (1982).

Purpose of perfecting security interest. — Perfection of security interests under the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) served purpose of giving notice to subsequent creditors. In re Firth, 363 F. Supp. 369, 1973 U.S. Dist. LEXIS 12015 (M.D. Ga. 1973).

Lienholder's burden in identifying parties to be served. — Registration requirements of the Georgia Motor Vehicle Certificate of Title Act (see now O.C.G.A. § 40-3-1 et seq.) minimize lienholder's burden in identifying the necessary parties to be served. Imperial Body Works, Inc. v. Waters, 156 Ga. App. 887, 275 S.E.2d 822, 1981 Ga. App. LEXIS 1643 (1981).

When title passes upon cash sales agreement. — When an agreement is made to sell an automobile for cash, and on delivery of the automobile a check is given for the purchase price as between the vendor and the vendee, and in the absence of an express agreement to the contrary, the title to the automobile does not pass until the check is presented to and paid by the bank in the usual course of business. Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

Criteria for treating possessor as owner. — Mere possession alone by one who is not shown on the face of the certificate of registration issued by the Revenue Commissioner to be the owner, and in the absence of a properly executed assignment and warranty of title, is not sufficient to authorize another dealing with the possessor to treat that person as the owner thereof. Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

OPINIONS OF THE ATTORNEY GENERAL

Business trust. — Georgia law does not permit a certificate of title to be held in the name of a business trust. 1997 Op. Att'y Gen. No. 97-28.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 29 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, § 96 et seq.

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

ARTICLE 1

GENERAL PROVISIONS

Administrative rules and regulations.

Motor Vehicle Certificate of Title Forms, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Rule 560-10-21-.01 et seq.

40-3-1. Short title.

This chapter shall be known and may be cited as the "Motor Vehicle Certificate of Title Act."

History.
Ga. L. 1961, p. 68, § 1; Ga. L. 1990, p. 2048, § 3.

JUDICIAL DECISIONS

Proving motor vehicle title. — Ga. L. 1961, p. 68, § 1 (see now O.C.G.A. § 40-3-1 et seq.) provides an additional method whereby title to motor vehicles can be proven but does not change the existing law as to the manner in which ownership of chattels, including automobiles, can be proven. Rome Bank & Trust Co. v. Bradshaw, 143 Ga. App. 152, 237 S.E.2d 612, 1977 Ga. App. LEXIS 2221 (1977).

Purpose of chapter. — Ga. L. 1961, p. 68, § 1 (see now O.C.G.A. § 40-3-1 et seq.) is a recording statute; the statute's purpose is to perfect and give notice of security interests, and it does not affect the creation of the security interest, which remains a matter of contract between the parties. Hallman v. State, 141 Ga. App. 527, 233 S.E.2d 839, 1977 Ga. App. LEXIS 1977 (1977).

Failure to comply with chapter. — Failure to comply with Ga. L. 1961, p. 68, § 1 (see now O.C.G.A. § 40-3-1 et seq.) does not nullify contract, but merely effects loss of priority when the rights of the third parties who complied with those provisions have intervened. Hallman v. State, 141 Ga. App. 527, 233 S.E.2d 839, 1977 Ga. App. LEXIS 1977 (1977).

Intervenor's unrecorded security interest in forfeiture proceeding. — State in a forfeiture proceeding does not occupy the status of a creditor or lienholder so that the security interest of the intervenor, when not properly recorded, is subordinated to it. Hallman v. State, 141 Ga. App. 527, 233 S.E.2d 839, 1977 Ga. App. LEXIS 1977 (1977).

Sale held complete without actual passing of certificate. — While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents, the buyer was also entitled to damages including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106, 2006 Ga. App. LEXIS 1119 (2006).

RESEARCH REFERENCES

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 44.

40-3-2. Definitions.

As used in this chapter, the term:

(1) "Boat trailer" means any vehicle without motive power designed for carrying boats, either partially or wholly on its own structure, which is being drawn by a self-propelled vehicle and operated over the public roads of this state.

(2) "Commissioner" means the state revenue commissioner.

(3) "Dealer" means a "dealer" as defined in Code Section 40-1-1 to whom current dealer registration plates have been issued by the commissioner.

(3.1) "Department" means the Department of Revenue.

(4) "Homemade trailer" means a vehicle without motive power, designed for carrying persons or property either partially or wholly on its own structure and for being drawn by a self-propelled vehicle other than a self-propelled vehicle running exclusively on tracks, which trailer has been manufactured and constructed from component parts for personal use and not for the purpose of commercial resale.

(5) "Identifying number" means the numbers and letters, if any, on a vehicle designated by the commissioner for the purpose of identifying the vehicle.

(6) "Lien" means any lien created by operation of law and not by contract or agreement with respect to a vehicle and includes all liens mentioned in Code Section 44-14-320, other than that in paragraph (5) thereof, and all liens for taxes due the United States of America, constructive notice of which is given by filing notice thereof in the office designated by state law.

(7) "Lienholder" means a person holding a lien created by operation of law on a motor vehicle.

(8) To "mail" means to deposit in the United States mail properly addressed and with postage paid.

(9) "Major component part" means any one of the following subassemblies of a motor vehicle:

(A) Front clip assembly (fenders, hood, and bumper);

(B) Rear clip assembly (quarter panels, floor panel assembly, and roof assembly, excluding a soft top);

(C) Engine and transmission;

(D) Frame; or

(E) Complete side (fenders, door, and quarter panel).

(9.1) "Natural person" means an individual human being and does not include any firm, partnership, association, corporation, or trust.

(10) "Rebuilt motor vehicle" means any motor vehicle which has been damaged and subsequently restored to an operable condition by the replacement of two or more major component parts.

(11) "Salvage motor vehicle" means any motor vehicle:

(A) Which has been damaged to the extent that its restoration to an operable condition would require the replacement of two or more major component parts;

(B) For which an insurance company has paid a total loss claim and the vehicle has not been repaired, regardless of the extent of damage to such vehicle or the number of major component parts required to repair such vehicle, but shall not mean or include any stolen motor vehicle which has been recovered with the public manufacturer's vehicle identification number plate intact and the vehicle:

(i) Is undamaged;

(ii) Has only cosmetic damage; or

(iii) Has been damaged but only to the extent that its restoration to an operable condition will not require the replacement of two or more major component parts;

(C) Which is an imported motor vehicle which has been damaged in shipment and disclaimed by the manufacturer as a result of the damage, has never been the subject of a retail sale to a consumer, and has never been issued a certificate of title.

The term salvage motor vehicle shall not include any motor vehicle for which a total loss claim has been paid which vehicle has sustained only cosmetic damage from causes other than fire or flood.

(12) "Security agreement" means a written agreement which reserves or creates a security interest.

(13) "Security interest" means an interest in a vehicle reserved or created by agreement which secures the payment or performance of an obligation, such as a conditional sales contract, chattel mortgage, bill of sale to secure debt, deed of trust, and the like. This term includes the interest of a lessor under a lease intended as security.

(14) "Security interest holder" means the holder of an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation.

History.

Ga. L. 1961, p. 68, § 2; Ga. L. 1962, p. 79, § 1; Ga. L. 1964, p. 178, § 1; Ga. L. 1980, p. 518, § 1; Ga. L. 1981, p. 644, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 152, §§ 1, 2; Ga. L. 1984, p. 781, §§ 1, 2; Ga. L. 1989, p. 1186, § 6; Ga. L. 1990, p. 1657, § 4; Ga. L. 1990, p. 2048, § 3; Ga. L. 1993, p. 1260, § 4; Ga. L. 2000, p. 951, § 4-1; Ga. L. 2001, p. 1173, § 1-5; Ga. L. 2004, p. 452, § 1; Ga. L. 2005, p. 334, § 15-1/HB 501; Ga. L. 2007, p. 635, § 1/HB 183.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, a comma was deleted following "Code Section 40-1-1" in paragraph (3).

Law reviews.

For note on 1990 amendment of this

Code section, see 7 Georgia St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

"Lien" excludes security interests. — "Lien," as used in Ga. L. 1964, p. 178, § 1 (see now O.C.G.A. § 40-3-2) , means a lien created by operation of law and not by contract, thus excluding security interests. Atlanta Truck Serv., Inc. v. Associates Com. Corp., 146 Ga. App. 170, 246 S.E.2d 2, 1978 Ga. App. LEXIS 2200 (1978).

Creation of security interest by leasing. — Mere holding of title as a lessor of a leased motor vehicle does not give rise to a security interest therein, unless the interest arose under a lease intended as security. First Nat'l Bank v. Strother Ford, Inc., 188 Ga. App. 749, 374 S.E.2d 203, 1988 Ga. App. LEXIS 1201 (1988) (decided under former Article 9).

"Security interest holder" not purchaser or vendee. — "Security interest holder" is not a purchaser or vendee of, or a successor in title to, the motor vehicle in question; rather, even though in physical possession of the vehicle's certificate of title, the possessor is only the holder of a legally recognized interest therein. Wooten v. G.M.H. Auto Sales, Inc., 187 Ga. App. 331, 370 S.E.2d 165, 1988 Ga. App. LEXIS 689 (1988).

Effect of foreclosure on mechanic's lien. — Automobile lessor does not, merely by initiating a foreclosure action in regard to a vehicle, thereby acquire any status as a secured party for purposes of obtaining a priority over the holder of a prior validly perfected mechanic's lien. First Nat'l Bank v. Strother Ford, Inc., 188 Ga. App. 749, 374 S.E.2d 203, 1988 Ga. App. LEXIS 1201 (1988).

Liability for incomplete compliance with recording and insurance provisions. — When a seller delivered possession of the automobile to the buyer and the transaction was complete as between them, even though compliance had not yet been made with the applicable recording and insurance provisions, the buyer was the "owner" of the automobile, and the buyer alone, and not the seller or the seller's insurer, was liable to a third party for injuries sustained in an accident while the buyer was driving the automobile. American Mut. Fire Ins. Co. v. Cotton States Mut. Ins. Co., 149 Ga. App. 280, 253 S.E.2d 825, 1979 Ga. App. LEXIS 1818 (1979).

Potential owners. — Under Ga. L. 1961, p. 68, (see now O.C.G.A. § 40-3-1 et seq.), the owner of an automobile must necessarily be a natural person, firm, copartnership, association, or corporation. A person doing business in a trade name could be none of these except a natural person. Samples v. Georgia Mut. Ins. Co., 110 Ga. App. 297, 138 S.E.2d 463, 1964 Ga. App. LEXIS 607 (1964).

Bulldozer. — Caterpillar 977L Traxcavator does not fall under definition of "motor vehicle" found either in O.C.G.A. § 10-1-31(a)(4) or general definition of "motor vehicle" under O.C.G.A. § 40-1-1(33) but does fit the definition of "special mobile equipment" under O.C.G.A. § 40-1-1(59). Battle v. Yancey Bros. Co., 157 Ga. App. 277, 277 S.E.2d 280, 1981 Ga. App. LEXIS 1779 (1981).

"Rebuilt motor vehicle" construed. — Motor vehicle which was a welded-together composite of parts of two cars was a "rebuilt motor vehicle" rather than a "salvage motor vehicle." Bill Davidson Buick, Inc. v. Sims, 187 Ga. App. 81, 369 S.E.2d 285, 1988 Ga. App. LEXIS 595 (1988).

Security agreement not required. — To the extent that a debtor argued that a creditor's security interest had to be in writing, the need for a writing, as contemplated by O.C.G.A. § 40-3-2, was obviated because the debtor admitted on the stand that a vehicle constituted the collateral for the loans the creditor made to the debtor. Allen v. Santana, 303 Ga. App. 844, 695 S.E.2d 314, 2010 Ga. App. LEXIS 422 (2010).

OPINIONS OF THE ATTORNEY GENERAL

No particular form of "security instrument" is prescribed by Ga. L. 1961, p. 68 (see now O.C.G.A. Ch. 3, T. 40), and any written agreement that secures the payment or performance of an obligation should suffice as a "security instrument." 1962 Ga. Op. Att'y Gen. 308.

Caterpillar tractor, hyster, and bulldozer. — Caterpillar tractor, hyster, and bulldozer used in snaking logs from swamps are "special mobile equipment." 1965-66 Op. Att'y Gen. No. 66-109.

Security interest must be perfected. — Security interest must first be perfected in accordance with the Uniform Commercial Code (see now O.C.G.A. T. 11), and then in accordance with Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.), for "special mobile equipment." 1965-66 Op. Att'y Gen. No. 66-109.

Mobile home considered "vehicle." — Mobile home is included under the definition of the term "vehicle" as a mobile home is a device by which a person or property may be transported or drawn upon a highway. 1962 Ga. Op. Att'y Gen. 303.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 38, 47, 50. 51 Am. Jur. 2d, Liens, §§ 1, 3.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 96 et seq., 193.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 1.

ALR.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

40-3-3. Powers and duties of commissioner.

(a) The commissioner is responsible for the administration of this chapter and may employ such clerical assistants and agents as may be necessary from time to time to enable the commissioner speedily, completely, and efficiently to perform the duties conferred on the commissioner in this chapter. The commissioner shall be authorized to delegate any administrative responsibility for retention of applications, certificates of title, notices of security interest, and any other forms or documents relating to the application and registration process to the appropriate authorized tag agent for the county in which the application is made or the registration is issued.

(b) The commissioner shall prescribe and provide suitable forms of applications, certificates of title, notices of security interest, and all other notices and forms necessary to carry out this chapter.

(c) The commissioner may:

(1) Make necessary investigation to procure information required to carry out this chapter;

(2) Adopt and enforce reasonable rules and regulations to carry out this chapter; and

(3) Assign a new identifying number to a vehicle if it has none, or its identifying number is destroyed or obliterated, and shall either issue a new certificate of title showing the new identifying number or make an appropriate endorsement on the original certificate.

History.
Ga. L. 1961, p. 68, § 3; Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 5; Ga. L. 1997, p. 739, § 4.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "and" was added at the end of paragraph (c)(2).

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 29 et seq., 39, 40.

40-3-4. Exclusions from issuance of certificate of title.

No certificate of title shall be obtained for:

(1) A vehicle owned by the United States unless it is registered in this state;

(2) A vehicle owned by a manufacturer of or dealer in vehicles and held for sale, even though incidentally used on the highway or used for purpose of testing or demonstration; a vehicle owned by a manufacturer headquarters or its affiliate and registered and licensed pursuant to Code Section 40-2-38; a vehicle owned by a dealer in vehicles but used by any Georgia public or private school for driver education purposes; or a vehicle used by a manufacturer solely for testing; except that all dealers acquiring new vehicles after July 1, 1962, from a manufacturer for resale shall obtain such evidence of origin of title from the manufacturer as the commissioner shall by rule and regulation prescribe;

(3) A vehicle owned by a nonresident of this state and not required by law to be registered in this state;

(4) A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state;

(5) A vehicle moved solely by human or animal power;

(6) An implement of husbandry;

(7) Special mobile equipment;

(8) A self-propelled wheelchair or invalid tricycle;

(9) A pole trailer;

(10) Motor buses used for the transportation of persons by a street railroad or other company engaged in the operation of an urban transit system over fixed routes;

(11) A boat trailer;

(12) A homemade trailer;

(13) A device used exclusively upon stationary rails or tracks or which obtains motive power from fixed overhead electric wires;

(14)(A) A vehicle, other than a mobile home or crane, the model year of which is prior to 1986.

(B) The owner of any vehicle which has a valid certificate of title and which becomes subject to the exclusion provided in subparagraph (A) of this paragraph may retain the certificate of title. Each subsequent transferee of any vehicle covered by subparagraph (A) of this paragraph, for which the certificate of title has been retained, may obtain a certificate of title by complying with Code Section 40-3-32. However, the failure of any subsequent transferee to comply with Code Section 40-3-32 shall preclude transferees subsequent to that transferee from obtaining a certificate of title. The department shall maintain such records as may be necessary to allow owners to obtain a certificate of title under this subparagraph. No certificate of title authorized to be issued under this subparagraph shall be issued under Code Section 40-3-28.

(C)(i) A security interest in or lien against a vehicle which is subject to the exclusion provided for in subparagraph (A) of this paragraph and which arises after such vehicle becomes subject to the operation of subparagraph (A) of this paragraph may be perfected in the same manner as such security interests and liens are perfected on vehicles required by this chapter to have certificates of title.

(ii) The transferee of any vehicle which is subject to the exclusion provided for in subparagraph (A) of this paragraph, regardless of whether that vehicle has a certificate of title issued pursuant to subparagraph (B) of this paragraph, shall take such vehicle subject to any security interest or lien perfected under this paragraph;

(15)(A) Except as provided in subparagraph (B) of this paragraph, a trailer with an unladen gross weight of 2,000 pounds or less.

(B) The exclusion provided in subparagraph (A) of this paragraph shall not apply to a travel trailer or camper, regardless of its unladen gross weight;

(16) A vehicle which is not sold for the purpose of lawful highway use;

(17) A vehicle with a model year prior to 1963;

(18) A moped; or

(19) A personal transportation vehicle.

History.

Ga. L. 1961, p. 68, § 4; Ga. L. 1962, p. 79, § 2; Ga. L. 1964, p. 178, § 2; Ga. L. 1980, p. 518, § 2; Ga. L. 1981, p. 617, § 1; Ga. L. 1985, p. 1271, § 1; Ga. L. 1987, p. 655, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 1993, p. 1260, § 5; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 741, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1515, § 1; Ga. L. 1998, p. 1179, §§ 31, 32; Ga. L. 1999, p. 334, § 3; Ga. L. 2000, p. 951, § 4-2; Ga. L. 2002, p. 506, § 4; Ga. L. 2002, p. 512, § 8; Ga. L. 2014, p. 745, § 3/HB 877; Ga. L. 2015, p. 1219, § 3/HB 202.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, "tracks" was substituted for "trucks" in paragraph (13).

The amendment of this Code section by Ga. L. 2002, p. 506, § 4, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 8. See County of Butts v. Strahan, 151 Ga. 417 (1921).

JUDICIAL DECISIONS

Automobile dealers and certificates of title. — Effect of Ga. L. 1961, p. 68, § 4 (see now O.C.G.A. § 40-3-4) is that the only way to create security interests in automobiles now is by the method provided in that section, which does not apply to or affect dealers holding automobiles for sale, which automobiles not only need not have a certificate of title, but also pass to buyers in the ordinary course of trade free of the security interest. Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co., 113 Ga. App. 782, 149 S.E.2d 753, 1966 Ga. App. LEXIS 1204, rev'd, 222 Ga. 559, 150 S.E.2d 803, 1966 Ga. LEXIS 553 (1966).

1990 camper did not qualify for exclusion. — Current version of O.C.G.A. § 40-3-4(14)(A) provides that no certificate of title is needed for vehicles manufactured prior to 1986. The camper here was a 1990 model and therefore the camper did not qualify under the exclusion; according to the statute as revised, a certificate of title would be required for a 1990 camper. In re Blair, No. 05-20151, 2005 Bankr. LEXIS 3547 (Bankr. S.D. Ga. June 2, 2005).

Casual vehicle use. — Term "incidentally," embraced in the qualification of the exclusion from Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) expressed in paragraph (2) of Ga. L. 1961, p. 68, § 4 (see now O.C.G.A. § 40-3-4) indicates a use which is merely casual and not the prime purpose of the holding for sale. First Nat'l Bank & Trust Co. v. Smithloff, 119 Ga. App. 284, 167 S.E.2d 190, 1969 Ga. App. LEXIS 1076 (1969).

Holding not subject to leasehold interest. — Notwithstanding that a lease is a sale of a leasehold interest, the phrase "held for sale" should not be construed to mean a holding subject to a lease hold interest, which would contemplate regular, not incidental, use on the highway. First Nat'l Bank & Trust Co. v. Smithloff, 119 Ga. App. 284, 167 S.E.2d 190, 1969 Ga. App. LEXIS 1076 (1969).

Vehicles subject to mechanics liens. — Vehicles referred to in Ga. L. 1969, p. 68, § 23 (see now O.C.G.A. § 40-3-54) as being subject to mechanics liens which may be asserted by retention of the vehicle are those which are required to have certificates of title. Peoples, Inc. v. DeVane, 114 Ga. App. 597, 152 S.E.2d 649, 1966 Ga. App. LEXIS 863 (1966).

Motor cranes propelled by the separate motor on a truck are not special mobile equipment within the meaning of

paragraph (7) of Ga. L. 1961, p. 68, § 4 (see now O.C.G.A. § 40-3-4). Citizens & S. Nat'l Bank v. Georgia Steel, Inc., 25 B.R. 796, 1982 Bankr. LEXIS 5163 (Bankr. M.D. Ga. 1982).

When vehicle is 15 model years old. — Evidence in the form of a letter and accompanying tables from the Georgia Department of Revenue indicated a 1978 vehicle became 15 model years old as of September 1, 1991, and a 1979 vehicle became 15 model years old as of September 1, 1992. Perkins v. Gilbert, 169 B.R. 455, 1994 Bankr. LEXIS 997 (Bankr. M.D. Ga. 1994).

Lapsing of security interest prevented by bankruptcy. — Although secured creditor's security interest was due to expire on date the vehicle became 15 model years old, the filing of the debtor's bankruptcy petition prevented any lapse of the security interest. Perkins v. Gilbert, 169 B.R. 455, 1994 Bankr. LEXIS 997 (Bankr. M.D. Ga. 1994).

OPINIONS OF THE ATTORNEY GENERAL

Obtaining title in foreign state. — Vehicle owner whose vehicle is engaged in interstate transportation may, at the owner's option, elect not to title the vehicle in Georgia, but may rely on the permissive exemptions and title the vehicle in some other state. 1963-65 Ga. Op. Att'y Gen. 425.

Perfecting special mobile equipment's security interest. — Security interest must first be perfected in accordance with the Uniform Commercial Code (see now O.C.G.A. T. 11), and then in accordance with Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.), for special mobile equipment. 1965-66 Op. Att'y Gen. No. 66-109.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36 et seq., 68, 84 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 29 et seq., 96 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 2.

ALR.

Construction and application of exemption or exception provisions of statutes requiring registration of motor vehicle, 91 A.L.R. 422.

40-3-5. Stolen, converted, and recovered vehicles.

(a) **Duties of peace officers.** A peace officer who learns of the theft of a vehicle not since recovered shall report the theft to the commissioner. A peace officer who learns of the recovery of a vehicle whose theft or conversion he knows or has reason to believe has been reported to the commissioner shall forthwith report the recovery to the commissioner.

(b) **Owner's, security holder's, or lienholder's report.** An owner or a security interest holder or lienholder shall report the theft of a vehicle, or its conversion if a crime, to the commissioner. A person who has so reported the theft or conversion of a vehicle shall, after learning of its recovery, immediately report the recovery to the commissioner.

(c) **Records to be kept by commissioner; distribution.** The

commissioner shall maintain appropriately indexed weekly and cumulative public records of stolen, converted, and recovered vehicles reported to him pursuant to this Code section. The commissioner may make and distribute copies of the weekly records so maintained to peace officers upon request without fee and to others for the fee, if any, the commissioner prescribes.

(d) **Action by commissioner.** The commissioner may suspend the registration of a vehicle whose theft or conversion is reported to him pursuant to this Code section, and until the commissioner learns of its recovery or that the report of its theft or conversion was erroneous he shall not issue a certificate of title for the vehicle.

History.
Ga. L. 1961, p. 68, § 32; Ga. L. 1980, p. 995, § 9; Ga. L. 1990, p. 2048, § 3.
Cross references.
Penalty for motor vehicle theft, § 16-8-12.
Duty of law enforcement officers to report stolen motor vehicles or plates to Georgia Crime Information Center, § 35-1-4.
Penalty for false report of theft or conversion of motor vehicle, § 40-3-92.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 388, 389.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 35.
ALR.
Nature and extent of insured's duty to seek retrieval of stolen automobile, 9 A.L.R.4th 405.

40-3-6. Hearings; judicial review.

(a) A person aggrieved by an act or omission to act of the department under this chapter is entitled, upon request, to a hearing. The commissioner shall establish a board to hear complaints of persons aggrieved by an act or omission to act of the commissioner or any employee of the department pertaining to the administration of this chapter. The procedure established in this chapter for the handling of complaints and grievances shall be exclusive and these procedures shall apply to all such complaints and grievances. The commissioner shall promulgate rules and regulations governing the membership of the board and the organization thereof.

(b) Hearings conducted under subsection (a) of this Code section shall be conducted under the terms and conditions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and court review of such hearings shall be as provided by that chapter.

History.
Ga. L. 1961, p. 68, §§ 29, 30; Ga. L. 1963, p. 32, § 2; Ga. L. 1965, p. 304, § 10; Ga. L. 1984, p. 1194, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 2000, p. 951, § 4-3.

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21 and 48-2-59 provide plaintiff challenging automobile "title transfer fee" with "plain, speedy and efficient" pre-tax and post-tax remedies by which a taxpayer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

OPINIONS OF THE ATTORNEY GENERAL

Payment of damages by Department of Revenue. — If the board to hear complaints and claims finds that an act or omission of the commissioner or one of the commissioner's employees in the administration of Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) has caused monetary damage, the Department of Revenue can legally pay the claim. 1965-66 Op. Att'y Gen. No. 66-223.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) §§ 29, 30.

ARTICLE 2

CERTIFICATES OF TITLE

RESEARCH REFERENCES

ALR.
Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 A.L.R.4th 184.

40-3-20. Certificate of title prerequisite to registration; documentation required to register a vehicle purchased outside state.

(a) Except as provided in Code Section 40-3-4, every owner of a vehicle which is required by law to be registered in this state and for which no certificate of title has been issued by the commissioner may make application to the commissioner or to the tag agent in the county wherein the owner resides for a certificate of title to the vehicle according to the model of the vehicle. If a vehicle is owned by and used in connection with an established business, application may be made to the commissioner or to the tag agent in the county in which the business is located. Such application shall be made in the following manner: All 1963 model vehicles and all successive model vehicles thereafter shall have a certificate of title. However, once a vehicle comes

within the exclusion provided by paragraph (14) of Code Section 40-3-4, a certificate of title shall no longer be required.

(b) The commissioner may by rule or regulation exempt from the requirements of this chapter vehicles owned by nonresident individuals or corporations that are properly titled in the state of such owner's residence where the vehicle is required to be registered in this state because:

(1) Georgia has no reciprocity agreement on registration and licensing of motor vehicles with the owner's state; or

(2) The vehicle is used in both interstate and intrastate transportation.

(c) When the owner of a vehicle is required to have a certificate of title, the tag agent or the commissioner shall not register or renew the registration of such vehicle until a certificate of title has been issued or applied for.

(d) No application for a certificate of title for a vehicle purchased outside the State of Georgia shall be accepted or processed unless the applicant shows, by a valid bill of sale or contract of purchase or by such other documentation satisfactory to the commissioner, that state and local sales and use tax has been paid or is not due. If state and local sales and use tax is owed on such vehicle but has not been paid, the local tag agent shall return the unprocessed application to the applicant informing him or her of the requirements of this Code section.

History.

Ga. L. 1961, p. 68, § 6; Ga. L. 1962, p. 79, § 4; Ga. L. 1963, p. 32, § 1; Ga. L. 1964, p. 436, § 1; Ga. L. 1967, p. 451, § 1; Ga. L. 1981, p. 617, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 2005, p. 1132, § 1/HB 364.

Cross references.

Filing to perfect security interests, generally, § 11-9-310.

Law reviews.

For comment on Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Security interest perfected only by filing under section. — Only way to perfect a security interest in any automobile since the enactment of the Uniform Commercial Code (see now O.C.G.A. T. 11) is by filing under former Code 1933 § 68-406 (see now O.C.G.A. § 40-3-20). Harper v. Avco Fin. Servs., Inc., 124 Ga. App. 6, 183 S.E.2d 89, 1971 Ga. App. LEXIS 790 (1971), but see In re Chappell, 224 B.R. 507, 1998 Bankr. LEXIS 1109 (Bankr. M.D. Ga. 1998).

Retroactive validity of late-perfected security interest. — Late-perfected security interest is not retroactively valid against an innocent third party who acquired the automobile for value. Harper v. Avco Fin. Servs., Inc., 124 Ga. App. 6, 183 S.E.2d 89, 1971 Ga. App. LEXIS 790 (1971), but see In re

Chappell, 224 B.R. 507, 1998 Bankr. LEXIS 1109 (Bankr. M.D. Ga. 1998).

Use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369, 1973 U.S. Dist. LEXIS 12015 (M.D. Ga. 1973).

Permanently attached mobile home. — "Double-wide" mobile home unit which has become permanently attached to the land on which the mobile home is placed ceases to be a "vehicle" under the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., so that a security interest is obtained by recording a security deed to the land and the "improvements thereon" rather than placing a lien on the mobile home under the vehicle title act. Walker v. Washington, 837 F.2d 455, 1988 U.S. App. LEXIS 1665 (11th Cir. 1988).

Because a Chapter 13 debtor's evidence as to the condition of a mobile home established that the wheels, axles, and tow tongue were still attached, that the home was not sited on a permanent foundation, and that the home could be removed without real damage either to the home or to the underlying realty, the home was not a fixture within the meaning of O.C.G.A. § 44-1-6(a), the presumption in O.C.G.A. § 40-3-20 that the mobile home was a vehicle was not rebutted, and a secured creditor's interest therein was not protected from modification by 11 U.S.C. § 1322(b)(2). INGOMAR, L.P. v. Collins (In re Collins), No. 05-42982, 2006 Bankr. LEXIS 4652 (Bankr. S.D. Ga. Sept. 14, 2006).

Debtors' mobile home was no longer personal property but instead was a fixture to the realty based on evidence that the debtors removed the tongue device for hitching the mobile home, had placed a curtain around the base of the home, and had made improvements such as landscaping and a car port attached to the mobile home on the land. Although a mobile home is initially a vehicle and a lien interest must be noted on the title, once a mobile home becomes a fixture a security interest may be perfected under real estate law. Williamson v. Wash. Mut. Home Loans, Inc., 387 B.R. 914, 2008 Bankr. LEXIS 1585 (Bankr. M.D. Ga. 2008), aff'd, 400 B.R. 917, 2009 U.S. Dist. LEXIS 7939 (M.D. Ga. 2009).

Time delay does not exempt vehicle title requirement. — Fact that the time for obtaining a certificate of title is delayed does not make a vehicle referred to as required to have a certificate of title one that is not required to have a certificate of title. Peoples, Inc. v. DeVane, 114 Ga. App. 597, 152 S.E.2d 649, 1966 Ga. App. LEXIS 863 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner may title older vehicles. — Commission (now the commissioner) may accept the applications for the titling of older model vehicles at any time and may elect to title vehicles as security interests are created with respect thereto. 1963-65 Ga. Op. Att'y Gen. 244.

Obtaining title in foreign state. — Vehicle owner whose vehicle is engaged in interstate transportation may, at the owner's option, elect not to title the vehicle in Georgia, but may rely on the permissive exemptions and title the vehicle in some other state. 1963-65 Ga. Op. Att'y Gen. 425.

Manufactured homes are subject to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and owners thereof are required to obtain a motor vehicle certificate of title. 2000 Op. Att'y Gen. No. 2000-8.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 29 et seq., 88, 90.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq., 283.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 4.

ALR.

License tax or fee on automobiles as affected by interstate commerce clause, 25 A.L.R. 37; 52 A.L.R. 533; 115 A.L.R. 1105.

Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 58 A.L.R.2d 1351.

40-3-21. Application for first certificate of title.

(a) The application for the first certificate of title of a vehicle in this state shall be made to the commissioner's duly authorized county tag agent on the prescribed form. Except as provided in subsection (b) of this Code section, the application shall be submitted to the appropriate authorized county tag agent by the owner of the vehicle within 30 days from the date of purchase of the vehicle or from the date the owner is otherwise required by law to register the vehicle in this state. If the owner does not submit the application within that time, the owner of the vehicle shall be required to pay a penalty of $10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of rejection to resubmit the documents required by the commissioner for the issuance of a certificate of title. Should the documents not be properly resubmitted within the 60 day period, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return the same to the authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents submitted, if the documents have not been resubmitted as required under this subsection. Such application shall contain:

(1) The full legal name, driver's license number, residence, and mailing address of the owner;

(2) A description of the vehicle, including, so far as the following data exist: its make, model, identifying number, type of body, the number of cylinders, and whether new, used, or a demonstrator and, for a manufactured home, the manufacturer's statement or certificate of origin and the full serial number for all manufactured homes sold in this state on or after July 1, 1994;

(3) The date of purchase by the applicant and, except as provided in paragraph (2) of subsection (c) of this Code section, the name and address of the person from whom the vehicle was acquired and the names and addresses of the holders of all security interests and liens in order of their priority; and

(4) Any further information the commissioner reasonably requires to identify the vehicle and to enable the commissioner or the

authorized county tag agent to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle and liens on the vehicle.

(b)(1) As used in this subsection, the term "digital signature" means a digital or electronic method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the digital or electronic signature is invalidated.

(2) If the application refers to a vehicle purchased from a dealer, it shall contain the name and address of the holder of any security interest created or reserved at the time of the sale by the dealer. The application shall be signed by the owner and, unless the dealer's signature appears on the certificate of title or manufacturer's statement of origin submitted in support of the title application, the dealer, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature so long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. The dealer shall mail, deliver, or electronically submit the application to the authorized county tag agent in the county where the vehicle will be registered within 30 days from the date of the sale of the vehicle. If the application is not submitted within that time, the dealer, or in nondealer sales the transferee, shall be required to pay a penalty of $10.00 in addition to the ordinary title fee paid by the transferee provided for in this chapter. If the documents submitted in support of the title application are rejected, the dealer submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of a certificate of title. Should the documents not be properly resubmitted within 60 days, there shall be an additional penalty of $10.00 assessed against the dealer. The willful failure of a dealer to obtain a certificate of title for a purchaser shall be grounds for suspension or revocation of the dealer's state issued license and registration for the sale of motor vehicles.

(c)(1) If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:

(A) Any certificate of title issued by the other state or country; and

(B) Any other information and documents the commissioner reasonably requires to establish the ownership of the vehicle and

the existence or nonexistence of security interests in it and liens against it.

(2) If the application refers to a vehicle last previously registered in another state and if the applicant is the last previously registered owner in such state, the application need not contain the name and address of the person from whom the vehicle was acquired.

History.

Ga. L. 1961, p. 68, § 8; Ga. L. 1962, p. 79, § 6; Ga. L. 1964, p. 436, § 2; Ga. L. 1981, p. 883, §§ 1, 2; Code 1981, § 40-3-22; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1271, § 2; Ga. L. 1986, p. 438, § 1; Code 1981, § 40-3-21, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 741, § 2; Ga. L. 1995, p. 809, § 13; Ga. L. 1997, p. 739, § 5; Ga. L. 2003, p. 500, § 1; Ga. L. 2007, p. 652, § 8/HB 518; Ga. L. 2018, p. 287, § 4/HB 329.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "exist" was substituted for "exists" in paragraph (a)(2).

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21 and 48-2-59 provide plaintiff challenging automobile "title transfer fee" with "plain, speedy and efficient" pre-tax and post-tax remedies by which a taxpayer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

Title passage when certificate not previously issued. — Former O.C.G.A. § 40-3-31 (see now O.C.G.A. § 40-3-32) cannot serve to deny passing of right, title, or interest to a purchaser of a vehicle on which a certificate of title has not previously been issued, especially in light of the statutory scheme which contemplates a possible considerable lapse of time between the actual purchase of a new vehicle and the issuance of the certificate of title. Owensboro Nat'l Bank v. Jenkins, 173 Ga. App. 775, 328 S.E.2d 399, 1985 Ga. App. LEXIS 1688 (1985).

Strict requirements for issuance of certificate of title. — Requirements to be met for issuance of certificate of title are more stringent than those required to perfect a security interest and therefore an application may have enough information for the applicant to have a security interest perfected and yet not enough information for the applicant to receive a certificate of title. Harris v. Ford Motor Credit Co. (In re Smith), 10 B.R. 883, 1981 U.S. Dist. LEXIS 11796 (M.D. Ga. 1981).

Certificate of title from foreign state. — Certificate of title from another state is not on same level as one from Georgia. Wielgorecki v. White, 133 Ga. App. 834, 212 S.E.2d 480, 1975 Ga. App. LEXIS 2307 (1975).

Bank's security interest and unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369, 1973 U.S. Dist. LEXIS 12015 (M.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Establishing ownership through additional documents. — Commissioner has broad discretion as to what additional documents will be required to establish ownership. 1965-66 Op. Att'y Gen. No. 66-200.

Priority of stolen vehicle's original owner's property right. — Issuance of title to another cannot deprive stolen vehicle's original owner of that owner's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 6.

ALR.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

40-3-21.1. Conditional titles; requirements.

For a 1962 or earlier model year motor vehicle, the owner of such motor vehicle may apply to the commissioner through the county tag agent for a conditional title for such motor vehicle. The application shall be made under oath on a form prescribed by the commissioner for such purpose. Such form shall require the applicant to provide such information as the commissioner shall determine, including all liens and other encumbrances known to the applicant at the time of application, which the commissioner shall cause to be listed on the conditional title upon its issuance. Upon receipt of the application, the commissioner or the commissioner's duly authorized county tag agent shall file such application and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a conditional certificate of title under the provisions of this chapter, shall issue a conditional certificate of title for the motor vehicle. The conditional certificate of title shall be clearly marked as such and shall contain a disclaimer that states that the title may not reflect all liens or other encumbrances affecting the motor vehicle. The commissioner may impose a fee for the issuance of a conditional title which shall not exceed $20.00. The duly authorized county tag agent shall retain 50 percent of such fee for the general fund of the county and shall transmit the remaining 50 percent to the department for deposit into the state treasury.

History.

Code 1981, § 40-3-21.1, enacted by Ga. L. 2018, p. 287, § 5/HB 329.

Editor's notes.

This Code section formerly pertained to the fee for a certificate of title for a vehicle titled in another state at the time of application. The former Code section was based on Code 1981, § 40-3-21.1, enacted by Ga. L. 1992, p. 779, § 16; Ga. L. 1993, p. 1260, § 6, and was repealed by Ga. L. 1996, p. 5, § 1, effective February 9, 1996.

40-3-22. Examination of records.

(a) The commissioner or the commissioner's duly authorized county tag agent, upon receiving application for a first certificate of title, shall check the identifying number of the vehicle shown in the application against the records of vehicles required to be maintained by Code Section 40-3-23 and against the record of stolen and converted vehicles required to be maintained by Code Section 40-3-5.

(b) Subsection (a) of this Code section shall not be applicable to an application for the first certificate of title of a new car or a demonstrator when such application is accompanied by a manufacturer's certificate of origin.

History.
Ga. L. 1961, p. 68, § 9; Code 1981, § 40-3-23; Code 1981, § 40-3-22, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 6.

OPINIONS OF THE ATTORNEY GENERAL

Priority of stolen vehicle's original owner's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 96 et seq., 273.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) §§ 7, 8.

40-3-23. Issuance of certificate of title; maintenance of record of certificates issued; public inspection; furnishing records for fee; electronic format.

(a) The commissioner or the commissioner's duly authorized county tag agent shall file each application received and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle.

(b) The commissioner or the commissioner's duly authorized county tag agent shall maintain a record of all certificates of title issued:

(1) Under a distinctive title number assigned to the vehicle;

(2) Under the identifying number of the vehicle;

(3) Alphabetically, under the name of the owner;

(4) Under the vehicle tag registration number; and

(5) In the discretion of the commissioner, in any other method the commissioner determines.

(c) The commissioner or the commissioner's duly authorized county tag agent is authorized and empowered to provide for photographic and photostatic recording of certificate of title records in such manner as the commissioner or the commissioner's duly authorized county tag agent may deem expedient. The photographic or photostatic copies authorized in this subsection shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted.

(d) The motor vehicle records which the commissioner or the commissioner's duly authorized county tag agent is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that, subject to subsection (f) of this Code section, the records may be disclosed for use as provided in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, and by the following:

(1) Any licensed dealer of new or used motor vehicles;

(2) Any tax collector, tax receiver, or tax commissioner; and

(3) A person or entity authorized by the commissioner for use in providing notice to the owners of towed or impounded vehicles.

(e) In addition to any public inspection of records authorized under subsection (d) of this Code section, motor vehicle records consisting of vehicle description, title status, title brands, last recorded mileage, recorded liens, or recorded security interests which the commissioner or the commissioner's duly authorized county tag agent is required to maintain under this Code section shall, in such manner and under such conditions as prescribed by the commissioner, be furnished individually or in bulk to any person upon payment of a reasonable fee, for any purpose not otherwise prohibited by law, including without limitation for the purpose of providing information to allow for informed motor vehicle purchase and safety decisions. Records furnished in accordance with this subsection may be subsequently transferred to third parties. Personal information of any registrant, including name, address, date of birth, or driver's license or social security number, shall not be furnished or transferred by or to any person pursuant to this subsection.

(f) Except as otherwise required in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, personal information furnished under paragraphs (1), (2), and (3) of subsection (d) of this

Code section shall be limited to the natural person's name, address, and driver identification number. The personal information obtained by a business under this Code section shall not be resold or redisclosed for any purposes other than those permitted under the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, without the written consent of the individual. Furnishing of information to a business under this Code section shall be pursuant to a contract entered into by such business and the state which specifies the consideration to be paid by such business to the state for such information and the frequency of updates.

(g) The commissioner may provide by rule or regulation for the maintenance of certificate of title records in electronic format and in a system accessible by authorized users. Electronic evidence of a certificate of title maintained in such system shall serve as an accurate and true depiction of the state issued certificate of title for a vehicle. The commissioner may further provide by rule or regulation for the transfer of certificates of title or grant of security interests therein in electronic format through such system between authorized users. Any such electronic certificates of title or electronic transfers or grants of security interests shall be valid for all lawful purposes.

History.

Ga. L. 1961, p. 68, § 10; Ga. L. 1962, p. 79, § 7; Ga. L. 1969, p. 92, § 1; Ga. L. 1981, p. 473, § 1; Code 1981, § 40-3-24; Ga. L. 1982, p. 1784, §§ 1, 2; Code 1981, § 40-3-23, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 7; Ga. L. 2000, p. 951, § 4-4; Ga. L. 2001, p. 1173, § 1-6; Ga. L. 2003, p. 484, § 2; Ga. L. 2004, p. 471, § 9; Ga. L. 2008, p. 803, § 2/HB 945; Ga. L. 2024, p. 147, § 6/HB 1100, effective April 22, 2024.

Amendments.

The 2024 amendment, effective April 22, 2024, added subsection (g).

Law reviews.

For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988).

JUDICIAL DECISIONS

Certified transcript by commissioner showing vehicle lien. — Under Ga. L. 1962, p. 79, § 7 (see now O.C.G.A. § 40-3-23), once a certificate of title is issued, a transcript certified to by the commissioner showing a notice of a lien on a motor vehicle is prima facie evidence of the liens' existence so as to protect the holder as against a subsequent transferee of the vehicle. Capital Auto. Co. v. Continental Credit Corp., 117 Ga. App. 451, 160 S.E.2d 836, 1968 Ga. App. LEXIS 1117 (1968).

Admissibility of copy of application in evidence. — Copy of application is admissible in evidence to the same extent as the original application. Harper v. Green, 115 Ga. App. 525, 154 S.E.2d 762, 1967 Ga. App. LEXIS 1151 (1967).

Records incorporated into investigatory case file. — Although motor vehicle records used by police during the "Atlanta child murders" case were not open for public inspection under the Public Records Act, O.C.G.A. § 50-18-70 et seq., this did not preclude public disclosure when a law-enforcement officer who had inspected the records incorporated information therefrom into an investigatory case file. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640, 1987 Ga. LEXIS 728 (1987).

Disclosure by bank of customer financing. — Disclosure by bank that

customer was involved with motor vehicles financed through bank was not an invasion of privacy based on public disclosure of private facts as at the time of the disclosure, motor vehicle certificates of title were public records open to public inspection. Williams v. Coffee County Bank, 168 Ga. App. 149, 308 S.E.2d 430, 1983 Ga. App. LEXIS 2712 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Access to information in Registration and Title Information System. — Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the purposes mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq., or to those state agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 29. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 648, 1207.

C.J.S.

60 C.J.S., Motor Vehicles, § 96 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 9.

ALR.

Presumption of ownership of automobile by one in whose name it is registered or whose license plates it bears, 103 A.L.R. 138.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

40-3-24. Contents of certificate of title; certificate of title not subject to judicial process.

(a) Each certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent shall contain:

(1) The date issued;

(2) The name and address of the owner;

(3) The names and addresses of the holders of any security interest and of any lien as shown on the application or, if the application is based on a certificate of title, as shown on the certificate;

(4) The title number assigned to the vehicle;

(5) A description of the vehicle, including, so far as the following data exist: its make, model, identifying number, type of body, number of cylinders, whether new, used, or a demonstrator and, if a new vehicle or a demonstrator, the date of the first sale of the vehicle for use; and

(6) Any other data the commissioner prescribes.

(b) The certificate of title shall contain forms for assignment and

warranty of title by the owner, and for assignment and warranty of title by a dealer, and may contain forms for applications for a certificate of title by a transferee or naming of a security interest holder and of a lienholder and the assignment or release of the security interest and lien.

(c) A certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent is prima-facie evidence of the facts appearing on it.

(d) A certificate of title for a vehicle is not subject to garnishment, attachment, execution, or other judicial process, but this subsection does not prevent a lawful levy upon the vehicle.

History.

Ga. L. 1961, p. 68, § 11; Ga. L. 1962, p. 79, § 8; Code 1981, § 40-3-25; Ga. L. 1989, p. 1186, § 7; Code 1981, § 40-3-24, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 8; Ga. L. 2024, p. 1052, § 4(36)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(5).

Law reviews.

For comment on Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Bank's security interest survives owner's use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369, 1973 U.S. Dist. LEXIS 12015 (M.D. Ga. 1973).

What constitutes evidence of ownership. — Application for a certificate of title and a certificate stating that the title has been issued is not a copy of a certificate of title and, therefore, is not entitled to the effect that a certificate of title would have under subsection (c) of Ga. L. 1962, p. 79, § 8 (see now O.C.G.A. § 40-3-24). Harper v. Green, 115 Ga. App. 525, 154 S.E.2d 762, 1967 Ga. App. LEXIS 1151 (1967).

Georgia certificate of title is not conclusive. By being only prima facie evidence of the question of title it can be contradicted by other evidence. Wielgorecki v. White, 133 Ga. App. 834, 212 S.E.2d 480, 1975 Ga. App. LEXIS 2307 (1975).

Certificate of title is prima facie evidence of the ownership of an automobile and is sufficient to prove ownership in the absence of evidence clearly contradicting the facts recited in the certificate. United States v. Elliott, 571 F.2d 880, 1978 U.S. App. LEXIS 11547 (5th Cir.), cert. denied, 439 U.S. 953, 99 S. Ct. 349, 58 L. Ed. 2d 344, 1978 U.S. LEXIS 3715 (1978), cert. denied, 439 U.S. 953, 99 S. Ct. 349, 58 L. Ed. 2d 344 (1978).

"Fact" under subsection (c). — Owner's name stated in the certificate of title is a "fact" within the meaning of subsection (c) of Ga. L. 1962, p. 79, § 8 (see now O.C.G.A. § 40-3-24). Thornton v. Alford, 112 Ga. App. 321, 145 S.E.2d 106, 1965 Ga. App. LEXIS 691 (1965).

Personal signature of the owner is not a "fact" within the meaning of subsection (c) of Ga. L. 1962, p. 79, § 8 (see now O.C.G.A. § 40-3-24) but merely a matter of form in making an application for the

certificate. Thornton v. Alford, 112 Ga. App. 321, 145 S.E.2d 106, 1965 Ga. App. LEXIS 691 (1965).

Reaching debtor by garnishing title in bank's hands. — Judgment creditor cannot reach the debtor's rights in vehicles, certificates of title to which are held by the bank as security interests for the debtor's loans by attempting to garnish the certificates of title in the bank's hand. Cobb Bank & Trust Co. v. Springfield, 145 Ga. App. 753, 245 S.E.2d 42, 1978 Ga. App. LEXIS 2120 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Priority of stolen vehicle's original owner's property right. — Issuance of title to another cannot deprive stolen vehicle's original owner of that owner's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31.

C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq.

40-3-25. Entry of odometer reading on certificate of title upon sale or transfer of vehicle; certain vehicles exempted.

(a) In addition to the information required by Code Section 40-3-24, each certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent shall contain spaces thereon for the entry of the mileage of the motor vehicle as shown on the odometer of such motor vehicle at the time of its sale or transfer. When a demonstrator or a new motor vehicle is sold by a dealer, it shall be the duty of the dealer to insert on the application for the certificate of title and on the manufacturer's statement of origin where assigned to the first retail purchaser the mileage of such motor vehicle as shown on its odometer on the day of the sale. When the owner of a motor vehicle sells or transfers such motor vehicle, such owner shall enter on the certificate of title the mileage as shown on the odometer of such motor vehicle at the time such owner executes the assignment and warranty of title. When a new certificate of title is issued for a previously titled motor vehicle, the odometer reading as recorded on the old certificate of title shall be shown on the new certificate of title. When a replacement certificate of title is issued to the owner of a lost, stolen, mutilated, or destroyed certificate of title, the mileage as shown on the odometer on the day application is made for the replacement certificate of title shall be shown on the replacement certificate of title.

(b) Notwithstanding any other provision of this Code section, the requirement of disclosure of the odometer mileage on certificates of title shall not be required for a motor vehicle:

(1) With a gross vehicle weight rating of more than 16,000 pounds;

(2) Manufactured in or before the 2010 model year and is transferred at least ten years after January 1 of the calendar year corresponding to its designated model year; or

(3) Manufactured in or after the 2011 model year and is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model.

(c) The commissioner is authorized and directed to provide by regulation for the implementation of this Code section.

History.
Ga. L. 1981, p. 517, § 1; Code 1981, § 40-3-25.1; Ga. L. 1988, p. 1340, § 2; Ga. L. 1989, p. 1186, § 8; Code 1981, § 40-3-25, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 9; Ga. L. 2021, p. 657, § 1/HB 210.

Cross references.
Penalty for tampering with odometers, § 40-8-5.
Regulation of used car dealers generally, § 43-47-1 et seq.

40-3-26. Delivery; notice; security interest holders and lienholders.

(a)(1) The certificate of title shall be mailed or delivered to the holder of the first security interest or lien named in it. In the event there is no security interest holder or lienholder named in such certificate, the certificate of title shall be mailed or delivered directly to the owner.

(2) The commissioner may enter into agreements with any such security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such security interest or lien. On or after January 1, 2013, the commissioner shall require that security interest holders and lienholders receive notice of recordings of security interests and liens electronically. Such requirement may be phased in based on criteria designated by the commissioner through duly adopted rules and regulations. Such security interest or lien shall remain on the official records of the department until such time as the security interest or lien is released by secure electronic measures or affidavit of lien or security interest release; after which release, or at the request of the lienholder or security interest holder, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or as otherwise provided by paragraph (1) of this subsection without payment of any fee provided by Code Section 40-3-38.

(3) If the certificate of title has not been electronically delivered as provided for in paragraph (2) of this subsection, in lieu of delivering a certificate of title, the commissioner may deliver to any security

interest holder or lienholder a confirmation form stating the certificate of title is available for printing:

(A) When such confirmation is presented to the commissioner's duly authorized county tag agent or to the commissioner requesting delivery of the title in accordance with this Code section;

(B) When the security interest or lien is satisfied and the confirmation form is delivered to the owner stating the security interest or lien is satisfied and released. The owner may then present the confirmation letter to the commissioner's duly authorized county tag agent or the commissioner for printing in accordance with this Code section; or

(C) When the security interest holder or lienholder delivers the confirmation form to the commissioner's duly authorized county tag agent or the commissioner stating the security interest or lien is satisfied and released and provides an alternate delivery address to include any subsequent security interest holder, lienholder, vehicle dealer, or other business with an interest in such vehicle.

(4) In the event the confirmation form is lost or stolen, the security interest holder or lienholder shall file an affidavit stating the circumstances under which the confirmation form was lost or stolen. Upon receipt, the commissioner shall deliver a certificate of title in accordance with this Code section.

(b) If the certificate of title is mailed to a security interest holder or lienholder, such person shall notify by mail all other lien or security interest holders that such person has received the certificate of title. The notice shall inform the security interest holder or lienholder of the contents and information reflected on such certificate of title. Such mailing or delivery shall be within five days, exclusive of holidays, after the receipt of the certificate by the holder of any security interest or lien.

(c) The security interest holder or lienholder may retain custody of the certificate of title until such security interest holder's or lienholder's claim has been satisfied. The security interest holder or lienholder having custody of a certificate of title must deliver the certificate of title to the next lienholder or security interest holder within ten days after such custodial security interest holder's or lienholder's lien or security interest has been satisfied and, if there is no other security interest holder or lienholder, such custodial security interest holder or lienholder must deliver the certificate of title to the owner.

(d) If a lien or security interest has been electronically recorded, the release of such lien or security interest will require the lienholder to

notify the commissioner and the owner of the vehicle, on a form prescribed by the commissioner, or by electronic means approved by the commissioner, of the release of the lien or security interest. Such notice will inform the owner that such owner may request a title free of lien, upon verification of such owner's current mailing address, from the commissioner as provided in Code Section 40-3-56.

History.

Ga. L. 1961, p. 68, § 12; Ga. L. 1962, p. 79, § 9; Ga. L. 1964, p. 436, § 3; Ga. L. 1965, p. 304, § 1; Ga. L. 1974, p. 594, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 10; Ga. L. 2000, p. 951, § 4-5; Ga. L. 2010, p. 143, § 7/HB 1005; Ga. L. 2012, p. 580, § 2/HB 865.

Law reviews.

For comment on Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Effective notice of condemnation proceeding. — When the owner or lessee of a vehicle conveying or storing contraband is a nonresident, service by publication is effective notice of the condemnation proceeding, and whether the owner or lessee's security interest could be perfected is irrelevant. Taylor v. State Bank, 119 Ga. App. 50, 165 S.E.2d 920, 1969 Ga. App. LEXIS 973 (1969).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 40, 45, 161 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 96 et seq., 103 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 10.

ALR.

Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813.

40-3-27. Reflection of subsequent transactions.

(a) Whenever the certificate of title is in the possession of a security interest holder or lienholder as allowed by this chapter and some other person, including the owner, who has an interest in a transaction concerning a security interest or lien shown on the certificate of title desires to have that transaction reflected on the certificate of title, such security interest holder or lienholder may execute a notice of that transaction in the form prescribed by the commissioner, setting forth the details of the transaction such security interest holder or lienholder desires to be reflected on the certificate of title. The notice, a fee as provided by Code Section 40-3-38, and the title application shall be mailed by certified mail or statutory overnight delivery, return receipt requested, by the person desiring the change to the first security interest holder or lienholder having possession of the certificate of title.

The notice shall contain on its face instructions to the security interest holder or lienholder having custody of the certificate of title directing such security interest holder or lienholder within ten days to forward the notice, the fee, the title application, and the certificate of title to the commissioner or the commissioner's duly authorized county tag agent. The first security interest holder or lienholder having possession of the certificate of title shall comply with the instructions contained in the notice. The commissioner or the authorized county tag agent, upon receipt of such a notice and title application, together with the fee and certificate of title, shall enter the transaction shown on the notice on such commissioner's or authorized county tag agent's records and on the certificate of title or issue a new certificate of title and shall then deliver the certificate of title as provided for in this chapter. The person desiring the change shall retain the return certified mail or statutory overnight delivery receipt as proof of such person's compliance with this Code section.

(b) In the event the first security interest holder or lienholder holding the certificate of title fails, refuses, or neglects to forward the title application, notice, fee, and original certificate of title to the commissioner or the commissioner's duly authorized county tag agent, as required by this Code section, the person desiring the change may, on a form prescribed by the commissioner, make direct application to the commissioner or the authorized county tag agent. Such direct application to the commissioner or the authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the first security interest holder or lienholder. Upon receipt of such a direct application, the commissioner or the authorized county tag agent shall order the first security interest holder or lienholder having custody of the certificate of title to forward the certificate of title to the commissioner or the authorized county tag agent for the purpose of having the subsequent transaction entered thereon or a new certificate of title issued. If, after a direct application to the commissioner or the authorized county tag agent and the order of the commissioner or authorized county tag agent, the first security interest holder or lienholder continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the outstanding certificate of title and issue a new certificate of title reflecting all security interests and liens, including the subsequent security interest, and this new certificate of title shall be delivered as provided for in this chapter.

(c) As an alternative to mailing notices of transactions concerning a security interest or lien on the certificate of title to the commissioner or the commissioner's appropriate authorized county tag agent in accor-

dance with this Code section, the commissioner shall be authorized to permit the transaction to be made by electronic means in accordance with regulations promulgated by the commissioner.

(d) Any first security interest holder or lienholder having possession of a certificate of title shall not have the validity of such first security interest holder's or lienholder's security interest or lien affected by surrendering the certificate of title as provided by this Code section.

History.
Ga. L. 1965, p. 304, § 2; Ga. L. 1981, p. 883, § 4; Ga. L. 1986, p. 438, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 11; Ga. L. 1998, p. 1179, § 33; Ga. L. 2000, p. 1589, § 3.

40-3-28. Registration of vehicle where commissioner not satisfied as to ownership of vehicle; bond.

If the commissioner or the commissioner's duly authorized county tag agent is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the commissioner or authorized county tag agent may register the vehicle, but shall either: (1) withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the commissioner or authorized county tag agent as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or (2) as a condition of issuing a certificate of title, require the applicant to file with the commissioner or authorized county tag agent a bond in the form prescribed by the commissioner and executed by the applicant and by a bonding, surety, or insurance company licensed to do business in Georgia. The bond shall be in an amount equal to the value of the vehicle as determined by the commissioner or authorized county tag agent and payable to the commissioner for the benefit of any prior owner, lienholder, or security interest holder, and any subsequent purchaser of the vehicle or person acquiring any security interest or lien on it, and their respective successors in interest, against any expense, loss, or damage, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. The commissioner shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall expire at the end of four years unless the commissioner or authorized county tag agent has been notified of a breach of a condition of the bond.

History.
Ga. L. 1967, p. 450, § 1; Ga. L. 1973, p. 712, § 1; Ga. L. 1976, p. 319, § 1; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 12; Ga. L. 2002, p. 838, § 3.

JUDICIAL DECISIONS

Effect on UCC warranties. — Issuance of certificates of title pursuant to O.C.G.A. § 40-3-28 does not, as a matter of law, negate the existence of express or implied warranties of title which the seller gives the purchaser in the course of their dealings. Hudson v. Gaines, 199 Ga. App. 70, 403 S.E.2d 852, 1991 Ga. App. LEXIS 378 (1991).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 40, 45, 161 et seq.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 96 et seq., 273, 274, 276.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 11.

40-3-29. Refusal to issue certificate of title.

(a) The commissioner or the commissioner's duly authorized county tag agent shall refuse issuance of a certificate of title only if any required fee is not paid or if the commissioner or the commissioner's duly authorized county tag agent has reasonable grounds to believe that:

(1) The applicant is not the owner of the vehicle;

(2) The application contains a false or fraudulent statement;

(3) The applicant fails to furnish required information or documents or any additional information the commissioner or authorized county tag agent reasonably requires; or

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

(b) If the application for first certificate of title is rejected, the application shall be returned to the holder of the first security interest or lien named in the application or to the owner if there is no security interest holder or lienholder.

History.
Ga. L. 1961, p. 68, § 13; Ga. L. 1982, p. 403, §§ 1, 3; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 13.

JUDICIAL DECISIONS

Stringent requirements. — Requirements to be met for issuance of certificate of title are more stringent than those required to perfect a security interest and therefore an application may have enough information for the applicant to have a security interest perfected and yet not enough information for the applicant to receive a certificate of title. Harris v. Ford Motor Credit Co. (In re Smith), 10 B.R. 883, 1981 U.S. Dist. LEXIS 11796 (M.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Refusing title to nonresidents. — If the owner of a bus used in an interstate business, but required to be registered in Georgia, is a resident of a foreign state and elects to title the owner's vehicle in Georgia, the commissioner may refuse to title such a vehicle only on the grounds specified by Ga. L. 1961, p. 68, § 13 (see now O.C.G.A. § 40-3-29). 1963-65 Ga. Op. Att'y Gen. 425.

Priority of stolen vehicle's original owner's property right. — Issuance of title to another cannot deprive stolen vehicle's original owner of that person's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 96 et seq., 273, 274, 276.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 12.

40-3-30. Requirement of compliance with federal safety standards.

(a) In addition to the reasons set forth in Code Section 40-3-29, no application shall be accepted and no certificate of title shall be issued to any motor vehicle which was not manufactured to comply with applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs Service or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards and unless all documents required by the commissioner for processing an application for a certificate of registration or title are printed and filled out in the English language or are accompanied by an English translation.

(b) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of title for such motor vehicles first titled in Georgia that have a manufactured date that is 25 years or older at the time of application. Certification of compliance shall only be required at the time of application for the issuance of the initial Georgia certificate of title.

(c) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of title for former military motor vehicles that are less than 25 years old and manufactured for the United States military.

(d) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of title for converted motor vehicles as such term is defined in Code Section 40-3-30.1.

History.
Code 1981, § 40-3-29.1, enacted by Ga. L. 1985, p. 693, § 2; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-3-30, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 4-6; Ga. L. 2002, p. 512, § 9; Ga. L. 2002, p. 1378, § 3; Ga. L. 2014, p. 409, § 3/SB 392; Ga. L. 2020, p. 349, § 3/HB 877.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 40-3-29.1 are included in the annotations for this Code section.

Former O.C.G.A. § 40-3-29.1 violated the preemption clause of the federal Clean Air Act, 42 U.S.C. § 7543 (a), but did not preempt 15 U.S.C. § 1392 (d) of the National Traffic and Motor Vehicle Safety Act, did not violate the Commerce Clause, and was not unconstitutionally vague. Georgia Auto. Importers Compliance Ass'n v. Bowers, 639 F. Supp. 352, 1986 U.S. Dist. LEXIS 24185 (N.D. Ga. 1986) (decided under former O.C.G.A. § 40-3-29.1).

40-3-30.1. Standards for issuance to assembled motor vehicle and motorcycle or converted motor vehicle; inspections; unconventional motor vehicle or motorcycle not to be titled or registered; exception.

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

(1) "Assembled motor vehicle or motorcycle" means any motor vehicle or motorcycle that is:

(A) Manufactured from a manufacturer's kit or manufacturer's fabricated parts, including replicas and original designs:

(i)(I) By an owner; or

(II) At the request of the owner by a third-party manufacturer of motor vehicles or motorcycles; and

(ii)(I) Such owner or third-party manufacturer is not manufacturing and testing in accordance with federal safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq.; and

(II) The United States Customs Service or the United States Department of Transportation has not certified that the motor vehicle complies with such applicable federal standards;

(B) A new vehicle and consists of a prefabricated body, chassis, and drive train;

(C) Handmade and not mass produced by any manufacturer for retail sale; or

(D) Not otherwise excluded from emission requirements and is

in compliance with Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles.

(2) "Converted motor vehicle" means any unconventional motor vehicle that has been altered from the original manufactured condition by an owner or third party in order to comply with certain state and federal requirements relating to low-speed vehicles.

(3)(A) "Unconventional motor vehicle or motorcycle" means any motor vehicle or motorcycle that is not manufactured in compliance with the following:

(i) Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles;

(ii) Applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs and Border Protection Agency or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards; or

(iii) Applicable federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, the "Clean Air Act," as amended.

(B) Such term shall not include former military motor vehicles.

(b) In addition to the requirements contained in Code Section 40-3-30, prior to the issuance of a certificate of title to the owner of an assembled motor vehicle or motorcycle, the owner shall cause such assembled motor vehicle or motorcycle to be inspected in order to establish:

(1) The existence of a verifiable Manufacturer's Certificate of Origin (MCO) or other verifiable documentation of purchase of all major components; and

(2) That such assembled motor vehicle or motorcycle complies with:

(A) Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles; and

(B) If applicable, federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, the "Clean Air Act," as amended.

(c) Prior to the issuance of a certificate of title to the owner of a converted motor vehicle, the owner shall cause such converted motor vehicle to be inspected in order to establish that such vehicle complies with:

(1) Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles; and

(2) Standards for low-speed vehicles based upon applicable standards set forth in 49 C.F.R. Section 571.500, as amended.

(d) The inspections conducted under subsection (b) and subsection (c) of this Code section shall only be for the purpose of establishing that such inspected motor vehicle or motorcycle is eligible to receive a certificate of title.

(e) The department shall be authorized to charge an inspection fee.

(f) Unconventional motor vehicles or motorcycles shall not be titled or registered; provided, however, that a multipurpose off-highway vehicle manufactured after January 1, 2000, shall be registered upon proper application and payment of the required fee.

History.
Code 1981, § 40-3-30.1, enacted by Ga. L. 2008, p. 835, § 6/SB 437; Ga. L. 2014, p. 405, § 4/SB 392; Ga. L. 2014, p. 745, § 4/HB 877; Ga. L. 2020, p. 349, § 4/HB 877; Ga. L. 2023, p. 352, § 2-6/HB 121, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, added the proviso at the end of subsection (f).

40-3-31. Replacement of lost, stolen, mutilated, or destroyed certificates of title.

If a certificate of title is lost, stolen, mutilated, or destroyed or becomes illegible, the owner or the legal representative of the owner named in the certificate, as shown by the records of the commissioner or the commissioner's duly authorized county tag agent, shall promptly make application for and may obtain a replacement, upon furnishing information satisfactory to the commissioner or authorized county tag agent. The replacement shall be issued on the following terms and conditions:

(1) If the replacement title is issued to the owner named in the lost, stolen, mutilated, or destroyed certificate, as shown by the records of the commissioner or authorized county tag agent, the replacement certificate of title shall contain the legend:

"This is a replacement certificate and may be subject to the rights of a person under the original certificate.";

(2) When the vehicle for which a replacement certificate of title has been issued is transferred to a new owner, the certificate of title issued to the transferee shall continue to contain the legend:

"This is a replacement certificate and may be subject to the rights of a person under the original certificate."

After a replacement certificate has been issued and the records of the commissioner or authorized county tag agent show that the owner has held record title continuously for a period of not less than six calendar months and the record title of the owner has not been challenged, the commissioner or authorized county tag agent may, upon proper application, issue a replacement title, which shall simply contain the legend "Replacement Title";

(3) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the commissioner or authorized county tag agent. Where the owner named in a replacement certificate of title, or a transferee, recovers the original certificate such owner or transferee may surrender the original certificate together with the replacement title and if such owner or transferee is otherwise entitled to a certificate the commissioner or authorized county tag agent may issue such owner or transferee a new certificate of title with no legend thereon;

(4) If two or more innocent persons are the victims of the fraud or mistake of another and none of the victims could have reasonably taken steps to detect or prevent the fraud or mistake, the victim who first acquired an interest in a vehicle through any certificate of title shall have such victim's interest protected; and

(5) A replacement title when the original has been lost in the mail prior to receipt by the registered owner shall be issued by the commissioner without charge upon application and completion of the form and affidavit prescribed by the commissioner setting forth the circumstances of nonreceipt of the title. The owner shall report the nonreceipt or loss and apply for replacement of the title to the commissioner within 60 days of the issuance of such title by the commissioner. An applicant shall provide an affidavit of nonreceipt and verify his or her current mailing address.

History.

Ga. L. 1961, p. 68, § 14; Ga. L. 1965, p. 304, § 3; Ga. L. 1974, p. 593, § 1; Ga. L. 1977, p. 252, §§ 1, 2; Code 1981, § 40-3-30; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 438, § 3; Code 1981, § 40-3-31, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 739, § 14; Ga. L. 1998, p. 1179, § 34.

JUDICIAL DECISIONS

Acquisition of title through fraud or mistake. — When the pawnbroker could have perfected a lien long before the expiration of six months after even the second replacement title was issued, this would have been a reasonable step to prevent the fraud perpetrated upon the defendants; therefore, the pawnbroker was not an innocent party pursuant to O.C.G.A. § 40-3-31(4). Cobb Ctr. Pawn & Jewelry Brokers, Inc. v. Gordon, 242 Ga. App. 73, 529 S.E.2d 138, 2000 Ga. App. LEXIS 93 (2000).

Clerical error. — Trial court erred in concluding that the security interest holder had a valid, perfected security

interest that the court could enforce against the car buyer regarding the car purchased, based on O.C.G.A. § 40-3-31(4), as that statutory section pertained to lost, stolen, mutilated, or destroyed certificates of title; the car buyer's certificate of title did not reflect the security interest because the state motor vehicles department made a clerical error and issued a certificate of title without the security interest. Metzger v. Americredit Fin. Svcs., 273 Ga. App. 453, 615 S.E.2d 120, 2005 Ga. App. LEXIS 336 (2005), cert. denied, No. S05C1525, 2005 Ga. LEXIS 552 (Ga. Sept. 19, 2005).

OPINIONS OF THE ATTORNEY GENERAL

Security interest of used car dealer. — Failure of a used car dealer to be listed on the certificate of title as an owner or security interest holder does not affect the creation of the security interest and all the rights attached thereto including repossession. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 100 et seq.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 13.

40-3-32. Transfer of vehicle generally.

(a) If an owner transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title or as the commissioner prescribes and cause the certificate and assignment to be delivered to the transferee. If the transferor willfully fails to deliver the properly assigned certificate of title to the transferee, the transferor shall be guilty of a misdemeanor. In addition, the transferor shall be civilly liable to the transferee for all damages, including reasonable attorney's fees, occasioned by the transferor's failure to comply with this subsection.

(b) Except as provided in Code Section 40-3-33, the transferee, promptly after delivery to him or her of the vehicle and certificate of title, shall execute the application for a new certificate of title on the form the commissioner prescribes and cause the application and the certificate of title to be mailed or delivered to the authorized county tag agent in the county where the vehicle will be registered together with the application for change of registration for the vehicle, so that the title application shall be received within 30 days from the date of the transfer of the vehicle. If the title application is not received within that time, the owner shall be required to pay a penalty of $10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party

submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return the same to the authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this subsection.

(c) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder, and the parties shall comply with Code Section 40-3-51.

(d) Except as provided in Code Section 40-3-33 and as between the parties, a transfer by an owner is not effective until this Code section and Code Section 40-3-33 have been complied with; and no purchaser or transferee shall acquire any right, title, or interest in and to a vehicle purchased by him unless and until he shall obtain from the transferor the certificate of title thereto, duly transferred in accordance with this Code section.

(e) The commissioner shall promulgate procedures and provide forms whereby a prospective purchaser may, if such prospective purchaser desires, have the commissioner's or the commissioner's duly authorized county tag agent's records searched for undisclosed certificates of title and security interests.

History.

Ga. L. 1961, p. 68, § 15; Ga. L. 1981, p. 883, § 5; Code 1981, § 40-3-31; Ga. L. 1986, p. 438, § 4; Code 1981, § 40-3-32, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 16; Ga. L. 2007, p. 652, § 9/HB 518; Ga. L. 2018, p. 287, § 6/HB 329.

Law reviews.

For article surveying insurance law in 1984-1985, see 37 Mercer L. Rev. 275 (1985).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-207 are included in the annotations for this Code section.

Necessity of compliance with registration and transfer provisions. — It was the intent of the legislature that compliance with the provisions of Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-31 et seq.), respecting the registration and transfer of titles to automobiles coming under its provisions, be essential to vest title to an automobile as manifest by the language of Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32). Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

Purchaser of vehicle on which certificate not previously issued. — Former § 40-3-31 (see now O.C.G.A. § 40-3-32) cannot serve to deny passing of right, title, or interest to a purchaser of a

vehicle on which a certificate of title had not previously been issued, especially in light of the statutory scheme which contemplated a possible considerable lapse of time between the actual purchase of a new vehicle and the issuance of the certificate of title. Owensboro Nat'l Bank v. Jenkins, 173 Ga. App. 775, 328 S.E.2d 399, 1985 Ga. App. LEXIS 1688 (1985); First Nat'l Bank v. Atlanta Classic Cars, Inc., 184 Ga. App. 784, 363 S.E.2d 16, 1987 Ga. App. LEXIS 2406 (1987); Bank S. v. Zweig, 217 Ga. App. 77, 456 S.E.2d 257, 1995 Ga. App. LEXIS 364 (1995).

Delivery of sworn assignment and warranty of title. — Upon transfer of ownership it is required that transferor deliver sworn assignment and warranty of title to transferee on the certificate of title and until this is done, except as between the parties, the transferee obtains no interest in the vehicle. Farmers & Merchants Bank v. Holloway, 159 Ga. App. 645, 284 S.E.2d 661, 1981 Ga. App. LEXIS 2785 (1981).

Evidence of ownership. — Certificate of title is prima-facie evidence of title ownership and possession alone will not suffice. Flatau v. Bank of Banks County (In re Stewart), 9 B.R. 32, 1980 Bankr. LEXIS 4578 (Bankr. M.D. Ga. 1980).

Mobile home falls within the provisions. Rockwin Corp. v. Kincaid, 124 Ga. App. 570, 184 S.E.2d 509, 1971 Ga. App. LEXIS 1028 (1971).

Transfer of mobile home by real estate warranty deed. — When a motor home is not fixed to the earth so as to irrevocably lose the mobile home's identity as a vehicle and, at the time the mobile home is placed upon the real estate, it is the intent of the seller, the purchaser, and the land seller that the mobile home will remain as personalty, the Motor Vehicle Title Act controls and requires a proper transfer of title to vest any interest. There can be no transfer of the personalty through the real estate warranty deed, especially when the property owner has constructive notice of a lienholder's interest in the mobile home. Anderson v. Kensington Mtg. & Fin. Corp., 166 Ga. App. 604, 305 S.E.2d 128, 1983 Ga. App. LEXIS 2265 (1983).

Applicability dependent on prior issuance of certificate. — Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) only applies when vehicle has previously been issued certificate of title by state revenue commissioner. Rockwin Corp. v. Kincaid, 124 Ga. App. 570, 184 S.E.2d 509, 1971 Ga. App. LEXIS 1028 (1971); Wielgorecki v. White, 133 Ga. App. 834, 212 S.E.2d 480, 1975 Ga. App. LEXIS 2307 (1975).

Transferors and transferees excepted. — Even though the provisions of Ga. L. 1961, p. 68 may be mandatory in some situations, transactions between the parties themselves, that is, the transferors and the transferees, are excepted from those provisions. Allen v. Holloway, 119 Ga. App. 676, 168 S.E.2d 196, 1969 Ga. App. LEXIS 1210 (1969).

Strict compliance when third party rights involved. — As between parties or when third party interests are not involved, substantial compliance with the provisions of the law may be sufficient, but the language of Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) is clear that when third party rights are involved, this is not the case. Flatau v. Bank of Banks County (In re Stewart), 9 B.R. 32, 1980 Bankr. LEXIS 4578 (Bankr. M.D. Ga. 1980).

As to third parties, essential that transfer be completed. — Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) recognizes that as between the parties an ownership may change hands without the necessity of transferring a title certificate by the seller and obtaining a new one in the name of the purchaser; however, as to third parties who may acquire an interest, it is essential that the title transfer be completed. Canal Ins. Co. v. Woodard, 121 Ga. App. 356, 173 S.E.2d 727, 1970 Ga. App. LEXIS 1222 (1970).

Sale held complete without actual passing of certificate. — Evidence authorized the finding by the fact finder that, pursuant to the parties' understanding, the title to a motor vehicle passed to the buyer at the time the buyer received physical possession with the seller holding the certificate as security only for the final payment of $50.00, which document was to be delivered at such time and place as the indebtedness was paid, and that, consequently, the sale was complete and the seller's uninsured

motorist coverage on the vehicle was no longer in effect. Stone v. Nolan, 171 Ga. App. 644, 320 S.E.2d 781, 1984 Ga. App. LEXIS 2306 (1984).

Evidence showed that a car dealership sold the dealership's interest in a car to the buyer before a collision where the father signed purchase and financing documents relating to the car sale, a credit company financed the purchase in the buyer's name and paid the dealership the car's purchase price, and the buyer's daughter took possession of the vehicle, regardless of whether an application for a certificate of title was filed before or after the collision. West v. Village Ford-Mercury, Inc., 256 Ga. App. 18, 567 S.E.2d 355, 2002 Ga. App. LEXIS 811 (2002).

While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents, the buyer was entitled to damages, including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106, 2006 Ga. App. LEXIS 1119 (2006).

Automobile broker. — Automobile broker authorized by owner to sell vehicle was not third party within the meaning of former § 40-3-31 (see now O.C.G.A. § 40-3-32). McDowell v. Owens, 170 Ga. App. 421, 317 S.E.2d 275, 1984 Ga. App. LEXIS 1917 (1984).

Gifts may convey title. — There is nothing in Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-31 et seq.) which prevents gifts from conveying title as between the legal representative of a deceased transferor and the transferee. Allen v. Holloway, 119 Ga. App. 676, 168 S.E.2d 196, 1969 Ga. App. LEXIS 1210 (1969).

Vehicle's registration in name of person holding unassigned certificate. — It is presumed, unless rebutted, that where a person holds an unassigned certificate of registration on a vehicle, the registration of the vehicle is still in the person's on the records of the State Revenue Commission. Jones v. State, 83 Ga. App. 301, 63 S.E.2d 414, 1951 Ga. App. LEXIS 856 (1951) (decided under former Code 1933, § 68-207).

Equitable interest in vehicle has priority over judicial lien. — Trustee, in the trustee's capacity as a hypothetical judicial lien creditor under 11 U.S.C. § 544(a)(1), did not prevail over an equitable interest in an automobile since the certificate of title was issued in the debtor's name and the name of the party claiming the equitable interest was not listed on the certificate of title. Wenco Indus., Inc. v. Stalzer (In re Davis), 165 B.R. 327, 1994 Bankr. LEXIS 430 (Bankr. N.D. Ga. 1994).

Equitable interest in vehicle has priority over interest asserted by trustee in bankruptcy. — Creditor that had an equitable priority interest in the vehicles that had been owned by a debtor, pursuant to an agreement to purchase the creditor's business, had an interest that was superior to a trustee's authority to avoid a lien interest pursuant to 11 U.S.C. § 544 and the creditor was entitled to assert a claim in the sale proceeds of the vehicles. BCC Sys. v. Brooks (In re BCC Sys.), No. 05-84208-CRM, 2008 Bankr. LEXIS 1906 (Bankr. N.D. Ga. Apr. 18, 2008).

Sale complete except for compliance with recording and insurance provisions. — When a seller delivered possession of the automobile to the buyer and the transaction was complete as between them, even though compliance had not yet been made with the applicable recording and insurance provisions, the buyer was the "owner" of the automobile and the buyer alone, and not the seller or the seller's insurer, was liable to a third party for injuries sustained in an accident while the buyer was driving the automobile. American Mut. Fire Ins. Co. v. Cotton States Mut. Ins. Co., 149 Ga. App. 280, 253 S.E.2d 825, 1979 Ga. App. LEXIS 1818 (1979).

When an auto insurance policy required the insured to notify the insurer and pay an additional premium within 30 days of becoming the owner of a vehicle, the key to coverage under the policy was the date the insured became the owner, not the date the car came into service as a means

of transportation, nor the date of issuance of the certificate of title. Noakes v. Atlanta Cas. Cos., 215 Ga. App. 398, 450 S.E.2d 861, 1994 Ga. App. LEXIS 1246 (1994).

Ownership proved although vehicle not registered. — Claimant who appeared and demanded possession as owner of an automobile which was the subject of a civil forfeiture action established a sufficient ownership interest as against the state by proof of claimant's payment of valuable consideration and receipt of the certificate of title from the transferor, even though the claimant failed to register the vehicle. State v. Banks, 215 Ga. App. 828, 452 S.E.2d 533, 1994 Ga. App. LEXIS 1390 (1994).

Automobile dealer relieved of duty of securing title in own name. — Former § 40-3-32 (see now O.C.G.A. § 40-3-33) relieves a dealer in automobiles of the duty imposed upon other transferees by Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) of securing a new title certificate from the state revenue commissioner in the name of the dealer. Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

Transfer to otherwise conform with section. — While an automobile dealer, in the event of a purchase by the dealer of a vehicle which the dealer holds for resale, does not have to apply for and receive a title in the dealer's name in order to be protected against an unperfected security interest, the transfer to the dealer shall otherwise conform with the provisions of Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32). Frank Jackson Motors, Inc. v. Mortgage Enters., Inc., 124 Ga. App. 798, 186 S.E.2d 464, 1971 Ga. App. LEXIS 1109 (1971).

Requirements for perfecting dealer's title. — In order for the "title" of the dealer to be perfected, the dealer must be in possession of a certificate of title upon which, or by separate paper, an assignment and warranty of title has been subscribed and sworn to by the transferor before an officer authorized by law to administer oaths in the state. Farmers & Merchants Bank v. Holloway, 159 Ga. App. 645, 284 S.E.2d 661, 1981 Ga. App. LEXIS 2785 (1981).

Substantial compliance. — When the dealer, at the time of delivery of the car, did not literally comply with the law by executing an assignment and warranty of title on the reverse of the certificate, but substantially complied by the execution of a bill of sale from the dealer to the purchaser, whereupon the purchaser executed an application for a new certificate of title in the purchaser's name, and these documents (the existing certificate of title, the title application, and the bill of sale) were delivered on behalf of the purchaser to the lienholder, who caused the documents to be mailed or delivered to the commissioner, title of the automobile passed to the purchaser, and the dealer's subsequent purported transfer of ownership of the automobile was void. Cochran v. Harris, 123 Ga. App. 212, 180 S.E.2d 290, 1971 Ga. App. LEXIS 1167, dismissed, 227 Ga. 638, 182 S.E.2d 121, 1971 Ga. LEXIS 801 (1971).

Trial court erred in denying the state's in rem forfeiture action and adjudicating a husband an innocent owner of a vehicle the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband assigned his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure; thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. State v. Centers, 310 Ga. App. 413, 713 S.E.2d 479, 2011 Ga. App. LEXIS 586 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Certificate of title on older model vehicles. — Neither Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) nor Ga. L. 1961, p. 68, § 16 (see now O.C.G.A.

§ 40-3-33) requires a certificate of title on older model vehicles. 1962 Ga. Op. Att'y Gen. 306.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 45.
C.J.S.
60 C.J.S., Motor Vehicles, § 75 et seq.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 14.
ALR.
Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 A.L.R. 1465; 52 A.L.R. 701; 63 A.L.R. 688; 94 A.L.R. 948; 58 A.L.R.2d 1351.

40-3-32.1. Application for transfer of title to local tag agent by purchaser of manufactured home.

In addition to any other requirements imposed by this chapter for the transfer of a certificate of title, the purchaser of a manufactured home shall submit an application for a transfer of title to the local tag agent in the county in which the manufactured home is to be installed, which application shall indicate the full serial number for such manufactured home and shall be accompanied by a certificate of the tax commissioner or tax collector of the county in which the manufactured home was previously installed, if different, stating that all ad valorem taxes assessed against such manufactured home have been paid. No new certificate of title shall be issued for a manufactured home unless all ad valorem taxes on such home have been paid.

History.
Code 1981, § 40-3-32.1, enacted by Ga. L. 1994, p. 741, § 4.

40-3-33. Transfer of vehicle to or from dealer; records; application for certificate of title by dealer.

(a)(1) Except as provided in paragraph (2) of this subsection, a dealer who buys a vehicle and holds it for resale need not apply to the commissioner for a new certificate of title but may retain the certificate delivered to him. Upon transferring the vehicle to another person other than by the creation of a security interest, such dealer shall promptly execute the assignment and warranty of title by a dealer. Such assignment and warranty shall show the names and addresses of the transferee and any holder of a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the commissioner prescribes. Transfers of vehicles under this Code section shall otherwise conform with Code Section 40-3-32. A dealer selling a previously registered vehicle which under this

chapter need not have a certificate of title need not furnish a purchaser of such a vehicle a certificate of title. After a previously registered vehicle has been brought under the terms of this chapter, a dealer, when selling that vehicle, shall conform to all provisions of this chapter.

(2)(A) As used in this paragraph, the term "franchise dealer" means a dealer who under a contract or franchise agreement with a manufacturer, distributor, wholesaler, or importer is authorized to sell new motor vehicles of or for such manufacturer, distributor, wholesaler, or importer and who is authorized to use trademarks or service marks associated with one or more makes of motor vehicles in connection with such sales.

(B) A dealer who is not a franchise dealer who acquires a vehicle for which the original certificate of title has not been issued and who holds such vehicle for resale shall not be exempt from the requirement to obtain a certificate of title in such dealer's name as provided in paragraph (1) of this subsection. Such dealer shall, as provided in Code Section 40-3-32, obtain a certificate of title in such dealer's name prior to selling or otherwise transferring said vehicle to any other person or dealer.

(b) Every dealer shall maintain a record, in the form the commissioner prescribes, of every vehicle bought, sold, or exchanged by him, or received by him for sale or exchange. Such record shall be kept for three years and shall be open to inspection by a representative of the commissioner during reasonable business hours.

(c) Except as otherwise provided for in subsection (c) of Code Section 40-3-32, the dealer shall submit a properly completed certificate of title application and proper supporting documents to the commissioner or to the appropriate authorized county tag agent so that the application and supporting documents shall be submitted to the commissioner or the appropriate authorized county tag agent within 30 days from the date of the transfer of the vehicle. If the application and supporting documents are not submitted within that time, the dealer shall be required to pay a penalty of $10.00 in addition to the ordinary title fee as provided by this chapter. If the documents submitted in support of the title application are rejected, the dealer submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional penalty of $10.00 assessed against the dealer. The willful failure of a dealer to obtain a certificate of title for a purchaser shall be grounds for suspension or revocation of the dealer's state issued license and registration for the sale of motor vehicles.

(d) All applications for a certificate of title by a motor vehicle dealer

shall be submitted to the department electronically. Any motor vehicle dealer who sells no more than ten motor vehicles per month on average as certified by the commissioner may apply on a form prescribed by the commissioner for a waiver from mandatory electronic filing of title applications as required by this subsection. The department shall adopt rules and regulations to administer this subsection.

(e) Any dealer which sells a motor vehicle to a person who is not a resident of the county in which the dealer is located may file an application for title for such motor vehicle with the county tag agent in the county in which the dealer is located.

History.

Ga. L. 1961, p. 68, § 16; Ga. L. 1965, p. 304, § 4; Ga. L. 1981, p. 883, § 6; Code 1981, § 40-3-32; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 438, § 5; Code 1981, § 40-3-33, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2785, § 2; Ga. L. 2007, p. 652, § 10/HB 518; Ga. L. 2017, p. 742, § 5/HB 412; Ga. L. 2018, p. 1069, § 1/HB 761.

Cross references.

Regulation of used car dealers generally, § 43-47-1 et seq.

JUDICIAL DECISIONS

Delivery of sworn assignment and warranty of title to transferee. — Upon transfer of ownership it is required that transferor deliver sworn assignment and warranty of title to transferee on the certificate of title and until this is done, except as between the parties, the transferee obtains no interest in the vehicle. Farmers & Merchants Bank v. Holloway, 159 Ga. App. 645, 284 S.E.2d 661, 1981 Ga. App. LEXIS 2785 (1981).

No duty for dealer to secure title in own name. — Ga. L. 1961, p. 68, § 16 (see now O.C.G.A. § 40-3-33) relieves a dealer in automobiles of the duty imposed upon other transferees by Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) of securing a new title certificate from the state revenue commissioner in the name of the dealer. Wreyford v. Peoples Loan & Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216, 1965 Ga. App. LEXIS 927 (1965).

Necessity of complying with provisions. — While an automobile dealer, in the event of a purchase by the dealer of a vehicle which the dealer holds for resale, does not have to apply for and receive a title in the dealer's name in order to be protected against an unperfected security interest, the transfer to the dealer shall otherwise conform with the provisions of Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32). Frank Jackson Motors, Inc. v. Mortgage Enters., Inc., 124 Ga. App. 798, 186 S.E.2d 464, 1971 Ga. App. LEXIS 1109 (1971).

Requirements for perfecting dealer's title. — In order for the "title" of the dealer to be perfected the dealer must be in possession of a certificate of title upon which, or by separate paper, an assignment and warranty of title has been subscribed and sworn to by the transferor before an officer authorized by law to administer oaths in the state. Farmers & Merchants Bank v. Holloway, 159 Ga. App. 645, 284 S.E.2d 661, 1981 Ga. App. LEXIS 2785 (1981).

Requirements for passing of title to purchaser. — When the dealer, at the time of delivery of the car, did not literally comply with the law by executing an assignment and warranty of title on the reverse of the certificate, but substantially complied by the execution of a bill of sale from the dealer to the purchaser, whereupon the purchaser executed an application for a new certificate of title in the purchaser's name, and these documents (the existing certificate of title, the title application, and the bill of sale) were delivered on behalf of the purchaser

to the lienholder, who causes the documents to be mailed or delivered to the commissioner, title of the automobile passed to the purchaser, and the dealer's subsequent purported transfer of ownership of the automobile was void. Cochran v. Harris, 123 Ga. App. 212, 180 S.E.2d 290, 1971 Ga. App. LEXIS 1167, dismissed, 227 Ga. 638, 182 S.E.2d 121, 1971 Ga. LEXIS 801 (1971).

Sale held complete without actual passing of certificate. — While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents the buyer was entitled to damages including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106, 2006 Ga. App. LEXIS 1119 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Older model vehicles. — Neither Ga. L. 1961, p. 68, § 15 (see now O.C.G.A. § 40-3-32) nor Ga. L. 1961, p. 68, § 16 (see now O.C.G.A. § 40-3-33) requires a certificate of title on older model vehicles. 1962 Ga. Op. Att'y Gen. 306.

Transfer of salvage titles. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-31 et seq.) and rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 35 et seq., 49, 51.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A.

Uniform Motor Vehicle Certification of Title and Anti-Theft Act (U.L.A.) § 15.

ALR.

Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 52 A.L.R. 701; 63 A.L.R. 688; 94 A.L.R. 948; 58 A.L.R.2d 1351.

40-3-34. Transfer of vehicle by operation of law; termination of interest; joint interest with right of survivorship.

(a) If the interest of an owner in a vehicle passes to another other than by voluntary transfer, the transferee shall, except as provided in subsection (b) of this Code section, mail or deliver to the commissioner or his appropriate authorized county tag agent the last certificate of title, if available; proof of the transfer; and his application for a new certificate in the form the commissioner prescribes, together with the application for change of registration for the vehicle so that the title application and other documents shall be received by the commissioner or his appropriate authorized county tag agent no later than 30 days from the date that the transferee acquired the interest in the vehicle. If the title application and other documents are not received within that time, the transferee shall be required to pay a penalty of $10.00 in addition to the ordinary title fee provided for by this chapter. If the

documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. Should the documents not be properly resubmitted within the 60 day period, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required in this subsection. If the last certificate of title is not available for transfer under this Code section, then the transferee shall forward such proof of transfer as the commissioner may by regulation prescribe.

(b) If the interest of the owner is terminated, whether the vehicle is sold pursuant to a power contained in a security agreement or by legal process at the instance of the holder either of a security interest or a lien, the transferee shall promptly mail or deliver to the commissioner or his appropriate authorized county tag agent the last certificate of title, if available; proof of transfer; his application for a new certificate, in the form prescribed by the commissioner; and an affidavit made by or on behalf of the holder of a security interest in or lien on the vehicle with respect to the termination of the interest of the owner, so as to have the application and supporting documents submitted to the commissioner or his appropriate authorized county tag agent within 30 days from the date the transferee acquired the interest in the vehicle. If the application and supporting documents are not submitted within that time, the transferee shall be required to pay a penalty of $10.00 in addition to the ordinary title fee prescribed by this chapter. If the documents submitted in support of the title application are rejected, the transferee submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this subsection. If the holder of a security interest or lien succeeds to the interest of the owner and holds the vehicle for resale, he need not secure a new certificate of title but, upon transfer, shall promptly deliver to the transferee the last certificate of title, if available, and such other documents as the commissioner may require by rule or regulation.

(c) A person holding a certificate of title whose interest in the vehicle has been extinguished or transferred other than by voluntary transfer

shall mail or deliver the certificate to the commissioner or the commissioner's duly authorized county tag agent upon request of the commissioner or authorized county tag agent. The delivery of the certificate pursuant to the request of the commissioner or authorized tag agent does not affect the rights of the person surrendering the certificate; and the action of the commissioner or authorized tag agent in issuing a new certificate of title as provided in this article is not conclusive upon the rights of an owner or lienholder named in the old certificate.

(d) In the event of transfer as upon inheritance, devise, or bequest, upon receipt of an application for a new certificate of title with the required fee, the last certificate of title, if available, and a certified copy of a will or letters of administration or, if no administration is to be had on the estate, an affidavit by the applicant to the effect that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, have amicably agreed among themselves upon a division of the estate or a certificate from the judge of the probate court showing that the motor vehicle registered in the name of the decedent owner has been assigned to the decedent's survivors as part of their year's support, the commissioner shall issue to the person or persons shown by such evidence to be entitled thereto the certificate of title for the vehicle.

(e)(1) In the event of transfer under a will when the motor vehicle was the decedent's only asset, upon receipt of an application for a new certificate of title accompanied by the required fee, the last certificate of title, if available, and an affidavit by the applicant to the effect that the motor vehicle was owned by the decedent and was the decedent's only asset and was not encumbered, that under the will the applicant is entitled to receive title to such motor vehicle, that no application for the administration of the estate of the deceased or the probate of such will is to be had, and that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, are sui juris and have amicably agreed that title to said vehicle be issued to the applicant, the commissioner shall issue to the person or persons shown by such evidence to be entitled thereto the certificate of title for the vehicle.

(2) The commissioner shall prescribe the form of the affidavit to be used in paragraph (1) of this subsection.

(f) A joint interest in a vehicle with survivorship in two or more persons may be created in the manner provided by subsection (a) of Code Section 44-6-190; and, if a certificate of title has been issued to two or more persons having such a joint interest with survivorship, then, in the event of the death of such a joint owner, the surviving such owner or owners, if any, need not secure a new certificate of title.

History. Ga. L. 1961, p. 68, § 17; Ga. L. 1962, p. 79, § 10; Ga. L. 1981, p. 883, § 7; Code 1981, § 40-3-33; Ga. L. 1985, p. 149, § 40;

Ga. L. 1986, p. 281, § 1; Code 1981, § 40-3-34, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 17; Ga. L. 1998, p. 510, § 1; Ga. L. 2007, p. 652, § 11/HB 518.

Law reviews.

For annual survey of law of wills, trusts, and administration of estates, see 38 Mercer L. Rev. 417 (1986).

JUDICIAL DECISIONS

Termination of debtor's ownership interest. — O.C.G.A. § 40-3-34(b) clearly recognizes that a debtor's ownership of collateral is not terminated until the sale of the collateral by the secured creditor or by legal process; therefore, an automobile that was repossessed pre-petition, but which had not been sold by the creditor pre-petition, was the property of the debtor's Chapter 13 bankruptcy estate. Rozier v. Motors Acceptance Corp., 283 B.R. 810, 2002 Bankr. LEXIS 1065 (Bankr. M.D. Ga. 2002), aff'd, 290 B.R. 910, 2003 U.S. Dist. LEXIS 4527 (M.D. Ga. 2003).

When a debtor's vehicle was part of the debtor's bankruptcy estate under Georgia law, return of the vehicle was proper despite the creditor's objections as ownership remained with the debtor until the creditor disposed of or elected to retain the collateral in accordance with the procedures of the Georgia Uniform Commercial Code, O.C.G.A. Ch. 4, T. 11. Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367, 2004 Ga. LEXIS 470 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Transfer of title by executor of deceased. — When title to a vehicle is in a deceased person, and the person has died testate, the executor, in order to transfer the title, must present a certified copy of the will to the commissioner; if the former owner has died intestate, the administrator must present a copy of the letters of administration. 1970 Op. Att'y Gen. No. U70-57.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 45.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 16.

40-3-35. Issuance of new certificate of title; retention of surrendered certificate of title.

(a) The commissioner or the commissioner's duly authorized county tag agent, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee, and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner and mail the certificate to the first lienholder named in the application or, if none, to the owner.

(b) The commissioner or the commissioner's duly authorized county tag agent, upon receipt of an application for a new certificate of title by

a transferee other than by voluntary transfer, with proof of the transfer, the required fee, and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to the commissioner or the authorized county tag agent, the commissioner or authorized county tag agent shall make demand therefor from the holder thereof.

(c) The commissioner or the commissioner's duly authorized county tag agent shall file and retain for five years every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein.

History.
Ga. L. 1961, p. 68, § 19; Code 1981, § 40-3-34; Code 1981, § 40-3-35, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 18.

Law reviews.
For note on 1990 amendment of this Code section, see 7 Georgia. St. U.L. Rev. 329 (1990).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 77 et seq., 100 et seq.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 18.

40-3-36. Cancellation and destruction of certificate of title for scrap, dismantled, or demolished vehicles or trailers; salvage certificate of title; administrative enforcement; removal of license plates.

(a)(1) Any registered owner or authorized agent of a registered owner who in any manner sells or disposes of any vehicle, including a trailer, as scrap metal or parts only or a secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor who scraps, dismantles, or demolishes a vehicle shall within 72 hours cancel the certificate of title by electronic means in a manner designated by the department and securely destroy the certificate of title.

(2) Notwithstanding any other provision of this article to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle, including a trailer, to be transferred, or has lost the title for the vehicle or trailer to be transferred, he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle or trailer is at least 12 model years old and is worth $850.00 or less if the vehicle was used as a motor vehicle, or $1,700.00 or less if the vehicle was used as a trailer. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts

dealer under Code Section 43-47-7 or scrap metal processor under Code Section 43-43-1. The department shall promulgate a form for the statement which shall include, but not be limited to:

(A) A statement that the vehicle or trailer shall never be titled again; it must be dismantled or scrapped;

(B) A description of the vehicle including, where applicable, the year, make, model, vehicle identification number, and color;

(C) The name, address, and driver's license number of the owner;

(D) A certification that the owner:

(i) Never obtained a title to the vehicle in his or her name; or

(ii) Was issued a title for the vehicle, but the title was lost or stolen;

(E) A certification that the vehicle:

(i) Is worth $850.00 or less, or $1,700.00 or less if the vehicle is a trailer;

(ii) Is at least 12 model years old; and

(iii) Is not subject to any secured interest or lien;

(F) An acknowledgment that the owner realizes this form will be filed with the department and that it is a felony, punishable by imprisonment for not fewer than one nor more than three years or a fine of not less than $1,000.00 nor more than $5,000.00, or both, to knowingly falsify any information on this statement;

(G) The owner's signature and the date of the transaction;

(H) The name, address, and National Motor Vehicle Title Information System identification number of the business acquiring the vehicle;

(I) A certification by the business that $850.00 or less, or $1,700.00 or less if the vehicle is a trailer, was paid to acquire the vehicle;

(J) A certification that the business has verified by an online method determined by the commissioner that the vehicle is not currently subject to any secured interest or lien; provided, however, that such certification shall not be required until such an online method has been established and is available; and

(K) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.

(3)(A) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall deliver the statement required under paragraph (2) of this subsection to the department within 72 hours of the completion of the transaction by electronic means in a manner designated by the department, requesting that the department cancel the Georgia certificate of title and registration.

(B) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall maintain the original statement for a period of not less than two years.

(C) Within 48 hours of each day's close of business, the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver by electronic means, a list of all such vehicles purchased that day for scrap or for parts. That list shall contain the following information:

(i) The name, address, and contact information for the reporting entity;

(ii) The vehicle identification numbers of such vehicles;

(iii) The dates such vehicles were obtained;

(iv) The names of the individuals or entities from whom the vehicles were obtained, for use by law enforcement personnel and appropriate governmental agencies only;

(v) A statement of whether the vehicles were, or will be, crushed or disposed of, or offered for sale or other purposes;

(vi) A statement of whether the vehicle is intended for export out of the United States; and

(vii) The National Motor Vehicle Title Information System identification number of the business acquiring the vehicle.

There shall be no charge to a secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor associated with providing this information to the department.

(D) For purposes of this subsection, the term "motor vehicle" shall not include a vehicle which has been crushed or flattened by mechanical means such that it is no longer the motor vehicle as described by the certificate of title, or such that the vehicle identification number is no longer visible or accessible, in which case the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall verify that the seller has reported the vehicles in accordance with this

subsection. Such verification may be in the form of a certification from the seller or contract between the seller and the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor which clearly identifies the seller by a government issued photograph identification card, or employer identification number, and shall be maintained for a period of not less than two years.

(E) The information obtained by the department in accordance with this subsection shall be reported to the National Motor Vehicle Title Information System, in a format which will satisfy the requirement for reporting this information, in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.

(F) The information obtained by the department in accordance with this subsection shall be made available only to law enforcement agencies, and for purposes of canceling certificates of title, and shall otherwise be considered to be confidential business information of the respective reporting entities.

(G) All records required under the provisions of this Code section shall be maintained for a period of two years by the reporting entity and shall include a scanned or photocopied copy of the seller's or seller's representative's driver's license or state issued identification card.

(4)(A) The registered owner of any motor vehicle which is damaged to the extent that its restoration to an operable condition would require the replacement of the front clip assembly, which includes the fenders, hood, and bumper; the rear clip assembly, which includes the quarter panels, the floor panel assembly, and the roof assembly, excluding a soft top; the frame; and a complete side, which includes the fenders, door, and quarter panel shall mail or deliver the certificate of title to the commissioner for cancellation.

(B) A motor vehicle owner who retains possession of a damaged vehicle which is a salvage motor vehicle shall surrender the license plates and registration for such vehicle, shall not operate such vehicle upon the roads of this state, and shall not sell, trade, or otherwise dispose of such vehicle prior to obtaining a salvage certificate of title for such vehicle.

(C)(i) Any insurance company which acquires a damaged motor vehicle by virtue of having paid a total loss claim shall deliver by electronic means the certificate of title to the commissioner for cancellation. If an insurance company or its authorized agent, including, but not limited to, a salvage dealer

as such term is defined in Code Section 40-11-13, is unable to obtain a certificate of title within 30 days after acceptance by the motor vehicle owner of a total loss claim, the insurance company or its authorized agent may apply to the department for a salvage certificate of title on a form provided by the department for such purpose. Such application shall require submission by electronic means of evidence that the insurance company or its authorized agent has fulfilled the settlement through payment of a total loss claim and has made two or more written or other verifiable forms of communication with the owner in order to obtain such owner's certificate of title. Any such application made by a salvage dealer shall also include written documentation of support that an insurance company has transferred all its claims or rights to such vehicle to the salvage dealer. Any salvage certificate of title issued by the department pursuant to this subdivision shall comply with any applicable requirements relating to salvage, rebuilt, or restored certificates of title in this Code section and Code Section 40-3-37.

(ii) In every case in which a total loss claim is paid and the insurance company does not acquire such damaged motor vehicle, the insurance company paying such total loss claim, the vehicle owner, and the lienholder or security interest holder, as applicable, shall take the following steps to secure a salvage certificate of title for such motor vehicle:

(I) If the vehicle owner is in possession of the certificate of title, the owner shall deliver the certificate of title to the insurance company prior to any payment of the claim, and the insurance company shall deliver by electronic means the certificate of title, an application for a salvage certificate of title, and the form provided by the commissioner for issuance of a salvage certificate of title;

(II) If the certificate of title has been lost, destroyed, or misplaced, the vehicle owner shall, prior to payment of the claim on such vehicle, complete an application for a replacement title on the form provided by the commissioner and deliver such application and form to the insurance company and the insurance company shall deliver by electronic means such application and form to the commissioner for issuance of a replacement original title marked salvage;

(III) If the lienholder or security interest holder has possession of the certificate of title, the vehicle owner shall complete an application for a replacement title on a form provided by the commissioner and shall deliver the com-

pleted form to the insurance company prior to the payment of the claim; the insurance company shall thereafter deliver by electronic means the application to the commissioner with notice of the payment of the total loss claim and the name and address of the lienholder or security interest holder in possession of the title. The commissioner shall mail notice to the lienholder or security interest holder that a total loss claim has been paid on the vehicle and that the title to such vehicle has been canceled, and the commissioner shall provide to the lienholder or security interest holder a salvage certificate of title for such vehicle, provided that the validity of the security interest shall not be affected by issuance of a salvage certificate of title. The lienholder or security interest holder shall, within ten days after receipt of such notice of total loss claim and cancellation of the original certificate of title, deliver by electronic means the canceled original certificate of title to the commissioner; or

(IV) For the sole purpose of payment of a total loss claim, for any vehicle ten years of age or older for which neither the vehicle owner nor the lienholder or security interest holder, if any, possesses a certificate of title, the vehicle owner shall deliver the vehicle license plate and certificate of registration for such vehicle to the insurance company prior to payment of any claim and the insurance company shall mail or deliver the license plate and deliver by electronic means the certificate of registration to the commissioner with a completed form provided by the commissioner; provided, however, that the vehicle owner shall not operate such vehicle and the owner shall obtain a certificate of title for such vehicle as provided by law, which certificate of title shall then be subject to cancellation as provided in this paragraph.

(D) The department shall give priority to the title submissions provided for in subparagraph (C) of this paragraph and shall issue a salvage certificate of title for such vehicles within seven days of receipt of such submissions by an insurance company.

(a.1) In the case of a motor vehicle which is subject to more than one perfected security interest or lien which motor vehicle is a total loss, if the insurer is to acquire title to the damaged motor vehicle, the holder of the senior security interest or lien, upon receipt of the settlement proceeds of the insurance policy in accordance with Code Section 33-34-9, shall apply for a new certificate of title for a transferee other than by voluntary transfer in accordance with subsection (b) of Code Section 40-3-35, naming the insurer only as transferee.

(b) Except as provided in subsection (a) of this Code section, any person, firm, or corporation which purchases or otherwise acquires a salvage motor vehicle shall apply to the commissioner by electronic means for a salvage certificate of title for such motor vehicle within 30 days of the purchase or acquisition of the motor vehicle or within 30 days of the payment of a total loss claim as provided in paragraph (4) of subsection (a) of this Code section to the registered owner of the salvage motor vehicle, if the person, firm, or corporation intends to operate or to sell, convey, or transfer the motor vehicle; and no such person, firm, or corporation shall sell, transfer, or convey a salvage motor vehicle until such person, firm, or corporation has applied for and obtained a salvage certificate of title.

(c) The application for a salvage certificate of title shall be made in a manner to be prescribed by the commissioner.

(d) Any certificate of title which is issued to a salvage motor vehicle, as provided for in this Code section, shall contain the word "salvage" on the face of the certificate in such a manner as the commissioner may prescribe, so as to indicate clearly that the motor vehicle described is a salvage motor vehicle. The legend "rebuilt" in no larger than 12 point font shall be placed on a certificate of title to a vehicle which was declared a salvage vehicle and subsequently repaired with less than two major component parts to restore the vehicle to an operable condition.

(e) Notwithstanding this subsection and subsections (c) and (d) of Code Section 40-3-37, the legend "rebuilt" shall only be required to be placed on the certificate of title to a vehicle which was declared a salvage vehicle on or after July 1, 2004, and which was subsequently rebuilt.

(f) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant to this Code section, may issue an administrative fine not to exceed $1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated under this Code section. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a

corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto.

(g) The Commissioner of Insurance is authorized to enforce the provisions of this Code section to the extent such provisions are applicable to insurers which are under the jurisdiction of the Department of Insurance. The Commissioner of Insurance is also authorized to cooperate with the commissioner in enforcing this Code section and to provide the commissioner with any information acquired by the Commissioner of Insurance during any investigation or proceeding involving this Code section. Nothing in this subsection shall be construed to limit the powers and duties of the commissioner to enforce the provisions of this Code section as such provisions apply to insurers.

(h) It shall be unlawful for any person, firm, or corporation to violate the provisions of subsection (a), (b), or (c) of this Code section; and any person, firm, or corporation convicted of violating such provisions shall be guilty of a misdemeanor. Any owner of a salvage motor vehicle who transfers or attempts to transfer such vehicle without obtaining a salvage certificate of title for such vehicle shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed $5,000.00. Any lienholder or security interest holder who, after notice by the commissioner of payment of a total loss claim and cancellation of the title of a vehicle, fails or refuses to return the title to the commissioner or who surrenders the title to anyone other than the commissioner shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed $5,000.00.

(i) The registered owner who retains possession of a salvage motor vehicle to whom a total loss claim has been paid shall promptly remove the license plate from such vehicle and return such plate to the commissioner for cancellation. An insurer which pays a total loss claim shall, on a form prescribed by the commissioner, notify the owner of the duty to remove and return such license plate for cancellation and of all inspection requirements for rebuilding or restoring such vehicle.

(j) As used in this Code section, the terms:

(1) "Scrap metal processor" shall have the same meaning as set forth in Code Section 43-43-1.

(2) "Secondary metals recycler" shall have the same meaning as set forth in Code Section 10-1-350.

(3) "Used motor vehicle parts dealer" shall have the same meaning as set forth in Code Section 43-47-2.

History.

Ga. L. 1961, p. 68, § 20; Ga. L. 1965, p. 264, § 1; Ga. L. 1966, p. 139, § 1; Ga. L. 1970, p. 185, § 1; Ga. L. 1975, p. 1596, § 1; Ga. L. 1979, p. 1108, § 1; Ga. L. 1981, p. 644, §§ 2, 4; Code 1981, § 40-3-35; Ga. L. 1985, p. 1227, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 1657, § 5; Code 1981, § 40-3-36, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, §§ 6, 7; Ga. L. 1993, p. 1260, § 7; Ga. L. 1998, p. 1179, § 35; Ga. L. 2000, p. 951, § 4-7; Ga. L. 2002, p. 848, § 2; Ga. L. 2004, p. 452, § 2; Ga. L. 2007, p. 585, § 1/HB 171; Ga. L. 2007, p. 635, § 2/HB 183; Ga. L. 2007, p. 652, § 12/HB 518; Ga. L. 2011, p. 355, §§ .1, 21/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 96, § 1/HB 900; Ga. L. 2012, p. 112, §§ 1-3, 1-4/HB 872; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2019, p. 337, § 1-99/SB 132; Ga. L. 2019, p. 872, § 2/HB 307; Ga. L. 2020, p. 493, § 40/SB 429; Ga. L. 2021, p. 358, § 2/HB 207; Ga. L. 2024, p. 1052, § 4(37)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "as defined in paragraph (11) of Code Section 40-3-2" following "motor vehicle" in subparagraph (a)(4)(B).

Cross references.

Record maintained by metals recycler when recycling motor vehicles, § 10-1-351.

Further provisions regarding duty of scrap metal processors to deliver certificates of title to Department of Revenue, § 43-43-3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "of this Code section" was inserted following "subsection (a)" in subsection (b).

Pursuant to Code Section 28-9-5, in 1993, "canceled" was substituted for "cancelled" in two places in division (a)(2)(C)(iii) (now (a)(4)(C)(iii)) and a misspelling of "misdemeanor" was corrected in the second sentence of subsection (h).

Pursuant to Code Section 28-9-5, in 2004, "to a vehicle" was inserted following "certificate of title" in the second sentence of subsection (d).

Editor's notes.

Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.

Ga. L. 2012, p. 112, § 4-2/HB 872, effective July 1, 2012, amended Ga. L. 2011, p. 355, § 21/HB 269 to remove the funding contingency for the amendment to paragraph (a)(3).

Ga. L. 2019, p. 872, § 8/HB 307, not codified by the General Assembly, provides: "This Act shall become effective upon approval by the Governor or upon its becoming law without such approval for purposes of developing the required forms and shall become effective on September 1, 2019, for all other purposes." This Act was approved by the Governor on May 7, 2019.

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 238 (2012).

JUDICIAL DECISIONS

Constitutionality of requirement of sending title certificate to commissioner. — Requiring a person to send the Revenue Commissioner the certificate of title of a motor vehicle disposed of as wreckage or salvage does not constitute an illegal seizure of private property without just compensation in violation of the Fourth Amendment to the Constitution, since the only purportedly valuable property involved is the title certificate and such a quasi-public document does not constitute property within the protection of the constitutional provision. McDonald v. State, 222 Ga. 596, 151 S.E.2d 121, 1966 Ga. LEXIS 570 (1966).

"Rebuilt" vehicle title need not have identifier. — There is no duty on the purchaser of a "rebuilt" vehicle to have the certificate of title marked with any identifier; that duty is on the purchaser of a "salvage" vehicle, i.e., one not yet rebuilt. Bill Davidson Buick, Inc. v. Sims, 187 Ga. App. 81, 369 S.E.2d 285, 1988 Ga. App. LEXIS 595 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Interest of insurance companies in salvage vehicles. — Insurance company acquires a beneficial interest to wrecked or salvage vehicles and is charged with the responsibility of turning in the certificate of title to the commissioner. 1967 Op. Att'y Gen. No. 67-256 (rendered under Ga. L. 1961, p. 68, prior to amendment by Ga. L. 1981, p. 644, §§ 2, 4).

Surrender of plates and registrations of salvage vehicles. — Owners and insurers are required to surrender to the commissioner the license plates and registrations of vehicles which become salvage or total loss vehicles. 1997 Op. Att'y Gen. No. 97-24.

Transfer of salvage titles. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with O.C.G.A. § 40-3-1 et seq. and the rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

Possession of title to rebuilt vehicle not prohibited. — That provision which makes it unlawful for a person to possess a certificate of title for a vehicle which has been sold or disposed of as salvage or wreckage applies only to those persons who acquire the vehicle when the vehicle is wreckage or salvage; a person who buys the vehicle which was subject to the salvage provision after the vehicle has been repaired or rebuilt is not violating this provision by possessing the title. 1967 Op. Att'y Gen. No. 67-179 (rendered under Ga. L. 1961, p. 68, prior to amendment by Ga. L. 1981, p. 644, §§ 2, 4).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 101, 102. 61A C.J.S., Motor Vehicles, § 1759.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 19.

40-3-36.1. Designation of flood damaged or fire damaged vehicle on certificate of title.

For any salvage motor vehicle which, after inspection, it is determined that repair to an operable condition does not require replacement of two or more major component parts but it is determined that the damage to the vehicle is a result of flood or fire shall be designated as flood damaged or fire damaged by the commissioner and such

designation shall be indicated on the face of the certificate of title for such vehicle.

History.
Code 1981, § 40-3-36.1, enacted by Ga. L. 1993, p. 1260, § 8.

40-3-37. Salvaged or rebuilt motor vehicles; inspections; fees; exemption of motorcycles; glider kits.

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

(1) "Application for a certificate of title on a recovered stolen motor vehicle" means an application for a certificate of title for a motor vehicle for which an insurance company has paid a total loss claim, has obtained a title marked "unrecovered stolen motor vehicle," and which has subsequently been recovered.

(2) "Application for a certificate of title on a salvaged or rebuilt motor vehicle" means:

(A) An application for a certificate of title for a motor vehicle for which a current Georgia certificate of title is marked "salvage" pursuant to subsection (e) of Code Section 40-3-36 and which has been repaired;

(B) An application for a certificate of title for a motor vehicle for which a current out-of-state certificate of title is marked "salvage," "rebuilt," or "restored" or any similar such phrase; or

(C) An application for a certificate of title for a motor vehicle for which a current Georgia certificate of title is marked "salvage" pursuant to subsection (e) of Code Section 40-3-36 and for which the transferee is anyone other than a licensee as defined in Code Section 43-47-2.

(b)(1) Upon receipt of an application for a certificate of title on a salvaged or rebuilt motor vehicle, the commissioner shall promptly conduct an initial inspection on each such motor vehicle prior to the issuance of a certificate of title for the motor vehicle. Upon receipt of an application for a certificate of title on a recovered stolen motor vehicle which has been stripped of:

(A) Substantially all its interior parts;

(B) Engine;

(C) Transmission;

(D) All doors;

(E) Complete soft top assembly including roof mechanism;

(F) Front clip assembly (fenders, hood, and bumper); or

(G) Cab and bed of a pick-up truck,

the commissioner shall promptly conduct an initial inspection on each such motor vehicle prior to the issuance of a certificate of title for the motor vehicle. The initial inspection shall include, but shall not be limited to, verification of the vehicle identification number, verification of the bills of sale or title for the major components, verification in regard to rebuilt vehicles that the word "rebuilt" is permanently affixed as required by subsection (d) of this Code section, verification that the vehicle was rebuilt in the State of Georgia, and, if the vehicle has been repaired, verification that the motor vehicle conforms to all safety equipment standards required by law. The commissioner shall be authorized to charge a fee of $100.00 for each initial inspection of each motor vehicle. In the event a motor vehicle fails an inspection, a fee of $100.00 shall be charged for each subsequent reinspection. The commissioner may conduct any such initial inspection and any required reinspections even though the motor vehicle may have been previously inspected under this Code section.

(2) If, upon inspection under paragraph (1) of this subsection, it is determined that the motor vehicle is not in full compliance with the law, the commissioner shall refuse to issue a certificate of title until compliance is reached. The commissioner may order additional, corrective repairs to such vehicle as a condition of issuance of a certificate of title.

(c) All applications submitted pursuant to this Code section shall be accompanied by one or more photographs of the motor vehicle in its salvaged condition before any repairs have been made to such vehicle, which photographs shall be used by the commissioner in his or her inspections of the vehicle pursuant to this Code section. Any person who rebuilds or repairs a salvage motor vehicle shall submit an application for a certificate of title and obtain an inspection of such vehicle prior to the painting of such vehicle.

(d)(1)(A) Upon inspection under subsection (b) of this Code section, if it is determined that the motor vehicle has been restored to an operable condition by the replacement of two or more major component parts, a certificate of title may be issued for such motor vehicle which shall contain the word "rebuilt" on its face in no larger than 12 point font. This requirement will indicate to all subsequent owners of the motor vehicle that such is a rebuilt motor vehicle. If any such inspection determines that the motor vehicle shall require the replacement of less than two major component parts in order to restore the motor vehicle to an operable condition, a certificate of title shall be issued for such

motor vehicle which shall contain the word "rebuilt" on its face in such manner as the commissioner shall prescribe. This requirement will indicate to all subsequent owners of the motor vehicle that such is a rebuilt motor vehicle.

(B) If it is determined that the motor vehicle required or shall require the replacement of two or more major component parts in order to restore the motor vehicle to an operable condition, the department shall cause the word "rebuilt" to be affixed to said motor vehicle at the time of inspection by the commissioner. The word "rebuilt" shall be affixed in a clear and conspicuous manner to the door post or such other location as the commissioner may prescribe. The word "rebuilt" shall be stamped on a certificate and shall be affixed to the motor vehicle in such manner as the commissioner may prescribe. The requirement of this subparagraph shall only apply to motor vehicles restored after November 1, 1982.

(2) Upon inspection by the commissioner and compliance with paragraph (2) of subsection (b) of this Code section, if it is determined that the motor vehicle does not require the replacement of two or more major components or has not had two or more major components changed, a certificate of title shall be issued and shall contain the word "rebuilt" on its face.

(3) If, after the initial inspection, the commissioner determines that the damage is so extensive that returning such vehicle to a safe, operable condition is impossible, the salvage certificate shall be revoked and such vehicle may only be used for scrap or parts. A vehicle for which such a determination is made shall not be issued a title under any circumstances or conditions including but not limited to obtaining of a surety bond.

(e) Any person, firm, or corporation that rebuilds or repairs a motor vehicle whose current certificate of title is marked "salvage" shall make application for and obtain a certificate of title as provided in this Code section prior to the sale or transfer of said motor vehicle. If, under the laws of any other state, a vehicle has been declared to be nonrebuildable, the commissioner shall not issue any certificate of title for such vehicle and the vehicle shall not be used for any purpose except parts.

(f)(1) Motorcycles which are over 25 years old shall be exempt from the salvage laws of this state.

(2) Motor vehicles which have been altered by the installation of a glider kit shall be issued a certificate of title containing the word "rebuilt."

History.
Ga. L. 1981, p. 644, §§ 3, 4; Code 1981, § 40-3-35.1; Ga. L. 1982, p. 403, §§ 2, 4; Ga. L. 1982, p. 1676, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 1227, § 2; Ga. L. 1987, p. 626, § 1; Code 1981, § 40-3-37, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 8; Ga. L. 1993, p. 91, § 40; Ga. L. 1993, p. 1260, § 9; Ga. L. 1998, p. 1179, § 36; Ga. L. 2004, p. 452, § 3; Ga. L. 2007, p. 635, § 3/HB 183; Ga. L. 2011, p. 752, § 40/HB 142.

Cross references.
Labeling requirements for remanufactured or rebuilt items generally, § 10-1-80 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, the quotation mark preceding the word "term" was deleted and a quotation mark added preceding "application" in subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Transfer of salvage titles. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with O.C.G.A. § 40-3-1 et seq. and the rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq.

40-3-38. Fees.

(a) An application for a certificate of title shall be accompanied by the required fee when mailed or delivered to the commissioner or a designated agent.

(b) An application for the naming of a lienholder on a certificate of title shall be accompanied by the required fee when mailed or delivered to the commissioner or a designated agent.

(c) The commissioner shall be paid a fee of $18.00 for the filing of an application for any certificate of title and for the filing of the notice of a security interest or a lien on vehicles not required by law to be titled in this state. The commissioner may, by appropriate regulation, provide for additional fees not to exceed $18.00 for the special handling of applications for certificates of title and related documents. The commissioner shall be paid a fee of $8.00 for the filing of an application for a replacement certificate of title. The fee for issuance of a replacement certificate of title shall be the same whether mailed or delivered to the commissioner or an agent.

(d) The above fees shall be required of all applicants except the State of Georgia and the United States of America.

History.
Ga. L. 1961, p. 68, § 18; Ga. L. 1969, p. 92, §§ 2, 3; Ga. L. 1981, p. 883, § 8; Code 1981, § 40-3-36; Ga. L. 1984, p. 1194, § 2;

Ga. L. 1985, p. 485, § 1; Code 1981, § 40-3-38, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 779, § 17; Ga. L. 1994, p. 1851, § 2.

JUDICIAL DECISIONS

Fee not applicable to post-certificate transactions. — Clear language of O.C.G.A. § 40-3-38(c) states that the charge authorized is one for an application for a certificate of title. When there is merely a subsequent transaction affecting title to a motor vehicle, there is no need or basis for application for a certificate of title on the vehicle, only a need to reflect the transaction on the already-existing certificate of title. Additionally, O.C.G.A. § 40-3-27 specifically addresses that situation and limits the fee to $5.00. Fryer v. Easy Money Title Pawn, Inc., 183 B.R. 654, 1995 Bankr. LEXIS 886 (Bankr. S.D. Ga. 1995).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 71. 66 Am. Jur. 2d, Records and Recording Laws, § 70.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 96 et seq., 307 et seq.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 17.

40-3-39. Compensation of tag agents; mailing of applications to department.

The commissioner is authorized to utilize the services of persons appointed as county tag agents under Code Section 40-2-23 and to allow such county tag agents to retain a fee therefor not in excess of 50¢ for each application handled, such fee to be disposed of as other tag fees retained by him or her as tag agent are disposed of in his or her county. Any applicant for a title shall have the right to mail the application directly to the department.

History.
Ga. L. 1961, p. 68, § 18; Code 1981, § 40-3-37; Ga. L. 1985, p. 485, § 2; Code 1981, § 40-3-39, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 4-8.

40-3-40. Reports and remittances by tag agents.

(a) All county tag agents accepting and handling title applications shall endeavor to submit such applications and related sums of money to which the department is entitled to the commissioner on a daily basis. All reports of title applications handled and related sums of money collected to which the department is entitled must be submitted to the commissioner within seven calendar days from the close of the business day during which such applications were handled and related sums of money collected.

(b) Funds received as a result of handling title applications shall be

considered trust funds in the hands of the tag agents until such time as they are paid over to the commissioner.

(c) Failure to submit the reports or remit the funds within the seven-calendar-day period from the close of the business day as required by this Code section shall result in the penalties imposed by Code Section 48-2-44.

(d) Before the expiration of the time period within which a title report is required to be filed with the commissioner or funds remitted to the commissioner, application may be made to the commissioner for an extension. The commissioner is authorized, upon a showing of justifiable cause, to grant up to a ten-day extension from the deadline provided for the performance of the above duties. Only one such extension may be granted with regard to any reports or funds due the commissioner for a specific business day.

(e) Proof of mailing within the appropriate time period provided for in this Code section, as evidenced by a United States Postal Service postmark, shall be prima-facie proof that the county tag agent has complied in a timely manner with his duties as enumerated by this Code section.

History.
Ga. L. 1980, p. 1038, § 1; Code 1981, § 40-3-38; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-3-40, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 15-2/HB 501.

40-3-41. Suspension or revocation of certificates of title.

(a) The commissioner shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with Code Section 40-3-6, when authorized by any other provision of law or if he finds:

(1) The certificate of title was fraudulently procured or erroneously issued; or

(2) The vehicle has been scrapped, dismantled, or destroyed.

(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(c) When the commissioner suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the commissioner.

(d) The commissioner may seize and impound any certificate of title which has been suspended or revoked.

History.
Ga. L. 1961, p. 68, § 28; Code 1981, § 40-3-39; Code 1981, § 40-3-41, as redesignated by Ga. L. 1990, p. 2048, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 98, 99.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 101, 102.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 26.

40-3-42. Timely submission of documents; penalty for late submissions.

In instances when an application for title is required to be submitted within a certain time period, proof of mailing within the designated period allowed for submission of the documents, as evidenced by a United States Postal Service postmark, shall be prima-facie proof that the application was timely submitted. Additionally, when the law provides for a penalty for the untimely submission of a title application, the responsibility for the collection of such penalty shall be that of the department.

History.
Ga. L. 1981, p. 883, § 3; Code 1981, § 40-3-40; Code 1981, § 40-3-42, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 2000, p. 951, § 4-9.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq.

40-3-43. Transfer of certificate of title for total loss claim paid for stolen vehicle.

(a) Any person, firm, or corporation which pays a total loss claim on a vehicle as a result of such vehicle's being stolen shall within 15 days of the payment of such total loss claim apply to the commissioner for a transfer of the certificate of title into such person's, firm's, or corporation's name. No person, firm, or corporation shall sell, transfer, or convey such vehicle until the requirements of this Code section have been met.

(b) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant to this Code section, may issue an administrative fine not to exceed $1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated under this Code section. The hearing and

any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto.

(c) The Commissioner of Insurance is authorized to enforce the provisions of this Code section to the extent such provisions are applicable to insurers which are under the jurisdiction of the Department of Insurance. The Commissioner of Insurance is also authorized to cooperate with the commissioner in enforcing this Code section and to provide the commissioner with any information acquired by the Commissioner of Insurance during any investigation or proceeding involving this Code section. Nothing in this subsection shall be construed to limit the powers and duties of the commissioner to enforce the provisions of this Code section as such provisions apply to insurers.

History.
Code 1981, § 40-3-41, enacted by Ga. L. 1988, p. 1340, § 1; Code 1981, § 40-3-43, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 2019, p. 337, § 1-99/SB 132.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, "vehicle's" was substituted for "vehicle" in the first sentence of subsection (a).

ARTICLE 3

SECURITY INTERESTS IN AND LIENS ON MOTOR VEHICLES

Cross references.
Secured transactions generally, § 11-9-101 et seq.

Sale or disposal of motor vehicle after giving bill of sale to secure debt or other security instrument, § 44-14-7.

40-3-50. Perfection of security interests generally.

(a) Except as provided in Code Sections 11-9-303, 11-9-316, and 11-9-337, the security interest in a vehicle of the type for which a certificate of title is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle by compliance with this chapter.

(b)(1) A security interest is perfected by delivery to the commissioner or to the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides, of the required fee and:

(A) The existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest; or

(B) A notice of security interest on forms prescribed by the commissioner.

(2) The security interest is perfected as of the time of its creation if the initial delivery of the application or notice to the commissioner or local tag agent is completed within 30 days thereafter, regardless of any subsequent rejection of the application or notice for errors; otherwise, as of the date of the delivery to the commissioner or local tag agent. The local tag agent shall issue a receipt or other evidence of the date of filing of such application or notice. When the security interest is perfected as provided for in this subsection, it shall constitute notice to everybody of the security interest of the holder.

History.

Ga. L. 1961, p. 68, § 21; Ga. L. 1962, p. 79, § 11; Ga. L. 1978, p. 1081, § 9; Ga. L. 1981, p. 883, § 9; Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 352, § 2; Ga. L. 1995, p. 809, § 14; Ga. L. 2000, p. 227, § 1; Ga. L. 2001, p. 362, § 32; Ga. L. 2011, p. 510, § 1/HB 323.

Editor's notes.

Ga. L. 1994, p. 352, § 3, not codified by the General Assembly, provides: "The General Assembly declares that the enactment of Section 2 of this Act is a present clarification of the original intent of the General Assembly as to the method, manner, and time of perfection of a security interest in a motor vehicle."

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Law reviews.

For comment on Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Purpose. — Legislature intended to provide a simple statutory lien procedure upon which those both financing and repairing motor vehicles could rely when

conducting daily business. This statutory procedure did not engraft upon itself common law principles of accession or the complex and multi-faceted procedures of the UCC. Barnes v. GMAC, 191 Ga. App. 201, 381 S.E.2d 146, 1989 Ga. App. LEXIS 497 (1989).

Exception. — Trial court erred in concluding that the security interest holder had a valid, perfected security interest in the vehicle that the car buyer purchased; ordinarily, the holder's security interest would have been noted on the certificate of title issued to the buyer when the car was purchased, but the state motor vehicle department made a clerical error and did not include the security interest holder's security interest on the certificate of title; as a result, the buyer was able to purchase the car free of the security interest holder's security interest pursuant to O.C.G.A. § 11-9-337, which provided an exception to enforcement of a security interest pursuant to O.C.G.A. § 40-3-50 for people taking delivery of a good without knowledge of a security interest. Metzger v. Americredit Fin. Svcs., 273 Ga. App. 453, 615 S.E.2d 120, 2005 Ga. App. LEXIS 336 (2005), cert. denied, No. S05C1525, 2005 Ga. LEXIS 552 (Ga. Sept. 19, 2005).

Creation of security interest matter of contract between parties. — Failure to comply with the Motor Vehicle Certificate of Title Act, (O.C.G.A. § 40-3-1 et seq.,) with respect to the perfection of a security interest does not affect the creation of the security interest which remains a matter of contract between the parties. Spoon v. Herndon, 167 Ga. App. 794, 307 S.E.2d 693, 1983 Ga. App. LEXIS 2619 (1983).

While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act, 15 U.S.C. § 1692, claim was dismissed; other parts of the Georgia Code, such as O.C.G.A. §§ 10-1-36 and 40-3-50, and applicable case law indicated that Georgia's highest courts would most likely hold that the case fell within Ga. U.C.C. art. 9 and not Ga. U.C.C. art. 2. Almand v. Reynolds & Robin, P.C., 485 F. Supp. 2d 1361, 2007 U.S. Dist. LEXIS 31907 (M.D. Ga. 2007).

Chapter as sole means of perfection. — Only way to perfect security interest in motor vehicles is by filing under Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.). General Fin. Corp. v. Hester, 141 Ga. App. 28, 232 S.E.2d 375, 1977 Ga. App. LEXIS 1742 (1977); Freeman v. Bentley, 205 Ga. App. 409, 422 S.E.2d 435, 1992 Ga. App. LEXIS 1202 (1992).

Failure to deliver documents. — O.C.G.A. § 40-3-50(b) does not provide that a security interest is void if the relevant documents are not delivered within 20 days, but states that if delivery is accomplished within 20 days, the perfection of the security interest will relate back to the time of the security's creation. Perkins v. Gilbert, 169 B.R. 455, 1994 Bankr. LEXIS 997 (Bankr. M.D. Ga. 1994).

Section inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79, § 11 (see now O.C.G.A. § 40-3-50) is that the only way to create security interests in automobiles is by the method provided in that section, which does not apply to or affect dealers holding automobiles for sale, which not only need not have certificate of title, but also pass to buyers in the ordinary course of trade free of the security interest. Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co., 113 Ga. App. 782, 149 S.E.2d 753, 1966 Ga. App. LEXIS 1204, rev'd, 222 Ga. 559, 150 S.E.2d 803, 1966 Ga. LEXIS 553 (1966).

Minor errors on application tolerated. — Application substantially complying with filing requirements is effective even though the application contains minor errors which are not seriously misleading. Roberts v. International Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697, 1977 Ga. App. LEXIS 2248 (1977).

Application initially listing no security interest holder. — An application for a certificate of title initially

listing no security interest holder is not covered by O.C.G.A. § 40-3-50. Kelley v. Citizens Bank (In re Russell), 227 B.R. 196, 1998 Bankr. LEXIS 1468 (Bankr. M.D. Ga. 1998).

Certificate of title superior to later asserted mechanics' lien. — When a certificate of title provided constructive notice to future debtors that the motor vehicle was encumbered by a security interest in favor of plaintiff, plaintiff's first security interest was superior to defendants' later asserted mechanics' lien. Hull v. Transport Acceptance Corp., 177 Ga. App. 875, 341 S.E.2d 330, 1986 Ga. App. LEXIS 1565 (1986).

Reapplication for certificates of title when new agreement is executed. — When lessee agreed to lease with an option to buy three tractors and, pursuant to subsection (b) of O.C.G.A. § 40-3-50, applied for certificates of title and thereby perfected security interests in the three tractors, but the parties subsequently executed an installment sales contract entitled a "Financing and Security Agreement," but the former lessee failed to reapply with the state revenue commissioner for certificates of title showing lessor rather than lessee as owner of the tractors under the new agreement, the former lessee was not in substantial compliance with the Georgia Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and failed to perfect the lessee's security interest under the installment contract. Load-It, Inc. v. GTE Leasing Corp., 72 B.R. 13, 1986 U.S. Dist. LEXIS 23929 (N.D. Ga. 1986).

Reapplication unnecessary. — Lessor under a lease intended as security can perfect the lessor's interest in a motor vehicle by applying for a certificate of title showing the lessor as owner, and when the parties' second agreement is identical to their first agreement, there is not such a change in their relationship as to require the lessor to reapply for a certificate of title showing the lessee, rather than the lessor as owner. Levine v. Leasing Int'l, Inc. (In re Betts), 71 B.R. 171, 1987 Bankr. LEXIS 330 (Bankr. N.D. Ga. 1987).

Finance company had a perfected security interest in tractors and was not required under the Georgia Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., to reapply for new certificates of title after completion of a financing and security agreement since the certificates already on file listed the names and addresses of the interested parties and accurately designated the company as the holder of the security interest. GTE Leasing Corp. v. Load-It, Inc., 860 F.2d 393, 1988 U.S. App. LEXIS 15434 (11th Cir. 1988).

Lapse between creation of interest and perfection. — Lapse of 48 days between the date a security interest was created and the date the certificate of title was perfected created an antecedent debt which was a recoverable preferential transfer under the Bankruptcy Code. Mann v. GMAC (In re Harley), 41 B.R. 276, 1984 Bankr. LEXIS 5395 (Bankr. N.D. Ga. 1984).

Bank's security interest survives owner's use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest, and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369, 1973 U.S. Dist. LEXIS 12015 (M.D. Ga. 1973).

Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) is notice statute, having the effect, when complied with, of imputing constructive notice to all who may subsequently acquire an interest in or lien against the property. Franklin Fin. Co. v. Strother Ford, Inc., 110 Ga. App. 365, 138 S.E.2d 679, 1964 Ga. App. LEXIS 632 (1964).

Rights of innocent third-party purchasers. — Ga. L. 1962, p. 79, § 11 (see now O.C.G.A. § 40-3-50) must not be construed as permitting retroactive validity against innocent third parties who have acquired rights for value. First Nat'l Bank & Trust Co. v. Smithloff, 119 Ga. App. 284, 167 S.E.2d 190, 1969 Ga. App. LEXIS 1076 (1969).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired the automobile for value. General Fin. Corp. v. Hester, 141 Ga. App. 28, 232 S.E.2d 375, 1977 Ga. App. LEXIS 1742 (1977).

Under the UCC, O.C.G.A. §§ 11-9-302(3) (see now O.C.G.A. § 11-9-310), 40-3-20, and 40-3-50, the rights of the holder of an unperfected security interest in an automobile are subordinate to the rights of an innocent third party who acquires the automobile for value. A party who purchases a car from one who purchased the car at a judicial sale to satisfy a judgment against the owner's spouse is such an innocent party. May v. Macioce, 200 Ga. App. 542, 409 S.E.2d 45, 1991 Ga. App. LEXIS 1072 (1991), cert. denied, No. S91C1480, 1991 Ga. LEXIS 585 (Ga. Sept. 6, 1991).

Trial court erred in concluding that the security interest holder had a valid, perfected security interest in the car buyer's vehicle that the holder could enforce against the buyer; while the security interest holder ordinarily would have had an enforceable security interest pursuant to O.C.G.A. § 40-3-50, regarding the perfection of security interests, the security interest in the car buyer's vehicle was not perfect and the buyer did not have constructive notice; the state motor vehicle department made a clerical error and did not list the security interest on the certificate of title issued to the buyer, and the buyer showed that a statutory exception existed that allowed the buyer to purchase the car free of the security interest. Metzger v. Americredit Fin. Svcs., 273 Ga. App. 453, 615 S.E.2d 120, 2005 Ga. App. LEXIS 336 (2005), cert. denied, No. S05C1525, 2005 Ga. LEXIS 552 (Ga. Sept. 19, 2005).

Pawnbroker as used car dealer. — In order to perfect a security interest in a vehicle, a pawnbroker, as a used car dealer, must follow the requirements specified in O.C.G.A. § 40-3-50. Cobb Ctr. Pawn & Jewelry Brokers, Inc. v. Gordon, 242 Ga. App. 73, 529 S.E.2d 138, 2000 Ga. App. LEXIS 93 (2000).

When security interest perfected. — When bank forwarded the bank's application for the certificate of title in the truck to the State Revenue Commissioner, and the certificate of title was issued to the bank on November 7, 1990, the bank's purchase money security interest became perfected some time prior to the issuance of the certificate of title. United States v. Specialty Contracting & Supply, Inc., 140 B.R. 922, 1992 Bankr. LEXIS 830 (Bankr. N.D. Ga. 1992).

Consequences of failure to perfect security interest within 20 days. — Creditor failed to deliver necessary documentation to the county motor vehicle licensing department within 20 days of the initial delivery of possession of the car to the debtor as required under O.C.G.A. § 40-3-50(b); therefore, the creditor's security interest in the vehicle could be set aside and recovered by the trustee along with any payments thereunder pursuant to 11 U.S.C. §§ 544(a) and 549. Gordon v. Am. Honda Fin. Corp. (In re Vollmer), No. A03-81803-REB, No. A03-81803-REB, No. 04-6490, 2005 Bankr. LEXIS 1623 (Bankr. N.D. Ga. July 7, 2005).

Creditor failed to deliver the necessary documentation to the county motor vehicle licensing department within 20 days of the initial delivery of possession of the car to the debtor as required under O.C.G.A. § 40-3-50(b), which precluded the creditor's reliance upon the affirmative defense of 11 U.S.C. § 547(c) to the trustee's avoidance action. Gordon v. Am. Honda Fin. Corp. (In re Vollmer), No. A03-81803-REB, No. A03-81803-REB, No. 04-6490, 2005 Bankr. LEXIS 1623 (Bankr. N.D. Ga. July 7, 2005).

Security interest perfected in other state. — When creditor of car owner had a perfected security interest in the car, and the name of the creditor as the holder of a security interest was shown on an existing certificate of title issued by the jurisdiction where the car was located when the security interest attached, the creditor's security interest perfected in North Carolina continued perfected in Georgia, and was valid against subsequent transferees. United Carolina Bank v. Sistrunk, 158 Ga. App. 107, 279 S.E.2d 272, 1981 Ga. App. LEXIS 2097 (1981).

Perfected security interest was constructive notice. — Lender's perfected security interest in a vehicle was constructive notice to the liability insurer of a third-party tortfeasor. JCS

Enters. v. Vanliner Ins., 227 Ga. App. 371, 489 S.E.2d 95, 1997 Ga. App. LEXIS 891 (1997).

Lease agreement mentioning ownership. — Lease agreement evidenced by a certificate of title in which the lessor was denominated the "owner," while containing no express identification of the "owner's" security interest, constituted a perfected security interest. Load-It, Inc. v. VTCC, Inc., 774 F.2d 1077, 1985 U.S. App. LEXIS 24420 (11th Cir. 1985).

When judicial liens subordinate to perfected security interest. — Judicial liens created either contemporaneously or after the creation of the security agreement are subordinate to the perfected security interest. GMAC v. Busenlehner, 918 F.2d 928, 1990 U.S. App. LEXIS 20994 (11th Cir. 1990), cert. denied, 500 U.S. 949, 111 S. Ct. 2251, 114 L. Ed. 2d 492, 1991 U.S. LEXIS 2986 (1991).

Motor crane operated by separate motor. — Security interest in motor cranes operated by separate motor of a truck is not properly perfected unless it is noted on the motor crane's certificate of title. Citizens & S. Nat'l Bank v. Georgia Steel, Inc., 25 B.R. 796, 1982 Bankr. LEXIS 5163 (Bankr. M.D. Ga. 1982).

After-acquired parts and repairs. — Lender's properly perfected security interest in a vehicle extended to after-acquired parts and repairs, and was superior to a repair shop's mechanic's lien and claim for unjust enrichment regarding parts affixed to the vehicle. Barnes v. GMAC, 191 Ga. App. 201, 381 S.E.2d 146, 1989 Ga. App. LEXIS 497 (1989).

Permanently attached mobile home not "vehicle." — "Double-wide" mobile home unit which has become permanently attached to the land on which the mobile home is placed ceases to be a "vehicle" under the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., so that a security interest is obtained by recording a security deed to the land and the "improvements thereon" rather than placing a lien on the mobile home under the vehicle title act. Walker v. Washington, 837 F.2d 455, 1988 U.S. App. LEXIS 1665 (11th Cir. 1988).

Since the resident failed to offer sufficient evidence that the mobile home was the resident's principal dwelling or that the mobile home was permanently affixed to real estate, or even that the resident had any ownership interest in the mobile home at the time of the loan application, a security interest was perfected under O.C.G.A. § 40-3-50. Griswell v. Columbus Fin. Co., 220 Ga. App. 803, 470 S.E.2d 256, 1996 Ga. App. LEXIS 254 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Debtor's signature. — Debtor is not required to sign the notice of lien or security interest filed under Ga. L. 1961, p. 68. 1967 Op. Att'y Gen. No. 67-48 (see now O.C.G.A. § 40-3-1 et seq.).

Substitution of vehicles in contract. — Holder of a purchase money security interest in a certain vehicle may not substitute a different vehicle in the contract and have the date of perfection of the security interest in the substituted collateral relate back to the date the security interest in the first vehicle was perfected. 1983 Op. Att'y Gen. No. 83-3.

Security interest not subject to prior judgment lien. — Filing of an execution issued on a judgment on the general execution docket does not afford notice to a subsequent security interest holder in a motor vehicle and the security interest holder's lien is not subject to the prior judgment lien. 1968 Op. Att'y Gen. No. 68-95.

Used car dealers. — In order to perfect a dealer's security interest in a vehicle, a used car dealer must follow the requirements specified in O.C.G.A. § 40-3-1 et seq.; the method for perfecting a security interest as described in that chapter is exclusive, and such security interests in motor vehicles as to which certificates of title must be obtained are exempt from the provisions of law which otherwise require or relate to the recording or filing of security interests. 1990 Op. Att'y Gen. No. 90-8.

Used car dealer who has a security interest in a vehicle may exercise all

rights afforded to the dealer by the security agreement including repossession, despite not having perfected the dealer's security interest. 1990 Op. Att'y Gen. No. 90-8.

Manufactured homes. — In order for liens or security interests in manufactured homes to be valid against subsequent creditors of the owner, subsequent transferees and subsequent security interests and liens, the lien or security interest must be perfected in accordance with the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq. 2000 Op. Att'y Gen. No. 2000-8.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36, 37, 45, 56.

C.J.S.

60 C.J.S., Motor Vehicles, § 103 et seq. 72 C.J.S., Pledges, § 13. 78 C.J.S., Sales, § 576 et seq.

40-3-51. Creation of security interest by owner.

If the owner creates a security interest in a vehicle:

(1) The owner shall immediately execute the application in the space provided therefor on the certificate of title or on a separate form that the commissioner prescribes, naming the holder of the security interest on the certificate and showing the name and address of the security interest holder, and shall cause the certificate, the application, and the required fee to be delivered to the security interest holder;

(2) The security interest holder shall immediately cause the certificate of title and application and the required fee to be mailed or delivered to the commissioner or the commissioner's appropriate authorized county tag agent within 30 days of the date of creation of the security interest or lien. If the certificate of title and application and the required fee are not mailed or delivered within such time, the lien or security interest holder shall be required to pay a $10.00 penalty in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner or the authorized county tag agent for the issuance of title. If the documents are not properly resubmitted within the 60 day period, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner or authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this paragraph; and

(3) Upon receipt of the certificate of title, the application, and the

required fee, the commissioner or the commissioner's duly authorized county tag agent shall issue a new certificate containing the name and address of the holder of the security interest and of holders of previous unreleased security interests and liens, if any, and shall mail the certificate to the first holder on it. If more than one holder is named on the certificate, the first holder shall comply with subsection (b) of Code Section 40-3-26 in regard to notifying other holders of the content of the certificate.

History.

Ga. L. 1961, p. 68, § 22; Ga. L. 1962, p. 79, § 12; Ga. L. 1964, p. 436, § 4; Ga. L. 1965, p. 304, § 6; Ga. L. 1969, p. 92, § 5; Ga. L. 1981, p. 883, § 11; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 19; Ga. L. 2008, p. 835, § 7/SB 437.

JUDICIAL DECISIONS

Chapter as sole means of perfection. — Only way to perfect security interest in motor vehicles is by filing under Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.). General Fin. Corp. v. Hester, 141 Ga. App. 28, 232 S.E.2d 375, 1977 Ga. App. LEXIS 1742 (1977).

Penalty for failure to deliver documents. — O.C.G.A. § 40-3-51 does not purport to void a security interest if delivery of the certificate of title is not made within the prescribed time, but merely sets forth a ten dollar ($10.00) penalty for delivery of relevant documents to the commissioner if not completed in a timely fashion. Perkins v. Gilbert, 169 B.R. 455, 1994 Bankr. LEXIS 997 (Bankr. M.D. Ga. 1994).

Retroactivity of late-perfected security interest. — Late-perfected security interest is not retroactively valid against an innocent third party who acquired the automobile for value. General Fin. Corp. v. Hester, 141 Ga. App. 28, 232 S.E.2d 375, 1977 Ga. App. LEXIS 1742 (1977).

No obligation to perfect security interest. — Credit union which loaned money to a borrower to purchase a van had no obligation to perfect a security interest therein. The borrower never received or took title to the van which was to be security for the loan and, thus, although the credit union could have perfected a security interest by delivering the title to the revenue commissioner, it could do so only after the security interest was created by submitting a title application pursuant to O.C.G.A. § 40-3-51. Hairston v. Savannah River Plant Fed. Credit Union, 216 Ga. App. 246, 453 S.E.2d 811, 1995 Ga. App. LEXIS 89 (1995).

Security interest without perfecting interest on certificate of title. — Although an application for certificate of title pursuant to O.C.G.A. § 40-3-51 is the exclusive means of perfecting a lien in a motor vehicle, a party may have a security interest in a vehicle without having perfected that interest on the certificate of title. In re Dukes, 213 B.R. 202, 1997 Bankr. LEXIS 2014 (Bankr. S.D. Ga. 1997).

OPINIONS OF THE ATTORNEY GENERAL

Receipt of application or notice of lien in commissioner's records. — Department of Revenue's (now commissioner's) records show when an application or notice of lien is received under Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) for use in determining relative priority of security interest. 1962 Ga. Op. Att'y Gen. 310.

Correction of title certificate. — If title certificate is incorrect, it should be returned to commissioner and the owner

notified by the security interest holder that the holder has received the certificate, that it contained an error, and that the holder has returned the certificate to the commissioner; the commissioner will issue a correct certificate of title if such seems to be required under the circumstances. 1962 Ga. Op. Att'y Gen. 311.

Used car dealers. — Failure of a used car dealer to be listed on the certificate of title as an owner or security interest holder does not affect the creation of the security interest and all the rights attached thereto, including repossession. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36, 37, 56. 51 Am. Jur. 2d, Liens, § 16.

C.J.S.

60 C.J.S., Motor Vehicles, § 103 et seq. 72 C.J.S., Pledges, § 13. 78A C.J.S., Sales, § 807 et seq.

U.L.A.

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) §§ 20, 21.

ALR.

Lien for repairs to or services in connection with automobile, 62 A.L.R. 1485.

40-3-52. Perfection of second or subsequent security interests.

(a) If the owner of a motor vehicle desires to place a second or subsequent security interest against the vehicle and the certificate of title on that vehicle is being held by a security interest holder or lienholder, the owner shall, on the form prescribed by the commissioner, execute a title application and a notice of the second or subsequent security interest; and the holder of the second or subsequent security interest shall forward such notice and title application, together with a fee as provided by Code Section 40-3-38, by certified mail or statutory overnight delivery, return receipt requested, to the first holder of a security interest or lien who has custody of the certificate of title. The notice of such second or subsequent security interest shall contain on its face instructions to the security interest holder or lienholder having custody of the certificate of title directing such custodial security interest holder or lienholder within ten days to forward the notice, title application, and fee, together with the certificate of title, to the commissioner or the commissioner's duly authorized county tag agent in order that the commissioner or authorized county tag agent may issue a new certificate of title and reflect on the certificate of title the subsequent security interest. The first security interest holder or lienholder having possession of the certificate of title shall comply with the instructions contained in the notice. The commissioner or authorized county tag agent, upon receipt of a properly executed application notice, the fee, and the original certificate of title, shall enter the subsequent security interest on such commissioner's or authorized county tag agent's records and shall issue a new certificate of title and shall then deliver the certificate of title as provided for in this chapter.

(b) If the holder of the second or subsequent security interest forwards by registered or certified mail or statutory overnight delivery the title application, notice of the second or subsequent security interest, and fee to the first security interest holder or lienholder who has custody of the certificate of title within ten days of the execution of that second or subsequent security interest, it shall be perfected as of the date it was executed; otherwise, as of the date the notice was forwarded to the first security interest holder or lienholder holding the certificate of title. The second or subsequent security interest holder shall retain the return registered or certified mail or statutory overnight delivery receipt as proof of perfection of his security interest under this Code section.

(c) In the event the first security interest holder or lienholder holding the certificate of the title fails, refuses, or neglects to forward the title application, notice, fee, and original certificate of title to the commissioner or the commissioner's duly authorized county tag agent as required by this Code section, the holder of the second or subsequent security interest may, on a form prescribed by the commissioner, make direct application to the commissioner or authorized county tag agent. Such direct application to the commissioner or authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the first security interest holder or lienholder. Upon receipt of such a direct application, the commissioner or authorized county tag agent shall order the first security interest holder or lienholder having custody of the certificate of title to forward the certificate of title to the commissioner or the authorized county tag agent for the purpose of having the second or subsequent security interest entered and a new certificate of title issued. If after a direct application of the commissioner or authorized county tag agent and the order of the commissioner or authorized county tag agent the first security interest holder or lienholder continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the outstanding certificate of title and issue a new certificate of title reflecting all security interests and liens, including the second or subsequent security interest, and this new certificate of title shall be delivered as provided for in this chapter.

(d) As an alternative to mailing notices concerning a second or subsequent security interest to the commissioner or the commissioner's duly authorized county tag agent in accordance with this Code section, the commissioner shall be authorized to permit the transaction to be made by electronic means in accordance with regulations promulgated by the commissioner.

(e) No first security interest holder or lienholder having possession of

the certificate of title shall have the validity of that security interest or lien affected by surrendering the certificate of title as provided for by this Code section.

History.
Ga. L. 1965, p. 304, § 5; Ga. L. 1978, p. 1081, § 9; Ga. L. 1981, p. 883, § 10; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 20; Ga. L. 1998, p. 1179, § 37; Ga. L. 2000, p. 1589, § 3.

Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Security interest perfected in other jurisdiction. — If a vehicle is subject to a security interest when brought into Georgia, and the name of the holder of the security interest is shown on an existing certificate of title issued by the jurisdiction where the vehicle was when the security interest attached, the security interest continues perfected in Georgia and is valid against subsequent transferees of the vehicle. Strother Ford, Inc. v. First Nat'l Bank, 132 Ga. App. 268, 208 S.E.2d 25, 1974 Ga. App. LEXIS 1672 (1974), superseded by statute as stated in Metzger v. Americredit Fin. Svcs., 273 Ga. App. 453, 615 S.E.2d 120, 2005 Ga. App. LEXIS 336 (2005).

RESEARCH REFERENCES

ALR.
Automobiles: priorities as between vendor's lien and subsequent title or security interest obtained in another state to which vehicle was removed, 42 A.L.R.3d 1168.

40-3-53. Perfection and enforcement of liens generally.

(a) If the holder of any lien, except the holder of a mechanic's lien, perfection of which is prescribed in Code Section 40-3-54, desires to perfect such lien against a vehicle, the lienholder shall, on the form prescribed by the commissioner, execute a title application and a notice of lien stating the type of lien and the specific vehicle against which the lien is claimed and shall forward such notice and title application, together with a fee as provided by Code Section 40-3-38, either personally or by certified mail or statutory overnight delivery, return receipt requested, to the person who has custody of the current certificate of title at the address shown on such certificate of title. If someone other than the owner is holding the certificate of title, a copy of the notice shall also be forwarded to the owner. The lien claimant shall retain the certified mail or statutory overnight delivery receipt as proof of compliance with this Code section.

(b) After receipt of the notice of lien, as specified in this Code section, neither the owner nor any other person shall take any action affecting the title other than as provided in this Code section. After receipt of the notice of lien, the person holding the certificate of title shall hold the notice of lien and attachments and the title for ten days. If, during the

ten-day period following receipt of the notice, the claimed lien is satisfied, the lien claimant shall, on the form prescribed by the commissioner, notify the owner and the person holding the certificate of title of such satisfaction. The notice of satisfaction shall serve as a release and withdrawal of the pending notice of lien. If the owner or person holding the certificate of title chooses to contest the claimed lien, such owner or person holding the certificate of title shall so indicate on the notice of lien form and shall notify the other interested parties. If the notice contesting the lien is given, or if ten days have elapsed without the lien being satisfied, the person holding the certificate of title shall forward the certificate of title together with the notice of lien and attachments thereto to the commissioner or the commissioner's duly authorized county tag agent in order that the commissioner or authorized county tag agent may issue a new certificate of title and reflect on the new certificate of title the lien on the vehicle. The owner or the person who has custody of the current certificate of title shall comply with the instructions contained in the notice, and in the event such owner or person having custody of the current title cannot do so such owner or person having custody of the current title shall notify the lien claimant. The commissioner or authorized county tag agent, upon receipt of a properly executed title application, notice, fee, and the current certificate of title, shall enter the lien on the commissioner's or authorized county tag agent's records and shall issue a new certificate of title reflecting the lien and shall then deliver the certificate of title as provided for in this chapter. The lien shall be perfected at the time the lien notice, application for title, fee, and current certificate of title are received by the commissioner or authorized county tag agent.

(c) In the event that the person who has custody of the current certificate of title fails, refuses, or neglects to forward the title application, notice, fee, and current certificate of title to the commissioner or the commissioner's duly authorized county tag agent as required in this Code section, the lien claimant may, if such lien claimant's lien has not been satisfied, on a form prescribed by the commissioner, make direct application to the commissioner or authorized county tag agent. Such direct application to the commissioner or authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the person who has custody of the current certificate of title. Upon receipt of such a direct application, the commissioner or authorized county tag agent shall order the person who has custody of the current certificate of title to forward the certificate of title to the commissioner or authorized county tag agent for the purpose of having the lien entered and a new certificate of title reflecting the lien issued. If, after a direct application to the commissioner or authorized county tag agent and after the order of the

commissioner or authorized county tag agent, the person who has custody of the current certificate of title continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the current certificate of title and issue a new certificate of title reflecting all security interests and liens, and this new certificate of title shall be delivered as provided for in this chapter. In the event a direct application is made, the lien shall be perfected as of the date the outstanding certificate of title is canceled.

(d) No security interest holder or lienholder having custody of the certificate of title shall have the validity of such security interest holder's or lienholder's security interest or lien affected by surrendering the certificate of title as provided by this Code section. The first security interest holder or lienholder shall have the responsibility to advise a prospective transferee or security interest holder, upon inquiry, that a notice of subsequent lien has been received. Upon the issuing of a new certificate of title, the commissioner or the commissioner's duly authorized county tag agent shall cancel the old certificate of title.

(e) A lien perfected under this Code section shall be a lien only against the specific vehicle identified in the application for a new certificate.

(f) A lien on a vehicle for which a certificate of title is required shall be perfected and shall be valid against subsequent transferees and holders of security interests and liens only by compliance with this Code section. The procedure contained in this chapter shall be the exclusive method for the perfection of liens on vehicles, and no lien shall be effective as to a vehicle unless so perfected.

History.

Ga. L. 1961, p. 68, § 21; Ga. L. 1962, p. 79, § 11; Ga. L. 1969, p. 92, § 4; Ga. L. 1978, p. 1081, § 9; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 21; Ga. L. 1998, p. 1179, § 38; Ga. L. 2000, p. 1589, § 3; Ga. L. 2024, p. 1052, § 4(38)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "lien," for "lien as defined in paragraph (7) of Code Section 40-3-2," in subsection (a).

Cross references.

Liens generally, § 44-14-320 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, in subsection (b), a comma was inserted following "notice of lien" in the first and second sentences and following "fee" in the next-to-last sentence.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Actual notice of prior lien preserves priority. — Although the holder of a security interest may fail to comply with the provisions relating to the

perfection of a security interest, it is well settled that actual notice of the prior lien to one who subsequently purchases or acquires a security interest is sufficient to preserve the priority of the lien or of the title. Hopkins v. Kemp Motor Sales, Inc., 139 Ga. App. 471, 228 S.E.2d 607, 1976 Ga. App. LEXIS 1850 (1976).

Priorities as between lenders. — When two lenders hold security agreements in the same property, and when, at the time of the second loan, the first lender's interest in the property was not perfected and the second lender had the opportunity to present the original certificate of title with a proper application to the commissioner to protect its status and obtain a first lien under Ga. L. 1978, p. 108, § 9 (see now O.C.G.A. § 40-3-53) but did not, and thereafter the first lender perfected that lender's security interest, the first lender's interest is superior to that of the second lender. Gwinnett Com. Bank v. Citizens & S. Bank, 152 Ga. App. 137, 262 S.E.2d 453, 1979 Ga. App. LEXIS 2841 (1979).

Sufficiency of evidence. — Evidence found insufficient to direct verdict for lienholder, or to grant motion for new trial. GMAC v. Miller, 138 Ga. App. 140, 225 S.E.2d 728, 1976 Ga. App. LEXIS 2085 (1976).

Noncomplying claimant not legally foreclosed from pursuing claim. — Claimant who has failed to record claimant's lien or otherwise make it known that one claims an interest in the property may have hard sledding when it comes to convincing the trier of fact, but the claimant is not as a matter of law foreclosed from pursuing the claim. State v. Hallman, 149 Ga. App. 221, 253 S.E.2d 859, 1979 Ga. App. LEXIS 1794 (1979).

Reliance on filing of judgment on general execution docket. — When a creditor fails to follow O.C.G.A. § 40-3-53 in perfecting a lien on a motor vehicle, relying instead on the filing of a judgment on the general execution docket and resulting judgment lien, the creditor's judgment lien does not attach to the subject vehicle and the vehicle is not encumbered by the lien. The reasoning of the court in a prior decision was not properly construed or extended as precedent for the implication that a judgment lien properly perfected under state law against a motor vehicle was thereby immune from avoidance under 11 U.S.C. § 522(f) if the conditions of that provision were shown to be satisfied; in fact, once the lien was shown to have attached and been perfected, the analysis under § 522(f) concerned precisely the avoidance of such an otherwise valid and perfected lien to the extent it impaired an exemption to which a debtor was entitled. First Fin. Servs. v. Tallant (In re Tallant), No. G11-23362-REB, No. G11-23362-REB, 2012 Bankr. LEXIS 2454 (Bankr. N.D. Ga. Apr. 4, 2012).

Trustee in bankruptcy. — Trustee in bankruptcy was not required to demonstrate the trustee's ability to comply with the statute in order to gain the trustee's status as a hypothetical perfected lien holder under § 544 of the Bankruptcy Code; the trustee gained the trustee's status as a perfected lien creditor as of the date of filing regardless of what other requirements state law provided for perfecting judgment liens. Kelley v. Citizens Bank (In re Russell), 227 B.R. 196, 1998 Bankr. LEXIS 1468 (Bankr. M.D. Ga. 1998).

Federal tax lien priority. — IRS held perfected tax lien in the debtor's vehicle that took priority over the respondent's lien because the IRS's lien was perfected at the time of filing the notice of tax lien notwithstanding the IRS's failure to comply with the Georgia Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq. Craft-Latimer v. Auto. Acceptance Corp. (In re Craft-Latimer), No. 15-51383-BEM, 2015 Bankr. LEXIS 2843 (Bankr. N.D. Ga. Aug. 10, 2015).

RESEARCH REFERENCES

Am. Jur. 2d.

51 Am. Jur. 2d, Liens, § 22 et seq.

40-3-54. Mechanics' liens; how asserted and foreclosed.

(a) All mechanics of every sort shall have a special lien on any vehicle required to have a certificate of title by Code Section 40-3-20 for work done, or for work done and materials furnished, or for materials furnished in repairing or servicing such vehicle. Perfection of the lien by recording shall be as provided in Code Section 40-3-53. The lien may be asserted by retention of the vehicle, and all contracts for repairs or service to vehicles shall be deemed to incorporate a right of retention by the mechanic to protect this lien until it is paid or satisfied through foreclosure as provided in this Code section. The lien may also be asserted by surrendering the vehicle, giving credit, and foreclosing the lien claim in the manner provided in this Code section. If he surrenders possession of the vehicle to the debtor, the mechanic shall record his claim of lien as provided in Code Section 40-3-53. Such special lien shall be superior to all liens except for taxes and such other liens and security interests of which the mechanic had actual or constructive notice before the work was done or material furnished. The validity of the lien against third parties shall be determined in accordance with this chapter.

(b) If possession is retained or the lien recorded, the owner-debtor may contest the validity of the amount claimed to be due by making written demand upon the lienholder. If upon receipt of such demand the lienholder fails to institute foreclosure proceedings pursuant to this Code section or Article 1A of Chapter 11 of this title within 30 days, the lien is forfeited.

(c) The lien shall be foreclosed in the following manner:

(1) A person asserting the lien, either for himself or as a guardian, administrator, executor, or trustee, may move to foreclose it by making an affidavit to a court of competent jurisdiction showing all the facts necessary to constitute a lien under this Code section and the amount claimed to be due;

(2) Upon such affidavit being filed, the clerk or a judge of the court shall serve notice upon the owner, the recorded lienholders and security interest holders, and the lessee, if any, of the vehicle of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists, and that such hearing must be petitioned for within five days after receipt of the notice and that, if no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(3) If a petition for a hearing is filed within the time allowed, the court shall set a probable cause hearing within ten days of the filing of the petition. If, at the probable cause hearing, the court determines

that reasonable cause exists to believe that a valid debt exists, the mechanic shall be given possession of the vehicle or the court shall obtain possession of the vehicle, as ordered by the court. The owner-debtor may retain possession of the vehicle by giving bond and security in the amount determined to be probably due and the costs of the action;

(4) Within five days of the probable cause hearing, a defendant must petition the court for a full hearing on the validity of the debt if a further determination of the validity of the debt is desired. If no such petition is filed, the lien on the amount determined reasonably due shall be conclusively deemed a valid one and foreclosure thereof allowed. If such a petition is filed, the court shall set a full hearing thereon within 30 days of the filing of the petition. Upon the filing of such petition by the defendant, neither the prosecuting mechanic nor the court may sell the vehicle, although possession of the vehicle may be retained;

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

(6) If the court finds the actions of the mechanic in retaining or seeking possession of the vehicle were not taken in good faith, the court, in its discretion, may award damages to the owner, the lessee, or any person deprived of the rightful use of the vehicle due to the deprivation of the use of the vehicle;

(7) Any proceeding to foreclose a mechanic's lien on a vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention.

History.

Ga. L. 1961, p. 68, § 23; Ga. L. 1962, p. 79, § 13; Ga. L. 1969, p. 92, § 6; Ga. L. 1975, p. 489, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 2019, p. 872, § 3/HB 307.

Cross references.

Special liens of mechanics and materialmen on personal property for work done and material furnished, § 44-14-363.

Editor's notes.

Ga. L. 2019, p. 872, § 8/HB 307, not codified by the General Assembly, provides: "This Act shall become effective upon approval by the Governor or upon its becoming law without such approval for purposes of developing the required forms and shall become effective on September 1, 2019, for all other purposes." This Act was approved by the Governor on May 7, 2019.

Law reviews.

For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

JUDICIAL DECISIONS

Purpose of section. — Evident purpose of O.C.G.A. § 40-3-54 is to ensure a prompt resolution of disputes regarding the validity of mechanic liens' as well as to

provide for prompt enforcement of those liens which are determined to be valid. Carpet Transp., Inc. v. Fisher, 166 Ga. App. 450, 304 S.E.2d 540, 1983 Ga. App. LEXIS 2207 (1983).

Former provision unconstitutional. — Former portion of Ga. L. 1969, p. 92, § 6 (see now O.C.G.A. § 40-3-54) which provided that a foreclosure on mechanics' liens must be in the manner provided by former Code 1933, § 67-2401 was unconstitutional. Mason v. Garris, 360 F. Supp. 420, 1973 U.S. Dist. LEXIS 13066 (N.D. Ga.), amended, 364 F. Supp. 452, 1973 U.S. Dist. LEXIS 11794 (N.D. Ga. 1973).

Period for filing petition. — O.C.G.A. § 40-3-54 requires that a petition be made within five days of a hearing and makes no provision for the late filing of a petition after receipt of a delayed ruling. Whatever period of time a hearing might encompass, it does not include that period of time after all evidence has been introduced when the trial judge has taken the litigated issues under advisement. First Nat'l Bank v. Strother Ford, Inc., 188 Ga. App. 749, 374 S.E.2d 203, 1988 Ga. App. LEXIS 1201 (1988).

Petition timely when office closed due to weather. — Trial court erred by finding that the petition for a full hearing on the validity of the debt was untimely because the clerk's office closed early on the day the petition was due because of weather, preventing the petition from being filed on time and the petition was filed the next day. Prince v. Rawls, 346 Ga. App. 254, 816 S.E.2d 123, 2018 Ga. App. LEXIS 361 (2018).

Vehicles required to have certificates of title to establish mechanic's lien. — Vehicles referred to in Ga. L. 1962, p. 79, § 13 (see now O.C.G.A. § 40-3-54) as being subject to mechanics liens are those which are required to have certificates of title, and those not subject to being retained by a mechanic are those exempt from those provisions by former Code 1933, § 68-404a (see now O.C.G.A. § 40-3-4). Peoples, Inc. v. DeVane, 114 Ga. App. 597, 152 S.E.2d 649, 1966 Ga. App. LEXIS 863 (1966).

Towing and estimate charges were not for "repairing or servicing" a vehicle within the meaning of O.C.G.A. § 40-3-54. Southern Gen. Ins. Co. v. Auto Transformation, Inc., 206 Ga. App. 243, 424 S.E.2d 883, 1992 Ga. App. LEXIS 1593 (1992).

Towing a vehicle and preparing an estimate of repair costs may not be considered work done or materials furnished in repairing or servicing a vehicle; the operator of a towing service was not entitled to a lien on a vehicle for towing and storage fees. Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405, 2005 Ga. App. LEXIS 1141 (2005).

Granting vehicle's possession to security interest holder without paying repairman. — When a repairman has a valid possessory lien for work done and materials furnished under Ga. L. 1975, p. 489, § 1 (see now O.C.G.A. § 40-3-54), it is illegal to grant possession of the vehicle to the security interest holder without payment of the amount due the repairman; but the repairman may lose priority if the repairman knew of the security interest at the time the materials were furnished. Atlanta Truck Serv., Inc. v. Associates Com. Corp., 146 Ga. App. 170, 246 S.E.2d 2, 1978 Ga. App. LEXIS 2200 (1978).

Priority of security interest on certificate of title. — When a certificate of title provided constructive notice to future debtors that the motor vehicle was encumbered by a security interest in favor of plaintiff, plaintiff's first security interest was superior to defendants' later asserted mechanics' lien. Hull v. Transport Acceptance Corp., 177 Ga. App. 875, 341 S.E.2d 330, 1986 Ga. App. LEXIS 1565 (1986); First Nat'l Bank v. Alvin Worley & Sons, 221 Ga. App. 820, 472 S.E.2d 568.

Trial court erred by holding that defendant's mechanic's lien was superior to bank's perfected security interest in motor home where the security interest was noted on the certificate of title, providing constructive notice to future creditors, and where it was undisputed that the repairs made by the defendant to the motor home were performed well after the certificate of title for the motor home was

issued. Washington State Employees Credit Union v. Robinson, 206 Ga. App. 782, 427 S.E.2d 15, 1992 Ga. App. LEXIS 1795 (1992), cert. denied, No. S93C0592, 1993 Ga. LEXIS 301 (Ga. Mar. 19, 1993).

Notification of mechanic's lien foreclosure. — Owner must be notified of institution of mechanic's lien foreclosure proceedings involving the owner's motor vehicle under paragraph (c)(2) of Ga. L. 1975, p. 489, § 1 (see now O.C.G.A. § 40-3-54). Imperial Body Works, Inc. v. Waters, 156 Ga. App. 887, 275 S.E.2d 822, 1981 Ga. App. LEXIS 1643 (1981).

Forfeiture by lienholder. — Because the vehicle owner contested the validity of the amount claimed to be due and it is undisputed that the body shop failed to institute foreclosure proceedings within ten days, the body shop lien was forfeited. Haire v. Suburban Auto Body, Inc., 204 Ga. App. 16, 418 S.E.2d 163, 1992 Ga. App. LEXIS 655 (1992).

Letters from the owner of motor vehicles and equipment to the lienholder contesting the validity of the debt and demanding return of the property constituted proper written demand and the lienholder forfeited the lien by the lienholder's failure to timely institute foreclosure proceedings. Neal v. Natural Gas, 222 Ga. App. 774, 476 S.E.2d 73, 1996 Ga. App. LEXIS 1006 (1996).

Burden of establishing proper service under O.C.G.A. § 40-3-54(c)(2) rests upon the mechanic lienholder who seeks to gain by the institution of foreclosure proceedings. Imperial Body Works, Inc. v. Waters, 156 Ga. App. 887, 275 S.E.2d 822, 1981 Ga. App. LEXIS 1643 (1981).

Motor vehicle lien superior to general property lien. — Security interest on a vehicle which is perfected pursuant to Ga. L. 1969, p. 92, § 6 (see now O.C.G.A. § 40-3-54) is superior to a mechanic's lien on a vehicle which is perfected under the provisions of former Code 1933, § 67-2003 (see now O.C.G.A. § 44-14-363). Gwinnett Sales & Serv. v. Trust Co., 130 Ga. App. 31, 202 S.E.2d 255, 1973 Ga. App. LEXIS 1211 (1973).

Effect of mechanic's conditional parting with vehicle. — Mechanic, who conditionally parted with possession of a vehicle for the purposes of providing for the mechanic's continued storage as property subject to a lien, neither lost nor waived its lien as it did not unconditionally part with possession or control of the lien property. First Nat'l Bank v. Strother Ford, Inc., 188 Ga. App. 749, 374 S.E.2d 203, 1988 Ga. App. LEXIS 1201 (1988).

Requirement of continued retention of mechanic's lien. — Lien asserted under the authority of O.C.G.A. § 40-3-54 is a statutory mechanic's lien; however, when the lien is perfected by the mechanic's retention of the vehicle, it becomes a statutory lien whose vitality is dependent on the continuation of that retention. First Nat'l Bank v. Strother Ford, Inc., 188 Ga. App. 749, 374 S.E.2d 203, 1988 Ga. App. LEXIS 1201 (1988).

Counter affidavit not required. — Owner of property was not required to file a counter affidavit of the lienholder in order to preserve defenses to the affidavit of the lienholder. Neal v. Natural Gas, 222 Ga. App. 774, 476 S.E.2d 73, 1996 Ga. App. LEXIS 1006 (1996).

Work must have been authorized by owner. — For a valid debt to exist on a motor vehicle the work must have been done or the supplies furnished by a contract with the owner or by the authority of the owner. P & B Corp. of Am., Ltd. v. One 1983 BMW, 175 Ga. App. 462, 333 S.E.2d 633, 1985 Ga. App. LEXIS 2121 (1985).

When insurance adjuster authorized to contract for repairs. — Court was authorized to conclude from the evidence that the plaintiff's repair charges were valid and that the plaintiff was consequently authorized to assert a lien against the vehicle even though it was apparent that the actual contract for the repairs was between the plaintiff and the insurance adjuster rather than the plaintiff and the defendant, there was evidence that the defendant expressly authorized the adjuster to enter into this contract and then knowingly surrendered possession of the vehicle to the plaintiff for the purpose of allowing the repairs to be made. Carpet Transp., Inc. v. Fisher, 166 Ga. App. 450, 304 S.E.2d 540, 1983 Ga. App. LEXIS 2207 (1983).

Date from which to calculate amount owed to vehicle owner. — Date upon which body shop's lien was

forfeited is the proper date from which the jury must calculate the amount owed to the vehicle owner for reasonable hire. Haire v. Suburban Auto Body, Inc., 204 Ga. App. 16, 418 S.E.2d 163, 1992 Ga. App. LEXIS 655 (1992).

Ordering recording of foreclosed mechanic's lien. — Because paragraph (c)(5) of O.C.G.A. § 40-3-54 provides for immediate enforcement of the mechanic's lien as part of the foreclosure proceedings, nothing is to be gained by ordering the Motor Vehicle Division to record the lien on the certificate of title. Carpet Transp., Inc. v. Fisher, 166 Ga. App. 450, 304 S.E.2d 540, 1983 Ga. App. LEXIS 2207 (1983).

Contract price paid in full. — No lien may be asserted when the contract price has been paid in full. Davis v. State, 167 Ga. App. 701, 307 S.E.2d 272, 1983 Ga. App. LEXIS 2582 (1983).

No jury trial. — Paragraph (c)(5) of O.C.G.A. § 40-3-54 clearly contemplates that the determination of the validity of the debt will be made by the court, and no provision is made for the intervention of a jury, nor is a right to trial by jury in such proceedings mandated by the Georgia Constitution. Carpet Transp., Inc. v. Fisher, 166 Ga. App. 450, 304 S.E.2d 540, 1983 Ga. App. LEXIS 2207 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Superiority of automobile mortgage. — Properly recorded automobile mortgage is superior to mechanic's lien for subsequently provided services and materials. 1975 Op. Att'y Gen. No. U75-51.

Magistrate court has jurisdiction to foreclose a motor vehicle mechanic's lien under O.C.G.A. § 40-3-54 if the amount demanded or the value of the property claimed does not exceed $5,000. 1991 Op. Att'y Gen. No. U91-8.

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities, § 105 et seq.

C.J.S.

61A C.J.S., Motor Vehicles, § 1830.

ALR.

Lien for repairs to or services in connection with automobile, 62 A.L.R. 1485.

Secured transactions: priorities as between previously perfected security interest and repairman's lien on motor vehicle under Uniform Commercial Code, 69 A.L.R.3d 1162.

Loss of garageman's lien on repaired vehicle by owner's use of vehicle, 74 A.L.R.4th 90.

40-3-55. Assignment of security interests and liens.

(a) The holder of any security interest in or lien on a vehicle may assign, absolutely or otherwise, such holder's security interest or lien to a person other than the owner without affecting the interest of the owner or the validity of the security interest or lien, but any person without notice of the assignment is protected in dealing with the holder of the security interest or lien, and the holder of the security interest or lien remains liable for any obligations as such holder until the assignee is named as the holder of the security interest or lien on the certificate of title.

(b) The assignee may, but need not to perfect the assignment, have

the certificate of title endorsed or issued with the assignee named as holder of a security interest or lien, upon delivering to the commissioner or the commissioner's duly authorized county tag agent the certificate and assignment by the holder of a security interest or lien named in the certificate in the form the commissioner prescribes, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. If the assignment refers to a security interest or lien which is reflected on the certificate of title and the certificate of title is in the possession of the first security interest holder or lienholder as provided by this chapter, the assignee may, but need not to perfect the assignment, have the certificate of title endorsed, or a new certificate of title issued, by complying with Code Section 40-3-27.

History.
Ga. L. 1961, p. 68, § 24; Ga. L. 1962, p. 79, § 14; Ga. L. 1965, p. 304, § 7; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 22.

RESEARCH REFERENCES

Am. Jur. 2d.
6 Am. Jur. 2d, Assignments, §§ 5, 11, 114. 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 44 et seq. 38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities, §§ 119, 127.
C.J.S.
6A C.J.S., Assignments, §§ 11, 43. 53 C.J.S., Liens, § 27. 61A C.J.S., Motor Vehicles, § 1834. 72 C.J.S., Pledges, § 37.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 22.

40-3-56. Satisfaction of security interests and liens.

(a)(1) If any security interest or lien listed on a certificate of title is satisfied, the holder thereof shall, within ten days, execute a release in the form the commissioner prescribes and mail or deliver the release to the commissioner and the owner, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. For the purposes of the release of a security interest or lien the "holder" of the lien or security interest is the parent bank or other lending institution and any branch or office of the parent institution may execute such release.

(2) If the commissioner has entered into an agreement with such a security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such

security interest or lien, at such time as the security interest or lien is released, by secure electronic measures, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or, if there is no other security interest holder or lienholder, to the owner without payment of any fee provided by Code Section 40-3-38.

(b) The owner may then forward the certificate of title, the release, the properly executed title application, and title application fee to the commissioner or the commissioner's duly authorized county tag agent, and the commissioner or authorized county tag agent shall release the security interest or lien on the certificate or issue a new certificate and mail or deliver the certificate to the owner. If the satisfied security interest or lien is one reflected on the certificate of title but the certificate of title is in the custody of the first security interest holder or lienholder as provided by this chapter, the release may be handled as provided in Code Section 40-3-27, and Code Section 40-3-26 shall otherwise be complied with. In the event that the lienholder or security interest holder is no longer in business, an individual shall not be required to submit a release to secure a new certificate of title. The owner shall be required to present to the commissioner or authorized county tag agent certification from the appropriate regulatory agency that such lienholder or security interest holder is no longer in business.

(c) Except for liens and security interests listed on certificates of title for mobile homes, cranes, or vehicles which weigh more than 10,000 pounds gross vehicle weight, which shall be satisfied only in conformity with subsections (a) and (b) of this Code section, any lien or security interest for a vehicle which is 11 model years old or less shall be considered satisfied and release shall not be required after ten years from the date of issuance of a title on which such lien or security interest is listed. For a vehicle which is 12 model years old and greater, any lien or security interest shall be considered satisfied and a release shall not be required after four years from the date of issuance of a title on which such lien or security interest is listed. None of the provisions of this Code section shall preclude the perfection of a new lien or security agreement, or the perfection of an extension of a lien or security agreement beyond a period of ten years for a vehicle which is 11 model years old or less or beyond a period of more than four years for a vehicle which is 12 model years old or greater, by application for a new certificate of title on which such lien or security agreement is listed. In order to provide for the continuous perfection of a lien or security interest originally entered into for a period of more than ten years for a vehicle which is 11 model years old or less or more than four years for a vehicle which is 12 model years old and greater, other than a mobile home, crane, or vehicle which weighs more than 10,000 pounds gross vehicle weight, an application for a second title on which the lien or

security interest is listed must be submitted to the commissioner or the commissioner's duly authorized tag agent before ten years from the date of the original title on which such lien or security interest is listed. Otherwise the lien or security interest shall be perfected as of the date of receipt of the application by the commissioner or the commissioner's duly authorized county tag agent.

History.
Ga. L. 1961, p. 68, § 25; Ga. L. 1962, p. 79, § 15; Ga. L. 1965, p. 304, § 8; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 9; Ga. L. 1993, p. 1260, § 10; Ga. L. 1997, p. 739, § 23; Ga. L. 2012, p. 112, § 1-5/HB 872.
Editor's notes.
Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.
Law reviews.
For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 238 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
68A Am. Jur. 2d, Secured Transactions, §§ 440 et seq.

40-3-57. Disclosure of information as to security interests and liens.

The holder of any security interest or of any lien named in a certificate of title shall, on written request of the owner, or of another holder of any security interest or lien named in the certificate, or of an interested third party, or of the commissioner, disclose any pertinent information as to the security interest, the security agreement, and the debt secured thereby, and the lien and the amount for which it is claimed.

History.
Ga. L. 1961, p. 68, § 26; Ga. L. 1962, p. 79, § 16; Ga. L. 1990, p. 2048, § 3.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 91 et seq., 103 et seq.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 24.

40-3-58. Exclusiveness of chapter.

The method provided in this chapter of perfecting and giving notice of security interests and liens with respect to motor vehicles as to which certificates of title need be obtained under this chapter is exclusive, and such security interests and liens are exempt from the provisions of law which otherwise require or relate to the recording or filing of security

interests or liens, claims of lien executions, and other like instruments with respect to such vehicles.

History.
Ga. L. 1961, p. 68, § 27; Ga. L. 1962, p. 79, § 17; Ga. L. 1990, p. 2048, § 3.

JUDICIAL DECISIONS

Chapter inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79 § 17 (see now O.C.G.A. § 40-3-58) is that the only way to create security interests in automobiles is by the method provided in Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.), which does not apply to or affect dealers holding automobiles for sale. Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co., 113 Ga. App. 782, 149 S.E.2d 753, 1966 Ga. App. LEXIS 1204, rev'd, 222 Ga. 559, 150 S.E.2d 803, 1966 Ga. LEXIS 553 (1966).

Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) is notice statute, having the effect, when complied with, of imputing constructive notice to all who may subsequently acquire an interest in or lien against the property. Franklin Fin. Co. v. Strother Ford, Inc., 110 Ga. App. 365, 138 S.E.2d 679, 1964 Ga. App. LEXIS 632 (1964).

Actual notice sufficient. — Actual notice of the prior lien to one who subsequently purchases or acquires a security interest is sufficient to preserve the priority of the lien or of the title. Franklin Fin. Co. v. Strother Ford, Inc., 110 Ga. App. 365, 138 S.E.2d 679, 1964 Ga. App. LEXIS 632 (1964).

After-acquired parts and repairs. — Lender's properly perfected security interest in a vehicle extended to after-acquired parts and repairs, and was superior to a repair shop's mechanic's lien and claim for unjust enrichment regarding parts affixed to the vehicle. Barnes v. GMAC, 191 Ga. App. 201, 381 S.E.2d 146, 1989 Ga. App. LEXIS 497 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Used car dealers. — In order to perfect a dealer's security interest in a vehicle, a used car dealer must follow the requirements specified in O.C.G.A. § 40-3-1 et seq.; the method for perfecting a security interest as described in those provisions is exclusive, and such security interests in motor vehicles as to which certificates of title must be obtained are exempt from the provisions of law which otherwise require or relate to the recording or filing of security interests. 1990 Op. Att'y Gen. No. 90-8.

Used car dealer who has a security interest in a vehicle may exercise all rights afforded to the dealer by the security agreement, including repossession, despite not having perfected the dealer's security interest. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 35.

C.J.S.
60 C.J.S., Motor Vehicles, §§ 41, 42. 72 C.J.S., Pledges, §§ 43, 44.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 25.

40-3-59. Certain security interests not affected.

This chapter does not apply to or affect a security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale. A buyer in the ordinary course of trade from the manufacturer or dealer takes free of such security interest.

History.
Ga. L. 1961, p. 68, § 5; Ga. L. 1962, p. 79, § 3; Ga. L. 1990, p. 2048, § 3.

JUDICIAL DECISIONS

Security interests affected. — It is only the security interests created by purchasers at retail, or in the ordinary course of business, which come under the provisions of Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) and which are affected by it. McDonald v. Peoples Auto. Loan & Fin. Corp., 115 Ga. App. 483, 154 S.E.2d 886, 1967 Ga. App. LEXIS 1142 (1967).

Chapter inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79, § 3 (see now O.C.G.A. § 40-3-59) is that the only way to create security interests in automobiles is by the method provided in Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.), which does not apply to or affect dealers holding automobiles for sale. Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co., 113 Ga. App. 782, 149 S.E.2d 753, 1966 Ga. App. LEXIS 1204, rev'd, 222 Ga. 559, 150 S.E.2d 803, 1966 Ga. LEXIS 553 (1966).

Inapplicable to buyer in ordinary course of trade. — Provision of Ga. L. 1962, p. 79, § 3 (see now O.C.G.A. § 40-3-59) regarding a buyer in the ordinary course of trade taking free of a security interest is applicable only in instances when the dealer's title is not subject to certification under Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.). First Nat'l Bank & Trust Co. v. Smithloff, 119 Ga. App. 284, 167 S.E.2d 190, 1969 Ga. App. LEXIS 1076 (1969).

Security interest perfected under motor vehicle or commercial provisions. — Security interest in a motor vehicle may be perfected under Ga. L. 1961, p. 68 (see now O.C.G.A. § 40-3-1 et seq.) if created by other than a dealer or manufacturer, or under the Uniform Commercial Code (see now O.C.G.A. T. 11) if by a dealer or manufacturer. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530, 1966 Ga. App. LEXIS 787 (1966).

Mobile home "on consignment" in retailer's inventory. — When manufacturer retained certificate of origin for mobile home which was "on consignment" and not yet included in a retailer's floor-plan arrangement, it was nonetheless in the retailer's inventory and available for sale to the retailer's retail customers, and the rights of the parties were determined under the Uniform Commercial Code, O.C.G.A. T. 11, rather than the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq. GECC v. Catalina Homes, Inc., 178 Ga. App. 319, 342 S.E.2d 734, 1986 Ga. App. LEXIS 1646 (1986).

Perfection of security interest under Uniform Commercial Code. — When there is vehicle floor-planning, perfection of security interest in inventory comes under the Uniform Commercial Code (see now O.C.G.A. T. 11), and priority is governed by statute. Rome Bank & Trust Co. v. Bradshaw, 143 Ga. App. 152, 237 S.E.2d 612, 1977 Ga. App. LEXIS 2221 (1977).

40-3-60. Security interest not created by provision for adjustment of rental price.

Notwithstanding any other provision of law, in the case of a motor vehicle or trailer, a transaction does not create a sales or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

History.
Code 1981, § 40-3-60, enacted by Ga. L. 1995, p. 739, § 1.

40-3-61. Proceeds of insurance policy to multiple lienholders in event of total loss of vehicle.

Notwithstanding any other provision of law to the contrary, in any claim involving the total loss of a vehicle which is subject to more than one perfected security interest or lien as recorded on the title of the vehicle, the proceeds of the insurance policy shall be first applied to the debt owed to the first lienholder. In the event that there are proceeds remaining after satisfying the first lienholder, the proceeds shall be then applied to the debt owed to the second and subsequent lienholders in order of priority and any proceeds remaining after the satisfaction of all such recorded liens shall be paid to the insured. If the amount of debt secured by such security interests or liens or the seniority of such security interests or liens is in doubt, any remaining funds shall be deposited with the court and a complaint for interpleader shall be filed in accordance with Code Section 9-11-22.

History.
Code 1981, § 40-3-61, enacted by Ga. L. 2002, p. 848, § 3.

Cross references.
Proceeds of insurance policy; limited access by insurers to records, § 33-34-9.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2002, a comma was deleted following "In the event" at the beginning of the second sentence.

ARTICLE 4

OFFENSES

Editor's notes.
The former Article 4, relating to previously registered vehicles and consisting of Code Sections 40-3-70 through 40-3-76, was based on Ga. L. 1961, p. 68, §§ 38, 40-46; Ga. L. 1962, p. 79, §§ 19, 20; Ga. L. 1965, p. 304, § 11; Ga. L. 1980, p. 507, § 1; Ga. L. 1985, p. 149, § 40; and was repealed by Ga. L. 1990, p. 2048, § 3, effective July 1, 1990.

Ga. L. 1990, p. 2048, § 3, effective July 1, 1990, renumbered former Article 5 as present Article 4.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 254 et seq.

40-3-90. Certain acts declared felonies.

A person who, with fraudulent intent:

(1) Alters, forges, or counterfeits a certificate of title;

(2) Alters or forges an assignment of a certificate of title or an assignment or release of a security interest on a certificate of title or a form the commissioner prescribed;

(3) Has possession of or uses a certificate of title knowing it to have been altered, forged, or counterfeited;

(4) Uses a false or fictitious name or address or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact in an application for a certificate of title;

(5) Alters or forges a notice of a transaction concerning a security interest or lien reflected on the certificate of title as provided by Code Section 40-3-27;

(6) Knowingly falsifies any information on the statement required by paragraph (2) of subsection (a) of Code Section 40-3-36; or

(7) Willfully violates any other provision of this chapter after having previously violated the same or any other provision of this chapter and having been convicted of that act in a court of competent jurisdiction

shall be guilty of a felony.

History.
Ga. L. 1961, p. 68, § 31; Ga. L. 1965, p. 304, § 9; Ga. L. 1975, p. 1596, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 2011, p. 355, § .2/HB 269.

Editor's notes.
Ga. L. 2011, p. 355, § 21/HB 269, as amended by Ga. L. 2012, p. 112, § 4-2/HB 872, provides that the 2011 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assembly. Although funds were not appropriated at the 2011, 2012, or 2013 session of the General Assembly, the General Assembly in the 2012 Session by HB 872 eliminated the funding contingency.

JUDICIAL DECISIONS

Furnishing false information by a title applicant. — O.C.G.A. § 40-3-90 does not require that a car dealer file an application for title either with the county tag agent or with the state title agency in order to complete the crime of furnishing false information by a title applicant. That section simply declares as a felony the act

of using a false name in an application for a certificate of title. Fricks v. State, 167 Ga. App. 832, 308 S.E.2d 21, 1983 Ga. App. LEXIS 2634 (1983).

RESEARCH REFERENCES

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 31.

40-3-91. Certain acts declared misdemeanors.

(a) A person who:

(1) With fraudulent intent, permits another, not entitled thereto, to use or have possession of a certificate of title;

(2) Willfully fails to mail or deliver a certificate of title to the commissioner or to the purchaser of the motor vehicle or a release of security interest or lien to the owner within ten days of the time required by this chapter, except as provided in Code Section 40-3-90;

(3) Willfully fails or refuses to mail or deliver the certificate of title to the commissioner within ten days after having received a notice, as provided for in Code Section 40-3-27 or 40-3-52; or

(4) Willfully violates any other provision of this chapter

shall be guilty of a misdemeanor.

(b) Any person, firm, or corporation which knowingly makes any false statement in any title application as to the date a vehicle was sold or acquired or as to the date of creation of a security interest or lien shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.00 or imprisoned for a period not to exceed 30 days.

(c) Any person, firm, or corporation which delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.00 or imprisoned for a period not to exceed 30 days for the acceptance or delivery of each certificate of title assigned in blank.

History.
Ga. L. 1961, p. 68, § 31; Ga. L. 1965, p. 304, § 9; Ga. L. 1969, p. 92, § 7; Ga. L. 1975, p. 1596, § 2; Ga. L. 1981, p. 883, § 12; Ga. L. 1990, p. 2048, § 3.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq. 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1631 et seq., 1748.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 31.

40-3-92. False report of theft or conversion.

A person who knowingly makes a false report to a peace officer or the commissioner of the theft or conversion of a vehicle shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Ga. L. 1961, p. 68, § 33; Ga. L. 1990, p. 2048, § 3; Ga. L. 1991, p. 969, § 1.

Cross references.
Penalty for false report of crime generally, § 16-10-26.

JUDICIAL DECISIONS

Application of the rule of lenity. — Defendant's conduct, as charged, subjected the defendant to prosecution and sentencing under both O.C.G.A. §§ 16-10-20 and 16-10-26 as the defendant willfully and knowingly made a false statement to law-enforcement officers by falsely reporting a crime the defendant alleged to have occurred in the officers' jurisdiction. Because the two statutes provided different grades of punishment for the same criminal conduct, the defendant was entitled to the rule of lenity. Gordon v. State, 334 Ga. App. 633, 780 S.E.2d 376, 2015 Ga. App. LEXIS 700 (2015).

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Obstructing Justice, § 16.
U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 36.

40-3-93. Evidence of criminal intent or knowledge.

In a prosecution for a crime specified in this chapter, evidence that the defendant has committed a prior act or acts of the same kind is admissible to prove criminal intent or knowledge.

History.
Ga. L. 1961, p. 68, § 35; Ga. L. 1990, p. 2048, § 3.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, §§ 1512, 1719.

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 38.

40-3-94. Penalties.

Unless another penalty is provided in this chapter:

(1) A person convicted of a felony for the violation of a provision of

this chapter shall be punished by a fine of not less than $500.00 nor more than $5,000.00, or by imprisonment for not less than one year nor more than five years, or by both such fine and imprisonment;

(2) A person convicted of a misdemeanor for the violation of a provision of this chapter shall be punished as provided in Code Section 17-10-3.

History.
Ga. L. 1961, p. 68, § 36; Ga. L. 1990, p. 2048, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 88. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 27 et seq.
C.J.S.
60 C.J.S., Motor Vehicles, § 96 et seq.
ALR.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R.3d 606.

40-3-95. Effect on other laws.

The penal provisions of this chapter in no way repeal or modify any existing provision of criminal law but are additional and supplementary thereto.

History.
Ga. L. 1961, p. 68, § 37; Ga. L. 1990, p. 2048, § 3.

CHAPTER 4

IDENTIFICATION OF AND PURCHASE AND RESALE OF MOTOR VEHICLES AND PARTS

Article 1

Identification of Passenger Cars, Truck Chassis, and Components

Sec.
40-4-1. Definitions.
40-4-2. Application of article.
40-4-3. Vehicle identification numbers required.
40-4-4. Placement, size, and appearance of vehicle identification numbers.
40-4-5. Vehicle identification number for truck chassis of wrecker.
40-4-5.1. Identification requirements for personal transportation vehicles.
40-4-6. Records to be kept by purchasers and sellers of used passenger cars, truck chassis, and components.
40-4-7. Penalties.

Article 2

Alteration or Removal of Identification Numbers

40-4-20. Definitions.
40-4-21. Removal or falsification of identification number.
40-4-22. Buying, selling, receiving, concealing, using, possessing, or disposing of motor vehicle or part thereof from which identification has been removed or altered.
40-4-23. When identification number not deemed falsified.

Article 3

Purchase and Resale of Used Motor Vehicles, Used Parts, and Farm Tractors

40-4-40. Records to be kept by persons purchasing used motor vehicles or parts for resale.
40-4-41. Duty of purchaser of vehicle or part from which identification has been removed or altered.
40-4-42. Presumption that vehicles and parts were purchased for resale.
40-4-43. Penalty for violation of Code Section 40-4-40 or Code Section 40-4-41.
40-4-44. Certain parts excepted from application of Code Sections 40-4-40 through 40-4-43.
40-4-45. Sale of farm tractors.

ARTICLE 1

IDENTIFICATION OF PASSENGER CARS, TRUCK CHASSIS, AND COMPONENTS

RESEARCH REFERENCES

ALR.

Constitutionality of statute making possession of automobile from which identifying marks have been removed a crime, 4 A.L.R. 1538; 42 A.L.R. 1149.

40-4-1. Definitions.

As used in this article, the term:

(1) "Component" means a passenger car engine or a passenger car transmission.

(2) "New passenger car" means any passenger car which has never been the subject of a sale at retail to the general public.

(3) "Passenger car" means every motor vehicle designed for carrying ten passengers or less except trackless trolleys or vehicles used exclusively upon streetcar rails or tracks or overhead trolley wires.

(4) "Used passenger car" means any passenger car which has been the subject of a sale at retail to the general public.

History.
Ga. L. 1966, p. 188, § 3; Ga. L. 1967, p. 113, § 3; Ga. L. 1996, p. 336, § 13A.

JUDICIAL DECISIONS

Automobile which was a "used demo" was "new" car. — Automobile leased by plaintiffs from defendant dealer as a "used demo" was a "new" car, not a "used" car, and the fact that the car was previously titled to the dealer's son-in-law did not create an issue of fraud in violation of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq. Toirkens v. Willett Toyota, Inc., 192 Ga. App. 109, 384 S.E.2d 218, 1989 Ga. App. LEXIS 959 (1989).

Automobile used as demonstrator was "new car." — In an action alleging violations of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., because the van leased to plaintiffs was always titled in the dealer and was never the subject of a retail sale or lease, the vehicle was a "new car," and the dealer did not engage in fraudulent or unfair business practices by listing the vehicle as "new," even though the vehicle had been driven as a demonstrator and had been in a collision. Kondo v. Marietta Toyota, 224 Ga. App. 490, 480 S.E.2d 851, 1997 Ga. App. LEXIS 27 (1997), cert. denied, No. S97C0815, 1997 Ga. LEXIS 441 (Ga. May 9, 1997).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 1.

40-4-2. Application of article.

(a) The provisions of this article requiring vehicle identification numbers on passenger cars and truck chassis with features designed for specialized requirements of a wrecker shall apply only to such items manufactured after January 1, 1967, and designated by the manufacturer as a 1968 or subsequent model.

(b) This article shall not apply to motorcycles, personal transportation vehicles, motor driven cycles, school buses, farm tractors, buses, truck tractors, road tractors, trucks, trailers, semitrailers, pole trailers, streetcars, or go-carts or to any vehicle whether self-propelled or not

which is not required to be issued a license plate under the laws of this state.

(c) This article shall not apply to the following special purpose vehicles:

Type 1. Truck chassis with body (other than station wagon or bus body) designed primarily for the transportation of persons;

Type 2. Truck chassis with other features designed for a specialized requirement other than a wrecker, including but not limited to fire fighting or snowplow features;

Type 3. Truck chassis with station wagon body;

Type 4. Passenger car chassis with body designed for the commercial transportation of persons;

Type 5. Bus chassis with other features designed for a specialized requirement, including but not limited to mobile laboratory, office, post office, classroom, studio, rescue unit, or library features;

Type 6. Utility vehicle, being a motor vehicle with a removable top, designed for carrying passengers or cargo and with particular features for operation both on highway and cross-country.

(d) This article shall not apply to the components of any vehicle excluded by subsection (b) or (c) of this Code section.

History.

Ga. L. 1966, p. 188, § 6; Ga. L. 1967, p. 113, § 6; Ga. L. 1992, p. 6, § 40; Ga. L. 1993, p. 91, § 40; Ga. L. 1996, p. 336, § 13A; Ga. L. 1997, p. 143, § 40; Ga. L. 2014, p. 745, § 5/HB 877.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, in subsection (c), "requirement," was substituted for "requirement" in Type 5.

40-4-3. Vehicle identification numbers required.

(a) **New passenger cars and components manufactured within state.** After January 1, 1997, new passenger cars, truck chassis with features designed for specialized requirements of wreckers, passenger car engines, and transmissions, as specified in this article, manufactured within this state and intended for sale to the general public within this state, shall be required to have placed upon them vehicle identification numbers and component identification numbers. The vehicle identification number shall not be the same as the vehicle identification number of any other passenger car or truck chassis manufactured by the same manufacturer. The component identification number shall not be the same as the component identification number for any other like component manufactured by the same manufacturer but may be the same as the vehicle identification number

if the component is installed as original equipment in the passenger car or truck chassis.

(b) **New passenger cars sold within state.** After January 1, 1997, no new passenger car or truck chassis with features designed for specialized requirements of a wrecker shall be sold to the general public in this state unless such passenger car shall bear a vehicle identification number, which shall not be the same as the vehicle identification number of any other passenger car made by the same manufacturer.

(c) **New components sold within state.** After January 1, 1967, no new passenger car engine or passenger car transmission shall be sold to the general public in this state unless it shall bear an identification number. The component identification number shall not be the same as the identification number for any other like passenger car component made by the same manufacturer but may be the same as the vehicle identification number if the particular component has been installed as original equipment in the passenger car prior to its sale to the general public.

History.
Ga. L. 1966, p. 188, § 1; Ga. L. 1967, p. 113, § 1; Ga. L. 1996, p. 336, § 13A.
Administrative rules and regulations.
Motor Vehicle Identification Numbers Issued by the State Revenue Commissioner, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-18-.01 et seq.

40-4-4. Placement, size, and appearance of vehicle identification numbers.

(a) The identification numbers required by Code Section 40-4-3 shall be placed upon the passenger car, truck chassis, and component parts by the manufacturer thereof.

(b) The identification numbers shall be placed upon the passenger car, truck chassis, and components in such a manner that any attempt to remove, alter, deface, obliterate, or destroy them will be ascertainable. The numbers may be affixed by any suitable manufacturing process that will result in the numbers becoming a permanent part of the passenger car or component.

(c) The identification numbers shall be of a height and width easily readable by the naked eye. They may consist of letters, digits, or any combination of them.

(d) The identification numbers may be in accordance with recommended practices approved by the Society of Automotive Engineers as to material, lettering, manufacturing, and installation.

(e) Vehicle identification numbers shall be easily accessible for inspection.

History.
Ga. L. 1966, p. 188, §§ 1, 2; Ga. L. 1967, p. 113, §§ 1, 2; Ga. L. 1996, p. 336, § 13A.

OPINIONS OF THE ATTORNEY GENERAL

Attachment solely to machine in engine compartment. — Automobiles may not be sold in this state after January 1, 1967, with vehicle identification numbers attached solely to the machine in the engine compartment without subjecting the seller to the possibility of being prosecuted for a misdemeanor offense. 1965-66 Op. Att'y Gen. No. 66-246.

40-4-5. Vehicle identification number for truck chassis of wrecker.

Truck chassis with features designed for specialized requirements of a wrecker manufactured after January 1, 1967, but before January 1, 1997, shall, at the time the vehicle is first registered on or after January 1, 1997, pursuant to Code Section 40-2-21, be issued by the Department of Revenue a unique vehicle identification number which shall be affixed to and maintained upon the chassis by the owner in a manner consistent with the requirements of subsections (b) and (e) of Code Section 40-4-4.

History.
Code 1981, § 40-4-5, enacted by Ga. L. 1996, p. 336, § 13A; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 16-1/HB 501.
Cross references.
Maintenance of records by scrap metal processors, § 43-43-2.
Maintenance of records by used car dealers, § 43-47-12.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1996, "shall," was substituted for "shall" and "Code Section 40-2-21," was substituted for "Code Section 40-2-2".
Editor's notes.
Ga. L. 1996, p. 336, § 13A, effective January 1, 1997, renumbered former Code Section 40-4-5 as present Code Section 40-4-6.

RESEARCH REFERENCES

Am. Jur. 2d.
66 Am. Jur. 2d, Records and Recording Laws, §§ 50, 94, 110, 149. 77 Am. Jur. 2d, Vendor and Purchaser, § 149 et seq.

40-4-5.1. Identification requirements for personal transportation vehicles.

(a) On or after July 1, 2014, on every newly manufactured personal transportation vehicle, the manufacturer shall inscribe a permanent, durable, corrosion-resistant name plate or marking which contains a unique serial number, name of manufacturer, model name or code, date code, contact information, nominal system voltage, fuel type, and load capacity.

(b) The name plate or marking shall be of a height and width easily

readable by the naked eye. The unique serial number may consist of letters, digits, or any combination of letters and digits.

(c) The name plate shall be easily accessible for inspection.

History.
Code 1981, § 40-4-5.1, enacted by Ga. L. 2014, p. 745, § 6/HB 877.

40-4-6. Records to be kept by purchasers and sellers of used passenger cars, truck chassis, and components.

Any person who purchases or sells or offers for sale any used passenger car, truck chassis, engine, or transmission required to be numbered by this article shall keep a permanent record of such transactions. Such record shall include: the item and its identification number or numbers; the name and address of the person from whom the item was purchased; and the name and address of the person to whom the item was sold. Such record shall be kept for three years from the date of the transaction and shall be available to all law enforcement officers for inspection at any reasonable time during business hours without prior notice or the necessity of obtaining a search warrant.

History.
Ga. L. 1966, p. 188, § 4; Ga. L. 1967, p. 113, § 4; Code 1981, § 40-4-6, as redesignated by Ga. L. 1996, p. 336, § 13A.

RESEARCH REFERENCES

Am. Jur. 2d.
21 Am. Jur. 2d, Criminal Law, §§ 1, 27, 30 et seq.
C.J.S.
61A C.J.S., Motor Vehicles, §§ 1746, 1747.
ALR.
Constitutionality of statute making possession of automobile from which identifying marks have been removed a crime, 4 A.L.R. 1538; 42 A.L.R. 1149.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 A.L.R. 374.

40-4-7. Penalties.

(a) **Sale, shipment, or manufacture of unnumbered passenger car or component.** Any person who sells or offers for sale in this state, ships or causes to be shipped into this state, or manufactures with the intention that it shall be sold at retail in this state a passenger car, truck chassis, passenger car engine, or passenger car transmission that does not bear an identification number or numbers as required by this article shall be guilty of a misdemeanor.

(b) **Failure to keep records.** Any person who purchases, sells, or offers for sale any passenger car, truck chassis, passenger car engine, or passenger car transmission that is required by this article to bear an identification number when intended to be sold at wholesale or retail

within this state and who willfully fails to keep the records required by Code Section 40-4-6 shall be guilty of a misdemeanor for each such failure.

History.
Ga. L. 1966, p. 188, § 5; Ga. L. 1967, p. 113, § 5; Ga. L. 1985, p. 149, § 40; Ga. L. 1994, p. 97, § 40; Code 1981, § 40-4-7, as redesignated by Ga. L. 1996, p. 336, § 13A.

ARTICLE 2

ALTERATION OR REMOVAL OF IDENTIFICATION NUMBERS

Cross references.
Duty of purchaser of vehicle or part from which identification has been removed, § 40-4-41.
Administrative rules and regulations.
Motor Vehicle Identification Numbers Issued by the State Revenue Commissioner, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Vehicle Division, Rule 560-10-18-.01 et seq.

40-4-20. Definitions.

As used in this article, the term:

(1) "Falsify" includes alter or forge.

(2) "Identification number" means an identifying number, serial number, engine number, or other distinguishing number or mark placed on a vehicle or engine by its manufacturer or by authority of the commissioner or in accordance with the laws of another state or country.

(3) "Remove" includes deface or destroy.

History.
Ga. L. 1961, p. 68, § 34; Ga. L. 1985, p. 149, § 40; Ga. L. 1992, p. 6, § 40.

40-4-21. Removal or falsification of identification number.

(a) A person who willfully removes, except in conformance with Code Section 40-3-35, or falsifies an identification number of a vehicle or an engine for a vehicle is guilty of a misdemeanor.

(b) A person who, willfully and with intent to misrepresent the identity of a vehicle or engine, removes or falsifies an identification number of the vehicle or engine with intent to convert or defraud is guilty of a felony. A person convicted of a felony under this subsection shall be punished by a fine of not less than $500.00 nor more than $5,000.00, or by imprisonment for not less than one year nor more than five years, or by both such fine and imprisonment.

History.
Ga. L. 1961, p. 68, § 34; Ga. L. 1984, p. 22, § 40.

JUDICIAL DECISIONS

Merger of counts. — As to any one vehicle, separate counts charging possession with knowledge that an identification number has been "removed and falsified" and possession with knowledge that an identification number has been "falsified" are merged, and it is error to sentence a defendant to consecutive sentences based on a theory that these counts refer to separate transactions. Gary v. State, 122 Ga. App. 151, 176 S.E.2d 478, 1970 Ga. App. LEXIS 810 (1970).

Verdicts not mutually exclusive. — Although the defendant characterized the jury's verdicts finding the defendant guilty of operating a chop shop and of falsifying a vehicle identification number as mutually exclusive, the two guilty verdicts returned by the jury could be logically reconciled as a finding that a person wilfully removed or falsified the identification number of a vehicle does not logically exclude a finding that the person owned, operated, or conducted a premise in which the person knowingly altered a vehicle identification number with the intent of misrepresenting the vehicle's identity, and the defendant's challenge was actually predicated upon the inconsistent verdict rule, which had been abolished in Georgia. Wilmott v. State, 326 Ga. App. 1, 755 S.E.2d 818, 2014 Ga. App. LEXIS 102 (2014).

RESEARCH REFERENCES

U.L.A.
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 37.
ALR.
Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 A.L.R. 1465; 52 A.L.R. 701; 63 A.L.R. 688; 94 A.L.R. 948; 58 A.L.R.2d 1351.

Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts, 107 A.L.R.5th 567.

40-4-22. Buying, selling, receiving, concealing, using, possessing, or disposing of motor vehicle or part thereof from which identification has been removed or altered.

(a) It shall be unlawful to buy, sell, receive, dispose of, conceal, use, or possess any motor vehicle, or any part thereof, from which the manufacturer's serial numbers or other distinguishing numbers or identifying marks have been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of such motor vehicle.

(b) Any person who knowingly violates any provisions of subsection (a) of this Code section is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary for not less than one nor more than five years.

History.
Ga. L. 1918, p. 264, § 1; Code 1933, § 68-9916; Ga. L. 1966, p. 10, § 1; Ga. L. 1982, p. 3, § 40.

JUDICIAL DECISIONS

Guilty knowledge of alteration required. — To convict the driver of violating former Code 1933, § 68-9916 (see now O.C.G.A. § 40-4-22), the finder of fact must find knowledge of alteration, which was the gist of the offense. Dooley v. State, 145 Ga. App. 539, 244 S.E.2d 55, 1978 Ga. App. LEXIS 2196, cert. denied, 439 U.S. 912, 99 S. Ct. 282, 58 L. Ed. 2d 258, 1978 U.S. LEXIS 3466 (1978); Martin v. State, 160 Ga. App. 275, 287 S.E.2d 244, 1981 Ga. App. LEXIS 2971 (1981).

Description of property in indictment. — Property need not be described in an offense under Ga. L. 1918, p. 264, § 1 (see now O.C.G.A. § 40-4-22) with the same accuracy as in simple larceny. Glass v. State, 26 Ga. App. 157, 106 S.E. 13, 1921 Ga. App. LEXIS 38 (1921).

Knowing possession of "clipped" car, meaning that one-half of described vehicle had been welded to one-half of unidentified vehicle, except under a license to rebuild, is a felony. Bill Spreen Toyota, Inc. v. Jenquin, 163 Ga. App. 855, 294 S.E.2d 533, 1982 Ga. App. LEXIS 2692 (1982).

Evidence deemed sufficient to authorize conviction. — Evidence, though circumstantial, was sufficient to authorize a conviction for unlawful alteration under former Code 1933, § 68-9916 (see now O.C.G.A. § 40-4-22) after the defendant removed the identification plate from the cab of defendant's 1975 vehicle and placed the identification plate in the 1978 automobile, seeking to conceal the true identity of the stolen goods and to misrepresent the goods as being defendant's own. McJunkin v. State, 160 Ga. App. 30, 285 S.E.2d 756, 1981 Ga. App. LEXIS 2861 (1981).

Defendant was convicted of possession of a motor vehicle with the VIN number removed after VIN numbers had been falsified and the cars reported stolen and, furthermore, the defendant was unable to produce any paperwork supporting the defendant's claimed lawful ownership. Clarke v. State, 356 Ga. App. 580, 848 S.E.2d 192, 2020 Ga. App. LEXIS 492 (2020).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 391, 392.

C.J.S.

61A C.J.S., Motor Vehicles, §§ 1745, 1746.

ALR.

Constitutionality of statute making possession of an automobile from which identifying marks have been removed a crime, 42 A.L.R. 1149.

40-4-23. When identification number not deemed falsified.

An identification number may be placed on a vehicle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle or engine by authority of the commissioner without violating this article. An identification number so placed or restored is not falsified.

History.

Ga. L. 1961, p. 68, § 34.

ARTICLE 3

PURCHASE AND RESALE OF USED MOTOR VEHICLES, USED PARTS, AND FARM TRACTORS

40-4-40. Records to be kept by persons purchasing used motor vehicles or parts for resale.

Any person who purchases a used motor vehicle or any used part comprising a component part of any motor vehicle for resale shall keep an accurate record of the date of purchase, the price paid, and the name and address of the person from whom the vehicle or part is purchased. Such information shall be maintained in permanent records for a period of not less than one year and shall be open to inspection by appropriate law enforcement officers.

History.
Ga. L. 1963, p. 436, § 1.
Cross references.
Maintenance of records by scrap metal processors, § 43-43-2.
Maintenance of records by used car dealers, § 43-47-12.
Administrative rules and regulations.
Licensing, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers Used Motor Vehicle Division, Rule 681-3-.01 et seq.
Dealer License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers Used Motor Vehicle Division, Rule 681-4-.01 et seq.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, § 1745.

40-4-41. Duty of purchaser of vehicle or part from which identification has been removed or altered.

Any person who purchases for resale a motor vehicle or used part from which the identification markings or plates have been removed, altered, mutilated, or destroyed shall immediately report such purchase to the sheriff of the county in which such person conducts his business.

History.
Ga. L. 1963, p. 436, § 4.
Cross references.
Alteration or removal of identification numbers, § 40-4-20 et seq.

40-4-42. Presumption that vehicles and parts were purchased for resale.

The possession of the motor vehicles and parts covered by Code

Sections 40-4-40, 40-4-41, this Code section, 40-4-43, and 40-4-44 shall be prima-facie evidence that they were purchased for the purpose of resale.

History.
Ga. L. 1963, p. 436, § 5.

40-4-43. Penalty for violation of Code Section 40-4-40 or Code Section 40-4-41.

Any person who fails to comply with any provision of Code Section 40-4-40 or 40-4-41 shall be guilty of a misdemeanor.

History.
Ga. L. 1963, p. 436, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
21 Am. Jur. 2d, Criminal Law, §§ 1, 27, 30 et seq.

40-4-44. Certain parts excepted from application of Code Sections 40-4-40 through 40-4-43.

Code Sections 40-4-40 through 40-4-43 shall not apply to the purchase of any motor vehicle part which may be removed from a motor vehicle by an individual possessing the ordinary skill and dexterity of an ordinary motor vehicle owner.

History.
Ga. L. 1963, p. 436, § 3.

40-4-45. Sale of farm tractors.

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

(1) "Certificate of origin" means the evidence of origin of title of a farm tractor from the manufacturer. It shall show the following information:

(A) The name and the address of the manufacturer;

(B) The serial number of the farm tractor; and

(C) The year, make, and model of the farm tractor.

(2) "Dealer" means a person engaged in buying, selling, trading, or exchanging farm tractors who has an established place of business in this state.

(3) "Farm tractor" means any self-propelled vehicle having more than 15 horsepower designed and used primarily as a farm imple-

ment for drawing plows, mowing machines, and other implements of husbandry.

(4) "Person" means a natural person, firm, partnership, association, or corporation.

(5) "Serial number" means the number or letters, or both, placed on a farm tractor by stamping thereon or by affixing a plate thereto by the manufacturer for the purpose of identifying the tractor.

(b) It shall be unlawful for any dealer to sell, trade, or exchange any farm tractor in this state which was manufactured after July 1, 1970, unless:

(1) The original serial number is stamped upon or affixed to the farm tractor; and

(2) The certificate of origin is presented to the purchaser, or to the person who otherwise receives the farm tractor through an exchange or trade with the dealer, at the time the sale, trade, or exchange is completed.

(c) Any person violating any provision of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1970, p. 242, §§ 1-3; Ga. L. 1994, p. 97, § 40.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, §§ 1 et seq., 15, 18, 78, 86 et seq.

ALR.
Constitutionality, construction, and effect of statute relating specifically to rights, remedies, and obligations of parties to sale of farm machinery, 78 A.L.R. 1363; 87 A.L.R. 290.

CHAPTER 5

DRIVERS' LICENSES

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Article 5

Identification Cards

40-5-100. Application; contents of card; prohibition on possession of more than one card; optional contributions to and participation in voluntary programs.
40-5-101. Rules and regulations.
40-5-102. Applicant to furnish proof of birth date.
40-5-103. Fee; issuance period; exemptions from fees; renewal.

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40-5-104. False statement in application.
40-5-105. Application of Code Section 40-5-2.
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Article 6

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40-5-123. Permitting unauthorized minor to drive.
40-5-124. Jurisdiction of offenses.
40-5-125. Fraudulent driver's license or identification card; false statements or commission of fraud in applications; criminal violation.

Article 7

Commercial Drivers' Licenses

40-5-140. Short title.
40-5-141. Purpose and applicability of article; liberal construction.
40-5-142. Definitions.
40-5-143. Driving commercial motor vehicle with more than one license prohibited.
40-5-144. Notice required by driver of commercial vehicle of certain convictions or license restrictions; information required to be provided to prospective employer.
40-5-145. Duties of employer.
40-5-146. Operation of commercial motor vehicle without valid license or driving privilege.
40-5-147. Requirements for issuance of license or instruction permit; administration of skills test by third party; waiver or exemption; disqualification and notice.
40-5-148. Nonresident license.
40-5-148.1. Restricted commercial licenses for persons in agricultural industry.
40-5-148.2. Issuance of nonresident commercial drivers' licenses.
40-5-148.3. Submission of medical examiner's certificate; penalty for false submissions.
40-5-149. Contents of application; application required when name, mailing address, or residence changed.
40-5-150. Contents of license; classifications; endorsements and restrictions; information to be obtained before issuance; notice of issuance; expiration of license; renewal.
40-5-151. Disqualification from driving; action required after suspending, revoking, or canceling license or nonresident privileges.
40-5-152. Operating a commercial motor vehicle while having measurable alcohol in system; refusal to take chemical test.
40-5-153. Implied consent to chemical test; administration of test; procedure.
40-5-154. Notice to licensing state of conviction of nonresident licensee for violation of state law or local ordinance.
40-5-155. Information to be available to driver's license administrators of other states, employers, and insurers.
40-5-156. Rules and regulations.
40-5-157. Authority for commissioner to enter into agreements, arrangements, or declarations.
40-5-158. Driving with license issued by state or province or territory of Canada in accordance with minimum federal standards.

Sec.
40-5-159. Violations.

Article 8

Identification Cards for Persons with Disabilities

40-5-170. Definitions.
40-5-171. Issuance and contents of identification cards for persons with disabilities.
40-5-172. Term of card issued to person with permanent disability; issuance to person with temporary disability; renewal.
40-5-173. Format of card.
40-5-174. Proof of need for special transportation services for persons with disabilities.
40-5-175. Admission to seating for persons with disabilities at public events.
40-5-176. Rules and regulations.
40-5-177. Evidence of applicant's birth date required.
40-5-178. Fee for card; waiver for person with veteran's driver's license.
40-5-179. Fraudulent identification cards; penalties.

Cross references.

Driver education course included for purposes of enrollment counts of public school students, § 20-2-160.

Registration and licensing of motor vehicles, § 40-2-1 et seq.

Licenses for driver training instructors and operators of driver training schools, § 43-13-1 et seq.

Editor's notes.

Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Ga. L. 1990, p. 2048, § 17, not codified by the General Assembly, provides: "Prosecution for any violation of Sections 4 and 5 of this Act occurring prior to January 1, 1991, is not affected or abated by this Act."

Administrative rules and regulations.

Driver License Services, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Rule 375-3-1-.01 et seq.

Law reviews.

For note on 1991 amendments to this chapter, see 8 Georgia St. U.L. Rev. 129 (1992).

For comment, "You Better Smile When You Say 'Cheese!': Whether the Photograph Requirement for Drivers' Licenses Violates the Free Exercise Clause of the First Amendment," see 61 Mercer L. Rev. 611 (2010).

JUDICIAL DECISIONS

Effect of chapter. — O.C.G.A. § 40-5-1 et seq. comprehensively revised the provisions for licensing drivers. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Suspension and retention of licenses of convicted racers. — Amendment to the Uniform Rules of the Road Act (see now O.C.G.A. § 40-6-1 et seq.), having been approved by the Governor subsequent to approval of the Drivers Licensing Act, prevails over the Drivers Licensing Act to the extent that there is a conflict between them; thus, the department should continue to suspend and retain drivers licenses of persons convicted of racing in accordance with the

provisions of the Uniform Rules of the Road Act and disregard the inconsistent provisions of the Drivers Licensing Act which were approved prior to the Uniform Rules of the Road Act. 1975 Op. Att'y Gen. 75-117.

Disclosure of driving record to private attorney may not be made without authorization from the driver to whom the disclosure relates. 1975 Op. Att'y Gen. No. 75-122.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100 et seq.

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

Sufficiency of indictment or information charging in words of statute offense relating to operation of automobile, 115 A.L.R. 357.

Traffic violation as violation of law within provision of life or accident insurance policy or certificate excepting death or injury due to violation of law, 125 A.L.R. 1104.

Negligent entrustment of motor vehicle to unlicensed driver, 55 A.L.R.4th 1100.

ARTICLE 1

GENERAL PROVISIONS

Cross references.

Completion of program for operation of watercraft while under influence of alcohol, toxic vapors, or drugs, § 52-7-12.

40-5-1. Definitions.

As used in this chapter, the term:

(1) "Assessment component" means the standard screening instrument or instruments designated by the department which are used to screen for the extent of an individual's alcohol or drug use and its impact on driving.

(2) Reserved.

(3) "Cancellation of driver's license" means the annulment or termination by formal action of the department of a person's license because of some error or defect in the license or because the licensee is no longer entitled to such license. The cancellation of a license is without prejudice, and application for a new license may be made at any time after such cancellation.

(3.1) "Clinical evaluation" means an evaluation under Chapter 7 of Title 37 at a facility to diagnose an individual's substance abuse or dependence and, if indicated, to refer the individual to appropriate treatment.

(4) "Code Section 40-6-391" means Code Section 40-6-391 of the Official Code of Georgia Annotated, as now or hereafter amended, any

federal law or regulation substantially conforming to or parallel with the offense covered under Code Section 40-6-391, any local ordinance adopted pursuant to Article 14 of Chapter 6 of this title, which ordinance adopts the provisions of Code Section 40-6-391, or any previously existing or existing law of this or any other state, which law was or is substantially conforming to or parallel with Code Section 40-6-391.

(5) "Commissioner" means the commissioner of driver services.

(6) "Conviction" means a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic violation charge, regardless of whether the sentence is suspended, probated, or rebated.

(7) "Department" means the Department of Driver Services.

(8) "Disqualification of driver's license" means a prohibition against driving a commercial motor vehicle.

(8.1) "Driver education training course" means any course approved by the department pursuant to Code Section 40-5-10.

(8.2) "Driver training school" means any person licensed by the department pursuant to Chapter 13 of Title 43.

(9) "For hire" means to operate a motor vehicle in this state for the purpose of transporting passengers for compensation or donation as a limousine carrier, ride share network or driver, or taxi service as such terms are defined in Code Section 40-1-190.

(9.1) "For-hire license endorsement" means an endorsement to a driver's license pursuant to Code Section 40-5-39 that authorizes the holder of the license to operate a motor vehicle for the purpose of transporting passengers in this state for compensation or donation as a limousine carrier, ride share network or driver, or taxi service as such terms are defined in Code Section 40-1-190.

(10) "Intervention component" means a program which delivers therapeutic education about alcohol and drug use and driving and peer group counseling concerning alcohol and drug use over a period of 20 hours utilizing a methodology and curriculum approved and certified by the department for the DUI Alcohol or Drug Use Risk Reduction Programs under subsection (e) of Code Section 40-5-83.

(11) "Limousine carrier" means any limousine company or provider which is licensed with this state pursuant to paragraph (5) of Code Section 40-1-151.

(12) "Mail" means to deposit in the United States mail properly addressed and with postage prepaid. For purposes of payment of a

reinstatement or restoration fee for a driver's license suspension or revocation, "mail" shall also mean payment via means other than personal appearance.

(13) "Owner" means a person other than a lienholder or security interest holder having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a lien or security interest in another person, but excludes a lessee under a lease not intended as security.

(13.5) "Personal information" means any information that identifies a person, including but not limited to an individual's fingerprint, photograph, or computerized image, social security number, driver identification number, name, address (other than five-digit ZIP Code), telephone number, and medical or disability information.

(14) "Present and future minimum motor vehicle insurance coverage" means minimum coverage as specified in Chapter 34 of Title 33, which coverage cannot be canceled except for a subsequent conviction of an offense enumerated in Code Section 40-5-54 and after giving the commissioner 20 days' written notice prior to the effective date of the cancellation.

(15) "Resident" means a person who has a permanent home or abode in Georgia to which, whenever such person is absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that the following person is a resident:

(A) Any person who accepts employment or engages in any trade, profession, or occupation in Georgia or enters his or her children to be educated in the private or public schools of Georgia within ten days after the commencement of such employment or education; or

(B) Any person who, except for infrequent, brief absences, has been present in the state for 30 or more days;

provided, however, that no person shall be considered a resident for purposes of this chapter unless such person is either a United States citizen or an alien with legal authorization from the United States Immigration and Naturalization Service.

(16) "Revocation of driver's license" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which license shall not be subject to renewal or restoration, except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this chapter.

(16.01) "Ride share driver" means an individual who uses his or

her personal passenger car to provide transportation for passengers arranged through a ride share network service.

(16.02) "Ride share network service" means any person or entity that uses a digital network or internet network to connect passengers to ride share drivers for the purpose of prearranged transportation for hire or for donation. The term "ride share network service" shall not include any corporate sponsored vanpool or exempt rideshare as such terms are defined in Code Section 40-1-100, provided that such corporate sponsored vanpool or exempt rideshare is not operated for the purpose of generating a profit.

(16.1) "Singularly or in combination" means that the department, in determining whether or not a person's license or privilege to operate a motor vehicle on the public highways is to be revoked as a habitual violator, is to treat each charge for which a conviction was obtained as a separate transaction when determining whether or not a person has the requisite convictions which mandate such a revocation.

(16.2) "Substance abuse treatment program" means a program of treatment under Chapter 7 of Title 37 at a facility authorized to provide services designed to meet an individual's substance abuse treatment needs based upon the results of a clinical evaluation performed by a provider other than the provider of the treatment program for such individual.

(17) "Suspension of driver's license" means the temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

(18) "Taxi service" means any taxicab company or provider which utilizes a motor vehicle or similar vehicle, device, machine, or conveyance to transport passengers; uses a taximeter; and is registered with the Department of Public Safety and, if applicable, is authorized to provide taxicab services pursuant to an ordinance of a local government in this state.

History.

Code 1933, § 68B-101, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 2; Ga. L. 1990, p. 1154, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 514, § 1; Ga. L. 1995, p. 920, § 1; Ga. L. 1996, p. 1250, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 8; Ga. L. 1997, p. 1446, § 1; Ga. L. 1999, p. 731, § 1; Ga. L. 2000, p. 951, § 5-1; Ga. L. 2005, p. 334, § 17-1/HB 501; Ga. L. 2010, p. 9, § 1-78/HB 1055; Ga. L. 2010, p. 932, § 1/HB 396; Ga. L. 2011, p. 355, § 1/HB 269; Ga. L. 2014, p. 710, § 1-6/SB 298; Ga. L. 2015, p. 1262, § 5/HB 225; Ga. L. 2017, p. 774, § 40/HB

323; Ga. L. 2021, p. 403, § 1/HB 466; Ga. L. 2024, p. 1052, § 4(39)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Driver Services" in paragraphs (1) and (10); deleted ", as defined in paragraph (41) of Code Section 40-1-1," following "car," in paragraph (16.01); and, revised capitalization in paragraph (16.02).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, the terms defined in this Code section were placed in alphabetical order and redesignated accordingly and at the end of the introductory language of paragraph (15) the quotation marks around "resident" were deleted.

Pursuant to Code Section 28-9-5, in 2001, "ZIP Code" was substituted for "ZIP code" in paragraph (13.5).

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews.

For article on the effect of nolo contendere plea on conviction, see 13 Ga. L. Rev. 723 (1979).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 196 (1997).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

JUDICIAL DECISIONS

Definition of "conviction." — Definition of "conviction" clearly evidenced the legislature's intention that a bond forfeiture arising from driving under the influence of alcohol or drugs committed prior to the enactment of former Code 1933, § 68B 308 (see now O.C.G.A. § 40-5-58), was considered a "conviction" for the purpose of that section. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978).

Neither state nor federal procedural due process bars General Assembly from defining "conviction" in former Code 1933, § 68B-101 (see now O.C.G.A. § 40-5-1) to include forfeiture of bail or collateral. Haley v. Hardison, 247 Ga. 750, 279 S.E.2d 712, 1981 Ga. LEXIS 866 (1981).

Statutory definition of "conviction" does not carve out an exception for entries of pleas of guilty or the payment of a fine in a first offender situation. Nor does the definition require an adjudication of guilt. Salomon v. Earp, 190 Ga. App. 405, 379 S.E.2d 217, 1989 Ga. App. LEXIS 267 (1989), overruled on other grounds, Pender v. Witcher, 196 Ga. App. 856, 397 S.E.2d 193, 1990 Ga. App. LEXIS 1094 (1990).

Definition of "conviction" found in O.C.G.A. § 40-5-1(6) is limited to traffic violation charges. Entry of a guilty plea to a charge other than a traffic violation charge does not fit within the expansive definition of "conviction." Priest v. State, 261 Ga. 651, 409 S.E.2d 657, 1991 Ga. LEXIS 865 (1991).

Definition of "resident." — Reading paragraph (15) of O.C.G.A. § 40-5-1 and O.C.G.A. § 40-5-20(a) in pari materia shows that the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver's license but to permit visitors with no intention of becoming "residents" to drive here without obtaining a Georgia license. Diaz v. State, 245 Ga. App. 380, 537 S.E.2d 784, 2000 Ga. App. LEXIS 952 (2000).

Defendant was not a "resident" required to obtain a Georgia driver's license even though the defendant was instructed to do

so by police, because the defendant testified that the defendant was not living as a resident in Georgia, was there temporarily for job training, and owned a house and resided in Florida. Williams v. State, 336 Ga. App. 442, 784 S.E.2d 808, 2016 Ga. App. LEXIS 201 (2016).

Illegal aliens. — Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver's license does not deprive the illegal aliens of equal protection of the laws in violation of the Fourteenth Amendment. John Doe No. 1 v. Ga. Dep't of Pub. Safety, 147 F. Supp. 2d 1369, 2001 U.S. Dist. LEXIS 7385 (N.D. Ga. 2001).

RESEARCH REFERENCES

ALR.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

Validity of state statutes, regulations, or other identification requirements restricting or denying driver's licenses to illegal aliens, 16 A.L.R.6th 131.

40-5-2. Keeping of records of applications for licenses and information on licensees; furnishing of information.

(a) The department shall maintain records regarding the drivers' licenses and permits issued by the department under this chapter. The drivers' records maintained by the department shall include:

(1) A record of every application for a license received by it and suitable indexes containing:

(A) All applications granted; and

(B) The name of every licensee whose license has been canceled, suspended, or revoked by the department and after each such name shall note the reasons for such action;

(2) Drivers' records received from other jurisdictions. Upon receipt of such driver's record, it shall become a part of such driver's record in this state and shall have the same force and effect as though entered on the driver's record in this state in the original instance; and

(3) Records of all abstracts of court records of convictions of any offense listed in subsection (a) of Code Section 40-5-20, subsection (a) of Code Section 40-5-54, Code Section 40-6-10, driving on a suspended license in violation of Code Section 40-5-121, administrative license suspension pursuant to Code Sections 40-5-67 through 40-5-67.2, Code Section 40-5-75, Chapter 9 of this title, the "Motor Vehicle Safety Responsibility Act," and Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," any felony offense under this title, any offense committed while operating a commercial motor vehicle, serious traffic offenses, or other offenses requiring the assessment of points on the driving record that are received by it under the laws of this state and in connection therewith maintain

convenient records or make suitable notations in order that an individual record of each licensee or individual showing the convictions of such licensee or individual and the traffic accidents in which such licensee or individual has been involved shall be readily ascertainable and available for the consideration of the department upon any application for, or application for renewal of, license and at other suitable times. For purposes of issuing a driver's operating record to the public as provided in this Code section, the period of calculation for compilation of such report shall be determined by the date of arrest.

(b) The records maintained by the department on individual drivers are exempt from any law of this state requiring that such records be open for public inspection; provided, however, that initial arrest reports, incident reports, and the records pertaining to investigations or prosecutions of criminal or unlawful activity shall be subject to disclosure pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72 and related provisions. Georgia Uniform Motor Vehicle Accident Reports shall be subject to disclosure pursuant to paragraph (5) of subsection (a) of Code Section 50-18-72. The department shall not make records or personal information available on any driver except as otherwise provided in this Code section or as otherwise specifically required by 18 U.S.C. Section 2721.

(c)(1) The driver's record provided by the department shall include an enumeration of any accidents in which the individual was convicted of a moving traffic violation, such moving traffic violation convictions, and information pertaining to financial responsibility. The department shall furnish a driver's operating record or personal information from a driver's record under the following circumstances:

(A) With the written instructions and consent of the driver upon whom the operating record has been made and compiled; such instructions and consent shall be signed by the driver but shall not be required to be notarized;

(B)(i) Pursuant to a written request or a request made in accordance with a contract with the Georgia Technology Authority for immediate online electronic furnishing of information, for use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting involving the driver; provided, however, that, notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this division shall be limited to name, address, driver identification number, and medical or disability information. The person who makes a request for a

driver's operating record shall identify himself or herself and shall have certified or affirmed that the information contained in the record will be used only for the purpose specified in the request. Further, the person making the request shall certify or affirm that he or she has on file an application for insurance or for the renewal or amendment thereof involving the driver or drivers; or

(ii) For the purpose of ascertaining necessary rating information by an insurance agent pursuant to an insurer's contract with the Georgia Technology Authority for the immediate online electronic furnishing of limited rating information to such insurer's agents. Limited rating information furnished under this division shall include only the number of violations of Code Section 40-6-391, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, and the number and type of other moving traffic violations which were committed by the proposed insured driver or drivers within the immediately preceding three or five years, which period shall be specified by the person making the request. The provisions of division (i) of this subparagraph notwithstanding, no other information concerning a driver's operating record shall be released to such agents for purposes of rating;

(B.1) The department shall implement a pilot program for 12 months to determine the revenue feasibility of supplying limited rating information to agents, insurers, and insurance support organizations. The department shall report the results of such pilot program to the Office of Planning and Budget. Unless the Office of Planning and Budget determines that the pilot program is not successful, the department shall continue the program on a year-to-year basis and furnish limited rating information to insurance support organizations for the same purposes as provided in division (ii) of subparagraph (B) of this paragraph, pursuant to a contract with the Georgia Technology Authority, provided that all other necessary requirements of this subsection have been met;

(C) In accordance with Article 7 of this chapter, the "Georgia Uniform Commercial Driver's License Act";

(D) To a judge, prosecuting official, or law enforcement agency for use in investigations or prosecutions of alleged criminal or unlawful activity, or to the driver's licensing agency of another state;

(E) Pursuant to a request from a public or private school system concerning any person currently employed or an applicant

for employment as a school bus driver who agrees in writing to allow the department to release the information;

(F) With the written release of the driver, to a rental car company for use in the normal course of its business; provided, however, that, notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subparagraph shall be limited to name, address, driver identification number, and medical or disability information. Such access shall be provided and funded through the GeorgiaNet Division of the Georgia Technology Authority, and the department shall bear no costs associated with such access; and

(G) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

provided, however, that, notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subparagraph shall be limited to name, address, and driver identification number and shall not include photographs, fingerprints, computer images, or medical or disability information. The personal information obtained by a business under this subparagraph shall not be resold or redisclosed for any other purpose without the written consent of the individual. Furnishing of information to a business under this subparagraph shall be pursuant to a contract entered into by such business and the state which specifies, without limitation, the consideration to be paid by such business to the state for such information and the frequency of updates.

(2) Nothing in this Code section shall preclude the department from confirming or verifying the status of a driver's license or permit.

(d)(1) The commissioner shall designate members of the department to be the official custodians of the records of the department. No disclosure or release of operating records or personal information shall be made without the signed written approval of a designated custodian; except that such approval shall not be required for any

release or disclosure through the GeorgiaNet Division of the Georgia Technology Authority pursuant to the signed written consent of the driver, provided that any such signed written consent shall be retained for a period of not less than four years by the party requesting the information; and except that such approval shall not be required for any release or disclosure of information made electronically through the GeorgiaNet Division of the Georgia Technology Authority in accordance with a contract authorized by subparagraph (c)(1)(B) or as provided in subsection (f) of this Code section. The custodians may certify copies or compilations, including extracts thereof, of the records of the department.

(2) In response to a subpoena or upon the request of any judicial official, the department shall provide a duly authenticated copy of any record or other document. This authenticated copy may consist of a photocopy or computer printout of the requested document certified by the commissioner or the commissioner's duly authorized representative.

(e) Upon written request, the department may provide copies of any record or personal information from any driver's record for use by any appropriate governmental official, entity, or agency for the purposes of carrying out official governmental functions or legitimate governmental duties; provided, however, that, notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subsection shall be limited to name, address, driver identification number, and medical or disability information.

(f) The department is specifically authorized to disseminate the following records and information:

(1) To the United States Selective Service System and the Georgia Crime Information Center, compilations of the names, most current addresses, license or identification card numbers, and dates of birth of licensees or applicants for licenses or applicants for or holders of identification cards issued under this chapter, or, in the case of the United States Selective Service System, any other information from the license or identification card application as necessary for purposes of registration of persons therewith. Such information shall only be used in the fulfillment of the legitimate governmental duties of the United States Selective Service System and the Georgia Crime Information Center and shall not be further disseminated to any person. Information transmitted to the United States Selective Service System pursuant to this paragraph shall be provided in an electronic format;

(2) To the military branches of the United States Department of Defense, compilations of the names, dates of birth, sex, and most

current addresses of licensees between the ages of 16 and 24 for the sole purpose of mailing recruiting and job opportunity information, provided that the department shall not be required to provide such a compilation more than once every two months;

(3) To the Department of Human Services, compilations of the names, dates of birth, and most current addresses of licensees or applicants for licenses. Any information provided pursuant to this subsection shall only be used by the Department of Human Services in connection with the recovery of delinquent child support payments under Article 1 of Chapter 11 of Title 19, known as the "Child Support Recovery Act";

(4) To a local fire or law enforcement department, a copy of the abstract of the driving record of any applicant for employment or any current employee and to the Georgia Bureau of Investigation for the purpose of providing a local fire or law enforcement department with the abstract through the Criminal Justice Information System. It shall be unlawful for any person who receives an abstract of the driving record of an individual under this subsection to disclose any information pertaining to such abstract or to make any use thereof except in the performance of official duties with the local fire or law enforcement department;

(5) The information required to be made available to organ procurement organizations pursuant to subsection (d) of Code Section 40-5-25 and subsection (e) of Code Section 40-5-100 and for the purposes set forth in such Code sections;

(6)(A) The information required to be made available regarding voter registration pursuant to Code Sections 21-2-221 and 21-2-221.2 and for the purposes set forth in such Code sections; and

(B) Information sufficient for use in verifying a registered voter's identity or the identity of an applicant for voter registration by the Secretary of State, the county election superintendent, or the county registrar, including name, address, date of birth, gender, driver identification number, photograph, and signature;

(7) The data required to be made available to The Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts pursuant to Code Section 15-12-40.1. Such data shall be provided to The Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts upon request in the electronic format required by the council for such purposes and without any charge for such data;

(8) To the Department of Revenue, information sufficient for use in the detection and prevention of fraudulent tax returns, including

name, address, date of birth, gender, driver identification number, photograph, and signature. Such information may be provided in electronic format by means of bulk transfer. Any information provided pursuant to this paragraph shall only be used by the Department of Revenue in connection with the detection and prevention of fraudulent tax returns; and

(9) To the Department of Natural Resources, information sufficient for use in the detection and prevention of fraud in applications for licenses, permits, and registrations issued by it and to confirm residency of an applicant, including name, address, date of birth, gender, driver identification number or identification number, status of driver's license, date of driver's license issuance and driver's license cancellation, type of driver's license or identification card issued, and any other information required by the Department of Natural Resources to detect and prevent fraud in applications for licenses, permits, and registrations issued by it. Any information provided pursuant to this paragraph shall only be used by the Department of Natural Resources in connection with the detection and prevention of fraud in applications for licenses, permits, and registrations issued by it, to confirm residency of an applicant, and in fulfilment of its obligations under Article 1 of Chapter 11 of Title 19, known as the "Child Support Recovery Act." Such information may be provided in electronic format by means of bulk transfer or by electronic connection.

(g) The drivers' records and personal information disseminated by the department pursuant to this Code section may be used only by the authorized recipient and only for the authorized purpose. It shall be unlawful to disclose, distribute, or sell such records or information to an unauthorized recipient or for an unauthorized purpose. It shall be a violation of this Code section to make a misrepresentation or false statement in order to obtain access to or information from the department's records. Any person who knowingly and willfully violates the provisions of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished as provided in Code Section 17-10-4.

(h) The department shall maintain for four years a record of each release of a driver's operating record or personal information, including the name and address of the requesting party, the date of the release, and the provision of law authorizing the release. Such record of releases shall be reported to the affected driver upon written application by the driver, except that the department shall not report any information about the existence of a release made in connection with a criminal investigation which is ongoing and which involves, though not necessarily focuses upon, such driver. Upon receipt of an application from a

driver for such record of releases, the department shall have three business days to determine whether an ongoing criminal investigation is involved, and such determination shall be in the discretion of the commissioner. Where a release is not reported to a driver because the underlying release involved an ongoing criminal investigation, the records concerning the underlying release shall be maintained for four years after the criminal investigation is closed and such records shall during such period after closure of the investigation be subject to disclosure upon application by the driver.

(i) The provisions of this Code section shall apply, where relevant, to the maintenance and disclosure of the department's records regarding state identification cards issued under Article 5 of this chapter.

(j) The commissioner is authorized to promulgate any rules, regulations, or policies as are necessary to carry out the provisions of this Code section, including the promulgation of regulations limiting the retention of conviction and withdrawal information on a driving record. Notwithstanding the foregoing, any regulation relating to the retention of conviction and withdrawal information on a driving record shall apply the same retention schedule to both commercial and noncommercial drivers. In accordance with paragraph (6) of subsection (a) of Code Section 50-25-4, reasonable fees shall be assessed for furnishing information from records or data bases pursuant to provisions of this Code section; provided, however, that the fee for furnishing an abstract of a driver's record shall not exceed $10.00.

(k)(1) The department, pursuant to rules and regulations promulgated by the commissioner, may periodically review all records maintained pursuant to this Code section and shall correct those records which contain known improper, false, fraudulent, or invalid information.

(2) Not later than July 31, 2006, the department shall destroy all records of fingerprints obtained on and after April 15, 1996, and prior to July 1, 2006, from applicants for drivers' licenses, identification cards, and identification cards for persons with disabilities issued by the department and shall compile and make available for public inspection a list of all persons or entities to whom the department provided such fingerprint records. Notwithstanding the provisions of this paragraph, fingerprint images electronically stored on existing drivers' licenses will be destroyed upon application for a renewal of the driver's license.

(l) In any case in which the release or transmittal of one or more driver's records is authorized under this Code section or any other provision of law, the commissioner may determine the method of release or transmittal of the record or records, including without limitation

release or transmittal by mail or by means of the internet or other electronic means.

History.

Ga. L. 1937, p. 322, art. 4, § 13; Ga. L. 1939, p. 135, § 12; Code 1933, § 68B-215, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1978, p. 920, § 1; Ga. L. 1979, p. 142, § 1; Ga. L. 1980, p. 917, §§ 1, 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1182, § 1; Ga. L. 1985, p. 1339, § 1; Ga. L. 1986, p. 156, § 1; Ga. L. 1986, p. 514, § 1; Ga. L. 1988, p. 470, § 1; Ga. L. 1988, p. 687, § 1; Ga. L. 1989, p. 519, § 3; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1870, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1995, p. 917, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1061, § 1; Ga. L. 1996, p. 1624, § 5; Ga. L. 1997, p. 1446, § 2; Ga. L. 1999, p. 809, § 3; Ga. L. 2000, p. 249, § 2; Ga. L. 2000, p. 429, § 3; Ga. L. 2000, p. 951, § 5-2; Ga. L. 2001, p. 294, § 2; Ga. L. 2001, Ex. Sess., p. 318, § 1-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 749, § 2; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-2/HB 501; Ga. L. 2005, p. 465, § 1/HB 151; Ga. L. 2005, p. 1122, § 1/HB 577; Ga. L. 2006, p. 432, §§ 1, 2/HB 513; Ga. L. 2006, p. 449, § 1/HB 1253; Ga. L. 2006, p. 897, § 2/HB 1417; Ga. L. 2008, p. 171, § 1/HB 1111; Ga. L. 2008, p. 1137, § 1/SB 350; Ga. L. 2009, p. 327, § 2/HB 549; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 932, § 1.1/HB 396; Ga. L. 2011, p. 59, § 1-66/HB 415; Ga. L. 2011, p. 99, § 57/HB 24; Ga. L. 2012, p. 218, § 11/HB 397; Ga. L. 2012, p. 804, § 4/HB 985; Ga. L. 2012, p. 995, § 44/SB 92; Ga. L. 2014, p. 451, § 12/HB 776; Ga. L. 2014, p. 851, § 5/HB 774; Ga. L. 2015, p. 60, § 4-6/SB 100; Ga. L. 2016, p. 864, § 40/HB 737; Ga. L. 2017, p. 629, § 1/SB 128; Ga. L. 2024, p. 1052, § 4(40)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in division (c)(1)(B)(i), in the undesignated text at the end of subparagraph (c)(1)(G), and in subsection (e).

Code Commission notes.

Ga. L. 1986, p. 156, § 1 and Ga. L. 1986, p. 514, § 1 both redesignated former subsection (g) as new subsection (h), added differing subsection (g)'s to this Code section, and effected identical amendments to new subsection (h). Pursuant to Code Section 28-9-5, the subsection (g) added by the former Act retained that designation, the subsection (g) added by the latter Act was redesignated as subsection (h) and former subsection (g) was redesignated as subsection (i).

Pursuant to Code Section 28-9-5, in 2000, "Georgia Technology Authority" was substituted for "GeorgiaNet Authority" in divisions (c)(1)(B)(i) and (c)(1)(B)(ii) and "GeorgiaNet Division of the Georgia Technology Authority" was substituted for "GeorgiaNet Authority" in paragraph (d)(1).

Pursuant to Code Section 28-9-5, in 2005, in the first sentence of paragraph (k)(1) (now paragraph (k)(2)), "July 31, 2006" was substituted for "30 days after the effective date of this paragraph" and "July 1, 2006," was substituted for "the effective date of this paragraph".

Pursuant to Code Section 28-9-5, in 2024, a comma was added following "however, that" in subparagraph (c)(1)(F) and "internet" was substituted for "Internet" in subsection (l).

Editor's notes.

Ga. L. 1999, p. 809, § 1, not codified by the General Assembly, sets forth findings supporting restriction of access to Georgia Uniform Motor Vehicle Accident Reports as necessary for combating privacy invasion and financial identity fraud.

Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

"(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle

liability insurance requirements by providing the Department of Public Safety with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage."

Ga. L. 2001, p. 294, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares as follows:

"(1) Military service of citizens of this state in the armed forces of the United States has been and will remain a critical contribution to the national defense;

"(2) The United States Selective Service System plays a crucial role in ensuring that the nation can rapidly call up citizens for military duty in time of need;

"(3) Certain persons are required by federal law to register with the United States Selective Service System;

"(4) Significant and detrimental consequences imposed by law await those who shun their duty and fail to register for the United States Selective Service System as required, including loss of eligibility for certain government programs and employment; and

"(5) The purpose of this Act is to support the national defense by promoting registration of certain Georgia residents with the United States Selective Service System as required by federal law."

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 196 (1997).

For note on the 1999 amendment to this Code section, see 16 Georgia St. U.L. Rev. 268 (1999).

For note on the 2001 amendment of this Code section, see 18 Georgia St. U.L. Rev. 220 (2001).

For article, "Evidence," see 27 Georgia St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 1 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

No First Amendment right to accident reports. — Private investigator seeking information for commercial solicitation has no First Amendment constitutional right of special access to motor vehicle accident reports. Spottsville v. Barnes, 135 F. Supp. 2d 1316, 2001 U.S. Dist. LEXIS 4170 (N.D. Ga. 2001), aff'd, 32 Fed. Appx. 534, 2002 U.S. App. LEXIS 14242 (11th Cir. 2002).

Photograph of criminal obtained lawfully under former subsection (e). — Former subsection (e) authorized the department to provide a copy of any driver's license to any law enforcement agency; thus, the photograph of a criminal was obtained lawfully. Davis v. State, 155 Ga. App. 511, 271 S.E.2d 648, 1980 Ga. App. LEXIS 2643 (1980).

Records certified by custodians of department. — In view of the 1980 amendment to present subsection (f) of O.C.G.A. § 40-5-2, the Blackmon v. State, 153 Ga. App. 359, 265 S.E.2d 320 (1980), case is no longer controlling; and records of the department are certified by the custodians of the department and not necessarily by only a single individual

empowered to do so. Kimbrell v. State, 164 Ga. App. 344, 296 S.E.2d 206, 1982 Ga. App. LEXIS 2796 (1982).

Certified record admissible. — Certified Department of Public Safety record showing that defendant had been notified of defendant's status as a habitual violator was admissible. Corbin v. State, 225 Ga. App. 269, 483 S.E.2d 678, 1997 Ga. App. LEXIS 335 (1997).

Certified copies of the Department of Public Safety's "Official Notice of Revocation" and "Official Notice of Revocation and Service by Court" were admissible evidence. Shapiro v. State, 233 Ga. App. 620, 504 S.E.2d 719, 1998 Ga. App. LEXIS 985 (1998).

Admissibility of computer printout. — There being no contention that a computer printout was not properly certified, the printout was admissible prima facie at the sentencing hearing. Niehaus v. State, 149 Ga. App. 575, 254 S.E.2d 895, 1979 Ga. App. LEXIS 1940 (1979).

Certified copy of a department computer printout showing pertinent convictions is admissible without the printout's reliability or trustworthiness having to be established, although the defendant has the right to show that the printout is untrustworthy and thus diminish the printout's credibility or persuade the court not to admit the printout. Love v. Hardison, 166 Ga. App. 677, 305 S.E.2d 420, 1983 Ga. App. LEXIS 2292 (1983).

Duplicate uniform traffic citation forms. — Duplicate uniform traffic citation forms signed by a judge and certified by the Department of Public Safety were properly considered by the department and the superior court in determining whether defendant was a habitual violator. Gill v. Bowman, 201 Ga. App. 308, 410 S.E.2d 780, 1991 Ga. App. LEXIS 1319 (1991), cert. denied, No. S92C0100, 1991 Ga. LEXIS 899 (Ga. Nov. 1, 1991).

"Best evidence" objection. — When certification of document is not challenged, the "best evidence" objection has no merit. Henson v. State, 168 Ga. App. 210, 308 S.E.2d 555, 1983 Ga. App. LEXIS 2730 (1983); McFarland v. State, 210 Ga. App. 426, 436 S.E.2d 541, 1993 Ga. App. LEXIS 1224 (1993).

Certification by officially designated custodian. — When notices of suspension were certified by a member of the department designated as the official custodian by the commissioner, this clearly complied with subsection (e) of O.C.G.A. § 40-5-2 as to admissibility. Smith v. State, 187 Ga. App. 322, 370 S.E.2d 185, 1988 Ga. App. LEXIS 686 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Language that abstract of driver's operating record not certified. — There was no prohibition to adding language sufficient to place law enforcement agencies on notice that an abstract of a driver's operating record was not certified; the following language should be added to each abstract furnished pursuant to former Code 1933, § 68B-215 (see now O.C.G.A. § 40-5-2): "This is not a certified copy and should be used for informational purposes only." 1976 Op. Att'y Gen. No. 76-107.

Access to records. — Department of Public Safety may furnish, upon appropriate request, such information on drivers' records as does not violate the prohibition contained in O.C.G.A. § 40-5-2, including information contained on such documents as nunc pro tunc orders amending or correcting prior convictions or sentences affecting licensees; furthermore, because of the additional financial burden which this may place upon the department, reasonable costs incurred in furnishing the information sought may be charged. 1984 Op. Att'y Gen. No. 84-1.

Electronic transfer of records of convictions. — Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety, but not as a substitute for sending the citation copy. The uniform traffic

citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 103.

40-5-3. Department employees as notaries public.

The commissioner shall cause designated employees of the department to be appointed as notaries public, in accordance with Chapter 17 of Title 45, for the purpose of performing the notarial acts required by this chapter, free of charge to applicants.

History.
Code 1933, § 68B-207, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.

40-5-4. Promulgation of rules and regulations.

(a) The commissioner is authorized to implement any and all provisions of this chapter by the promulgation of necessary rules and regulations. An express grant of authority to the commissioner in any Code section to promulgate regulations shall not be construed as excluding such authority in any other Code section.

(b) When duly promulgated and adopted, all regulations issued pursuant to this chapter shall have the force of law.

History.
Ga. L. 1937, p. 322, art. 4, § 10; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 7; Code 1933, § 68B-501, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-3.

40-5-4.1. Authorized delay in compliance with federal Real ID Act.

The Governor of the State of Georgia, or his or her designee, is authorized to delay compliance with certain provisions of the federal Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, until it is expressly guaranteed by the Department of Homeland Security, through adequately defined safeguards, that implementation of the Real ID Act will not compromise the economic privacy or biological sanctity of any citizen or resident of the State of Georgia. This Code section shall not be interpreted as limiting the Governor's discretion or authority to delay compliance with certain provisions of the Real ID Act for any other reason.

History.

Code 1981, § 40-5-4.1, enacted by Ga. L. 2007, p. 27, § 2/SB 5.

Editor's notes.

Ga. L. 2007, p. 27, § 1/SB 5, not codified by the General Assembly, provides: "The General Assembly of Georgia finds that the Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, established standards that state-issued drivers' licenses and identification cards must meet by May 11, 2008, if the licenses or identification cards are to be accepted as valid identification by the federal government. After May 11, 2008, federal agencies are scheduled to accept only drivers' licenses or identification cards that meet Real ID standards. Noncompliant cards will not be accepted for federal purposes such as boarding a domestic flight, opening a bank account, or any other service or activity over which the federal government claims jurisdiction. Each state will also be required to share data from their drivers' licenses or identification cards data base with other states. The exact requirements of the Real ID Act have yet to be defined. The Department of Homeland Security was originally going to promulgate regulations by November, 2005. That date was changed to November, 2006. Currently, regulations are scheduled for January, 2007, but many parties feel this deadline may also pass without the regulations being issued.

"Because the Real ID Act was attached to a vital supplemental spending bill for defense and tsunami relief, there was no opportunity for a full examination of the consequences of the proposal. While everyone recognizes the need to make identifying documents as secure as is humanly possible, the one-size-fits-all approach required by the Real ID Act may actually increase the documents' vulnerability to counterfeiting. If criminals are able to invade one state's system, they may have access to all states' systems. On another front, a report from the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators suggests that the new requirements of the Real ID Act will cost states at least $11 billion over the first five years of the program. Despite this massive price tag, there has been no money appropriated to help states meet the law's demands.

"The Real ID Act gives the Department of Homeland Security the power to set federal standards and determine whether state drivers' licenses and other identification cards meet these standards. There is no provision in the Real ID Act that requires or even mentions information privacy or data security. The federal and state governments must ensure that the data needed to verify the identity of driver's license applicants is maintained securely and not used for other unrelated purposes. The Department of Homeland Security must include privacy protections for personal driver data as they promulgate regulations spelling out what states need to do to implement the federal law. Success of the Real ID Act depends on the Department of Homeland Security and the states collaborating to find a way of implementing its requirements in a fiscally responsible and risk adjusted manner. Therefore, the Georgia Department of Driver Services is directed to withhold any legislation designed to implement the Real ID Act in Georgia until such time as the Department of Homeland Security has enacted regulations that define the exact type of information that is to be required on a state driver's license. Furthermore, before the Real ID Act is implemented in Georgia, the Governor of Georgia is entitled to review the regulations promulgated by the Department of Homeland Security and determine if they adequately safeguard and restrict use of the information in order to protect the privacy rights of the citizens of Georgia.

"The citizens of Georgia also recognize the importance of ensuring that drivers' licenses are issued only to persons legally present in this state. Therefore, the use of secure and verifiable identification will be required in this state in order to obtain a driver's license. This requirement is in harmony with the intent of the Real ID Act to secure identification processes in this country. The Department of Driver Services is instructed to take the necessary steps to become a participant in the SAVE Program (Systematic Alien Verifica-

tion for Entitlements). This program, administered by the United States Bureau of Citizenship and Immigration Services, is designed to verify the immigration status of noncitizens."

40-5-5. Reciprocal agreements with other states, districts, territories, and foreign countries for the operation of motor vehicles and required testing; "limited term" notation.

(a) The Governor is authorized and directed to negotiate and consummate, with the proper authorities of the several states of the United States, the District of Columbia, and the territories and possessions of the United States, valid and binding reciprocal agreements whereby residents of such states, the District of Columbia, and the territories and possessions of the United States operating motor vehicles properly licensed and registered in their respective jurisdictions may have the same or substantially the same privileges or exemptions in the operation of their motor vehicles in this state as residents of this state may have and enjoy in the operation in such other jurisdictions of their motor vehicles properly licensed and registered in this state. Notwithstanding any provision of law to the contrary, the Governor may likewise negotiate and consummate valid and binding reciprocal agreements with the proper authorities of said jurisdictions relating to the suspension, revocation, cancellation, and reinstatement of motor vehicle drivers' licenses. In the making of such agreements, due regard shall be had for the benefit and convenience of the motor vehicle owners and other citizens of this state. The Governor may adopt and promulgate such rules and regulations as shall be necessary to effectuate and administer the provisions of this Code section.

(b) The Governor or a commission appointed by him shall give proper publicity to the terms of every reciprocal agreement entered into by him pursuant to this chapter; and he is authorized and empowered to promulgate rules and regulations for observance and enforcement of the terms of such agreement, which rules and regulations shall have the force and effect of law.

(c) The commissioner is authorized to negotiate and enter into an agreement with a foreign country or such political subdivision of a foreign country that exempts the citizens of such foreign country or such political subdivision of a foreign country from the knowledge test and the on-the-road driving test required in Code Section 40-5-27 so long as the citizen holds a valid driver's license of an equivalent class issued by such foreign country or such political subdivision of a foreign country; provided, however, that no such agreement shall be entered into unless the foreign country or the political subdivision of a foreign country offers the same reciprocity to persons holding a valid driver's license of an equivalent class issued by the State of Georgia and the commissioner determines that the laws of such foreign country or such

political subdivision of a foreign country relating to the operation of motor vehicles are sufficiently similar to such laws of this state such that driving safety shall not be compromised; and provided, further, that no such agreement shall be entered into unless the Department of Economic Development has certified that persons or entities from such country or such political subdivision have made or are likely to make a substantial economic investment in this state that has or will lead to the substantial creation of jobs in this state. The provisions of this subsection notwithstanding, the commissioner shall not be authorized to enter into any reciprocal agreement with any foreign country or any political subdivision of a foreign country that is designated as a state sponsor of terrorism by the United States Department of State. The exemption provided for in this subsection shall not be an exemption from any other legal requirement for the issuance of a driver's license, including the requirement that the applicant demonstrate lawful presence within the United States in accordance with Code Sections 40-5-21.1 and 40-5-21.2. This subsection shall not apply to citizens of foreign countries or political subdivisions or foreign countries applying for a commercial driver's license or Class M driver's license.

(d) The department shall make a notation on any driver's license, permit, identification card, or other state identifying document issued by the department pursuant to this Code section. The notation shall be in a manner approved by the department and shall state "Limited Term" or such other notation as determined by the department. Nothing contained in this subsection shall preclude the department from making the same or similar notations on other similarly issued identifying documents. Any driver's license or other identifying document that is so noted shall not be used as voter identification.

History.

Ga. L. 1937-38, Ex. Sess., p. 617, §§ 1, 5; Ga. L. 1941, p. 361, §§ 2, 5; Ga. L. 1959, p. 25, § 1; Ga. L. 1973, p. 559, § 1; Ga. L. 1976, p. 198, § 1; Ga. L. 1979, p. 1015, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 2013, p. 281, § 1/HB 475; Ga. L. 2020, p. 199, § 2-2/HB 463.

Cross references.

Cooperation between Georgia and other states generally, § 28-6-1 et seq.

Editor's notes.

The Department of Driver Services is the depository for the reciprocal agreements referred to in this Code section. These agreements are available for examination upon request.

Law reviews.

For article on the 2013 amendment of this Code section, see 30 Georgia St. U.L. Rev. 203 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Reciprocity determined by examining agreement. — In order to determine whether or not a motor vehicle is entitled to reciprocity while operating in Georgia, it is necessary to examine the reciprocity agreement that this state has with the state in which that vehicle is based. 1965-66 Op. Att'y Gen. No. 66-227.

Licensing authorities' conduct towards out-of-state truck lines. — Conduct of the licensing authorities of Georgia in relation to out-of-state truck

lines operating in Georgia depends wholly and entirely upon the conduct of the mother state of the trucking association, that is, the state under whose laws the trucking association is operating; the reciprocal agreement between that state and the State of Georgia determines acts of the state agents in either requiring or not requiring the trucks to obtain a Georgia for hire tag. 1950-51 Ga. Op. Att'y Gen. 188.

Imposition of highway use tax against another state. — Truck or trailer must carry the license plate of the state from which the truck or trailer operates and should not be allowed to carry plates of other states; however, if the trucks or trailers do operate with license plates from more than one state and one of the states imposes a highway use tax and is not in reciprocity with the State of Georgia, then the tax imposed under Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 5 (see now O.C.G.A. § 40-2-110 et seq.) is applicable to that truck or trailer. 1954-56 Ga. Op. Att'y Gen. 475.

Entitlement to reduction in highway use tax. — Trailers liable for highway use tax are not entitled to reduction in this tax under Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-151). 1954-56 Ga. Op. Att'y Gen. 476.

Trial of violators. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 6 (see now O.C.G.A. § 40-2-114(a)(4)) contemplates a trial by jury and a conviction or acquittal of persons accused of violating Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 5 (see now O.C.G.A. § 40-2-110 et seq.); therefore, it would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Ga. Op. Att'y Gen. 476.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 62 et seq., 92, 113 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 1158 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 186, 187. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 5.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 24, 25, 28 et seq., 192, 309, 379 et seq. 61A C.J.S., Motor Vehicles, § 1482.

ALR.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

40-5-6. Form for making anatomical gifts upon issuance or renewal of driver's license or identification card.

(a) Whenever any person applies for or requests the issuance, reissuance, or renewal of any class of driver's license or identification card, the department shall furnish such person with a form, sufficient under Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," for the gift of all or part of the donor's body conditioned upon the donor's death. If any such person, legally authorized to execute such a gift as provided for pursuant to Code Section 44-5-142, desires to execute a gift, the department shall provide such person with appropriate assistance and the presence of the legally required number of witnesses.

(b) A notation shall be affixed to or made a part of every driver's license and identification card issued in this state indicating whether or

not the licensee or cardholder has executed, under Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," a gift, by will or otherwise, of all or part of his or her body conditioned upon the donor's death.

History.
Ga. L. 1974, p. 1117, §§ 1, 2; Code 1981, § 40-5-7; Code 1981, § 40-5-6, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 2008, p. 503, § 4/SB 405; Ga. L. 2015, p. 60, § 4-7/SB 100; Ga. L. 2024, p. 1052, § 4(41)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "identification card" for "personal identification card" in subsections (a) and (b).
Cross references.
Donation of human eyes to eye banks, § 31-23-1 et seq.
Anatomical gifts, § 44-5-140 et seq.
Editor's notes.
Former Code Section 40-5-6, relating to mailing of notice by the department, was based on Ga. L. 1975, p. 1008, and was repealed by Ga. L. 1989, p. 519, § 4, effective April 10, 1989.
Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."
Law reviews.
For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B.J. 50 (No. 7, 2005).
For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

40-5-7. [Reserved] Blue Ribbon Young Driver and DUI Study Commission; creation; membership; purpose; meetings; compensation; reports to Governor and General Assembly; termination.

History.
Ga. L. 2001, p. 208, § 1-0; repealed by Ga. L. 2001, p. 208, § 1-0, effective December 1, 2002.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2001, Code Section 40-5-7, as enacted by Ga. L. 2001, p. 294, § 3, was redesignated as Code Section 40-5-8.
Pursuant to Code Section 28-9-5, in 2003, this Code section designation was reserved.
Editor's notes.
Ga. L. 2001, p. 208, § 1-0 repealed and reserved this Code section, effective December 1, 2002.

40-5-8. Registration of applicants with United States Selective Service System; notification that signature constitutes consent.

(a) Any male United States citizen or immigrant who applies for any driver's license or identification card issued under this chapter, including without limitation any instruction permit, limited driving permit, provisional driver's license, or commercial driver's license, or for renewal thereof, and who is less than 26 years of age shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 App. U.S.C.A. Section 451, et seq., as amended.

(b) The signature of any applicant described in subsection (a) of this Code section submitted to the department in application for such license or identification card issuance or renewal shall serve as an indication that the applicant either has registered already with the United States Selective Service System or that he is authorizing the department to forward to the United States Selective Service System the necessary information for such registration. The department shall notify the applicant at the time of application that his signature constitutes consent to be registered with the United States Selective Service System if he is not already so registered. The department shall, as soon as practical following such application and in accordance with paragraph (1) of subsection (f) of Code Section 40-5-2, forward the necessary personal information of the applicant to the United States Selective Service System for purposes of registration therewith at such time as required by federal law.

History.

Code 1981, § 40-5-8, enacted by Ga. L. 2001, p. 294, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, Code Section 40-5-7, as enacted by Ga. L. 2001, p. 294, § 3, was redesignated as Code Section 40-5-8.

Editor's notes.

Ga. L. 2001, p. 294, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares as follows:

"(1) Military service of citizens of this state in the armed forces of the United States has been and will remain a critical contribution to the national defense;

"(2) The United States Selective Service System plays a crucial role in ensuring that the nation can rapidly call up citizens for military duty in time of need;

"(3) Certain persons are required by federal law to register with the United States Selective Service System;

"(4) Significant and detrimental consequences imposed by law await those who shun their duty and fail to register for the United States Selective Service System as required, including loss of eligibility for certain government programs and employment; and

"(5) The purpose of this Act is to support the national defense by promoting registration of certain Georgia residents with the United States Selective Service System as required by federal law."

40-5-9. Pauper's affidavit for a partial waiver of driver's license reinstatement and restoration fees.

(a) A pauper's affidavit may be filed in lieu of paying the driver's license reinstatement or restoration fee otherwise required by this chapter. An individual filing a pauper's affidavit shall under oath affirm his or her poverty and his or her resulting inability to pay the driver's license reinstatement or restoration fee otherwise required by this chapter. The form of the affidavit shall be prescribed by the commissioner and shall indicate on its face that such individual has neither the income nor the assets to pay the fee otherwise required. The following warning shall be printed on the affidavit form prepared by the commissioner, to wit: "WARNING: Any person knowingly making any false statement on this affidavit commits the offense of false swearing and shall be guilty of a felony."

(b) Upon the submission of a pauper's affidavit, the driver's license reinstatement or restoration fee shall be waived.

(c) The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

History.
Code 1981, § 40-5-9, enacted by Ga. L. 2016, p. 443, § 4-1/SB 367; Ga. L. 2024, p. 560, § 6/HB 926, effective May 2, 2024.
Amendments.
The 2024 amendment, effective May 2, 2024, substituted "waived" for "50 percent of the fee required by law" at the end of subsection (b) and added subsection (c).
Editor's notes.
Ga. L. 2024, p. 560, § 1/HB 926, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Second Chance Workforce Act.'"
Law reviews.
For article on the 2016 enactment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).
Administrative rules and regulations.
Pauper's Affidavit for Reinstatement or Restoration Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.23.

40-5-10. Driver education training courses.

(a) The department shall establish standards for approval of curriculum for a driver education training course, provided that such course shall be designed to educate young drivers about safe driving practices and the traffic laws of this state and to train young drivers in the safe operation of motor vehicles.

(b) The department shall provide for the approval of similar courses from other states to satisfy the requirements of this chapter relating to driver education training courses for any child moving into this state within nine months of his or her sixteenth birthday when the child's parent is in the active military service of the United States.

(c) Driver education training courses may be offered:

(1) By the department, a driver training school, a public or private high school, or a home education instructor; and

(2) Through in-person instruction, online courses, or remote participation platforms provided by in-person instruction providers.

(d) The department shall promulgate rules and regulations to implement the provisions of this Code section.

History.
Code 1981, § 40-5-10, enacted by Ga. L. 2021, p. 403, § 2/HB 466.

ARTICLE 2

ISSUANCE, EXPIRATION, AND RENEWAL OF LICENSES

Administrative rules and regulations.

Renewals, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Rule 375-3-2-.01 et seq.

Driver Training Schools, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver Training and Driver Improvement, Rule 375-5-2-.01 et seq.

RESEARCH REFERENCES

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375; 53 A.L.R.2d 850.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 71 A.L.R. 616; 108 A.L.R. 1162; 125 A.L.R. 1459.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

State's liability to one injured by improperly licensed driver, 41 A.L.R.4th 111.

Change of Gender or Sex on Government ID, Records, or Forms, 77 A.L.R.7th Art. 2.

40-5-20. License required; surrender of prior licenses; local licenses prohibited.

(a) No person, except those expressly exempted in this chapter or in Chapter 6 of this title, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being driven. Any person who is a resident of this state for 30 days shall obtain a Georgia driver's license before operating a motor vehicle in this state. Any court having jurisdiction over traffic offenses in this state shall report to the department the name and other identifying information of any individual convicted of driving without a license. This Code section shall not apply to a person driving with a suspended license or license that has been revoked. Any person convicted of violating this Code section shall be punished as provided in subsection (a) of Code Section 40-5-121; provided, however, that, if:

(1) Such person is driving with a driver's license issued by this state that has been expired for less than 31 days at the time of the offense and he or she produces in court a driver's license that would have been valid at the time of the offense, he or she shall not be guilty of such offense; and

(2) Such person is driving without a valid driver's license or receipt issued by the department reflecting issuance, renewal, re-

placement, or reinstatement in his or her possession but he or she has a valid driver's license, Code Section 40-5-29 shall apply to such offense.

(b) No person, except those expressly exempted in this chapter, shall steer or, while within the passenger compartment of such vehicle, exercise any degree of physical control of a vehicle being towed by a motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being towed.

(c)(1)(A) Any person who applies for a driver's license, instruction permit, or limited driving permit shall indicate on such application whether he or she is in possession of any other valid driver's license or permit issued pursuant to this title or from any other jurisdiction.

(B) Except as provided in paragraph (2) of this subsection, no person shall receive a driver's license unless and until such person surrenders to the department all valid licenses or permits in such person's possession issued to him or her pursuant to this title or by any other jurisdiction. The department shall physically mark any surrendered license or permit in a manner which makes it apparent that such license or permit is no longer valid and return the license or permit to such person.

(C) The department shall issue a receipt to a person eligible to be issued a driver's license, instruction permit, or limited driving permit pursuant to the requirements of this title. Such receipt shall satisfy the requirements of subsection (a) of Code Section 40-5-29 regarding proof of eligibility to operate a motor vehicle until the person has received his or her permanent driver's license, instruction permit, or limited driving permit.

(D) If a surrendered driver's license was issued by another jurisdiction, the department shall forward the surrendered license information to the previous jurisdiction.

(E) Except as provided for in paragraph (2) of this subsection, no person shall be permitted to have more than one valid driver's license at any time.

(2) Any noncitizen who is eligible for issuance of a driver's license, instruction permit, or limited driving permit pursuant to the requirements of this title and is in possession of a valid driver's license or permit issued by a foreign jurisdiction may be issued a driver's license, instruction permit, or limited driving permit without surrendering the foreign driver's license or permit. This exemption shall not apply to a person who is required to terminate any previously issued

driver's license pursuant to federal law. The department shall make a notation on the driving record of any person who retains a foreign driver's license, and this information shall be made available to law enforcement officers and agencies on such person's driving record through the Georgia Crime Information Center.

(d) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipality, or local board or body having authority to adopt local police regulations.

History.

Code 1933, § 68B-201, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 2; Ga. L. 2002, p. 1045, § 1; Ga. L. 2008, p. 1137, § 2/SB 350; Ga. L. 2008, p. 1154, § 1/SB 488; Ga. L. 2009, p. 65, § 1/SB 196; Ga. L. 2014, p. 710, § 2-1/SB 298; Ga. L. 2014, p. 745, § 7/HB 877; Ga. L. 2017, p. 184, § 1/HB 136; Ga. L. 2024, p. 1052, § 4(42)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in the proviso of the fifth sentence of subsection (a).

Editor's notes.

For application of this statute in 2020, see Executive Order 03.25.20.01.

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 277 (2002).

For article, "Crimes of Suspicion," see 72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Applicability to residents and non-residents. — Because O.C.G.A. § 40-5-20 prohibits both residents and nonresidents from driving any motor vehicle upon a highway in this state without a valid driver's license, defendant's claim that under O.C.G.A. § 40-5-1(15) the defendant could not be considered a resident of Georgia was irrelevant. Chiasson v. State, 250 Ga. App. 63, 549 S.E.2d 503, 2001 Ga. App. LEXIS 595 (2001), cert. denied, No. S01C1454, 2001 Ga. LEXIS 885 (Ga. Nov. 5, 2001).

Right to drive is qualified right. — Right to operate motor vehicle upon public highways of this state is merely qualified right which can be exercised by obtaining a license from the state. Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205, 1980 Ga. LEXIS 870 (1980); Ward v. State, 188 Ga. App. 372, 373 S.E.2d 65, 1988 Ga. App. LEXIS 1058 (1988).

Undocumented aliens. — Reading the definition of "resident" in O.C.G.A. § 40-5-1(15) and O.C.G.A. § 40-5-20(a) in pari materia, shows that the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver's license but to permit visitors, with no intention of becoming residents, to drive here without obtaining a Georgia license. Diaz v. State, 245 Ga. App. 380, 537 S.E.2d 784, 2000 Ga. App. LEXIS 952 (2000).

Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver's license does not deprive the aliens of equal protection of the laws in violation of the Fourteenth Amendment. John Doe No. 1 v. Ga. Dep't of Pub. Safety, 147 F. Supp. 2d 1369, 2001 U.S. Dist. LEXIS 7385 (N.D. Ga. 2001).

Denial of defendant's, an undocumented alien, motion to quash was affirmed be-

cause limiting the safe harbor provision of O.C.G.A. § 40-5-20 to the production at trial of a Georgia driver's license was a rational part of the enforcement scheme, allowing the presumption created by a violation of O.C.G.A. § 40-5-29(b) to be automatically rebutted only when the evidence that the driver in fact had a valid license when cited was most indisputable and readily evaluated by the factfinder. Castillo-Solis v. State, 292 Ga. 755, 740 S.E.2d 583, 2013 Ga. LEXIS 294 (2013).

Mexican driver had no standing to challenge statute as unconstitutional. — Driver with a Mexican driver's license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic because the Mexican did not have an international license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. Medina v. State, 312 Ga. App. 399, 718 S.E.2d 323, 2011 Ga. App. LEXIS 966 (2011).

Effect of license requirement on right to travel. — Mere fact of imposing a license requirement does not constitute state infringement on any right of locomotion which an individual may have to travel on public ways as a common-law freeman. Lebrun v. State, 255 Ga. 406, 339 S.E.2d 227, 1986 Ga. LEXIS 551 (1986).

Custodial arrest for operating a motor vehicle without a license. — If an officer stops a vehicle in the good faith belief that a traffic violation has been committed, the officer's ultimate failure to issue a traffic citation will not preclude the traffic offense from evincing the reasonable suspicion which served to justify the officer's initial stop of the vehicle. Once a stop is effected, a defendant is subject to custodial arrest for operating a motor vehicle without a valid driver's license. State v. Chambers, 194 Ga. App. 609, 391 S.E.2d 657, 1990 Ga. App. LEXIS 266 (1990).

City streets constitute highway for purposes of statute. — Proof that defendant was driving on city streets was sufficient to show defendant was driving on a "highway" so as to sustain a conviction for driving without a license as city streets fit within the broad definition of "highway" under O.C.G.A. § 40-5-20 making it a violation to drive without a license. Scott v. State, 254 Ga. App. 728, 563 S.E.2d 554, 2002 Ga. App. LEXIS 451 (2002).

Driving with expired driver's license is a violation of O.C.G.A. § 40-5-20(a); O.C.G.A. § 40-5-120(7) (see now O.C.G.A. § 40-5-120(4)) makes such a violation a misdemeanor. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

Presumption raised by failure to have license in possession. — There existed no reversible error when the defendant was accused of (and subsequently convicted of) driving a vehicle without a valid license, but the offense on which the jury was charged concerned the failure to have a valid license in one's possession at all times while operating a motor vehicle (see now O.C.G.A. § 40-5-29) and the presumption thereby raised that the driver had no valid license. Roberts v. State, 173 Ga. App. 614, 327 S.E.2d 743, 1985 Ga. App. LEXIS 1637 (1985).

Detention based on lack of driver's license was proper. — Motion to suppress evidence seized from the defendant's car was properly denied because a uniformed officer's initial approach to the car, which had been driven to the scene of a controlled drug buy by a codefendant, was a first-tier police-citizen encounter, the car was already stopped when the uniformed officer approached and asked the codefendant for identification, the codefendant admitted that the codefendant had no driver's license or other identification, and thus the officer had reasonable suspicion that the codefendant was violating the law by driving without a license and was justified in detaining the codefendant from driving off in the vehicle; the officer also had reasonable suspicion of criminal drug activity based on the fact that an informant who was working with police to conduct the drug deal had described a two-door silver Mercedes coupe with

dealer tags as the target vehicle belonging to the defendant, and police had confirmed this vehicle was just at the establishment frequented by the defendant, the codefendant drove up in the vehicle just before defendant arrived in a different car, at the very time and place designated for the drug transaction, the codefendant parked near the drug transaction and made hand signals which could have been inferred to have been counter-surveillance signals that the codefendant saw no police and that the transaction could go forward, and, because these circumstances authorized the officer to conduct an investigative detention of the codefendant and the vehicle, the bringing of a drug dog to the scene during that brief detention was proper, and when the drug dog alerted to the vehicle as containing drugs, the subsequent warrantless search of the vehicle was justified. Bowden v. State, 279 Ga. App. 173, 630 S.E.2d 792, 2006 Ga. App. LEXIS 494 (2006).

Trial court properly denied the defendant's motion to suppress because the defendant admitted to the police officer that the defendant had no visa or passport, and that the only documentation the defendant could present was a Mexican driver's license written in Spanish and the Mexican consulate card; thus, the police officer had probable cause to arrest the defendant for driving without a license, and the arrest was lawful. Garcia-Carrillo v. State, 322 Ga. App. 439, 746 S.E.2d 137, 2013 Ga. App. LEXIS 541 (2013).

Traffic stop for compliance not unreasonably prolonged. — As an officer's questioning of the defendant, after a traffic stop, about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642, 2009 Ga. App. LEXIS 925 (2009).

Golf carts. — After the defendant drove a golf cart on a public highway with a suspended license in violation of O.C.G.A. § 40-5-20(a), the trial court properly instructed the jury that the defendant had to have a driver's license; the evidence sufficiently supported the suspended license conviction. Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498, 2003 Ga. App. LEXIS 732 (2003), cert. denied, No. S03C1522, 2003 Ga. LEXIS 864 (Ga. Oct. 6, 2003).

Safe harbor provision not applicable to driver with learner's permit. — Because the defendant's learner's permit was not valid for the purpose of driving unsupervised, as the defendant was on the day of a traffic stop, the defendant could not qualify for the safe harbor under O.C.G.A. § 40-5-20(a). Colotl v. State, 313 Ga. App. 42, 720 S.E.2d 210, 2011 Ga. App. LEXIS 978 (2011), cert. denied, No. S12C0605, 2012 Ga. LEXIS 392 (Ga. Apr. 24, 2012).

Actionable negligence arising from operation without license. — While it is a violation of state law to operate an automobile without a driver's license, this is actionable negligence only when there is a proximate causal connection between the violation and the injury. Carpenter v. Lyons, 78 Ga. App. 214, 50 S.E.2d 850, 1948 Ga. App. LEXIS 712 (1948) (decided under Ga. L. 1937, p. 322).

Ineffective assistance of counsel for failing to object to officer's testimony. — Appellate court reversed the trial court's denial of the defendant's motion for a new trial with respect to the two misdemeanor traffic violations because the prejudice from trial counsel's failure to object was clear as the officer's hearsay testimony was the only evidence offered to prove the elements of the traffic offenses and had the evidence been excluded, there would not have been sufficient evidence to convict on those offenses. Taylor v. State, 337 Ga. App. 486, 788 S.E.2d 97, 2016 Ga. App. LEXIS 357 (2016).

Evidence sufficient to sustain conviction. — Evidence was sufficient to find that a defendant violated O.C.G.A. § 40-5-20(a) because it was a matter of common knowledge that "the loop" or "bypass" in a certain area was a public highway, although there was no direct testimony of that fact. Craig v. State, 276

Ga. App. 329, 623 S.E.2d 518, 2005 Ga. App. LEXIS 1147 (2005).

Because the defendant admittedly lacked a driver's license, the tag on the car being driven was expired, and the defendant produced no evidence that the car had been recently purchased, and thus fell within the initial 30-day registration period during which a numbered license plate was not required, defendant's convictions were upheld on appeal. Arellano v. State, 289 Ga. App. 148, 656 S.E.2d 264, 2008 Ga. App. LEXIS 22 (2008).

Evidence insufficient to sustain conviction. — Testimony by a police officer that someone else ran a computer check and determined that defendant did not have a driver's license was not sufficient to sustain defendant's conviction for driving without a license. James v. State, 265 Ga. App. 689, 595 S.E.2d 364, 2004 Ga. App. LEXIS 231 (2004).

Because the state failed to present the parties' stipulation to the trier of fact and there was no other evidence that the defendant was driving without a license, insufficient evidence existed to sustain a conviction for driving without a license. Raby v. State, 274 Ga. App. 665, 618 S.E.2d 704, 2005 Ga. App. LEXIS 816 (2005).

Charge to jury. — Because the defendant was being tried under O.C.G.A. § 40-5-20, giving a clarifying charge to the jury on "driving without a license on the person" (see now O.C.G.A. § 40-5-29) was not error. Duckworth v. State, 223 Ga. App. 250, 477 S.E.2d 336, 1996 Ga. App. LEXIS 1085 (1996), aff'd, 268 Ga. 566, 492 S.E.2d 201, 1997 Ga. LEXIS 713 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Motor scooter is a motor vehicle which must be licensed before operation in Georgia, and the operator of a motor scooter is subject to the same rules as drivers of automobiles. 1954-56 Ga. Op. Att'y Gen. 485.

Go-cart is a motor vehicle; the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Nonresident 16-year-old student. — Nonresident student is not required to obtain a Georgia driver's license in order to operate a vehicle on the public roads and highways so long as the student is at least 16 years of age and is the holder and possessor of a valid operator's or public chauffeur's license issued by the state of domicile. 1970 Op. Att'y Gen. No. 70-40.

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 40-5-20(a) are designated as offenses for which those charged are to be fingerprinted. 2008 Op. Att'y Gen. No. 2008-6; 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 100, 102, 112 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 319 et seq., 323, 331 et seq.

ALR.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375; 53 A.L.R.2d 850.

Constitutionality and construction of statutes with respect to nonresident motor vehicle operators' or drivers' licenses, 82 A.L.R. 1392.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 A.L.R. 1162; 125 A.L.R. 1459.

Lack of proper automobile registration or operator's license as evidence of operator's negligence, 29 A.L.R.2d 963.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

Validity of state statutes, regulations,

or other identification requirements restricting or denying driver's licenses to illegal aliens, 16 A.L.R.6th 131.

40-5-21. Exemptions generally.

(a) Except as provided in Article 7 of this chapter, the "Uniform Commercial Driver's License Act," the following persons are exempt from licenses under this chapter:

(1) Any employee of the United States government while operating a motor vehicle owned by or leased to the United States government and which is being operated on official business, unless such employee is required by the United States government or any agency thereof to have a state driver's license;

(2) A nonresident who has in his or her immediate possession a valid driver's license issued to him or her in his or her home state, country, or political subdivision of a foreign country; provided, however, that such person would otherwise satisfy all requirements to receive a Georgia driver's license; and provided, further, that in the case of a driver's license issued by the driver's licensing authority of a foreign country or political subdivision of a foreign country, a law enforcement officer may consult such person's passport or visa to verify the validity of such license, if available;

(3) A nonresident on active duty in the armed forces of the United States who has a valid license issued by his or her home state, and such nonresident's spouse or dependent son or daughter who has a valid license issued by such person's home state;

(4) Any person on active duty in the armed forces of the United States who has in his or her immediate possession a valid license issued in a foreign country or political subdivision of a foreign country by the armed forces of the United States, for a period of not more than 45 days from the date of his or her return to the United States;

(5) Any inmate or resident patient of a state, county, or municipally owned institution who drives a vehicle while on the grounds of such institution and while accompanied by and under the direct personal supervision of a qualified driving instructor or of some other person duly authorized in writing to so accompany and supervise such inmate or resident patient;

(6) Any person driving or operating a farm tractor or farm implement temporarily operated on a highway for the purpose of conducting farm business;

(7) Any inmate of a state, county, or municipal prison, correctional institution, or jail while operating a motor vehicle owned by or leased

to the state, county, or municipality and being operated with the written approval of the warden or superintendent and in such manner and for such purpose as may be specified by the warden or superintendent, provided that such inmate, within the 60 day period prior to the grant of written authority, has passed the vision, written, and driving tests required for licensing a citizen to operate such motor vehicle. The department shall give such tests and issue a certificate, without charge therefor, to any inmate passing such tests;

(8) A member of the reserve components of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated in accordance with the duties of such member as a member of the reserve components of the armed forces;

(9) Any person seeking to obtain a driver's license while taking the driving examination for such license accompanied by a driver license examiner of the department or a certified examining agent of the department;

(10) Any migrant farm worker who works in this state less than 90 days in any calendar year and who possesses a valid driver's license issued by another state;

(11) Any resident who is 15 years of age or over while taking actual in-car training in a training vehicle other than a commercial motor vehicle under the direct personal supervision of a driving instructor when such driving instructor and training vehicle are licensed by the department in accordance with the provisions of Chapter 13 of Title 43, "The Driver Training School and Commercial Driver Training School License Act." As used in the previous sentence, the term "commercial motor vehicle" shall have the meaning specified in Code Section 40-5-142. All vehicles utilized for the in-car training authorized under this paragraph shall be equipped with dual controlled brakes and shall be marked with signs in accordance with the rules of the department clearly identifying such vehicles as training cars belonging to a licensed driving school. A driving instructor shall test the eyesight of any unlicensed person who will be receiving actual in-car training prior to commencement of such training, and no unlicensed driver shall receive in-car training unless such person has at least the visual acuity and horizontal field of vision as is required for issuance of a driver's license in subsection (c) of Code Section 40-5-27;

(12) Any person while operating a personal transportation vehicle:

(A) On any way publicly maintained for the use of personal transportation vehicles by the public and no other types of motor

vehicles in accordance with a local ordinance adopted pursuant to Part 3 or 6 of Article 13 of Chapter 6 of this title; or

(B) When crossing a street or highway used by other types of motor vehicles at a location designated for such crossing pursuant to subsection (d) of Code Section 40-6-331 or pursuant to a PTV plan authorized by a local authority as described in Part 6 of Article 13 of Chapter 6 of this title; and

(13) A fully autonomous vehicle with the automated driving system engaged or the operator of a fully autonomous vehicle with the automated driving system engaged.

(b) Notwithstanding any contrary provisions of Code Section 40-5-20 or subsection (a) of this Code section, a nonresident of this state who is attending a school in this state shall be exempt from the driver's licensing requirements of this chapter if and only if:

(1) He or she is at least 16 years of age and has in his or her immediate possession a valid license issued to him or her in his or her home state or country; provided, however, that any restrictions which would apply to a Georgia driver's license as a matter of law would apply to the privilege afforded to the out-of-state license; and

(2) He or she is currently enrolled or was enrolled during the immediately preceding period of enrollment in a school in this state, has paid for the current period of enrollment or paid for the immediately preceding period of enrollment the tuition charged by the school to nonresidents of Georgia, and has in his or her possession proof of payment of such tuition for such current or immediately preceding period of enrollment.

History.

Ga. L. 1937, p. 322, art. 4, § 1; Ga. L. 1939, p. 135, § 9; Code 1933, § 68B-202, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 1; Ga. L. 1978, p. 931, § 1; Ga. L. 1978, p. 2189, § 1; Code 1981, § 40-5-21.1, enacted by Ga. L. 1983, p. 638, § 2; Ga. L. 1989, p. 519, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 4; Ga. L. 1994, p. 478, § 1; Ga. L. 1996, p. 1624, § 6; Ga. L. 1997, p. 760, § 9; Ga. L. 2000, p. 951, § 5-4; Ga. L. 2001, p. 184, §§ 2-1, 3-1; Ga. L. 2004, p. 67, § 2; Ga. L. 2005, p. 334, § 17-3/HB 501; Ga. L. 2008, p. 589, § .1/HB 969; Ga. L. 2008, p. 1154, § 2/SB 488; Ga. L. 2014, p. 745, § 8/HB 877; Ga. L. 2016, p. 767, § 3/SB 320; Ga. L. 2017, p. 549, § 2/SB 219; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2020, p. 199, § 2-3/HB 463.

Cross references.

Reciprocal recognition of driver's licenses issued in other territories, Convention on Road Traffic (1949); 3 U.S.T. 3008; T.I.A.S. 2487; 125 UNTS 22.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "Georgia" was deleted preceding "Uniform Commercial Driver's License Act" in subsection (a).

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall

not apply to offenses committed prior to that date.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 205 (2001).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 231 (2017).

For annual survey on commercial transportation, see 73 Mercer L. Rev. 47 (2021).

JUDICIAL DECISIONS

Sentence void as outside punitive parameters. — Court's imposition of a 12-month probation and a $750 fine fell outside the parameters for either a first or subsequent offense, and was therefore void. State v. Dingler, 207 Ga. App. 391, 427 S.E.2d 861, 1993 Ga. App. LEXIS 162 (1993).

Penalty for permitting unlicensed person to drive car. — Sentence of six months in jail, six months on probation, and a fine of $1,000 for permitting an unlicensed person to drive a car did not constitute cruel and unusual punishment. Means v. State, 255 Ga. 537, 340 S.E.2d 612, 1986 Ga. LEXIS 629 (1986).

Mexican driver had no standing to challenge driver's license requirement. — Driver with a Mexican driver's license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic because the Mexican did not have an international license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. Medina v. State, 312 Ga. App. 399, 718 S.E.2d 323, 2011 Ga. App. LEXIS 966 (2011).

Detention based on lack of driver's license was proper. — Trial court properly denied the defendant's motion to suppress because the defendant admitted to the police officer that the defendant had no visa or passport, and that the only documentation the defendant could present was a Mexican driver's license written in Spanish and the Mexican consulate card; thus, the police officer had probable cause to arrest the defendant for driving without a license, and the arrest was lawful. Garcia-Carrillo v. State, 322 Ga. App. 439, 746 S.E.2d 137, 2013 Ga. App. LEXIS 541 (2013).

Evidence insufficient for driving without a license. — Evidence was insufficient to support the defendant's conviction for driving without a driver's license as the state failed to present any written record at trial or at the hearing on the motion for a new trial showing that the defendant's driving privileges had in fact been suspended and the defendant presented evidence at the hearing on the motion for a new trial that no such suspension existed and that the defendant's Florida license was valid in Georgia. Williams v. State, 336 Ga. App. 442, 784 S.E.2d 808, 2016 Ga. App. LEXIS 201 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Go-cart is a motor vehicle; the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Nonresident 16-year-old student. — Nonresident student is not required to obtain a Georgia driver's license in order to operate a vehicle on the public roads and highways so long as the student is at least 16 years of age and is the holder and

possessor of a valid operator's or public chauffeur's license issued by the state of domicile. 1970 Op. Att'y Gen. No. 70-40.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 108 et seq.
C.J.S.
60 C.J.S., Motor Vehicles, § 325 et seq.
ALR.
Applicability of state or municipal traffic or vehicle regulations to those engaged in handling United States mail, 18 A.L.R. 1169.

40-5-21.1. Temporary licenses, permits, or special identification cards; foreign licenses or identification cards as evidence of legal presence in the United States; extensions.

(a) Notwithstanding any other provision of this title, an applicant who presents in person valid documentary evidence of:

(1) Admission to the United States in a valid, unexpired nonimmigrant status;

(2) A pending or approved application for asylum in the United States;

(3) Admission into the United States in refugee status;

(4) An approved application for temporary protected status in the United States;

(5) Approved deferred action status;

(6) Other federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law; or

(7) Verification of lawful presence as provided by Code Section 40-5-21.2

may be issued a temporary license, permit, or special identification card. Such temporary license, permit, or special identification card shall be valid only during the period of time of the applicant's authorized stay in the United States or five years, whichever occurs first.

(b) A driver's license or identification card issued by any state or territory which, on or after July 1, 2006, authorized such driver's license or identification card to be issued to persons not lawfully present in the United States may not be accepted as evidence of legal presence in the United States.

(c) Any noncitizen applicant whose Georgia driver's license or iden-

tification card has expired, or will expire within 30 days, who has filed, or on whose behalf has been filed, a request for an extension with the United States Department of Homeland Security, or similar such federal issuing agency, for time to remain lawfully within the United States shall be issued a temporary driving permit or identification card valid for 120 days from the date of the expiration of his or her valid driver's license or identification card. The noncitizen applicant shall be required to present evidence of the application for extension by submitting a copy or copies of documentation designated by the department. A temporary driving permit or identification card shall be issued upon submission of the required documentation and an application fee in an amount to be determined by the department. Upon the expiration of the temporary driving permit or identification card, no further consecutive temporary permits or identification cards shall be authorized; provided, however, that application may be made following the expiration of an additional valid Georgia driver's license or identification card.

History.

Code 1981, § 40-5-21.1, enacted by Ga. L. 2005, p. 1122, § 2/HB 577; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 1154, § 3/SB 488; Ga. L. 2010, p. 932, § 2/HB 396; Ga. L. 2013, p. 283, § 1/SB 122; Ga. L. 2024, p. 1052, § 4(43)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in subsection (c).

Editor's notes.

For application of this statute in 2021, see Executive Orders 02.26.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, 05.28.21.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100 et seq.

40-5-21.2. Compliance with Systematic Alien Verification for Entitlements Program; application; implementation.

(a) As used in this Code section, the term "SAVE Program" means the Systematic Alien Verification for Entitlements (SAVE) Program established by the United States Bureau of Citizenship and Immigration Services.

(b) The department shall utilize the following procedures in this subsection before issuing an identification card, license, permit, or other official document to an applicant who is a noncitizen:

(1) The department shall attempt to confirm through the SAVE Program that the applicant is lawfully present in the United States; and

(2) If the SAVE Program does not provide sufficient information to the department to make a determination, the department shall be authorized to accept verbal or email confirmation of the legal status of the applicant from the Department of Homeland Security.

(c) This Code section shall not apply to instances when a federal law mandates acceptance of a document.

(d) Subsection (b) of this Code section shall become effective upon the department's full implementation of the SAVE Program but not later than January 1, 2008.

History.

Code 1981, § 40-5-21.2, enacted by Ga. L. 2007, p. 27, § 3/SB 5; Ga. L. 2008, p. 1154, § 4/SB 488; Ga. L. 2010, p. 932, § 3/HB 396; Ga. L. 2024, p. 1052, § 4(44)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in subsection (a), deleted a colon following "term", deleted former paragraph (a)(1), which read: "'Department' means the Georgia Department of Driver Services.", and deleted the former paragraph (a)(2) designation; revised capitalization in paragraphs (b)(1) and (b)(2); and substituted "email" for "e-mail" in paragraph (b)(2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, a comma was deleted following "noncitizen" in subsection (b).

Editor's notes.

Ga. L. 2007, p. 27, § 1/SB 5, not codified by the General Assembly, provides: "The General Assembly of Georgia finds that the Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, established standards that state-issued drivers' licenses and identification cards must meet by May 11, 2008, if the licenses or identification cards are to be accepted as valid identification by the federal government. After May 11, 2008, federal agencies are scheduled to accept only drivers' licenses or identification cards that meet Real ID standards. Noncompliant cards will not be accepted for federal purposes such as boarding a domestic flight, opening a bank account, or any other service or activity over which the federal government claims jurisdiction. Each state will also be required to share data from their drivers' licenses or identification cards data base with other states. The exact requirements of the Real ID Act have yet to be defined. The Department of Homeland Security was originally going to promulgate regulations by November, 2005. That date was changed to November, 2006. Currently, regulations are scheduled for January, 2007, but many parties feel this deadline may also pass without the regulations being issued.

"Because the Real ID Act was attached to a vital supplemental spending bill for defense and tsunami relief, there was no opportunity for a full examination of the consequences of the proposal. While everyone recognizes the need to make identifying documents as secure as is humanly possible, the one-size-fits-all approach required by the Real ID Act may actually increase the documents' vulnerability to counterfeiting. If criminals are able to invade one state's system, they may have access to all states' systems. On another front, a report from the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators suggests that the new requirements of the Real ID Act will cost states at least $11 billion over the first five years of the program. Despite this massive price tag, there has been no money appropriated to help states meet the law's demands.

"The Real ID Act gives the Department of Homeland Security the power to set federal standards and determine whether state drivers' licenses and other identification cards meet these standards. There is no provision in the Real ID Act that

requires or even mentions information privacy or data security. The federal and state governments must ensure that the data needed to verify the identity of driver's license applicants is maintained securely and not used for other unrelated purposes. The Department of Homeland Security must include privacy protections for personal driver data as they promulgate regulations spelling out what states need to do to implement the federal law. Success of the Real ID Act depends on the Department of Homeland Security and the states collaborating to find a way of implementing its requirements in a fiscally responsible and risk adjusted manner. Therefore, the Georgia Department of Driver Services is directed to withhold any legislation designed to implement the Real ID Act in Georgia until such time as the Department of Homeland Security has enacted regulations that define the exact type of information that is to be required on a state driver's license. Furthermore, before the Real ID Act is implemented in Georgia, the Governor of Georgia is entitled to review the regulations promulgated by the Department of Homeland Security and determine if they adequately safeguard and restrict use of the information in order to protect the privacy rights of the citizens of Georgia.

"The citizens of Georgia also recognize the importance of ensuring that drivers' licenses are issued only to persons legally present in this state. Therefore, the use of secure and verifiable identification will be required in this state in order to obtain a driver's license. This requirement is in harmony with the intent of the Real ID Act to secure identification processes in this country. The Department of Driver Services is instructed to take the necessary steps to become a participant in the SAVE Program (Systematic Alien Verification for Entitlements). This program, administered by the United States Bureau of Citizenship and Immigration Services, is designed to verify the immigration status of noncitizens."

U.S. Code.

The Systematic Alien Verification for Entitlements Program, referred to in this Code section, is codified, primarily, at 8 U.S.C. § 1324.

40-5-22. Issuance of instruction permit or driver's license to person under 18 years of age; persons not to be licensed.

(a) Except as otherwise provided in this Code section, the department shall not issue any Class C driver's license to any person who is under 18 years of age or Class M driver's license to any person who is under 17 years of age, except that the department may, under subsection (a) of Code Section 40-5-24, issue a Class P instruction permit permitting the operation of a noncommercial Class C vehicle to any person who is at least 15 years of age, and may, under Code Section 40-5-24, issue a Class D driver's license permitting the operation of a noncommercial Class C vehicle to any person who is at least 16 years of age. The department shall not issue a driver's license or a Class P instruction permit for the operation of a Class A or B vehicle or any commercial driver's license to any person who is under 18 years of age.

(a.1)(1) The department shall not issue an instruction permit or driver's license to a person who is younger than 18 years of age unless at the time such minor submits an application for an instruction permit or driver's license the applicant presents acceptable proof that he or she has received a high school diploma, a state approved high school equivalency (HSE) diploma, a special diploma, or a certificate

of high school completion or has terminated his or her secondary education and is enrolled in a postsecondary school, is pursuing a state approved high school equivalency (HSE) diploma, or the records of the department indicate that said applicant:

(A) Is enrolled in and not under expulsion from a public or private school; or

(B) Is enrolled in a home education program that satisfies the reporting requirements of all state laws governing such program.

The department shall notify such minor of his or her ineligibility for an instruction permit or driver's license at the time of such application.

(2) The State Board of Education and the commissioner of driver services are authorized to promulgate rules and regulations to implement the provisions of this subsection.

(3) The Technical College System of Georgia shall be responsible for compliance and noncompliance data for students pursuing a state approved high school equivalency (HSE) diploma.

(a.2)(1) Except as otherwise provided in paragraph (2) of this subsection, the department shall not issue any initial Class D driver's license or, in the case of a person who has never been issued a Class D driver's license by the department or the equivalent thereof by any other jurisdiction, any initial Class C driver's license to a person under 18 years of age unless such person:

(A) Is at least 16 years of age;

(B) Has completed a driver education course;

(C) Has completed an alcohol and drug course as prescribed in subsection (b) of Code Section 20-2-142; and

(D) Has completed a cumulative total of at least 40 hours of other supervised driving experience, including at least six hours at night, which is verified in writing signed before a person authorized to administer oaths by a parent or guardian of the applicant or by the applicant if such person is at least 18 years of age; provided, however, that such affidavit shall not be required when behind-the-wheel training has been provided by a driver training school.

(2) Any person under 18 years of age who has in his or her immediate possession a valid license equivalent to a Class C license issued to him or her in another state or country shall be entitled to receive a Class C license.

(3) The commissioner shall by rule or regulation provide for the approval of courses from other states to satisfy the requirements of

this Code section for any child moving into this state within nine months of his or her sixteenth birthday when the child's parent is in the active military service of the United States.

(4) For purposes of supervised driving experience under paragraph (1) of this subsection, supervision shall be provided by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(b)(1) Notwithstanding the provisions of subsection (a) of this Code section, any person 14 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to visual impairment may apply for and, subject to the approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this subsection shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(2) Notwithstanding the provisions of subsection (a) of this Code section, any person 15 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to physical impairment and has been issued an identification card containing the international handicapped symbol pursuant to Article 8 of this chapter may apply for and, subject to the approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this paragraph shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(c) Except as provided in subsection (d) of this Code section, the department shall not issue any driver's license to nor renew the driver's license of any person:

(1) Whose license has been suspended during such suspension, or whose license has been revoked, except as otherwise provided in this chapter;

(2) Whose license is currently under suspension or revocation in any other jurisdiction upon grounds which would authorize the suspension or revocation of a license under this chapter;

(3) Who is a habitual user of alcohol or any drug to a degree rendering him or her incapable of safely driving a motor vehicle;

(4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(5) Who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(6) Who the commissioner has good cause to believe would not, by reason of physical or mental disability, be able to operate a motor vehicle with safety upon the highway; or

(7) Whose license issued by any other jurisdiction is suspended or revoked by such other jurisdiction during the period such license is suspended or revoked by such other jurisdiction.

(d) The department is authorized to issue a limited driving permit to an applicant whose license is currently under suspension or revocation in any other jurisdiction upon grounds which would authorize the suspension or revocation of a license under this chapter, provided that the applicant is otherwise eligible for such limited driving permit in accordance with subsection (a) of Code Section 40-5-64 and paragraph (1) or (2) of subsection (a) of Code Section 40-5-64.1.

(e) The department may issue a probationary license, limited driving permit, or ignition interlock device limited driving permit to any individual whose driver's license is expired; provided, however, that he or she is otherwise eligible for such probationary license, limited driving permit, or ignition interlock device limited driving permit pursuant to Code Section 40-5-58, 40-5-64, 40-5-64.1, 40-5-75, or 40-5-76.

History.

Ga. L. 1937, p. 322, art. 4, § 2; Ga. L. 1966, p. 12, § 1; Code 1933, § 68B-203, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 745, § 2; Ga. L. 1984, p. 22, § 40; Ga. L. 1986, p. 839, § 1; Ga. L. 1989, p. 519, § 6; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 321, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 760, § 10; Ga. L. 2000, p. 951, § 5-5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, § 1-1; Ga. L. 2004, p. 107, § 21B; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-4/HB 501; Ga. L. 2005, p. 798, § 22/SB 35; Ga. L. 2005, p. 1461, § 3/SB 226; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2006, p. 343, § 3/SB 637; Ga. L. 2006, p. 449, § 2/HB 1253; Ga. L. 2008, p. 171, § 2/HB 1111; Ga. L. 2008, p. 335, § 6/SB 435; Ga. L. 2008, p. 589, § 1/HB 969; Ga. L. 2010, p. 199, § 1/HB 258; Ga. L. 2011, p. 355, § 2/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 72, § 2/SB 236; Ga. L. 2014, p. 432, § 2-13/HB 826; Ga. L. 2015, p. 60, § 4-8/SB 100; Ga. L. 2016, p. 323, § 2-1/HB 205; Ga. L. 2017, p. 184, § 2/HB 136; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2018, p. 550, § 2-9/SB 407; Ga. L. 2021, p. 403, § 3/HB 466; Ga. L. 2022, p. 168, § 7/SB 397.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general

educational development (GED)" twice in paragraph (a.1)(1) and once in paragraph (a.1)(3).

Cross references.

Driver education course included for purposes of enrollment counts of public school students, § 20-2-160.

School attendance reports, §§ 20-2-320, 20-2-690, 20-2-697, 20-2-701.

Graduated licensing and related restrictions, § 40-5-24.

Applications of minors, § 40-5-26.

Suspension of licenses of persons under age 21 for certain offenses, § 40-5-57.1.

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date, except that subsection (a.1) of this Code section became effective January 1, 1998.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2005, p. 1461, § 7/SB 226, provides that the fourth 2005 amendment, as amended by Ga. L. 2006, p. 343, § 3/SB 637, becomes effective on January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2017, p. 774, § 54(e)/HB 323, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2017 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subsection (b) of this Code section by Ga. L. 2017, p. 774, § 40/HB 323, was not given effect.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 205 (2001).

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1910, p. 93, § 9, Ga. L. 1921, p. 255, § 6, and former Code 1933, § 68-307 are included in the annotations for this Code section.

Constitutionality. — Driver's equal protection challenge to O.C.G.A. § 40-5-22(c)(2) failed as the statute did not create a suspect class or impact a fundamental right and there was a rational basis to create a class of driver's license applicants whose out-of-state licenses were suspended or revoked; the classification bore a direct relation to the strong governmental interests in protecting the public from drivers whose licenses had been revoked for driving under the influence and in preventing license shopping by nonresidents with

revoked out-of-state licenses. Roberts v. Burgess, 279 Ga. 486, 614 S.E.2d 25, 2005 Ga. LEXIS 297 (2005).

Driver's equal protection challenge to O.C.G.A. § 40-5-22(c)(7) failed because when a driver applied for a Florida license, the driver voluntarily subjected oneself to that state's laws relating to the issuance of licenses; Florida validly suspended the driver's license and neither Georgia nor Florida was precluded from taking into account offenses that occurred in another state in deciding whether to issue or revoke an already issued operator's license. Roberts v. Burgess, 279 Ga. 486, 614 S.E.2d 25, 2005 Ga. LEXIS 297 (2005).

Operation of motor vehicle by minor under 16. — It was unlawful for a minor under 16 years of age to operate a motor vehicle upon the highways of this state, whether the owner was accompanied by the owner of the machine or not, and regardless of experience. Western & A.R.R. v. Reed, 35 Ga. App. 538, 134 S.E. 134, 1926 Ga. App. LEXIS 972 (1926) (decided under Ga. L. 1921, p. 255, § 6).

Rule only applicable to public streets or highways. — While it is unlawful for a minor under 16 years of age to operate a motor vehicle upon the public highways, the rule is not applicable to roads which are not public streets or highways. Western & A.R.R. v. Reed, 35 Ga. App. 538, 134 S.E. 134, 1926 Ga. App. LEXIS 972 (1926) (decided under Ga. L. 1921, p. 255, § 6).

Employment of 18-year-old driver not negligence per se. — Fact that defendant employed and used 18-year-old boy as driver was not negligence per se, inasmuch as persons 16 years of age or older and otherwise qualified are permitted to drive an automobile in this state. Carpenter v. Lyons, 78 Ga. App. 214, 50 S.E.2d 850, 1948 Ga. App. LEXIS 712 (1948) (decided under former Code 1933, § 68-307).

Revocation proper given revocation in foreign jurisdiction. — Driver's Georgia driver's license was properly revoked under O.C.G.A. § 40-5-22(c)(7) as that section applied not only to the revocation of a physical driver's license issued by another state, but also to any privilege to drive in that state, and Illinois had revoked the driver's privilege to drive in that state. Wolfe v. Ga. Dep't of Driver Servs., 330 Ga. App. 552, 768 S.E.2d 528, 2015 Ga. App. LEXIS 11 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 112 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 331 et seq., 335 et seq.

ALR.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Statutory change of age of majority as affecting preexisting status or rights, 75 A.L.R.3d 228.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

State's liability for improperly licensing negligent driver, 41 A.L.R.4th 111.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 A.L.R.5th 725.

40-5-22.1. Reinstatement after delinquency adjudication for driving under the influence of alcohol or drugs for child under 16 years of age.

Notwithstanding any other provision of law, if a child under 16 years of age is adjudicated delinquent of driving under the influence of alcohol

or drugs or convicted in any other court of such offenses, the court shall order that the privilege of such child to apply for and be issued a driver's license or instruction permit shall be suspended and delayed until such child is 17 years of age for a first conviction and until such child is 18 years of age for a second or subsequent such conviction. Upon reaching the required age, such license privilege shall be reinstated if the child submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program or an assessment and intervention program approved by the juvenile court and pays a reinstatement fee to the department. The reinstatement fee for a first such conviction shall be $210.00 or $200.00 if paid by mail. The reinstatement fee for a second such conviction shall be $310.00 or $300.00 if paid by mail. The reinstatement fee for a third or subsequent such conviction shall be $410.00 or $400.00 if paid by mail. The court shall notify the department of its order delaying the issuance of such child's license within 15 days of the date of such order. The department shall not issue a driver's license or instruction permit to any person contrary to a court order issued pursuant to this Code section.

History.

Code 1981, § 40-5-22.1, enacted by Ga. L. 1990, p. 1148, § 1; Ga. L. 1992, p. 2785, § 5; Ga. L. 2000, p. 951, § 5-6; Ga. L. 2005, p. 334, § 17-5/HB 501; Ga. L. 2009, p. 679, § 1/HB 160; Ga. L. 2016, p. 443, § 4-2/SB 367; Ga. L. 2024, p. 1052, § 4(45)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted ""in-struction permit" for "learner's permit" twice, and substituted "department" for "Department of Driver Services" at the end of the second sentence.

Law reviews.

For note on 1990 enactment of this Code section, see 7 Georgia St. U.L. Rev. 337 (1990).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

40-5-23. Classes of licenses.

(a) The department upon issuing a driver's license shall indicate thereon the type or general class of vehicles that the licensee may drive.

(b) Subject to this chapter, the commissioner shall establish by rules and regulations such qualifications, including but not limited to, training, experience, or educational prerequisites, as he or she believes are necessary for the safe operation of the various types, sizes, or combinations of vehicles and shall appropriately examine each applicant to determine his or her qualification according to the type or general class of license applied for.

(c) The noncommercial classes of motor vehicles for which operators may be licensed shall be as follows:

(1) Class C:

(A) Any single vehicle with a gross vehicle weight rating not in

excess of 26,000 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, or any such vehicle towing a vehicle with a gross vehicle weight rating in excess of 10,000 pounds, provided that any combination of vehicles set forth in this subparagraph has a gross combined vehicle weight rating not in excess of 26,000 pounds;

(B) Any three-wheeled motor vehicle that is equipped with a steering wheel for directional control; and

(C) Any self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal conveyance regardless of the gross vehicle weight rating or combined gross vehicle weight rating;

(2) Class D: Provisional license applicable to noncommercial Class C vehicles for which an applicant desires a driver's license but is not presently licensed to drive;

(3) Class E: Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided that the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds and the vehicle or vehicles are operated by a farmer to transport agricultural products, livestock, farm machinery, or farm supplies to or from a farm and are not used in the operations of a common or contract carrier;

(4) Class F: Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds;

(5) Class M: Motorcycles, motor driven cycles, and three-wheeled motorcycles equipped with handlebars for directional control; and

(6) Class P: Instruction permit applicable to all types of vehicles for which an applicant desires a driver's license but is not presently licensed to drive.

(d) Any applicant for a Class E or Class F license shall possess a valid Georgia driver's license for Class C vehicles. A license issued pursuant to this Code section shall not be a commercial driver's license.

History.

Code 1933, § 68B-204, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1984, p. 1329, § 1A; Ga. L. 1989, p. 519, § 7; Ga. L. 1990, p. 2048, § 4; Ga. L. 1997, p. 760, § 11; Ga. L. 2000, p. 951, § 5-7; Ga. L. 2005, p. 854, § 1/SB 273; Ga. L. 2006, p. 504, § 1/HB 1392; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 932, § 5/HB 396; Ga. L. 2017, p. 184, § 2A/HB 136; Ga. L. 2024, p. 560, § 6/HB 926, effective May 2, 2024.

Amendments.

The 2024 amendment, effective May 2, 2024, rewrote subsection (c) and substi-

tuted "shall" for "must" in the first sentence in subsection (d).

Cross references.

License requirement for operators of ambulance services, § 31-11-30 et seq.

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2005, p. 854, § 3/SB 273, not codified by the General Assembly, provides that the 2005 amendment applies to offenses occurring on or after July 1, 2005.

Ga. L. 2024, p. 560, § 1/HB 926, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Second Chance Workforce Act.'"

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

JUDICIAL DECISIONS

Evidence sufficient to indicate need for former Class 3 license. — Evidence that a school bus carried approximately 60 students on the day the driver was arrested was sufficient circumstantial evidence to authorize a conclusion that the school bus required an operator possessing a Class 3 license. Griggs v. State, 167 Ga. App. 581, 307 S.E.2d 75, 1983 Ga. App. LEXIS 3337 (1983) (decided prior to the 1989 amendment, which rewrote subsection (c)).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-401 are included in the annotations for this Code section.

Person or business entity must comply with Driver Training School License Act if the person of entity prepares applicant for license examination required for a former class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101 (decided under former Code 1933, § 92A-401).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 108 et seq.

40-5-24. Instruction permits; graduated licensing and related restrictions; temporary licenses.

(a)(1)(A) Any resident of this state who is at least 15 years of age may apply to the department for an instruction permit to operate a noncommercial Class C vehicle. The department shall, after the applicant has successfully passed all parts of the examination referred to in Code Section 40-5-27 other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his or her immediate possession, to drive a Class C vehicle upon the public highways

for a period of two years when accompanied by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, any person holding a valid Class C instruction permit may drive a Class C motor vehicle when accompanied by a disabled parent or guardian who has been issued an identification card containing the international handicapped symbol pursuant to Article 8 of this chapter.

(2) This subsection does not apply to instruction permits for the operation of motorcycles.

(b)(1)(A) Except as provided in subparagraph (B) of this paragraph, any resident of this state who is at least 16 years of age and who, for a period of at least 12 months, had a valid instruction permit issued under subsection (a) of this Code section may apply to the department for a Class D driver's license to operate a noncommercial Class C vehicle if such resident has:

(i) For a period of not less than 12 consecutive months prior to making application for a Class D driver's license, not been convicted of a violation of Code Section 40-6-391, hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets in violation of Code Section 40-6-186, using a motor vehicle in fleeing or attempting to elude an officer in violation of Code Section 40-6-395, reckless driving in violation of Code Section 40-6-390, reckless stunt driving in violation of Code Section 40-6-390.1, or convicted of any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57; and

(ii) Completed the requisite courses and supervised driving experience set forth in subsection (a.2) of Code Section 40-5-22.

(B) Any resident at least 17 years of age who has at any age surrendered to the department a valid instruction permit or driver's license issued by another state or the District of Columbia or who has submitted to the department proof, to the satisfaction of the department, of a valid instruction permit or driver's license issued by another state or the District of Columbia may apply his or her driving record under such previously issued permit or driver's license toward meeting the eligibility requirements for a Class D driver's license the same as if such previously issued permit or driver's license were an instruction permit issued under subsection (a) of this Code section.

(2) The department shall, after all applicable requirements have been met, issue to the applicant a Class D driver's license which shall entitle the applicant, while having such license in his or her immediate possession, to drive a Class C vehicle upon the public highways of this state under the following conditions:

(A) Any Class D license holder shall not drive a Class C motor vehicle on the public roads, streets, or highways of this state between the hours of 12:00 Midnight and 5:00 A.M. eastern standard time or eastern daylight time, whichever is applicable; and

(B)(i) Any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when more than three other passengers in the vehicle who are not members of the driver's immediate family are less than 21 years of age.

(ii) During the six-month period immediately following issuance of such license, any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when any other passenger in the vehicle is not a member of the driver's immediate family.

(iii) Notwithstanding the provisions of division (i) of this subparagraph, during the second six-month period immediately following issuance of such license, any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when more than one other passenger in the vehicle who is not a member of the driver's immediate family is less than 21 years of age;

provided, however, that a Class D license holder shall not be charged with a violation of this paragraph alone but may be charged with violating this paragraph in addition to any other traffic offense.

(C) For purposes of this paragraph, the term "immediate family" shall include the license holder's parents and stepparents, grandparents, siblings and stepsiblings, children, and any other person who resides at the license holder's residence.

(3) A person who has been issued a Class D driver's license under this subsection and has never been issued a Class C driver's license under this chapter will become eligible for a Class C driver's license under this chapter only if such person has a valid Class D driver's license which is not under suspension and, for a period of not less than 12 consecutive months prior to making application for a Class C driver's license, has not been convicted of a violation of Code Section 40-6-391, hit and run or leaving the scene of an accident in violation

of Code Section 40-6-270, racing on highways or streets in violation of Code Section 40-6-186, using a motor vehicle in fleeing or attempting to elude an officer in violation of Code Section 40-6-395, reckless driving in violation of Code Section 40-6-390, reckless stunt driving in violation of Code Section 40-6-390.1, or convicted of any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57 and is at least 18 years of age; provided, however, that any person at least 17 years of age who provides proof of military enlistment and meets all other qualifications of this paragraph, except that such person has held a Class D driver's license for a period of less than 12 consecutive months, shall be eligible for a Class C driver's license.

(c) Any resident of this state who is at least 17 years of age may apply to the department for a noncommercial Class M motorcycle instruction permit. The department shall, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his or her immediate possession, to drive a motorcycle or a motor driven cycle upon the public highways for a period of six months; provided, however, that a person who is at least 16 years of age and meets all of the other qualifications of this subsection except for age who has completed a driver education training course may apply for a Class M motorcycle instruction permit. A motorcycle instruction permit shall not be valid when carrying passengers, on a limited access highway, or at night.

(d) Any resident of this state who is at least 18 years of age may apply to the department for an instruction permit to operate noncommercial vehicles in Classes E and F. Such permits may be issued only to persons with valid commercial or noncommercial Class C licenses or persons who have passed all required tests for a commercial or noncommercial Class C license. The department shall, after the applicant has successfully passed all parts of the appropriate examination other than the skill and driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having the permit in his or her immediate possession, to operate a vehicle of the appropriate noncommercial class upon the public highways for a period of 12 months when accompanied by a licensed driver, qualified in the vehicle being operated, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver as an instructor. Prior to being issued a driver's license for Classes E and F, the applicant shall pass a knowledge and skill test for driving a Class E or F vehicle as provided by the commissioner.

(e) The department shall issue a temporary driver's permit to an applicant for a driver's license permitting him or her to operate a specified

type or class of motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's eligibility to receive a driver's license. Such permit must be in his or her immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused. Such permit shall be valid for no more than 45 days. When a license has been refused, the permit shall be returned to the department within ten days of receipt of written notice of refusal.

History.

Ga. L. 1937, p. 322, art. 4, § 3; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 2; Ga. L. 1957, p. 103, § 3; Ga. L. 1958, p. 268, § 1; Ga. L. 1959, p. 318, § 1; Code 1933, § 68B-205, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 519, § 8; Ga. L. 1990, p. 1241, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 514, § 2; Ga. L. 1997, p. 760, § 12; Ga. L. 1998, p. 3, § 1; Ga. L. 2001, p. 184, § 1-2; Ga. L. 2005, p. 1461, § 4/SB 226; Ga. L. 2006, p. 343, § 3/SB 637; Ga. L. 2010, p. 199, § 2/HB 258; Ga. L. 2010, p. 932, § 6/HB 396; Ga. L. 2011, p. 355, § 3/HB 269; Ga. L. 2014, p. 409, § 5/SB 392; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2021, p. 403, § 4/HB 466; Ga. L. 2024, p. 532, § 2/SB 10, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted "reckless stunt driving in violation of Code Section 40-6-390.1," in division (b)(1)(A)(i) and in paragraph (b)(3).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "; and" was substituted for a period at the end of subparagraph (b)(2)(A) and a period was substituted for "; and" in division (b)(2)(B)(i).

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

Ga. L. 2005, p. 1461, § 7/SB 226, provides that the 2005 amendment, as amended by Ga. L. 2006, p. 343, § 3/SB 637, becomes effective on January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

For application of this statute in 2020, see Executive Orders 04.23.20.02 and 05.12.20.01.

Administrative rules and regulations.

Drivers Licenses Official Compilation of the Rules and Regulations of the State of Georgia, Board of Corrections, Departmental Operations, Offender Administration, Rule 125-2-4-.13.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 205 (2001).

JUDICIAL DECISIONS

Undocumented aliens. — Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver's license do not deprive the illegal aliens of equal

protection of the laws in violation of the Fourteenth Amendment. John Doe No. 1 v. Ga. Dep't of Pub. Safety, 147 F. Supp. 2d 1369, 2001 U.S. Dist. LEXIS 7385 (N.D. Ga. 2001).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-401 are included in the annotations for this Code section.

Instructor not exempted by fact student holds license of other class. — Fact that a student holds a valid license of a class other than the one for which the student is receiving instructions in no way exempts the instructing person or business from the requirements of this chapter. 1974 Op. Att'y Gen. No. 74-101 (decided under former Code 1933, § 92A-401(b)).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 335 et seq.

ALR.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

40-5-25. Applications; fees; provisions for voluntary participation in various programs.

(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department. Every application shall be accompanied by the proper license fee. The fees shall be as established by the Board of Driver Services, not to exceed:

(1) For instruction permits for Classes C, E, F, and M drivers' licenses and for Class D drivers' licenses $ 10.00

(2) For five-year Classes C, E, F, and M noncommercial drivers' licenses 20.00

(2.1) For eight-year Classes C, E, F, and M noncommercial drivers' licenses 32.00

(3) For application for Classes A, B, C, and M commercial drivers' licenses or a Class P commercial driver's instruction permit 35.00

(4) For Class P commercial drivers' instruction permits for Classes A, B, C, and M commercial drivers'

licenses 10.00

(5) For up to five-year Classes A, B, C, and M commercial drivers' licenses, initial issuance requiring a road test 70.00

(5.1) For eight-year Classes A, B, C, and M commercial drivers' licenses, initial issuance requiring a road test 82.00

(6) For up to five-year Classes A, B, C, and M commercial drivers' licenses, initial issuance not requiring a road test 20.00

(6.1) For eight-year Classes A, B, C, and M commercial drivers' licenses, initial issuance not requiring a road test 32.00

(7) For renewal of up to five-year Classes A, B, C, and M commercial drivers' licenses 20.00

(7.1) For renewal of eight-year Classes A, B, C, and M commercial drivers' licenses 32.00

(7.2) For renewal of up to five-year Classes C, E, F, and M noncommercial drivers' licenses 20.00

(7.3) For renewal of eight-year Classes C, E, F, and M noncommercial drivers' licenses 32.00

(8) Initial issuance of Classes A, B, C, and M commercial drivers' licenses and Class P commercial drivers' instruction permits shall include all endorsement fees within the license fee. Each endorsement added after initial licensing 5.00

The commissioner may by rule provide incentive discounts in otherwise applicable fees reflecting cost savings to the department where a license

is renewed by means other than personal appearance. The discount for renewal of a Class C or Class M license and any other discounts shall be as determined by the commissioner. Except as provided in Code Section 40-5-36, relating to veterans' licenses, and Code Section 40-5-149, relating to application fees for public school bus drivers, there shall be no exceptions to the fee requirements for a commercial driver's license or a commercial driver's license permit. Notwithstanding any other provision of this Code section, there shall be no fee whatsoever for replacement of any driver's license solely due to a change of the licensee's name or address, provided that such replacement license shall be valid only for the remaining period of such original license; and provided, further, that only one such free replacement license may be obtained within the period for which the license was originally issued. Any application for the replacement of a lost license pursuant to Code Section 40-5-31 or due to a change in the licensee's name or address submitted within 150 days of the expiration of said license shall be treated as an application for renewal subject to the applicable license fees as set forth in this subsection. The maximum period for which any driver's license shall be issued is eight years.

(b)(1) Each person applying for a Class P commercial or noncommercial instruction permit for a Class A, B, C, E, F, or M driver's license shall pay the applicable license fee prior to attempting the knowledge test for the instruction permit sought when the knowledge test is to be administered by the department. If said person fails to achieve a passing score on the knowledge test, the license fee paid shall be considered a testing fee and retained by the department. Any person failing to achieve a passing score on the knowledge test for an instruction permit shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her license fee.

(2) The department shall waive the license fee for each person applying for a Class P noncommercial instruction permit for a Class C driver's license when the noncommercial knowledge test is to be administered by a driver training school or public or private high school authorized to administer such tests as provided for in subsection (d) of Code Section 40-5-27.

(3) Each person applying for a Class A, B, or C commercial driver's license shall pay the applicable license fee at the time that he or she schedules his or her appointment for said skills test. If said person fails to appear for his or her scheduled skills test appointment or fails to achieve a passing score on the skills test, the license fee paid shall be considered a testing fee and retained by the department. The person shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her

license fee. All fees retained by the department pursuant to this Code section shall be remitted to the general fund.

(c) Every such application shall state the full legal name, date of birth, sex, and residence address of the applicant; shall briefly describe the applicant; shall state whether the applicant has theretofore been licensed as a driver and, if so, when and by what state or country, and whether any such license has ever been suspended, revoked, or refused, and, if so, the date of and reason for such suspension, revocation, or refusal; and shall state such other information as the commissioner may require to determine the applicant's identity, competence, and eligibility. The application shall include any other information as required by paragraph (1) of subsection (a.1) of Code Section 19-11-9.1. The department shall not issue a license until a complete examination of the applicant's record has been completed. The commissioner may issue such rules and regulations as shall be necessary for the orderly processing of license applications.

(d)(1) The General Assembly finds that it is in the best interest of this state to encourage improved public education and awareness regarding anatomical gifts of human organs and tissues and to address the ever increasing need for donations of anatomical gifts for the benefit of the citizens of Georgia.

(2) The department shall make available to procurement organizations or secure data centers maintained and managed at the direction of a procurement organization information provided for in Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," including the name, license number, date of birth, gender, and most recent address of any person eligible pursuant to Code Section 44-5-142 who obtains an organ donor driver's license; provided, however, that the gender information shall be made available only to a procurement organization or secure data center if such organization or center has sufficient funds to cover the associated costs of providing such information. Information so obtained by such organizations and centers shall be used for a state-wide organ donor registry accessible to organ tissue and eye banks authorized to function as such in this state and shall not be further disseminated.

(e)(1) The General Assembly finds that it is in the best interest of this state to encourage improved public education and awareness regarding blindness and to address the need for blindness prevention screenings, treatments, and rehabilitation for the benefit of the citizens of Georgia.

(2) Each application form for issuance, reissuance, or renewal of a driver's license under subsection (a) of this Code section shall include

language permitting the applicant to make a voluntary contribution of $1.00 to be used for purposes of preventing blindness and preserving the sight of residents of this state. Any such voluntary contribution shall be made at the discretion of the applicant at the time of application in addition to payment of the license fee required under this Code section.

(3) Voluntary contributions made pursuant to this subsection shall be transmitted to the Department of Public Health for use thereby in providing the blindness education, screening, and treatment program provided by Code Section 31-1-23.

(f) The General Assembly finds that it is in the best interests of this state to encourage alcohol and drug education to inform young people of the dangers involved in consuming alcohol or certain drugs while operating a motor vehicle. The General Assembly further finds that parental or guardian involvement in an alcohol and drug awareness program will assist in reducing the number of young persons involved in driving under the influence of drugs or alcohol. To promote these purposes, where a parent or guardian successfully participates in the parent-guardian component of the alcohol and drug course required by subsection (a.2) of Code Section 40-5-22 as prescribed in subsection (b) of Code Section 20-2-142, each parent or guardian shall be entitled to a one-time three-year online motor vehicle report.

History.

Ga. L. 1937, p. 322, art. 4, § 5; Ga. L. 1943, p. 196, § 5; Ga. L. 1947, p. 294, § 1; Ga. L. 1951, p. 157, § 7; Ga. L. 1955, p. 662, § 1; Ga. L. 1955, Ex. Sess., p. 35, § 1; Ga. L. 1961, p. 136, § 2; Ga. L. 1961, p. 433, § 1; Ga. L. 1964, p. 171, § 1; Code 1933, § 68B-206, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 819, § 1; Ga. L. 1989, p. 519, § 9; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 18; Ga. L. 1993, p. 615, § 1; Ga. L. 1994, p. 1390, § 1; Ga. L. 1994, p. 1876, § 1; Ga. L. 1996, p. 228, § 1; Ga. L. 1997, p. 760, § 13; Ga. L. 1999, p. 537, § 2; Ga. L. 2000, p. 951, §§ 5-8, 5-9; Ga. L. 2002, p. 1045, § 3; Ga. L. 2003, p. 415, § 9; Ga. L. 2005, p. 334, § 17-6/HB 501; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 171, § 3/HB 1111; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 9, § 1-79/HB 1055; Ga. L. 2010, p. 932, § 7/HB 396; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 72, § 2A/SB 236; Ga. L. 2015, p. 60, §§ 4-9, 4-10/SB 100; Ga. L. 2017, p. 184, § 3/HB 136; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2021, p. 403, § 5/HB 466; Ga. L. 2024, p. 1052, § 4(46)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "five-year" for "five year" in paragraphs (a)(5), (a)(6), (a)(7), and (a)(7.2); substituted "Classes" for "Class" in paragraph (a)(7.1); and deleted paragraph (e)(4), which read: "This subsection shall become effective on January 1, 2000."

Cross references.

Prescribed courses — Development and dissemination of instructional materials on effect of alcohol, § 20-2-142.

Mandatory instruction concerning alcohol, tobacco, vapor products, and other drug use, § 20-2-144.

Blindness education, screening, and treatment program, § 31-1-23.

Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Code Commission notes.

Pursuant to Code Section 28-9-5, in

1993, "Notwithstanding any" was substituted for "Notwithstanding, any" in the fourth sentence of the paragraph following the form in subsection (a).

Pursuant to Code Section 28-9-5, in 1994, "driver's license" was substituted for "drivers' license" in the first sentence of paragraph (d)(2).

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by that Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

JUDICIAL DECISIONS

Reduced licensing fee for organ donors. — Trial court did not err in denying driver's license applicant's request for a finding that O.C.G.A. § 40-5-25(d), which provided for a reduced fee for Class C driver's license applicants who desired to be organ donors, was unconstitutional as that statute did not violate the driver's license applicant's substantive due process rights because the statute did not implicate a fundamental right or the driver's license applicant's equal protection rights because organ donors were not a suspect class, and, thus, the statute only had to pass the rational basis test, which the statute did. Barnhill v. State, 276 Ga. 155, 575 S.E.2d 460, 2003 Ga. LEXIS 16 (2003).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 103.

C.J.S.

60 C.J.S., Motor Vehicles, § 344 et seq.

ALR.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 A.L.R. 1162; 125 A.L.R. 1459.

40-5-26. Applications of minors; revocation request of minor's instruction permit or license; distinctive licenses for persons under 21.

(a)(1) The application of any person under the age of 18 years for an instruction permit or driver's license shall be:

(A) Signed and verified by the father, mother, or guardian of the applicant before a person authorized to administer oaths or, in the event there is no parent or guardian, by another responsible adult; or

(B) Signed and verified by a licensed driver training instructor before a person authorized to administer oaths when such in-

structor is acting as an agent for such purposes on behalf of the father, mother, or guardian of the applicant and such agency is evidenced by permission of such parent or guardian which has been granted in writing and signed and verified by such parent or guardian before a person authorized to administer oaths and on such form as shall be prescribed by rule or regulation of the department.

(2)(A) A person who signed and verified a minor's successful application for an instruction permit or driver's license may subsequently during such minority request revocation of the minor's instruction permit or driver's license by written notice to the department on such form as specified thereby, signed and verified before a person authorized to administer oaths. If the request for revocation is submitted by a licensed driver training instructor acting as an agent on behalf of the father, mother, or guardian of the applicant, such agency must be evidenced by permission for the revocation of such parent or guardian which has been granted in writing and signed and verified by such parent or guardian before a person authorized to administer oaths. Upon receipt of such request and payment of a fee in an amount equivalent to that which was required for issuance of the instruction permit or driver's license, and after a mandatory three business day waiting period, during which the request for revocation may be withdrawn but the fee shall not be returned, the department shall revoke the minor's instruction permit or driver's license.

(B) A minor whose instruction permit or driver's license has been revoked under this paragraph shall not be eligible for issuance of another instruction permit or driver's license until he or she reaches 18 years of age, unless consent for issuance of an instruction permit or driver's license has been granted as provided by subparagraphs (A) and (B) of paragraph (1) of this subsection upon application of the minor made not sooner than three months after the effective date of revocation.

(C) The provisions of Code Section 40-5-62 shall not apply to a person whose instruction permit or driver's license has been revoked under this paragraph.

(D) A revocation of a minor's instruction permit or driver's license under this paragraph shall not be deemed a revocation for purposes of any increase in insurance rates or cancellation of any policy of motor vehicle insurance for which the minor is not the sole named insured, but such a policy may be amended so as to remove such minor from the list of named insureds under such policy.

(b) The department shall, by rule and regulation, provide that all licenses issued to applicants under 21 years of age shall be so designed as to be readily distinguishable from all other licenses issued to other applicants. After having attained 21 years of age, the holder of any such distinctive license may obtain a new license which shall not be distinctive. Such new license shall be obtained in the same manner and under the same conditions and limitations as are provided in Code Section 40-5-32, relating to renewals of licenses.

History.

Ga. L. 1937, p. 322, art. 4, § 3; Ga. L. 1951, p. 597, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 339, §§ 1-3; Ga. L. 1957, p. 103, § 3; Code 1933, § 68B-207, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1421, § 1; Ga. L. 1982, p. 1862, § 1; Ga. L. 1983, p. 819, § 2; Ga. L. 1984, p. 1070, § 1; Ga. L. 1985, p. 758, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2004, p. 749, § 3; Ga. L. 2005, p. 1461, § 5/SB 226.

Editor's notes.

Ga. L. 2005, p. 1461, § 7/SB 226, provides that the 2005 amendment becomes effective January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 335 et seq.

ALR.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct, 45 A.L.R.4th 87.

40-5-27. Examination of applicants.

(a)(1) The department shall examine every applicant for a driver's license, except as otherwise provided in this Code section. Such examination shall include a test of the applicant's eyesight, his or her ability to understand official traffic-control devices, and his or her knowledge of safe driving practices and the traffic laws of this state and shall also include a comprehensive on-the-road driving test during which the applicant shall be required to fully demonstrate his or her ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or general class of vehicles he or she desires a license to drive.

(2) The on-the-road driving test requirement shall not apply to any applicant for a Class C driver's license who holds a Class D driver's license issued on or after January 1, 2002.

(3) Neither the on-the-road driving test nor the knowledge test shall apply to:

(A) An applicant 18 years of age and older with a valid and current license, or a license that has been expired for less than two years, issued by another state of the United States or the District of Columbia; or

(B) An applicant who is a citizen of a foreign country or political subdivision of a foreign country with which the commissioner has entered into a reciprocal agreement pursuant to subsection (c) of Code Section 40-5-5.

(4) The examination may also include such further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. The commissioner may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any class of license.

(b) The department shall make provision for giving an examination either in the county where the applicant resides or at another place reasonably convenient to the applicant. The examination, with the exception of those required for a commercial driver's license, commercial driver's license permit, or noncommercial Class A, B, or M license, shall be given at least once each month in each county of the state.

(c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, no noncommercial driver's license shall be issued to any person who does not have a visual acuity of 20/60 or better, corrected or uncorrected, in at least one eye and a horizontal field of vision with both eyes open of at least 140 degrees or, in the event that one eye only has usable vision, horizontal field of vision of at least 70 degrees temporally and 50 degrees nasally.

(2) A person whose visual acuity is less than 20/60 but better than 20/200 using spectacles, contact lenses, or the carrier portion of bioptic spectacles shall be considered eligible for a driver's license if the person is not otherwise disqualified from having a driver's license under the provisions of this article and if:

(A) The person can attain a visual acuity of at least 20/60 through utilizing bioptic telescopes;

(B) The telescopes are prescribed by a licensed optometrist or ophthalmologist;

(C) The person presents documentation of having satisfactorily completed training in the use of the bioptic telescope as certified by the prescribing doctor;

(D) The person presents documentation of an on-the-road evaluation and having satisfactorily completed any recommended training in driving while using bioptic telescopes from a certified driver's license examiner;

(E) The person completes a standard driver's education course while using the bioptic telescopes subsequent to completing evaluation or training with a driver's license examiner; and

(F) The person presents said documentation to a department operated test site and passes a driver's test examination administered by the department.

(3) A person who is licensed to drive using bioptic telescopes shall be subject to possible restrictions placed on his or her license as determined and recommended by the prescribing optometrist or ophthalmologist or the driver's license examiner. Any recommended restrictions shall be reported to the department in writing at the time the person presents himself or herself for a driver's test examination. Restrictions may include daylight driving only, outside rearview mirrors, certain area and time restrictions, no interstate driving, yearly reevaluations by an optometrist or ophthalmologist, and other such restrictions. Any restrictions shall be eligible for review and reconsideration after one year by completing all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection, including completing any additional possible testing under special conditions, as determined by the optometrist or ophthalmologist.

(4) The user of a bioptic telescope shall require renewal of his or her license every four years; provided, however, that such person shall be reevaluated at least biennially by an optometrist or ophthalmologist. A certification by the optometrist or ophthalmologist that the user's visual acuity, visual field, and eye health remain stable shall be presented to the department at the time of the biennial eye examination. In the event that changes in vision are determined, the person's license shall expire and the person must successfully repeat all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection in order to have his or her license reinstated. If no significant changes occur in the user's vision at the second biennial examination in a license renewal cycle, the user's license shall be renewed without the necessity of a road test examination or any further eyesight examination.

(d) The department shall authorize driver training schools qualified pursuant to the provisions of this subsection to conduct knowledge tests, on-the-road driving tests, and other tests required for issuance of a driver's license; provided that any driver training school authorized to conduct such tests shall continue to provide driver education training

courses on a full-time basis during any period of time such school is authorized to conduct testing.

(1) The department shall authorize a driver training school which has been licensed for a minimum of two years and conducted driver education training courses on a full-time basis for at least two years to administer the on-the-road driving testing provided for in this Code section, provided that:

(A) An applicant under 18 years of age has successfully completed:

(i) A driver education training course which includes a minimum of 30 class hours of instruction; and

(ii) Six hours of private in-car instruction provided by a licensed instructor employed by the driver training school administering such on-the-road driving test.

(B) An applicant 18 years of age or older has successfully completed a minimum of six hours of private in-car instruction provided by a licensed instructor employed by the driver training school administering such on-the-road driving test.

(2) The department shall authorize a driver training school which has administered the on-the-road driving test as provided for in subparagraph (A) of paragraph (1) of this subsection for five years or more to administer the on-the road driving test to any applicant 17 years of age or older; provided, however, that any driver training school which had administered the on-the-road driving test as provided for in subparagraph (A) of paragraph (1) of this subsection for at least two years on January 1, 2021, shall be authorized to administer the on-the road driving test to any applicant 17 years of age or older.

(3) The department may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any Class P instruction permit, Class C driver's license, or Class D driver's license under this Code section.

(4) The department may authorize public and private high schools to conduct knowledge tests required for issuance of a Class P instruction permit or Class D driver's license or both.

History.

Ga. L. 1937, p. 322, art. 4, § 4; Ga. L. 1951, p. 598, § 3; Code 1933, § 68B-208, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 10; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 3311, § 2; Ga. L. 1996, p. 1250, § 3; Ga. L. 1997, p. 760, § 14; Ga. L. 2001, p. 184, § 1-3; Ga. L. 2004, p. 749, § 4; Ga. L. 2005, p. 334, § 17-7/HB 501; Ga. L. 2005, p. 525, § 1/HB 613; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2013, p. 281, § 2/HB 475; Ga. L. 2014, p. 710, § 1-7/SB 298; Ga. L. 2015, p. 60, § 4-11/SB 100; Ga. L. 2017, p. 774, § 40/HB

323; Ga. L. 2019, p. 461, § 1/SB 212; Ga. L. 2020, p. 199, § 2-4/HB 463; Ga. L. 2021, p. 403, § 6/HB 466; Ga. L. 2022, p. 352, § 40/HB 1428; Ga. L. 2024, p. 1052, § 4(47)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (d)(2).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (c)(1), substituted "visual acuity of 20/60 or better, corrected or uncorrected, in at least one eye" for "visual acuity of 20/60, corrected or uncorrected, in at least one eye or better" and "vision of at least" for "vision must be at least"; and substituted "every four years; provided, however, that such person shall" for "every four years. However, the person must" in paragraph (c)(4).

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2001, p. 184, § 4-1, not codified by the General Assembly, provides that subsection (a) of this Code section as amended by this Act shall become effective six months after the effective date of appropriation by the General Assembly of sufficient funds for purposes of such amendment. Funds were appropriated effective July 1, 2001, at the 2001 session of the General Assembly.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

For application of this statute in 2020, see Executive Order 04.23.20.02.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 205 (2001).

For article on the 2013 amendment of this Code section, see 30 Georgia St. U.L. Rev. 203 (2013).

JUDICIAL DECISIONS

Flashing yellow "X" not actionable as nuisance. — Because the meaning of a flashing yellow "X" signal was included within the state's driver's manual and was a standard traffic control device, knowledge thereof was chargeable to the drivers in the state. Accordingly, as a matter of law, the flashing yellow "X" did not create a continuously hazardous condition amounting to a nuisance. City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth., 262 Ga. 743, 425 S.E.2d 862, 1993 Ga. LEXIS 238 (1993).

OPINIONS OF THE ATTORNEY GENERAL

State defined and application to testing requirements. — The term "state" as used specifically in O.C.G.A. § 40-5-27(a)(3)(A) includes territories of the United States such that persons from the territories who are applying for a driver's license and who otherwise satisfy the conditions of the statute may be exempted from the on-the-road driving test and the knowledge test. 2020 Op. Att'y Gen. 20-3.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 115.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 339, 343.

ALR.

Physical defect, illness, drowsiness, or falling asleep of motor vehicle operators as affecting liability for injury, 28 A.L.R.2d 12; 93 A.L.R.3d 326; 1 A.L.R.4th 556.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Liability for automobile accident allegedly caused by driver's blackout, sudden unconsciousness, or the like, 93 A.L.R.3d 326.

Motor vehicle passenger's contributory negligence or assumption of risk where accident resulted from driver's drowsiness, physical defect, or illness, 1 A.L.R.4th 556.

State's liability for improperly licensing negligent driver, 41 A.L.R.4th 111.

40-5-28. Issuance and contents of licenses; county tag agents; Class E and Class F licenses for volunteer firefighters.

(a) Except as provided in subsection (c) of this Code section, the department shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license indicating the type or general class of vehicles the licensee may drive, which license shall be upon a form prescribed by the department and which shall bear thereon a distinguishing number assigned to the licensee, a photograph of the licensee, the licensee's full legal name, either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with a pen and ink immediately upon receipt of the license, and such other information or identification as is required by the department. No license shall be valid until it has been so signed by the licensee. A license issued pursuant to this subsection shall be in a physical format and, upon election of the applicant, an additional electronic format which is capable of being viewed upon a wireless telecommunications device as such term is defined in Code Section 40-6-241. The department shall not require applicants to submit or otherwise obtain from applicants any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) The commissioner may determine the location and manner of issuance of drivers' licenses. Without limiting the generality of the foregoing, it is specifically provided that the commissioner may designate county tag agents, if they so agree, as agents of the department for this purpose and may authorize the issuance of drivers' licenses by county tag agents. No county tag agent shall be required to issue or renew drivers' licenses unless such county tag agent agrees in writing

to perform such functions. No county tag agent shall be required to issue or renew drivers' licenses for residents of any county other than the residents of the county for which he or she serves as tax commissioner.

(c) The department shall make available to qualified applicants who are also volunteer firefighters Class E and Class F drivers' licenses without charge. In order to receive the Class E or Class F endorsement without payment of a fee, the applicant shall provide:

(1) A copy of his or her firefighter certification indicating that he or she is currently a certified firefighter in good standing; and

(2) A letter signed by the chief executive officer of the public entity he or she serves which letter appears on such political entity's official agency letterhead and provides that he or she is a volunteer firefighter for such public entity.

The provisions of this subsection shall apply to both original and renewal applicants for Class E and Class F licenses, as these classes are identified in Code Section 40-5-23.

History.

Code 1933, § 68B-209, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 4; Ga. L. 2005, p. 334, § 17-8/HB 501; Ga. L. 2005, p. 1122, § 3/HB 577; Ga. L. 2010, p. 932, § 8/HB 396; Ga. L. 2014, p. 710, § 6-1/SB 298; Ga. L. 2015, p. 60, § 4-12/SB 100; Ga. L. 2020, p. 199, § 3-2/HB 463.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, in the last sentence of subsection (a), a comma was deleted following "limitation" and a comma was added following "photograph".

Editor's notes.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For comment, "You Better Smile When You Say 'Cheese!': Whether the Photograph Requirement for Drivers' Licenses Violates the Free Exercise Clause of the First Amendment," see 61 Mercer L. Rev. 611 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att'y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-28 regarding fingerprinting. 1997 Op. Att'y Gen. No. U97-33.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100.

C.J.S.
60 C.J.S., Motor Vehicles, § 353 et seq.

40-5-28.1. Use of social security numbers.

No license or permit issued or renewed on or after January 1, 2007, pursuant to this article shall contain the social security number of the licensee or permit holder.

History.
Code 1981, § 40-5-28.1, enacted by Ga. L. 1997, p. 1443, § 1; Ga. L. 2006, p. 449, § 3/HB 1253.

Editor's notes.
This Code section became effective July 1, 1997, and is applicable to licenses, permits, and identification cards issued on or after that date.

40-5-29. License to be carried and exhibited on demand.

(a) Every licensee shall have his or her driver's license in his or her immediate possession at all times when operating a motor vehicle. Any person who has a receipt issued by the department reflecting issuance, renewal, replacement, or reinstatement of his or her driver's license in his or her immediate possession shall be considered to have such license in his or her immediate possession if such is confirmed to be valid by the department or through the Georgia Crime Information Center. The department may establish by rule and regulation the term of such receipt. Notwithstanding the foregoing, no receipt issued by the department shall be accepted as proof of such person's identity for any other purpose, including but not limited to proof of voter identification or proof of age for purposes of purchasing alcoholic beverages.

(b)(1) Every licensee shall display his or her license upon the demand of a law enforcement officer. When records of the department indicate that a license has been issued in an electronic format, a law enforcement officer may demand such display be made by physical format. In such instances, if a law enforcement officer demands display of the physical format, the licensee shall not be compelled to display an electronic format of his or her license nor release his or her wireless telecommunications device to the officer. A refusal to comply with such demand not only shall constitute a violation of this subsection but shall also give rise to a presumption of a violation of subsection (a) of this Code section and of Code Section 40-5-20.

(2) Any person utilizing a wireless telecommunications device to display his or her license in electronic format in order to comply with subsection (a) of this Code section shall not be considered to have consented to a search of such device by a law enforcement officer.

(3) For purposes of this subsection, the term "wireless telecommunications device" shall have the same meaning as provided in Code Section 40-6-241.

(c) A person convicted of a violation of subsection (a) of this Code section shall be fined no more than $10.00 if he or she produces in court a license theretofore issued to him or her and valid at the time of his or her arrest.

History.

Ga. L. 1937, p. 322, art. 4, § 7; Ga. L. 1951, p. 598, § 4; Code 1933, § 68B-210, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2014, p. 710, § 2-2/SB 298; Ga. L. 2020, p. 199, § 3-3/HB 463.

Cross references.

Requirement of compliance with lawful order or direction of officer authorized to direct, control, or regulate traffic, § 40-6-2.

National driver register, 49 U.S.C.S § 30301 et seq.

Real ID driver's licenses and identification cards, 6 C.F.R. § 37.1 et seq.

JUDICIAL DECISIONS

Legislative intent in reducing the punishment for failure of a licensee to have a driver's license in the licenser's possession when operating a vehicle to a fine of ten dollars precluded imposition of a sentence to a consecutive 12 months' probation. Crain v. State, 197 Ga. App. 729, 399 S.E.2d 289, 1990 Ga. App. LEXIS 1454 (1990).

Presumption upon failure to have license in possession. — There existed no reversible error when the defendant was accused of (and subsequently convicted of) driving a vehicle without a valid license (see O.C.G.A. § 40-5-20), but the offense on which the jury was charged concerned the failure to have a valid license in one's possession at all times while operating a motor vehicle and the presumption thereby raised that the driver had no valid license. Roberts v. State, 173 Ga. App. 614, 327 S.E.2d 743, 1985 Ga. App. LEXIS 1637 (1985).

Limiting O.C.G.A. § 40-5-20(a)'s safe harbor to the production at trial of a Georgia driver's license was a rational part of the enforcement scheme, allowing the presumption created by a violation of O.C.G.A. § 40-5-29(b) to be automatically rebutted only when the evidence that the driver in fact had a valid license when cited was most indisputable and readily evaluated by the factfinder. Castillo-Solis v. State, 292 Ga. 755, 740 S.E.2d 583, 2013 Ga. LEXIS 294 (2013).

Presumption upon failure to produce license upon request. — Unexplained refusal of the defendant to produce a license upon request by the officer authorizes the presumption that the defendant does not possess a valid license. Smith v. State, 158 Ga. App. 663, 281 S.E.2d 631, 1981 Ga. App. LEXIS 2361 (1981).

Conservation officer/ranger engaged in official duties. — Sufficient evidence supported the defendant's convictions of felony and misdemeanor obstruction of an officer and driving without carrying a license because the on-duty and uniformed conservation ranger had authority to arrest and was authorized to enforce traffic offenses and the state showed that the ranger was acting within the lawful discharge of official duties when the defendant was asked to turn down the music from the vehicle. Thornton v. State, 353 Ga. App. 252, 836 S.E.2d 541, 2019 Ga. App. LEXIS 596 (2019), aff'd, 310 Ga. 460, 851 S.E.2d 564, 2020 Ga. LEXIS 774 (2020).

Defeating presumption of no valid license. — While a failure to show a license on request of a law enforcement officer may give rise to the presumption that the driver does not have a valid

license, this presumption is defeated when the license is produced at the trial. McCook v. State, 145 Ga. App. 3, 243 S.E.2d 289, 1978 Ga. App. LEXIS 1838 (1978), superseded by statute as stated in Stryker v. State, 297 Ga. App. 493, 677 S.E.2d 680, 2009 Ga. App. LEXIS 383 (2009).

Officer lacked reasonable articulable suspicion for stop. — With regard to the charge of driving without a license against the defendant, the trial court properly granted the defendant's motion to suppress because the officer lacked a reasonable articulable suspicion for making the stop since the officer completely failed to note the unlicensed owner's name and gender as listed in the license plate search report, which did not match the defendant's gender, and made no attempt to observe the driver's gender prior to the stop. State v. Martinez-Arvealo, 340 Ga. App. 271, 797 S.E.2d 181, 2017 Ga. App. LEXIS 54 (2017).

Driving without a license gives probable cause to arrest. — Because an officer had probable cause to arrest the defendant at the scene of an accident for driving without the defendant's driver's license in the defendant's immediate possession, O.C.G.A. § 40-5-29, the officer's search of the defendant's person as the officer placed the defendant in handcuffs and in the squad car was a valid search incident to an arrest pursuant to O.C.G.A. § 17-5-1. State v. McCloud, 344 Ga. App. 595, 810 S.E.2d 668, 2018 Ga. App. LEXIS 72 (2018), cert. denied, No. S18C0899, 2018 Ga. LEXIS 577 (Ga. Aug. 20, 2018).

Charge to jury. — Because the defendant was being tried for "driving without a valid license" under O.C.G.A. § 40-5-20, giving a clarifying charge to the jury on O.C.G.A. § 40-5-29 was not error. Duckworth v. State, 223 Ga. App. 250, 477 S.E.2d 336, 1996 Ga. App. LEXIS 1085 (1996), aff'd, 268 Ga. 566, 492 S.E.2d 201, 1997 Ga. LEXIS 713 (1997).

Jury question. — When there was conflicting testimony as to whether the arresting officer asked to see defendant's driver's license, although the production of a valid license at trial operated to defeat the statutory presumption under subsection (b) of O.C.G.A. § 40-5-29, the charge of operating without a valid driver's license was proper and the conflicting evidence required submission to the jury. Johnson v. State, 165 Ga. App. 773, 302 S.E.2d 626, 1983 Ga. App. LEXIS 2012 (1983).

Evidence was sufficient to support a conviction since: (1) after the defendant was stopped at a roadblock, an officer asked the defendant for defendant's license and proof of insurance and the defendant responded by asking what the defendant had done; (2) the defendant was told that the defendant had done nothing, but that the papers still needed to be checked; (3) the defendant then stated that the defendant had not committed a crime and asked for the officer's badge number; (4) the officer gave this information to the defendant and then told the defendant that the defendant needed to produce the defendant's papers and that the defendant would otherwise be arrested; (5) the defendant then asked for the code section which permitted the officer to ask for the defendant's license; and (6) after this went on for several minutes, another officer came over and arrested the defendant. Johnson v. State, 234 Ga. App. 218, 507 S.E.2d 13, 1998 Ga. App. LEXIS 1121 (1998), cert. denied, No. S99C0036, 1999 Ga. LEXIS 83 (Ga. Jan. 15, 1999).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 105, 106.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 347, 348.

ALR.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

40-5-30. Restricted licenses.

(a) Upon issuing a driver's license, the department shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

(b) The department may either issue a special restricted license or set forth such restrictions upon the usual license form.

(c) No person shall operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him or her; provided, however, that at the time of the hearing on such offense, if such person was charged with driving in violation of a restriction requiring that he or she wear eyeglasses or contact lenses, such person shall not be guilty of such offense if he or she presents the trial court with admissible medical or other evidence sufficient to demonstrate to the satisfaction of the trial court that he or she no longer suffers from the vision condition that resulted in the imposition of such restriction.

(d) Upon a person being convicted of a violation of this Code section, the court may order the department to suspend such person's license for a period not to exceed six months. The court shall determine the length of such suspension and shall report such suspension and the length thereof to the department. The department shall reinstate the license at the end of the suspension period upon receipt of a reinstatement fee of $210.00 or $200.00 if paid by mail.

History.

Code 1933, § 68B-211, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-10; Ga. L. 2006, p. 449, § 4/HB 1253; Ga. L. 2009, p. 679, § 2/HB 160; Ga. L. 2010, p. 877, § 1/SB 6; Ga. L. 2010, p. 893, § 1/HB 1224.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, subsection (d), as enacted by Ga. L. 2010, p. 893, § 1/HB 1224, was redesignated as subsection (c).

Administrative rules and regulations.

Licenses Restricted as to Use for Physical Impairment, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, General Provisions, Rule 375-3-1-.04.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-5-30(c) does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

40-5-31. Replacement permits or licenses.

(a) In the event that an instruction permit or a driver's license issued under this chapter is lost or destroyed, the person to whom the same was issued may upon payment of the required fee and upon furnishing proof satisfactory to the department that such permit has been lost or destroyed:

(1) Obtain a new permit or license; or

(2) Obtain a replacement permit or license.

A new permit obtained under this Code section shall be obtained in the same manner and under the same conditions and limitations as provided in Code Section 40-5-24. A new license obtained under this Code section shall be obtained in the same manner and under the same conditions and limitations as provided in Code Section 40-5-32. A replacement permit or license obtained under this Code section shall be issued only for the remaining period for which the original permit or license was issued for a fee of $10.00, and no examination or eyesight test shall be required to obtain such replacement permit.

(b) The department shall issue a temporary permit or driver's license to each individual who has lost by misplacement, and not by revocation or suspension, his or her instruction permit or driver's license and who has made application under oath on a form furnished by the department which states that the applicant presently has a valid permit or license which has been lost or misplaced. In lieu of the applicant's signature on a form, any application for the issuance of a replacement permit or license submitted electronically shall contain an acknowledgment and attestation under penalty of perjury that he or she meets each requirement of this Code section.

(c) A temporary permit or license issued pursuant to this Code section shall be valid for 30 days but may be renewed in the event the applicant's new permit or license has not been received within such time.

(d) Any person who falsely swears or falsely makes the oath provided for in subsection (b) of this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1969, p. 991, § 1; Code 1933, § 68B-212, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 819, § 3; Ga. L. 1989, p. 519, § 11; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 5; Ga. L. 2000, p. 469, § 1; Ga. L. 2005, p. 334, § 17-9/HB 501; Ga. L. 2022, p. 185, § 1/HB 246; Ga.

L. 2024, p. 1052, § 4(48)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "fee of $10.00" for "fee of $5.00" in the ending undesignated paragraph in subsection (a).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted ", relating to renewals of licenses" from the end of paragraph (a)(2); and substituted "replacement permit or license" for "replacement license" in subsection (b).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 340 et seq.

40-5-32. Expiration and renewal of licenses; reexamination required; electronic renewal notices.

(a)(1) Except as otherwise provided in this Code section, every driver's license shall expire on the licensee's birthday in the eighth year following the issuance of such license. Notwithstanding the foregoing, any commercial driver's license that contains an H or X endorsement as defined in subsection (c) of Code Section 40-5-150 shall expire on the date of expiration of the licensee's security threat assessment conducted by the Transportation Security Administration of the United States Department of Homeland Security.

(2) Except as otherwise provided by subsection (c) of this Code section, every veteran's, honorary, or distinctive license shall expire on the licensee's birthday in the eighth year following the issuance thereof. The department may allow a veteran, honorary, or distinctive license holder to retain his or her expired veteran's, honorary, or distinctive license as a souvenir.

(3) Every driver's license shall be renewed on or before its expiration date upon application, payment of the required fee, and, if applicable, satisfactory completion of the examination required by subsection (c) of this Code section. Nothing in this Code section shall be interpreted as affecting the rights and privileges of any person holding a veteran's, honorary, or distinctive license, or authorizing the imposition of a charge or fee for the issuance or renewal of such licenses.

(4) The commissioner shall issue such rules and regulations as are required to enforce this subsection.

(b) An application for driver's license renewal may be submitted by means of:

(1) Personal appearance before the department; or

(2) Subject to rules or regulations of the department which shall be consistent with considerations of public safety and efficiency of

service to licensees, means other than such personal appearance which may include without limitation by mail or electronically. The department may by such rules or regulations exempt persons renewing drivers' licenses under this paragraph from the license surrender requirement of subsection (c) of Code Section 40-5-20.

(c)(1) The department shall require every person who is age 64 or older applying for issuance or renewal of a driver's license to take and pass successfully such test of his or her eyesight as the department shall prescribe.

(2) The commissioner may issue such rules and regulations as are necessary to implement this subsection.

(d)(1) Notice of driver's license renewal issued by the department pursuant to this Code section shall be satisfied by electronic means when:

(A) The license holder consents to receive notifications and communications electronically pursuant to the conditions set forth in paragraph (2) of this subsection; and

(B) The department includes any record of transmission of any electronic notification or communication to the license holder in the records of the department for such license holder.

(2) The department shall be authorized to utilize electronic notifications and communications for any license holder who agrees to a statement which reads:

"I AGREE TO RECEIVE ALL NOTIFICATIONS AND COMMUNICATIONS FOR DRIVER'S LICENSE RENEWALS ELECTRONICALLY."

(3) If the department becomes aware that an electronic notification or communication was not transmitted to a license holder, the department shall send the notification or communication as otherwise required by applicable law.

(4) The department shall retain a record pursuant to Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," of any electronic notification or communication sent pursuant to this subsection. Such record shall be retrievable by the department for a period of ten years after the date such electronic notification or communication was sent.

(5) A license holder may withdraw his or her consent to receive notifications and communications by electronic means upon a method established by the department for such purpose pursuant to rule or regulation.

(6) Any notification or communication sent by electronic means

pursuant to this subsection shall comply with the requirements set forth in Chapter 12 of Title 10, the "Uniform Electronic Transactions Act."

History.
Ga. L. 1937, p. 322, art. 4, § 5; Ga. L. 1943, p. 196, § 5; Ga. L. 1947, p. 294, § 1; Ga. L. 1951, p. 157, § 7; Ga. L. 1955, p. 662, § 1; Ga. L. 1955, Ex. Sess., p. 35, § 1; Ga. L. 1961, p. 136, § 2; Ga. L. 1961, p. 433, § 1; Code 1933, § 68B-213, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 2; Ga. L. 1977, p. 576, § 1; Ga. L. 1989, p. 519, § 12; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-11; Ga. L. 2002, p. 1045, § 2; Ga. L. 2004, p. 749, § 5; Ga. L. 2005, p. 334, § 17-10/HB 501; Ga. L. 2010, p. 932, § 9/HB 396; Ga. L. 2016, p. 385, § 7/HB 806; Ga. L. 2024, p. 147, § 7/HB 1100, effective April 22, 2024.
Amendments.
The 2024 amendment, effective April 22, 2024, added subsection (d).
Cross references.
Veterans' licenses, honorary licenses, generally, § 40-5-36.
Law reviews.
For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 277 (2002).

JUDICIAL DECISIONS

Duties of holders of veterans' licenses. — From the language employed in O.C.G.A. § 40-5-1 et seq. since 1975, it is apparent that the legislature contemplated that the veterans' licenses would expire in the same way as other licenses and must be renewed every four years. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

Holders of veterans' licenses must comply with vision test requirements of subsection (b) (now subsection (c)) of O.C.G.A. § 40-5-32. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 122.

C.J.S.
60 C.J.S., Motor Vehicles, § 341 et seq.

40-5-33. Change of address or name.

Whenever any person, after applying for or receiving a driver's license, shall move from the address named in such application or in the license issued to him or her or when the name of a licensee is changed by marriage or otherwise, such person shall apply to the department for a license showing the correct name or address within 60 days. Failure to change the name or address shall not deem the license invalid. The commissioner may determine the locations at which applications shall be accepted for applications due to change of name or address. Without limiting the generality of the foregoing, it is specifically provided that the commissioner may designate county tag agents, if they so agree, as agents of the department for this purpose.

History.
Code 1933, § 68B-214, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 519, § 13; Ga. L.

1990, p. 2048, § 4; Ga. L. 1994, p. 1876, § 2; Ga. L. 1995, p. 920, § 2; Ga. L. 2005, p. 334, § 17-11/HB 501.

JUDICIAL DECISIONS

Violation of statute did not justify continued detention. — Even if it was a crime to violate O.C.G.A. § 40-5-33, a defendant's purported violation of the statute did not justify the continued detention of the defendant after a traffic stop; the deputy who stopped the defendant could have given the defendant a verbal warning instead of waiting to be brought a written warning book. Bennett v. State, 285 Ga. App. 796, 648 S.E.2d 126, 2007 Ga. App. LEXIS 648 (2007).

40-5-34. Driver License Advisory Board.

(a) The commissioner is authorized to appoint a Driver License Advisory Board.

(b) The Driver License Advisory Board shall advise the commissioner on medical criteria and vision standards relating to the licensing of drivers under this chapter.

(c) If the department has cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, it may obtain the advice of the Driver License Advisory Board. The Driver License Advisory Board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the Driver License Advisory Board or any other qualified person it may designate. The licensed driver or applicant may cause a written report to be forwarded to the Driver License Advisory Board by a person of his choice who is licensed under Chapter 30 of Title 43 and Article 2 of Chapter 34 of Title 43 to diagnose and treat disorders of humans. Such report shall be given due consideration by the Driver License Advisory Board.

(d) Members of the Driver License Advisory Board and other persons making examinations shall not be held liable for their opinions and recommendations presented pursuant to subsection (c) of this Code section.

(e) Reports received or made by the Driver License Advisory Board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the Driver License Advisory Board or the department and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under subsection (c) of Code Section 40-5-59 and Code Section 40-5-66, and any person conducting an examination pursuant to subsection (c) of this Code section may be compelled to testify concerning his observations and findings in such proceedings.

History.
Code 1933, § 68B-216, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.
Administrative rules and regulations.
Driver's License Advisory Board, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Rule 375-3-5-.01 et seq.

JUDICIAL DECISIONS

Applicability of subsection (c). — Subsection (c) of former Code 1933, § 68B-216 (see now O.C.G.A. § 40-5-34) applied only when a medical condition formed the basis for not issuing or reissuing a license, not when the action of the department in revoking a driver's license was based on the driver's repeated convictions of driving while under the influence of alcohol. Camp v. Department of Pub. Safety, 241 Ga. 419, 246 S.E.2d 296, 1978 Ga. LEXIS 1004 (1978).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 102, 103, 120.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 29 et seq., 322 et seq.
ALR.
Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

40-5-35. Disqualifying disorders and disabilities; reports by physicians and vision specialists; procedure when person found unqualified to be licensed.

(a) The Driver License Advisory Board appointed by the department shall define disorders characterized by lapses of consciousness or other mental or physical disabilities affecting the ability of a person to drive safely for the purpose of the reports required by this Code section, and the commissioner may use these definitions to promulgate regulations making such disorders and disabilities disqualifications, under certain conditions, for obtaining or keeping a driver's license for any class or classes of vehicles; provided, however, that a person shall not be disqualified from obtaining a noncommercial Class C driver's license for having had an episode of lapsed or altered consciousness due to epilepsy unless such an episode occurred within the immediately preceding six-month period.

(b) All physicians licensed under Article 2 of Chapter 34 of Title 43 to diagnose and treat disorders and disabilities defined by the commissioner may report to the department the full name, date of birth, and address of any person with a disability which would render such person incapable of operating a motor vehicle safely.

(c) All other persons licensed under Chapter 30 of Title 43 to diagnose and treat disorders defined by the commissioner may report to the department the full name, date of birth, and address of any person

with a disability which would render such person incapable of operating a motor vehicle safely.

(d) The reports required by this Code section shall be confidential and shall be used solely for the purpose of determining the qualifications of any person to drive a motor vehicle on the highways of this state. No civil or criminal action may be brought against any person or agency for providing the information required in this Code section. The reports, or any reference to the reports, shall not be included in any abstract prepared pursuant to Code Section 40-5-2.

(e) Reports received or made by the Driver License Advisory Board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the Driver License Advisory Board or the department and may not be divulged to any person or used as evidence in any civil or criminal trial, except that the reports may be admitted in proceedings conducted pursuant to this Code section and Code Section 40-5-66.

(f) Whenever the department shall determine that a person is unqualified to be licensed, the department shall inform such person in writing and give him an opportunity to request a hearing, in writing, within 15 days. If no hearing is requested within the 15 day period as specified in this subsection, the right to this hearing shall be waived and the license of the person shall be revoked. The person may request an opinion of the Driver License Advisory Board as provided in subsection (c) of Code Section 40-5-34. The department may not grant any exceptions to any regulations issued pursuant to subsection (a) of this Code section. The scope of the hearing shall determine, upon evidence and testimony submitted, if the driver is competent to drive a motor vehicle as defined in this title. No driving privileges shall be revoked unless the department shows that the driver had disorders characterized by lapses of consciousness or other mental or physical disabilities affecting his ability to drive safely. The hearing shall be informal and an appeal shall be as provided for in Code Section 40-5-66.

History.
Code 1933, § 68B-217, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 890, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 13; Ga. L. 2000, p. 951, § 5-12; Ga. L. 2000, p. 1313, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 120 et seq.

ALR.
Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

40-5-36. Veterans' licenses, honorary licenses, and other distinctive licenses.

(a) Except as specifically provided in this chapter, no part of this chapter shall be interpreted as affecting the rights and privileges of a person holding a veteran's, honorary, or distinctive license, and nothing in this chapter shall be construed so as to authorize the department to impose any charge or fee of any type whatsoever for the issuance or renewal of a veteran's, honorary, or distinctive license; provided, however, that the commissioner may issue regulations on types and classes of vehicles which may be operated by the holder of such license.

(b) The commissioner shall establish by rules and regulations the proof required to be produced by an applicant for a veteran's, honorary, or distinctive license. The contents of such license shall be the same as for any other license. The forms upon which such licenses are issued shall be such that the licenses are of a permanent nature, provided that nothing in this subsection shall authorize the department to require any person holding a veteran's or honorary license before January 1, 1976, to surrender such license. Veterans', honorary, and distinctive licenses shall not be subject to any fees.

(c) Veterans' licenses may be issued to:

(1) Veterans who are residents of Georgia at the time of application for the license who served in the active military, naval, or air service and who were discharged or released therefrom under conditions other than dishonorable;

(2) All members or former members of the National Guard or reserve forces who served on active duty or who have 20 or more years' creditable service therein; and

(3) Veterans who are United States citizens and residents of this state at the time of application for the license and who served on active duty in the armed forces of an ally of the United States during wartime or any conflict when personnel were committed by the President of the United States, whether or not such veteran was assigned to a unit or division which directly participated in such war or conflict and who were discharged or separated under honorable conditions.

(d) Honorary licenses may be issued to:

(1) A resident of Georgia who is the surviving spouse of a veteran as defined by paragraph (1) of subsection (c) of this Code section. Any license to such spouse shall be valid only as long as that person remains unmarried; or

(2) A resident of Georgia who is the spouse of a veteran who would

be qualified to receive a veteran's license but who is disabled to the extent that he or she cannot operate a motor vehicle.

(e) A distinctive license may be issued to any member of the Georgia National Guard in good standing who has completed at least one year of satisfactory service. The department shall have the authority to cancel the distinctive license of any person upon receipt of written notice from the adjutant general who shall notify the department that the person is no longer a member of the Georgia National Guard in good standing.

History.

Ga. L. 1949, p. 1152, §§ 2-5; Ga. L. 1966, p. 546, §§ 3-7, 12; Ga. L. 1966, p. 553, § 2; Code 1933, § 68B-218, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1978, p. 2191, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1496, § 1; Ga. L. 1994, p. 393, § 3; Ga. L. 2000, p. 951, § 5-13; Ga. L. 2004, p. 471, § 10; Ga. L. 2020, p. 669, § 2/HB 819; Ga. L. 2021, p. 93, § 1/HB 338.

JUDICIAL DECISIONS

Issuance not constituting contract. — Issuance of veterans' license under statute providing for permanent veterans' licenses did not constitute contract between a veteran and the state. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

Renewal of licenses. — From the language employed in O.C.G.A. § 40-5-1 et seq. since 1975, it is apparent that the legislature contemplated that the veterans' licenses would expire in the same way as other licenses and must be renewed every four years. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

Surrender of licenses. — Provision in subsection (b) of O.C.G.A. § 40-5-36, that holders of veterans' licenses issued prior to 1976 may not be compelled to surrender the license, does not mean that veterans' licenses issued prior to 1976 do not expire but rather that holders of such licenses may not be compelled to permanently physically relinquish those licenses. Neither the provision for renewal nor the provision for temporary retention of a license in lieu of bond amounts to a requirement that a licensee "surrender" the license. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

40-5-37. Expiration of active duty service members' licenses.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who is on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose Georgia driver's license expired while such service member was serving on active duty outside the state shall be permitted to operate a motor vehicle in accordance with such expired license and shall not be charged with a violation of Code Section 40-5-20 for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. The service

member must present to the department either a copy of the official military orders or a written verification signed by the service member's commanding officer to waive charges.

History.
Code 1981, § 40-5-37, enacted by Ga. L. 2005, p. 213, § 5/SB 258.

40-5-38. Notation of post-traumatic stress disorder.

(a) Members of the armed services and veterans who have been diagnosed with post-traumatic stress disorder may request to have a notation of such diagnosis placed on his or her driver's license. Such applicant shall present the department with a sworn statement from a person licensed to practice medicine or psychology in this state verifying such diagnosis.

(b) The commissioner shall by rules and regulations establish procedures necessary to carry out the provisions of this Code section including, without limitation, application forms to include a waiver of liability for the release of any medical information and an appropriate symbol to be placed on the drivers' licenses.

History.
Code 1981, § 40-5-38, enacted by Ga. L. 2010, p. 1013, § 1/SB 419; Ga. L. 2024, p. 1052, § 4(49)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "post-traumatic" for "post traumatic" in subsection (a).

Cross references.
Veterans Mental Health Services Program, § 38-4-15.

40-5-39. Requirements for operation of a motor vehicle for hire; for-hire license endorsements and eligibility; term; background checks.

(a) No person shall operate a motor vehicle for hire in this state unless such person:

(1) Has a for-hire license endorsement pursuant to this Code section and has liability insurance coverage in the amounts required by law for the class of motor vehicle being operated for hire and the requirements for limousine carriers, ride share networks and drivers, and taxi services, as applicable; or

(2) Has a private background check certification pursuant to this Code section and has liability insurance coverage in the amounts required by law for the class of motor vehicle being operated for hire and the requirements for limousine carriers, ride share networks and drivers, and taxi services, as applicable.

This shall include, but not be limited to, ride share drivers and persons operating motor vehicles for limousine carriers and taxicabs for taxi services.

(b) The department shall provide a for-hire license endorsement for any qualified person under this Code section. In order to be eligible for such endorsement, an applicant shall:

(1) Be at least 18 years of age;

(2) Possess a valid Georgia driver's license which is not limited as defined in Code Section 40-5-64 or 40-5-64.1;

(3) Not have been convicted, been on probation or parole, or served time on a sentence for a period of seven years previous to the date of application for any felony or any other crime of moral turpitude or a pattern of misdemeanors that evidences a disregard for the law unless he or she has received a pardon and can produce evidence of same. For the purposes of this paragraph, a plea of nolo contendere shall be considered to be a conviction, and a conviction for which a person has been free from custody and free from supervision for at least seven years shall not be considered a conviction unless the conviction is for a dangerous sexual offense which is contained in Code Section 42-1-12 or the criminal offense was committed against a victim who was a minor at the time of the offense;

(4) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(5) Be a United States citizen or, if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

(c) Such endorsement shall be valid for the same term as such person's driver's license, provided that each person seeking renewal of a driver's license with such endorsement shall submit to a review of his or her criminal history for verification of his or her continued eligibility for such endorsement prior to making application for such renewal using the same process set forth in subsection (b) of this Code section.

If such person no longer satisfies the background requirements set forth herein, he or she shall not be eligible for the inclusion of such endorsement on his or her driver's license, and it shall be renewed without the endorsement.

(d) Every person who operates a motor vehicle for hire in this state shall have his or her Georgia driver's license with the prescribed for-hire license endorsement in his or her possession at all times while operating a motor vehicle for hire in this state or shall have his or her Georgia driver's license and a private background check certification pursuant to subsection (e) of this Code section in his or her possession. Such driver's license with a for-hire endorsement or such driver's license and private background check certification shall be presented to a law enforcement officer upon request by such officer.

(e)(1) A person operating a motor vehicle for hire in this state may obtain a private background check in lieu of obtaining a for-hire endorsement. Such background check shall be conducted by the taxi service, limousine carrier, or ride share network service that employs such driver.

(2) The taxi service, limousine carrier, or ride share network service shall require such person to submit an application to the taxi service, limousine carrier, or ride share network service which includes, but is not limited to, information regarding such person's address, age, driver's license information and number, driving history, motor vehicle registration, automobile liability insurance, and other information necessary to complete a background check on such person.

(3) The taxi service, limousine carrier, or ride share network service shall conduct or cause to be conducted a local and national criminal background check on such person which shall include:

(A) A search of a multistate, multijurisdiction criminal records locator or similar nation-wide data base with validation or primary source search;

(B) A search of the National Sex Offender Registry data base; and

(C) The obtaining and review of a driving history research report.

(4) The taxi service, limousine carrier, or ride share network service shall review the background check and issue a private background check certification to such person; provided, however, that no such certification shall be issued to a person whose background check discloses that such person:

(A) Has had more than three moving traffic violations in the prior three-year period or has one major traffic violation, as such term is defined in Code Section 40-5-142, in the prior three-year period;

(B) Has been convicted within the past seven years of driving under the influence of drugs or alcohol or has been convicted at any time of fraud, a sexual offense, the use of a motor vehicle to commit a felony, a crime involving property damage, a crime involving theft, a crime involving an act of violence, or a crime involving an act of terror;

(C) Has a match on the National Sex Offender Registry data base;

(D) Does not have a valid driver's license;

(E) If such person will be using such person's vehicle as the motor vehicle to be operated for hire, does not possess proof of registration for such vehicle;

(F) Does not possess proof of liability insurance coverage in such amounts as provided by law for the class of motor vehicle being operated for hire and the requirements for limousine carriers, ride share networks and drivers, and taxi services, as applicable; and

(G) Is not at least 18 years of age.

(5) Such private background check certification shall be issued in written form or in a form which may be displayed electronically on a smartphone. A digital identification properly issued pursuant to subsection (d) of Code Section 40-1-193 shall constitute sufficient certification of a private background check. Such private background check certification shall be valid for a period of five years from the date of its issuance.

(f) The department is authorized to promulgate rules and regulations as necessary to implement this Code section.

(g) Any person who violates the provisions of this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 40-5-39, enacted by Ga. L. 2012, p. 580, § 3/HB 865; Ga. L. 2015, p. 1262, § 6/HB 225; Ga. L. 2016, p. 323, § 2-2/HB 205; Ga. L. 2016, p. 767, § 4/SB 320; Ga. L. 2024, p. 1052, § 4(50)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in subparagraphs (e)(3)(B) and (e)(4)(C), and inserted "traffic" following "moving" in subparagraph (e)(4)(A).

Administrative rules and regulations.

For-hire Endorsements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver Training and Driver Improvement, Rule 375-5-5-.01 et seq.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

For article, "The Uber Million Dollar Question: Are Uber Drivers Employees or Independent Contractors?," see 68 Mercer L. Rev. 461 (2017).

ARTICLE 3

CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

Cross references.

Suspension of drivers' licenses for failure to obtain motor vehicle insurance, § 40-5-70.

Suspension of driver's license for failure to satisfy judgment rendered in action arising out of motor vehicle accident, § 40-9-60 et seq.

Prosecution of traffic offenses, § 40-13-1 et seq.

Editor's notes.

Code Sections 40-5-67 through 40-5-69, which became effective in this article January 1, 1991, were formerly contained in Article 3A, pertaining to the disposition of licenses of persons driving under the influence of alcohol or drugs. The former Article 3A consisted of Code Sections 40-5-67 through 40-5-73 and was based on Ga. L. 1983, p. 1000, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1984, p. 797, § 3; Ga. L. 1985, p. 758, §§ 10 and 11, Ga. L. 1989, p. 14, § 40; and Ga. L. 1990, p. 1154.

Administrative rules and regulations.

Revocation and Suspension, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Rule 375-3-3-.01 et seq.

Law reviews.

For note on 1993 amendment of this article, see 10 Georgia St. U.L. Rev. 169 (1993).

For note on the 1994 amendments of Code Sections 40-5-58, 40-5-64, 40-5-67 to 40-5-67.2 of this article, see 11 Georgia St. U.L. Rev. 215 (1994).

JUDICIAL DECISIONS

Suspension of license by court. — Although the Department of Public Safety has the authority to cancel, suspend, or revoke a driver's license under certain circumstances, O.C.G.A. § 40-5-50 et seq. does not purport to deprive a court of competent jurisdiction of the authority to suspend a driver's license as a condition of probation. Brock v. State, 165 Ga. App. 150, 299 S.E.2d 71, 1983 Ga. App. LEXIS 1796 (1983).

Issuance of limited permit. — There is no authority for issuance of a limited permit to a person currently ineligible for a license due to a conviction of driving with a revoked license. Hardison v. Popham, 151 Ga. App. 143, 259 S.E.2d 149, 1979 Ga. App. LEXIS 2470 (1979).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 116 et seq.

ALR.

Validity, construction, and application of provision for revocation or suspension of driver's license because of conviction of traffic violation in another state, 87 A.L.R.2d 1019.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power, 92 A.L.R.2d 204.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Request for prior administration of additional test as constituting refusal to

submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

State's liability to one injured by improperly licensed driver, 41 A.L.R.4th 111.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 A.L.R.5th 542.

40-5-50. Authority of department to cancel license or identification card.

The department is authorized to cancel any driver's license or identification card issued by the department pursuant to Code Section 40-5-100 upon determining that the holder of such license or identification card was not entitled to the issuance thereof under this chapter or failed to give the required or correct information in the application for such license or identification card.

History.

Code 1933, § 68B-301, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 920, § 3; Ga. L. 2000, p. 951, § 5-14; Ga. L. 2024, p. 1052, § 4(51)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "personal" following "driver's license or" near the beginning of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 117.

C.J.S.

60 C.J.S., Motor Vehicles, § 353 et seq.

ALR.

Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 A.L.R. 1459.

Validity, construction, and application of provision for revocation or suspension of driver's license because of conviction of traffic violation in another state, 87 A.L.R.2d 1019.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Admissibility, in motor vehicle license suspension proceedings, or evidence obtained by unlawful search and seizure, 23 A.L.R.5th 108.

40-5-51. Suspension of driving privilege of nonresident; reporting convictions, suspensions, and revocations of nonresidents.

(a) The privilege of driving a motor vehicle on the highways of this state given to a nonresident under this chapter shall be subject to suspension or revocation by the department only when suspension or revocation is required by law for the violation. No points shall be assessed as provided in Code Section 40-5-57 for any violation committed by a nonresident.

(b) The department is required, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(c) When a nonresident's operating privilege is suspended or revoked, the department shall forward a certified copy of the record of such action to the motor vehicle administrator in the state wherein such person resides.

History.

Code 1933, § 68B-302, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2004, p. 749, § 6.

Cross references.

Jurisdiction of state over persons temporarily traveling in state, § 50-2-21.

JUDICIAL DECISIONS

Failure to comply with reporting requirements. — Any failure by the Department of Transportation in complying with the reporting requirements of O.C.G.A. § 40-5-51 pertaining to suspension or revocation of operating privileges of nonresident motorists did not diminish the fact that former O.C.G.A. § 40-5-55(c), in effect at the time of the offense, evoked procedures at the time of defendant's arrest for immediate suspension of any person's driving privileges upon refusal to submit to the chemical test prescribed by O.C.G.A. § 40-5-55(a); consequently, since the trial transcript revealed that the deputy advised defendant at the time of arrest of defendant's options pursuant to Georgia's implied consent law, there was no basis for excluding evidence of the results of the state-administered breath test. Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70, 1993 Ga. App. LEXIS 1590 (1993), cert. denied, No. S94C0613, 1994 Ga. LEXIS 556 (Ga. Feb. 28, 1994), overruled on other grounds, State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604, 1995 Ga. App. LEXIS 232 (1995).

Consent obtained by misleading information. — Police officer's warning to nonresident defendant that "Under OCGA §§ 40-5-55 and 40-5-153, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and State v. Reich, 210 Ga. App. 407, 436 S.E.2d 703 (1993). State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604, 1995 Ga. App. LEXIS 232 (1995).

Incorrect information harmless. — Arresting officer's incorrect statement to a motorist arrested for DUI that the motorist's Florida driver's license would be suspended "for one year tonight" upon the motorist's refusal to submit to chemical tests was harmless since the driver had refused to take the tests before the officer made the incorrect statement. Rojas v. State, 235 Ga. App. 524, 509 S.E.2d 72, 1998 Ga. App. LEXIS 1447 (1998), cert. denied, No. S99C0479, 1999 Ga. LEXIS 355 (Ga. Apr. 9, 1999).

Surrender of out-of-state license was improper. — Even if a defendant's speeding conviction were affirmed, O.C.G.A. § 40-5-51(a) provided that no points were to be assessed for any violation committed by a non-resident; accordingly, even if the conviction had been proper, the trial court erred in ordering the defendant to surrender the defendant's Texas driver's license. In the Interest of R.G., 272 Ga. App. 276, 612 S.E.2d 94, 2005 Ga. App. LEXIS 270 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Forwarding of records upon conviction for driving under the influence. — Georgia law requires that when non-resident is convicted of driving

under the influence the court forward the nonresident's driver's license to the Georgia Department of Public Safety, with the license to be forwarded to the non-resident's home state along with the record of conviction and record of any action taken by the Department of Public Safety. 1986 Op. Att'y Gen. No. U86-15.

Georgia law requires that when a nonresident person is charged with driving under the influence the arresting officer is to take the driver's license, attach it to the court's copy of the citation, and forward it to the appropriate court, as would be done with a Georgia driver. 1986 Op. Att'y Gen. No. U86-16.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 355.

40-5-52. Suspension of license or operating privilege for conduct in another state.

(a) The department shall suspend, as provided in Code Section 40-5-63, the license of any resident of this state and may suspend a nonresident's operating privilege, upon receiving notice of a conviction in another state of an offense described in Code Section 40-5-54 or Code Section 40-6-391 or any drug related offense.

(b) The department is authorized to suspend or revoke the license of any resident or the operating privilege of any nonresident upon receiving notice of the conviction of such person in another state of an offense other than those described in Code Section 40-5-54 or Code Section 40-6-391 which, if committed in this state, would be grounds for the suspension or revocation of a driver's license.

(c) The department may give such effect to the conduct of a resident in another state as is provided by the laws of this state had such conduct occurred in this state.

(d) Whenever the department has suspended the license of a Georgia resident or refused to issue a driver's license to any person for conduct that occurred in another state, it shall review the suspension at least once every five years and shall reinstate the license if the department determines that the suspension is no longer warranted and the person would otherwise be eligible for a license.

History.
Code 1933, § 68B-303, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1984, p. 614, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 730, § 1; Ga. L. 2010, p. 932, § 4/HB 396.

Cross references.
Jurisdiction of state over persons temporarily traveling in state, § 50-2-21.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1994, "drug related" was substituted for "drug-related" in subsection (a).

JUDICIAL DECISIONS

Points are assessed for out-of-state violations which would be assessed points if committed within Georgia. Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486, 1980 Ga. LEXIS 1134 (1980).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 374.

ALR.

Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 A.L.R. 1459.

Validity, construction, and application of provision for revocation or suspension of driver's license because of conviction of traffic violation in another state, 87 A.L.R.2d 1019.

40-5-53. Surrender of license to court of conviction; report of conviction to department; destruction of license.

(a) Whenever any person is convicted of any offense for which this chapter makes mandatory the suspension of the license of such person by the department, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted and the court shall thereupon forward the same to the department, together with the uniform citation form authorized by Article 1 of Chapter 13 of this title, within ten days after the conviction. Notwithstanding any other provision of this title, the department shall destroy any suspended or revoked drivers' licenses, permits, or identification cards forwarded to it under this or any other provision of law. The department shall issue a new driver's license, permit, or identification card upon satisfaction of the applicable reinstatement requirement, including but not limited to the payment of the applicable reinstatement fee. No additional fee shall be required for the issuance of a replacement driver's license, permit, or identification card.

(b)(1) Every court in each county of this state having jurisdiction over offenses committed under this chapter and Chapter 6 of this title or any other law of this state or ordinance adopted by a local authority regulating the operation of motor vehicles on highways shall forward to the department, within ten days after the conviction of any person in such court for a violation of any such law other than regulations governing speeding in a noncommercial motor vehicle for which no points are assigned under Code Section 40-5-57, standing, or parking, a uniform citation form authorized by Article 1 of Chapter 13 of this title. Notwithstanding any other provision of this title, in satisfaction of the reporting requirement of this subsection, the courts of this state shall transmit the information contained on the uniform citation form by electronic means, using the electronic reporting method approved by the department. Subject to

appropriations by the General Assembly, the department shall pay to the clerk of the court forwarding the required report 40¢ for each report transmitted electronically in a timely manner as required in this subsection; and notwithstanding any general or local law to the contrary, the clerk shall pay such fees over to the general fund of the city or county operating the court.

(2) Except as otherwise provided for in paragraphs (3) and (4) of this subsection, a report of any conviction received by the department two or more years after the date of final disposition shall be noted on a person's driving record and such conviction shall be made available in accordance with Code Sections 40-5-2 and 40-5-155. No such conviction shall result in the suspension of a driver's license, provided that the department determines that two or more years have elapsed since the date the driver's license was surrendered in accordance with the provisions set forth in subsection (e) of Code Section 40-5-61 and no new driver's license was subsequently issued.

(3) A report of any conviction for an offense covered under Code Section 40-5-54, or Code Sections 40-6-390.1 through 40-6-395, or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or Code Sections 40-6-390.1 through 40-6-395, regardless of the date such report of conviction is received by the department, shall be considered for purposes of revoking a driver's license in accordance with Code Section 40-5-58.

(4) Any report of any conviction, regardless of the date such report of conviction is received by the department, shall be considered for purposes of disqualifying a person's commercial driver's license, commercial driver instruction permit, or commercial driving privileges in accordance with Code Section 40-5-151.

History.

Ga. L. 1937, p. 322, art. 4, § 13; Ga. L. 1939, p. 135, § 12; Ga. L. 1968, p. 430, § 6; Code 1933, § 68B-304, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 1002, § 9; Ga. L. 1987, p. 392, § 1; Ga. L. 1990, p. 1913, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1118, § 1; Ga. L. 1992, p. 2785, § 6; Ga. L. 1993, p. 1665, § 1; Ga. L. 1995, p. 917, § 2; Ga. L. 2000, p. 951, § 5-15; Ga. L. 2003, p. 580, § 1; Ga. L. 2004, p. 471, § 1; Ga. L. 2005, p. 334, § 17-12/HB 501; Ga. L. 2006, p. 449, § 5/HB 1253; Ga. L. 2010, p. 932, § 10/HB 396; Ga. L. 2016, p. 385, § 8/HB 806; Ga. L. 2017, p. 184, § 4/HB 136; Ga. L. 2021, p. 228, § 2/HB 534; Ga. L. 2024, p. 1052, § 4(52)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "license," for "license as such term is defined in paragraph (17) of Code section 40-5-1," in the second sentence in paragraph (b)(2).

Editor's notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to

all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

Law reviews.

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Basis of jurisdiction and authority to declare driver habitual offender. — Department's jurisdiction and authority to declare a driver a habitual offender does not depend on the court's compliance with ten-day notice requirements of O.C.G.A. § 40-5-53(b), but depends on the information contained within the department's files as provided by O.C.G.A. § 40-5-58(b). Hardison v. Orndorff, 173 Ga. App. 630, 327 S.E.2d 497, 1985 Ga. App. LEXIS 1645 (1985).

Failure to transmit notice of conviction within ten days. — Failure of a court to transmit notice of a licensee's third DUI conviction to the Georgia Department of Driver Services (DDS) within 10 days of the conviction's entry as required by O.C.G.A. § 40-5-53(b) did not invalidate the revocation of licensee's driver's license; the statute was meant to facilitate record keeping and the DDS's duty to act on a license revocation was based not on when the court acted but on when the department's records disclosed facts sufficient to revoke the license. Lokey v. Ga. Dep't of Driver Servs., 291 Ga. App. 856, 663 S.E.2d 283, 2008 Ga. App. LEXIS 661 (2008).

Under O.C.G.A. § 40-5-53(b), a court of conviction is required to transmit notification of applicable convictions to the Georgia Department of Driver Services within 10 days of the date of conviction, but a trial court's failure to timely transmit the records, which failure results in delayed revocation of an individual's license, does not affect the validity of the revocation or the calculation of the five-year period. Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89, 2009 Ga. App. LEXIS 562 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. Sept. 28, 2009).

Calculating time in prison into revocation period. — While the defendant's license may have been held by the Department of Corrections while the defendant was incarcerated, the defendant's five-year revocation period may not be reduced by that time because the defendant had not been declared a habitual violator by the Department of Driver Services. Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89, 2009 Ga. App. LEXIS 562 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. Sept. 28, 2009).

Fee goes to city treasury. — Import of O.C.G.A. § 40-5-53 is that the court shall forward the report to the department through the department's agent, the clerk, and that the court forwarding the report shall receive the fee from the department through the department's agent, the clerk. Hence, the fees properly must go into the city treasury. Young v. Lockhart, 255 Ga. 55, 334 S.E.2d 856, 1985 Ga. LEXIS 867 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Clerk of the court is not authorized to retain fees paid by the department. 1979 Op. Att'y Gen. No. U79-21.

Administrative handling of reports of pleas. — Upon receipt of report of conviction, i.e., finding of guilt or entry of plea of guilty, or plea of nolo contendere, the Department of Public Safety should administratively handle the report as the department would any other report of conviction notwithstanding the fact that the defendant was able to lessen any harsh criminal consequences of defendant's actions by availing oneself of first-offender treatment. 1982 Op. Att'y Gen. No. 82-64.

Once the Department of Public Safety is in receipt of a report of "an accepted plea of nolo contendere" it should administratively handle the nolo contendere plea as provided for in O.C.G.A. § 40-5-1 et seq. without regard to whether a fine was or

was not imposed by the trial court. 1982 Op. Att'y Gen. No. 82-64.

Electronic transfer of records of convictions. — Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety but not as a substitute for sending the citation copy. The uniform traffic citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

40-5-54. Mandatory suspension of license; notice of suspension.

(a) The department shall forthwith suspend, as provided in Code Section 40-5-63, the license of any driver upon receiving a record of such driver's conviction of the following offenses, whether charged as a violation of state law or of a local ordinance adopted pursuant to Article 14 of Chapter 6 of this title:

(1) Homicide by vehicle, as defined by Code Section 40-6-393;

(2) Any felony in the commission of which a motor vehicle is used;

(3) Hit and run or leaving the scene of an accident in violation of Code Section 40-6-270;

(4) Racing on highways and streets;

(5) Using a motor vehicle in fleeing or attempting to elude an officer; or

(6) Operating a motor vehicle with a revoked, canceled, or suspended registration in violation of Code Section 40-6-15.

(b) All judges of all courts having jurisdiction of the offenses set forth in subsection (a) of this Code section shall, at the time of sentencing, give notice to the defendant on forms prescribed by the department of the suspension of the defendant's driver's license. The period of suspension shall be determined by the department for the term authorized by law. The court shall forward the notice of suspension and the defendant's driver's license to the department within ten days from the date of conviction. The department shall notify the defendant of the period of suspension at the address provided by the defendant.

History.
Ga. L. 1939, p. 135, § 10; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 565, § 7A; Ga. L. 1956, p. 543, § 15; Ga. L. 1957, p. 124, § 4; Ga. L. 1964, p. 225, § 3; Ga. L. 1968, p. 430, § 8; Ga. L. 1971, p. 249, § 1; Code 1933, § 68B-305, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1073, § 1; Ga. L. 1983, p. 1000, § 2; Ga. L. 1987, p. 1082, § 1; Ga. L. 1988, p. 897, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1284, § 1; Ga. L. 1993, p. 940, § 1; Ga. L. 2000, p. 951,

§ 5-16; Ga. L. 2002, p. 1024, § 4; Ga. L. 2004, p. 749, § 7; Ga. L. 2011, p. 355, § 4/HB 269; Ga. L. 2015, p. 60, § 4-13/SB 100.

Cross references.

Drag racing, § 40-6-186.

Laying drags, § 40-6-251.

Editor's notes.

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Defendant's driver's license was properly suspended after the defendant pled guilty to and received sentences as a first offender for two counts of homicide by vehicle in the first degree and one count of driving with ability impaired by alcohol. Salomon v. Earp, 190 Ga. App. 405, 379 S.E.2d 217, 1989 Ga. App. LEXIS 267 (1989), overruled on other grounds, Pender v. Witcher, 196 Ga. App. 856, 397 S.E.2d 193, 1990 Ga. App. LEXIS 1094 (1990).

Conviction in a city court of driving under the influence was sufficient to authorize revocation of the license of the driver to operate an automobile. Watson v. Department of Pub. Safety, 66 Ga. App. 633, 18 S.E.2d 789, 1942 Ga. App. LEXIS 255 (1942) (decided under Ga. L. 1937, p. 322).

OPINIONS OF THE ATTORNEY GENERAL

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 119, 143 et seq.

Am. Jur. Proof of Facts.

Identification of Hit-And-Run Vehicle and Driver, 60 POF3d 91.

ALR.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866.

Regulations establishing a "Point System" as regards suspension or revocation of license of operator of motor vehicle, 5 A.L.R.3d 690.

Necessity and sufficiency of showing in a criminal prosecution under a "hit-and-

run" statute accused's knowledge of accident, injury, or damage, 23 A.L.R.3d 497; 26 A.L.R.5th 1.

Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him, 36 A.L.R.4th 907.

40-5-54.1. Denial or suspension of license for noncompliance with child support order.

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

(1) "Agency" means the agency within the Department of Human Services which is responsible for enforcing orders for child support pursuant to this article.

(2) "Certificate of mailing" means a delivery method utilized by the United States Postal Service which provides evidence that an item has been sent and the date such item was accepted.

(3) "Compliance with an order for child support" means, as set forth in a court order, administrative order, or contempt order for child support, the obligor is not more than 60 calendar days in arrears in making payments in full for current support, periodic payments on a support arrearage, or periodic payments on a reimbursement for public assistance.

(4) "Proof of compliance" means the notice of release issued by the agency or court of competent jurisdiction stating that the delinquent obligor is in compliance with an order for child support.

(b) The department shall suspend, as provided in Code Sections 19-6-28.1 and 19-11-9.3, the license of any driver upon receiving a record from the agency or a court of competent jurisdiction stating that such driver is not in compliance with an order for child support. The department shall send notice of any suspension imposed pursuant to this Code section via certified mail or certificate of mailing to the address reflected on its records as the driver's mailing address. The mailing of such notice by the department shall be deemed conclusively to be notice to such driver of the suspension of his or her driver's license and shall be deemed to satisfy all notice requirements of law, and no further notice to the driver shall be required for the suspensions provided for in this Code section.

(c) The suspension or denial of an application for issuance or renewal of a license shall be for an indefinite period and until such person shall provide proof of compliance with an order for child support. Such person's license shall be reinstated if the person submits proof of compliance with an order for child support from the agency or court of competent jurisdiction and pays a restoration fee of $35.00 or $25.00 when such reinstatement is processed by mail for the return of his or her license.

(d) Any person who receives notice from the agency that his or her license is subject to denial or suspension may request a hearing and appeal as provided for in Code Section 19-6-28.1 or 19-11-9.3. Notwithstanding any provisions of law to the contrary, the hearings and appeal procedures provided for in such Code sections shall be the only such procedures required for purposes of this Code section.

History.
Code 1981, § 40-5-54.1, enacted by Ga. L. 1996, p. 453, § 11; Ga. L. 2000, p. 951, § 5-17; Ga. L. 2008, p. 171, § 4/HB 1111; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2020, p. 199, § 1-2/HB 463.

40-5-55. Implied consent to chemical tests.

(a) The State of Georgia considers that any person who drives or is in actual physical control of any moving vehicle in violation of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391. The test or tests shall be administered as soon as possible to any person who operates a motor vehicle upon the highways or elsewhere throughout this state who is involved in any traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which of the test or tests shall be administered, provided a blood test with drug screen may be administered to any person operating a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities.

(b) Any person who is dead, unconscious, or otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Code section, and the test or tests may be administered, subject to Code Section 40-6-392.

(c) As used in this Code section, the term "traffic accident resulting in serious injuries or fatalities" means any motor vehicle accident in which a person was killed or in which one or more persons suffered a fractured

bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness.

History.

Ga. L. 1968, p. 448, § 2; Ga. L. 1974, p. 562, § 2; Ga. L. 1974, p. 633, § 3; Code 1933, § 68B-306, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 1000, § 3; Ga. L. 1985, p. 630, § 1; Ga. L. 1985, p. 758, § 2; Ga. L. 1987, p. 1489, § 1; Ga. L. 1989, p. 1698, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 2; Ga. L. 1992, p. 912, § 1; Ga. L. 1992, p. 2564, § 1; Ga. L. 1993, p. 940, § 2; Ga. L. 2001, p. 208, § 1-1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, subsection (g) was redesignated as present subsection (c) in light of the amendment to this Code section by Ga. L. 1992, p. 2564, § 1.

Law reviews.

For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

For comment, "Is There a Georgia Supreme Court, Problem? Analyzing the Georgia Supreme Court's New Peculiar Approach Towards Breathalyzers and Implied Consent Law," see 71 Mercer L. Rev. 393 (2019).

JUDICIAL DECISIONS

Analysis

General Consideration
Notice
Testing
Serious Injury
Admissibility

General Consideration

Strict construction. — Former Code 1933, § 68B-306 (see now O.C.G.A. § 40-5-55) was in derogation of the common law and must be strictly construed and followed. Hardison v. Chastain, 151 Ga. App. 678, 261 S.E.2d 425, 1979 Ga. App. LEXIS 2745 (1979).

Construction with O.C.G.A. § 40-5-67.1. — O.C.G.A. § 40-5-55 is the springboard for a law enforcement officer's duties under O.C.G.A. § 40-5-67.1 to request chemical testing of a driver's bodily substances and to inform the driver of the implied consent warning; the two statutes are in pari materia since the statutes relate to the same subject matter. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Constitutionality. — Since, under the Constitution of Georgia, the state may constitutionally take a blood sample from a defendant without defendant's consent, O.C.G.A. §§ 40-5-55 and 40-6-392 grant, rather than deny, a right to a defendant by providing for refusal to take such a test. Allen v. State, 254 Ga. 433, 330 S.E.2d 588, 1985 Ga. LEXIS 740 (1985).

Choice provided to a DUI defendant under Georgia law — submitting to a blood-alcohol test or refusing to submit, with resultant sanctions — is not so painful, dangerous, or severe, or so violative of religious beliefs, that no choice actually exists, and does not amount to compulsion on behalf of the state or a violation of due process. Allen v. State, 254 Ga. 433, 330 S.E.2d 588, 1985 Ga. LEXIS 740 (1985).

Nothing in the implied consent law prohibits an officer from advising a driver of the driver's implied consent rights and requesting multiple chemical tests at one

time, and such a request would not violate the Fourth Amendment as an unreasonable attempt to "shop" through the driver's bodily fluids in search of evidence. McKeown v. State, 187 Ga. App. 685, 371 S.E.2d 243, 1988 Ga. App. LEXIS 815 (1988).

Choice afforded a suspect under O.C.G.A. § 40-5-55 either to agree or refuse to take a test is not protected by the privilege against self-incrimination since there is a distinction between compelling an arrestee to perform some act such as a field sobriety test versus requiring the arrestee to submit to the collection of evidence from the arrestee's person, such as providing a urine sample. Kehinde v. State, 236 Ga. App. 400, 512 S.E.2d 311, 1999 Ga. App. LEXIS 184 (1999), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Implied consent provision in O.C.G.A. § 40-5-55(a) is unconstitutional as violative of Ga. Const. 1983, Art. I, Sec. I, Para. XIII, and the Fourth and Fourteenth Amendments of the United States Constitution because it authorizes a search and seizure, chemical testing of a suspect's blood, without probable cause that the suspect had been driving while impaired since the suspect was involved in an accident involving serious injuries or fatalities. Cooper v. State, 277 Ga. 282, 587 S.E.2d 605, 2003 Ga. LEXIS 842 (2003), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Georgia Supreme Court has held that O.C.G.A. § 40-5-55(a) is unconstitutional to the extent it requires chemical testing of the driver of a vehicle involved in a traffic accident resulting in serious injuries or death as it violates the Fourth and Fourteenth Amendments of the United States Constitution because the statute authorizes a search and seizure without probable cause; thus, when testing is conducted based upon the seriousness of injuries in an accident, rather than upon probable cause that the person has violated O.C.G.A. § 40-6-391, the results are inadmissible. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876, 2003 Ga. App. LEXIS 1431 (2003).

Defendant's claim that the blood test results were improperly admitted on the basis that O.C.G.A. § 40-5-55 was unconstitutional lacked merit as the defendant failed to raise that issue until the motion for new trial, and the constitutionality issue was not properly before the trial court at that time because it was too late to raise that issue after guilty verdicts against the defendant had been returned. Verlangieri v. State, 273 Ga. App. 585, 615 S.E.2d 633, 2005 Ga. App. LEXIS 580 (2005), cert. denied, No. S05C1689, 2005 Ga. LEXIS 568 (Ga. Sept. 19, 2005).

Because a defendant was arrested for driving under the influence under O.C.G.A. § 40-6-391 based on probable cause and the state complied with the implied consent requirements of O.C.G.A. § 40-5-55, the defendant could not complain that drug and alcohol testing violated the search and seizure provisions of the Fourth Amendment or the Georgia Constitution because the implied consent statute allowed for the warrantless compelled testing of bodily fluids based on the existence of probable cause, but without proof of the existence of exigent circumstances. Cornwell v. State, 283 Ga. 247, 657 S.E.2d 195, 2008 Ga. LEXIS 27 (2008).

Measurement of blood alcohol content based on a breath test requires the cooperation of the person being tested and compelling a defendant to perform an act that is incriminating in nature is precisely what Ga. Const. 1983, Art. I, Sec. I, Para. XVI prohibits. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Ga. Const. 1983, Art. I, Sec. I, Para. XVI was held to protect against compelled breath tests and affords individuals a constitutional right to refuse testing. Submitting to a breath test implicates a person's right against compelled self-incrimination and prior decisions holding otherwise are overruled. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Trial court's denial of the defendant's motion to suppress was reversed because the Georgia Supreme Court concluded that Ga. Const. 1983, Art. I, Sec. I, Para.

General Consideration (Cont'd)

XVI precluded admission of evidence that the suspect refused to consent to the breath test, thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to the extent that the statutes allow the defendant's refusal to submit to a breath test to be admitted into evidence at a criminal trial. Elliott v. State, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019) (decided under former versions of Code Sections 40-5-67.1 and 40-6-392).

Section does not apply to alco-sensor test. — Argument that the results of an alco-sensor test were inadmissible because the defendant submitted to the test at the request of the defendant's wife, and not the officer's request, were meritless because O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4) did not apply to the administration of the alco-sensor test. Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795, 2009 Ga. App. LEXIS 378 (2009).

Advice of counsel at time of test. — Person was not entitled to advice of counsel when deciding whether to submit to test under former Code 1933, § 68B-306 (see now O.C.G.A. § 40-5-55). Department of Pub. Safety v. Maples, 149 Ga. App. 484, 254 S.E.2d 724, 1979 Ga. App. LEXIS 1900 (1979), superseded by statute as stated in Miles v. Ahearn, 243 Ga. App. 741, 534 S.E.2d 175, 2000 Ga. App. LEXIS 549 (2000); Hardison v. Chastain, 151 Ga. App. 678, 261 S.E.2d 425, 1979 Ga. App. LEXIS 2745 (1979).

Arrest required. — O.C.G.A. § 40-5-55(a), as the statute now stands, provides that consent is implied only if a person is arrested for a violation of O.C.G.A. § 40-6-391. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876, 2003 Ga. App. LEXIS 1431 (2003).

Arrest not required after defendant received serious injuries in accident. — After a defendant was involved in an accident which resulted in the defendant sustaining serious injuries, the investigating officer had probable cause to believe that the defendant was driving under the influence and, therefore, the officer was not required to arrest the defendant before reading the implied consent warning; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read to that suspect. Hough v. State, 279 Ga. 711, 620 S.E.2d 380, 2005 Ga. LEXIS 647 (2005).

Balancing implied consent with constitutional rights. — Stated purpose of O.C.G.A. § 40-5-55 is to protect the citizens of this state from individuals driving under the influence because these drivers constitute "a direct and immediate threat to the welfare and safety of the general public." This extremely important purpose, in turn, must be balanced against the intrusion created by chemical testing on the individual's Fourth Amendment rights after the individual has been involved in a traffic accident involving serious injuries or fatalities and the investigating officer has probable cause to believe that the individual was driving under the influence. In considering this balance, it must further be remembered that the Fourth Amendment was designed to protect individuals only from unreasonable searches. In a scenario where the driver/defendant is seriously injured in an automobile accident, given the presence of probable cause, the requirement that a person submit to a chemical test is inherently reasonable in the balance, and the Fourth Amendment's "probable cause yardstick" measures up to be constitutionally sound. Hough v. State, 279 Ga. 711, 620 S.E.2d 380, 2005 Ga. LEXIS 647 (2005).

Grounds to invoke the implied consent procedure. — Police had reasonable grounds to invoke defendant's implied consent to chemical testing when defendant was arrested in connection with a driving related offense, driving with a revoked license, and the officer identified a strong odor of alcohol on defendant's person. Duvall v. State, 250 Ga. App. 87, 550 S.E.2d 479, 2001 Ga. App. LEXIS 693 (2001).

Before an unconscious person could have been deemed not to have withdrawn implied consent to blood alcohol testing, that implied consent must have first ex-

isted as provided by O.C.G.A. § 40-5-55(a); consent was implied only if a person was arrested for a violation of O.C.G.A. § 40-6-391, and since a defendant was not arrested for any such violation before the blood test was conducted, a trial court properly suppressed the results of the blood test. State v. Bass, 273 Ga. App. 540, 615 S.E.2d 589, 2005 Ga. App. LEXIS 565 (2005).

Suppression of the results of a state-administered breath test because an officer did not specifically state a defendant was being arrested for DUI was error. Acknowledged probable cause to arrest the defendant for DUI coupled with the defendant's actual arrest satisfied the requirements of O.C.G.A. § 40-5-55 and provided the grounds for invoking the implied consent procedures including reading the defendant a standard implied consent rights form. State v. Underwood, 283 Ga. 498, 661 S.E.2d 529, 2008 Ga. LEXIS 422 (2008).

Failure to submit to chemical test by arresting officer. — Because the defendant refused to submit to the chemical test required by the arresting officer pursuant to O.C.G.A. § 40-5-55, the defendant was excluded from the discovery provisions of O.C.G.A. § 40-6-392(a)(4), and the trial court correctly denied the defendant's discovery request made pursuant to those provisions. Massey v. State, 331 Ga. App. 430, 771 S.E.2d 122, 2015 Ga. App. LEXIS 170 (2015), cert. denied, No. S15C1142, 2015 Ga. LEXIS 411 (Ga. June 1, 2015).

Serious injury or fatality of driver not prerequisite to chemical testing. — O.C.G.A. § 40-5-55(a) does not require that the serious injury or fatality required to have resulted from a traffic accident must have been suffered by the driver whose bodily substances are sought for chemical testing. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Rights read by non-arresting officer. — Implied consent statute was not violated because an officer other than the arresting officer read the defendant's rights to the defendant. Edge v. State, 226 Ga. App. 559, 487 S.E.2d 117, 1997 Ga. App. LEXIS 700 (1997), overruled in part, Zilke v. State, 299 Ga. 232, 787 S.E.2d 745, 2016 Ga. LEXIS 422 (2016).

Non-English speaking driver. — Non-English-speaking driver is not in a condition rendering such person incapable of refusal for the purposes of O.C.G.A. § 40-5-55(b). Lee v. State, 324 Ga. App. 28, 749 S.E.2d 32, 2013 Ga. App. LEXIS 787 (2013).

Defendant's challenge to an implied consent jury instruction was rejected as the challenged language came from the statute, not from an appellate court opinion; the defendant's claim that the instruction contained an appellate court's interpretation had been rejected in two other binding cases. Jones v. State, 273 Ga. App. 192, 614 S.E.2d 820, 2005 Ga. App. LEXIS 441 (2005).

Effect of search warrant threat on consent. — Defendant's conviction was properly reversed because the police improperly threatened to obtain a search warrant to obtain blood and urine for testing through a catheter after the defendant invoked the right under the implied consent law to refuse the testing. State v. Collier, 279 Ga. 316, 612 S.E.2d 281, 2005 Ga. LEXIS 294 (2005).

Police do not have the authority to seek a search warrant to compel a defendant to submit blood and urine samples for drug testing after a defendant has invoked the defendant's right under the implied consent law to refuse the testing. State v. Collier, 279 Ga. 316, 612 S.E.2d 281, 2005 Ga. LEXIS 294 (2005).

Effect of time lapse between advisement and statement. — In a vehicular homicide prosecution, even if the seizure of defendant's blood sample, following an implied consent advisement, under O.C.G.A. § 40-5-55(a), was illegal, the defendant's statement made to another officer four hours later was admissible due to the amount of time between the advisement and the statement and the fact that two different officers were involved. McGrath v. State, 277 Ga. App. 825, 627 S.E.2d 866, 2006 Ga. App. LEXIS 209 (2006), cert. denied, No. S06C1181, 2006 Ga. LEXIS 509 (Ga.

General Consideration (Cont'd)

July 14, 2006), cert. denied, 549 U.S. 1223, 127 S. Ct. 1287, 167 L. Ed. 2d 105, 2007 U.S. LEXIS 2328 (2007).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. Harrelson v. State, 287 Ga. App. 664, 653 S.E.2d 98, 2007 Ga. App. LEXIS 1055 (2007).

No probable cause for arrest. — Order denying the defendant's motion to suppress any evidence obtained as a result of arrest was reversed because the officer lacked probable cause to arrest the defendant for driving under the influence since the officer testified that the stop was initiated not because of the defendant's driving, but because of an obstructed license plate, and the defendant indicated no signs of intoxication following certain tests and the only evidence was the defendant's admission the defendant had consumed a beer earlier. Bostic v. State, 332 Ga. App. 604, 774 S.E.2d 175, 2015 Ga. App. LEXIS 363 (2015).

Notice

No right to Miranda warnings before taking breath test. — Evidence of defendant's refusal to take a breath test did not need to be excluded simply because the officer did not advise the defendant of defendant's rights. Lankford v. State, 204 Ga. App. 405, 419 S.E.2d 498, 1992 Ga. App. LEXIS 879 (1992), cert. denied, No. S92C1162, 1992 Ga. LEXIS 675 (Ga. July 16, 1992), cert. denied, 506 U.S. 1051, 113 S. Ct. 972, 122 L. Ed. 2d 127, 1993 U.S. LEXIS 93 (1993).

Choice afforded a suspect under O.C.G.A. §§ 40-5-55 and 40-6-392, either to agree or refuse to take a blood-alcohol test, is not protected by the privilege against self-incrimination and the form signed by the defendant, agreeing to take a breath test, was likewise unprotected, such that the court erred in suppressing the test based on the police officer's failure to inform defendant of defendant's Miranda rights. State v. Mack, 207 Ga. App. 287, 427 S.E.2d 615, 1993 Ga. App. LEXIS 154 (1993).

No Miranda warnings were required before the defendant made a statement since the statement was made voluntarily, and was not made in response to police interrogation or while in police custody. Stevenson v. State, 264 Ga. 892, 453 S.E.2d 18, 1995 Ga. LEXIS 62 (1995).

Repetition of warnings not required. — Implied consent statute was properly implemented, since the defendant was given the implied consent warnings when the defendant was arrested for driving with a suspended license but was not again given the implied consent warnings after the defendant took a breath test and was placed under arrest for driving under the influence. Parsons v. State, 190 Ga. App. 803, 380 S.E.2d 87, 1989 Ga. App. LEXIS 399 (1989).

Police officer was not required to again allow the defendant to consider the defendant's options once the defendant knew the defendant had failed an administered breath test by returning to the defendant the form which the defendant had previously reviewed, initialled, and signed so as to indicate the defendant's desire for an additional test. State v. Hull, 210 Ga. App. 72, 435 S.E.2d 284, 1993 Ga. App. LEXIS 1043 (1993).

In all cases in which police officers request a chemical test of a person's blood, urine, or other bodily substances in connection with the operation of a motor vehicle for the purpose of determining whether the driver was under the influence of alcohol or drugs, the officers must give the notice required by the implied consent statute. State v. Morgan, 289 Ga. App. 706, 658 S.E.2d 237, 2008 Ga. App. LEXIS 189 (2008), cert. denied, No. S08C1017, 2008 Ga. LEXIS 504 (Ga. June 2, 2008), superseded by statute as stated in Diaz v. State, 344 Ga. App. 291, 810 S.E.2d 566, 2018 Ga. App. LEXIS 22 (2018).

Notice was timely. — Two-hour delay before the defendant was advised of the defendant's implied consent rights was not untimely because the delay was caused by a newly hired officer's call for assistance to confirm that officer's determination that the defendant was driving under the influence. Edge v. State, 226 Ga. App. 559, 487 S.E.2d 117, 1997 Ga. App. LEXIS 700 (1997), overruled in part, Zilke v. State, 299 Ga. 232, 787 S.E.2d 745, 2016 Ga. LEXIS 422 (2016), overruled in part as stated in Suggs v. State, 343 Ga. App. 71, 806 S.E.2d 224, 2017 Ga. App. LEXIS 448 (2017).

Trial court did not err in denying a defendant's motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped and it was determined that the defendant was driving under the influence; the defendant consented to such a test as a driver using a vehicle on the Georgia highways and delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. Cain v. State, 274 Ga. App. 533, 617 S.E.2d 567, 2005 Ga. App. LEXIS 696 (2005).

Trial court did not err by refusing to suppress the defendant's blood-test results based on not being under arrest prior to being read Georgia's implied consent notice because, although the defendant's recollection differed from that of the law-enforcement officer, and although defense counsel cross-examined the officer extensively as to alleged inconsistencies in the chronology of events, the officer testified that the officer issued citations to the defendant before reading Georgia's implied consent notice. Chernowski v. State, 330 Ga. App. 702, 769 S.E.2d 126, 2015 Ga. App. LEXIS 45 (2015).

Notice was adequate. — Defendant's argument that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs failed; nothing in O.C.G.A. § 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117, 2006 Ga. App. LEXIS 1220 (2006).

There was no error in the trial court's conclusion that the officer read the defendant the implied consent notice before the blood sample was obtained as the officer testified that the officer had done so and the nurse who obtained the blood sample testified the nurse never drew a patient's blood for law enforcement purposes unless the nurse personally observed an officer read the implied consent notice to the patient. Diaz v. State, 344 Ga. App. 291, 810 S.E.2d 566, 2018 Ga. App. LEXIS 22 (2018), cert. denied, No. S18C0793, 2018 Ga. LEXIS 504 (Ga. Aug. 2, 2018).

Defendant advised of options. — Any failure by the Department of Transportation in complying with the reporting requirements of O.C.G.A. § 40-5-51 pertaining to suspension or revocation of operating privileges of nonresident motorists did not diminish the fact that former subsection (c) of O.C.G.A. § 40-5-55, in effect at the time of the offense, evoked procedures at the time of defendant's arrest for immediate suspension of any person's driving privileges upon refusal to submit to the chemical test prescribed by O.C.G.A. § 40-5-55(a); consequently, since the trial transcript revealed that the deputy advised the defendant at the time of arrest of the defendant's options pursuant to Georgia's implied consent law, there was no basis for excluding evidence of the results of the state-administered breath test. Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70, 1993 Ga. App. LEXIS 1590 (1993), cert. denied, No. S94C0613, 1994 Ga. LEXIS 556 (Ga. Feb. 28, 1994), overruled on other grounds, State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604, 1995 Ga. App. LEXIS 232 (1995).

Implied consent notice given before arrest. — Required timing of the implied consent notice for a person who is involved in a traffic incident resulting in serious injuries or a fatality, and who is not arrested at that time for a violation of O.C.G.A. § 40-6-391 is: (a) law enforcement officers must administer

Notice (Cont'd)

chemical tests for alcohol and drugs as soon as possible; and (b) the implied consent notice must be given at the time such test is requested, which may or may not be at the time of actual testing. Joiner v. State, 239 Ga. App. 843, 522 S.E.2d 25, 1999 Ga. App. LEXIS 1075 (1999), overruled in part, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899, 2004 Ga. App. LEXIS 1586 (2004).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the appellate court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774, 2004 Ga. App. LEXIS 895 (2004), cert. dismissed, No. S04C1890, 2004 Ga. LEXIS 857 (Ga. Sept. 27, 2004), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Notice can be given in close proximity before arrest. — O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when the notice preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. Kahl v. State, 268 Ga. App. 879, 602 S.E.2d 888, 2004 Ga. App. LEXIS 1041, overruled in part, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899, 2004 Ga. App. LEXIS 1586 (2004).

Warning read to two suspects at the same time. — Even though the arresting officer testified that the officer read implied consent warnings to the defendant and the driver of another vehicle at the same time, since the officer also testified that the officer "independently" advised both suspects of their options before subjecting the suspects to a breath test, the trial court did not err in failing to suppress the results of the test. Hilliard v. State, 216 Ga. App. 618, 455 S.E.2d 82, 1995 Ga. App. LEXIS 200 (1995), cert. denied, No. S95C1077, 1995 Ga. LEXIS 741 (Ga. May 25, 1995).

Warning to commercial driver. — Notices advising the defendant that if the defendant refused testing the defendant would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. State v. Becker, 240 Ga. App. 267, 523 S.E.2d 98, 1999 Ga. App. LEXIS 1314 (1999), cert. denied, No. S00C0238, 2000 Ga. LEXIS 195 (Ga. Feb. 25, 2000).

Driver afforded sufficient due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592, 2008 Ga. LEXIS 254 (2008).

Parent's consent to minor's blood test not necessary. — Fact that the driver was a minor at the time the driver's blood was taken did not require that the driver's parents, after having been informed of the driver's rights under the implied consent law, consent to the taking of the driver's blood. Long v. State, 176

Ga. App. 89, 335 S.E.2d 587, 1985 Ga. App. LEXIS 2288 (1985).

Improper notice required suppression of blood test results. — Trial court erroneously applied the amendment of O.C.G.A. § 40-5-67.1(d) retroactively to the defendant's criminal matter, wherein the court denied suppression of a blood test result taken of the defendant as the investigating officer failed to provide the defendant with the requisite notice of the implied consent rights under O.C.G.A. § 40-5-55(a) prior to obtaining the defendant's consent; retroactive application of § 40-5-67.1(d) was improper because the amendment eliminated the defendant's substantive right to refuse to submit to testing. Williams v. State, 297 Ga. App. 626, 677 S.E.2d 773, 2009 Ga. App. LEXIS 493 (2009).

Notice given one hour after arrest rendered results inadmissible. — Counsel was ineffective for failing to file a motion to suppress defendant's blood sample, which had tested positive for methamphetamine, because the defendant was not read the defendant's implied consent rights until nearly an hour after the defendant was arrested for leaving the scene of an accident, instead of at the time of defendant's arrest as required by O.C.G.A. §§ 40-5-55 and 40-6-391(a)(4). Thrasher v. State, 300 Ga. App. 154, 684 S.E.2d 318, 2009 Ga. App. LEXIS 1106 (2009).

Arresting officer not required to ensure driver understands notice. — As to the defendant's conviction for driving under the influence, the trial court did not misapply O.C.G.A. § 40-5-55(b) when the court denied the defendant's motion in limine to preclude the results of the breath test because it was presumed that the court followed the line of cases holding that an arresting officer is not required to ensure that the driver understands the implied consent notice. Lee v. State, 324 Ga. App. 28, 749 S.E.2d 32, 2013 Ga. App. LEXIS 787 (2013).

Notice not required for unconscious defendant. — Trooper was not required to give the implied consent notice to the defendant, who was unconscious and had fractured a femur, was deemed to have given consent to testing. Bailey v. State, 338 Ga. App. 428, 790 S.E.2d 98, 2016 Ga. App. LEXIS 433 (2016), cert. dismissed, No. S17C0132, 2017 Ga. LEXIS 259 (Ga. Apr. 17, 2017), overruled in part, Welbon v. State, 301 Ga. 106, 799 S.E.2d 793, 2017 Ga. LEXIS 328 (2017).

Testing

Determination of actual consent required. — Based on the United States Supreme Court decision in Missouri v. McNeely, in which the court rejected a per se rule that the natural metabolization of alcohol in a person's bloodstream constitutes an exigency justifying an exception to the U.S. Const., amend. 4's search warrant requirement for nonconsensual blood testing in all driving under the influence cases, the Georgia Supreme Court overruled Strong v. State, 231 Ga. 514 (1973), to the extent that decision holds otherwise. Williams v. State, 296 Ga. 817, 771 S.E.2d 373, 2015 Ga. LEXIS 197 (2015).

Defendant's driving under the influence case was remanded to the trial court because in considering the defendant's motion to suppress, the court failed to address whether the defendant gave actual consent to the procuring and testing of blood, which would require the determination of the voluntariness of the consent under the totality of the circumstances. Williams v. State, 296 Ga. 817, 771 S.E.2d 373, 2015 Ga. LEXIS 197 (2015).

Authority of officer to designate type of chemical test. — O.C.G.A. § 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. Jordan v. State, 223 Ga. App. 176, 477 S.E.2d 583, 1996 Ga. App. LEXIS 1042 (1996), cert. denied, No. S97C0238, 1997 Ga. LEXIS 234 (Ga. Feb. 14, 1997).

Trooper testified to extensive training in administering field sobriety tests, that the trooper had performed the HGN test many times, and described the standard

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procedure in administering the test, thus, given that evidence, the trial court was authorized to conclude that the trooper substantially performed the test in accordance with training and guidelines. Garrison v. State, 368 Ga. App. 819, 890 S.E.2d 869, 2023 Ga. App. LEXIS 380 (2023).

Right to an alternative test. — Defendant's failure to complete a breath test without justification negated defendant's right to an alternative test. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229, 1997 Ga. App. LEXIS 1536 (1997), cert. denied, No. S98C0530, 1998 Ga. LEXIS 400 (Ga. Mar. 6, 1998).

Test or tests. — As long as a defendant's right to an independent chemical test was clear, an officer may have obtained consent for more than one chemical test and then elected which consented-to "test or tests" were to have been administered; an order suppressing defendant's breath test results was reversed. State v. Brantley, 263 Ga. App. 209, 587 S.E.2d 383, 2003 Ga. App. LEXIS 1158 (2003).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the presence of alcohol, drugs, or marijuana. State v. Sumlin, 224 Ga. App. 205, 480 S.E.2d 260, 1997 Ga. App. LEXIS 14 (1997).

Retest allowed. — When, due to inadvertence, a breathalyzer test of a defendant's breath cannot be completed and a retest is possible without inconveniencing the defendant and without delay, such a retest is not a violation of the defendant's rights and is not a basis for suppression of the results of the test. Montgomery v. State, 174 Ga. App. 95, 329 S.E.2d 166, 1985 Ga. App. LEXIS 2695 (1985); Shadix v. State, 179 Ga. App. 644, 347 S.E.2d 298, 1986 Ga. App. LEXIS 2655 (1986).

Independent blood test. — Trial court did not err in excluding defendant's testimony regarding an independent blood test made more than eight hours after the arrest. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229, 1997 Ga. App. LEXIS 1536 (1997), cert. denied, No. S98C0530, 1998 Ga. LEXIS 400 (Ga. Mar. 6, 1998).

Defendant's motion to suppress the results of a blood test administered pursuant to a search warrant was properly denied because the statute dealing with chemical tests for alcohol or drugs in a defendant's blood did not grant the defendant the right to an independent test when the officer obtained a search warrant for a blood test; the defendant forfeited the defendant's right to independent testing by refusing the arresting officer's request to submit to a state-administered breath test after being advised under the implied consent law; and the defendant was not entitled to take advantage of the independent test incentive as the defendant refused to submit to the chemical testing requested by the arresting officer. Hynes v. State, 341 Ga. App. 500, 801 S.E.2d 306, 2017 Ga. App. LEXIS 229 (2017), cert. denied, No. S17C1781, 2017 Ga. LEXIS 983 (Ga. Dec. 11, 2017).

Chemical test despite absence of probable cause. — Chemical test may be requested under the implied consent statute even though the arresting officer lacks probable cause to arrest for substance-influenced driving if the officer has at least reasonable grounds to believe that a violation of O.C.G.A. § 40-5-55 has occurred. Davis v. State, 187 Ga. App. 517, 370 S.E.2d 779, 1988 Ga. App. LEXIS 787 (1988).

Results of a urine test were admissible in a prosecution for driving under the influence of methamphetamine since the officer had reasonable grounds to arrest the defendant based on the fact that the defendant's eyes were dilated and the defendant's inability to give the officer any explanation as to how or why the defendant drove the defendant's vehicle into the rear of a truck. Martin v. State, 214 Ga. App. 614, 448 S.E.2d 471, 1994 Ga. App. LEXIS 978 (1994).

Probable cause was required before chemical testing may be administered on a driver involved in an accident involving

serious injuries because the provision of O.C.G.A. § 40-5-55 allowing such tests after accidents involving serious injury is unconstitutional to the extent that the law requires chemical testing regardless of any determination of probable cause. Evidence of a chemical test taken in this situation without probable cause was subject to suppression. Ferguson v. State, 277 Ga. 530, 590 S.E.2d 728, 2003 Ga. LEXIS 1010 (2003).

Deoxyribonucleic acid (DNA) testing not authorized. — Blood sample taken pursuant to the implied consent law could not be subject to deoxyribonucleic acid (DNA) testing. State v. Gerace, 210 Ga. App. 874, 437 S.E.2d 862, 1993 Ga. App. LEXIS 1360 (1993).

Restrictions to testing authorized by warrant. — Warrant only authorized testing for alcohol, so testing for drugs exceeded the scope and the police could not use a lawful blood draw to then test for anything without limitation as the privacy interest in blood requires a warrant specifically authorizing drug testing. State v. De La Paz, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Two warrants were held not required when law enforcement wishes to test a DUI suspect's blood. One warrant will suffice, but that warrant's terms and limitations must be honored by law enforcement and will be enforced by the courts. State v. De La Paz, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Drug testing was not part of consent. — Defendant's consent to testing in response to the implied consent warning was given with the understanding that it was to determine if the defendant was under the influence for purposes of violations of O.C.G.A. § 40-6-391 and the test results could not be used to support a charge of possession of marijuana. State v. Lewis, 233 Ga. App. 390, 504 S.E.2d 242, 1998 Ga. App. LEXIS 922 (1998), cert. denied, No. S98C1791, 1998 Ga. LEXIS 1193 (Ga. Nov. 20, 1998).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of whether the refusal resulted from the defendant's confusion, it nevertheless remained a refusal; moreover, the defendant's choice to construe the law allowing for an option of designating the type of state-administered test was of no moment. State v. Brookbank, 283 Ga. App. 814, 642 S.E.2d 885, 2007 Ga. App. LEXIS 202 (2007).

Conduct constituted refusal. — When a defendant went to a breathalyzer machine but plugged the hole with the defendant's tongue and declined to blow into the tube, the defendant's conduct could be viewed as a refusal to take the test; there was no evidence that the defendant suffered from a physical or medical condition that would prevent the defendant from providing an adequate breath sample. State v. Stewart, 286 Ga. App. 542, 649 S.E.2d 525, 2007 Ga. App. LEXIS 682 (2007), cert. denied, No. S07C1851, 2008 Ga. LEXIS 120 (Ga. Jan. 28, 2008).

Testing positive for drugs but negative for alcohol. — Defendant was not entitled to suppression of the blood test in which the defendant tested positive for cocaine rather than alcohol after the defendant consented to the test after implied consent warnings were read to the defendant; nothing in O.C.G.A. § 40-5-55 excluded testing for drugs and alcohol as the defendant was notified that the test was for drugs and alcohol. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117, 2006 Ga. App. LEXIS 1220 (2006).

Trial court did not err in denying defendant's motion to exclude state-administered test results. — Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in the defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. Plemmons v. State, 326 Ga.

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App. 765, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014), cert. denied, No. S14C1064, 2014 Ga. LEXIS 572 (Ga. June 30, 2014).

Serious Injury

Accident involving serious injury. — Officers' observation that there was a lot of blood at the accident scene and that injuries included disfigurement of the passenger's leg and swelling of the driver's ankle constituted sufficient evidence of "serious" injury so as to invoke the driver's implied consent to a blood-alcohol test. Lewis v. State, 215 Ga. App. 796, 452 S.E.2d 228, 1994 Ga. App. LEXIS 1362 (1994).

Because the traffic accident in which the defendant was involved resulted in a serious injury, the defendant was deemed by operation of law, pursuant to O.C.G.A. § 40-5-55, to have given consent to a chemical test of the defendant's bodily substances for the presence of alcohol or any other drug. Stevenson v. State, 264 Ga. 892, 453 S.E.2d 18, 1995 Ga. LEXIS 62 (1995).

Absent an arrest, a person involved in an accident resulting in serious injuries or fatalities must be informed of the person's implied consent rights within a reasonable amount of time after the accident as determined by the circumstances, and, when possible, before the administration of any state tests. Seith v. State, 225 Ga. App. 684, 484 S.E.2d 690, 1997 Ga. App. LEXIS 374 (1997).

In a vehicular homicide prosecution, when the defendant was given an implied consent advisement, under O.C.G.A. § 40-5-55(a), and a sample of blood was seized, the blood sample was admissible because the defendant was not required to submit to testing merely because of involvement in a traffic accident involving serious injuries but because an investigating law enforcement officer had probable cause to believe that the defendant had been driving under the influence. McGrath v. State, 277 Ga. App. 825, 627 S.E.2d 866, 2006 Ga. App. LEXIS 209 (2006), cert. denied, No. S06C1181, 2006 Ga. LEXIS 509 (Ga. July 14, 2006), cert. denied, 549 U.S. 1223, 127 S. Ct. 1287, 167 L. Ed. 2d 105, 2007 U.S. LEXIS 2328 (2007).

Trial court erred in granting the defendant's motion to suppress results from a blood test performed prior to any arrest as: (1) the evidence showed that the defendant was involved in a car wreck resulting in serious injury before blood was drawn; and (2) a sheriff's deputy had probable cause to suspect that the defendant had been driving under the influence of alcohol; moreover, contrary to the defendant's assertion, the fact that a loss of consciousness was temporary did not cause the blood test to fall outside the ambit of O.C.G.A. § 40-5-55(c). State v. Umbach, 284 Ga. App. 240, 643 S.E.2d 758, 2007 Ga. App. LEXIS 168 (2007).

As a defendant who sustained a fractured jaw when the defendant's van hit a utility pole was "involved in a traffic accident resulting in serious injury" within the meaning of O.C.G.A. § 40-5-55(c), and the responding officer, who smelled the odor of alcohol on the defendant, had probable cause to believe the defendant was driving under the influence of alcohol, the defendant was properly required to submit to a blood test at the hospital without being arrested. Fowler v. State, 294 Ga. App. 864, 670 S.E.2d 448, 2008 Ga. App. LEXIS 1194 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. Feb. 23, 2009), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

Following a one-car accident resulting in a fatality and other serious injuries, because a witness who observed the defendant just prior to the accident indicated that the defendant smelled of alcohol, the helicopter crew who transported the defendant also noticed the smell of alcohol, and the accompanying officer observed that the defendant smelled of alcohol and had glassy eyes and slurred speech, the officer had a sufficient basis to obtain a blood sample from the defendant for testing pursuant to O.C.G.A. § 40-5-55(a). Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831, 2012 Ga. App. LEXIS 227 (2012).

While O.C.G.A. § 40-5-55 provided that blood-alcohol concentration (BAC) tests

had to be administered as soon as possible to anyone operating a motor vehicle who was involved in an accident resulting in serious injuries, the results of the defendant's BAC test were admissible as there was no legal authority standing for the proposition that a BAC test performed more than three hours after an accused last drove was inadmissible. Butler v. State, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Suppression of evidence. — Accident in which the defendant was involved was not severe enough to trigger the implied consent statute, and, thus, the trial court erred in not suppressing defendant's blood test results. Pilkenton v. State, 254 Ga. App. 127, 561 S.E.2d 462, 2002 Ga. App. LEXIS 289 (2002).

Trial court did not err in denying the defendant's motion to suppress evidence seized by a state trooper who was lawfully investigating a serious injury accident the defendant was involved in as evidence the trooper found, specifically, some steel wool and prescription drugs, when coupled with other information the trooper possessed concerning the nature and cause of the crash, provided sufficient probable cause for the trooper to believe that the defendant was driving under the influence; further, the appeals court agreed that the evidence would have been inevitably discovered. Cunningham v. State, 284 Ga. App. 739, 644 S.E.2d 878, 2007 Ga. App. LEXIS 394 (2007).

Dislocated shoulder was not a serious injury as defined by O.C.G.A. § 40-5-55(c) so as to invoke implied consent to blood and urine tests. Miller v. State, 219 Ga. App. 498, 466 S.E.2d 67 (1995).

Law enforcement must be aware of serious injury or fatality. — O.C.G.A. § 40-5-67.1(a) provides the temporal connection not expressly set forth in O.C.G.A. § 40-5-55(a); thus, the officer's request for testing is legally viable under the second contingency of O.C.G.A. § 40-5-55(a), the driver's involvement in a traffic accident resulting in serious injuries or fatalities, only if at the time of the request the driver has been involved in a traffic accident that has resulted in serious injuries or fatalities of which law enforcement is aware. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Accident involving fatality. — In a case involving a fatality, an arrest prior to testing was not required to activate a driver's implied consent. Brown v. State, 218 Ga. App. 469, 462 S.E.2d 420, 1995 Ga. App. LEXIS 759 (1995).

Admissibility

Admission of refusal to submit to blood-alcohol test. — Admission of a refusal to submit to blood-alcohol chemical test does not violate the constitutional right against self-incrimination. Wessels v. State, 169 Ga. App. 246, 312 S.E.2d 361, 1983 Ga. App. LEXIS 3464 (1983).

Court properly allowed into evidence the defendant's refusal to take the state-administered breath test, even though the defendant contended that the defendant was injured and shaken by the accident and was, therefore, incapable of refusing. Hassell v. State, 212 Ga. App. 432, 442 S.E.2d 261, 1994 Ga. App. LEXIS 284 (1994), cert. denied, No. S94C1024, 1994 Ga. LEXIS 694 (Ga. Apr. 28, 1994).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. State v. Leviner, 213 Ga. App. 99, 443 S.E.2d 688, 1994 Ga. App. LEXIS 471 (1994), cert. denied, No. S94C1258, 1994 Ga. LEXIS 940 (Ga. Sept. 9, 1994).

When an officer read a defendant an implied consent notice under O.C.G.A. § 40-5-67.1(b) accurately and timely, the notice was valid irrespective of the defendant's claimed inability to understand the notice; thus, even if the defendant's later refusal to provide a breath sample resulted from a failure to comprehend the consequences of the defendant's conduct, the refusal was admissible against the defendant. State v. Stewart, 286 Ga. App. 542, 649 S.E.2d 525, 2007 Ga. App. LEXIS 682 (2007), cert. denied, No. S07C1851, 2008 Ga. LEXIS 120 (Ga. Jan. 28, 2008).

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In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), because a breath test was permitted as a search incident to the defendant's DUI arrest, the defendant's refusal to take the breath test was not the exercise of the constitutional right against unreasonable searches and seizures, and evidence of the defendant's refusal was properly admitted under O.C.G.A. § 40-5-67.1(b). Cherry v. State, 345 Ga. App. 409, 813 S.E.2d 408, 2018 Ga. App. LEXIS 116 (2018), cert. denied, No. S18C1104, 2018 Ga. LEXIS 720 (Ga. Oct. 22, 2018).

Trial court did not err by denying defendant's motion to suppress defendant's refusal to consent to the state-administered blood test because the record showed that defendant had been arrested when the officer read defendant the implied-consent notice, as while being treated by the EMT at the scene of the accident, defendant repeatedly asked to be taken home and was told by the police officers that defendant could either go to the hospital or be taken to jail. In addition, the record explicitly showed one of the officers informing defendant that defendant was being placed under arrest for driving under the influence of alcohol. Quint v. State, 367 Ga. App. 339, 886 S.E.2d 1, 2023 Ga. App. LEXIS 154 (2023).

Testimony as to officer's precise wording not required. — Trial court did not err in admitting into evidence the results of an intoximeter test performed on defendant when the arresting officer could not recall the precise wording in which the officer gave defendant the implied consent warnings. Cheevers v. Clark, 214 Ga. App. 866, 449 S.E.2d 528, 1994 Ga. App. LEXIS 1082 (1994), cert. denied, 456 S.E.2d 510, 1995 Ga. LEXIS 313 (Ga. 1995).

No coercion by requiring consent or refusal of breath test before allowing phone call. — Trial court's grant of the appellee's motion in limine to suppress the results of a breath test was reversed because refusing to allow the appellee to make a phone call did not constitute coercion as there was no evidence to support the trial court's finding that the appellee's consent to the breath test was obtained after a DUI officer told the appellee that a call to the appellee's daughter could not be made unless the appellee took a breath test, so that finding was clearly erroneous. State v. Council, 348 Ga. App. 497, 823 S.E.2d 817, 2019 Ga. App. LEXIS 32 (2019).

Consent obtained by misleading information. — When nonresident defendant's consent to a chemical breath test was based at least in part on an officer's statement that defendant's refusal to take the test would result in a six-month suspension of defendant's out-of-state driver's license, a penalty which the state was unauthorized to carry out, the defendant was deprived of making an informal choice under the implied consent law, and the test results were inadmissible. Deckard v. State, 210 Ga. App. 421, 436 S.E.2d 536, 1993 Ga. App. LEXIS 1192 (1993).

In a prosecution for driving under the influence, since the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. State v. Leviner, 213 Ga. App. 99, 443 S.E.2d 688, 1994 Ga. App. LEXIS 471 (1994), cert. denied, No. S94C1258, 1994 Ga. LEXIS 940 (Ga. Sept. 9, 1994).

Police officer's warning to nonresident defendant that "Under O.C.G.A. §§ 40-5-153 and 40-5-55, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible overruling, Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and State v. Reich, 210 Ga. App. 407, 436 S.E.2d 703 (1993). State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604, 1995 Ga. App. LEXIS 232 (1995).

Substantial evidence supported the trial court's decision to grant the defen-

dant's motion to suppress evidence that was derived as a result of defendant's submission to a breath test during a traffic stop since the defendant's consent to take the test was based, at least in part, on misleading information from the police officer that defendant's out-of-state license could be suspended if the defendant refused to submit to the test; the officer had no authority to implement such a penalty for refusal. State v. Peirce, 257 Ga. App. 623, 571 S.E.2d 826, 2002 Ga. App. LEXIS 1240 (2002).

Trial court properly suppressed the alco-sensor tests taken by the defendant because the officer incorrectly informed the defendant that the defendant did not have the right to refuse the test; O.C.G.A. § 40-5-55 gave the defendant the right to withdraw implied consent as pursuant to Ga. Const. 1983, Art. I, Sec. I, Para. XIII, a reasonable person in the defendant's position would have thought the defendant, who was ordered to turn around and place the defendant's hands behind the defendant's back after refusing the test, was being placed under arrest. State v. Norris, 281 Ga. App. 193, 635 S.E.2d 810, 2006 Ga. App. LEXIS 1046 (2006), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

No right to advice of counsel before deciding whether to submit to testing. — Motion filed by a defendant to exclude the results of a breath test under the Georgia Implied Consent Law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). Rackoff v. State, 281 Ga. 306, 637 S.E.2d 706, 2006 Ga. LEXIS 978 (2006).

Test results admissible following implied consent warning. — Implied consent warning properly advised the driver of the purposes for which the driver's blood was to be tested, and the test results were thus admissible in a prosecution for driving with the presence of marijuana in the driver's blood. Radcliffe v. State, 234 Ga. App. 576, 507 S.E.2d 759, 1998 Ga. App. LEXIS 1078 (1998), cert. denied, No. S99C0135, 1999 Ga. LEXIS 125 (Ga. Feb. 5, 1999).

Because police had probable cause to believe that a defendant was impaired, in violation of O.C.G.A. § 40-6-391, when the defendant caused a vehicle accident that resulted in serious injury of one vehicle occupant and the death of another occupant, based on the defendant's appearance and statements made to medical personnel, the trial court found that the implied consent notice was properly administered and suppression of the state-administered chemical tests was denied; although the defendant was not under arrest at the time the implied consent notice was read, given the serious injuries resulting from the accident and the fact that there was probable cause to believe the defendant was driving while impaired, the defendant's consent to testing was implied pursuant to O.C.G.A. § 40-5-55. Ellis v. State, 275 Ga. App. 881, 622 S.E.2d 89, 2005 Ga. App. LEXIS 1132 (2005), cert. denied, No. S06C0309, 2006 Ga. LEXIS 88 (Ga. Jan. 30, 2006).

Under Ga. Const. 1983, Art. I, Sec. I, Para. XIII, the defendant could not suppress the evidence of the blood test taken while the defendant was under suspicion for driving under the influence under O.C.G.A. § 40-6-391; because the state complied with the statutory implied consent requirements, the defendant was deemed under the implied consent provisions of O.C.G.A. § 40-5-55 to have given the defendant's consent to a test of the defendant's blood. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117, 2006 Ga. App. LEXIS 1220 (2006).

Grant of the defendant's motion to suppress was reversed because the trial court erred in concluding that the defendant did not actually consent to the state-administered blood test under the totality of the circumstances as the undisputed evidence in the video recording demonstrated that

Admissibility (Cont'd)

the defendant's consent was free and voluntary and the 20-minute delay in the officer's implied consent notice resulted from the officer complying with the defendant's request to perform field sobriety tests. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139, 2016 Ga. App. LEXIS 469 (2016), cert. denied, No. S17C0113, 2017 Ga. LEXIS 261 (Ga. Apr. 17, 2017).

Chemical test results properly suppressed. — Trial court properly granted the defendant's motion to suppress the results of a chemical test of blood based on the undue delay between the arrest, after a traffic stop, and the reading of the implied consent warnings as: (1) the state trooper was presented with numerous opportunities to issue the warnings to the defendant, but did not; and (2) the trial court rejected the trooper's rationale for not reading the defendant the implied consent warnings at any other earlier opportunity, implicitly determining that the trooper's testimony was not credible. State v. Austell, 285 Ga. App. 18, 645 S.E.2d 550, 2007 Ga. App. LEXIS 346 (2007).

Request for testing made before fatality resulted. — Because at the time an officer requested chemical testing under O.C.G.A. § 40-5-55, the defendant had not been arrested and there was no evidence that a serious injury or fatality had resulted from a collision in which the defendant was involved, request for chemical testing was invalid, although the defendant's passenger died 10 days after the request. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Probable cause. — Officers had probable cause to request a blood test under the implied consent statute, as the defendant exhibited several signs of impairment, was wholly unaware of the collision the defendant had caused, had slept in the vehicle for a while after leaving the party where alcohol had been served, and, most importantly, possessed drugs. State v. Hughes, 325 Ga. App. 429, 750 S.E.2d 789, 2013 Ga. App. LEXIS 970 (2013), aff'd, 296 Ga. 744, 770 S.E.2d 636, 2015 Ga. LEXIS 185 (2015).

Appellate court properly reversed the grant of the defendant's motion to suppress because taken together, a reasonable officer could conclude that driving under the influence was a probable explanation following the fatal accident instead of multiple innocent explanations based on the officers believing that the defendant drove through a red light and caused the accident and that a number of unknown pills were found on the defendant. Hughes v. State, 296 Ga. 744, 770 S.E.2d 636, 2015 Ga. LEXIS 185 (2015).

Probable cause and valid consent. — Order denying suppression of chemical test results admitted against a defendant was proper under the implied consent statute, O.C.G.A. § 40-5-55, given evidence that a formal arrest of the defendant prior to reading the implied consent rights was not warranted, and the defendant was being administered medical care. Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800, 2006 Ga. App. LEXIS 798 (2006).

Denial of a defendant's suppression motion was affirmed as a victim with a broken kneecap was seriously injured under O.C.G.A. § 40-5-55(c) and the officers had probable cause based on the defendant's statements, the defendant's glossy eyes, and the odor of alcohol on the defendant's person to believe that the defendant was driving under the influence of alcohol; the officer was not required to arrest the defendant before the implied consent reading. Jenkins v. State, 282 Ga. App. 106, 637 S.E.2d 818, 2006 Ga. App. LEXIS 1317 (2006).

New rule on implied consent testing applied retroactively. — Defendant's conviction was not final when the rule against obtaining chemical test results under the implied consent statute without probable cause to arrest a defendant was announced; thus, the new rule applied retroactively to the defendant's case. Costley v. State, 271 Ga. App. 692, 610 S.E.2d 647, 2005 Ga. App. LEXIS 136 (2005).

Test results inadmissible when no probable cause to arrest defendant for O.C.G.A. § 40-6-391 violation. — Trial court erred in denying the defendant's motion to suppress the

defendant's chemical test results that were obtained under the implied consent statute, O.C.G.A. § 40-5-55(a), since the defendant was not arrested after a fatal crash for any offense in violation of O.C.G.A. § 40-6-391 nor was there probable cause to arrest the defendant for any such violation. Costley v. State, 271 Ga. App. 692, 610 S.E.2d 647, 2005 Ga. App. LEXIS 136 (2005).

Trial court properly granted defendant's motion to suppress the results of a state-administered blood test showing that the defendant had marijuana in the defendant's system at the time of a fatal car accident as the testing was obtained by an officer without the officer giving the implied consent notice to the defendant. State v. Morgan, 289 Ga. App. 706, 658 S.E.2d 237, 2008 Ga. App. LEXIS 189 (2008), cert. denied, No. S08C1017, 2008 Ga. LEXIS 504 (Ga. June 2, 2008), superseded by statute as stated in Diaz v. State, 344 Ga. App. 291, 810 S.E.2d 566, 2018 Ga. App. LEXIS 22 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (a) inapplicable to locomotive engineers. — Provisions of the Georgia Implied Consent Act do not, by the terms of the Act, apply to locomotive engineers. Any attempt to construe the Act so as to apply to locomotive engineers is barred by federal law, which preempts state law in this area. 1993 Op. Att'y Gen. No. U93-10.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

ALR.

Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 A.L.R.5th 597.

Driving While Intoxicated: Duty of Law Enforcement Officer to Advise Suspect of Their Rights Under Implied Consent Law, Including Offers of Test Alternatives, 51 A.L.R.7th 2.

40-5-56. Suspension of license or driving privilege for failure to respond to citation; reinstatement of license.

(a) Notwithstanding any other provisions of this chapter or any other law to the contrary and unless otherwise ordered by the court, the department shall suspend the driver's license or privilege to operate a motor vehicle in this state of any person who has failed to respond to a citation to appear before a court of competent jurisdiction in this state or in any other state for a traffic violation other than a parking violation. The department shall include language in the uniform traffic citation stating that failure to appear and respond to such citation may result in the suspension of the violator's driver's license or nonresident driving privilege. The language reflected on a uniform traffic citation issued in this state shall be sufficient notice of said suspension to support a conviction for a violation of Code Section 40-5-121 if such person drives subsequent to the imposition of such a suspension following his or her failure to appear; provided, however, that the department shall send notice of any suspension imposed pursuant to this Code section via certified mail or certificate of mailing to the

address reflected on its records as the person's mailing address. For purposes of this subsection, the term "certificate of mailing" means a delivery method utilized by the United States Postal Service which provides evidence that an item has been sent and the date such item was accepted.

(b) The suspension provided for in this Code section shall be for an indefinite period until such person has scheduled a new date to appear before the court pursuant to subsection (b) of Code Section 17-6-11; has made an appearance in court through hearing, arraignment, or waiver of arraignment and entry of a plea; the charge against the accused has been finally adjudicated; or the court otherwise orders such person's driver's license be reinstated. Such person's license shall be reinstated when the department receives proof of payment of any fines and penalties, an order of reinstatement by the court and payment of the applicable restoration fee of $100.00 or $90.00 when such reinstatement is processed by mail to the department, unless such fee is waived by the court or otherwise as provided by law. Such suspension shall be in addition to any other suspension or revocation provided for in this chapter.

History.

Code 1933, § 68B-316, enacted by Ga. L. 1978, p. 1452, § 1; Ga. L. 1979, p. 1049, § 2; Ga. L. 1983, p. 1000, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1986, p. 184, § 1; Ga. L. 1988, p. 897, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 5-18; Ga. L. 2000, p. 1589, § 4; Ga. L. 2006, p. 449, § 6/HB 1253; Ga. L. 2008, p. 171, § 5/HB 1111; Ga. L. 2009, p. 679, § 3/HB 160; Ga. L. 2010, p. 932, § 12/HB 396; Ga. L. 2020, p. 199, § 1-3/HB 463; Ga. L. 2022, p. 753, § 4/SB 10; Ga. L. 2024, p. 560, § 7/HB 926, effective May 2, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, in subsection (a), inserted "and unless otherwise ordered by the court" to the first sentence and substituted "may" for "shall" in the second sentence; and, in subsection (b), added "or the court orders such person's driver's license be reinstated" at the end of the first sentence, and, in the second sentence, substituted "when the department receives proof of payment of any fines and penalties or order of reinstatement by the court and the person pays the applicable" for "if the person submits proof of payment of the fine from the court of jurisdiction and pays a" and added ", unless such fee is waived by the court or otherwise as provided by law" at the end.

The 2024 amendment, effective May 2, 2024, in subsection (b), substituted "has scheduled a new date to appear before the court pursuant to subsection (b) of Code Section 17-6-11; has made an appearance in court through hearing, arraignment, or waiver of arraignment and entry of a plea; the charge against the accused has been finally adjudicated; or the court otherwise" for "person shall respond and pay any fines and penalties imposed or the court" in the first sentence, and in the second sentence, substituted "penalties, an order" for "penalties or order" and "payment of" for "the person pays".

Editor's notes.

Ga. L. 2024, p. 560, § 1/HB 926, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Second Chance Workforce Act.'"

JUDICIAL DECISIONS

Driving on erroneously suspended license. — If the person is driving despite notification that the person's license has been suspended, the person is flaunting the law even if the reasons underlying the person's suspension were erroneously forwarded to the department. Smith v. State, 187 Ga. App. 322, 370 S.E.2d 185, 1988 Ga. App. LEXIS 686 (1988).

Collateral attack not permissible. — When there is no evidence that the defendant requested a hearing on the suspension of the defendant's license after receipt of the notices of proposed suspension, the defendant waived the right to a hearing to contest the suspension, and the reasons for the suspension set forth on notices of suspension admitted in evidence made the suspension valid on the suspension's face so that an attack on the validity of the suspension was collateral and was not permissible. Smith v. State, 187 Ga. App. 322, 370 S.E.2d 185, 1988 Ga. App. LEXIS 686 (1988).

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 418.

ALR.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 A.L.R.2d 1379.

40-5-57. Suspension or revocation of license of habitually negligent or dangerous driver; point system.

(a) The State of Georgia considers dangerous and negligent drivers to be a direct and immediate threat to the welfare and safety of the general public, and it is in the best interests of the citizens of Georgia immediately to remove such drivers from the highways of this state. Therefore, the department is authorized to suspend the license of a driver without a preliminary hearing upon a showing by the records of the department or other sufficient evidence that the licensee is a habitually dangerous or negligent driver of a motor vehicle, such fact being established by the point system in subsection (b) of this Code section.

(b) For the purpose of identifying habitually dangerous or negligent drivers and habitual or frequent violators of traffic regulations governing the movement of vehicles, the department shall assess points, as provided in subsection (c) of this Code section, for convictions of violations of the provisions of Chapter 6 of this title, of violations of lawful ordinances adopted by local authorities regulating the operation of motor vehicles, and of offenses committed in other states which if committed in this state would be grounds for such assessment. Notice of each assessment of points may be given, but the absence of notice shall not affect any suspension made pursuant to this Code section. No points shall be assessed for violating a provision of state law or municipal ordinance regulating standing, parking, equipment, size, and weight. The department is required to suspend the license of a

driver, without preliminary hearing, when his driving record identifies him as a habitually dangerous or negligent driver or as a habitual or frequent violator under this subsection.

(c)(1)(A) Except as provided in subparagraph (C) of this paragraph, the points to be assessed for each offense shall be as provided in the following schedule:

(i)	Aggressive driving	6 points
(ii)	Reckless driving	4 points
(iii)	Unlawful passing of a school bus	6 points
(iv)	Improper passing on a hill or a curve	4 points
(v)	Exceeding the speed limit by more than 14 miles per hour but less than 19 miles per hour	2 points
(vi)	Exceeding the speed limit by 19 miles per hour or more but less than 24 miles per hour	3 points
(vii)	Exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour	4 points
(viii)	Exceeding the speed limit by 34 miles per hour or more	6 points
(ix)	Disobedience of any traffic-control device or traffic officer	3 points
(x)	Too fast for conditions	0 points
(xi)	Possessing an open container of an alcoholic beverage while driving	2 points
(xii)	Failure to adequately secure a load, except fresh farm produce, resulting in loss of such load onto the roadway which results in an accident	2 points
(xiii)	Violation of child safety restraint requirements, first offense	1 point
(xiv)	Violation of child safety restraint requirements, second or subsequent offense	2 points
(xv)	First violation of Code Section 40-6-241	1 point
(xvi)	Second violation of Code Section 40-6-241	2 points
(xvii)	Third or subsequent violation of Code Section 40-6-241	3 points
(xviii)	All other moving traffic violations which are not speed limit violations	3 points

(B) The commissioner shall suspend the driver's license of any person who has accumulated a violation point count of 15 or more points in any consecutive 24 month period, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained. A second or subsequent plea of nolo contendere, within the preceding five years, as measured from the dates of previous arrests for which pleas of nolo contendere were accepted to the date of the most current arrest for which a plea of nolo contendere

is accepted, to a charge of committing an offense listed in this subsection shall be considered a conviction for the purposes of this Code section. At the end of the period of suspension, the violation point count shall be reduced to zero points.

(C) A court may order a person to attend a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 for any violation for which points are assessed against a driver's license under this subsection or may accept the attendance by a person at a driver improvement clinic approved by the commissioner pursuant to Code Section 40-5-83 after the issuance of a citation for such offense and prior to such person's appearance before the court, in which event the court shall reduce the fine assessed against such person by 20 percent, and no points shall be assessed by the department against such driver. The disposition and court order shall be reported to the department and shall be placed on the motor vehicle record with a zero point count. This plea may be accepted by the court once every five years as measured from date of arrest to date of arrest.

(2) Any points assessed against an individual for exceeding the speed limit shall be deducted from that individual's accumulated violation point count and the uniform traffic citation issued therefor shall be removed from the individual's record if:

(A) The points were assessed based on the use of a radar speed detection device by a county or municipality during a period of time when the commissioner has determined that such county or municipality was operating a radar speed detection device in violation of Chapter 14 of this title, relating to the use of radar speed detection devices; and

(B) The commissioner has suspended or revoked the radar speed detection device permit of such county or municipality pursuant to Code Section 40-14-11.

(d) Any person who has such points assessed against him as to require the suspension of his license pursuant to subsection (a) or (b) of this Code section shall have his license suspended as follows:

(1) Upon a first assessment of the requisite points, the period of suspension shall be one year, provided that at any time after completion of the requirements set forth in Code Section 40-5-84, such person may apply to the department for the return of his license;

(2) For a second assessment of the requisite points within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained, the period of suspension shall be three

years, provided that at any time after completion of the requirements set forth in Code Section 40-5-84, such person may apply to the department for the return of his license; and

(3) For a third assessment of requisite points within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained, such person shall have his license suspended for a period of two years. Such person shall not be eligible for early return of his license or for a limited driving permit as provided in Code Section 40-5-64 during such two-year period.

(e) The periods of suspension provided for in this Code section shall begin on the date the license is surrendered to and received by the department, from the date a license is surrendered to a court under any provision of this chapter, or on the date that the department processes the citation or conviction, whichever date shall first occur. If the license cannot be surrendered to the department, the period of suspension may begin on the date set forth in a sworn affidavit setting forth the date and reasons for such impossibility, if the department shall have sufficient evidence to believe that the date set forth in such affidavit is true; in the absence of such evidence, the date of receipt of such affidavit shall be controlling.

(f) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay the fee provided for in Code Section 40-5-84 for the return of his or her license.

History.

Ga. L. 1968, p. 430, §§ 1-5; Code 1933, § 68B-307, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 1235, § 1; Ga. L. 1978, p. 1655, § 1; Ga. L. 1980, p. 691, § 1; Ga. L. 1982, p. 1633, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 758, § 3; Code 1981, § 40-5-57.1, enacted by Ga. L. 1985, p. 758, § 4; Ga. L. 1989, p. 555, § 1; Code 1981, § 40-5-57, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1587, § 1; Ga. L. 1992, p. 1967, § 1; Ga. L. 1992, p. 2755, § 1; Ga. L. 1992, p. 2785, § 7; Ga. L. 1995, p. 917, § 3; Ga. L. 1996, p. 469, § 1; Ga. L. 1999, p. 515, § 1; Ga. L. 2000, p. 951, § 5-19; Ga. L. 2001, p. 208, § 1-2; Ga. L. 2004, p. 471, § 2; Ga. L. 2006, p. 275, § 3-12/HB 1320; Ga. L. 2010, p. 1156, § 1/HB 23; Ga. L. 2010, p. 1158, § 2/SB 360; Ga. L. 2014, p. 710, § 1-8/SB 298; Ga. L. 2018, p. 127, § 2/HB 673.

Cross references.

Certain restrictions on suspension or revocation of drivers' licenses for speeding violations reported by counties and municipalities to Department of Driver Services, § 40-14-16.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, in subparagraph (c)(1)(C) "motor vehicle record" was substituted for "Motor Vehicle Record" and "court" was substituted for "Court".

Editor's notes.

Ga. L. 1996, p. 469, § 4, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1996, and shall apply with respect to offenses

committed on or after that date. The provisions of this Act shall not apply to or affect offenses committed prior to that effective date."

Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006 for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Ga. L. 2010, p. 1156, § 4/HB 23, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to offenses committed on or after July 1, 2010.

Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For article, "Motor Vehicles and Traffic," see 27 Georgia St. U.L. Rev. 155 (2011).

For article on the 2018 amendment of this Code section, see 35 Georgia St. U.L. Rev. 139 (2018).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Constitutionality of different treatment of habitual violators. — Because the equal protection clause of the Fourteenth Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. Gaines v. State, 260 Ga. 267, 392 S.E.2d 524, 1990 Ga. LEXIS 247 (1990).

Bond conditions did not constitute criminal punishment for double jeopardy purposes. — Conducting a hearing to modify the bond conditions of a third-time DUI offender and placing limitations upon the offender's driving privileges, predicated upon the necessity to protect the welfare and safety of the citizens of Georgia from a recidivist offender, was not punishment, nor was the hearing prosecution, for the purposes of double jeopardy. Strickland v. State, 300 Ga. App. 898, 686 S.E.2d 486, 2009 Ga. App. LEXIS 1301 (2009), overruled in part, Edvalson v. State, 339 Ga. App. 348, 793 S.E.2d 545, 2016 Ga. App. LEXIS 626 (2016).

Notice of suspension. — Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions provided for in O.C.G.A. § 40-5-1 et seq., and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Moreover, O.C.G.A. § 40-5-57 does not allow notice of license suspension by operation of law. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. State v. Fuller, 289 Ga. App. 283, 656 S.E.2d 902, 2008 Ga. App. LEXIS 71 (2008), superseded by statute as stated in Johnson v. State, 297

Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Administrative and criminal prosecutions not double jeopardy. — Suspension of defendant's operator's license pursuant to administrative proceedings did not constitute former punishment foreclosing prosecution for driving under the influence in violation of double jeopardy provisions. Jackson v. State, 218 Ga. App. 677, 462 S.E.2d 802, 1995 Ga. App. LEXIS 846 (1995), cert. denied, No. S96C0146, 1996 Ga. LEXIS 313 (Ga. Jan. 19, 1996).

Conviction for driving under the influence upheld. — Conviction in a city court of driving under the influence was sufficient to authorize revocation of the license of the driver to operate an automobile. Watson v. Department of Pub. Safety, 66 Ga. App. 633, 18 S.E.2d 789, 1942 Ga. App. LEXIS 255 (1942) (decided under Ga. L. 1937, p. 322).

Out-of-state violations. — Points are assessed for out-of-state violations which would be assessed points if committed within Georgia. Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486, 1980 Ga. LEXIS 1134 (1980).

Surrender of out of state license improper. — Even if a defendant's speeding conviction were affirmed, O.C.G.A. § 40-5-51(a) provided that no points were to be assessed for any violation committed by a non-resident; accordingly, even if the conviction had been proper, the trial court erred in ordering defendant to surrender the defendant's Texas driver's license. In the Interest of R.G., 272 Ga. App. 276, 612 S.E.2d 94, 2005 Ga. App. LEXIS 270 (2005).

Liberal construction of statute relieving against forfeiture. — Statute relieving against forfeiture (such as reduction of points for violations) must be construed liberally. Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486, 1980 Ga. LEXIS 1134 (1980).

Effect of subsequent relieving statute. — Forfeiture is not imposed when there is a subsequent relieving statute. Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486, 1980 Ga. LEXIS 1134 (1980).

Date of conviction time for calculating points. — Since former Code 1933, § 68B-307 required the assessment of points for convictions, the date of conviction is the rational choice as the time for the calculation of the number of points to be assessed. Cofer v. Gurley, 146 Ga. App. 420, 246 S.E.2d 436, 1978 Ga. App. LEXIS 2388 (1978) (see O.C.G.A. § 40-5-57).

Reasonable period of time for sending notice of suspension. — Four months after the last adjudication of a violation was a patently reasonable period of time within which to issue a notice of suspension, and in the absence of an unreasonable delay, there is no deprivation of a constitutional right. Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486, 1980 Ga. LEXIS 1134 (1980).

Classification of mandatory suspension of license. — Mandatory suspension of license imposed under violation point system cannot be classified as criminal punishment resulting from a criminal prosecution. It is accomplished administratively by a designated public officer, and there is a complete absence of any judicial action and no attribute of a criminal case. Cofer v. Gurley, 146 Ga. App. 420, 246 S.E.2d 436, 1978 Ga. App. LEXIS 2388 (1978).

Period of revocation for third assessment of points. — O.C.G.A. § 40-5-57 not only clearly contemplates that a driver's license can be suspended at least three times during a five-year period, but establishes a longer period of revocation for the third assessment of the requisite points. Bowman v. Parrot, 200 Ga. App. 405, 408 S.E.2d 115, 1991 Ga. App. LEXIS 1009 (1991), cert. denied, No. S91C1383, 1991 Ga. LEXIS 546 (Ga. Sept. 6, 1991).

OPINIONS OF THE ATTORNEY GENERAL

Applications for limited permits. — Driver whose license was suspended under former Code 1933, § 68B-307 (see O.C.G.A. § 40-5-57) more than once may

apply for a limited permit with respect to each suspension occurring within a ten-year (now five-year) period, provided that no more than two limited permits, excluding renewals, may be issued to one driver during this period. 1977 Op. Att'y Gen. No. 77-54.

Driver may not apply for limited permit when license was revoked under former Code 1933, § 68B-312 (see O.C.G.A. § 40-5-63). 1977 Op. Att'y Gen. No. 77-54.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 116 et seq., 143 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, §§ 353 et seq., 359.

ALR.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 A.L.R. 1162; 125 A.L.R. 1459.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for canceling license or special privilege, 113 A.L.R. 1179.

Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 A.L.R. 1459.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 A.L.R.2d 1064.

Conviction or acquittal in previous criminal case as bar to revocation or suspension of driver's license on same factual charges, 96 A.L.R.2d 612.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 A.L.R.2d 1367.

Regulations establishing a "Point System" as regards suspension or revocation of license of operator of motor vehicle, 5 A.L.R.3d 690.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 A.L.R.5th 542.

40-5-57.1. Suspension of licenses of persons under 21 years for certain offenses; suspension of licenses of persons under 18 years for certain point accumulation.

(a) Notwithstanding any other provision of this chapter, the driver's license of any person under 21 years of age convicted of hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57, or a violation of Code Section 40-6-391 shall be suspended by

operation of law as provided by this Code section. A plea of nolo contendere shall be considered a conviction for the purposes of this subsection. The court in which such conviction is had shall require the surrender to it of the driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of the disposition to the department within ten days after the conviction. The department shall send notice of any suspension imposed pursuant to this subsection via certified mail to the address reflected on its records as the person's mailing address.

(b) The driver's license of any person under 18 years of age who has accumulated a violation point count of four or more points under Code Section 40-5-57 in any consecutive 12 month period shall be suspended by the department as provided by subsection (c) of this Code section. A plea of nolo contendere shall be considered a conviction for purposes of this subsection. Notice of suspension shall be given by certified mail or statutory overnight delivery, return receipt requested, to the address reflected in the department's records as the driver's mailing address or, in lieu thereof, notice may be given by personal service upon such person. Notice given by certified mail or statutory overnight delivery, return receipt requested, mailed to the person's last known address shall be prima-facie evidence that such person received the required notice.

(c) A person whose driver's license has been suspended under subsection (a) or (b) of this Code section shall:

(1) Subject to the requirements of subsection (d) of this Code section and except as otherwise provided by paragraph (2) of this subsection:

(A) Upon a first such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after six months; and

(B) Upon a second or subsequent such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after 12 months; or

(2)(A) Upon the first conviction of a violation of Code Section 40-6-391, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of six months unless the driver's blood alcohol concentration at the time of the offense was 0.08 grams or more or the person has previously been subject to a suspension pursuant

to paragraph (1) of this subsection, in which case the period of suspension shall be for 12 months.

(B) Upon the second conviction of a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of 18 months.

(C) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58.

(c.1) In any case where a person's driver's license was administratively suspended as a result of a violation of Code Section 40-6-391 for which the person's driver's license has been suspended pursuant to subsection (c) of this Code section, the administrative license suspension period and the license suspension period provided by this Code section may run concurrently, and any completed portion of such administrative license suspension period shall apply toward completion of the license suspension period provided by this Code section.

(d)(1) Any driver's license suspended under subsection (a) or (b) of this Code section for commission of any offense other than violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 and pays the applicable reinstatement fee. Any driver's license suspended under subsection (a) of this Code section for commission of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the applicable reinstatement fee.

(2) The reinstatement fee for a first such suspension shall be $210.00 or $200.00 if paid by mail. The reinstatement fee for a second or subsequent such suspension shall be $310.00 or $300.00 if paid by mail.

(e) A suspension provided for in subsection (a) of this Code section shall be imposed based on the person's age on the date of the conviction giving rise to the suspension.

History.

Code 1981, § 40-5-57.1, enacted by Ga. L. 1997, p. 760, § 15; Ga. L. 2000, p. 951, § 5-20; Ga. L. 2000, p. 1457, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, §§ 2-2, 3-2; Ga. L. 2001, p. 208, §§ 2-2, 3-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 471, § 3; Ga. L. 2005, p. 334, §§ 17-13,

17-14/HB 501; Ga. L. 2009, p. 679, § 4/HB 160; Ga. L. 2012, p. 72, § 3/SB 236; Ga. L. 2014, p. 710, § 1-9/SB 298; Ga. L. 2015, p. 60, § 4-15/SB 100.

Editor's notes.

Ga. L. 1990, p. 2048, § 4, repealed the former version of this Code section and redesignated its provisions as subsections (d), (e), and (f) of Code Section 40-5-57, effective January 1, 1991. The former version of this Code section was based on Ga. L. 1985, p. 758, § 4, and concerned periods of suspension; department's and commissioner's discretion in early return of license; and proof of insurance.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 205 (2001).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving, 34 A.L.R.6th 623.

40-5-57.2. Suspension of license for reckless stunt driving.

(a) The driver's license of any person convicted of reckless stunt driving in violation of Code Section 40-6-390.1 shall by operation of law be suspended, and such suspension shall be subject to the following terms and conditions:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be up to 12 months, provided that such person may apply to the department for early reinstatement of his or her driver's license at the end of 120 days. Such license shall be reinstated upon payment of a restoration fee of $210.00, or $200.00 when such reinstatement is processed by mail;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which

a conviction is obtained, the period of suspension shall be for three years, provided that such person may apply to the department for early reinstatement of his or her driver's license after 18 months from the date of the conviction. Such license shall be reinstated upon payment of a restoration fee of $310.00, or $300.00 when such reinstatement is processed by mail; and

(3) Upon the third or subsequent conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58. A person whose license has been suspended pursuant to this subsection may, if eligible under Code Section 40-5-58, apply for a probationary license pursuant to such Code section. A driver's license suspension imposed under this paragraph shall run concurrently with and shall be counted toward the fulfillment of any period of revocation imposed directly under Code Sections 40-5-58 and 40-5-62, provided that such revocation arose from the same act for which the suspension was imposed.

(b) Whenever a person is convicted of reckless stunt driving in violation of Code Section 40-6-390.1, the court in which such conviction is entered shall require the surrender of any driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The method of calculating the periods of suspension provided for in this Code section shall be governed by subsection (e) of Code Section 40-5-61.

(c) Application for reinstatement of a driver's license under paragraph (1) or (2) of subsection (a) of this Code section shall be made on such forms as the commissioner may prescribe and shall be accompanied by the applicable restoration fee.

(d) Except as provided in subsection (a) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person's license has been suspended pursuant to this Code section if such person has not thereafter obtained a valid license or limited permit. Any person who is convicted of operating a motor vehicle before the department has reinstated such person's license or before obtaining a limited driving permit or probationary license shall be punished by a fine of not less than $750.00 nor more than $5,000.00 or by imprisonment in the penitentiary for not more than 12 months, or both.

History.
Code 1981, § 40-5-57.2, enacted by Ga. L. 2021, p. 228, § 3/HB 534.
Editor's notes.
This Code section formerly pertained to suspension based on violation of Code Section 40-6-255. The former Code section was based on Code 1981, § 40-5-57.2, enacted by Ga. L. 1998, p. 1658, § 1, and was repealed by Ga. L. 2015, p. 60, § 4-14/SB 100, effective July 1, 2015.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising under O.C.G.A. § 40-5-57.2(d) are offenses for which those charged are to be fingerprinted. 2021 Op. Att'y Gen. No. 21-1.

40-5-57.3. Penalty for multiple convictions of causing serious injury due to right of way violations.

(a) The driver's license of any person who is convicted for a second or subsequent offense of violating Code Section 40-6-77 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be suspended for 30 days. The person shall submit his or her driver's license to the court upon conviction and the court shall forward the driver's license to the department.

(b) After the suspension period and the person pays a restoration fee of $60.00 or, when processed by mail, $50.00, the suspension shall terminate and the department shall return the person's driver's license to such person.

History.
Code 1981, § 40-5-57.3, enacted by Ga. L. 2009, p. 65, § 2/SB 196.
Administrative rules and regulations.
Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.01.

40-5-58. Habitual violators; probationary licenses.

(a) As used in this Code section, "habitual violator" means any person who has been arrested and convicted within the United States three or more times within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, of:

(1) Committing any offense covered under Code Section 40-5-54 or Code Sections 40-6-390.1 through 40-6-395 or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or Code Sections 40-6-390.1 through 40-6-395; or

(2) Singularly or in combination, any of the offenses described in paragraph (1) of this subsection.

(b) When the records of the department disclose that any person is a habitual violator as defined in subsection (a) of this Code section, the department shall forthwith notify such person that his or her driver's license has been revoked by operation of law and that it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless otherwise provided in this Code section. Notice shall be given by certified mail or statutory overnight delivery, with return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person.

(c)(1) Except as provided in paragraph (2) of this subsection or in subsection (d) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person has received notice that his or her driver's license has been revoked as provided in subsection (b) of this Code section, if such person has not thereafter obtained a valid driver's license. Any person declared to be a habitual violator and whose driver's license has been revoked under this Code section and who is thereafter convicted of operating a motor vehicle before the department has issued such person a driver's license or before the expiration of five years from such revocation, whichever occurs first, shall be punished by a fine of not less than $750.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both. Any person declared to be a habitual violator and whose driver's license has been revoked and who is convicted of operating a motor vehicle after the expiration of five years from such revocation but before the department has issued such person a driver's license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions of violations of Code Section 40-6-391 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, and who is thereafter convicted of operating a motor vehicle during such period of revocation, prior to the issuance of a probationary license under subsection (d) of this Code section or before the expiration of five years, shall be guilty of the felony of habitual impaired driving and shall be punished by a fine of not less than $1,000.00 or by

imprisonment in the penitentiary for not less than one nor more than five years, or both.

(d)(1) Notwithstanding any contrary provisions of this Code section or any other Code section of this chapter, any person who has been declared a habitual violator and who has had his or her driver's license revoked under subsection (b) of this Code section for a period of five years and two years have expired since the date on which such person's license was surrendered or an affidavit was accepted as provided in subsection (e) of Code Section 40-5-61 may be issued a probationary driver's license for a period of time not to exceed three years upon compliance with the following conditions:

(A) Such person has not been convicted, or pleaded nolo contendere to a charge, of violating any provision of this chapter, Chapter 6 of this title, or any local ordinance relating to the movement of vehicles for a period of two years immediately preceding the application for a probationary driver's license;

(B) Such person has not been convicted, or pleaded nolo contendere to a charge, of a violation of any provision of this chapter or Chapter 6 of this title which resulted in the death or injury of any individual;

(C) Such person has successfully completed, prior to the issuance of the probationary driver's license, a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program as designated by the department;

(D) Reserved;

(E) Such person shall submit a sworn affidavit that such person does not excessively use alcoholic beverages and does not illegally use controlled substances or marijuana when a person has been declared a habitual violator based upon a violation of a state law or local ordinance involving Code Section 40-6-391. It shall be a misdemeanor to falsely swear on such affidavit and, upon conviction, the probationary license shall be revoked. No probationary license shall be issued during the remainder of the revocation period, and no driver's license shall be issued for the remainder of the original revocation period or for a period of two years from the date of conviction under this subparagraph;

(F) Such person submits proof of financial responsibility as provided in Chapter 9 of this title; and

(G) Refusal to issue a probationary driver's license would cause extreme hardship to the applicant. For the purposes of this subsection, the term "extreme hardship" means that the appli-

cant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

(i) Going to his or her place of employment or performing the normal duties of his or her occupation;

(ii) Receiving scheduled medical care or obtaining prescription drugs;

(iii) Attending a college or school at which he or she is regularly enrolled as a student;

(iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; or

(v) Attending under court order any driver education or improvement school or alcohol or drug treatment program or course approved by the court which entered the judgment of conviction resulting in revocation of his or her driver's license or by the commissioner.

(2) Application for a probationary driver's license shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such license. All applications shall be signed by the applicant before a person authorized to administer oaths.

(3) Upon compliance with the above conditions and the payment of a fee of $210.00, or $200.00 when processed by mail, such person may be issued a probationary driver's license by the department. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed probationary driver's license issued to him or her.

(4) A probationary driver's license shall be endorsed with such conditions as the commissioner deems necessary to ensure that such license will be used by the licensee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

(A) Specific places between which the licensee may be allowed to operate a motor vehicle;

(B) Routes to be followed by the licensee;

(C) Times of travel;

(D) The specific vehicles which the licensee may operate; and

(E) Such other restrictions as the department may require.

(5) A probationary driver's license issued pursuant to this Code section shall become invalid upon the expiration of the period of the suspension or revocation of the driver's license of such person.

(6)(A)(i) Any probationary licensee violating the provisions of paragraph (4) of this subsection or operating a vehicle in violation of any conditions specified in this subsection shall be guilty of a misdemeanor.

(ii) Except as provided in division (iii) of this subparagraph, any probationary licensee violating any state law or local ordinance involving an offense listed in Code Section 40-5-54, 40-6-390.1, or 40-6-391 shall be guilty of a felony and shall be punished by a fine of not less than $1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(iii) Any probationary licensee violating any state law or local ordinance involving a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall be punished as is provided for conviction of such felony.

(B) Any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, any state law or local ordinance involving an offense listed in Code Section 40-5-54, 40-6-390.1, or 40-6-391 or any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, the conditions endorsed on such license, shall have his or her license revoked by the department. Any court in which such conviction is had or in which said nolo contendere plea is accepted shall require the licensee to surrender the license to the court. The court shall forward the license to the department within ten days after the conviction or acceptance of the plea, with a copy of the conviction. Any person whose probationary license is revoked for committing an offense listed in Code Section 40-5-54, 40-6-390.1, or 40-6-391 shall not be eligible to apply for a regular driver's license until the expiration of the original five-year revocation period during which the probationary license was originally issued or for a period of two years following the conviction, whichever is greater.

(C) If the commissioner has reason to believe or makes a preliminary finding that the requirements of the public safety or welfare outweigh the individual needs of a person for a probationary license, the commissioner, in his or her discretion, after affording the person notice and an opportunity to be heard, may refuse to issue the license under this subsection.

(D) Any person whose probationary driver's license has been revoked shall not be eligible to apply for a subsequent probationary license under this Code section for a period of five years.

(7) Any person whose probationary license has been revoked or who has been refused a probationary license by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with Chapter 13 of Title 50.

(e) If a person's license was revoked for a violation of Code Section 40-6-391 resulting from a motor vehicle collision in which any person lost his or her life, the person whose license was revoked shall not be entitled to a probationary license as set forth in this Code section.

History.

Code 1933, § 68B-308, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 3; Ga. L. 1978, p. 225, § 1; Ga. L. 1980, p. 691, §§ 2, 3; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 867, § 1; Ga. L. 1982, p. 1862, § 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 1000, § 5; Ga. L. 1984, p. 22, § 40; Ga. L. 1984, p. 797, §§ 1, 2; Ga. L. 1985, p. 758, §§ 5, 6; Ga. L. 1987, p. 1082, §§ 2, 3; Ga. L. 1988, p. 385, § 1; Ga. L. 1988, p. 897, § 3; Ga. L. 1988, p. 1893, § 1A; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 1154, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 19; Ga. L. 1992, p. 2556, § 1; Ga. L. 1992, p. 2785, § 8; Ga. L. 1994, p. 745, § 1; Ga. L. 2000, p. 951, §§ 5-21, 5-22; Ga. L. 2000, p. 1204, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2006, p. 449, § 7/HB 1253; Ga. L. 2011, p. 99, § 58/HB 24; Ga. L. 2011, p. 355, § 5/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2014, p. 710, § 1-10/SB 298; Ga. L. 2017, p. 608, § 3/SB 176; Ga. L. 2021, p. 228, § 4/HB 534.

Cross references.

Surrender of license plates of habitual violators, § 40-2-136.

Seizure and forfeiture of motor vehicle operated by habitual violator, § 40-6-391.2.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, a semicolon was substituted for a colon at the end of subparagraph (e)(4)(B) (now subparagraph (d)(4)(B)).

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

Law reviews.

For article on the effect of receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article, "Evidence," see 27 Georgia St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 1 (2011).

JUDICIAL DECISIONS

Analysis

General Consideration
Notice
Practice and Procedure
Sentence and Appeal

General Consideration

Constitutionality. — All habitual violators under former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) were treated equally, and that section was not arbitrary, unreasonable, or without rational basis, nor did the statute deny equal protection of the laws. Cox v. State, 241 Ga. 154, 244 S.E.2d 1, 1978 Ga. LEXIS 901 (1978).

Because the equal protection clause of the Fourteenth Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. Gaines v. State, 260 Ga. 267, 392 S.E.2d 524, 1990 Ga. LEXIS 247 (1990).

Statutory scheme of an administrative appeal and a de novo review in the superior court of the revocation of a habitual offender's license meets the due process requirements of both the state and federal constitutions. Miller v. State, 243 Ga. App. 764, 533 S.E.2d 787, 2000 Ga. App. LEXIS 497 (2000), cert. denied, No. S00C1507, 2000 Ga. LEXIS 846 (Ga. Oct. 27, 2000).

Three separate and unrelated transactions are required for designation as a habitual violator. Wilson v. Miles, 218 Ga. App. 806, 463 S.E.2d 381, 1995 Ga. App. LEXIS 892 (1995).

Even if there were fewer than three arrests. — Notwithstanding that three separate and unrelated transactions are required to designate a person as a habitual violator and that the defendant was so designated on the basis of three convictions arising from 2 arrest incidents, the defendant could still be convicted for driving after being declared a habitual violator as such a conviction required proof only that the defendant was declared an habitual violator and that the defendant thereafter operated a vehicle without a valid driver's license. Hollis v. State, 234 Ga. App. 269, 505 S.E.2d 837, 1998 Ga. App. LEXIS 1168 (1998), cert. denied, No. S99C0055, 1999 Ga. LEXIS 67 (Ga. Jan. 15, 1999).

Change in law does not rescind status. — Change in the law after one has been declared a habitual violator does not automatically rescind that status. State v. Oliver, 202 Ga. App. 613, 415 S.E.2d 54, 1992 Ga. App. LEXIS 90 (1992).

Pre-1982 reckless driving conviction to be disregarded. — The 1982 amendment of O.C.G.A. § 40-5-58, which deleted the offense of reckless driving from those offenses which contribute to habitual violator status under that section, should be given retroactive effect so as to require the superior court to disregard a pre-1982 reckless driving conviction in assessing the sufficiency of the evidence to support the revocation of a license. Galletta v. Hardison, 168 Ga. App. 36, 308 S.E.2d 47, 1983 Ga. App. LEXIS 2666 (1983).

Separate and distinct nature of subsection (c) violation. — Offense of violating subsection (c) of O.C.G.A. § 40-5-58 is an offense separate and distinct from offenses which led to a driver being declared a habitual violator. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Indictment for subsection (c) violation. — In a prosecution for operating a motor vehicle after being declared a habitual violator, failure of the indictment to plead all known convictions against the defendant for driving under the influence did not result in error for

fatal variance; rather, the indictment properly pled the instant violation of O.C.G.A. § 40-5-58, giving the defendant due notice of that which the defendant was to defend against and protecting the defendant from again being tried thereon, the proper measure of the defendant's entitlement. Spruell v. State, 217 Ga. App. 150, 456 S.E.2d 740, 1995 Ga. App. LEXIS 370 (1995).

Effect of subsection (d). — Effect of subsection (d) of O.C.G.A. § 40-5-58 is to create an exception to the rule of O.C.G.A. § 17-7-95, concerning the consequences of a plea of nolo contendere. This does not result in subsection (d) running afoul of the prohibition in Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. III, Sec. V, Para. III) against the passage of a law referring to more than one subject matter or containing matter different from what is expressed in the title. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Subsection (d) of O.C.G.A. § 40-5-58 does not constitute an amendment to or repeal of O.C.G.A. § 17-7-95, dealing with nolo contendere pleas generally, within the meaning of Ga. Const. 1976, Art. III, Sec. VII, Para. XII (see now Ga. Const. 1983, Art. III, Sec. V, Para. IV). Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Section applies to private as well as public roads. — After the defendant was convicted of operating a motor vehicle, while driving on a private road, after having been declared a habitual violator, and the defendant contended on appeal that because the state issues a driver's license for operation of a motor vehicle "upon a highway in this state," O.C.G.A. § 40-5-20(a), and because the statutory provisions concerning license revocation refer to "public highways," O.C.G.A. §§ 40-5-1(10) (see now O.C.G.A. § 40-5-1(16)) and 40-5-121(a), the defendant could not be convicted of the charged crime, the trial court did not err since O.C.G.A. § 40-5-58, under which appellant was convicted, evinces a clear legislative intent to prohibit a person who has been declared a habitual violator and whose license has been revoked from operating a vehicle anywhere in the state. Jarrad v. State, 195 Ga. App. 704, 394 S.E.2d 555, 1990 Ga. App. LEXIS 682 (1990).

Driver's license needed to be in control of vehicle. — "Driver's" license is needed in Georgia, by the law's definition, not only to drive, but a license is needed more broadly to operate, which includes not only driving but also being in actual physical control short of driving. Miller v. State, 202 Ga. App. 414, 414 S.E.2d 326, 1992 Ga. App. LEXIS 13 (1992).

Driving vehicle after receiving notice of license revocation. — O.C.G.A. § 40-5-58 prohibits driving a vehicle after receiving notice that one's license has been revoked as a habitual violator. Hester v. State, 159 Ga. App. 642, 284 S.E.2d 659, 1981 Ga. App. LEXIS 2784 (1981); Hyde v. State, 205 Ga. App. 754, 424 S.E.2d 39, 1992 Ga. App. LEXIS 1396 (1992).

Once a habitual violator has been notified under O.C.G.A. § 40-5-58 it is unlawful for that person to operate a motor vehicle until that person becomes eligible for, applies for, and receives a new license, regardless of the five-year limitation. Kimbrell v. State, 164 Ga. App. 344, 296 S.E.2d 206, 1982 Ga. App. LEXIS 2796 (1982).

Although the defendant had been able to obtain a license under a different surname, the defendant had been notified after the defendant's third DUI violation under the defendant's other surname that the defendant was prohibited from driving as a habitual violator under O.C.G.A. § 40-5-58, and the license in another name was no defense to the defendant's habitual violator status. Munna v. State, 331 Ga. App. 410, 771 S.E.2d 106, 2015 Ga. App. LEXIS 167 (2015).

Effect of valid license from another state. — Regardless of possession of a driver's license from any other state, one who has had one's Georgia driver's license revoked by the Department of Public Safety can legally thereafter operate a vehicle in Georgia only if the Department reauthorizes one to do so. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

Once an individual has been declared a habitual violator, one may not thereafter

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avoid prosecution for driving a motor vehicle in this state by merely having in one's possession an ostensibly valid license from another state. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

Effect of probationary license on driving without license offense. — Conviction against the defendant for driving without a valid license after being declared a habitual violator in violation of O.C.G.A. § 40-5-58(c)(1) could not stand because at the time of an accident that the defendant was involved in, the defendant had been issued a probationary driver's license pursuant to § 40-5-58(e). Christian v. State, 297 Ga. App. 596, 677 S.E.2d 767, 2009 Ga. App. LEXIS 490 (2009).

Driving with suspended or revoked license is lesser included offense. — Driving with a suspended or revoked license was a lesser included offense of operating a motor vehicle after revocation of one's license as a habitual violator, when the defendant had been stopped by the police while operating an automobile on an interstate highway at a time when the defendant's Georgia driver's license was revoked due to the defendant's having been declared a habitual violator. Parks v. State, 180 Ga. App. 31, 348 S.E.2d 481, 1986 Ga. App. LEXIS 2073 (1986).

Probationary driver's license prevented conviction of being habitual violator operating without license. — Because the charge of being a habitual violator operating a vehicle without a valid driver's license, O.C.G.A. § 40-5-58(c)(1), demanded a verdict of acquittal as a matter of law and the trial court erred by denying the defendant's motion for a directed verdict; the defendant was not driving without a valid driver's license because the arresting officer testified that the defendant had a probationary driver's license on the day of the arrest. Murray v. State, 315 Ga. App. 653, 727 S.E.2d 267, 2012 Ga. App. LEXIS 398 (2012).

Merger of offenses. — Defendant's convictions for operating a motor vehicle under the influence of alcohol while having a probationary license and driving under the influence of alcohol could not both stand since, under the facts, the latter was a lesser included offense in the violation of the probationary license offense. Williams v. State, 223 Ga. App. 209, 477 S.E.2d 367, 1996 Ga. App. LEXIS 1100 (1996).

Convictions under both O.C.G.A. §§ 40-5-58(c) and 40-6-395(b)(5)(A) were proper under O.C.G.A. § 16-1-6 as the elements of both charged offenses required different proof. Under O.C.G.A. § 40-5-58(c), the state proved that the defendant was declared an habitual violator, was properly notified of such status, and that the defendant operated a vehicle without having obtained a valid driver's license; while under O.C.G.A. § 40-6-395(b)(5)(A), proof that the driver committed a misdemeanor while fleeing or attempting to elude, that the driver was trying to escape arrest for a felony offense other than road violations, and that the driver committed one of the statutorily enumerated acts was required. Buggay v. State, 263 Ga. App. 520, 588 S.E.2d 244, 2003 Ga. App. LEXIS 1143 (2003).

Double jeopardy plea when both §§ 40-5-58 and 40-5-121 charged. — When a defendant was convicted of driving with a suspended license in violation of O.C.G.A. § 40-5-121 and was later indicted for a violation of O.C.G.A. § 40-5-58, based upon the defendant's operation of a motor vehicle after the defendant had been notified that the defendant had been declared a habitual violator, the trial court was ordered to reconsider the court's denial of the defendant's double-jeopardy plea on grounds that the same conduct established the commission of all crimes. Whaley v. State, 260 Ga. 384, 393 S.E.2d 681, 1990 Ga. LEXIS 280 (1990).

Possession of license unnecessary for classification as habitual offender. — It is not necessary that a traffic offender have a driver's license to be classified as a "habitual violator," and when such habitual violator is notified of that classification, what is suspended is the driver's right "to operate a motor

vehicle in this state." Mays v. State, 190 Ga. App. 390, 378 S.E.2d 145, 1989 Ga. App. LEXIS 125 (1989).

Obtaining of license by habitual violator. — Fact that a person had obtained a driver's license did not give the person permission to drive in contravention of that person's habitual violator status. Walls v. State, 167 Ga. App. 276, 306 S.E.2d 371, 1983 Ga. App. LEXIS 2493 (1983).

One who has been properly notified that one has been declared a habitual violator by this state can thereafter lose that status and drive in Georgia only after the passage of five years and, pursuant to an application, the Department of Public Safety has determined that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

Date used for determining habitual violator status. — Date of offense is date used for purpose of determining habitual violator status under O.C.G.A. § 40-5-58. Hardison v. Boyd, 174 Ga. App. 71, 329 S.E.2d 198, 1985 Ga. App. LEXIS 1747 (1985).

Crucial date, insofar as habitual violator status is concerned, is the date of driving, not the date on which the status is challenged or set aside. If the person is driving despite notification that the person may not do so because the person had been declared a habitual violator, the person is flaunting the law even if one or more of the underlying convictions is voidable. State v. Bell, 182 Ga. App. 860, 357 S.E.2d 596, 1987 Ga. App. LEXIS 1841 (1987).

Date of beginning of revocation period. — Defendant's five-year revocation period began when the defendant was notified of the defendant's status as a habitual violator, not on the date when the defendant was stopped for driving under the influence. England v. State, 232 Ga. App. 842, 502 S.E.2d 770, 1998 Ga. App. LEXIS 852 (1998), cert. denied, No. S98C1584, 1998 Ga. LEXIS 1100 (Ga. Oct. 26, 1998).

Trial court erred in ruling that the revocation of a licensee's driver's license as a habitual violator was effective in May 2006 when the Georgia Department of Driver Services (DDS) received official notice of the licensee's December 2004 conviction on a third driving under the influence charge; the habitual violator revocation was effective in December 2004 as at that time, pursuant to O.C.G.A. § 40-5-58(b), the licensee had been advised of the licensee's habitual violator status and DDS informed the licensee that the licensee's driver's license was revoked for five years. Lokey v. Ga. Dep't of Driver Servs., 291 Ga. App. 856, 663 S.E.2d 283, 2008 Ga. App. LEXIS 661 (2008).

License revocation period begins upon license's surrender. — While it is illegal for a person to drive a motor vehicle after the person has received notice of habitual violator status, the five-year period of revocation prior to application for a new license begins to run only after the license is surrendered or the license's absence accounted for. Colquitt v. State, 176 Ga. App. 371, 336 S.E.2d 306, 1985 Ga. App. LEXIS 2366 (1985).

Computing eligibility for probationary license. — Department properly used the date of a driver's affidavit stating that the driver was unable to surrender a driver's license because the driver had never received the license from the examining board as the starting point for computing the driver's eligibility for probationary license. Earp v. Jordan, 197 Ga. App. 253, 398 S.E.2d 205, 1990 Ga. App. LEXIS 1274 (1990), cert. denied, No. S91C0193, 1991 Ga. LEXIS 485 (Ga. Jan. 31, 1991).

Consideration of offenses subject to collateral attack. — Person may be subjected to felony punishment as a habitual violator under subsection (c) of O.C.G.A. § 40-5-58, even though offenses giving rise to the person's having been declared a habitual violator are subject to collateral attack on constitutional grounds. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982); Todd v. State, 163 Ga. App. 814, 294 S.E.2d 714, 1982 Ga. App. LEXIS 3253 (1982).

Entire driving record is immaterial to prosecution. — It is notice of one's status as a nonlicensed habitual violator,

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not the driving record underlying that status, that is an "essential element" of O.C.G.A. § 40-5-58, and the entire driving record of the defendant is "immaterial" to a prosecution under that section. Hester v. State, 159 Ga. App. 642, 284 S.E.2d 659, 1981 Ga. App. LEXIS 2784 (1981); Hyde v. State, 205 Ga. App. 754, 424 S.E.2d 39, 1992 Ga. App. LEXIS 1396 (1992).

Sanctions for driving too fast. — License's cancellation, suspension, or revocation is not required for conviction for driving too fast. A conviction for driving too fast for conditions is not a conviction which singularly, or in combination with any other offense or offenses, statutorily requires the cancellation, suspension, or revocation, or authorizes a court or the department to impose the suspension or revocation of a driver's license as required by paragraph (a)(2) of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58). Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458, 1980 Ga. LEXIS 1043 (1980).

Habitual traffic violator conviction admissible in other proceeding. — Evidence of defendant's felony conviction for driving a motor vehicle after having been declared a habitual traffic violator was admissible despite the defendant's contention that the conviction might suggest to the jury that the defendant was a career criminal rather than merely a habitual traffic violator, since the state agreed with the defense that the court could include in the court's instructions a definition of the offense. Tharpe v. State, 262 Ga. 110, 416 S.E.2d 78, 1992 Ga. LEXIS 228, modified, No. S91P1642 (Ga. 1992), cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 292, 1992 U.S. LEXIS 6671 (1992).

Imposition of felony punishment. — Felony punishment may be imposed for driving after being declared a habitual violator, even if the convictions on which the habitual violator status is based are subject to collateral attack on constitutional grounds, such as not having counsel when convicted. Love v. Hardison, 166 Ga. App. 677, 305 S.E.2d 420, 1983 Ga. App. LEXIS 2292 (1983).

Reliance on nolo contendere in classifying habitual violator. — Language of former Code 1933, § 68B-312 (see now O.C.G.A. § 40-5-63(a)(3)) permitted the department to rely upon a nolo contendere accepted prior to the effective date of this article as a conviction in classifying a person as a habitual violator. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978).

Meaning of "operate." — Term "operate" does not necessarily mean drive, although the term can include drive. Miller v. State, 202 Ga. App. 414, 414 S.E.2d 326, 1992 Ga. App. LEXIS 13 (1992).

To "operate" means "to drive" or "to be in actual physical control." Miller v. State, 202 Ga. App. 414, 414 S.E.2d 326, 1992 Ga. App. LEXIS 13 (1992).

"Valid driver's license" construed. — "Valid driver's license," referred to in O.C.G.A. § 40-5-58(c), means a license which is in the possession of a former habitual violator whose privilege to operate a motor vehicle in this state has been restored by the Department of Public Safety. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

Bond forfeiture treated as "conviction." — Definition of "conviction" given in former Code 1933, § 68B-101 (see now O.C.G.A. § 40-5-1(6)) clearly evidenced the legislature's intention that a bond forfeiture arising from a driving under the influence of alcohol or drug offense committed prior to the enactment of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) was considered a conviction for the purpose of those provisions. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978).

O.C.G.A. § 40-5-1(4) (see now O.C.G.A. § 40-5-1(6)) treats bond forfeiture as a "conviction" for purposes of O.C.G.A. § 40-5-58. Haley v. Hardison, 247 Ga. 750, 279 S.E.2d 712, 1981 Ga. LEXIS 866 (1981).

Neither state nor federal procedural due process bars the General Assembly from defining "conviction" in O.C.G.A. § 40-5-1 to include forfeiture of bail or collateral. Haley v. Hardison, 247 Ga. 750, 279 S.E.2d 712, 1981 Ga. LEXIS 866 (1981).

Applicability of § 40-5-34(c). — Former Code 1933, § 68B-216 (see now O.C.G.A. § 40-5-34(c)) applied only when a medical condition formed the basis for not issuing or reissuing a license, not where the action of the department in revoking a driver's license was based on the driver's repeated convictions of driving while under the influence of alcohol. Camp v. Department of Pub. Safety, 241 Ga. 419, 246 S.E.2d 296, 1978 Ga. LEXIS 1004 (1978).

Trial on accusation rather than indictment. — Felony charge of driving after having been declared a habitual violator may be tried on an accusation preferred by a district attorney rather than on an indictment returned by a grand jury. State v. Gilstrap, 230 Ga. App. 281, 495 S.E.2d 885, 1998 Ga. App. LEXIS 109 (1998).

Notice

Notice provisions of section constitutional. — Notice provisions in former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) meet the constitutional standards of due process. Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458, 1980 Ga. LEXIS 1043 (1980).

Service of notice is not civil process service. — Service of notice of revocation of a driver's license as a habitual violator under O.C.G.A. § 40-5-58 was not service of a civil process under former O.C.G.A. § 24-10-1 (see now O.C.G.A. § 24-13-1). Hill v. State, 162 Ga. App. 637, 292 S.E.2d 512, 1982 Ga. App. LEXIS 3155 (1982).

Ten-day notice requirements of § 40-5-53 inapplicable. — Department's jurisdiction and authority to declare a driver a habitual offender does not depend on court's compliance with ten-day notice requirements of O.C.G.A. § 40-5-53(b) (relating to reports of convictions) but depends on the information contained within the department's files as provided by O.C.G.A. § 40-5-58(b). Hardison v. Orndorff, 173 Ga. App. 630, 327 S.E.2d 497, 1985 Ga. App. LEXIS 1645 (1985).

Relevance of date upon which notice given. — Date upon which notice was given to a habitual violator is relevant to whether the subsequent act of driving is punishable as a felony or a misdemeanor; a nonlicensed habitual violator who drives within five years of notification of that person's status as such is punishable for a felony, whereas a violator who drives more than five years after the notification is punishable for a misdemeanor. Hyde v. State, 205 Ga. App. 754, 424 S.E.2d 39, 1992 Ga. App. LEXIS 1396 (1992).

Date of notice on indictment. — Since the misdemeanor offense defined in O.C.G.A. § 40-5-58(c)(1) did not contain the element of operating a motor vehicle within five years of notice of revocation, any allegations regarding the time at which the defendant committed the offense of operating a motor vehicle after revocation of the defendant's license and before issuance of a new license were unnecessary. Woody v. State, 212 Ga. App. 186, 441 S.E.2d 505, 1994 Ga. App. LEXIS 180 (1994).

Notice by certified mail. — Provision for notice by certified mail affords due process in the administrative function of giving notice that a driver's license is revoked as a habitual violator. Weaver v. State, 242 Ga. 8, 247 S.E.2d 749, 1978 Ga. LEXIS 1070 (1978).

Jury could find that the Department of Public Safety had complied with all the statutory requirements of O.C.G.A. § 40-5-58 when notice was sent by certified mail, return receipt requested, to the licensee at the licensee's last known address, and the return receipt showed that someone at that location accepted delivery of the certified letter addressed to the licensee. King v. State, 179 Ga. App. 184, 345 S.E.2d 902, 1986 Ga. App. LEXIS 1861 (1986).

Defendant's contention that there was no evidence that the defendant received notice of the defendant's habitual violator status was without merit, since notice of the defendant's habitual violator status was sent by certified mail to the defendant's last known address and the return

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receipt indicates that the notice was signed for by the defendant. Johnson v. State, 194 Ga. App. 501, 391 S.E.2d 132, 1990 Ga. App. LEXIS 202 (1990).

Because the state provided evidence that notice of habitual violator status was sent to the defendant at the defendant's last known address and the return receipt clearly had the defendant's printed name and signature under the "received by" section of the return receipt, and because the defendant failed to rebut this evidence, the jury was authorized to conclude that the Department of Public Service complied with the statutory notice requirements. West v. State, 300 Ga. App. 583, 685 S.E.2d 486, 2009 Ga. App. LEXIS 1229 (2009).

Personal service of notice by police officer sufficient. — Proper notice was effected after the defendant was personally served by a county police officer with the notice of revocation and declaration as a habitual offender, and personally signed that notice, and the document was returned and placed in the files of the Department of Public Safety. Stowe v. State, 176 Ga. App. 169, 335 S.E.2d 431, 1985 Ga. App. LEXIS 2269 (1985).

After a police officer read the notice to the defendant, who in turn refused to sign the notice, and this service and refusal was witnessed by another police officer, such personal service was sufficient to satisfy the intent and notice requirements of O.C.G.A. § 40-5-58(b). Waits v. State, 194 Ga. App. 284, 390 S.E.2d 296, 1990 Ga. App. LEXIS 60 (1990).

Attempted personal service followed by refusal to accept. — When a state trooper attempted to personally serve the defendant with an "Official Notice of Revocation" and the defendant refused to accept, the service comported with the notice requirements. Wellons v. State, 152 Ga. App. 523, 263 S.E.2d 212, 1979 Ga. App. LEXIS 2980 (1979).

Reading habitual violator declaration sufficient notice. — When a state patrol officer read the defendant the contents of a request which stated that the defendant had been declared a habitual violator, told the defendant that the defendant would be unable to drive a vehicle, and that if the defendant did the defendant would be subject to imprisonment, there was sufficient compliance with the notice requirements of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58). Cooper v. State, 156 Ga. App. 108, 274 S.E.2d 112, 1980 Ga. App. LEXIS 2898 (1980).

Misleading notice held sufficient. — Notice relied on by the state to establish the "essential element" of notification was actively misleading insofar as the notice specified that the defendant's exposure to felony sanctions for operating a motor vehicle without a valid driver's license would last only five years; however, the notice was sufficient to support a conviction for the misdemeanor offense of driving without a license. Connelly v. State, 181 Ga. App. 261, 351 S.E.2d 702, 1986 Ga. App. LEXIS 2822 (1986).

Defendant did not receive sufficient notice. — Evidence was insufficient as to the habitually impaired driving charge because, as the state conceded, the defendant did not receive sufficient notice of the defendant's status as a habitual violator. Clinton v. State, 340 Ga. App. 587, 798 S.E.2d 101, 2017 Ga. App. LEXIS 115 (2017).

Sufficient evidence to convict. — There was sufficient evidence to convict the defendant of a habitual violator offense since a habitual violator notice revoking the defendant's driver's license was sent by registered mail to the address the defendant provided and was signed for in the defendant's name at that address, and since the defendant admitted surrendering the defendant's driver's license, and admitted knowing the defendant was not supposed to be driving. Allain v. State, 202 Ga. App. 706, 415 S.E.2d 315, 1992 Ga. App. LEXIS 141 (1992).

Failure to notify of rights deemed harmless. — Though the notice of revocation of licenses was materially defective in that the notice did not contain any information about the revoked licensee's right to request a departmental hearing and the licensee's subsequent appellate rights, this oversight was

rendered harmless when the licensee was granted an out-of-time hearing and pursued the licensee's appellate rights by bringing the adverse department decision to the superior court. Hardison v. Booker, 179 Ga. App. 693, 347 S.E.2d 681, 1986 Ga. App. LEXIS 2011 (1986).

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Prosecutorial discretion. — Even if the defendant admits notice that the defendant had the legal status of habitual violator, the state is not bound to charge the defendant with a felony under O.C.G.A. § 40-5-58 and is not precluded from charging the defendant with a O.C.G.A. § 40-5-121 misdemeanor. The decision of whether to prosecute and what charges to file are decisions that rest in the prosecutor's discretion. Noeske v. State, 181 Ga. App. 778, 353 S.E.2d 635, 1987 Ga. App. LEXIS 1555 (1987).

Indictment not defective. — An indictment on November 18, 1986, for alleged offenses occurring on May 10 and August 22, 1986, based on the operation of a motor vehicle on those dates after being declared a habitual violator on February 7, 1986, is not defective and is not subject to a motion to quash since the offenses upon which the habitual violator status was based were set aside as "null and void" on September 18, 1986, since driving a motor vehicle after revocation of a license upon being declared a habitual violator is an offense separate and distinct from the offenses which led to the driver's being declared a habitual violator. State v. Tart, 183 Ga. App. 737, 359 S.E.2d 722, 1987 Ga. App. LEXIS 2080 (1987).

Challenge to indictment. — Defendant waived the defendant's claim that the defendant should have been sentenced for a misdemeanor rather than a felony on the basis that the language of the accusation did not specify felony because the defendant's argument addressed a defect in the accusation and should have been raised by special demurrer. England v. State, 232 Ga. App. 842, 502 S.E.2d 770, 1998 Ga. App. LEXIS 852 (1998), cert. denied, No. S98C1584, 1998 Ga. LEXIS 1100 (Ga. Oct. 26, 1998).

Location of operation of vehicle not required in indictment. — Elements required for the offense of operating a motor vehicle after having been declared to be a habitual violator do not include any specific location in which the motor vehicle is operated; therefore, the state did not have to prove that the defendant operated a vehicle on the street named in the indictment since the location named in the indictment, with the exception of the county, is immaterial and pure surplusage. Stacey v. State, 214 Ga. App. 130, 447 S.E.2d 339, 1994 Ga. App. LEXIS 845 (1994).

Failure to set out prior convictions in indictment. — Indictment under subsection (c) of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) was not deficient if the indictment failed to set out prior convictions, but stated that the defendant was a habitual violator because this gave notice that the defendant's past record of traffic offenses will be used to prove the commission of the crime. Weaver v. State, 242 Ga. 8, 247 S.E.2d 749, 1978 Ga. LEXIS 1070 (1978).

No need to prove prior convictions. — State is not required to prove previous convictions which led to a party being declared a habitual violator. Bollen v. State, 155 Ga. App. 181, 270 S.E.2d 227, 1980 Ga. App. LEXIS 2511 (1980); Hester v. State, 159 Ga. App. 642, 284 S.E.2d 659, 1981 Ga. App. LEXIS 2784 (1981).

Conviction under O.C.G.A. § 40-5-58 need not be based upon proof of prior traffic offenses as such proof is immaterial in a prosecution under that section. Hester v. State, 159 Ga. App. 642, 284 S.E.2d 659, 1981 Ga. App. LEXIS 2784 (1981).

Consideration of drunk driving conviction in another state. — In determining whether appellee was a habitual violator, appellee's conviction of the offense of driving with an unlawful blood alcohol level in Florida constituted conviction of an offense "substantially conforming to an offense" in O.C.G.A. § 40-6-390 et seq. Hardison v. Haslam, 250 Ga. 59, 295 S.E.2d 830, 1982 Ga. LEXIS 993 (1982).

Collateral attack of habitual violator status. — Driver who is declared a habitual violator and who has driver's license revoked, based on three convictions for driving under the influence

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within five years, is not permitted to collaterally attack one's habitual violator status by attacking the validity of one of the driver's prior convictions. Love v. Hardison, 166 Ga. App. 677, 305 S.E.2d 420, 1983 Ga. App. LEXIS 2292 (1983).

State must prove defendant operated vehicle after receiving revocation notice. — An essential element of the offense under subsection (c) of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58), was that the defendant operated a motor vehicle after receiving notice that the defendant's license had been revoked. On the trial of the case, the state has the burden of proving this notice. Weaver v. State, 242 Ga. 8, 247 S.E.2d 749, 1978 Ga. LEXIS 1070 (1978).

In a prosecution under subsection (c) of O.C.G.A. § 40-5-58, the state has the burden of proving that the defendant was given notice of revocation of the defendant's driver's license because of the defendant having been declared a habitual violator. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Committing offense after revocation period expires but before new license secured. — When the defendant driver injured a pedestrian while under the influence of alcohol and lacked a license because of a previous revocation, the driver was correctly sentenced under O.C.G.A. § 40-5-58 as a habitual violator notwithstanding that the five-year license revocation period expired prior to the moment of the offense. Cody v. State, 170 Ga. App. 712, 318 S.E.2d 503, 1984 Ga. App. LEXIS 2005 (1984).

Former jeopardy if charge known to prosecutor when other offenses adjudicated. — Plea of former jeopardy under former Code 1933, § 26-506 (see now O.C.G.A. § 16-1-7), based upon the fact that the habitual violator charge was known to the prosecuting officer to arise out of the same conduct as other offenses to which the defendant had previously pled guilty and which laid within the jurisdiction of a single court, required that the state press these matters in a single prosecution, and prohibited belatedly bringing a habitual offender charge. Carnes v. State, 242 Ga. 286, 248 S.E.2d 660, 1978 Ga. LEXIS 1173 (1978).

Proof vehicle moving not required. — Conviction under O.C.G.A. § 40-5-58(c) requires no proof that the vehicle was actually moving. Mazo v. State, 224 Ga. App. 744, 481 S.E.2d 831, 1997 Ga. App. LEXIS 105 (1997), cert. denied, No. S97C0889, 1997 Ga. LEXIS 439 (Ga. May 9, 1997).

Proof of operation of a vehicle for a nonbusiness purpose was not required in a prosecution for operating a motor vehicle under the influence of alcohol while having a probationary license. Williams v. State, 223 Ga. App. 209, 477 S.E.2d 367, 1996 Ga. App. LEXIS 1100 (1996).

Admission of evidence by certified document. — Trial court correctly denied the defendant's motion for directed verdict of acquittal on the charge of habitual violator since the state submitted evidence of all material allegations by means of a properly certified document which was admissible as evidence in any civil or criminal proceeding as proof of the document's contents. Brown v. State, 201 Ga. App. 98, 410 S.E.2d 196, 1991 Ga. App. LEXIS 1206 (1991).

Introduction into evidence of irrelevant material in driving history. — Entry into evidence of the defendant's entire driving history, which contains not only facts essential to the conviction but also irrelevant additional material, is not reversible error unless prejudice appears and it can be shown that the irrelevant material contributed to the conviction. Harper v. State, 175 Ga. App. 703, 334 S.E.2d 30, 1985 Ga. App. LEXIS 2143 (1985).

When the state introduced, over the defendant-appellant's objection, the notice of revocation sent to the appellant, to which was attached appellant's entire driving history (exhibit 1), and two prior habitual violator convictions (exhibits 2 and 3), and each exhibit contained evidence of prior driving under the influence (DUI) convictions, and exhibit 2 also included a conviction for public indecency,

appellant did not testify at trial, and the prior convictions at issue were unrelated and irrelevant to the charged crime, there was no proper purpose for admission of the public indecency and DUI convictions, thereby necessitating a reversal of the judgment. Jarrad v. State, 195 Ga. App. 704, 394 S.E.2d 555, 1990 Ga. App. LEXIS 682 (1990).

In a prosecution under O.C.G.A. § 40-5-58(c), the admission of the defendant's entire driving record when only a portion of the driving record is admissible is reversible error. Ragan v. State, 264 Ga. 190, 442 S.E.2d 750, 1994 Ga. LEXIS 420 (1994).

Possession of valid license from another state. — Under O.C.G.A. § 40-5-65, possession of a valid license from another state was not a defense to a habitual violator charge and created no presumption that the defendant was authorized to drive in Georgia; since the defendant testified that the defendant never inquired about reinstating the defendant's Georgia driving privileges, the evidence supported the defendant's habitual violator conviction. Stripling v. State, 279 Ga. App. 856, 632 S.E.2d 747, 2006 Ga. App. LEXIS 708 (2006).

Evidence sufficient for conviction. — Certified copies of records of the Department of Public Safety constituted sufficient evidence to convict the defendant of operating a motor vehicle after receiving notice that the defendant's license was revoked as a habitual violator. Hill v. State, 223 Ga. App. 493, 478 S.E.2d 406, 1996 Ga. App. LEXIS 1216 (1996).

Evidence, including the fact that the defendant's driving was unrelated to the limited lawful purposes of a habitual violator's probationary driver's license, was sufficient to sustain conviction. Kingree v. State, 228 Ga. App. 71, 491 S.E.2d 123, 1997 Ga. App. LEXIS 1030 (1997).

Defendant's admissions that the defendant was at a bar with the defendant's car and too drunk to remember how the defendant got home the evening before the defendant's arrest and proof that the defendant's car was wrecked within a block and a half of the defendant's home, that the defendant had possession of the defendant's car keys shortly after the collision, and that the defendant's driver's license had been revoked based on the defendant's status as a habitual violator at the time of the collision was sufficient to find the defendant guilty of violating O.C.G.A. § 40-5-58(c)(1). Sams v. State, 239 Ga. App. 715, 521 S.E.2d 848, 1999 Ga. App. LEXIS 1121 (1999).

Evidence that the defendant's license was revoked in 1989, that the license was never reinstated or renewed, and that the defendant drove an automobile on April 9, 1998, without a valid license, was sufficient for conviction. Brady v. State, 241 Ga. App. 387, 527 S.E.2d 214, 1999 Ga. App. LEXIS 1640 (1999).

Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. Greene v. State, 278 Ga. App. 848, 630 S.E.2d 123, 2006 Ga. App. LEXIS 419 (2006).

Jury need not accept defendant's explanation. — Jury is not required to accept the defendant's explanation that an emergency required the defendant to drive on the occasion in question. Cape v. State, 165 Ga. App. 825, 303 S.E.2d 77, 1983 Ga. App. LEXIS 2029 (1983).

Testimony held sufficient to authorize guilty verdict. — Testimony that the defendant drove an automobile coupled with evidence that the defendant's driver's license had been revoked as a habitual offender is sufficient to authorize a rational jury to find guilt beyond a reasonable doubt. Hester v. State, 159 Ga. App. 642, 284 S.E.2d 659, 1981 Ga. App. LEXIS 2784 (1981).

Instruction on offense authorized. — When the defendant was arrested for driving without a license after an earlier revocation of the defendant's license for being a habitual violator, it was not error for the trial court to charge the jury upon the habitual offender offense alleged in the indictment. Kelly v. State, 182 Ga. App. 7, 354 S.E.2d 647, 1987 Ga. App. LEXIS 2591 (1987).

Practice and Procedure (Cont'd)

Supersedeas does not stay delivery of the defendant's driver's license to Department of Public Safety following the defendant's driving under the influence conviction. Arnold v. State, 163 Ga. App. 94, 292 S.E.2d 891, 1982 Ga. App. LEXIS 2415 (1982).

Sentence and Appeal

Crime of moral turpitude. — Violation of O.C.G.A. § 40-5-58 reflects a callous and repeated disregard for the safety and welfare of other people, conviction for which is a crime of moral turpitude within the meaning of Ga. Const. 1983, Art. II, Sec. I, Para. III(a). Jarrard v. Clayton County Bd. of Registrars, 262 Ga. 759, 425 S.E.2d 874, 1993 Ga. LEXIS 248 (1993), overruled in part, Cook v. Board of Registrars, 291 Ga. 67, 727 S.E.2d 478, 2012 Ga. LEXIS 449 (2012).

Former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) was not a recidivist statute. Bollen v. State, 155 Ga. App. 181, 270 S.E.2d 227, 1980 Ga. App. LEXIS 2511 (1980).

Subsection (c) of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58), was not a recidivist statute and in a prosecution under that section it was not necessary to prove the defendant's prior convictions. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Increased penalty imposed for new crime only. — Habitual violator statute allowing for the consideration of offenses which occurred before the enactment of the statute is not ex post facto. The repetition of the criminal conduct aggravates the offender's guilt and justifies heavier penalties when the offender is again convicted, and the penalty is imposed for a new crime only, but is heavier if the offender is a habitual violator. The increased penalty is for the latest crime, which is considered to be an aggravated offense because it is repetitive. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978).

Use of prior convictions. — Appellate court erred in affirming the trial court's ruling that the trial court could consider the defendant's prior convictions in sentencing the defendant as the state conceded at the sentencing hearing before the trial court that the prior convictions, based on guilty pleas, could not be used to enhance the defendant's sentence because the convictions were uncounseled, and, thus, only offered the prior convictions for the trial court to consider how much of the defendant's sentence should be probated. Thompson v. State, 276 Ga. 701, 583 S.E.2d 14, 2003 Ga. LEXIS 612 (2003).

One-to-five-year sentence not excessive. — Mandatory one-to-five-year sentence for driving with revoked license is neither barbaric nor excessive under the federal Constitution. Cox v. State, 241 Ga. 154, 244 S.E.2d 1, 1978 Ga. LEXIS 901 (1978).

Trial court properly upheld the decision of the Georgia Department of Driver Services (DDS) revoking a driver's license as of September 11, 2007, based on the driver's status as a habitual offender under O.C.G.A. § 40-5-58(b) due to the driver's 2004 convictions for vehicular homicide, driving under the influence, racing, and failure to maintain lane and DDS' determination that the five-year revocation period commenced from that date as the five-year period could not be reduced by the driver's incarceration time. While the driver's license may have been held by the Department of Corrections while the driver was incarcerated, the five-year revocation period was not subject to reduction by that time because the driver had not been declared a habitual violator by DDS until September 11, 2007. Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89, 2009 Ga. App. LEXIS 562 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. Sept. 28, 2009).

Allowable conditions of probation. — Court had authority to impose as a condition of probation the requirement that the defendant wear a fluorescent pink plastic bracelet imprinted with the words "D.U.I. CONVICT." Such requirement did not impose cruel and unusual punishment or deprive the defendant of equal protection and the condition was not an impermissibly indeterminate condition. Ballenger v.

State, 210 Ga. App. 627, 436 S.E.2d 793, 1993 Ga. App. LEXIS 1295 (1993).

Constitutionality of administrative appeal and review scheme. — Georgia scheme of administrative appeal and de novo review in the superior court meets due process hearing requirements of the state and federal Constitutions. Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458, 1980 Ga. LEXIS 1043 (1980).

Right to administrative review and de novo appeal. — Person whose driver's license has been revoked under O.C.G.A. § 40-5-58 by the Department of Public Safety has a right to obtain administrative review of the department decision followed by a de novo appeal to superior court. Smith v. State, 248 Ga. 828, 286 S.E.2d 709, 1982 Ga. LEXIS 1095 (1982).

Revocation not criminal sentence. — Revocation of a license pursuant to former Code 1933, § 68B-303 (see now O.C.G.A. § 40-5-58) was clearly not a criminal sentence. Cofer v. Hawthorne, 154 Ga. App. 875, 270 S.E.2d 84, 1980 Ga. App. LEXIS 2426 (1980).

Failure to preserve objection at trial waived argument on appeal. — Defendant did not object at trial to the Georgia Department of Public Safety documents that were admitted to show the defendant's receipt of notice that the defendant's license had been suspended as a habitual violator nor did the defendant object to any failure of the Department to meet the relevant statutory requirements; thus, the defendant waived argument on appeal concerning their admission into evidence. Keller v. State, 271 Ga. App. 79, 608 S.E.2d 697, 2004 Ga. App. LEXIS 1593 (2004), cert. denied, No. S05C0712, 2005 Ga. LEXIS 322 (Ga. Apr. 26, 2005).

Conviction of driving by habitual traffic violator predicate felony under recidivist statute. — As a violation of O.C.G.A. § 40-5-58(c)(1) (operating a vehicle by a habitual offender whose license has been revoked) is punishable by one to five years' imprisonment, the offense is a felony. Since a defendant had four prior convictions for violations of § 40-5-58(c)(1), the defendant was properly sentenced as a recidivist under O.C.G.A. § 17-10-7(c). Hollis v. State, 295 Ga. App. 529, 672 S.E.2d 487, 2009 Ga. App. LEXIS 30 (2009).

Sentence upheld. — When the driver was declared a habitual violator under provisions of former Code 1933, § 68B-308(a), then was convicted for operating a motor vehicle while the person's license was still revoked pursuant to that action, after the Official Code of Georgia Annotated became effective on November 1, 1982, the revocation of the driver's license was effected "under this Code section" within the meaning of O.C.G.A. § 40-5-58(c), and the driver could be sentenced to a five-year confinement pursuant to that. Ketchum v. State, 167 Ga. App. 858, 307 S.E.2d 742, 1983 Ga. App. LEXIS 2642 (1983).

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Operation of construction equipment by habitual violator. — Driver declared to be a habitual violator and given notice as provided by law is not guilty of the offense of operating a vehicle after having been declared a habitual violator when the driver operates self-propelled road construction equipment which is not designed or used primarily for the transportation of persons or property so long as such a vehicle is not operated on the highways of this state. 1990 Op. Att'y Gen. No. U90-14.

Prosecution of persons designated as habitual violators before January 1, 1991. — Holding of the Court of Appeals in Galletta v. Hardison, 168 Ga. App. 36 (1983) is applicable solely to appeals from driver's license revocations by the Georgia Department of Public Safety and individuals designated as habitual violators prior to January 1, 1991, based upon one or more convictions for driving with a suspended license who drive prior to obtaining reinstatement of their driving privileges by the Department of Public Safety; those drivers are subject to felony prosecution pursuant to subsection (c) of O.C.G.A. § 40-5-58 notwithstanding the 1990

amendment to that Code section. 1992 Op. Att'y Gen. No. U92-5.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 143 et seq.

ALR.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866.

Validity and construction of statute or ordinance mandating imprisonment for habitual or repeated traffic offender, 2 A.L.R.4th 618.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

40-5-59. Reexamination of drivers believed to be incompetent or unqualified.

(a) The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, shall require him to submit to an examination at the nearest license examining facility within ten days of receipt of written notice from the department. Upon the conclusion of such examination, the department shall take action as may be appropriate and may revoke the license of such person or permit him to retain such license or may issue a license subject to restrictions as permitted under Code Section 40-5-30 or restrictions as to the type or class of vehicles that may be driven. Refusal or neglect of the licensee to submit to such examination shall be grounds for revocation of his license.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the department is authorized to revoke the license of a driver without a preliminary examination or hearing upon a recommendation by a court or prosecutor or upon a showing by the records of the department that the licensee is incapacitated by reason of disease, mental or physical disability, or addiction to alcohol or drugs to the extent that such person is incompetent to operate a motor vehicle.

(c) Any person whose license is revoked pursuant to subsection (b) of this Code section thereafter shall be entitled to a hearing before the department upon receipt by the department of a written request therefor. Such hearing shall be held within 30 days of the receipt of such request. The person may request an opinion of the Driver License Advisory Board as provided for in subsection (c) of Code Section 40-5-34. The department may not grant any exceptions to any regulations issued pursuant to subsection (a) of Code Section 40-5-35. The scope of the hearing shall be to determine if the driver is competent to drive a motor vehicle. The hearing shall be informal and appeal shall be as provided for in Code Section 40-5-66.

(d) The reports required by this Code section shall be confidential and shall be used solely for the purpose of determining the qualifications of any person to drive a motor vehicle on the highways of this state. No civil or criminal action may be brought against any person or agency for providing the information to the department for the purposes of this Code section. The reports, or any reference to the reports, shall not be included in any abstract prepared pursuant to Code Section 40-5-2.

History.
Code 1933, § 68B-309, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2006, p. 449, § 8/HB 1253.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 115.
C.J.S.
60 C.J.S., Motor Vehicles, § 341 et seq.
ALR.
Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

40-5-60. When revocation or suspension effective; notice.

(a) All revocations and suspensions provided for in this chapter shall be effective on the day the driver receives actual knowledge or legal notice thereof, whichever occurs first. Notice of suspension by operation of law shall be considered legal notice. Any license suspension or revocation mandated in this chapter following a person's conviction for any offense, including suspensions due to the accumulation of points pursuant to Code Section 40-5-57, shall be by operation of law.

(b) Notwithstanding any other provision of this chapter to the contrary, for any suspension or revocation for which the department is required to send notice to the driver, the department shall be authorized to direct such notice to the driver's new address as reflected in the records of the United States Postal Service in lieu of or in addition to sending such notice to the address reflected in his or her driving record.

History.
Ga. L. 1976, p. 1668, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2008, p. 171, § 6/HB 1111; Ga. L. 2011, p. 355, § 6/HB 269.
Law reviews.
For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Necessity of actual or constructive notice. — Since one element of the offense of driving while one's license is in a mandatory state of suspension is notice to

the defendant of the action, absent proof by the state of actual or legal notice, a conviction for the offense of driving while one's license is suspended cannot be sustained. State v. Orr, 246 Ga. 644, 272 S.E.2d 346, 1980 Ga. LEXIS 1234 (1980).

Conviction for driving while one's license is in a mandatory state of suspension may be sustained when one is charged with constructive notice of suspension by operation of law. Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250, 1988 Ga. App. LEXIS 1077 (1988).

Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions provided for in O.C.G.A. § 40-5-1 et seq., and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. State v. Fuller, 289 Ga. App. 283, 656 S.E.2d 902, 2008 Ga. App. LEXIS 71 (2008), superseded by statute as stated in Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Because there was no evidence that a defendant had received notice of the defendant's license suspension for excessive violation points under O.C.G.A. § 40-5-57, a conviction of driving with a suspended license in violation of O.C.G.A. § 40-5-121 was properly reversed. Under O.C.G.A. § 40-5-60, notice of a suspension was required for a conviction, and § 40-5-57 did not provide for notice by operation of law. State v. Fuller, 289 Ga. App. 283, 656 S.E.2d 902, 2008 Ga. App. LEXIS 71 (2008), superseded by statute as stated in Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Notice sufficient. — Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with a notice of suspension pursuant to O.C.G.A. § 40-5-60; the state introduced the defendant's driver's license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. Sledge v. State, 312 Ga. App. 97, 717 S.E.2d 682, 2011 Ga. App. LEXIS 903 (2011).

Officer's knowledge of driver's knowledge of suspension status. — Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Calculating beginning of revocation period when delay of notification. — Trial court erred in ruling that the revocation of a licensee's driver's license as a habitual violator was effective in May 2006 when the Georgia Department of Driver Services (DDS) received official notice of the licensee's December 2004 conviction for a third driving under the influence charge; the habitual violator revocation was effective on December 16, 2004, the date on which the licensee received legal notice of the licensee's status as a habitual violator and that the licensee's driver's license was being revoked. Lokey v. Ga. Dep't of Driver Servs., 291 Ga. App. 856, 663 S.E.2d 283, 2008 Ga. App. LEXIS 661 (2008).

40-5-61. Surrender and return of license; time served under such sentence credited toward fulfillment of period of revocation or suspension.

(a) The department, upon canceling, suspending, or revoking a license, shall require that such license shall be surrendered to the department and be processed in accordance with the rules and regulations of the department.

(b) Any person whose license has been canceled, suspended, or revoked shall immediately return his license to the department.

(c) It shall be unlawful to refuse to deliver upon a legal demand any driver's license which has been canceled, suspended, or revoked.

(d) Except as provided in Code Section 40-5-62, when the revocation period expires, the department shall reinstate the license to the driver within 30 days.

(e)(1) For the purpose of making any determination under this Code section relating to the return of revoked or suspended licenses to drivers, the period of revocation or suspension shall begin on the date the license is surrendered to the department or a court of competent jurisdiction under any provision of this chapter or on the date that the department processes the citation or conviction, whichever date shall first occur.

(2) If the license is lost, or for any other reason surrender to the department is impossible, the period of revocation or suspension may begin on the date set forth in a sworn affidavit setting forth the date and reasons for such impossibility, if the department shall have sufficient evidence to believe that the date set forth in such affidavit is true; in the absence of such evidence, the date of receipt of such affidavit by the department shall be controlling.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, a period of revocation or suspension may begin on the date a person is sentenced for an offense that also results in the revocation or suspension of his or her driver's license or driving privileges.

(f) When a person serving a sentence has his or her driver's license or driving privileges concurrently revoked or suspended with the imposition of his or her sentence, the department shall credit the time served under such sentence toward the fulfillment of the period of revocation or suspension.

History.
Code 1933, § 68B-313, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1668, § 1; Ga. L. 1989, p. 628, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1993, p. 940, § 3; Ga. L. 2000, p. 951, § 5-23; Ga. L. 2004, p. 471, § 4; Ga. L. 2016, p. 443, § 4-3/SB 367.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

40-5-62. Periods of revocation; time served under such sentence credited toward fulfillment of period of revocation; conditions to restoration of license or issuance of new license.

(a) Unless the revocation was for a cause which has been removed, any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be eligible to apply for a new license nor restoration of his or her nonresident's operating privilege until the earlier of:

(1) Five years from the date on which the revoked license was surrendered to and received by the department pursuant to a person's having been declared a habitual violator under Code Section 40-5-58;

(2) Five years from the date on which a person is sentenced for the offense that resulted in his or her driver's license or driving privileges being revoked;

(3) Five years from the date on which the department processed the citation or conviction, reduced by a period of time equal to that period of time which elapses between the date the person surrenders his or her driver's license to the court after conviction for the offense for which the person is declared a habitual violator and the date the department receives such license from the court; or

(4) Such time as any cause for revocation under subsection (b) of Code Section 40-5-59 has been removed.

(b) When a person serving a sentence has his or her driver's license or driving privileges concurrently revoked with the imposition of his or her sentence, the department shall credit the time served under such sentence toward the fulfillment of the period of revocation.

(c) The department shall not issue a new license nor restore a person's suspended license or nonresident's operating privilege unless and until it is satisfied after investigation of the character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Notwithstanding subsection (a) of this Code section or any other provision of this title, the department shall not issue a new license to any person whose license was revoked as a habitual violator for three violations of Code Section 40-6-391 within a five-year period unless and until such person submits

proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program. The department may issue rules and regulations providing for reinstatement hearings. In the case of a revocation pursuant to Code Section 40-5-58, the department shall charge a fee of $410.00 or $400.00 if processed by mail in addition to the fee prescribed by Code Section 40-5-25 to issue a new driver's license to a person whose driver's license has been revoked.

History.

Code 1933, § 68B-310, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 487, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 758, § 8; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 19.1; Ga. L. 1993, p. 940, § 4; Ga. L. 2004, p. 471, § 5; Ga. L. 2009, p. 679, § 5/HB 160; Ga. L. 2014, p. 710, § 1-11/SB 298; Ga. L. 2016, p. 443, § 4-4/SB 367.

Cross references.

Requirement of proof of financial responsibility for the future as prerequisite to restoration of driver's license to person convicted of offense for which license suspension is mandatory, § 40-9-81.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Revocation not criminal sentence. — Revocation of a license pursuant to former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) was clearly not a criminal sentence. Cofer v. Hawthorne, 154 Ga. App. 875, 270 S.E.2d 84, 1980 Ga. App. LEXIS 2426 (1980).

Delay in transmitting notification. — Under O.C.G.A. § 40-5-53(b), a court of conviction is required to transmit notification of applicable convictions to the Georgia Department of Driver Services within 10 days of the date of conviction, but a trial court's failure to timely transmit the records, which failure results in delayed revocation of an individual's license, does not affect the validity of the revocation or the calculation of the five-year period. Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89, 2009 Ga. App. LEXIS 562 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. Sept. 28, 2009).

Revocation continues until reinstatement. — Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. Greene v. State, 278 Ga. App. 848, 630 S.E.2d 123, 2006 Ga. App. LEXIS 419 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of procedures. — Procedures of former Code 1933, § 68B-310 (see now O.C.G.A. § 40-5-62), should be used without regard to whether the applicant habitual violator was properly determined to be such by the superior court or by the Department of Public Safety. 1980 Op. Att'y Gen. No. 80-94.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 116.
C.J.S.
60 C.J.S., Motor Vehicles, §§ 353 et seq., 359, 459.
ALR.
Suspension or revocation of driver's license for refusal to take sobriety test, 88 A.L.R.2d 1064.
Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

40-5-63. Periods of suspension for certain convictions of Code Section 40-5-54 or 40-6-391; conditions to return of license.

(a) The driver's license of any person convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391, unless the driver's license has been previously suspended pursuant to Code Sections 40-5-67.1 and 40-5-67.2, shall by operation of law be suspended and such suspension shall be subject to the following terms and conditions; provided, however, that any person convicted of a drug related offense pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of Code Section 40-5-75; and further provided that each charge for which a conviction was obtained shall be treated as a separate transaction for the purpose of imposing a license suspension hereunder, even if said convictions arise from a single incident; and further provided that the department shall treat each conviction received in the order in which said convictions are processed even if it is not the order in which said offenses occurred:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be 12 months. At the end of 120 days, the person may apply to the department for early reinstatement of his or her driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not

become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. For purposes of this paragraph, an accepted plea of nolo contendere to an offense listed in Code Section 40-5-54 by a person who is under 18 years of age at the time of arrest shall constitute a conviction. For the purposes of this paragraph only, an accepted plea of nolo contendere by a person 21 years of age or older, with no conviction of and no plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered a conviction, and the court having jurisdiction shall forward, as provided in Code Section 40-6-391.1, the record of such disposition of the case to the department and the record of such disposition shall be kept on file for the purpose of considering and counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and (3) of this subsection;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be three years. At the end of 120 days, the person may apply to the department for reinstatement of his or her driver's license; except that if such license was suspended as a result of a second conviction of a violation of Code Section 40-6-391 within five years, the person shall not be eligible to apply for license reinstatement until the end of 18 months. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program, provides proof of installation and maintenance of an ignition interlock device for a period of one year coinciding with the issuance of an ignition interlock device limited driving permit as provided in Code Section 40-5-64.1 unless waived due to financial hardship, and pays the prescribed restoration fee. For

purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period of time shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions; or

(3) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and such license shall be revoked as provided for in paragraphs (1) through (3) of subsection (a) of Code Section 40-5-62. For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere and all prior accepted pleas of nolo contendere to a charge of violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions.

(b) The periods of suspension provided for in this Code section shall begin on the date the person is convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay the applicable restoration fee. In addition to any other requirement the department may impose, a driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid, shall remain suspended, and shall not be returned to such driver or otherwise reinstated until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.

(d)(1) Any person convicted of violating subsection (a) of Code Section 40-6-393 or subsection (b) of Code Section 40-6-394 shall have his or her license suspended for a period of three years. Such person shall not be eligible for early reinstatement of said driver's license as

provided in this Code section or in Article 4 of this chapter and shall not be eligible for a limited driving permit as provided in Code Section 40-5-64.

(2) For purposes of this chapter, an accepted plea of nolo contendere to any violation of Code Section 40-6-393 or 40-6-394 shall constitute a conviction.

History.

Code 1933, § 68B-312, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1670, § 1; Ga. L. 1978, p. 225, § 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 1601, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 487, § 2; Ga. L. 1983, p. 1000, § 6; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 7; Ga. L. 1987, p. 1082, § 4; Ga. L. 1989, p. 1698, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 3; Ga. L. 1992, p. 779, § 20; Ga. L. 1992, p. 2564, § 2; Ga. L. 1992, p. 2746, § 2; Ga. L. 1992, p. 2785, §§ 9, 10; Ga. L. 1993, p. 940, § 5; Ga. L. 1994, p. 730, § 2; Ga. L. 1997, p. 760, § 16; Ga. L. 1997, p. 1085, § 3; Ga. L. 2000, p. 951, §§ 5-24, 5-25; Ga. L. 2000, p. 1457, § 2; Ga. L. 2001, p. 208, §§ 2-3, 3-3; Ga. L. 2005, p. 334, § 17-15/HB 501; Ga. L. 2006, p. 449, § 9/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 932, § 13/HB 396; Ga. L. 2011, p. 355, § 7/HB 269; Ga. L. 2013, p. 878, § 1/HB 407; Ga. L. 2014, p. 710, § 1-12/SB 298; Ga. L. 2015, p. 60, § 4-16/SB 100; Ga. L. 2016, p. 323, § 2-3/HB 205; Ga. L. 2016, p. 443, § 4-5/SB 367; Ga. L. 2019, p. 491, § 2/SB 1.

Cross references.

License plate revocations, § 40-2-136.

Requirement of proof of financial responsibility for the future as prerequisite to restoration of driver's license to person convicted of offense for which license suspension is mandatory, § 40-9-81.

Ignition interlock device requirements, § 42-8-110 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, "this paragraph" was substituted for "this subparagraph" in the last sentence of paragraph (a)(2).

Pursuant to Code Section 28-9-5, in 1994, "drug related" was substituted for "drug-related" in the beginning of subsection (a).

Editor's notes.

Ga. L. 1990, p. 1154, § 3, effective July 1, 1990, amended former Code Section 40-5-70. Since Ga. L. 1990, p. 2048, § 4, incorporated the provisions of former Code Section 40-5-70 into this Code section, those amendments have been given effect in this Code section.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2019, p. 491, § 1/SB 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'C.J.'s Law.'"

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 145 (2019).

JUDICIAL DECISIONS

Warning need not exactly track statutory language. — When the defendant contended that evidence of the defendant's refusal to submit to a chemical test to determine the alcohol content of the defendant's blood should not have been admitted because the defendant had been erroneously advised by the arresting officer that the defendant's driver's license would be suspended "for a period of six to 12 months" in the event of such a refusal, it was held that a defendant is not entitled to a warning which tracks the exact language of the implied consent statute, and the contention that the alleged misinformation prevented the defendant from making an intelligent choice strained credulity. Pryor v. State, 182 Ga. App. 79, 354 S.E.2d 690, 1987 Ga. App. LEXIS 2592 (1987).

Notice of suspension. — Legislature intended to effectuate suspension or revocation of a driver's license automatically upon a conviction for driving under the influence (DUI), the notice to the defendant being the trial for violation of O.C.G.A. § 40-6-391 (DUI); i.e., notice "by operation of law." Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250, 1988 Ga. App. LEXIS 1077 (1988).

In a prosecution for driving with a suspended license, without the defendant's agreement to stipulate to the defendant's convictions for driving under the influence (DUI), there was no recourse other than to admit the defendant's entire driving violations record to establish notice under O.C.G.A. § 40-5-63(a). A mere showing of the defendant's suspended status, without proof of the DUI violations, would have been insufficient. Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250, 1988 Ga. App. LEXIS 1077 (1988).

Subsection (a) of O.C.G.A. § 40-5-63 effectuates suspension or revocation of a driver's license automatically upon a conviction for driving under the influence, the notice of suspension being the trial for the driving offense under O.C.G.A. § 40-6-391. Eppinger v. State, 236 Ga. App. 426, 512 S.E.2d 320, 1999 Ga. App. LEXIS 192 (1999).

Defendant's driver's license was properly suspended after the defendant pled guilty to and received sentences as a first offender for two counts of homicide by vehicle in the first degree and one count of driving with ability impaired by alcohol. Salomon v. Earp, 190 Ga. App. 405, 379 S.E.2d 217, 1989 Ga. App. LEXIS 267 (1989), overruled on other grounds, Pender v. Witcher, 196 Ga. App. 856, 397 S.E.2d 193, 1990 Ga. App. LEXIS 1094 (1990).

Under the plain language of O.C.G.A. § 40-5-63(a), because the underlying DUI convictions pursuant to O.C.G.A. § 40-6-391 did not have to result from separate arrests or separate and isolated incidents, the Department of Driver Services could suspend a driver's license based upon two separate DUI convictions resulting from a single incident. Dozier v. Jackson, 282 Ga. App. 264, 638 S.E.2d 337, 2006 Ga. App. LEXIS 1266 (2006).

Probation condition requiring court permission to drive. — Condition of probation requiring the defendant to seek the court's permission to drive was within the requisite statutory parameters. Durrance v. State, 319 Ga. App. 866, 738 S.E.2d 692, 2013 Ga. App. LEXIS 94 (2013).

Effect of premature issuance. — Premature issuance of a driver's license to the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and as permitted by statutory procedure. Payne v. State, 209 Ga. App. 780, 434

S.E.2d 543, 1993 Ga. App. LEXIS 985 (1993); Grisson v. State, 237 Ga. App. 559, 515 S.E.2d 857.

Habitual violator and general nolo contendere provisions concurrently effective. — Ga. L. 1946, p. 142, §§ 1-3 (see now O.C.G.A. § 17-7-95) referred generally to the effects of pleas of nolo contendere as compared with pleas of guilty and makes no reference to the suspension of licenses. Since paragraph (a)(2) of former Code 1933, § 68B-312 (see now O.C.G.A. § 40-5-63) referred not to crimes generally, but only to the specific offenses of driving under the influence of alcohol or drugs, the two sections have concurrent efficacy. Howe v. Cofer, 144 Ga. App. 589, 241 S.E.2d 472, 1978 Ga. App. LEXIS 1695 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere.

When nolo contendere plea considered conviction. — Nolo contendere plea will be considered to be a conviction when there has been another conviction or accepted plea within the statutory five-year period. Howe v. Cofer, 144 Ga. App. 589, 241 S.E.2d 472, 1978 Ga. App. LEXIS 1695 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere).

Language of paragraph (a)(3) of former Code 1933, § 68B-312 (see now O.C.G.A. § 40-5-63) permitted the department to rely upon a nolo contendere accepted prior to the effective date of former Code 1933, § 68B-308 (see now O.C.G.A. § 40-5-58) as a conviction in classifying a person as a habitual violator. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere.

Habitual violator provision not ex post facto. — Habitual violator provision which considers offenses occurring before provision's enactment is not ex post facto. The repetition of the criminal conduct aggravates the offender's guilt and justifies heavier penalties when the offender is again convicted, and the penalty is imposed for a new crime only, but is heavier if the offender is a habitual violator. The increased penalty is for the latest crime, which is considered to be an aggravated offense because it is repetitive. Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152, 1978 Ga. App. LEXIS 2490 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere).

Mistaken suspension. — Since the defendant's license suspension under O.C.G.A. § 40-5-63 was an ancillary result of the erroneous filing of the conviction papers, the suspension was not punishment within the meaning of the bar against double jeopardy. Locklear v. State, 244 Ga. App. 10, 534 S.E.2d 575, 2000 Ga. App. LEXIS 608 (2000), cert. denied, No. S00C1544, 2000 Ga. LEXIS 730 (Ga. Sept. 28, 2000).

Officers knowledge of driver's DUI as probable cause for stop. — *Unpublished decision:* Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers to believe the defendant had not yet applied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. United States v. Woods, 385 Fed. Appx. 914, 2010 U.S. App. LEXIS 13642 (11th Cir. 2010).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 40-5-70 are included in the annotations for this Code section.

Application for limited permit. —

Driver may not apply for limited permit when driver's license was revoked under paragraph (a)(3) of former Code 1933, § 68B-312. 1977 Op. Att'y Gen. No. 77-54 (see now O.C.G.A. § 40-5-63).

Age as affecting when accepted plea of nolo contendere considered conviction. — Under O.C.G.A. § 40-5-63, which provides for the suspension of the driver's license of any person convicted of a violation of O.C.G.A. § 40-6-391, an accepted plea of nolo contendere tendered by an individual 18 years of age or older who has no previous conviction on these charges within the previous five years is not to be considered a conviction; however, an accepted plea of nolo contendere tendered by a person less than 18 years of age is to be considered a conviction. 1986 Op. Att'y Gen. U86-20 (rendered under former § 40-5-70).

When an individual is less than 18 years of age at the time of arrest but is more than 18 years of age at the time the individual tenders a plea of nolo contendere, the plea is still considered as one tendered by a person less than 18 years of age, and therefore constitutes a conviction. 1986 Op. Att'y Gen. No. U86-20 (rendered under former § 40-5-70).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 159.

C.J.S.

60 C.J.S., Motor Vehicles, § 459.

ALR.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 A.L.R.2d 1367.

40-5-63.1. Clinical evaluation and substance abuse treatment programs for certain offenders.

In addition to any and all other conditions of license reinstatement, issuance, or restoration under Code Section 40-5-57.1, 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions for violating Code Section 40-6-391 within ten years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be required to undergo a clinical evaluation and, if recommended as a part of such evaluation, shall complete a substance abuse treatment program prior to such license reinstatement, issuance, or restoration; provided, however, that such evaluation and treatment shall be at such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of completion of such a program shall be submitted to the department prior to license reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions.

History.

Code 1981, § 40-5-63.1, enacted by Ga. L. 1997, p. 760, § 17; Ga. L. 2000, p. 951, § 5-26; Ga. L. 2000, p. 1457, § 3; Ga. L. 2008, p. 498, § 1/HB 336; Ga. L. 2012, p. 72, § 4/SB 236.

Cross references.

Hospitalization and Treatment of Alcoholics, Drug Dependent Individuals, and Drug Abusers, § 37-7-1 et seq.

DUI Alcohol or Drug Use Risk Reduction Programs, § 40-5-80 et seq.

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2008, p. 498, § 5/HB 336, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applied to offenses occurring on or after July 1, 2008; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (c) of Code Section 40-6-391, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after July 1, 2008, shall be considered.

Administrative rules and regulations.

Clinical Evaluation and Substance Abuse Treatment for DUI Offenders, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Behaviorial Health and Disabilities, Rule 82-2-1-.01 et seq.

Law reviews.

For article commenting on the 1997 enactment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

40-5-64. Limited driving permits for certain offenders.

(a) **To whom issued.**

(1) Notwithstanding any contrary provision of this Code section or Code Section 40-5-57, 40-5-57.2, 40-5-63, 40-5-75, 40-5-121, or 42-8-111, any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest, may apply for a limited driving permit when that person's driver's license has been suspended in accordance with:

(A) Code Section 40-5-54.1 and upon receipt of a record of such from a court or the agency within the Department of Human Services which is responsible for enforcing orders for child support;

(B) Subsection (d) of Code Section 40-5-57;

(C) Paragraph (1) of subsection (a) of Code Section 40-5-57.2;

(D) Paragraph (1) of subsection (a) of Code Section 40-5-63;

(E) Paragraph (1) of subsection (a) of Code Section 40-5-67.2;

(F) Subsection (a) of Code Section 40-5-57.1, when the person

is 18 years of age or older and his or her license was suspended for exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour, and the sentencing judge, in his or her discretion, decides it is reasonable to issue a limited driving permit; or

(G) Paragraph (1) of subsection (a) of Code Section 40-5-75.

(2) No person who has been granted an exemption from the ignition interlock device requirements of Article 7 of Chapter 8 of Title 42 due to undue financial hardship under Code Section 42-8-111 shall be eligible for a limited driving permit, an ignition interlock device limited driving permit, or any other driving privilege for a period of one year.

(3) To the extent a person is subject to more than one suspension for which a limited driving permit may be issued, the department shall not issue such permit unless the suspensions are for a conviction for driving under the influence in violation of Code Section 40-6-391 imposed pursuant to Code Section 40-5-63 and an administrative suspension imposed pursuant to paragraph (1) of subsection (a) of Code Section 40-5-67.2 arising from the same incident.

(b) **Application form.** Applications for limited driving permits shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such permit. All applications shall be signed by the applicant before a person authorized to administer oaths.

(c) **Standards for approval.** The department shall issue a limited driving permit if the application indicates that refusal to issue such permit would cause extreme hardship to the applicant. Except as otherwise provided by subsection (c.1) of this Code section, for the purposes of this Code section, the term "extreme hardship" means that the applicant cannot reasonably obtain other transportation, and therefore the applicant would be prohibited from:

(1) Going to his or her place of employment or performing the normal duties of his or her occupation;

(2) Receiving scheduled medical care or obtaining prescription drugs;

(3) Attending a college or school at which he or she is regularly enrolled as a student;

(4) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems

related to alcohol or other drugs, which organizations are recognized by the commissioner;

(5) Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver's license or by the commissioner;

(6) Attending court; reporting to a community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation office; reporting to a community supervision officer, county or Department of Juvenile Justice juvenile probation officer, or probation officer serving pursuant to Article 6 of Chapter 8 of Title 42; or performing community service;

(7) Transporting an immediate family member who does not hold a valid driver's license for work, to obtain medical care or prescriptions, or to school; or

(8) Attending any program, event, treatment, or activity ordered by a judge presiding in an accountability court, as such term is defined in Code Section 15-1-18.

(c.1) **Exception to standards for approval.** The provisions of paragraphs (2), (3), (4), and (5) of subsection (c) of this Code section shall not apply and shall not be considered for purposes of granting a limited driving permit or imposing conditions thereon under this Code section in the case of a driver's license suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22.

(d) **Conditions attached.** A limited driving permit shall be endorsed with such conditions as the commissioner deems necessary to ensure that such permit will be used by the permittee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

(1) Specific places between which the permittee may be allowed to operate a motor vehicle;

(2) Routes to be followed by the permittee;

(3) Times of travel;

(4) The specific vehicles which the permittee may operate; and

(5) Such other restrictions as the department may require.

(e) **Fees, duration, renewal, and replacement of limited driving permit.**

(1) A limited driving permit issued pursuant to this Code section shall be $32.00 and shall become invalid upon:

(A) The expiration of one year following issuance thereof in the case of a suspension:

(i) For an offense listed in Code Section 40-5-54;

(ii) In accordance with Code Section 40-5-54.1;

(iii) In accordance with Code Section 40-5-57;

(iv) In accordance with Code Section 40-5-57.2;

(v) In accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation of Code Section 40-6-391; or

(vi) In accordance with Code Section 40-5-75;

(B) The expiration of 30 days in the case of an administrative license suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-67.2; or

(C) Any earlier reinstatement of the driver's license.

(2) A person may apply to the department for a limited driving permit immediately following such conviction if he or she has surrendered his or her driver's license to the court in which the conviction was adjudged or to the department if the department has processed the administrative driver's license suspension form or conviction. Upon the applicant's execution of an affidavit attesting to such facts and to the fact that the court had not imposed a suspension or revocation of his or her driver's license or driving privileges inconsistent with the driving privileges to be conferred by the limited driving permit applied for, the department may issue such person a limited driving permit.

(3) Limited driving permits issued pursuant to this Code section are renewable upon payment of a renewal fee of $10.00. Such permits may be renewed one time after the person is eligible to reinstate his or her driver's license for the violation that was the basis of the issuance of the permit.

(4) Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed limited driving permit issued to him or her.

(f) **Liability of issuing officer.** No official or employee of the department shall be criminally or civilly liable or subject to being held in contempt of court for issuing a limited driving permit in reliance on the truth of the affidavits required by this Code section.

(g) **Revocation of limited driving permit.**

(1)(A) The department shall revoke a limited driving permit upon notice from:

(i) A court of a conviction of the permittee for violating any state law relating to the movement of vehicles;

(ii) A court of a conviction of the permittee for violating the conditions endorsed on the limited driving permit; or

(iii) A court or the agency within the Department of Human Services which is responsible for enforcing orders for child support that the permittee is not in compliance with an order for child support.

(B) Any court in which such conviction is had shall require such permittee to surrender his or her limited driving permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction.

(2) Except for revocations based upon division (1)(A)(iii) of this subsection, any person whose limited driving permit has been revoked shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department.

(3) In any case of revocation of a limited driving permit pursuant to paragraph (1) of this subsection, the department may impose an additional period of suspension for the conviction upon which revocation of the permit was based.

(h) **Hearings.** Any person whose permit has been revoked or who has been refused a permit by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with said chapter.

(i) **Rules and regulations.** The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

(j) **Penalty.** Any permittee who operates a motor vehicle in violation of any condition specified on the permit shall be guilty of a misdemeanor.

History.

Code 1933, § 68B-311, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 648, § 1; Ga. L. 1978, p. 225, § 3; Ga. L. 1983, p. 1000, § 7; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 9; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 21; Ga. L. 1992, p. 2564, § 3; Ga. L. 1992, p. 2785, § 11; Ga. L. 1994, p. 1600, § 1; Ga. L. 1997, p. 760, § 18; Ga. L. 1999, p. 391, § 5; Ga. L. 2000, p. 951, § 5-27; Ga. L. 2000, p. 1457, § 4; Ga. L. 2002, p. 1324, § 1-20; Ga. L.

2003, p. 796, § 1; Ga. L. 2004, p. 471, § 6; Ga. L. 2006, p. 449, § 10/HB 1253; Ga. L. 2008, p. 171, § 7/HB 1111; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2010, p. 199, § 3/HB 258; Ga. L. 2010, p. 932, § 14/HB 396; Ga. L. 2011, p. 355, § 8/HB 269; Ga. L. 2012, p. 72, § 5/SB 236; Ga. L. 2013, p. 878, § 2/HB 407; Ga. L. 2015, p. 60, § 4-17/SB 100; Ga. L. 2015, p. 422, § 5-59/HB 310; Ga. L. 2016, p. 323, § 1-1/HB 205; Ga. L. 2016, p. 443, § 4-6/SB 367; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2018, p. 1112, § 40/SB 365; Ga. L. 2019, p. 1056, § 40/SB 52; Ga. L. 2021, p. 228, § 5/HB 534; Ga. L. 2022, p. 185, § 2/HB 246; Ga. L. 2023, p. 123, § 1/HB 120, effective May 1, 2023 and January 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "shall be $32.00" for "shall be $25.00" in paragraph (e)(1) and substituted "fee of $10.00" for "fee of $5.00" in paragraph (e)(3).

The 2023 amendment, effective May 1, 2023, added subparagraph (a)(1)(G); and, effective January 1, 2024, rewrote subsections (a), (e), and (g).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, the amendment of this Code section to subsection (c.1) and paragraph (e)(2) by Ga. L. 2016, p. 323, § 1-1/HB 205, was treated as impliedly repealed and superseded by Ga. L. 2016, p. 443, § 4-6/SB 367 due to irreconcilable conflict.

Pursuant to Code Section 28-9-5, in 2017, the paragraph (1) designation was deleted from subsection (c.1) and former paragraph (c.1)(2) was transferred from Code Section 40-5-64 to Code Section 40-5-64.1 and was renumbered as present subsection (e).

Pursuant to Code Section 28-9-5, in 2023, subparagraph (a)(1)(G) is added as intended by Ga. L. 2023, p. 123, § 1/HB 120 despite the absence of subparagraphs (a)(1)(C) through (a)(1)(F) in the version of this Code section effective from May 1, 2023 until January 1, 2024.

Editor's notes.

Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Heidi's Law.'"

Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date."

Ga. L. 2015, p. 60, § 4-17/SB 100, purported to amend subsection (a) but only amended paragraph (a)(1).

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

Ga. L. 2017, p. 774, § 40/HB 323, part of an Act to revise, modernize, and correct the Code, purported to revise a term in this Code section; however, such term no longer exists in such Code section, thus this amendment has not been given effect.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly,

provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

Ga. L. 2023, p. 123, § 2(b)/HB 120, not codified by the General Assembly, provides: "(b) Subparagraph (a)(1)(G) of Code Section 40-5-64 as enacted by Section 1 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval." The effective date of subparagraph (a)(1)(G) is May 1, 2023.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note on 1999 amendment to this Code section, see 16 Georgia St. U.L. Rev. 200 (1999).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 231 (2015).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Habitual violator provision not unconstitutional. — Fact that the offenses which serve to disqualify the person as a first offender occurred prior to the enactment of the habitual offender provision does not serve to give such a provision an unconstitutional or illegal retroactive effect. Cofer v. Fielden, 145 Ga. App. 251, 243 S.E.2d 670, 1978 Ga. App. LEXIS 1937 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Language of former Code 1933, § 68B-311 (see now O.C.G.A. § 40-5-64) clearly indicated that only drivers who were convicted of driving under the influence of drugs or alcohol or drivers whose licenses were suspended due to the accumulation of 15 traffic violations points may apply for limited permits. 1977 Op. Att'y Gen. No. 77-54 (decided prior to 1983 amendment which deleted the provision for limited permits for persons convicted of driving under the influence).

Standard for issuing limited permits. — In issuing limited permits, the standard which should be followed was set out in former Code 1933, § 68B-311 (see now O.C.G.A. § 40-5-64). 1977 Op. Att'y Gen. No. 77-54.

Issuance when refusal causes "extreme hardship." — Language of subsection (c) of former Code 1933 § 68B-311 (see now O.C.G.A. § 40-5-64), indicated that the department must issue a limited permit when an application for such a permit indicated that refusal to issue the permit would cause "extreme hardship;" while the department cannot refuse to issue limited permits to applicants who qualify for such permits, the department had considerable discretion to prescribe the conditions under which the permits may be used. 1977 Op. Att'y Gen. No. 77-54.

No limited permit available. — Driver may not apply for limited permit when license was revoked under former Code 1933, § 68B-312 (see now O.C.G.A. § 40-5-63(a)(3)). 1977 Op. Att'y Gen. No. 77-54.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 459.

40-5-64.1. Ignition interlock device limited driving permits.

(a) **To whom issued.**

(1) Any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest, and whose driver's license is subject to an administrative driver's license suspension pursuant to subsection (c) of Code Section 40-5-67.1, may apply for an ignition interlock device limited driving permit with the department.

(2) Any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest, and whose driver's license is subject to an administrative driver's license suspension pursuant to subsection (d) of Code Section 40-5-67.1, may apply for an ignition interlock device limited driving permit with the department.

(3) Any person whose driver's license has been suspended as a result of a second conviction for violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, may apply for an ignition interlock device limited driving permit after serving at least 120 days of the suspension required for such conviction.

(4) The department shall not issue an ignition interlock device limited driving permit to any person:

(A) Under 21 years of age;

(B) Who is not currently licensed to operate a motor vehicle in this state;

(C) Who currently holds a license to drive a commercial motor vehicle;

(D) Whose driver's license is subject to an administrative suspension for involvement in a traffic accident resulting in injuries or fatalities; or

(E) Whose driver's license is subject to a suspension, revocation, or cancellation for any reason other than as contemplated by this Code section.

(b) **Application form.** Applications for ignition interlock device limited driving permits shall be made upon such forms as the commis-

sioner may prescribe. All applications shall be signed by the applicant before a person authorized to administer oaths.

(c) **Standards for approval.**

(1) The department shall issue an ignition interlock device limited driving permit for a fee of $25.00 and:

(A) For an applicant eligible for an ignition interlock device limited driving permit pursuant to paragraph (1) or (2) of subsection (a) of this Code section:

(i) Within 30 days from the date on which notice was given pursuant to subsection (g) of Code Section 40-5-67.1;

(ii) Upon surrender of the applicant's driver's license; and

(iii) Upon the applicant's execution of an affidavit attesting that the hearing afforded under subsection (g) of Code Section 40-5-67.1 has been waived; or

(B) For an applicant eligible for an ignition interlock device limited driving permit pursuant to paragraph (3) of subsection (a) of this Code section, upon the submission of a certificate of eligibility from an accountability court, as such term is defined in Code Section 15-1-18, or the submission of proof of enrollment in a substance abuse treatment program as provided in Code Section 40-5-63.1 and the surrender of his or her driver's license to such court or to the department if the department has processed the administrative driver's license suspension form or conviction.

(2) No person who has been granted an exemption from the ignition interlock device requirements of Article 7 of Chapter 8 of Title 42 due to undue financial hardship under Code Section 42-8-111 shall be eligible for a limited driving permit pursuant to Code Section 40-5-64 or any other driving privilege for a period of one year.

(d) **Duration, renewal, and replacement of ignition interlock device limited driving permit.**

(1) An ignition interlock device limited driving permit shall be valid for a period of one year. Upon successful completion of one year of monitoring of such ignition interlock device, the restriction for maintaining and using such ignition interlock device shall be removed, and such permit may be renewed for additional periods of two months upon payment of a renewal fee of $5.00, but it may only be renewed one time after such person is eligible to reinstate his or her driver's license.

(2) Upon payment of a fee in the same amount as that provided by Code Section 40-5-25 for the issuance of a Class C driver's license, a

person may be issued a replacement for a lost or destroyed ignition interlock device limited driving permit previously issued to him or her.

(e) **Exceptions to standards for approval.** An ignition interlock device limited driving permit shall be restricted to allow the holder thereof to drive solely for the following purposes:

(1) Going to his or her place of employment or performing the normal duties of his or her occupation;

(2) Receiving scheduled medical care or obtaining prescription drugs;

(3) Attending a college or school at which he or she is regularly enrolled as a student;

(4) Attending regularly scheduled sessions or meetings of treatment support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner;

(5) Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver's license or by the commissioner;

(6) Attending court, reporting to a community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation office, reporting to a community supervision officer, county or Department of Juvenile Justice juvenile probation officer, or probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or performing community service;

(7) Transporting an immediate family member who does not hold a valid driver's license for work, to obtain medical care or prescriptions, or to school;

(8) Attending any program, event, treatment, or activity ordered by a judge presiding in an accountability court, as such term is defined in Code Section 15-1-18; or

(9) Going for monthly monitoring visits with the permit holder's ignition interlock device service provider.

(f) **Revocation of ignition interlock device limited driving permit.**

(1)(A) The department shall revoke the ignition interlock device limited driving permit of any permittee issued such permit pursuant to paragraph (1) or (2) of subsection (a) of this Code section who is convicted of violating any state law relating to the

movement of vehicles or convicted of driving a motor vehicle in violation of an ignition interlock device limited driving permit. Any court in which such conviction is had shall require such permittee to surrender the ignition interlock device limited driving permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction.

(B) The department shall revoke the ignition interlock device limited driving permit of any permittee who is required to complete a substance abuse treatment program pursuant to Code Section 40-5-63.1 and enrolled but failed to attend or complete such program as scheduled upon receipt of notice of such information from the Department of Behavioral Health and Developmental Disabilities. The department shall notify the permittee of such revocation by regular mail to his or her last known address. Such notice of revocation shall inform the permittee of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(C) The department shall revoke the ignition interlock device limited driving permit of a permittee upon receipt of notice from an ignition interlock device service provider that an ignition interlock device has been tampered with, a permittee has failed to report for monitoring as required by law, or an ignition interlock device has been removed from any motor vehicle to be driven by a permittee prior to successful completion of the required term of monitoring under Code Section 42-8-110.1.

(2) The department shall notify the permittee of such revocation by regular mail to his or her last known address. Such notice of revocation shall inform the permittee of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(3) Any person whose ignition interlock device limited driving permit has been revoked for the first time shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department. Any person whose ignition interlock device limited driving permit has previously been revoked shall not be eligible to apply for a driver's license until two years from the date such permit was surrendered to the department.

(g) **Hearings.** Any person whose ignition interlock device limited driving permit has been revoked or who has been refused such permit by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the

department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with such chapter.

(h) **Rules and regulations.** The commissioner may promulgate rules and regulations as are necessary to implement this Code section.

(i) **Penalty.** Any person issued an ignition interlock device limited driving permit who operates a motor vehicle in violation of the terms of such permit, as described in Code Section 42-8-110.1 or subsection (e) or (f) of this Code section, commits the offense of violation of an ignition interlock device limited driving permit. Any person who commits the offense of violation of an ignition interlock device limited driving permit shall be guilty of a misdemeanor.

History.

Code 1981, § 40-5-64.1, enacted by Ga. L. 2016, p. 323, § 1-2/HB 205; Ga. L. 2018, p. 1112, § 40/SB 365.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, the enactment of paragraphs (d)(1) and (d)(2) and subsection (e) of this Code section by Ga. L. 2016, p. 323, § 1-2/HB 205, was treated as impliedly repealed and superseded by Ga. L. 2016, p. 443, § 4-6/SB 367 due to irreconcilable conflict.

Pursuant to Code Section 28-9-5, in 2016, "**Duration, renewal fees, and**" was deleted from the catchline of subsection (d) and "**Replacement**" was substituted for "**replacement**" and "(3)" was deleted at the beginning of subsection (d).

Pursuant to Code Section 28-9-5, in 2017, "Reserved." was deleted from subsection (e); former paragraph (c.1)(2) was transferred from Code Section 40-5-64 to Code Section 40-5-64.1 and was renumbered as present subsection (e); and "**Exceptions to standards for approval.**" was added as the catchline of subsection (e).

Law reviews.

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising under O.C.G.A. § 40-5-64.1 are designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

40-5-65. Restriction as to operation under foreign license during period of revocation or suspension.

Any resident or nonresident whose driver's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license or permit issued by any other jurisdiction or otherwise during such suspension or after such revocation until the license is restored when and as permitted under this chapter.

History.

Code 1933, § 68B-314, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.

JUDICIAL DECISIONS

Legal operation of vehicle by one whose license was revoked. — Regardless of possession of a driver's license from any other state, one who has had one's Georgia driver's license revoked by the Department of Public Safety can legally thereafter operate a vehicle in Georgia only if the Department reauthorizes that person to do so. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

One who has been properly notified that one has been declared a habitual violator by this state can thereafter lose that status and drive in Georgia only after the passage of five years and, pursuant to that person's application, the Department of Public Safety has determined that it will be safe to grant the person the privilege of driving a motor vehicle on the public highways. Goblet v. State, 174 Ga. App. 675, 331 S.E.2d 56, 1985 Ga. App. LEXIS 1924 (1985).

An individual may not avoid prosecution for operating a motor vehicle in this state after having been declared a habitual violator by obtaining a valid license from another state. Tootle v. State, 203 Ga. App. 497, 417 S.E.2d 433, 1992 Ga. App. LEXIS 523 (1992).

Effect of premature issuance. — Premature issuance of a driver's license to the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and as permitted by statutory procedure. Payne v. State, 209 Ga. App. 780, 434 S.E.2d 543, 1993 Ga. App. LEXIS 985 (1993); Grisson v. State, 237 Ga. App. 559, 515 S.E.2d 857.

Possession of Florida license not a defense. — Under O.C.G.A. § 40-5-65, possession of a valid license from another state was not a defense to a habitual violator charge and created no presumption that the defendant was authorized to drive in Georgia; since the defendant testified that the defendant never inquired about reinstating the defendant's Georgia driving privileges, the evidence supported the defendant's habitual violator conviction. Stripling v. State, 279 Ga. App. 856, 632 S.E.2d 747, 2006 Ga. App. LEXIS 708 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 111.

C.J.S.

60 C.J.S., Motor Vehicles, § 328 et seq.

ALR.

Constitutionality and construction of statutes with respect to nonresident motor vehicle operators' or drivers' licenses, 82 A.L.R. 1392.

40-5-66. Appeals from decisions of department.

(a) Except as provided in subsection (h) of Code Section 40-5-67.1, subsection (h) of Code Section 40-5-64, and subsection (g) of Code Section 40-5-64.1, any decision rendered by the department shall be final unless the aggrieved person shall desire an appeal. In such case, such person shall have the right to enter an appeal in the superior court of the county of his or her residence or in the Superior Court of Fulton County. Such appeal shall name the commissioner as defendant and must be filed within 30 days from the date the department enters its

decision or order. The person filing the appeal shall not be required to post any bond nor to pay the costs in advance.

(b) If the person so desires, the appeal may be heard by the judge at term or in chambers or by a jury at the first term. The hearing on the appeal shall be de novo, but no appeal shall act as a supersedeas of any orders or acts of the department. No person shall be allowed to operate any vehicle in violation of any suspension or revocation by the department while any such appeal is pending.

History.

Ga. L. 1937, p. 322, art. 4, § 11; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 8; Code 1933, § 68B-315, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 4; Ga. L. 2016, p. 323, § 2-4/HB 205; Ga. L. 2017, p. 774, § 40/HB 323.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Due process. — Right to appeal to the state court system under O.C.G.A. § 40-5-66 from a driver's license revocation does not rectify the procedural due process flaws inherent in the revocation hearing procedures because that section does not afford a prerevocation hearing. Smith v. Commissioner of Ga. Dep't of Pub. Safety, 673 F. Supp. 446, 1987 U.S. Dist. LEXIS 10647 (M.D. Ga. 1987).

Jurisdiction to determine habitual violator status. — Because an administrative law judge lacked jurisdiction to address the issue of a driver's habitual violator status, and thus, the ruling that the driver was wrongfully declared an habitual offender was not binding on the parties, the driver was not entitled to mandamus relief ordering the Commissioner of the Department of Driver Services to issue a driver's license. James v. Davis, 280 Ga. 497, 629 S.E.2d 820, 2006 Ga. LEXIS 264 (2006).

Hearing required unless waived. — Although the superior court is not required to conduct a hearing concerning the merits of the Department of Public Safety's decision to revoke the driver's license of an aggrieved party if the parties waive the parties' right to be heard, the superior court cannot avoid the dictates of O.C.G.A. §§ 5-3-29 and 9-10-2 by simply failing to hold a hearing. Bowman v. Parrot, 200 Ga. App. 405, 408 S.E.2d 115, 1991 Ga. App. LEXIS 1009 (1991), cert. denied, No. S91C1383, 1991 Ga. LEXIS 546 (Ga. Sept. 6, 1991).

Appeal to department does not affect appeal rights to superior court. — Even though defendant elected to first pursue an administrative appeal of a driver's license suspension to the Department of Public Safety, and was unsuccessful in that effort, the defendant was still entitled to file an appeal in the superior court under O.C.G.A. § 40-5-66, at which the defendant could receive a meaningful hearing upon request and, accordingly, the defendant was not denied the right to procedural due process. Miles v. Shaw, 272 Ga. 475, 532 S.E.2d 373, 2000 Ga. LEXIS 495 (2000).

Timeliness of appeal. — Lower courts erred in determining that an applicant's petition was untimely because the Georgia Department of Driver Services canceled, but did not revoke, the license that it had issued to the applicant; thus, the applicant was entitled by the plain terms of O.C.G.A. § 40-5-66 to make an application for a new license at any time after the cancellation. Barrow v. Mikell, 298 Ga. 429, 782 S.E.2d 439, 2016 Ga. LEXIS 109 (2016).

Standard of review. — It was error to affirm a decision to suspend a driver's license when, after being advised of the

implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test, because the hearing before the ALJ was conducted pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the breath tests ten minutes apart, and the driver's failure to give an adequate sample could not be used to suspend the license. Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379, 2006 Ga. App. LEXIS 406 (2006), cert. denied, No. S06C1693, 2006 Ga. LEXIS 763 (Ga. Sept. 8, 2006).

Untimely appeal warranted dismissal. — Trial court erred in denying a motion by the Georgia Department of Public Safety (DPS) to dismiss a motorist's petition for judicial review of a decision by the DPS which denied the motorist's application for reinstatement of the motorist's driver's license as the petition for judicial review was not filed within 30 days from the date that the DPS entered its decision as required under O.C.G.A. § 40-5-66(a). Hightower v. Cervantes, 259 Ga. App. 562, 578 S.E.2d 240, 2003 Ga. App. LEXIS 190 (2003).

Trial court erred by reversing the decision of the Georgia Department of Driver Services because the evidence supported the decision of the department in denying, as untimely, the driver's request for an administrative license suspension hearing, pursuant to O.C.G.A. § 40-5-67.1(g), since the actions of the driver's attorney in failing to mail a timely request for a hearing were imputed to the driver. Mikell v. Hortenstine, 334 Ga. App. 621, 780 S.E.2d 53, 2015 Ga. App. LEXIS 687 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 107, 154 et seq.

C.J.S.

60 C.J.S., Motor Vehicles, § 433 et seq.

ALR.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 A.L.R.2d 1064.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 A.L.R.2d 1367.

40-5-67. Seizure and disposition of driver's license of persons charged with driving under the influence; issuance of temporary driving permit; disposition of cases.

(a) Whenever any resident or nonresident person is charged with violating Code Section 40-6-391, the law enforcement officer shall take the driver's license of the person so charged. The driver's license shall be attached to the court's copy of the uniform traffic citation and complaint form and shall be forwarded to the court having jurisdiction of the offense. A copy of the uniform traffic citation and complaint form shall be forwarded, within ten days of issue, to the department. Taking the driver's license as required in this Code section shall not prohibit any law enforcement officer or agency from requiring any cash bond authorized by Article 1 of Chapter 6 of Title 17.

(b)(1) At the time the law enforcement officer takes the driver's

license, the officer shall issue a temporary driving permit to the person as follows:

(A) If the driver refuses to submit to a test or tests to determine the presence of alcohol or drugs as required in Code Section 40-5-55, the officer shall issue a 45 day temporary driving permit;

(B) If the driver's license is required to be suspended under Code Section 40-5-67.1, the officer shall issue a 45 day temporary driving permit; or

(C) If the test or tests administered pursuant to Code Section 40-5-55 indicate an alcohol concentration in violation of Code Section 40-6-391 but less than the level for an administrative suspension of the license under subsection (c) of Code Section 40-5-67.1, the officer shall issue a 180 day temporary driving permit.

(2) A temporary driving permit issued under this subsection shall be valid for the stated period or until the person's driving privilege is suspended or revoked under any provision of this title. The department, at its sole discretion, may delay the expiration date of such temporary driving permit, but in no event shall this delay extend beyond the date when such person's driving privilege is suspended or revoked under any provision of this title. The department shall by rules and regulations establish the conditions under which the expiration of a temporary driving permit may be delayed.

(c)(1) If the person is convicted of violating or enters a plea of nolo contendere to a charge of violating Code Section 40-6-391, the court shall, within ten days, forward the person's driver's license and the record of the disposition of the case to the department. At this time, the court shall also require the person to surrender the temporary driving permit issued pursuant to subsection (b) of this Code section.

(2) If the person is not convicted of violating and does not enter a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the court is in possession of the driver's license, the court shall return the driver's license to the person unless the license is in suspension for any other offense, in which case the court shall forward the license to the department for disposition.

History.

Code 1981, § 40-5-69, enacted by Ga. L. 1983, p. 1000, § 1; Code 1981, § 40-5-67, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 5; Ga. L. 1994, p. 1600, § 2; Ga. L. 1997, p. 760, § 19; Ga. L. 2000, p. 951, § 5-28; Ga. L. 2016, p. 323, § 1-3/HB 205.

Editor's notes.

Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the

acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

JUDICIAL DECISIONS

Double jeopardy. — Suspension of a driver's license at an administrative hearing is not punishment, nor is the hearing a prosecution for the purposes of double jeopardy. Kirkpatrick v. State, 219 Ga. App. 307, 464 S.E.2d 882, 1995 Ga. App. LEXIS 1024 (1995).

Equal protection claims. — Defendant's constitutional claims to the implied consent statutes were without merit since the defendant, a Spanish speaking person, was not similarly situated to a hearing impaired person and, although similarly situated to an English speaking person, there was a rational basis for requiring the implied consent warnings to be read in English. Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458, 2002 Ga. LEXIS 526, cert. denied, Rodriguez v. Georgia, 537 U.S. 1046, 123 S. Ct. 624, 154 L. Ed. 2d 519, 2002 U.S. LEXIS 8717 (2002).

DUI arrestee had no standing to challenge administrative suspension procedure. — Plaintiff, whose license was confiscated by an officer at the time of arrest for DUI and who was issued a citation allowing the plaintiff to drive pending resolution of the plaintiff's case, did not have standing to challenge the administrative suspension procedures established by O.C.G.A. § 40-5-67.1. McGraw v. State, 230 Ga. App. 843, 498 S.E.2d 314, 1998 Ga. App. LEXIS 306 (1998).

Duty of court to seize license and temporary permit pending appeal. — Upon conviction for driving under the influence, the defendant was properly required to surrender the defendant's driver's license and temporary permit to the trial court pending appeal; the seizure and forwarding of the license to the Department of Public Safety was not part of the defendant's sentence or a condition of the defendant's bond but a requirement imposed by statute on the court. Wells v. State, 212 Ga. App. 15, 440 S.E.2d 692, 1994 Ga. App. LEXIS 115 (1994), cert. denied, No. S94C0822, 1994 Ga. LEXIS 618 (Ga. Apr. 1, 1994).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under O.C.G.A. § 40-6-391. Wright v. State, 228 Ga. App. 717, 492 S.E.2d 581, 1997 Ga. App. LEXIS 1240 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 40-5-69, which was renumbered as Code Section 40-5-67 by Ga. L. 1990, p. 2048, § 4, are included in the annotations for this Code section.

Nonresident convicted of driving under the influence. — Georgia law requires that, when a non-resident is convicted of driving under the influence, the court forward the non-resident's driver's license to the Georgia Department of Public Safety with the license to be forwarded to the non-resident's home state along with the record of conviction and record of any action taken by the Department of Public Safety. 1986 Op. Att'y Gen. No. U86-15 (decided under former § 40-5-69).

Georgia law requires that, when a non-resident person is charged with driving under the influence, the arresting officer is to take the driver's license, attach the license to the court's copy of the citation, and forward the license to the appropriate court as would be done with a Georgia driver. 1986 Op. Att'y Gen. No. U86-16 (decided under former § 40-5-69).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Defense to Charge of Driving Under the Influence of Alcohol, 17 POF2d 1.

Negligent Failure to Detain Intoxicated Motorist, 1 POF3d 545.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

40-5-67.1. Chemical tests; implied consent notices; rights of motorists; test results; refusal to submit; suspension or disqualification; administrative license suspension hearing and review; inspection and certification of breath-testing instruments.

(a) The test or tests required under Code Section 40-5-55 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 and the officer has arrested such person for a violation of Code Section 40-6-391, any federal law in conformity with Code Section 40-6-391, or any local ordinance which adopts Code Section 40-6-391 by reference or the person has been involved in a traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which test or tests shall be administered initially and may subsequently require a test or tests of any substances not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

(1) Implied consent notice for suspects under age 21:

"The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?"

(2) Implied consent notice for suspects age 21 or over:

"The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?"

(3) Implied consent notice for commercial motor vehicle driver suspects:

"The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. Your refusal to submit to blood or urine testing may be

offered into evidence against you at trial. If you submit to testing and the results indicate the presence of any alcohol, you will be issued an out-of-service order and will be prohibited from operating a commercial motor vehicle for 24 hours. If the results indicate an alcohol concentration of 0.04 grams or more, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?"

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test of such person's blood or urine, shall be admitted into evidence against such person. Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

(c) If a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension or disqualification is required under this Code section, the results shall be reported to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more, the department shall suspend the person's driver's license, permit, or nonresident operating privilege pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter. Upon the receipt of a report of the law enforcement officer that the arrested person had been operating or was in actual physical control of a moving commercial motor vehicle and the test results indicate an alcohol concentration of 0.04 grams or more, the department shall disqualify the person from operating a motor vehicle for a minimum period of one year.

(d) If a person under arrest or a person who was involved in any

traffic accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, the department shall suspend the person's driver's license, permit, or nonresident operating privilege for a period of one year or if the person was operating or in actual physical control of a commercial motor vehicle, the department shall disqualify the person from operating a commercial motor vehicle and shall suspend the person's driver's license, permit, or nonresident operating privilege, subject to review as provided for in this chapter.

(d.1) Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 40-6-391 if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(e) If the person is a resident without a driver's license, commercial driver's license, or permit to operate a motor vehicle in this state, the department shall deny issuance of a license or permit to such person for the same period provided in subsection (c) or (d) of this Code section, whichever is applicable, for suspension of a license or permit or disqualification to operate a commercial motor vehicle subject to review as provided for in this chapter.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the license of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The law enforcement officer shall take possession of any driver's license or permit held by any person whose license is subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and shall issue a 45 day temporary driving permit. The officer shall forward the person's driver's license to the department along with the notice of

intent to suspend or disqualify and the report required by subsection (c) or (d) of this Code section within ten days after the date of the arrest of such person. This paragraph shall not apply to any person issued a 180 day temporary driving permit pursuant to subsection (b) of Code Section 40-5-67. The failure of the officer to transmit the report required by this Code section within ten days shall not prevent the department from accepting such report and utilizing it in the suspension of a driver's license as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the report of such officer, shall suspend the person's driver's license, permit, or nonresident operating privilege or disqualify such person from operating a motor vehicle and, by regular mail, at the last known address, notify such person of such suspension or disqualification. The notice shall inform the person of the grounds of suspension or disqualification, the effective date of the suspension or disqualification, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose driver's license is suspended or who is disqualified from driving a commercial motor vehicle pursuant to this Code section shall remit to the department a $150.00 filing fee together with a request, in writing, for a hearing within 30 days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. The issuance of an ignition interlock device limited driving permit to a person eligible for such permit under paragraph (1) or (2) of subsection (a) of Code Section 40-5-64.1 shall constitute a waiver of the right to a hearing under this subsection. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded.

(2) The scope of the hearing shall be limited to the following issues:

(A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 40-6-391; or

(ii) Whether the person was involved in a motor vehicle accident or collision resulting in serious injury or fatality; and

(B) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test; and

(C)(i) Whether the person refused the test; or

(ii) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more or, for a person operating or having actual physical control of a commercial motor vehicle, an alcohol concentration of 0.04 grams or more; and

(D) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the driver's license suspension or disqualification. If no hearing is requested within the 30 days specified in paragraph (1) of this subsection, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The issuance of an ignition interlock device limited driving permit to a person eligible for such permit under paragraph (1) or (2) of subsection (a) of Code Section 40-5-64.1 shall constitute a waiver of the right to a hearing under this subsection. The request for a hearing shall not stay the suspension of the driver's license; provided, however, that, if the hearing is timely requested and is not held before the expiration of the temporary driving permit and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4)(A) Except as where provided to the contrary in subparagraph (B) of this paragraph, in the event the person is acquitted of a violation of Code Section 40-6-391 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated and deleted from the driver's license record. An accepted plea of nolo contendere shall

be entered on the driver's license record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 40-6-391. In the event of an acquittal or other disposition other than by a conviction or plea of nolo contendere, the driver's license restoration fee shall be promptly returned by the department to the licensee.

(B)(i) If any person who has obtained an ignition interlock device limited driving permit under paragraph (1) of subsection (a) of Code Section 40-5-64.1 is acquitted of the violation of Code Section 40-6-391 upon which the underlying driver's license suspension was based or if such charge is initially disposed of other than by a conviction or plea of nolo contendere, then such permit shall be revoked and the driver's license shall be reinstated without a fee. The department shall terminate the driver's license suspension of any such person and shall delete the suspension from the driver's license record.

(ii) Any person who has obtained an ignition interlock device limited driving permit under paragraph (2) of subsection (a) of Code Section 40-5-64.1 shall maintain such permit for the required term of monitoring under Code Section 42-8-110.1, regardless of whether such person is acquitted of the violation of Code Section 40-6-391 upon which the underlying driver's license suspension was based or such charge is initially disposed of other than by a conviction or plea of nolo contendere.

(h) If the suspension is sustained after such a hearing, the person whose license has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; while such appeal is pending, the order of the department shall not be stayed.

(i) Subject to the limitations of this subsection, any law enforcement officer who attends a hearing provided for by subsection (g) of this Code section for the purpose of giving testimony relative to the subject of such hearing shall be compensated in the amount of $20.00 for each day's attendance at such hearing. In the event a law enforcement officer gives testimony at two or more different hearings on the same day, such officer shall receive only $20.00 for attendance at all hearings. The compensation provided for in this subsection shall not be paid to any law enforcement officer who is on regular duty or who is on a lunch or other break from regular duty at the time the officer attends any such hearing. The compensation provided for by this subsection shall be paid to the law enforcement officer by the department from department funds at such time and in such manner as the commissioner shall

provide by rules or regulations. The commissioner shall also require verification of a law enforcement officer's qualifying to receive the payment authorized by this subsection by requiring the completion of an appropriate document in substantially the following form:

IMPLIED CONSENT HEARING ATTENDANCE RECORD

OFFICER: _____ S.S. No. _____

ADDRESS: _____
Street City State ZIP Code

DATE: _____ TIME: _____ A.M. P.M.

CASE: _____

This is to certify that the police officer named above attended an implied consent hearing as a witness or complainant on the date and time shown above.

HEARING OFFICER: _____ TITLE: _____

I certify that I appeared at the implied consent hearing described above on the date and time shown above and that I was not on regular duty at the time of attending the hearing and that I have not received and will not receive compensation from my regular employer for attending the hearing.

Signature of officer: _____

APPROVED FOR PAYMENT: _____
Comptroller

(j) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

> "This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of Code Section 40-6-392 and subparagraph (g)(2)(F) of this Code section.

History.

Code 1981, § 40-5-67.1, enacted by Ga. L. 1992, p. 2564, § 6; Ga. L. 1994, p. 472, § 1; Ga. L. 1994, p. 1600, § 3-6; Ga. L. 1995, p. 1160, §§ 1-3; Ga. L. 1995, Ex. Sess., p. 5, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 20; Ga. L. 1998, p. 210, § 2; Ga. L. 2000, p. 951, §§ 5-29—5-32; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 208, § 1-3; Ga. L. 2006, p. 329, § 2/HB 1275; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 9, § 1-80/HB 1055; Ga. L. 2011, p. 355, § 9/HB 269; Ga. L. 2016, p. 323, § 1-4/HB 205; Ga. L. 2019, p. 295, § 2/HB 471; Ga. L. 2024, p. 1052, § 4(53)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (g)(3).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, in paragraph (g)(1), "section" was substituted for "Section" and a comma was inserted following "requested", and "subsection (g)" was substituted for "subsection (i)" in subsection (i).

Pursuant to Code Section 28-9-5, in 2019, quotation marks were added at the beginning of the implied consent notice paragraphs in subsection (b).

Editor's notes.

Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1995, p. 1160, § 5, not codified by the General Assembly, provides that the Act shall apply to all cases pending at the time of its approval by the Governor or its becoming law without such approval, except that the provisions regarding the requirement for two breath samples set forth in subparagraph (a)(1)(B) of Code Section 40-6-392 shall not apply to arrests made prior to January 1, 1995. The Act was approved by the Governor on April 21, 1995.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and, except for subsection (b.1) of this Code section, shall not apply to offenses committed prior to that date.

Ga. L. 1998, p. 210, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares that persons driving motor vehicles on public roads while under the influence of alcohol or drugs or while having an unlawful alcohol concentration has been and remains a serious and deadly problem in this state and requires the diligent and utmost efforts of law enforcement officials to apprehend and prosecute persons committing such violations. The General Assembly further finds that a law enforcement officer should be allowed to initially require a combination of tests and should subsequently be allowed to require additional tests of any substance not initially tested. The General Assembly further finds and declares that while suspects in such cases should be informed of their rights regarding the administration of chemical testing, no such suspect is entitled to a notice which tracks the exact language of the implied consent statute, so long as the substance of the notice remains unchanged."

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

For application of this statute in 2020, see Executive Order 03.25.20.01.

Law reviews.

For note on 1992 enactment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For note on the 1995 amendment of this Code section, see 12 Georgia St. U.L. Rev. 289 (1995).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For annual survey on criminal law, see 71 Mercer L. Rev. 69 (2019).

For comment, "Is There a Georgia Supreme Court, Problem? Analyzing the Georgia Supreme Court's New Peculiar Approach Towards Breathalyzers and Implied Consent Law," see 71 Mercer L. Rev. 393 (2019).

JUDICIAL DECISIONS

Analysis

General Consideration
Due Processes
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68A-306, 68A-902.1, and Ga. L. 1968, p. 448 are included in the annotations for this Code section.

Constitutionality of implied consent notice. — Implied consent notice given to defendants pursuant to O.C.G.A. § 40-5-67.1 did not violate due process on the basis that the notice is incomplete, misleading, and coercive. Klink v. State, 272 Ga. 605, 533 S.E.2d 92, 2000 Ga. LEXIS 550 (2000), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017), overruled in part as stated in State v. Council, 343 Ga. App. 583, 807 S.E.2d 504, 2017 Ga. App. LEXIS 531 (2017), overruled in part as stated in State v. Council, 348 Ga. App. 497, 823 S.E.2d 817, 2019 Ga. App. LEXIS 32 (2019).

Police officers in Georgia are permitted to administer bodily alcohol concentration tests to motorists in order to determine whether the motorists are driving under the influence of alcohol or drugs without first warning that the results of such tests may be used in a criminal trial for DUI. Lutz v. State, 274 Ga. 71, 548 S.E.2d 323, 2001 Ga. LEXIS 450 (2001), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Implied consent statute does not violate the dictates of equal protection set forth in the Georgia and federal Constitutions. Lutz v. State, 274 Ga. 71, 548 S.E.2d 323, 2001 Ga. LEXIS 450 (2001), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Because an appellate court could not assume that the implied consent notice standing alone would coerce reasonable people to whom it was read, the defendant's facial challenge failed. Fazio v. State, 302 Ga. 295, 806 S.E.2d 544, 2017 Ga. LEXIS 887 (2017).

Implied consent statute was not unconstitutional under the Fourth Amendment

General Consideration (Cont'd)

or Ga. Const. 1983, Art. I, Sec. I, Para. XIII because, even if the statute were coercive, police could obtain a breath test without a warrant as a search incident to arrest. Fazio v. State, 302 Ga. 295, 806 S.E.2d 544, 2017 Ga. LEXIS 887 (2017).

Ga. Const. 1983, Art. I, Sec. I, Para. XVI was held to protect against compelled breath tests and affords individuals a constitutional right to refuse testing. Submitting to a breath test implicates a person's right against compelled self-incrimination and prior decisions holding otherwise are overruled. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Measurement of blood alcohol content based on a breath test requires the cooperation of the person being tested and compelling a defendant to perform an act that is incriminating in nature is precisely what Ga. Const. 1983, Art. I, Sec. I, Para. XVI prohibits. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

In a DUI under 21 and DUI less safe case, the trial court did not err in denying the defendant's motion to suppress, and in concluding that Georgia's implied consent notice for DUI suspects under 21 years of age was constitutional because the defendant's facial challenge failed as there was no evidence that O.C.G.A. § 40-5-67.1 created widespread confusion about the drivers' rights and the consequences for refusing to submit to a chemical test or for taking and failing that test; and the defendant's as applied challenge failed as the arresting officer acted in a professional and non-coercive manner; and, although the defendant was upset, a video recording sufficiently demonstrated that the defendant consented to the state-administered breath test. Bergstrom v. State, 347 Ga. App. 295, 819 S.E.2d 84, 2018 Ga. App. LEXIS 506 (2018).

Trial court's denial of the defendant's motion to suppress was reversed because the Georgia Supreme Court concluded that Ga. Const. 1983, Art. I, Sec. I, Para. XVI precluded admission of evidence that the suspect refused to consent to the breath test; thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to the extent that the statutes allow the defendant's refusal to submit to a breath test to be admitted into evidence at a criminal trial. Elliott v. State, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019).

Constitutionality of 1995 amendment. — Amendment of O.C.G.A. § 40-5-67.1 effective in August, 1995, which changed the retroactive effect of the amendment effective in April, 1995, so that the amendment applied only to stops made after the effective date of the April amendment, rather than to cases pending on such date, did not violate federal or state ex post facto provisions or the uniformity or special laws provisions of the state constitution. State v. Martin, 266 Ga. 244, 466 S.E.2d 216, 1996 Ga. LEXIS 72 (1996).

Effect of the 1995 amendment on pending cases. — See State v. Boone, 221 Ga. App. 256, 471 S.E.2d 53, 1996 Ga. App. LEXIS 458 (1996).

Implied consent provision unconstitutional. — Trial court erred in denying the defendant's motion to suppress the results of a blood test the defendant consented to after a state trooper read the defendant the implied consent notice under O.C.G.A. § 40-5-67.1(b)(2), which informed the defendant that Georgia law required the defendant to submit to chemical testing, that the refusal to submit to testing would lead to the suspension of the defendant's driving privileges, and that the defendant's refusal might be offered into evidence against the defendant at trial; the defendant was not suspected of violating O.C.G.A. § 40-6-391 when the defendant was advised of the implied consent law, O.C.G.A. § 40-5-55(a) (which was unconstitutional), and the defendant's consent was invalid. Cooper v. State, 277 Ga. 282, 587 S.E.2d 605, 2003 Ga. LEXIS 842 (2003), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

No valid equal protection claim. — Trial court did not err in denying the defendant's motion to suppress results of breath tests as the statutory implied

consent warning given to the defendant was not unconstitutional for not informing the defendant that the results of chemical testing could be used against a motorist at trial, even though the statutes involving intoxicated hunters and boaters gave such warning, as hunters and boaters were not similarly situated to motorists for purposes of an equal protection challenge. Young v. State, 275 Ga. 309, 565 S.E.2d 814, 2002 Ga. LEXIS 537 (2002).

Determination of actual consent required. — Based on the United States Supreme Court decision in Missouri v. McNeely, in which the Court rejected a per se rule that the natural metabolization of alcohol in a person's bloodstream constitutes an exigency justifying an exception to the U.S. Const., amend. 4 search warrant requirement for nonconsensual blood testing in all driving under the influence cases, the Georgia Supreme Court overruled Strong v. State, 231 Ga. 514 (1973), to the extent that decision holds otherwise. Williams v. State, 296 Ga. 817, 771 S.E.2d 373, 2015 Ga. LEXIS 197 (2015).

Standard of review. — It was error to affirm a decision to suspend a driver's license when, after being advised of the implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test because the hearing before the administrative law judge was conducted pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to O.C.G.A. § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the breath tests ten minutes apart, and the driver's failure to give an adequate sample could not be used to suspend the license. Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379, 2006 Ga. App. LEXIS 406 (2006), cert. denied, No. S06C1693, 2006 Ga. LEXIS 763 (Ga. Sept. 8, 2006).

An implied consent warning read to the defendant prior to the defendant's consent to a test did not adequately inform the defendant that the defendant's consent was for any purpose other than the stated purpose of prosecution for driving under the influence, therefor, the test results were properly suppressed in a prosecution for possession of cocaine. State v. Frazier, 229 Ga. App. 344, 494 S.E.2d 36, 1997 Ga. App. LEXIS 1352 (1997), cert. denied, No. S98C0404, 1998 Ga. LEXIS 350 (Ga. Feb. 27, 1998).

Results of a blood test consented to by the defendant in response to the implied consent warning found in O.C.G.A. § 40-5-67.1 could not be used in a prosecution for possession of cocaine because use of the test to support the possession charge was beyond the scope of the consent given. State v. Jewell, 228 Ga. App. 825, 492 S.E.2d 706, 1997 Ga. App. LEXIS 1233 (1997), cert. denied, No. S98C0250, 1998 Ga. LEXIS 236 (Ga. Feb. 6, 1998); State v. Burton, 230 Ga. App. 753, 498 S.E.2d 121, 1998 Ga. App. LEXIS 263 (1998).

State must demonstrate notice requirements. — State cannot admit evidence of a defendant's chemical test results, or of the defendant's refusal to take a test, without demonstrating that the state met the implied consent notice requirements. Baird v. State, 260 Ga. App. 661, 580 S.E.2d 650, 2003 Ga. App. LEXIS 456 (2003).

Right to additional test. — There is nothing about the plain language of either subsection (b)(3) of O.C.G.A. § 40-5-67.1 or O.C.G.A. § 40-6-392(b)(2) which would preclude the defendant from affirmatively choosing to have the state's qualified testing officer perform an additional breath test at the defendant's expense. Nawrocki v. State, 235 Ga. App. 416, 510 S.E.2d 301, 1998 Ga. App. LEXIS 1515 (1998), cert. denied, No. S99C0419, 1999 Ga. LEXIS 359 (Ga. Apr. 9, 1999), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Defendant's motion to suppress the results of a blood test administered pursuant to a search warrant was properly denied because the statute dealing with chemical tests for alcohol or drugs in a defendant's blood did not grant the defendant the right to an independent test

General Consideration (Cont'd)

when the officer obtained a search warrant for a blood test; the defendant forfeited the defendant's right to independent testing by refusing the arresting officer's request to submit to a state-administered breath test after being advised under the implied consent law; and the defendant was not entitled to take advantage of the independent test incentive as the defendant refused to submit to the chemical testing requested by the arresting officer. Hynes v. State, 341 Ga. App. 500, 801 S.E.2d 306, 2017 Ga. App. LEXIS 229 (2017), cert. denied, No. S17C1781, 2017 Ga. LEXIS 983 (Ga. Dec. 11, 2017).

Right against self-incrimination. — Use of a substance naturally excreted by the human body does not violate a DUI suspect's constitutional rights, and therefore there is no requirement that the suspect be informed of the suspect's right against self-incrimination by a police officer giving the suspect the implied consent notice. Nawrocki v. State, 235 Ga. App. 416, 510 S.E.2d 301, 1998 Ga. App. LEXIS 1515 (1998), cert. denied, No. S99C0419, 1999 Ga. LEXIS 359 (Ga. Apr. 9, 1999), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Administrative and criminal prosecutions not double jeopardy. — Suspension of the defendant's operator's license pursuant to administrative proceedings did not constitute former punishment foreclosing prosecution for driving under the influence in violation of double jeopardy provisions. Jackson v. State, 218 Ga. App. 677, 462 S.E.2d 802, 1995 Ga. App. LEXIS 846 (1995), cert. denied, No. S96C0146, 1996 Ga. LEXIS 313 (Ga. Jan. 19, 1996).

Stipulation at administrative license suspension hearing admissible in subsequent legal proceedings. — Defendant, having accepted the benefit of the stipulation at the administrative license suspension (ALS) hearing in the form of the reinstatement of the defendant's license and having shown no fraud or mistake, acquiesced to counsel's stipulation to plead guilty to the driving under the influence of alcohol (DUI) at the ALS hearing and to the admissibility of the final decision from the ALS hearing in subsequent legal proceedings related to the DUI charge. Flading v. State, 327 Ga. App. 346, 759 S.E.2d 67, 2014 Ga. App. LEXIS 335 (2014).

Suspension of license not prosecution for double jeopardy purposes. — Suspension of a driver's license at an administrative hearing was not punishment, nor was the hearing a prosecution for the purposes of double jeopardy; thus, a subsequent criminal prosecution for driving under the influence was not barred. Nolen v. State, 218 Ga. App. 819, 463 S.E.2d 504, 1995 Ga. App. LEXIS 896 (1995), cert. denied, No. S96C0143, 1996 Ga. LEXIS 205 (Ga. Jan. 5, 1996), cert. denied, No. S96C0288, 1996 Ga. LEXIS 282 (Ga. Jan. 26, 1996); Kirkpatrick v. State, 219 Ga. App. 307, 464 S.E.2d 882, 1995 Ga. App. LEXIS 1024 (1995); Walsh v. State, 220 Ga. App. 514, 469 S.E.2d 526.

Payment of the fee required for reinstatement of a driver's license after the license was suspended following an arrest for driving under the influence was not punishment and did not bar a subsequent prosecution for driving under the influence. Thompson v. State, 229 Ga. App. 526, 494 S.E.2d 306; Morgan v. State, 229 Ga. App. 861, 495 S.E.2d 138, 1997 Ga. App. LEXIS 1518 (1997).

No probable cause for arrest. — Order denying the defendant's motion to suppress any evidence obtained as a result of arrest was reversed because the officer lacked probable cause to arrest the defendant for driving under the influence since the officer testified that the stop was initiated not because of the defendant's driving, but because of an obstructed license plate, and the defendant indicated no signs of intoxication following certain tests and the only evidence was defendant's admission the defendant had consumed a beer earlier. Bostic v. State, 332 Ga. App. 604, 774 S.E.2d 175, 2015 Ga. App. LEXIS 363 (2015).

Arrest requirement established. — Testimony of police officer that the officer went to interview the defendant in a hospital emergency room where the

defendant had been taken from the accident scene, that the officer placed the defendant under arrest prior to reading the defendant the implied consent warning, and that the defendant indicated the defendant understood, was sufficient to support a finding that the defendant was placed under arrest. Lee v. State, 222 Ga. App. 389, 474 S.E.2d 281, 1996 Ga. App. LEXIS 836 (1996).

Sufficient cause for arrest. — Arrestee failed to produce evidence creating a genuine issue of material fact with regard to the arrestee's Fourth Amendment claim; the smell of alcohol was sufficient to give the officer reasonable suspicion that the arrestee had been driving under the influence of alcohol. As the officer engaged in a reasonable investigation, including requesting that the arrestee submit to a breathalyzer test, the arrestee refused to cooperate and this refusal gave the officer probable cause to arrest the arrestee. Miller v. Harget, 458 F.3d 1251, 2006 U.S. App. LEXIS 19887 (11th Cir. 2006), cert. denied, 550 U.S. 957, 127 S. Ct. 2429, 167 L. Ed. 2d 1130, 2007 U.S. LEXIS 5923 (2007).

Results cannot be used as basis for possession charge. — Results of blood or urine tests obtained pursuant to the language of the implied consent warnings cannot be used as the basis for a possession charge since, under the language of the warnings, the suspect consents to such tests only for the purpose of determining whether the suspect was under the influence of drugs or alcohol, and thus the use of the tests for any purpose other than that exceeds the scope of the consent given. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

Impact of voluntary consent to test. — Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. Jones v. State, 319 Ga. App. 520, 737 S.E.2d 318, 2013 Ga. App. LEXIS 7 (2013).

Court's directed verdict of acquittal made issues moot. — Defendant was unable to show harm from the denial of a pretrial motion to dismiss evidence of a breath test administered before the defendant was read the implied consent rights as required by O.C.G.A. § 40-5-67.1(b)(2), and without being informed of the right to an independent chemical analysis as required by O.C.G.A. § 40-6-392(a)(4) because at trial the trial court directed a verdict of acquittal on the charge of driving under the influence with a blood alcohol level higher than 0.08 percent. Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795, 2009 Ga. App. LEXIS 378 (2009).

Informed decision impossible when "may" used instead of "will". — Defendant's motion in limine to suppress evidence of the defendant's refusal to submit to a state-administered chemical test of the defendant's blood, breath, or urine was properly granted because the officer's error in giving the implied consent notice misled the defendant as to a serious consequence of refusing to submit to testing as the officer's statement to the defendant that the defendant's license "may be suspended," instead of "will be suspended," altered the substance of the implied consent notice by changing the mandatory suspension into a mere permissive possibility, and impaired the defendant's ability to make an informed decision about whether to submit to testing; thus, the defendant's refusal was rendered inadmissible. State v. Stroud, 344 Ga. App. 885, 812 S.E.2d 83, 2018 Ga. App. LEXIS 153 (2018).

State-administered tests should have been suppressed. — Defendant's driving under the influence per se conviction was reversed because the trial court erred in admitting the results of the state-administered test; because the defendant's statements to the arresting officer could reasonably be construed as a request for an independent test and the defendant was not given an independent test after requesting one, the state-administered test results should have been suppressed. Wright v. State, 338 Ga. App. 216, 789 S.E.2d 424, 2016 Ga. App. LEXIS 455 (2016), cert. denied, No. S17C0046, 2017 Ga. LEXIS 209 (Ga. Mar. 20, 2017), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

Due Processes

"Totality of circumstances" test inapplicable. — Because the choice afforded a suspect under the implied consent statute does not rise to the level of constitutional self-incrimination, it is improper for a court to apply the "totality of circumstances" test. The issues to be determined are simply whether the officer told the suspect of the suspect's implied consent rights in a timely fashion and whether the suspect revoked the implied consent. State v. Highsmith, 190 Ga. App. 838, 380 S.E.2d 272, 1989 Ga. App. LEXIS 449 (1989).

Warning to holder of commercial license driving private passenger car. — Because the defendant was over 18 and driving a private passenger car when arrested, it was appropriate to give the defendant the implied consent warning for suspects over 18, even though the defendant held a commercial driver's license. Meyer v. State, 224 Ga. App. 183, 480 S.E.2d 234, 1997 Ga. App. LEXIS 2 (1997).

Due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592, 2008 Ga. LEXIS 254 (2008).

There was no unlawful coercion after the officer merely informed the arrestee of the permissible range of sanctions that the state is authorized to impose. The fact that the driver's license was not ultimately suspended did not mean that the officer was not informed of the true and legitimate consequences of the officer's refusal or performance on the test. Gutierrez v. State, 228 Ga. App. 458, 491 S.E.2d 898, 1997 Ga. App. LEXIS 1164 (1997), cert. denied, No. S98C0053, 1998 Ga. LEXIS 149 (Ga. Jan. 5, 1998).

Defendant was properly advised. — In a driving under the influence case, the state met the state's burden of showing that the defendant had been properly advised of an implied consent notice. Although a card an officer read into evidence was of a later date than the card the officer had read to the defendant, the officer testified that the language of the cards was the same, and the language accurately informed the defendant of the applicable implied consent notice. State v. Cato, 289 Ga. App. 702, 658 S.E.2d 124, 2008 Ga. App. LEXIS 80 (2008).

Because a police officer's actions, including reading the defendant the implied consent warnings in O.C.G.A. § 40-5-67.1(g)(2)(B) multiple times, were reasonable and the procedure utilized was fair, the results of a toxicology report, indicating that 0.24 milligrams per liter of benzoylecgonine, a metabolite of cocaine, was present in the defendant's blood, was sufficient for the jury to find the defendant guilty of violating O.C.G.A. § 40-6-391(a)(6). Page v. State, 296 Ga. App. 431, 674 S.E.2d 654, 2009 Ga. App. LEXIS 265 (2009).

Trial court erred in granting a defendant's motion to suppress evidence of the defendant's refusal to submit to chemical testing on the basis that the arresting officer failed to inform the defendant, pursuant to O.C.G.A. § 40-5-67.1(b)(2), that the defendant's refusal to submit could be used against the defendant at trial. The officer informed the defendant that failure to take the test would result in loss of driving privileges for one year; thus the officer made it clear that refusing the test was not a safe harbor, free of adverse consequences. State v. Sauls, 315 Ga. App. 98, 728 S.E.2d 241, 2012 Ga. App. LEXIS 115 (2012), rev'd, 293 Ga. 165, 744 S.E.2d 735, 2013 Ga. LEXIS 542 (2013), vacated on other grounds, 324 Ga. App. 652, 751 S.E.2d 495, 2013 Ga. App. LEXIS 904 (2013).

Trial court did not err in excluding the breath test results because the arresting officer read the appropriate implied consent warning for persons over 21 as there

was no evidence that the defendant had an out-of-state driver's license, the defendant did not assert that the defendant was under 21, or occupied a commercial motor vehicle. State v. Gaggini, 321 Ga. App. 31, 740 S.E.2d 845, 2013 Ga. App. LEXIS 298 (2013).

Consent to test was found voluntary under all the circumstances. — Defendant's breath test was admissible because the defendant consented after being read an implied consent warning as required by O.C.G.A. § 40-5-67.1(b)(2), and there was no evidence that the officers used fear, intimidation, threat, or lengthy detention to obtain the defendant's consent, although the defendant was arrested and in handcuffs when the notice was read. Kendrick v. State, 335 Ga. App. 766, 782 S.E.2d 842, 2016 Ga. App. LEXIS 79 (2016).

Trial court erred in denying the defendant's motion to suppress the results of a state-administered breath test given after the defendant initially refused to take such a test as there was no evidence that the defendant was asked a second time whether the defendant would consent to the test or that the defendant rescinded the defendant's refusal and thereafter consented. Howell v. State, 266 Ga. App. 480, 597 S.E.2d 546, 2004 Ga. App. LEXIS 413 (2004).

Advisement to Driver of Rights

Miranda like warnings not required. — Supreme Court of Georgia held that neither Georgia's right against compelled self-incrimination, Georgia's right to due process, nor Georgia's statute prohibiting compelled self-incrimination, O.C.G.A. § 24-5-506, requires law enforcement to provide Miranda warnings to persons arrested for DUI before asking a person to submit to a breath test. State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Police officers were not required to give the defendant a Miranda warning before asking the defendant to submit to the breath test; thus, the trial court did not err in that regard but because the trial court did not consider the deficiency in the implied consent notice as a factor in the court's totality of the circumstances analysis, the denial of the defendant's motion to suppress was reversed. Fofanah v. State, 351 Ga. App. 632, 832 S.E.2d 449, 2019 Ga. App. LEXIS 460 (2019).

Timing of warning. — Implied consent warning must be given at a time as close in proximity to the instant of arrest as the circumstances of that particular case might warrant. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587, 1999 Ga. App. LEXIS 123 (1999), cert. denied, No. S99C0902, 1999 Ga. LEXIS 604 (Ga. June 11, 1999).

When the timing was warranted by the circumstances, a delay of approximately 16 minutes between the defendant's arrest and the reading of the implied consent notice did not require suppression of the defendant's refusal to submit to chemical testing. State v. Marks, 239 Ga. App. 448, 521 S.E.2d 257, 1999 Ga. App. LEXIS 1028 (1999).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774, 2004 Ga. App. LEXIS 895 (2004), cert. dismissed, No. S04C1890, 2004 Ga. LEXIS 857 (Ga. Sept. 27, 2004), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Notice can be given in close proximity before arrest. — O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when the notice preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the

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instant of arrest as the circumstances of the individual case might warrant. Kahl v. State, 268 Ga. App. 879, 602 S.E.2d 888, 2004 Ga. App. LEXIS 1041, overruled in part, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899, 2004 Ga. App. LEXIS 1586 (2004).

Right to have additional test administered. — Language of O.C.G.A. § 40-6-392 made it clear that a person must be advised of the right to have an additional test administered by a qualified person of that person's own choice in addition to the one administered by the arresting officer. The failure to so inform invalidated the result of any test and also justified the refusal to submit to a test. Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812, 1976 Ga. LEXIS 1250 (1976) (decided under former Code 1933, § 68B-306).

Failure of an arresting officer to advise the suspect of the suspect's rights to a chemical test or tests according to former Code 1933, § 68A-902.1 (see now O.C.G.A. § 40-6-392(a)(3)) rendered the results of the test inadmissible in later proceedings. Rogers v. State, 163 Ga. App. 641, 295 S.E.2d 140, 1982 Ga. App. LEXIS 3235 (1982), overruled in part, Bailey v. State, 338 Ga. App. 428, 790 S.E.2d 98, 2016 Ga. App. LEXIS 433 (2016) (decided under former Code 1933, §§ 68A-902.1 and 68B-306).

State may not use the accused's refusal to submit to the state-administered test to suspend the accused's driver's license since the accused was not informed, at the time of arrest, or at a time in proximity to the accused's arrest if the circumstances of the case warrant a later time, of the accused's right to an independent chemical analysis to determine blood alcohol or drug contents. Perano v. State, 250 Ga. 704, 300 S.E.2d 668, 1983 Ga. LEXIS 601 (1983) (decided under former Code 1933, § 68A-902.1).

When it was uncontroverted in three consolidated cases that the arresting officer did not inform the defendant of the defendant's right, after submission to the state-administered test, to have an independent test administered by a qualified person of the defendant's own choosing, the trial court properly granted the defendant-appellees' motions to exclude the results of the state-administered tests or the refusal to submit to testing. State v. Hassett, 216 Ga. App. 114, 453 S.E.2d 508, 1995 Ga. App. LEXIS 33 (1995).

Defendant's failure to complete a breath test without justification negated the defendant's right to an alternative test. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229, 1997 Ga. App. LEXIS 1536 (1997), cert. denied, No. S98C0530, 1998 Ga. LEXIS 400 (Ga. Mar. 6, 1998).

Motorist was not denied the right to an independent blood alcohol test by qualified personnel of the motorist's own choosing since the evidence showed that, after the defendant requested an additional test, the defendant was taken to the nearest hospital where the defendant's blood was drawn and tested, and the defendant neither objected to being there nor requested a specific doctor. Lambropoulous v. State, 234 Ga. App. 625, 507 S.E.2d 225, 1998 Ga. App. LEXIS 1275 (1998), cert. denied, No. S99C0160, 1999 Ga. LEXIS 146 (Ga. Feb. 5, 1999).

There is no requirement that a suspect bond out before being entitled to an independent test, but merely that the suspect first agree to take a state-administered test. State v. Terry, 236 Ga. App. 248, 511 S.E.2d 608, 1999 Ga. App. LEXIS 142 (1999).

Notice is silent as to when an independent test will be administered. State v. Terry, 236 Ga. App. 248, 511 S.E.2d 608, 1999 Ga. App. LEXIS 142 (1999).

If a suspect agrees to the state-administered test, the police must make a reasonable effort to accommodate the accused who seeks an independent test. State v. Terry, 236 Ga. App. 248, 511 S.E.2d 608, 1999 Ga. App. LEXIS 142 (1999).

There was no error in denying the defendant's motion to suppress because the law did not require that the officer making the DUI arrest ask the accused if the accused wished to have an independent chemical test after the officer read the implied consent notice informing the accused of that option under O.C.G.A.

§ 40-5-67.1(b)(2). McArthur v. State, 276 Ga. App. 872, 625 S.E.2d 68, 2005 Ga. App. LEXIS 1334 (2005), cert. denied, No. S06C0759, 2006 Ga. LEXIS 381 (Ga. May 18, 2006).

No evidence of request for additional test. — After a police officer properly advised the defendant of the defendant's rights under the implied consent notice, and since there was no evidence in the record establishing that the defendant ever requested to be taken to the hospital to exercise the defendant's right to an independent breath test, the trial court erred in making a factual finding that such a request was made. State v. Gillette, 236 Ga. App. 571, 512 S.E.2d 399, 1999 Ga. App. LEXIS 233 (1999).

Officer elects test. — As long as a defendant's right to an independent chemical test was clear, an officer may have obtained consent for more than one chemical test and then elected which consented-to "test or tests" were to have been administered; thus, an order suppressing the defendant's breath test results was reversed. State v. Brantley, 263 Ga. App. 209, 587 S.E.2d 383, 2003 Ga. App. LEXIS 1158 (2003).

Implied consent warning was not rendered defective or misleading by the arresting officer's failure to initiate administrative license suspension proceedings immediately after the defendant's arrest. Singleterry v. State, 227 Ga. App. 155, 489 S.E.2d 42, 1997 Ga. App. LEXIS 814 (1997), cert. denied, No. S97C1775, 1997 Ga. LEXIS 911 (Ga. Nov. 21, 1997).

Unimportant misstatements made in giving the implied consent warning did not require suppression of the test results since the meaning of the implied consent warning did not change and the motorist was unharmed. Harrison v. State, 235 Ga. App. 78, 508 S.E.2d 459, 1998 Ga. App. LEXIS 1424 (1998).

Officer's mistakenly informing the defendant that the defendant's driver's license was subject to suspension if the defendant's alcohol concentration was .01 grams or more, instead of the legal limit of .10 grams, did not change the substance of the notice in any way harmful to the defendant. Maurer v. State, 240 Ga. App. 145, 525 S.E.2d 104, 1999 Ga. App. LEXIS 1255 (1999).

Even though an officer read the implied consent warning incorrectly due to a slip of the tongue, the mistake was harmless and did not render the blood test results inadmissible. Yarbrough v. State, 241 Ga. App. 777, 527 S.E.2d 628, 2000 Ga. App. LEXIS 24 (2000).

Although the police officer who read the defendant the implied consent warning of O.C.G.A. § 40-5-67.1(b)(2) concluded the warning by asking if the defendant would submit to breath and blood tests, the language of § 40-5-67.1(a) indicated that the officer's request for consent to conduct both kinds of tests did not mean that both types of tests had to be given; the wording of the officer's request and the officer's ultimate decision to conduct only breath tests could not have misled the defendant into believing that the defendant could not request an independent blood test. Mueller v. State, 257 Ga. App. 830, 572 S.E.2d 627, 2002 Ga. App. LEXIS 1127 (2002), cert. denied, No. S03C0296, 2003 Ga. LEXIS 96 (Ga. Jan. 27, 2003).

Trial court's judgment denying the defendant's motion to suppress was reversed and the case remanded for the court to further consider the totality of the circumstances surrounding the defendant's breath test as, although the trial court did consider some of the circumstances surrounding the defendant's consent, the court did not consider whether the officer's misleading statement affected the defendant's decision to take the breath test, having already determined that specific issues as to the defendant's consent were moot. Holland v. State, 347 Ga. App. 601, 820 S.E.2d 442, 2018 Ga. App. LEXIS 570 (2018).

Reference to "test" or "tests" in notice. — Arresting officer's reading of the implied consent warning did not change the substance of the notice, and thus, did not require suppression of the defendant's refusal to submit to chemical testing since the officer informed the defendant that the defendant was entitled to an additional chemical "test" rather than "tests" as stated in the statute. Rojas v. State, 235 Ga. App. 524, 509 S.E.2d 72, 1998 Ga. App. LEXIS 1447 (1998), cert.

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denied, No. S99C0479, 1999 Ga. LEXIS 355 (Ga. Apr. 9, 1999).

When the officer was requesting consent for only one test, correcting the grammar of the sentence by changing "test" to "tests" is not a substantive change which alters the meaning of the question, but makes the critical sentence in the warning, which defines the test for which consent is sought, more understandable. State v. Sneddon, 235 Ga. App. 739, 510 S.E.2d 566, 1998 Ga. App. LEXIS 1602 (1998).

When a police officer changed the word "tests" to "test" in the officer's implied consent warnings to the defendant because the officer only asked the defendant to submit to one type of state administered test, the officer's warnings satisfied the statutory requirements. State v. Black, 236 Ga. App. 56, 510 S.E.2d 903, 1999 Ga. App. LEXIS 39 (1999), cert. denied, No. S99C0640, 1999 Ga. LEXIS 468 (Ga. May 14, 1999).

When the defendant was informed that the law required the defendant to submit to a state administered test, that was the significant point in that portion of the implied consent warning, and the substitution of the word "test" for "tests" did not render the results of the breath test inadmissible. Sheridan v. State, 236 Ga. App. 350, 511 S.E.2d 908, 1999 Ga. App. LEXIS 176 (1999).

Substitution of "test" for "tests" and "substance" for "substances" did not alter the substance of the statutory implied consent notice, and suppression was therefore not required. State v. Payne, 236 Ga. App. 338, 512 S.E.2d 292, 1999 Ga. App. LEXIS 162 (1999).

Police officer's replacement of the word "test" for "tests," coupled with the officer's grammatical errors in the giving of the implied consent warning notice, did not affect the substance of the notice. State v. McGraw, 237 Ga. App. 345, 514 S.E.2d 34, 1999 Ga. App. LEXIS 219 (1999), cert. denied, No. S99C1061, 1999 Ga. LEXIS 524 (Ga. June 4, 1999).

Even if it was error for a police officer to have informed the defendant that the defendant was entitled to an "additional chemical test," rather than "tests," any such error was immaterial since the defendant rejected any additional test at all. State v. McGraw, 237 Ga. App. 345, 514 S.E.2d 34, 1999 Ga. App. LEXIS 219 (1999), cert. denied, No. S99C1061, 1999 Ga. LEXIS 524 (Ga. June 4, 1999).

Requirement that the notice "shall be read in its entirety" means that police officers are to read the warning all the way through, instead of reading, for example, only half of the notice; however, the legislature allowed for human error in the reading of the warning, such as the omission of a word or two, as long as the notice's meaning is not affected. State v. Garnett, 241 Ga. App. 315, 527 S.E.2d 21, 1999 Ga. App. LEXIS 1605 (1999).

Substance of notice unchanged by omission of word. — Arresting officer's omission of the word "and" in the next to last sentence of the statutory implied consent warning did not change the substance of the required statutory notice and therefore complied with the 1998 amended version of O.C.G.A. § 40-5-67.1. State v. Nolen, 234 Ga. App. 291, 508 S.E.2d 733, 1998 Ga. App. LEXIS 1215 (1998).

Police officer's reading of the implied consent notice was sufficient, and the defendant's blood test results should not have been suppressed in the defendant's DUI prosecution for the officer's failure to use the exact statutory language after the officer omitted two words from the implied consent notice, but the defendant was not misled. State v. Levins, 234 Ga. App. 739, 507 S.E.2d 246, 1998 Ga. App. LEXIS 1625 (1998).

Warning of suspension not misleading and coercive. — Implied consent notice prescribed by O.C.G.A. § 40-5-67.1(b)(2) and read by an officer to a driver was not misleading and did not overstate the penalty for refusing to take the state-administered test; a one-year suspension was a true and legitimate consequence of refusal to submit, pursuant to § 40-5-67.1(d), despite the availability of scenarios in which suspension could be rescinded in less than one year. State v. Oyeniyi, 335 Ga. App. 575, 782 S.E.2d 476, 2016 Ga. App. LEXIS

37 (2016), cert. denied, No. S16C0880, 2016 Ga. LEXIS 485 (Ga. Sept. 6, 2016).

Privilege against self-incrimination. — Implied consent warnings administered to motorists suspected of driving under the influence need not inform the motorists of their privilege against self-incrimination. Heller v. State, 234 Ga. App. 630, 507 S.E.2d 518, 1998 Ga. App. LEXIS 1320 (1998).

Warning in substantial compliance with O.C.G.A. § 40-5-67.1 was sufficient. State v. McCabe, 239 Ga. App. 297, 519 S.E.2d 760, 1999 Ga. App. LEXIS 901 (1999).

Trial court erred in granting the defendant's motion to suppress the results of a state-administered chemical blood test, as the record showed that the defendant was read the implied consent notice, was not threatened in any way, did not show physical resistance, and told both the officer and the EMS worker that the defendant consented to have blood taken. State v. Clay, 339 Ga. App. 473, 793 S.E.2d 636, 2016 Ga. App. LEXIS 648 (2016).

Failure to read specific language of implied consent warning. — An officer's possible substitution of "test" for "tests" in reading the last sentence of the prescribed notice amounted to a verbatim reading since the officer was asking for consent for only one test. State v. Hopkins, 232 Ga. App. 705, 503 S.E.2d 590, 1998 Ga. App. LEXIS 795 (1998).

Added words to implied consent notice. — Trial court erred when the court granted the defendant's motion to suppress evidence based on the officer adding words to the implied consent notice because the added words did not alter the substance of the notice nor affect the defendant's consent to testing. State v. Fedrick, 329 Ga. App. 75, 763 S.E.2d 739, 2014 Ga. App. LEXIS 623 (2014).

Verbatim reading of the implied consent notice is not required. Bass v. State, 238 Ga. App. 503, 519 S.E.2d 294, 1999 Ga. App. LEXIS 861 (1999), cert. denied, No. S99C1478, 1999 Ga. LEXIS 870 (Ga. Oct. 22, 1999), overruled in part, Jones v. State, 272 Ga. 900, 537 S.E.2d 80, 2000 Ga. LEXIS 681 (2000), overruled in part, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899, 2004 Ga. App. LEXIS 1586 (2004).

Must read language exactly. — In advising a motorist of the motorist's implied consent rights, a police officer was required to read the exact language of subsection (b) of O.C.G.A. § 40-5-67.1. State v. Fielding, 229 Ga. App. 675, 494 S.E.2d 561, 1997 Ga. App. LEXIS 1484 (1997).

Notice insufficient when proof of what was read to defendant inadequate. — Defendant's blood test results should have been suppressed because, although a nurse and an officer testified that the officer read the implied consent warning to the defendant prior to the blood draw, the actual card from which the officer read was not admitted into evidence, the state did not produce evidence of what was read to the defendant, and the state thus failed to prove that the state complied with the O.C.G.A. § 40-5-67.1(b) implied consent notice requirements; in the absence of the blood test results, there was no competent evidence that the defendant had an alcohol concentration of .08 grams or more within three hours after driving as charged in the accusation. Thus, the conviction for DUI per se was not supported by sufficient evidence. Epps v. State, 298 Ga. App. 607, 680 S.E.2d 636, 2009 Ga. App. LEXIS 755 (2009).

Omission of information resulted in insufficient notice. — Court of appeals erred in reversing the trial court's grant of the defendant's motion to suppress evidence that the defendant refused to submit to chemical testing because the officer failed to convey the entire substance of the implied consent notice required by O.C.G.A. § 40-5-67.1(b)(2), omitting information about the consequence of refusal, rendering the notice insufficient to allow the defendant to make an informed decision about whether to submit to testing. Sauls v. State, 293 Ga. 165, 744 S.E.2d 735, 2013 Ga. LEXIS 542 (2013), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Advisement of rights momentarily interrupted by another call. — Results of the defendant's intoximeter test were

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admissible because the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the instant of arrest as the circumstances warranted when after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while they were in the patrol car. Fore v. State, 180 Ga. App. 196, 348 S.E.2d 579, 1986 Ga. App. LEXIS 2111 (1986).

Warning to driver suspected of intoxication. — Driver suspected of intoxication is not entitled to warning which tracks exact language of O.C.G.A. § 40-5-67.1. Ivie v. State, 151 Ga. App. 496, 260 S.E.2d 543, 1979 Ga. App. LEXIS 2583 (1979); Pryor v. State, 182 Ga. App. 79, 354 S.E.2d 690, 1987 Ga. App. LEXIS 2592 (1987).

Implied consent warnings that tracked the language of O.C.G.A. § 40-5-67.1 were not deceptive or misleading on the basis that the officer did not subsequently initiate an administrative license suspension. Morrissette v. State, 229 Ga. App. 420, 494 S.E.2d 8, 1997 Ga. App. LEXIS 1306 (1997), cert. denied, No. S98C0457, 1998 Ga. LEXIS 346 (Ga. Feb. 27, 1998).

When an officer initially gave the implied consent warning correctly, the officer was under no duty to give further warnings or instructions, and the officer's subsequent statement to the defendant, i.e., that if the defendant did not submit to a breath test, the officer would suspend the defendant's driver's license was not false or misleading. State v. Kirbabas, 232 Ga. App. 474, 502 S.E.2d 314, 1998 Ga. App. LEXIS 718 (1998), reversed on other grounds, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Implied consent notice given before arrest. — Required timing of the implied consent notice for a person who is involved in a traffic incident resulting in serious injuries or a fatality, and who is not arrested at that time for a violation of O.C.G.A. § 40-6-391 is: (a) law enforcement officers must administer chemical tests for alcohol and drugs as soon as possible; and (b) the implied consent notice must be given at the time such test is requested, which may or may not be at the time of actual testing. Joiner v. State, 239 Ga. App. 843, 522 S.E.2d 25, 1999 Ga. App. LEXIS 1075 (1999), overruled in part, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899, 2004 Ga. App. LEXIS 1586 (2004).

Arrest not required before reading of implied consent rights when defendant received serious injuries in accident. — Because a defendant was involved in an accident which resulted in serious injuries and the investigating officer had probable cause to believe that the defendant was driving under the influence, the officer was not required to arrest the defendant before the reading of implied consent; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read. Hough v. State, 279 Ga. 711, 620 S.E.2d 380, 2005 Ga. LEXIS 647 (2005).

25 minute delay in reading implies consent notice acceptable. — Officer's testimony that: (1) the officer read the Georgia implied consent law from 1997; (2) the officer read the notice for suspects over 21; and (3) the officers read the notice twice because the defendant appeared not to understand was sufficient to prove compliance with the implied consent notice requirements. Cullingham v. State, 242 Ga. App. 499, 529 S.E.2d 199, 2000 Ga. App. LEXIS 126 (2000), cert. denied, No. S00C1057, 2000 Ga. LEXIS 562 (Ga. June 30, 2000).

Trial court did not err in denying the defendant's motion to suppress as an officer's failure to read the implied consent notice in a timely manner did not warrant suppression given that the 25-minute delay was based on the officer's need to ensure safety by searching and interviewing the defendant's intoxicated passenger, investigate and secure the scene, and inventory the defendant's car before a tow truck arrived. Dunbar v. State, 283 Ga.

App. 872, 643 S.E.2d 292, 2007 Ga. App. LEXIS 218 (2007).

Results of test suppressed when information misleading. — When the trial court found that the information given the defendant regarding the defendant's right to an independent test was substantially misleading, inaccurate, extraneous, and relevant to the defendant's decision whether to agree to the state-administered test, it was not error for the court to grant the defendant's motion to suppress. State v. Terry, 236 Ga. App. 248, 511 S.E.2d 608, 1999 Ga. App. LEXIS 142 (1999).

Substantial evidence supported the trial court's decision to grant the defendant's motion to suppress evidence that was derived as a result of the defendant's submission to a breath test during a traffic stop after the defendant's consent to take the test was based, at least in part, on misleading information from the police officer that the defendant's out-of-state license could be suspended if the defendant refused to submit to the test; the officer had no authority to implement such a penalty for refusal. State v. Peirce, 257 Ga. App. 623, 571 S.E.2d 826, 2002 Ga. App. LEXIS 1240 (2002).

Trial court erred in denying the defendant's motion to suppress because the defendant's final consent to a blood test was given only after the trooper misinformed the defendant of the consequences of refusing to take a blood test and the defendant appeared to believe that the defendant's Washington driver's license would be revoked if the defendant refused. Hernandez v. State, 348 Ga. App. 569, 824 S.E.2d 67, 2019 Ga. App. LEXIS 48 (2019).

Error not to have supressed test results. — Trial court erred when the court did not suppress the defendant's breath test because the implied consent warning read to the defendant by the arresting officer was misleading, inaccurate, and coercive; however, there was sufficient evidence that the defendant was a less safe driver. Kitchens v. State, 258 Ga. App. 411, 574 S.E.2d 451, 2002 Ga. App. LEXIS 1475 (2002).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. Harrelson v. State, 287 Ga. App. 664, 653 S.E.2d 98, 2007 Ga. App. LEXIS 1055 (2007).

Warning to commercial driver. — Implied consent warning given to a commercial driver stating: "If you refuse this testing, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year" was a correct statement of the consequences for a refusal to submit to alcohol testing. Roberson v. State, 228 Ga. App. 416, 491 S.E.2d 864, 1997 Ga. App. LEXIS 1143 (1997).

Notices advising the defendant that if the defendant refused testing the defendant would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. State v. Becker, 240 Ga. App. 267, 523 S.E.2d 98, 1999 Ga. App. LEXIS 1314 (1999), cert. denied, No. S00C0238, 2000 Ga. LEXIS 195 (Ga. Feb. 25, 2000).

Trial court erred in concluding that the difference between the implied consent warning for suspects over age 21 and the warning for commercial drivers was within the range of substantial compliance and did not render the warning insufficiently accurate because overstating the legal limit might have led the defendant to subject to testing. Gelzer v. State, 347 Ga. App. 219, 818 S.E.2d 677, 2018 Ga. App. LEXIS 494 (2018).

Defendant was properly advised. — Defendant was not entitled to have the results of a breath test excluded because the officer's failure to designate a specific state-administered test for which consent was being requested did not change the meaning of the notice required under O.C.G.A. § 40-5-67.1; the defendant was under notice that state-administered

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chemical tests would be of the defendant's blood, breath, urine, or other bodily substances. Nagata v. State, 319 Ga. App. 513, 736 S.E.2d 474, 2013 Ga. App. LEXIS 2 (2013).

Since the defendant did not assert that the defendant was under 21 or occupied a commercial vehicle, the notice of implied consent for those over 21 was the only appropriate notice for the officer to have read to the defendant, who held a license from North Carolina. State v. Barnard, 321 Ga. App. 20, 740 S.E.2d 837, 2013 Ga. App. LEXIS 308 (2013).

Driver Incapable of Understanding Rights

Advisement, not understanding, is all that is required. — All drivers are entitled only to be advised of their rights under the implied consent law, that is, to have the implied consent notice read to the drivers, and the law does not require the arresting officer to ensure that the driver understands the implied consent notice. Furcal-Peguero v. State, 255 Ga. App. 729, 566 S.E.2d 320, 2002 Ga. App. LEXIS 655 (2002), cert. denied, No. S02C1523, 2002 Ga. LEXIS 708 (Ga. Sept. 6, 2002), cert. denied, 537 U.S. 1233, 123 S. Ct. 1356, 155 L. Ed. 2d 197, 2003 U.S. LEXIS 1769 (2003).

When an officer read a defendant an implied consent notice under O.C.G.A. § 40-5-67.1(b) accurately and timely, the notice was valid irrespective of the defendant's claimed inability to understand the notice; thus, even if the defendant's later refusal to provide a breath sample resulted from a failure to comprehend the consequences of the defendant's conduct, the refusal was admissible against the defendant. State v. Stewart, 286 Ga. App. 542, 649 S.E.2d 525, 2007 Ga. App. LEXIS 682 (2007), cert. denied, No. S07C1851, 2008 Ga. LEXIS 120 (Ga. Jan. 28, 2008).

Results of blood test admissible though defendant unconscious. — When the evidence shows that advice as to independent tests available cannot be given because of unconsciousness, it was the intent of the General Assembly that, under the exigent circumstances, the officer lawfully can extract a blood specimen under the aegis of protection of evidence. Smith v. State, 143 Ga. App. 347, 238 S.E.2d 698, 1977 Ga. App. LEXIS 2314 (1977) (decided under former Code 1933, § 68A-902.1).

For blood drawn from an unconscious driver to be used for a blood alcohol test it is not necessary that the state show that the driver was informed, upon regaining consciousness of the right to refuse such testing. Long v. State, 176 Ga. App. 89, 335 S.E.2d 587, 1985 Ga. App. LEXIS 2288 (1985).

Even if the defendant was unconscious or semi-conscious, and thereby incapable of refusing to consent to a blood test, the results of the test were nevertheless admissible. Holmes v. State, 180 Ga. App. 787, 350 S.E.2d 497, 1986 Ga. App. LEXIS 2266 (1986); Curtis v. State, 182 Ga. App. 388, 355 S.E.2d 741, 1987 Ga. App. LEXIS 2616 (1987).

Subsequent administration of test required reading notice again. — Because a defendant, who was charged with driving under the influence in violation of O.C.G.A. § 40-6-391, was confused after a police officer read the defendant the implied consent warning, and the defendant failed to respond to the officer's request to administer the chemical breath test, such a response was tantamount to a refusal, and accordingly, when the defendant was then taken to a detention center it was error to administer the test without the defendant being asked to consent again or without reading the implied consent warnings pursuant to O.C.G.A. § 40-5-67.1, and suppression of the results was required. State v. Adams, 270 Ga. App. 878, 609 S.E.2d 378, 2004 Ga. App. LEXIS 1622 (2004).

Timing of warning. — When there was a perceived threat of a fire or explosion at the accident scene and an apparent need for prompt medical transportation of the defendant for medical treatment, there was a fair risk that the defendant would not have been able to make an intelligent choice concerning the state's request for a blood

test, and the implied consent warning given at the hospital was timely given. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587, 1999 Ga. App. LEXIS 123 (1999), cert. denied, No. S99C0902, 1999 Ga. LEXIS 604 (Ga. June 11, 1999).

Spanish speaking drivers. — Results of state-administered blood alcohol test given to a driver suspected of driving under the influence who could not speak English and who was only advised of the driver's rights under the implied consent statute in English were admissible because the driver consented to chemical intoxication tests by driving on the state's roads, because the officer advised the defendant of the defendant's implied consent rights, albeit in English, and because the defendant did not withdraw consent. Furthermore, admissibility of a state-administered test of the blood alcohol level of a person suspected of driving under the influence is not conditioned on the state's showing of a knowing and intelligent waiver of the "right" to an independent test. Furcal-Peguero v. State, 255 Ga. App. 729, 566 S.E.2d 320, 2002 Ga. App. LEXIS 655 (2002), cert. denied, No. S02C1523, 2002 Ga. LEXIS 708 (Ga. Sept. 6, 2002), cert. denied, 537 U.S. 1233, 123 S. Ct. 1356, 155 L. Ed. 2d 197, 2003 U.S. LEXIS 1769 (2003).

Refusal by Driver to Submit to Test

Constitutionality. — Georgia Supreme Court concluded that Ga. Const. 1983, Art. I, Sec. I, Para. XVI precluded admission of evidence that the suspect refused to consent to a breath test; thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to the extent that the statutes allow the defendant's refusal to submit to a breath test to be admitted into evidence at a criminal trial. Elliott v. State, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019).

Georgia Supreme Court held defendant had right to refuse to perform preliminary breath test and field sobriety tests under Georgia Constitution, and evidence of defendant's refusals could not be introduced at trial. Ammons v. State, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

Georgia Supreme Court held that the Georgia Constitution's privileges and immunities clause did not bar the admission of evidence that defendant refused to consent to a blood test. Ammons v. State, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

License suspended only when person refuses test. — Only when a person has refused to submit to the chemical test upon the request of the law enforcement officer shall that person's license be suspended under the law. Hardison v. Chastain, 151 Ga. App. 678, 261 S.E.2d 425, 1979 Ga. App. LEXIS 2745 (1979) (decided under former Code 1933, § 68A-902.1).

Arresting officer cannot take words of others as to refusal. — Simple question by the arresting officer as to whether or not the defendant was refusing the chemical blood test would have settled this issue, but the law enforcement officer did not ask the question, but took the words of others that the defendant had refused to take the test, and, therefore, the defendant's license could not be suspended. Hardison v. Chastain, 151 Ga. App. 678, 261 S.E.2d 425, 1979 Ga. App. LEXIS 2745 (1979) (decided under former Code 1933, § 68A-902.1).

Refusal to submit to test based on "bad advice." — An officer is not required to ensure that a suspect be provided an environment free from another's "bad advice" when deciding whether to cooperate with a properly administered implied consent notice, especially when that advice does not enure to the state's benefit and especially when the suspect is equally free to ignore such advice. State v. Marks, 239 Ga. App. 448, 521 S.E.2d 257, 1999 Ga. App. LEXIS 1028 (1999).

Form 1205. — O.C.G.A. § 40-5-67.1 expressly limits the scope of a hearing to challenge a license suspension to six enumerated issues including the lawfulness of the arrest, whether the motorist was informed of the implied consent rights, whether the motorist refused testing, the results of any test given, whether the testing was properly administered, and whether the arresting

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officer completed the DPS Form 1205 and submitted the Form to the department has no bearing on these issues, and nothing in the statute requires that the department tender the Form into evidence. Miles v. Ahearn, 243 Ga. App. 741, 534 S.E.2d 175, 2000 Ga. App. LEXIS 549 (2000), cert. denied, No. S00C1465, 2000 Ga. LEXIS 788 (Ga. Oct. 20, 2000).

If the arresting officer testifies in person as to the events of the arrest, the DPS Form 1205 clearly is not necessary to the resolution of the issues enumerated in O.C.G.A. § 40-5-67.1 and there is no need for an initial showing that the license was suspended because the fact of the suspension is not at issue. Miles v. Ahearn, 243 Ga. App. 741, 534 S.E.2d 175, 2000 Ga. App. LEXIS 549 (2000), cert. denied, No. S00C1465, 2000 Ga. LEXIS 788 (Ga. Oct. 20, 2000).

Pretense of complying with test. — That the defendant made a pretense of complying with an intoximeter test, but in fact failed to inflate the balloon, authorizes a finding that the defendant refused to submit to the test. The implied consent law requires a meaningful submission to the test. Howard v. Cofer, 150 Ga. App. 579, 258 S.E.2d 195, 1979 Ga. App. LEXIS 2213 (1979), superseded by statute as stated in Groutas v. McCoy, 219 Ga. App. 252, 464 S.E.2d 657, 1995 Ga. App. LEXIS 1002 (1995) (decided under former Code 1933, § 68A-902.1).

Not completing test within judgment of test operator. — When Ga. L. 1968, p. 448 fails to set out what constitutes a complete breath alcohol test, a showing that the driver of the automobile did not complete the test within the judgment of the operator is not evidence of a "refusal to submit" within the contemplation of the law. Department of Pub. Safety v. Orr, 122 Ga. App. 439, 177 S.E.2d 164, 1970 Ga. App. LEXIS 892 (1970) (decided under Ga. L. 1968, p. 448).

Defendant's failure to recall not inconsistent with state's showing of refusal. — Defendant's failure to recall the circumstances following a collision did not contradict the state's prima facie showing that the defendant was in a communicative condition — not dead, unconscious, or otherwise incapable of refusing the test — when informed of the defendant's rights and thereafter refused chemical testing of the defendant's blood. Duncan v. State, 183 Ga. App. 368, 358 S.E.2d 910, 1987 Ga. App. LEXIS 2704 (1987).

Evidence of refusal admissible. — Defendant's refusal to take the chemical test was admissible in evidence notwithstanding the fact that the arresting officer mistakenly told the defendant that the defendant's license had already been revoked, since the officer's mistake concerning the license was an honest one, which had nothing to do with the defendant's options under the implied consent statute. Sorrow v. State, 178 Ga. App. 83, 342 S.E.2d 20, 1986 Ga. App. LEXIS 2489 (1986).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test, subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. State v. Leviner, 213 Ga. App. 99, 443 S.E.2d 688, 1994 Ga. App. LEXIS 471 (1994), cert. denied, No. S94C1258, 1994 Ga. LEXIS 940 (Ga. Sept. 9, 1994).

In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), because a breath test was permitted as a search incident to the defendant's DUI arrest, the defendant's refusal to take the breath test was not the exercise of the constitutional right against unreasonable searches and seizures, and evidence of the defendant's refusal was properly admitted under O.C.G.A. § 40-5-67.1(b). Cherry v. State, 345 Ga. App. 409, 813 S.E.2d 408, 2018 Ga. App. LEXIS 116 (2018), cert. denied, No. S18C1104, 2018 Ga. LEXIS 720 (Ga. Oct. 22, 2018).

Silence as refusal. — Defendant's refusal to permit a chemical analysis to be made of the defendant's blood, breath, urine, or other bodily substance at the time of the defendant's arrest is admissible in evidence against the defendant, and there is no reason that

silence in the face of a request to take such a test should be treated any differently than a refusal. Miles v. State, 236 Ga. App. 632, 513 S.E.2d 39, 1999 Ga. App. LEXIS 277 (1999), cert. denied, No. S99C0845, 1999 Ga. LEXIS 570 (Ga. May 28, 1999).

When an officer testified that the officer read to the defendant the requisite "implied consent" notice set forth in O.C.G.A. § 40-5-67.1(b), the defendant's refusal to submit to the test was admissible as evidence against the defendant, and this does not rise to the level of constitutional self-incrimination. Ellison v. State, 242 Ga. App. 636, 530 S.E.2d 524, 2000 Ga. App. LEXIS 284 (2000).

After a police officer read the defendant the correct informed consent notice pursuant to O.C.G.A. § 40-5-67.1(b)(2) and the defendant's questions regarding the defendant's submission or refusal to submit to the chemical testing were answered accurately, the information was not false or misleading, and the consequences of the defendant's submission or refusal to submit to the test were provided; thus, there was no substantial basis for a determination that the defendant was incapable of making an informed decision, and the trial court erred in excluding the defendant's refusal to submit to the testing in that instance. State v. Chun, 265 Ga. App. 530, 594 S.E.2d 732, 2004 Ga. App. LEXIS 173 (2004), cert. denied, No. S04C1056, 2004 Ga. LEXIS 432 (Ga. May 24, 2004).

Defendant's refusal to submit to chemical testing was admissible because, after the defendant refused, the officers improperly obtained a search warrant and forcibly conducted the testing; the remedy for the officers' misdeed was exclusion of the test results, not exclusion of evidence of the defendant's refusal to submit to testing. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557, 2005 Ga. App. LEXIS 289 (2005), cert. denied, No. S05C1208, 2005 Ga. LEXIS 620 (Ga. Sept. 19, 2005).

Defendant's refusal to submit to chemical testing was admissible even though the state introduced evidence of the blood alcohol level from the defendant's medical records; the test results and the refusal to submit were admissible for different reasons and the admissibility of one did not preclude the admissibility of the other. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557, 2005 Ga. App. LEXIS 289 (2005), cert. denied, No. S05C1208, 2005 Ga. LEXIS 620 (Ga. Sept. 19, 2005).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver under O.C.G.A. § 40-6-391(a)(1) was affirmed as the conviction was supported by sufficient evidence including: (1) the defendant's admissions that the defendant had been driving a motorcycle and that the defendant had consumed "beer, tequila, and lots of alcohol" earlier in the day; (2) the defendant's refusal to submit to state-administered chemical testing; and (3) a deputy's opinion that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver. Kimbrell v. State, 280 Ga. App. 867, 635 S.E.2d 237, 2006 Ga. App. LEXIS 964 (2006).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of whether the refusal resulted from the defendant's confusion, it nevertheless remained a refusal. State v. Brookbank, 283 Ga. App. 814, 642 S.E.2d 885, 2007 Ga. App. LEXIS 202 (2007).

Defendant's refusal to submit to a state-administered chemical test of blood, breath, urine, or other bodily substance was admissible as evidence of the defendant's intoxication. Stewart v. State, 288 Ga. App. 735, 655 S.E.2d 328, 2007 Ga. App. LEXIS 1281 (2007).

Evidence of refusal. — State was not collaterally estopped from introducing evidence of the defendant's refusal to submit to a breath test when the state was not given the opportunity to fully litigate the issue at an administrative hearing regarding the defendant's driver's license suspension. Swain v. State, 251 Ga. App. 110, 552 S.E.2d 880, 2001 Ga. App. LEXIS 836 (2001), cert. denied, No. S01C1804, 2002 Ga. LEXIS 412 (Ga. Apr. 29, 2002).

Effect of refusal. — By refusing the state-administered breath test after being advised under O.C.G.A. § 40-5-67.1, the

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defendant forfeited any right to an independent blood test. Renkiewicz v. State, 283 Ga. App. 692, 642 S.E.2d 384, 2007 Ga. App. LEXIS 170 (2007).

Conduct constituting refusal. — When a defendant went to a breathalyzer machine but plugged the hole with the defendant's tongue and declined to blow into the tube, the defendant's conduct could be viewed as a refusal to take the test; there was no evidence that the defendant suffered from a physical or medical condition that would prevent the defendant from providing an adequate breath sample. State v. Stewart, 286 Ga. App. 542, 649 S.E.2d 525, 2007 Ga. App. LEXIS 682 (2007), cert. denied, No. S07C1851, 2008 Ga. LEXIS 120 (Ga. Jan. 28, 2008).

Consent obtained by misleading information. — In a prosecution for driving under the influence, when the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. State v. Leviner, 213 Ga. App. 99, 443 S.E.2d 688, 1994 Ga. App. LEXIS 471 (1994), cert. denied, No. S94C1258, 1994 Ga. LEXIS 940 (Ga. Sept. 9, 1994).

Consent obtained by coercion. — Defendant's conviction was properly reversed as the police improperly threatened to obtain a search warrant to obtain blood and urine for testing through a catheter after the defendant invoked the right under the implied consent law to refuse the testing. State v. Collier, 279 Ga. 316, 612 S.E.2d 281, 2005 Ga. LEXIS 294 (2005).

Refusal of nonresident driver. — Proper implied consent warning as enacted by the legislature was read to the defendant without error, notwithstanding the defendant's contention that the defendant refused to submit to the requested blood test because the defendant did not believe there would be any penalties in the defendant's home state of South Carolina, i.e., that only the defendant's driving privileges in Georgia would be affected. Wofford v. State, 234 Ga. App. 316, 506 S.E.2d 656, 1998 Ga. App. LEXIS 1207 (1998), cert. denied, No. S99C0019, 1999 Ga. LEXIS 68 (Ga. Jan. 15, 1999), overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

Compelled testing not permitted. — Police do not have the authority to seek a search warrant to compel a defendant to submit blood and urine samples for drug testing after a defendant invoked the right under the implied consent law to refuse the testing. State v. Collier, 279 Ga. 316, 612 S.E.2d 281, 2005 Ga. LEXIS 294 (2005).

Search warrant obtained after refusal. — Search warrant used to take the defendant's blood after the defendant refused testing was valid under the implied consent statute because the state was permitted to apply for a warrant to perform the test and the officer provided sufficient cause to obtain the warrant for the defendant's blood. McAllister v. State, 325 Ga. App. 583, 754 S.E.2d 376, 2014 Ga. App. LEXIS 27 (2014).

Breath test admissible despite initial refusal. — At the time of a defendant's arrest for DUI, the defendant refused to submit to a breath test; after the officer gave the defendant the chance to rescind this refusal, the defendant agreed to take the test in the absence of any threats or inducements. As the officer did not act unreasonably in attempting to induce the defendant to rescind the initial refusal, the test results were admissible. State v. Quezada, 295 Ga. App. 522, 672 S.E.2d 497, 2009 Ga. App. LEXIS 26 (2009).

Jury properly instructed that jury could infer that defendant would have tested positive. — Trial judge was authorized to instruct a jury in a defendant's trial for driving under the influence that the jury could infer from the defendant's refusal to submit to state-administered chemical tests of the defendant's blood and breath that the defendant would have tested positively for alcohol. Blankenship v. State, 301 Ga.

App. 602, 688 S.E.2d 395, 2009 Ga. App. LEXIS 1421 (2009).

Designation of Test by Arresting Officer

Arresting officer designates particular chemical test. — Under a theory of implied consent, O.C.G.A. § 40-5-67.1 effectively mandates that a person charged with driving under the influence submit to whichever recognized chemical test (blood, breath, urine, etc.) is designated by the arresting officer. Steed v. City of Atlanta, 172 Ga. App. 839, 325 S.E.2d 165, 1984 Ga. App. LEXIS 2686 (1984).

Authority of officer to designate type of chemical test. — O.C.G.A. § 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. Jordan v. State, 223 Ga. App. 176, 477 S.E.2d 583, 1996 Ga. App. LEXIS 1042 (1996), cert. denied, No. S97C0238, 1997 Ga. LEXIS 234 (Ga. Feb. 14, 1997).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the presence of alcohol, drugs, or marijuana. State v. Sumlin, 224 Ga. App. 205, 480 S.E.2d 260, 1997 Ga. App. LEXIS 14 (1997).

Results of test not designated not inadmissible. — When an arresting officer requested a blood test on the citation but a breath test was administered instead by another officer upon oral instructions from a "paddy wagon" driver, the breath test was not inadmissible on the grounds that the test violated the statutory directive that "the requesting law enforcement officer shall designate which of the aforesaid test shall be administered." Steed v. City of Atlanta, 172 Ga. App. 839, 325 S.E.2d 165, 1984 Ga. App. LEXIS 2686 (1984) (decided under O.C.G.A. § 40-5-55).

Miranda warnings are not necessary before requesting additional tests now that the 1998 amendment of O.C.G.A. § 40-5-67.1 authorizes an officer to require additional tests. State v. Moses, 237 Ga. App. 764, 516 S.E.2d 807, 1999 Ga. App. LEXIS 566 (1999).

Trial court's suppression of urine test results could not be sustained on the ground that Miranda warnings were not given to a DUI arrestee before the arrestee decided to submit to a urine test after taking a breath or blood test. State v. Coe, 243 Ga. App. 232, 533 S.E.2d 104, 2000 Ga. App. LEXIS 447 (2000), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

An arrestee is not, under Georgia constitutional or statutory law, entitled to Miranda warnings before deciding whether to submit to the state's request for an additional test of breath, blood, or urine. State v. Coe, 243 Ga. App. 232, 533 S.E.2d 104, 2000 Ga. App. LEXIS 447 (2000), overruled in part, Olevik v. State, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

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No requirement to prove age if proper warning given and acknowledged. — O.C.G.A. § 40-5-67.1(b) specifies two different implied-consent notices based on whether a driving under the influence suspect is age 21 or over; when the defendant specifically stipulated at trial that the police officer read the correct warning, whether the state properly proved that the defendant was over 21 was irrelevant. Ahn v. State, 255 Ga. App. 547, 565 S.E.2d 823, 2002 Ga. App. LEXIS 630 (2002), cert. denied, No. S02C1519, 2002 Ga. LEXIS 692 (Ga. Sept. 6, 2002).

DUI arrestee had no standing to challenge statute. — Plaintiff, whose license was confiscated by the officer at the time of arrest for DUI and who was issued a citation allowing plaintiff to drive pending resolution of plaintiff's case, did

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not have standing to challenge the administrative suspension procedures established by O.C.G.A. § 40-5-67.1. McGraw v. State, 230 Ga. App. 843, 498 S.E.2d 314, 1998 Ga. App. LEXIS 306 (1998).

No requirement advising test results can be used at trial. — Required warnings for breath test under O.C.G.A. § 40-5-67.1 does not include language advising that the test results could be used in a trial. St. Germain v. State, 255 Ga. App. 864, 567 S.E.2d 107, 2002 Ga. App. LEXIS 787 (2002).

Challenge to procedures used in reading to the defendant the statutory implied consent warning and the proper working of the Intoxilyzer 5000 machine should have been appropriately raised by a motion in limine, not a motion to suppress. Goddard v. State, 244 Ga. App. 730, 536 S.E.2d 160, 2000 Ga. App. LEXIS 739 (2000).

Service requirements met. — Trial court erred in substituting the court's judgment for that of the Georgia Department of Motor Vehicle Services and in setting aside a driver's license suspension because an officer complied with O.C.G.A. § 40-5-67.1(f)(1) by handing the driver a copy of the DPS Form 1205 when the driver was arrested. Davis v. Brown, 274 Ga. App. 48, 616 S.E.2d 826, 2005 Ga. App. LEXIS 666 (2005).

Failure to timely request hearing. — Trial court erred by reversing the decision of the Georgia Department of Driver Services because the evidence supported the decision of the department in denying, as untimely, the driver's request for an administrative license suspension hearing, pursuant to O.C.G.A. § 40-5-67.1(g), since the actions of the driver's attorney in failing to mail a timely request for a hearing were imputed to the driver. Mikell v. Hortenstine, 334 Ga. App. 621, 780 S.E.2d 53, 2015 Ga. App. LEXIS 687 (2015).

Failure to hold hearing within 30 days. — Failure to hold a hearing within the 30-day period provided for in former § 40-5-55(d) (see now subsection (g) of O.C.G.A. § 40-5-67.1) did not warrant dismissal of the charges under the implied consent law. That provision was not mandatory but directory. Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397, 1983 Ga. App. LEXIS 2788 (1983).

Family emergency causing failure to make timely response. — When the driver left Georgia shortly after the driver received notification of suspension of the driver's license and the right to a hearing in order to travel to another state to take care of the driver's daughter following surgery, this unfortunate family emergency did not rise to the level of a legal excuse for failing to respond within the mandatory time period. Earp v. Harris, 191 Ga. App. 414, 382 S.E.2d 156, 1989 Ga. App. LEXIS 680 (1989) (decided under O.C.G.A. § 40-5-55).

Mailing request for hearing. — Date on which a document is postmarked, rather than the date on which a document is mailed, is determinative of the document's timeliness; thus, in deciding whether the mailing of a request for a hearing was made within the time limit of O.C.G.A. § 40-5-67.1(g), the trial court erred in determining that the date on which the document was mailed was controlling. Department of Pub. Safety v. Ramey, 215 Ga. App. 334, 450 S.E.2d 332, 1994 Ga. App. LEXIS 1193 (1994).

Instruction based upon § 40-5-55(a). — In a prosecution for driving under the influence of alcohol, since there was no jury question as to consent, an instruction to the jury based upon former Code 1933, § 68B-306(a) (see now O.C.G.A. § 40-5-55), was in error, but it was harmless error. Hardeman v. State, 147 Ga. App. 120, 248 S.E.2d 189, 1978 Ga. App. LEXIS 2805 (1978) (decided under former Code 1933, § 68B-306.

Charge including the first sentence of O.C.G.A. § 40-5-55(a) was not prejudicial. Trotter v. State, 179 Ga. App. 314, 346 S.E.2d 390, 1986 Ga. App. LEXIS 1908 (1986); Brantley v. State, 199 Ga. App. 623, 405 S.E.2d 533, 1991 Ga. App. LEXIS 579 (1991), cert. denied, No. S91C1112, 1991 Ga. LEXIS 773 (Ga. June 27, 1991).

"Voluntariness" charge not required. — Trial court did not err in refusing appellant's request to charge on

the "voluntariness" of appellant's consent to a scientific testing of appellant's bodily fluids. Kirkland v. State, 206 Ga. App. 27, 424 S.E.2d 638, 1992 Ga. App. LEXIS 1547 (1992).

Implied consent. — State was not required to prove the defendant's compliance with the mandatory language of O.C.G.A. § 40-5-67.1 since the defendant had expressly stipulated that "implied consent was given." Gill v. State, 229 Ga. App. 462, 494 S.E.2d 259, 1997 Ga. App. LEXIS 1432 (1997).

Trial court did not err by denying defendant's motion to suppress defendant's refusal to consent to the state-administered blood test because the record showed that defendant had been arrested when the officer read defendant the implied-consent notice, as while being treated by the EMT at the scene of the accident, defendant repeatedly asked to be taken home and was told by the police officers that defendant could either go to the hospital or be taken to jail. In addition, the record explicitly showed one of the officers informing defendant that defendant was being placed under arrest for driving under the influence of alcohol. Quint v. State, 367 Ga. App. 339, 886 S.E.2d 1, 2023 Ga. App. LEXIS 154 (2023).

Independent test upon request. — Although the police officer fulfilled the officer's duty of reading to the defendant the applicable implied consent notice about submitting to state-administered chemical tests for the purpose of determining if the defendant was under the influence of alcohol, the failure to administer the independent urine test that the defendant requested pursuant to that notice meant that the state-administered breath test was inadmissible to support the defendant's DUI conviction. Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489, 2003 Ga. App. LEXIS 729 (2003), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

Arresting officer did not make a reasonable effort to accommodate a defendant's request for an independent blood test by qualified personnel of the defendant's own choosing, as required under O.C.G.A. §§ 40-5-67.1(b)(2) and 40-6-392(a)(3), because the officer unilaterally chose the location for the independent test. State v. Metzager, 303 Ga. App. 17, 692 S.E.2d 687, 2010 Ga. App. LEXIS 266 (2010).

O.C.G.A. § 40-6-392(a)(4), with regard to an independent chemical test of blood, specifies no deadline for requesting full information, no timetable for supplying the information, and no penalty for the state's failure to produce the information. State v. Thompson, 334 Ga. App. 692, 780 S.E.2d 67, 2015 Ga. App. LEXIS 699 (2015), cert. denied, No. S16C0479, 2016 Ga. LEXIS 228 (Ga. Mar. 7, 2016).

Failure to address voluntariness of consent. — In a DUI case, the trial court erred by failing to address the issue of the voluntariness of the defendant's consent to the breath test under the totality of the circumstances, including the defendant's contention that the defendant was uncomfortable and in pain when the implied consent notice was read and that the implied consent notice contained the misleading, coercive threat that the refusal to submit to the breath test could be used as evidence at trial. Melton v. State, 354 Ga. App. 828, 841 S.E.2d 481, 2020 Ga. App. LEXIS 227 (2020).

Warrant in testing DUI suspects. — Warrant only authorized testing for alcohol, so testing for drugs exceeded the scope and the police could not use a lawful blood draw to then test for anything without limitation as the privacy interest in blood requires a warrant specifically authorizing drug testing. State v. De La Paz, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Two warrants were held not required when law enforcement wishes to test a DUI suspect's blood. One warrant will suffice, but that warrant's terms and limitations must be honored by law enforcement and will be enforced by the courts. State v. De La Paz, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Erroneous admission of test results. — When an officer failed to read appropriate warnings to the defendant, it was error to admit results of the defendant's breath tests, even though the defendant had stipulated to the facts that would be demonstrated by the results of

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the tests, i.e., that the defendant had a blood alcohol level of .207. Richards v. State, 269 Ga. 483, 500 S.E.2d 581, 1998 Ga. LEXIS 560 (1998) (reversing Richards v. State, 225 Ga. App. 777, 484 S.E.2d 683, 1997 Ga. App. LEXIS 350 (1997)).

Test results admissible. — Trial court did not err in admitting at trial the defendant's failure of the horizontal gaze nystagmus test in a case involving vehicular homicide, driving under the influence, and other offenses because that evidence was admissible not only because the evidence showed impairment, but also because the evidence tended to prove that the defendant was a less safe driver at the time the van struck and killed the pedestrian. Cromartie v. State, 275 Ga. App. 209, 620 S.E.2d 413, 2005 Ga. App. LEXIS 886 (2005).

Because the Miranda requirements were not triggered until the defendant's arrest, and after performance of the field sobriety tests, suppression of the test results was not required. Doyle v. State, 281 Ga. App. 592, 636 S.E.2d 751, 2006 Ga. App. LEXIS 1176 (2006), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Trial court properly denied a defendant's motion to suppress the results of the breath test administered with regard to the defendant's conviction for driving with an unlawful alcohol concentration because the defendant's statement that "I will take a blood test" was not a request for an independent test under the implied consent law but was an attempt to designate which test would be administered by the state, which was not an option for the defendant; further, the officer's response to the defendant merely clarified the designation that the state-administrated test would be a breath test and did not mislead the defendant regarding the defendant's right to have an independent chemical test. Anderton v. State, 283 Ga. App. 493, 642 S.E.2d 137, 2007 Ga. App. LEXIS 92 (2007), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

The trial court did not err in denying the defendant's motion in limine to suppress the results of a state-administered breath test as an officer's implied consent warning was substantively accurate so as to allow the defendant to make an informed decision about whether to consent to the test, and solely referred to the defendant's privilege to drive within the state of Georgia with a Georgia driver's license, and not the defendant's Pennsylvania license; further, the officer's initial statement was nothing more than an attention-grabbing preface, and as such did not constitute a substantive change that altered the meaning of the implied consent notice thereafter recited to the defendant. McHugh v. State, 285 Ga. App. 131, 645 S.E.2d 619, 2007 Ga. App. LEXIS 443 (2007).

Trial court did not err in denying the defendant's motion to exclude the results of a state-administered breath test because a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was not so misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15, 2012 Ga. App. LEXIS 178 (2012).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3), and thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175, 2012 Ga. LEXIS 440 (2012).

Trial court properly denied the defendant's motion to suppress the results of

the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether the defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the process go by real quick for you," was not coercive or deceptively misleading and did not render defendant incapable of making an informed decision about whether to submit to the breath test. Miller v. State, 317 Ga. App. 504, 731 S.E.2d 393, 2012 Ga. App. LEXIS 749 (2012).

Trial court properly denied defendant's motion in limine to exclude evidence that defendant refused chemical testing based on the testimony of a deputy that while in defendant's hospital room, a ticket was written for drunk driving and defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. Plemmons v. State, 326 Ga. App. 765, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014), cert. denied, No. S14C1064, 2014 Ga. LEXIS 572 (Ga. June 30, 2014).

Grant of the defendant's motion to suppress was reversed because the trial court erred in concluding that the defendant did not actually consent to the state-administered blood test under the totality of the circumstances as the undisputed evidence in the video recording demonstrated that the defendant's consent was free and voluntary and the 20-minute delay in the officer's implied consent notice resulted from the officer complying with the defendant's request to perform field sobriety tests. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139, 2016 Ga. App. LEXIS 469 (2016), cert. denied, No. S17C0113, 2017 Ga. LEXIS 261 (Ga. Apr. 17, 2017).

In a DUI per se case, the trial court did not err in denying the defendant's motion to suppress the results of a chemical testing of the defendant's blood because the defendant freely and voluntarily consented to the test as the defendant gave an affirmative response to the officer's question pursuant to the implied consent notice; the officer did not employ shows of force; and, at the fire station, the defendant reaffirmed the defendant's assent before the medic drew the defendant's blood. Jacobs v. State, 338 Ga. App. 743, 791 S.E.2d 844, 2016 Ga. App. LEXIS 539 (2016), cert. denied, No. S17C0439, 2017 Ga. LEXIS 356 (Ga. May 1, 2017).

Defendant's motion in limine excluding the results of the defendant's breath test was improperly granted because the evidence, including the videotape of the stop, did not show that the officers used fear, intimidation, threat of physical punishment, or lengthy detention to obtain the defendant's consent to the test; the defendant's intoxication, youth, lack of education, or low intelligence did not somehow negate the voluntariness of the defendant's consent; the implied consent notice read to the defendant informed the defendant of the choice of either agreeing or refusing to submit to chemical testing, and the possible consequences for each choice; and the defendant immediately agreed to submit to the breath test. State v. Young, 339 Ga. App. 306, 793 S.E.2d 186, 2016 Ga. App. LEXIS 615 (2016).

Trial court did not err in denying the defendant's motion to suppress evidence obtained in a warrantless blood test because the implied consent notice was read to the defendant, the defendant gave an affirmative answer to the question posed by the implied-consent language, the defendant did not appear to be impaired to the extent that the defendant did not understand what was being asked, and the officer did not force or coerce the defendant to take the test. McKibben v. State, 340 Ga. App. 89, 796 S.E.2d 478, 2017 Ga. App. LEXIS 15 (2017).

Trial court erroneously suppressed the breath-test evidence obtained when the defendant was arrested for, inter alia, driving under the influence of alcohol because there was no evidence that the officer used fear, intimidation, threat of physical punishment, or a lengthy detention to obtain the defendant's consent to the breath test; there was no evidence that the defendant's age, intelligence, or level of education hindered the defendant's ability to understand the implied-

Practice and Procedure (Cont'd)

consent notice; the notice, as read to the defendant, made it clear that the defendant had the right to refuse testing; and the defendant was advised of the various consequences of the defendant's refusal to consent to any testing. State v. Jacobs, 342 Ga. App. 476, 804 S.E.2d 132, 2017 Ga. App. LEXIS 361 (2017).

Trooper testified to extensive training in administering field sobriety tests, that the trooper had performed the HGN test many times, and described the standard procedure in administering the test, thus, given that evidence, the trial court was authorized to conclude that the trooper substantially performed the test in accordance with training and guidelines. Garrison v. State, 368 Ga. App. 819, 890 S.E.2d 869, 2023 Ga. App. LEXIS 380 (2023).

Argument based on machine's removal or repair. — Trial court properly refused to suppress evidence of a defendant's chemical breath test; testimony from an officer and proof that a current implied consent card contained the same language as the card used during the defendant's arrest allowed the trial court to conclude that the officer advised the defendant of the defendant's implied consent rights, and as there was evidence that the breath test machine was working properly at the time of the defendant's breath test, any argument regarding the machine's subsequent removal or repair went to the weight of the results, not their admissibility. Jones v. State, 285 Ga. App. 352, 646 S.E.2d 323, 2007 Ga. App. LEXIS 518 (2007), cert. denied, No. S07C1407, 2007 Ga. LEXIS 758 (Ga. Oct. 9, 2007).

Trial court did not err in admitting the results of a blood test administered to the defendant in the course of medical treatment as the right to refuse a state-administered test was entirely independent of the state's prerogative, pursuant to a warrant obtained in accordance with the Fourth Amendment, to obtain the results as other evidence of a crime. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239, 2007 Ga. App. LEXIS 1204 (2007).

The trial court did not err in denying the defendant's motion to suppress the results of a blood test as the notice given to the defendant by a state trooper under the implied consent law, O.C.G.A. § 40-5-67.1(a), was sufficiently accurate to permit the defendant to make an informed decision about whether to consent to testing and the evidence failed to show that the defendant requested an independent test. Collins v. State, 290 Ga. App. 418, 659 S.E.2d 818, 2008 Ga. App. LEXIS 335 (2008), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

In defendant's trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. United States v. Howard, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Test results can be used for driving offenses. — In a prosecution for driving under the influence of marijuana and driving under the influence of drugs to the extent of being a less safe driver, even though the hospital consent form signed by the defendant was entitled "Request for Alcohol Testing," the test results, which were positive for marijuana, were admissible since the defendant had earlier consented to testing after receiving the required implied consent notice. State v. Lewis, 233 Ga. App. 390, 504 S.E.2d 242, 1998 Ga. App. LEXIS 922 (1998), cert. denied, No. S98C1791, 1998 Ga. LEXIS 1193 (Ga. Nov. 20, 1998).

Test results cannot be used for possession offenses. — Because the implied consent warning did not inform the defendant that evidence from a blood test could be used against the defendant for purposes other than determining if the defendant was "under the influence of alcohol or drugs," test results were properly suppressed in a prosecution of the defendant for possession of cocaine.

State v. Long, 232 Ga. App. 445, 502 S.E.2d 298, 1998 Ga. App. LEXIS 714 (1998).

Defendant's consent to testing in response to the implied consent warning was given with the understanding that the consent was to determine if the defendant was under the influence for purposes of violations of O.C.G.A. § 40-6-391 and the test results could not be used to support a charge of possession of marijuana. State v. Lewis, 233 Ga. App. 390, 504 S.E.2d 242, 1998 Ga. App. LEXIS 922 (1998), cert. denied, No. S98C1791, 1998 Ga. LEXIS 1193 (Ga. Nov. 20, 1998).

Location of subject matter jurisdiction of appeals. — Both the superior court of the county of residence of the petitioner and the Fulton County Superior Court would have subject matter jurisdiction of appeals arising out of applications of Ga. L. 1968, p. 448 (see now O.C.G.A. § 40-5-67.1). Burson v. Webb, 125 Ga. App. 824, 189 S.E.2d 120, 1972 Ga. App. LEXIS 1483 (1972) (decided under Ga. L. 1968, p. 448).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in the defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under O.C.G.A. § 40-6-391. Wright v. State, 228 Ga. App. 717, 492 S.E.2d 581, 1997 Ga. App. LEXIS 1240 (1997).

Driver entitled to a hearing. — Trial court could have found that the Georgia Department of Motor Vehicle Safety acted arbitrarily and capriciously and abused the court's discretion in applying the 10-day notice requirement as it could be inferred that the DPS Form 1205 served on a driver was seized by an officer during the driver's arrest; the driver was entitled to a hearing before an administrative law judge, despite the driver's failure to request a hearing within the 10-day time period. Davis v. Brown, 274 Ga. App. 48, 616 S.E.2d 826, 2005 Ga. App. LEXIS 666 (2005).

Law enforcement must be aware of serious injury or fatality. — O.C.G.A. § 40-5-67.1(a) provides the temporal connection not expressly set forth in O.C.G.A. § 40-5-55(a); thus, the officer's request for testing is legally viable under the second contingency of O.C.G.A. § 40-5-55(a), the driver's involvement in a traffic accident resulting in serious injuries or fatalities, only if at the time of the request the driver has been involved in a traffic accident that has resulted in serious injuries or fatalities of which law enforcement is aware. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Out-of-state drivers. — Since the defendant held an out-of-state driver's license and the warning discussed the consequences for a driver's Georgia license, there was no evidence to support a finding that the implied consent notice given to the defendant misrepresented in any manner the "legitimate consequences" of the defendant's refusal to submit to the tests. State v. Haddock, 235 Ga. App. 726, 510 S.E.2d 561, 1998 Ga. App. LEXIS 1599 (1998).

Applicability

1. In General

Retroactive application of amendment improper. — Trial court erroneously applied the amendment of O.C.G.A. § 40-5-67.1(d) retroactively to the defendant's criminal matter, wherein the court denied suppression of a blood test result taken of the defendant as the investigating officer failed to provide the defendant with the requisite notice of the implied consent rights under O.C.G.A. § 40-5-55(a) prior to obtaining the defendant's consent; retroactive application of § 40-5-67.1(d) was improper because the amendment eliminated the defendant's substantive right to refuse to submit to testing. Williams v. State, 297 Ga. App. 626, 677 S.E.2d 773, 2009 Ga. App. LEXIS 493 (2009).

No substantive legal rights created. — Subsection (b) of O.C.G.A. § 40-5-67.1 does not create any substantive legal rights, but instead, the statute is a notice provision that prescribes the method by which a police officer should notify DUI suspects of their legal rights regarding chemical testing. State v. Levins, 234 Ga.

Applicability (Cont'd)
1. In General (Cont'd)

App. 739, 507 S.E.2d 246, 1998 Ga. App. LEXIS 1625 (1998).

Construction with O.C.G.A. § 40-5-55. — O.C.G.A. § 40-5-55 is the springboard for a law enforcement officer's duties under O.C.G.A. § 40-5-67.1 to request chemical testing of a driver's bodily substances and to inform the driver of the implied consent warning; the two statutes are in pari materia since the statutes relate to the same subject matter. Snyder v. State, 283 Ga. 211, 657 S.E.2d 834, 2008 Ga. LEXIS 192 (2008).

Purpose of statute. — Purpose of the implied consent law is to notify drivers of the drivers' rights so that the drivers can make informed decisions; accordingly, appellate courts have suppressed the results of chemical tests when the driver was misinformed of the driver's rights and when the misinformation may have affected the driver's decision to consent. Kitchens v. State, 258 Ga. App. 411, 574 S.E.2d 451, 2002 Ga. App. LEXIS 1475 (2002).

No effect on implied consent. — O.C.G.A. § 40-5-67.1, upon becoming effective, did not repeal that portion of O.C.G.A. § 40-6-392 regarding implied consent. O.C.G.A § 40-5-67.1 primarily concerns the methods and procedures to effect the administrative suspension of a driver's license based upon the use of chemical test results, does not address the admissibility of evidence in a criminal trial, and was intended to provide additional consent notice requirements. State v. Hassett, 216 Ga. App. 114, 453 S.E.2d 508, 1995 Ga. App. LEXIS 33 (1995).

Loss of commercial license. — Implied consent notice given to a defendant under O.C.G.A. § 40-5-67.1(b)(2) did not violate due process; the ability to refuse to submit to chemical testing was not a constitutional right and as a trooper advised the defendant that a refusal to submit to testing could result in the suspension of the defendant's personal driver's license, the trooper was not required to also advise the defendant that under O.C.G.A. § 40-5-151(c), the defendant could also lose the defendant's commercial driver's license for life. Chancellor v. State, 284 Ga. 66, 663 S.E.2d 203, 2008 Ga. LEXIS 532 (2008).

Failure to abide by statute renders test inadmissible. — When a suspect requests an independent test but is unable to obtain the test, the results of the state-administered test cannot be used by the state as evidence against the suspect unless the failure to obtain the test is justified; an accused's right to have an additional, independent chemical test or tests administered is invoked by some statement that reasonably could be construed, in light of the circumstances, to be an expression of a desire for such test. Wright v. State, 338 Ga. App. 216, 789 S.E.2d 424, 2016 Ga. App. LEXIS 455 (2016), cert. denied, No. S17C0046, 2017 Ga. LEXIS 209 (Ga. Mar. 20, 2017), overruled on other grounds, State v. Henry, 312 Ga. 632, 864 S.E.2d 415, 2021 Ga. LEXIS 650 (2021).

2. Effect of Amendments

Effect of 1995 amendment. — Because of the addition of former subsection (b.1) of O.C.G.A. § 40-5-67.1 in 1995, in a case pending on August 18, 1995, involving an offense committed prior to April 21, 1995, the mandatory language of paragraph (b)(2) did not apply and a warning that clearly informed the defendant that the defendant could have an additional test by a qualified person of the defendant's own choosing was sufficient. Howard v. State, 219 Ga. App. 228, 465 S.E.2d 281, 1995 Ga. App. LEXIS 1000 (1995), cert. denied, No. S96C0393, 1996 Ga. LEXIS 384 (Ga. Feb. 9, 1996); Dooley v. State, 221 Ga. App. 245, 470 S.E.2d 803, 1996 Ga. App. LEXIS 438 (1996); Stymest v. State, 221 Ga. App. 251, 470 S.E.2d 806, 1996 Ga. App. LEXIS 435 (1996).

Amendment of O.C.G.A. § 40-5-67.1 effective in August, 1995, which changed the retroactive effect of the amendment effective in April, 1995, so that the amendment applied only to stops made after the effective date of the April amendment, rather than to cases pending on such date, applied to make valid a

consent warning given to the defendant in September, 1995. State v. Martin, 266 Ga. 244, 466 S.E.2d 216, 1996 Ga. LEXIS 72 (1996) (reversing Martin v. State, 217 Ga. App. 860, 460 S.E.2d 92, 1995 Ga. App. LEXIS 625 (1995), rev'd, 266 Ga. 244, 466 S.E.2d 216, 1996 Ga. LEXIS 72 (1996), vacated, 221 Ga. App. 630, 474 S.E.2d 195, 1996 Ga. App. LEXIS 598 (1996)).

Offenses committed prior to April 21, 1995 are governed by the provisions of O.C.G.A. §§ 40-5-67.1 and 40-6-392 as those provisions existed prior to the 1995 amendment. Park v. State, 220 Ga. App. 215, 469 S.E.2d 353, 1996 Ga. App. LEXIS 140 (1996).

Amendment to O.C.G.A. § 40-5-67.1, effective August 18, 1995, provides that the new implied consent warning requirement applies only as to "an offense committed on or after April 21, 1995." The applicable law in situations where the request for testing is made regarding an offense occurring before April 21, 1995, include inter alia that a suspect is not entitled to a warning which tracks the exact language of this section; the sufficiency of the warning is to be judged by the warning's content and not the warning's form; and the warning must inform the suspect that the suspect could have an additional test by a qualified person of the suspect's own choosing. State v. Golub, 220 Ga. App. 810, 470 S.E.2d 331, 1996 Ga. App. LEXIS 353 (1996).

Effect of 1998 amendments. — The 1998 amendment to O.C.G.A. § 40-5-67.1 applied to an implied consent warning given to a motorist before the effective date of the amendment since the amendment does not affect the manner or degree of punishment, did not alter any substantive rights conferred on the motorist by law, and does not violate state or federal ex post facto constitutional provisions. State v. Moncrief, 234 Ga. App. 871, 508 S.E.2d 216, 1998 Ga. App. LEXIS 1378 (1998), cert. denied, No. S99C0270, 1999 Ga. LEXIS 191 (Ga. Feb. 19, 1999).

Court would apply the 1998 amendment to O.C.G.A. § 40-5-67.1, even though the amendment became effective after the state filed the state's notice of appeal, since the amendment did not change any substantive rights of the defendants. State v. Nolen, 234 Ga. App. 291, 508 S.E.2d 733, 1998 Ga. App. LEXIS 1215 (1998).

The 1998 amendment to O.C.G.A. § 40-5-67.1, providing that the implied consent notice did not have to read exactly as the statute so long as the substance remained unchanged, had retroactive effect. State v. Payne, 236 Ga. App. 338, 512 S.E.2d 292, 1999 Ga. App. LEXIS 162 (1999).

Amendments to O.C.G.A. § 40-5-67.1 in March 1998, providing that the implied consent warning notice did not need to be read exactly so long as the substance remained unchanged, were procedural in nature and were given retroactive effect. State v. McGraw, 237 Ga. App. 345, 514 S.E.2d 34, 1999 Ga. App. LEXIS 219 (1999), cert. denied, No. S99C1061, 1999 Ga. LEXIS 524 (Ga. June 4, 1999).

Version as amended in 1998 to be applied to all cases on appellate review. — O.C.G.A. § 40-5-67.1 is procedural, and thus, the 1998 amended version will be applied to cases on appellate review regardless of the effective date of the amendment in relation to the incident date of the case. State v. Mayo, 235 Ga. App. 107, 508 S.E.2d 475, 1998 Ga. App. LEXIS 1421 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68A-902.1, Ga. L. 1968, p. 448, and Ga. L. 1983, p. 100 are included in the annotations for this Code section.

Time of applicability. — Provisions of the DUI statute which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to the defendants whose alleged illegal conduct occurred on or after

September 1, 1983. 1983 Op. Att'y Gen. No. U83-52 (decided under Ga. L. 1983, p. 100).

Election of test by driver. — Driver has no election of the chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Driver may designate additional chemical test. — It is only with regards to the independent or additional test (as provided for in O.C.G.A. § 40-6-392) that the driver may designate the chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Advisement of driver's right to additional test. — Driver must be informed of driver's right to an additional test so that the driver may challenge the accuracy of the chemical test administered by the state. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Responsibility of obtaining the additional test rests with the driver. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Arresting officer must execute required affidavit. — Affidavit required as a basis for the suspension of a driver's license for failure to comply with the statute cannot be executed by an officer other than the arresting officer. 1970 Op. Att'y Gen. No. U70-82 (decided under Ga. L. 1968, p. 448).

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46 (decided under Ga. L. 1968, p. 448).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

Am. Jur. Proof of Facts.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Unreliability of the Horizontal Gaze Nystagmus Test, 4 POF3d 439.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

ALR.

Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 A.L.R. 1459.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 A.L.R.2d 1064.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 A.L.R.3d 325.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 A.L.R.4th 690.

Destruction of ampoule used in alcohol breath test as warranting suppression of result of test, 19 A.L.R.4th 509.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112.

Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 A.L.R.4th 776.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes, 32 A.L.R.5th 659.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication-post-Sitz cases, 74 A.L.R.5th 319.

Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 A.L.R.5th 597.

Authentication of organic nonblood specimen taken from human body for purposes of analysis, 78 A.L.R.5th 1.

40-5-67.2. Terms and conditions for implied consent license suspension; administrative license suspension in relation to post-conviction suspension.

(a) Any driver's license required to be suspended under subsection (c) of Code Section 40-5-67.1 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (c) of Code Section 40-5-67.1 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for one year. Not sooner than 30 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be $510.00 or $500.00 when processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee;

(2) Upon the second suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for three years. The person shall be eligible to apply to the department for license reinstatement not sooner than 18 months following the effective date of suspension. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be $510.00 or $500.00 when processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee; and

(3) Upon the third or subsequent suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the

period of suspension shall be for five years. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. The driver may apply for a probationary license pursuant to Code Section 40-5-58 after the expiration of two years from the effective date of suspension.

(b) An administrative license suspension pursuant to Code Section 40-5-67.1 shall be counted toward fulfillment of any period of suspension subsequently imposed as a result of a conviction of violating Code Section 40-6-391 which arises out of the same violation for which the administrative license suspension was imposed. An administrative license suspension pursuant to Code Section 40-5-67.1 shall run concurrently with any revocation of such driver's license pursuant to a subsequent determination that such person is a habitual violator.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay a restoration fee of $210.00 or $200.00 when processed by mail.

(d) Any other provision of law to the contrary notwithstanding, a driver with no previous conviction for a violation of Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest, during the period of administrative suspension contemplated under this chapter, shall be entitled to a limited driving permit or an ignition interlock device limited driving permit as provided in Code Sections 40-5-64 and 40-5-64.1.

History.

Code 1981, § 40-5-67.2, enacted by Ga. L. 1992, p. 2564, § 6; Ga. L. 1994, p. 1600, § 7; Ga. L. 2000, p. 951, § 5-33; Ga. L. 2000, p. 1457, § 5; Ga. L. 2001, p. 208, §§ 2-4, 3-4; Ga. L. 2005, p. 334, § 17-15.1/HB 501; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2016, p. 323, § 2-5/HB 205; Ga. L. 2024, p. 1052, § 4(54)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted a semicolon for a period at the end of paragraph (a)(1), and substituted "; and" for a period at the end of paragraph (a)(2).

Editor's notes.

Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the Code section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to

the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Law reviews.

For note on 1992 enactment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the driver had received within the few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. State v. Harris, 236 Ga. App. 525, 513 S.E.2d 1, 1999 Ga. App. LEXIS 90 (1999).

Double jeopardy. — Suspension of a driver's license at an administrative hearing is not punishment, nor is the hearing a prosecution for the purposes of double jeopardy. Kirkpatrick v. State, 219 Ga. App. 307, 464 S.E.2d 882, 1995 Ga. App. LEXIS 1024 (1995).

Concurrent suspension. — Implied consent suspensions run concurrently with any habitual violator revocation of a driver's license. Miles v. Kemp, 233 Ga. App. 850, 506 S.E.2d 141, 1998 Ga. App. LEXIS 1079 (1998).

Credit for implied consent suspensions. — Credit for implied consent suspensions is to be given only against subsequent suspensions under the DUI statute if both were imposed as a result of the same arrest. Miles v. Kemp, 233 Ga. App. 850, 506 S.E.2d 141, 1998 Ga. App. LEXIS 1079 (1998).

40-5-68. [Reserved] Suspension of licenses by operation of law for failure to complete alcohol or drug program.

History.

Code 1981, § 40-5-72, enacted by Ga. L. 1983, p. 1000, § 1; Ga. L. 1990, p. 1154, § 4; Code 1981, § 40-5-68, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 4; Ga. L. 1992, p. 779, § 22; Ga. L. 1992, p. 2564, § 7; repealed by Ga. L. 1997, p. 760, § 21, effective July 1, 1997.

Editor's notes.

Ga. L. 1997, p. 760, § 21, repealed and reserved this Code section, effective July 1, 1997.

Law reviews.

For article commenting on the 1997 repeal of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

40-5-69. Circumstances not affecting suspensions by operation of law.

If a person's driver's license is suspended by operation of law as provided in Code Section 40-5-63, 40-5-67.1, or 40-5-67.2, the fact that the person's driver's license was not physically surrendered to the law enforcement officer at the time the person was charged with violating Code Section 40-6-391 or that the person's driver's license was not retained by the court and forwarded to the department as provided in Code Section 40-5-67 or that the person's driver's license was not forwarded as provided in Code Section 40-5-72 shall not affect such suspension.

History.

Code 1981, § 40-5-73, enacted by Ga. L. 1983, p. 1000, § 1; Code 1981, § 40-5-69, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 8; Ga. L. 1997, p. 760, § 22; Ga. L. 2000, p. 951, § 5-34.

Editor's notes.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 203 (1997).

40-5-70. Suspension of license, license tag, and tag registration for operation of vehicle without effective insurance.

(a) In addition to any other punishment, the driver's license of a person convicted under subsection (a), (b), or (c) of Code Section 40-6-10 shall be suspended for a period of 60 days. The person shall submit the driver's license to the court upon conviction, and the court shall forward the driver's license to the department. After the 60 day suspension period and when the person provides proof of having prepaid a six-month minimum insurance policy and pays a restoration fee of $210.00 or $200.00 when processed by mail to the department, the suspension shall terminate and the department shall return the person's driver's license to such person. For a second or subsequent offense within a five-year period, the suspension period shall be increased to 90 days, and, in addition to the driver's license, such person's license tag and tag registration shall also be suspended for a period of 90 days. The restoration fee for a second or subsequent offense within a five-year period shall be $310.00 or $300.00 if paid by mail. The procedures for submission of drivers' licenses to the court and the forwarding of such licenses to the department shall also apply to license tags and tag registrations.

(b) A hearing of contempt of court shall be scheduled for any person refusing to deliver his motor vehicle driver's license and, where applicable, motor vehicle license tag and tag registration to the court after a conviction under subsection (a), (b), or (c) of Code Section 40-6-10 and a warrant shall issue for the arrest of such person.

(c) For the purposes of mandatory suspension of a driver's license for a first violation of subsection (a), (b), or (c) of Code Section 40-6-10, a forfeiture of bail or collateral used to seek a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilty shall be considered a conviction regardless of whether the sentence is suspended, probated, rebated, or revoked. A plea of nolo contendere shall not be considered a conviction under this subsection, but a record

of the disposition of the case shall be forwarded by the court to the department for the purposes of counting the plea of nolo contendere as a conviction under subsection (d) of this Code section.

(d) For the purposes of mandatory suspension of a driver's license, license tag, and tag registration for a second or subsequent violation within a five-year period, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction was obtained, of subsection (a), (b), or (c) of Code Section 40-6-10, a forfeiture of bail or collateral used to seek a defendant's appearance in court, the payment of a fine, a plea of guilty, a plea of nolo contendere, a plea of nolo contendere to a previous violation of subsection (a), (b), or (c) of Code Section 40-6-10, or a finding of guilty shall be considered a conviction regardless of whether the sentence is suspended, probated, rebated, or revoked.

History.

Code 1981, § 40-5-70, enacted by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 23; Ga. L. 2009, p. 679, § 6/HB 160.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "drivers'" was substituted for "driver's" in the last sentence of subsection (a) and "subsection (d)" was substituted for "subsection (b)" in the second sentence of subsection (c).

Editor's notes.

Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, repealed former Code Section 40-5-70, relating to the suspension and reinstatement of driver's licenses for persons convicted of driving under the influence of alcohol or drugs, incorporated those provisions into Code Section 40-5-63, and enacted present Code Section 40-5-70. Former Code Section 40-5-70 was based on Ga. L. 1983, p. 1000, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 10; Ga. L. 1989, p. 14, § 40; and Ga. L. 1990, p. 1154, § 3.

Administrative rules and regulations.

Reinstatement Procedures for Insurance Suspension, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.16.

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the officer had received within the few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. State v. Harris, 236 Ga. App. 525, 513 S.E.2d 1, 1999 Ga. App. LEXIS 90 (1999).

40-5-71. [Reserved] Notice of insurance issuance, renewal, or termination; lapse fee; suspension of license following insurance termination; restricted driving permits.

History.

Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 24; Ga. L. 1992, p. 2785, § 12; Ga. L. 1993, p. 91, § 40; Ga. L. 1993, p. 936, §§ 1, 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 453, § 12; Ga. L. 2000, p. 429, § 4; Ga. L. 2000, p. 951, §§ 5-35—5-37; Ga. L. 2002, p.

1024, § 5; Ga. L. 2003, p. 261, § 4; repealed by Ga. L. 2010, p. 143, § 8/HB 1005, effective May 20, 2010.

Editor's notes.

Ga. L. 2010, p. 143, § 8/HB 1005 repealed and reserved this Code section, effective May 20, 2010.

40-5-72. Forwarding of suspended license, license tag, and tag registration to department.

(a) It is the duty of any person who has his or her driver's license and, where applicable, license tag and tag registration suspended under the provisions of Code Section 40-5-70 or 40-2-137 immediately upon suspension and demand of the department to forward such items to the department.

(b) If such driver's license and, where applicable, license tag and tag registration are not received by the department within ten days following the effective date of suspension, the commissioner shall immediately direct any peace officer to secure possession of the driver's license and, where applicable, license tag and tag registration and return the same to the department. The person whose driver's license and, where applicable, license tag and tag registration have been suspended shall surrender such items to any peace officer upon demand.

(c) Unless otherwise provided in this Code section, notice of the effective date of suspension shall occur when the driver receives actual knowledge or legal notice of the suspension, whichever occurs first. For the purposes of making any determination relating to the return of a suspended motor vehicle driver's license and, where applicable, license tag and tag registration, a period of suspension under Code Section 40-5-70 or 40-2-137 or this Code section shall begin upon the date of conviction adjudicated by the court having jurisdiction.

(d) Any person violating subsection (a) or (b) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not more than 30 days.

History.

Code 1981, § 40-5-72, enacted by Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-38; Ga. L. 2010, p. 143, § 9/HB 1005.

Editor's notes.

Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, renumbered former Code Section 40-5-72 as Code Section 40-5-68 [repealed] and enacted the present Code Section 40-5-72. Former Code Section 40-5-72 related to suspension of licenses for failure to complete alcohol or drug program.

40-5-73. Limited applicability.

The provisions of Code Sections 40-5-70, 40-6-10, and 40-6-11 shall

not be applicable to persons operating vehicles which are not required to be registered or licensed in this state.

History.
Code 1981, § 40-5-73, enacted by Ga. L. 1990, p. 2048, § 4.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "Code Sections" was substituted for "Code Section" near the beginning.
Editor's notes.
Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, renumbered former Code Section 40-5-73, relating to circumstances not affecting suspensions by operation of law, as Code Section 40-5-69 and enacted the present Code Section 40-5-73.

40-5-74. Defacement or alteration of seized license prohibited.

Whenever a person is charged with a violation of the law relating to the operation of motor vehicles resulting in the person's driver's license being seized by a law enforcement officer and forwarded to the court having jurisdiction of the offense or whenever a person is convicted of any offense resulting in the person's driver's license being suspended and forwarded to the department, such driver's license shall not be stapled to any document or in any manner defaced or altered so as to indicate at any time in the future such previous seizure and processing of the license.

History.
Code 1981, § 40-5-74, enacted by Ga. L. 1996, p. 1250, § 6.

ARTICLE 3A

SUSPENSION OF LICENSE FOR BEING IN CONTROL OF A MOVING VEHICLE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE OR MARIJUANA

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, this article, which was designated as Article 3B by Ga. L. 1990, p. 1149, § 1, was renumbered as Article 3A. Former Article 3A, consisting of Code Sections 40-5-67 through 40-5-73 was repealed by Ga. L. 1990, p. 2048, effective January 1, 1991. See note under Article 3 heading.

40-5-75. Suspension of licenses by operation of law; reinstatement.

(a) The driver's license of any person convicted of driving or being in actual physical control of any moving vehicle while under the influence of a controlled substance or marijuana in violation of paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, or the equivalent law of any other jurisdiction, shall by operation of law be suspended, and such suspension shall be subject to the following terms and conditions:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for not less than 180 days. At the end of 180 days, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays to the department a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for three years, provided that after one year from the date of the conviction, the person may apply to the department for reinstatement of his or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the department a restoration fee of $310.00 or $300.00 when such reinstatement is processed by mail; and

(3) Upon the third or subsequent conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58. A driver's license suspension imposed under this paragraph shall run concurrently with and shall be counted toward the fulfillment of any period of revocation imposed directly under Code Sections 40-5-58 and 40-5-62, provided that such revocation arose from the same act for which the suspension was imposed.

(b) Except as provided in Code Section 40-5-76, whenever a person is convicted of driving or being in actual physical control of any moving vehicle while under the influence of a controlled substance or marijuana in violation of paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, or the equivalent law of any other jurisdiction, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The periods of suspension provided for in this Code section shall be governed by subsection (e) of Code Section 40-5-61.

(c) Application for reinstatement of a driver's license under paragraph (1), (2), or (3) of subsection (a) of this Code section shall be made

on such forms as the commissioner may prescribe and shall be accompanied by proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail. Application for a three-year driving permit under paragraph (3) of subsection (a) of this Code section shall be made on such form as the commissioner may prescribe and shall be accompanied by proof of completion of an approved residential drug treatment program and a fee of $25.00 for such permit.

(d) Reserved.

(e) Except as provided in subsection (a) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person's license has been suspended pursuant to this Code section if such person has not thereafter obtained a valid license. Any person who is convicted of operating a motor vehicle before the department has reinstated such person's license or issued such person a three-year driving permit shall be punished by a fine of not less than $750.00 nor more than $5,000.00 or by imprisonment in the penitentiary for not more than 12 months, or both.

(f) Licensed drivers who are 16 years of age who are adjudicated in a juvenile court pursuant to this Code section may, at their option, complete a DUI Alcohol or Drug Use Risk Reduction Program or an assessment and intervention program approved by the juvenile court.

(g)(1)(A) Effective July 1, 2016, the department shall be authorized to reinstate, instanter, a driver's license that was suspended pursuant to this Code section for a violation of Article 2 of Chapter 13 of Title 16, or the equivalent law of any other jurisdiction, that occurred prior to July 1, 2015, provided that the driver's license has not been previously reinstated. The provisions of this subparagraph shall not apply to a suspension imposed pursuant to this Code section for a violation of paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, or the equivalent law of any other jurisdiction, that occurred prior to July 1, 2015, unless ordered by a judge presiding in a drug court division, mental health court division, veterans court division, or operating under the influence court division in accordance with subsection (a) of Code Section 40-5-76.

(B) Effective July 1, 2017, the department shall be authorized to reinstate, instanter, a driver's license that was suspended pursuant to this Code section for a violation of Article 1 of Chapter 13 of Title 16, or the equivalent law of any other jurisdiction, that occurred prior to July 1, 2015, provided that the driver's license has not been previously reinstated. The provisions of this subparagraph shall not apply to a suspension

imposed pursuant to this Code section for a violation of paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, or the equivalent law of any other jurisdiction, that occurred prior to July 1, 2015, unless ordered by a judge presiding in a drug court division, mental health court division, veterans court division, or operating under the influence court division in accordance with subsection (a) of Code Section 40-5-76.

(2) The department shall make a notation of a suspended driver's license that is reinstated pursuant to paragraph (1) of this subsection on a person's driving record, and such information shall be made available in accordance with Code Section 40-5-2.

(3) The driver's license or driving privileges of any person who has a driver's license reinstated in accordance with paragraph (1) of this subsection shall remain subject to any and all applicable disqualifications specified in Article 7 of this chapter.

(4) The department may promulgate rules and regulations as are necessary to implement this subsection.

History.

Code 1981, § 40-5-75, enacted by Ga. L. 1990, p. 1149, § 1; Ga. L. 1990, p. 1097, § 1.5; Ga. L. 1991, p. 1767, § 1; Ga. L. 1992, p. 779, § 25; Ga. L. 1992, p. 2785, § 13; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 730, §§ 3-5; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 20, § 23; Ga. L. 2000, p. 951, § 5-39; Ga. L. 2004, p. 471, § 7; Ga. L. 2005, p. 334, § 17-16/HB 501; Ga. L. 2006, p. 449, § 11/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 117, § 1/HB 419; Ga. L. 2009, p. 679, § 7/HB 160; Ga. L. 2010, p. 932, § 15/HB 396; Ga. L. 2011, p. 355, § 10/HB 269; Ga. L. 2013, p. 222, § 15/HB 349; Ga. L. 2013, p. 294, § 4-47/HB 242; Ga. L. 2015, p. 60, § 4-18/SB 100; Ga. L. 2016, p. 443, § 4-7/SB 367; Ga. L. 2017, p. 608, § 4/SB 176; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2020, p. 345, § 1/HB 799.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1994, in the first sentence in subsection (b), "paragraph (2), (4), or (6)" was substituted for "paragraphs (2), (4), or (6)."

Pursuant to Code Section 28-9-5, in 2016, "July 1, 2016" was substituted for "the effective date of this subsection" in paragraph (g)(1) (now subparagraph (g)(1)(A)).

Editor's notes.

Ga. L. 1990, p. 1097, § 2, not codified by the General Assembly, provides that subsection (h) applies to all adjudications on or after July 1, 1990.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly,

provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For note on 1990 enactment of this Code section, see 7 Georgia St. U.L. Rev. 337 (1990).

For note on 1991 amendment of this Code section, see 8 Georgia St. U.L. Rev. 126 (1992).

For annual survey on criminal law and procedure, see 44 Mercer L. Rev. 165 (1992).

For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Georgia St. U.L. Rev. 17 (2013).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-5-75 does not violate the due process or equal protection clauses of the United States or Georgia Constitutions. Quiller v. Bowman, 262 Ga. 769, 425 S.E.2d 641, 1993 Ga. LEXIS 188, cert. denied, 510 U.S. 818, 114 S. Ct. 72, 126 L. Ed. 2d 41, 1993 U.S. LEXIS 5013 (1993).

Construction with O.C.G.A. § 17-10-7. — Because O.C.G.A. § 40-5-75 is a recidivist statute and not a habitual traffic offense violator statute it should be construed together with the general recidivist statute, O.C.G.A. § 17-10-7, such that multiple counts of a single indictment are deemed as a single conviction. Bowman v. Griffith, 204 Ga. App. 851, 420 S.E.2d 795, 1992 Ga. App. LEXIS 1027 (1992).

Effect of first offender treatment. — Defendant who is given first offender treatment has not been "convicted" within the meaning of O.C.G.A. § 40-5-75 and mandatory driver's license suspension is not required. Priest v. State, 261 Ga. 651, 409 S.E.2d 657, 1991 Ga. LEXIS 865 (1991).

Three-year suspension for recidivists. — Trial court did not err by reducing the suspension of the defendant's license to 180 days since it was undisputed that the defendant had no prior conviction of possession of a controlled substance or marijuana and therefore the three-year suspension for recidivists was inapplicable. Bowman v. Griffith, 204 Ga. App. 851, 420 S.E.2d 795, 1992 Ga. App. LEXIS 1027 (1992).

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the officer received within the few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. State v. Harris, 236 Ga. App. 525, 513 S.E.2d 1, 1999 Ga. App. LEXIS 90 (1999).

Officers knowledge of driver's DUI as probable cause for stop. — *Unpublished decision:* Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers to believe the defendant had not yet applied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. United States v. Woods, 385 Fed. Appx. 914, 2010 U.S. App. LEXIS 13642 (11th Cir. 2010).

Application for reinstatement. — Letters to the department that were not on forms prescribed by the commissioner, were not accompanied by proof of completion of a risk reduction program, and were not accompanied by a restoration fee did not constitute

applications for reinstatement. Department of Pub. Safety v. Schueman, 243 Ga. App. 369, 532 S.E.2d 487, 2000 Ga. App. LEXIS 403 (2000).

After a second conviction of violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-1 et seq., for an application for reinstatement to initiate the start of a new suspension, it is not required that the applicant must be eligible for reinstatement from the prior suspension. Department of Pub. Safety v. Schueman, 243 Ga. App. 369, 532 S.E.2d 487, 2000 Ga. App. LEXIS 403 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Additional penalties called for in O.C.G.A. §§ 15-21-100 and 40-5-75 are to be imposed upon convictions for drug-related felonies and misdemeanors. 1990 Op. Att'y Gen. No. U90-21.

RESEARCH REFERENCES

ALR.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 A.L.R.5th 542.

40-5-76. Court ordered reinstatement or suspension of license or issuance of limited driving permit or ignition interlock device limited driving permit; time credited toward fulfillment of period of license suspension.

(a)(1) A judge presiding in a drug court division, mental health court division, veterans court division, or operating under the influence court division, as a reward or sanction to the defendant's behavior in such court division, may order the department to:

(A) Reinstate a defendant's Georgia driver's license that has been or should be suspended under the laws of this state;

(B) Issue to a defendant a limited driving permit using the guidance set forth in subsections (c), (c.1), and (d) of Code Section 40-5-64 or with whatever conditions the court determines to be appropriate under the circumstances;

(C) Issue to a defendant an ignition interlock device limited driving permit using the guidance set forth in subsections (c) and (e) of Code Section 40-5-64.1 or with whatever conditions the court determines to be appropriate under the circumstances; or

(D) Suspend or revoke such license, limited driving permit, or ignition interlock device limited driving permit.

(2) The court shall require the defendant to pay to the department the fee normally required for the reinstatement of such driver's license or issuance of such limited driving permit or ignition interlock device limited driving permit or waive such fee.

(3) The court may order the department to issue to a defendant a

limited driving permit or ignition interlock device limited driving permit pursuant to this subsection for a one-year period, and may allow such permit to be renewed for a one-year period, and shall provide the department with such order.

(b) If the offense for which the defendant was convicted did not directly relate to the operation of a motor vehicle, a judge presiding in any court, other than the court divisions specified in subsection (a) of this Code section, may order the department to reinstate a defendant's driver's license that has been or should be suspended, issue to a defendant a limited driving permit using the guidance set forth in subsections (c), (c.1), and (d) of Code Section 40-5-64, or issue to a defendant an ignition interlock device limited driving permit using the guidance set forth in subsections (c) and (e) of Code Section 40-5-64.1. The court shall require the defendant to pay to the department the fee normally required for the reinstatement of such driver's license or issuance of such limited driving permit or ignition interlock device limited driving permit or waive such fee. Such judge may also order the department to suspend a defendant's driver's license, limited driving permit, or ignition interlock device limited driving permit as a consequence of the defendant's violation of the terms of his or her probation.

(c)(1) The department shall make a notation on a person's driving record when his or her driver's license was reinstated or suspended or he or she was issued a limited driving permit or ignition interlock device limited driving permit under this Code section, and such information shall be made available in accordance with Code Section 40-5-2.

(2) The driver's license of any person who has a driver's license reinstated or suspended in accordance with this Code section shall remain subject to any applicable disqualifications specified in Article 7 of this chapter.

(d) The department shall credit any time during which a defendant was issued a limited driving permit or ignition interlock device limited driving permit under subsection (a) of this Code section toward the fulfillment of the period of a driver's license suspension for which such permit was issued.

History.

Code 1981, § 40-5-76, enacted by Ga. L. 2013, p. 222, § 16/HB 349; Ga. L. 2014, p. 34, § 1-5/SB 365; Ga. L. 2014, p. 79, § 4/SB 320; Ga. L. 2016, p. 323, § 2-6/HB 205; Ga. L. 2016, p. 443, § 4-8/SB 367; Ga. L. 2018, p. 550, § 2-10/SB 407.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, the amendment of subsection (a) of this Code section by Ga. L. 2016, p. 323, § 2-6/HB 205, was treated as impliedly repealed and superseded by Ga. L. 2016, p. 443, § 4-8/SB 367, due to irreconcilable conflict.

Editor's notes.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly,

provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Law reviews.

For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Georgia St. U.L. Rev. 17 (2013).

For article on the 2014 amendment of this Code section, see 31 Georgia St. U.L. Rev. 25 (2014).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

ARTICLE 4

RESTORATION OF LICENSES TO PERSONS COMPLETING DEFENSIVE DRIVING COURSE OR ALCOHOL OR DRUG PROGRAM

Cross references.

Clinical evaluation and substance abuse treatment programs for certain offenders, § 40-5-63.1.

Administrative rules and regulations.

Alcohol and Drug Awareness Program, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver Training and Driver Improvement, Rule 375-5-4-.01 et seq.

DUI Alcohol or Drug Use Risk Reduction Program, Official Compilation of the Rules and Regulation of the State of Georgia, Rules of Department of Driver Services, Driver Training and Driver Improvement, Rule 375-5-6-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Georgia Driver Improvement Act (see now O.C.G.A. § 40-5-80 et seq.) acts as an additional method for restoration of licenses suspended or revoked by the state and does not preclude a judge from requiring a defendant to attend a local driver improvement school. 1978 Op. Att'y Gen. No. U78-49.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 A.L.R.5th 725.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 A.L.R.5th 542.

40-5-80. Purpose of article.

The purpose of this article, the "Georgia Driver Improvement Act," is to improve and promote greater safety upon the highways and streets of this state; to improve the attitude and driving habits of drivers who accumulate traffic accident and motor vehicle conviction records; and to provide uniform DUI Alcohol or Drug Use Risk Reduction Programs for the rehabilitation of persons identified as reckless or negligent drivers and frequent violators. In carrying out this purpose, the Department of Driver Services shall:

(1) Charge a fee for the consideration of applications for approval of driver improvement clinics and instructors. The amount of this fee shall be established by the commissioner and shall, as best as the commissioner shall determine, approximate the expense incurred by the department in consideration of an application. These licenses and each renewal thereof shall be valid for a period of four years unless suspended or revoked prior to the expiration of that time period; and

(2) Require, in addition to the criteria established by the commissioner for approval of driver improvement clinics and certification of DUI Alcohol or Drug Use Risk Reduction Programs, as provided in subsections (a) and (e) of Code Section 40-5-83, respectively, that every driver improvement clinic and DUI Alcohol or Drug Use Risk Reduction Program shall, as a condition of approval or certification, provide a continuous surety company bond for the protection of the contractual rights of students in such form as will meet with the approval of the department and written by a company authorized to do business in this state. The principal sum of the bond shall be established by the commissioner; however, in no event shall the amount of the bond be less than $10,000.00 per location, and a single bond at such rate may be submitted for all locations under the same ownership. If at any time said bond is not valid and in force, the license of the driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program shall be deemed suspended by operation of law until a valid surety company bond is again in force.

History.
Code 1933, § 68D-101, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1990, p. 1154, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 14; Ga. L. 1994, p. 1066, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 951, § 5-40; Ga. L. 2003, p. 796, § 2; Ga. L. 2005, p. 334, § 17-17/HB 501; Ga. L. 2014, p. 710, § 1-13/SB 298.

40-5-81. Certification and approval of courses by department; prohibited behavior by a clinic or program.

(a) Any defensive driving course or defensive driving program at which attendance is required by court order shall conform to the requirements of this article. When a defensive driving course, defensive

driving program, or DUI Alcohol or Drug Use Risk Reduction Program is required by a court having jurisdiction over misdemeanor traffic law offenses or by any prosecuting attorney thereof, such course or program shall be certified or approved by the department under the provisions of Code Sections 40-5-82 and 40-5-83, as applicable. Certificates of completion from unlicensed defensive driving courses shall not be recognized for any purposes under this article.

(b) Whenever any person is authorized or required to attend a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence imposed under this title or any ordinance enacted pursuant to this title or as a condition of the retention or restoration of the person's driving privilege, such person, in complying with such condition, shall be authorized to attend any driver improvement clinic approved under this article or DUI Alcohol or Drug Use Risk Reduction Program certified under this article; and no judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court or person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases shall specify, directly or indirectly, a particular driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program which the person may or shall attend. This Code section shall not prohibit any judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court or owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor offenders from furnishing any person, upon request, the names of approved driver improvement clinics or certified DUI Alcohol or Drug Use Risk Reduction Programs.

(c) It shall be unlawful for the owner, agent, servant, or employee of any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program licensed by the department to directly or indirectly solicit business by personal solicitation on public property, by phone, by email, or by mail. A violation of this subsection shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, internet, or telephone directories, by a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program shall not be considered a violation of this subsection.

(d) It shall be unlawful for the owner, agent, servant, or employee of any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program licensed by the department to directly or indirectly offer, for purposes of the enrollment or solicitation of any student or prospective student, any item of monetary value, including but not limited to United States legal tender, food, gasoline cards, debit gift cards, or merchant gift cards, to any:

(1) Student or agent or legal representative of a student;

(2) Employee or agent of a private company which has contracted with a county, municipality, or consolidated government to provide probation services pursuant to Article 6 of Chapter 8 of Title 42;

(3) Law enforcement officer; or

(4) Officer or employee of the judicial branch or a court.

A violation of this subsection shall be a misdemeanor. In addition to all other penalties available at law, any person convicted of a second or subsequent offense under this subsection shall have his or her license to operate a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program under this article revoked.

History.

Code 1933, § 68D-102, enacted by Ga. L. 1978, p. 2302, § 1; Code 1981, § 40-5-85.2, enacted by Ga. L. 1985, p. 758, § 20; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 9; Ga. L. 1992, p. 2785, § 15; Ga. L. 1992, p. 2978, § 9.1; Ga. L. 1993, p. 454, § 1; Ga. L. 2000, p. 951, § 5-41; Ga. L. 2003, p. 796, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-18/HB 501; Ga. L. 2011, p. 355, § 11/HB 269; Ga. L. 2014, p. 710, § 1-14/SB 298; Ga. L. 2015, p. 5, § 40/HB 90; Ga. L. 2015, p. 60, § 4-19/SB 100; Ga. L. 2015, p. 422, § 5-60/HB 310; Ga. L. 2016, p. 767, § 5/SB 320; Ga. L. 2017, p. 774, § 40/HB 323; Ga. L. 2024, p. 1052, § 4(55)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "email' for "e-mail" in the first sentence in subsection (c).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, "internet" was substituted for "Internet" in subsection (c).

Editor's notes.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 231 (2015).

40-5-82. Administration of program.

(a) The Driver Improvement Program created by this article shall be administered by the commissioner. The commissioner is authorized to promulgate and adopt rules and regulations necessary to carry out this article.

(b) For the purpose of generating greater interest in highway safety, the commissioner may solicit the assistance of local governmental authorities, associations, societies, clubs, schools, colleges, and other organizations or persons knowledgeable in highway safety driving standards to participate in conjunction with the department in the

development of local driver improvement programs and in conducting driver improvement classes.

(c) The department is designated as the agency responsible for the certification of DUI Alcohol or Drug Use Risk Reduction Programs and staff. This responsibility includes selection of the assessment instrument, development of the intervention curricula, training of program staff, and monitoring of all DUI Alcohol or Drug Use Risk Reduction Programs under this article.

(d) All DUI Alcohol or Drug Use Risk Reduction Program records including, but not limited to, assessment results and other components attended shall be confidential and shall not be released without the written consent of the DUI offender, except that such records shall be made available to the Department of Behavioral Health and Developmental Disabilities and the Department of Driver Services. The provision of assessments to the Department of Behavioral Health and Developmental Disabilities shall be according to an interagency agreement between the Department of Driver Services and the Department of Behavioral Health and Developmental Disabilities, and the agreement may provide for assessment fees to be transmitted to the Department of Behavioral Health and Developmental Disabilities.

(e) The department shall conduct a records check for any applicant for certification as an operator, director, or instructor of a DUI Alcohol or Drug Use Risk Reduction Program. Each applicant shall submit at least one set of classifiable fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified. No applicant shall be certified who has previously been convicted of a felony. The department shall promulgate rules and regulations regarding certification requirements, including restrictions regarding misdemeanor convictions. No applicant shall be certified unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.

Code 1933, § 68D-103, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 1154, § 6; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1140, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1999,

p. 731, § 2; Ga. L. 2000, p. 951, § 5-42; Ga. L. 2005, p. 334, § 17-19/HB 501; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 932, § 16/HB 396; Ga. L. 2014, p. 710, § 1-15/SB 298.

40-5-83. Approval and operation of driver improvement clinics; criteria for defensive driving courses, alcohol and drug courses, and driving under the influence risk reduction programs.

(a)(1) The commissioner shall establish criteria for the approval of driver improvement clinics. To be approved, a clinic shall provide and operate a defensive driving course. Clinics shall be composed of uniform education and training programs consisting of six hours of instruction designed for the rehabilitation of problem drivers. The commissioner shall establish standards and requirements concerning the contents of defensive driving courses, qualifications of instructors, attendance requirements for students, and examinations. Approved clinics shall charge a fee of $95.00 for a defensive driving course, except that such clinics may charge different fees of their own choosing if the person is not enrolling in such course pursuant to court order or department requirement. No clinic shall be approved unless such clinic agrees in writing to allow the examination and audit of the books, records, and financial statements of such clinic. Clinics may be operated by any individual, partnership, or corporation. Nothing in this paragraph shall be construed to affect in any way driving programs established for purposes of insurance premium reductions under the provisions of Code Section 33-9-42.

(2)(A) No driver improvement clinic shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name used by any other driver improvement clinic, Georgia company, or Georgia corporation registered with the Secretary of State. This subparagraph shall not prohibit the franchising or licensing of any part or all of the name of a driver improvement clinic by the owner or the rights thereof to another licensed driver improvement clinic.

(B) This paragraph shall not prohibit the franchising or licensing of any part or all of the name of a clinic by the owner of the rights therein to another licensed driver improvement clinic.

(b)(1) The commissioner shall be authorized to accept certificates of completion from all defensive driving, driving under the influence, and alcohol and drug programs, clinics, and courses approved by any other state, the District of Columbia, and territories and possessions of the United States, including military reservations, whereby driver improvement clinics, programs, and courses shall be approved for use by residents of this state, other states, the District of Columbia, and territories and possessions of the United States.

(2) Driver improvement clinics, programs, and courses outside of the State of Georgia shall not be required to comply with the provisions of subsection (a) of this Code section.

(3) Driving under the influence and alcohol and drug programs, clinics, and courses outside of the State of Georgia shall not be required to comply with the provisions of subsection (e) of this Code section; provided, however, that the department shall not accept certificates of completion from any such program, clinic, or course unless said program, clinic, or course has been certified by the department as substantially conforming, with respect to course content, with the standards and requirements promulgated by the department under subsection (e) of this Code section. Certificates of completion from an out-of-state program, clinic, or course not so certified by the department may be accepted only for the purpose of permitting persons who are not residents of the State of Georgia to reinstate nonresident operating privileges.

(c) The commissioner shall be authorized to issue a special license to the instructor of any driver improvement clinic who is qualified to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142. A driver improvement clinic shall offer such alcohol and drug course only through a qualified instructor and shall not charge a fee for such course of more than $25.00. The commissioner shall be authorized to issue a special license to a licensed instructor of any driver training school to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142 who is qualified to teach a driver education training course, which course consists of a minimum of 30 hours of classroom and six hours of behind-the-wheel training. The alcohol and drug program may be included in the 30 hours of classroom training as part of a curriculum approved by the department. Any fee authorized by law for such a drug and alcohol course may be included in the tuition charge for a driver education training course. Any text or workbook provided or required by the department for such alcohol and drug course shall be provided by the department at the same fee as currently charged by the department to any public or private school, contractor, or appropriate representative currently teaching the program.

(d) Notwithstanding the provisions of any law or rule or regulation which prohibits any individual who was a probation officer or other official or employee of the probation division of the Department of Corrections on or before June 30, 2015, or a spouse of such individual from owning, operating, instructing at, or being employed by a driver improvement clinic, any individual who was a probation officer or other official or employee of the probation division of the Department of Corrections on or before June 30, 2015, or a spouse of such individual who owns, operates, instructs at, or is employed by a driver improve-

ment clinic shall remain qualified to own, operate, instruct at, or be employed by a driver improvement clinic and to engage in such activities. Any individual who is an employee of the Department of Community Supervision or a spouse of such individual who owns, operates, instructs at, or is employed by a driver improvement clinic on July 1, 2015, and who in all respects is and remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic shall be expressly authorized to continue on and after June 1, 2015, to engage in such activities. No person who owns, operates, or is employed by a private company which has contracted to provide probation services for misdemeanor cases shall be authorized to own, operate, be an instructor at, or be employed by a driver improvement clinic or a DUI Alcohol or Drug Use Risk Reduction Program.

(e)(1) The department is designated as the agency responsible for establishing criteria for the certification of DUI Alcohol or Drug Use Risk Reduction Programs. An applicant shall meet the certification criteria promulgated by the department through its standards and shall provide assessment component services and intervention component services. A certified DUI Alcohol or Drug Use Risk Reduction Program shall require that a risk assessment component be conducted prior to administering the intervention component of such program. A certified DUI Alcohol or Drug Use Risk Reduction Program may include a clinical evaluation component after an individual completes risk assessment and intervention services. Only clinical evaluators licensed by the Department of Behavioral Health and Developmental Disabilities shall be qualified to conduct clinical evaluations. The department is designated as the agency responsible for establishing rules and regulations concerning the contents and duration of the components of DUI Alcohol or Drug Use Risk Reduction Programs, qualifications of instructors, attendance requirements for students, examinations, and program evaluations. Qualified instructors shall be certified for periods of four years each, which may be renewed.

(2) Certified DUI Alcohol or Drug Use Risk Reduction Programs shall charge a fee of $100.00 for the assessment component and $235.00 for the intervention component. An additional fee for required student program materials shall be established by the department in such an amount as is reasonable and necessary to cover the cost of such materials.

(3) No DUI Alcohol or Drug Use Risk Reduction Program shall be certified unless such program agrees in writing to submit reports as required in the rules and regulations of the department and to allow the examination and audit of the books, records, and financial statements of such DUI Alcohol or Drug Use Risk Reduction Program by the department or its authorized agent.

(4) DUI Alcohol or Drug Use Risk Reduction Programs may be operated by any public, private, or governmental entity; provided, however, that, except as otherwise provided in this subsection, in any political subdivision in which a DUI Alcohol or Drug Use Risk Reduction Program is operated by a private entity, whether for profit or nonprofit, neither the local county board of health nor any other governmental entity shall fund any new programs in that area. Programs in existence prior to July 1, 1990, which are operated by local county boards of health or any other governmental entities shall be authorized to continue operation. New programs may be started in areas where no private DUI Alcohol or Drug Use Risk Reduction Programs have been made available in the political subdivision.

(5) The Department of Corrections shall be authorized to operate DUI Alcohol or Drug Use Risk Reduction Programs in its facilities where offenders are not authorized to participate in such programs in the community, provided that such programs meet the certification criteria promulgated by the Department of Driver Services. All such programs operated by the Department of Corrections shall be exempt from all fee provisions established in this subsection specifically including the rebate of any fee for the costs of administration.

(6) No DUI Alcohol or Drug Use Risk Reduction Program shall be certified unless such program agrees in writing to pay to the state, for the costs of administration, a fee of $30.00 for each offender assessed, provided that nothing in this Code section shall be construed to allow the department to retain any funds required by the Constitution to be paid into the state treasury; and provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such miscellaneous funds.

(f)(1) Each applicant for certification to own or operate a driver improvement clinic shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified.

(2) No applicant shall be certified unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Secu-

rity to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.

Code 1933, § 68D-104, enacted by Ga. L. 1978, p. 2302, § 1; Code 1981, § 40-5-83.1, enacted by Ga. L. 1983, p. 745, § 3; Ga. L. 1985, p. 409, § 1; Ga. L. 1985, p. 758, § 12; Code 1981, § 40-5-85.1, enacted by Ga. L. 1985, p. 758, § 20; Ga. L. 1986, p. 839, § 2; Ga. L. 1987, p. 431, § 1; Ga. L. 1990, p. 1154, § 7; Code 1981, § 40-5-83, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1140, § 2; Ga. L. 1992, p. 913, § 1; Ga. L. 1992, p. 2785, § 16; Ga. L. 1993, p. 91, § 40; Ga. L. 1993, p. 454, § 2; Ga. L. 1994, p. 1066, § 2; Ga. L. 1997, p. 143, § 40; Ga. L. 1999, p. 731, § 3; Ga. L. 2000, p. 951, § 5-43; Ga. L. 2003, p. 796, § 4; Ga. L. 2005, p. 334, § 17-20/HB 501; Ga. L. 2009, p. 65, § 6/SB 196; Ga. L. 2010, p. 932, § 17/HB 396; Ga. L. 2011, p. 355, § 12/HB 269; Ga. L. 2014, p. 710, §§ 1-16, 5-1/SB 298; Ga. L. 2015, p. 422, § 5-61/HB 310; Ga. L. 2016, p. 864, § 40/HB 737; Ga. L. 2021, p. 403, § 7/HB 466.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, subsection (c), as enacted by Ga. L. 1990, p. 1154, § 7, has been renumbered as subsection (e), since Ga. L. 1990, p. 2048, § 4, also added subsections (c) and (d).

Editor's notes.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

Law reviews.

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 231 (2015).

OPINIONS OF THE ATTORNEY GENERAL

State probation officer as owner or operator. — If a state probation officer is an owner of or instructor in a driver improvement school approved pursuant to O.C.G.A § 40-5-83, a conflict of interest arises. 1984 Op. Att'y Gen. No. U84-29.

Court officer or employee as owner or instructor. — Conflict of interest would exist if a sheriff, deputy sheriff, law enforcement officer, superior court judge, state court judge, or any other officer or employee of the court were to be an instructor, owner, or registrar of a state approved driver improvement school. 1984 Op. Att'y Gen. No. U84-29.

Program director of state mental health center as owner. — Program director for alcohol and drug abuse services for a state mental health center does not necessarily have an impermissible conflict of interest as an owner of a driver improvement clinic approved pursuant to O.C.G.A. § 40-5-83. 1984 Op. Att'y Gen. No. U84-53.

40-5-84. Reinstatement of licenses suspended for certain offenses or for points.

(a) Except as otherwise provided, the license of any person whose license is suspended for the first time as a result of the conviction of an offense listed in Code Section 40-5-54 shall, at the expiration of 120 days following the date the license is suspended, be reinstated by the department upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail.

(b) The license of any person whose license is suspended for the second time as a result of the conviction of an offense listed in Code Section 40-5-54 shall, at the expiration of 120 days following the date the license is suspended, be reinstated by the department upon receipt by the department of a certificate of completion of a defensive driving course approved by the department and the payment of a restoration fee of $310.00 or $300.00 when such reinstatement is processed by mail.

(c) The license of any person whose license is suspended for the first time within a five-year period as a result of the assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department immediately upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of $210.00 or $200.00 when such reinstatement is processed by mail.

(d) The license of any person whose license is suspended for the second time within a five-year period as a result of the assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department immediately upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of $310.00 or $300.00 when such reinstatement is processed by mail.

(e) The license of any person whose license is suspended for the third or subsequent time within a five-year period as a result of the assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department upon receipt by the department of a certificate of completion of a defensive driving course approved by the department and the payment of a restoration fee of $410.00 or $400.00 when such reinstatement is processed by mail.

History.

Code 1933, § 68D-105, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1983, p. 1000, § 8; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 13; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 17; Ga. L. 2003, p. 796, § 5; Ga. L. 2009, p. 679, § 8/HB 160; Ga. L. 2011, p. 355, § 13/HB 269; Ga. L. 2014, p. 710, § 1-17/SB 298.

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the officer received within the few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. State v. Harris, 236 Ga. App. 525, 513 S.E.2d 1, 1999 Ga. App. LEXIS 90 (1999).

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 332 et seq., 346 et seq.
8 Am. Jur. 2d, Automobiles and Highway Traffic, § 988 et seq.

40-5-85. Red stripe upon reinstated license for repeat offenders of driving under the influence of alcohol or drugs.

Notwithstanding any other provision of this chapter, any person convicted within five years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391 for a second time of the offense of driving under the influence of alcohol or drugs in violation of Code Section 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her license as provided for in this chapter, be issued a driver's license which may bear a red stripe thereon. After seven years with no additional convictions for driving under the influence of alcohol or drugs any such person shall be issued a regular driver's license without such red stripe provided that he or she is otherwise entitled to such license under the laws of this state.

History.
Code 1981, § 40-5-85, enacted by Ga. L. 1996, p. 1624, § 8.
Editor's notes.
The former Code section, relating to the reinstatement of licenses suspended for driving under the influence of alcohol or drugs, was based on Code 1933, § 68D-106; Ga. L. 1978, p. 2302, § 1; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 1000, § 9; Ga. L. 1990, p. 2048, § 4 and was repealed by Ga. L. 1992, p. 2564, § 10, effective January 1, 1993.

40-5-86. Reduction of point count upon completion of course.

Upon the accumulation of points pursuant to Code Section 40-5-57, the total number of points accumulated by any driver shall be reduced by seven points, but to not less than zero points, upon the satisfactory completion by such driver of a defensive driving course approved by the department and the submission of a certificate by such driver to the department. The provisions of this Code section shall be available one time only to each driver in any five-year period.

History.
Code 1933, § 68D-107, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1987, p. 1082, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2105, § 1; Ga. L. 1992, p. 2785, § 18; Ga. L. 2003, p. 796, § 6; Ga. L. 2014, p. 710, § 1-18/SB 298.
Law reviews.
For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

40-5-87. Conditions of article exclusive.

The requirements and conditions of this article and the rules and

regulations adopted pursuant to this article shall be the exclusive requirements for restoration of a license under this article or the issuance of a limited driving permit under this article.

History. Code 1933, § 68D-108, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1990, p. 2048, § 4.

40-5-88. Administrative penalties.

(a) As an alternative to criminal or other civil enforcement, the commissioner of driver services in order to enforce this article or any orders, rules, or regulations promulgated pursuant to this article, may issue an administrative fine not to exceed $1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person, firm, or corporation has violated any provisions of this article or any regulations or orders promulgated under this article. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed $250.00, may be issued.

(b) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner of driver services shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner of driver services may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to such commissioner with respect to any violation of this article or any order, rules, or regulations promulgated pursuant to this article.

History.
Code 1981, § 40-5-88, enacted by Ga. L. 1985, p. 758, § 14; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 19; Ga. L. 2000, p. 951, § 5-44; Ga. L. 2003, p. 796, § 7; Ga. L. 2005, p. 334, § 17-21/HB 501.

ARTICLE 5

IDENTIFICATION CARDS

40-5-100. Application; contents of card; prohibition on possession of more than one card; optional contributions to and participation in voluntary programs.

(a) The department shall issue identification cards to any resident, as such term is defined in Code Section 40-5-1, who makes an application to the department in accordance with rules and regulations prescribed by the commissioner. Cards issued to applicants under 21 years of age shall contain the distinctive characteristics of drivers' licenses issued pursuant to Code Section 40-5-26. The identification card shall be similar in form but distinguishable in color from motor vehicle drivers' licenses, shall be in physical format and, upon election of the applicant, in an electronic format, and may contain a recent photograph of the applicant and include the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Sex;

(6) Height;

(7) Weight;

(8) Eye color;

(9) Signature of person identified or facsimile thereof;

(10) Designation of participation in an anatomical gift donation program when such person is eligible to make such gift pursuant to Code Section 44-5-142; and

(11) Such other information or identification as required by the department; provided, however, that the department shall not require an applicant to submit or otherwise obtain from an applicant any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) An identification card issued pursuant to this Code section shall be valid for a period of eight years, shall bear the signatures of the commissioner and the Governor, and shall bear an identification card number which shall not be the same as the social security number.

(c)(1) No person may possess more than one identification card issued pursuant to this Code section; provided, however, that this subsection shall not be construed to prevent a person issued a driver's license, instruction permit, or limited driving permit pursuant to this title from also possessing an identification card issued under this article.

(2)(A) Any person who applies for an identification card shall indicate on such application whether he or she is in possession of any other valid identification card, driver's license, instruction permit, or limited driving permit issued pursuant to this title or by any other jurisdiction.

(B) Except as provided in paragraph (3) of this subsection, each applicant for an identification card shall surrender to the department any valid identification card, driver's license, instruction permit, or limited driving permit previously issued pursuant to this title or by any other jurisdiction. The department shall physically mark any surrendered identification card, driver's license, instruction permit, or limited driving permit in a manner which makes it apparent that such card, license, or permit is no longer valid and return the card, license, or permit to such person.

(C) The department shall issue a receipt to a person eligible to be issued an identification card pursuant to the requirements of this title. Such receipt may be used as proof of issuance until the person has received his or her permanent identification card.

(D) If a surrendered identification card, driver's license, instruction permit, or limited driving permit was issued by another jurisdiction, the department shall forward the surrendered card, license, or permit information to the previous jurisdiction.

(3)(A) Any noncitizen who is eligible for issuance of an identification card pursuant to the requirements of this title and is in possession of an identification card or driver's license issued by a foreign jurisdiction may be issued an identification card without surrendering the foreign driver's license or identification card. This exemption shall not apply to a person who is required to terminate any previously issued identification card pursuant to federal law.

(B) The department shall make a notation on the driving record of any person who retains a foreign identification card or

driver's license, and this information shall be made available to law enforcement officers and agencies on such person's driving record through the Georgia Crime Information Center.

(d) An application for identification card renewal may be submitted by:

(1) Personal appearance before the department; or

(2) Subject to rules or regulations of the department which shall be consistent with considerations of public safety and efficiency of service to customers, means other than such personal appearance which may include without limitation by mail or electronically. The department may by such rules or regulations exempt persons renewing identification cards under this paragraph from the surrender requirement in this Code section.

(e)(1) The General Assembly finds that it is in the best interest of this state to encourage improved public education and awareness regarding anatomical gifts of human organs and tissues and to address the ever increasing need for donations of anatomical gifts for the benefit of the citizens of Georgia.

(2) The department shall make available to procurement organizations or secure data centers maintained and managed at the direction of a procurement organization information provided for in Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," including the name, identification card number, date of birth, gender, and most recent address of any person who obtains an organ donor identification card; provided, however, that the gender information shall be made available only to a procurement organization or secure data center if such organization or center has sufficient funds to cover the associated costs of providing such information. Information so obtained by such organizations and centers shall be used for a state-wide organ donor registry accessible to organ tissue and eye banks authorized to function as such in this state and shall not be further disseminated.

(f)(1) The General Assembly finds that it is in the best interest of this state to encourage improved public education and awareness regarding blindness and to address the need for blindness prevention screenings, treatments, and rehabilitation for the benefit of the citizens of Georgia.

(2) Each application form for issuance, reissuance, or renewal of a identification card under this Code section shall include language permitting the applicant to make a voluntary contribution of $1.00 to be used for purposes of preventing blindness and preserving the sight of residents of this state. Any such voluntary contribution shall be

made at the discretion of the applicant at the time of application in addition to payment of the identification card fee prescribed by the commissioner.

(3) Voluntary contributions made pursuant to this subsection shall be transmitted to the Department of Public Health for use thereby in providing the blindness education, screening, and treatment program provided by Code Section 31-1-23.

(g) Any eligible applicant child or youth 14 to 17 years of age who does not have an address of residence or is in the legal custody of the Division of Family and Children Services of the Department of Human Services shall not be required to have a parent, guardian, or responsible adult sign or verify the application for an identification card.

History.

Ga. L. 1973, p. 807, § 1; Ga. L. 1976, p. 1421, § 2; Ga. L. 1984, p. 1674, § 1; Ga. L. 1986, p. 395, § 1; Ga. L. 1988, p. 897, § 4; Ga. L. 1990, p. 1913, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 20; Ga. L. 1995, p. 920, § 4; Ga. L. 1996, p. 1250, § 7; Ga. L. 1997, p. 1443, § 2; Ga. L. 2000, p. 951, §§ 5-45, 5-46; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-23/HB 501; Ga. L. 2005, p. 1122, § 4/HB 577; Ga. L. 2008, p. 1154, § 5/SB 488; Ga. L. 2010, p. 932, § 18/HB 396; Ga. L. 2014, p. 710, § 7-1/SB 298; Ga. L. 2015, p. 60, § 4-20/SB 100; Ga. L. 2016, p. 385, § 9/HB 806; Ga. L. 2017, p. 184, § 5/HB 136; Ga. L. 2020, p. 199, § 3-4/HB 463; Ga. L. 2024, p. 323, § 1/SB 387, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(56)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, added subsection (g).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "personal" preceding "identification" in the first sentence of subsection (a), in paragraph (e)(2), and twice in paragraph (f)(2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, in paragraph (a)(11), a comma was deleted following "limitation" and a comma was added following "photograph".

Editor's notes.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att'y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-100 regarding fingerprinting. 1997 Op. Att'y Gen. No. U97-33.

40-5-101. Rules and regulations.

The commissioner shall promulgate rules and regulations under which this article shall be implemented and administered.

History.
Ga. L. 1973, p. 807, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-47.

40-5-102. Applicant to furnish proof of birth date.

The department shall require an applicant for an identification card to furnish a birth certificate or other verifiable evidence stating the applicant's birth date.

History.
Ga. L. 1973, p. 807, § 4; Ga. L. 1990, p. 2048, § 4.

40-5-103. Fee; issuance period; exemptions from fees; renewal.

(a) Except as provided in Code Section 40-5-21.1 and subsections (b) and (c) of this Code section, the department shall collect a fee of $20.00 for a five-year card and a fee of $32.00 for an eight-year card, which fee shall be deposited in the state treasury in the same manner as other motor vehicle driver's license fees.

(a.1) The maximum period for which any identification card shall be issued is eight years.

(b) The department shall collect a fee of $5.00 for the identification card for all persons who are referred by a nonprofit organization which organization has entered into an agreement with the department whereby such organization verifies that the individual applying for such identification card is indigent. The department shall enter into such agreements and shall adopt rules and regulations to govern such agreements.

(c) The department shall not be authorized to collect a fee for an identification card from those persons who are entitled to a free veterans' or honorary driver's license under the provisions of Code Section 40-5-36, from a child or youth who is in the legal custody of the Division of Family and Children Services of the Department of Human Services, or from an individual receiving extended care youth services from such division.

(d) The department shall not be authorized to collect a fee for an identification card from any person:

(1) Who swears under oath that he or she desires an identification card in order to vote in a primary or election in Georgia and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and

(2) Who produces evidence that he or she is registered to vote in Georgia.

This subsection shall not apply to a person who has been issued a driver's license in this state.

(e) The commissioner may by rule authorize incentive discounts where identification cards are renewed by Internet, telephone, or mail. Any person who has previously been issued a driver's license who transitions from such license or applies for an identification card in addition to such license shall be eligible for such incentive discounts.

(f)(1) Every identification card shall be renewed on or before its expiration upon application, payment of the required fee, and, if applicable, satisfactory completion of any other requirements imposed by law.

(2) An application for renewal of an identification card may be submitted by:

(A) Personal appearance before the department; or

(B) Subject to rules or regulations of the department consistent with considerations of public safety and efficiency of service to identification card holders, means other than personal appearance which may include, without limitation, by mail or electronically. The department may by such rules or regulations exempt persons renewing, obtaining, or transitioning to identification cards under this paragraph from any surrender requirement imposed under Georgia law.

(3) Notwithstanding any other provision of this Code section, there shall be no fee whatsoever for replacement of any identification card solely due to a change of the identification card holder's name or address, provided that such replacement identification card shall be valid only for the remaining period of such original term; and provided, further, that only one such free replacement identification card may be obtained within the period for which the identification card was originally issued. Any application for the replacement of a lost identification card or due to a change in the identification card holder's name or address submitted within 150 days of the expiration of said identification card shall be treated as an application for renewal subject to the applicable fees as set forth in this Code section.

History.

Ga. L. 1973, p. 807, § 3; Ga. L. 1983, p. 461, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 26; Ga. L. 2000, p. 951, § 5-48; Ga. L. 2005, p. 253, § 66/HB 244; Ga. L. 2005, p. 334, § 17-24/HB 501; Ga. L. 2006, p. 3, § 3/SB 84; Ga. L. 2008, p. 171, § 8/HB 1111; Ga. L. 2010, p. 9, § 1-81/HB 1055; Ga. L. 2010, p. 932, § 19/HB 396; Ga. L. 2011, p. 355, § 14/HB 269; Ga. L. 2017, p. 184, § 6/HB 136; Ga. L. 2024, p. 323, § 2/SB 387, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, added ", from a child or youth who is in the legal custody of the Division of Family and Children Services of the Department of Human Services, or from an

individual receiving extended care youth services from such division" at the end of subsection (c).

Cross references.

Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, subsection (d), as enacted by Ga. L. 2005, p. 334, § 17-24/HB 501, was redesignated as subsection (e).

Editor's notes.

Ga. L. 2005, p. 253, § 67/HB 244, not codified by the General Assembly, provides for severability.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Georgia St. U.L. Rev. 145 (2006).

JUDICIAL DECISIONS

Requiring photo ID to vote. — Because it was likely that the voting organizations could prevail on the merits of their claims that the photo identification requirement of O.C.G.A. § 21-2-417 violated the Twenty-Fourth Amendment, a preliminary injunction issued preventing the statute's enforcement or application; having to buy the photo ID, the cost of which had also increased pursuant to O.C.G.A. § 40-5-103(a), placed a cost on voting. Common Cause/GA v. Billups, 406 F. Supp. 2d 1326, 2005 U.S. Dist. LEXIS 26222 (N.D. Ga. 2005), dismissed in part, No. 4:05-CV-0201-HLM, 2006 U.S. Dist. LEXIS 116451 (N.D. Ga. June 29, 2006), dismissed in part, No. 4:05-CV-0201-HLM, 2007 U.S. Dist. LEXIS 117246 (N.D. Ga. Aug. 17, 2007).

40-5-104. False statement in application.

Any person who knowingly makes any false statement in an application for an identification card provided for by this article shall be guilty of a violation of Code Section 16-10-20.

History.

Ga. L. 1973, p. 807, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 2002, p. 551, § 5.

Cross references.

Identity fraud, § 16-9-120 et seq.

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 81 (2002).

40-5-105. Application of Code Section 40-5-2.

The provisions of Code Section 40-5-2 regarding the maintenance and disclosure of department records shall apply, where relevant, to those records maintained or received by the department in connection with identification cards issued under this article.

History.

Code 1981, § 40-5-105, enacted by Ga. L. 1997, p. 1446, § 3.

Law reviews.

For article commenting on the 1997 enactment of this Code section, see 14 Georgia St. U.L. Rev. 196 (1997).

40-5-106. Impact of display to officer of identification in electronic format.

Any person utilizing a wireless telecommunications device as such

term is defined in Code Section 40-6-241 to display his or her identification card in electronic format shall not be considered to have consented to a search of such device by a law enforcement officer.

History.
Code 1981, § 40-5-106, enacted by Ga. L. 2020, p. 199, § 3-5/HB 463.
Cross references.
Security from unwarrantable search and seizure, U.S. Const., amend. 4.
Security from unreasonable search and seizure, Ga. Const. 1983, Art. I, Sec. I, Para. XIII and § 1-2-6.
Searches and seizures generally, § 17-5-1 et seq.

40-5-107. Issuance of identification cards upon release from confinement.

(a) The department, in coordination with the Department of Corrections, may issue an identification card to any resident of this state lacking an identification card upon the completion of a term of incarceration in any prison or detention facility of this state or its departments or agencies and upon submission of the documentation required by Code Section 40-5-100.

(b) The Department of Corrections may provide to the department copies of any documentation in its possession required for issuance of an identification card pursuant to Code Section 40-5-100. The Department of Corrections may provide an incarcerated person with information on the documentation required to obtain an identification card pursuant to Code Section 40-5-100 and may assist such person in making requests for official copies of such required documentation.

History.
Code 1981, § 40-5-107, enacted by Ga. L. 2023, p. 548, § 1/SB 218, effective July 1, 2023; Ga. L. 2024, p. 1052, § 4(57)/SB 448, effective July 1, 2024.
Effective date.
This Code section became effective July 1, 2023.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "an identification card" for "a personal identification card" throughout subsections (a) and (b).

ARTICLE 6

MISCELLANEOUS OFFENSES AND JURISDICTION OF OFFENSES

RESEARCH REFERENCES

ALR.
Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375; 53 A.L.R.2d 850.
What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

40-5-120. Unlawful use of license or identification card; penalties for violations of chapter generally.

It is a misdemeanor for any person to:

(1) Display or cause or permit to be displayed or have in his or her possession any canceled, revoked, or suspended driver's license or identification card issued pursuant to Code Section 40-5-100;

(2) Fail or refuse to surrender to the department upon lawful demand any driver's license or identification card issued pursuant to Code Section 40-5-100 which has been suspended, revoked, disqualified, or canceled;

(3) Permit any unlawful use of a driver's license or identification card issued pursuant to Code Section 40-5-100 issued to such person;

(4) Do any act forbidden or fail to perform any act required by this chapter for which a criminal sanction is not provided elsewhere in this chapter; or

(5) Scan another person's driver's license, permit, or identification card without the person's prior knowledge and consent. If a person consents to the scanning of his or her driver's license, permit, or identification card, the information collected may be stored and used for any legitimate purpose. Each unlawful act of storage, disclosure, or usage in violation of this paragraph shall be considered a separate violation of this Code section. This prohibition shall not apply to law enforcement officers or any governmental entity that scans a driver's license, permit, or identification card to verify the contents thereof or to gather information for use for any governmental purpose.

History.

Code 1933, § 68B-401, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 14; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 920, § 5; Ga. L. 2010, p. 932, § 20/HB 396; Ga. L. 2024, p. 1052, § 4(58)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "identification card" for "personal identification card" in paragraphs (1), (2), and (3).

Cross references.

Suspension of driver's license for conviction for fraudulent or fictitious use of license, § 40-5-54.

Use of false name or making false statement in application, § 40-5-125.

JUDICIAL DECISIONS

Punishment for failure to carry license. — Legislative intent in reducing the punishment for failure of a licensee to have the licensee's driver's license in the licensee's possession when operating a vehicle to a fine of ten dollars precluded imposition of a sentence to a consecutive 12 months' probation. Crain v. State, 197 Ga. App. 729, 399 S.E.2d 289, 1990 Ga. App. LEXIS 1454 (1990).

Fines for misdemeanors. — Paragraph (7) (now paragraph (4)) of O.C.G.A. § 40-5-120 makes driving with an expired driver's license (O.C.G.A.

§ 40-5-20(a)) a misdemeanor; and since misdemeanors may be punished by a fine as high as $1,000, a fine of $35.00 is clearly within the statutory limits and not subject to review. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917, 1983 Ga. App. LEXIS 1951 (1983).

Nonissuance of citation does not negate reasonableness of stop. — If an officer stops a vehicle in the good faith belief that a traffic violation has been committed, the officer's ultimate failure to issue a traffic citation will not preclude the traffic offense from evincing the reasonable suspicion which served to justify the officer's initial stop of the vehicle. Once a stop is effected, a defendant is subject to custodial arrest for operating a motor vehicle without a valid driver's license. State v. Chambers, 194 Ga. App. 609, 391 S.E.2d 657, 1990 Ga. App. LEXIS 266 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Any misdemeanor offenses arising under paragraph (5) of O.C.G.A. § 40-5-120 are offenses for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 10-6.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 258 et seq.

40-5-121. Driving while license suspended or revoked.

(a) Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than $500.00 nor more than $1,000.00. Such fingerprints, taken upon conviction, shall be forwarded to the Georgia Crime Information Center where an identification number shall be assigned to the individual for the purpose of tracking any future violations by the same offender. For the second and third conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than

$1,000.00 nor more than $2,500.00. For the fourth or subsequent conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, and there may be imposed in addition thereto a fine of not less than $2,500.00 nor more than $5,000.00.

(b)(1) The department, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the license of such person was suspended, disqualified, or revoked, including suspensions under subsection (e) of Code Section 40-5-75, shall impose an additional suspension or disqualification of six months. Upon the expiration of six months, the department shall reinstate the license. The reinstatement fee for a first such conviction within a five-year period shall be $210.00 or $200.00 if paid by mail. The reinstatement fee for a second such conviction within a five-year period shall be $310.00 or $300.00 if paid by mail. The reinstatement fee for a third or subsequent such conviction within a five-year period shall be $410.00 or $400.00 if paid by mail.

(2) The court shall be required to confiscate the license, if applicable, and attach it to the uniform citation and forward it to the department within ten days of conviction. The period of suspension or disqualification provided for in this Code section shall begin on the date the person is convicted of violating this Code section.

(c) For purposes of pleading nolo contendere, only one nolo contendere plea will be accepted to a charge of driving without being licensed or with a suspended or disqualified license within a five-year period as measured from date of arrest to date of arrest. All other nolo contendere pleas in this period will be considered convictions. For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction. There shall be no limited driving permit available for a suspension or disqualification under this Code section.

(d) Notwithstanding the limits set forth in Code Section 40-5-124 and in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishment for a misdemeanor or misdemeanor of a high and aggravated nature as applicable and provided for in this Code section upon a conviction of a nonfelony charge of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

History. Code 1933, § 68B-402, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1979, p. 1049, § 1; Ga. L. 1983, p. 1000, § 10; Ga. L.

1984, p. 22, § 40; Ga. L. 1988, p. 897, § 5; Ga. L. 1989, p. 350, § 1; Ga. L. 1989, p. 519, § 15; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 5; Ga. L. 1992, p. 1128, § 1; Ga. L. 1999, p. 391, § 6; Ga. L. 2000, p. 951, § 5-49; Ga. L. 2004, p. 631, § 40; Ga. L. 2006, p. 449, § 12/HB 1253; Ga. L. 2008, p. 1137, § 3/SB 350; Ga. L. 2009, p. 65, § 3/SB 196; Ga. L. 2009, p. 679, § 9/HB 160; Ga. L. 2015, p. 60, § 4-21/SB 100; Ga. L. 2016, p. 443, § 4-9/SB 367.

Cross references.

Provisions regarding operation of motor vehicle during suspension of license, registration, or operating privilege, § 40-9-8.

Editor's notes.

Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Heidi's Law.'"

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

Law reviews.

For note on 1999 amendment to this Code section, see 16 Georgia St. U.L. Rev. 200 (1999).

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 322 are included in the annotations for this Code section.

There is no element of criminal intent in a violation of O.C.G.A. § 40-5-121. King v. State, 226 Ga. App. 576, 486 S.E.2d 904, 1997 Ga. App. LEXIS 631 (1997), rev'd on other grounds, 270 Ga. 367, 509 S.E.2d 32, 1998 Ga. LEXIS 1199 (1998), vacated, 236 Ga. App. 54, 514 S.E.2d 484, 1999 Ga. App. LEXIS 36 (1999).

License suspension interferes with liberty interest. — Defendant's challenge to the defendant's misdemeanor traffic convictions by a motion to vacate was not an appropriate remedy and the defendant's motion could not be construed as a motion for arrest of judgment or other alternative motion because the motion was untimely under O.C.G.A. § 40-13-33(a); the 180-day limit applied to any challenge that could have been brought by habeas corpus, and suspension of a driver's license interfered with a liberty interest. Munye v. State, 342 Ga. App. 680, 803 S.E.2d 775, 2017 Ga. App. LEXIS 354 (2017), cert. denied, No. S18C0239, 2018 Ga. LEXIS 236 (Ga. Apr. 16, 2018).

Habitual violator subject to different sentencing. — Because the equal protection clause of the Fourteenth Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. Gaines v. State, 260 Ga. 267, 392 S.E.2d 524, 1990 Ga. LEXIS 247 (1990).

Notice to defendant required. — One of the elements of driving while one's license is suspended is notice to the defendant of action in suspending the license, and absent proof by the state of actual or legal notice to the defendant a conviction for that offense cannot be sustained. Sumner v. State, 184 Ga. App. 374, 361 S.E.2d 536, 1987 Ga. App. LEXIS 2259 (1987); Farmer v. State, 222 Ga. App. 591, 474 S.E.2d 760, 1996 Ga. App. LEXIS 918 (1996).

Actual or legal notice to the defendant of the suspension of the defendant's license is an element of the offense of driving while defendant's license is suspended. State v. Brooks, 194 Ga. App. 465, 390 S.E.2d 673, 1990 Ga. App. LEXIS 112 (1990).

Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions

provided for in O.C.G.A. § 40-5-1 et seq., and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. State v. Fuller, 289 Ga. App. 283, 656 S.E.2d 902, 2008 Ga. App. LEXIS 71 (2008), superseded by statute as stated in Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Because there was no evidence that a defendant received notice of the defendant's license suspension for excessive violation points under O.C.G.A. § 40-5-57, a conviction of driving with a suspended license in violation of O.C.G.A. § 40-5-121 was properly reversed. Under O.C.G.A. § 40-5-60, notice of a suspension was required for a conviction, and O.C.G.A. § 40-5-57 did not provide for notice by operation of law. State v. Fuller, 289 Ga. App. 283, 656 S.E.2d 902, 2008 Ga. App. LEXIS 71 (2008), superseded by statute as stated in Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Actual or constructive notice of suspension not within officer's knowledge. — Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Service date. — Defendant's conviction for driving on a suspended license was reversed since the defendant was never given a uniform citation listing the service date, in contravention of the clear mandate of O.C.G.A. § 40-5-121, nor a copy of the arrest warrant. Defendant's license had been suspended under O.C.G.A. § 40-5-56 for failing to appear at a hearing for a traffic offense. Mobley v. State, 253 Ga. App. 57, 557 S.E.2d 488, 2001 Ga. App. LEXIS 1409 (2001).

Notice sufficient evidence to convict. — Official notification of the suspension of one's license to drive was sufficient evidence to convict the driver of a violation of former Code 1933, § 68B-402 (see now O.C.G.A. § 40-5-121). Furman v. State, 144 Ga. App. 824, 242 S.E.2d 746, 1978 Ga. App. LEXIS 1801 (1978).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with notice of suspension pursuant to O.C.G.A. § 40-5-60; the state introduced the defendant's driver's license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. Sledge v. State, 312 Ga. App. 97, 717 S.E.2d 682, 2011 Ga. App. LEXIS 903 (2011).

Hearsay evidence not sufficient for conviction. — When the only evidence that the defendant was driving without a license was hearsay from one of the police officers, not covered by one of the exceptions and not otherwise admissible as necessary and demonstrably trustworthy, reversal of the conviction for driving without a license was required. Day v. State, 235 Ga. App. 771, 510 S.E.2d 579, 1998 Ga. App. LEXIS 1610 (1998).

Corroboration not required for defendant's admission to driving on suspended license. — Defendant's statement to an officer that the defendant's license was suspended was an admission and not a confession requiring corroboration under former O.C.G.A. § 24-3-53 (see now O.C.G.A. § 24-8-823) because the defendant's statement did not

include an admission to driving on a highway of the state, which was an essential element of the offense of driving with a suspended license under O.C.G.A. § 40-5-121(a). Griffin v. State, 302 Ga. App. 807, 692 S.E.2d 7, 2010 Ga. App. LEXIS 142 (2010), cert. denied, No. S10C1172, 2010 Ga. LEXIS 699 (Ga. Sept. 7, 2010).

Technical violations of statute did not render arrest illegal. — Although there may have been technical violations of O.C.G.A. § 40-5-121(b)(1) in an officer's arrest of a driver for driving with a suspended license, the driver's statement that the driver's license was suspended provided the officer with probable cause to arrest, and any violation of § 40-5-121(b)(1) did not render the subsequent search of a van improper. Agnew v. State, 298 Ga. App. 290, 680 S.E.2d 141, 2009 Ga. App. LEXIS 658 (2009).

Evidence sufficient for conviction. — See D'Ambrosio v. State, 245 Ga. App. 12, 536 S.E.2d 218, 2000 Ga. App. LEXIS 790 (2000), cert. denied, No. S00C1816, 2000 Ga. LEXIS 802 (Ga. Oct. 20, 2000), cert. denied, 532 U.S. 962, 121 S. Ct. 1496, 149 L. Ed. 2d 381, 2001 U.S. LEXIS 2797 (2001).

Evidence that the defendant's license was suspended at the time the defendant was arrested following a high-speed motor vehicle chase with police was sufficient to support defendant's conviction for driving with a suspended license. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662, 2003 Ga. App. LEXIS 837 (2003).

Driving with a suspended license conviction was affirmed after the state proved that the defendant received notice of the defendant's license suspension by introducing the defendant's driving record; an officer testified that the officer was certified to run driving histories and that the officer obtained a printout of the defendant's driving history from an approved computer terminal at the Georgia Department of Public Safety. Fannin v. State, 267 Ga. App. 413, 599 S.E.2d 355, 2004 Ga. App. LEXIS 668 (2004).

Defendant's conviction for improper stopping in violation of O.C.G.A. § 40-6-202 was based on sufficient evidence as the fact that the vehicle was blocking only one lane of traffic, rather than the entire street, was adequate because the vehicle was not legally parked for purposes of § 40-6-202; further, since the defendant was sitting in the driver's seat of the car with a suspended license, which the defendant clearly knew about because the defendant had received citations for driving with a suspended license previously, there was sufficient circumstantial evidence to convict the defendant of driving without a valid license in violation of O.C.G.A. § 40-5-121. Marsengill v. State, 275 Ga. App. 840, 622 S.E.2d 58, 2005 Ga. App. LEXIS 1119 (2005).

Defendant's conviction of driving a motor vehicle with a suspended license was supported by sufficient evidence as the defendant could not produce a driver's license, and the officer's check on the status of the defendant's license revealed that the license was suspended. Mayfield v. State, 276 Ga. App. 544, 623 S.E.2d 725, 2005 Ga. App. LEXIS 1310 (2005).

Evidence that the defendant's license was suspended including a written notice given to, signed by, and explained to the defendant, an officer's observation of the defendant driving after the date of that notice, and the defendant's admission to the officer, sufficiently established the elements of driving with a suspended license. Wilson v. State, 278 Ga. App. 420, 629 S.E.2d 110, 2006 Ga. App. LEXIS 329 (2006).

Admission that the defendant did not have a driver's license, coupled with the certified copy of the license-suspension notice that was admitted at trial, sufficed to sustain a conviction for driving with a suspended license. Johnson v. State, 279 Ga. App. 98, 630 S.E.2d 612, 2006 Ga. App. LEXIS 458 (2006).

Despite a lack of direct evidence to show that the defendant drove the victim's vehicle, a conviction for driving with a suspended license was upheld as sufficient circumstantial evidence existed that showed the defendant returned the vehicle to the parking lot where the victim left the vehicle running with the keys in the ignition, and the police saw the defendant walking away from the vehicle after

doing so. Wheeler v. State, 281 Ga. App. 158, 635 S.E.2d 415, 2006 Ga. App. LEXIS 1026 (2006).

In a case where the defendant was convicted of driving with a suspended license, there was sufficient evidence that the defendant was driving since: the vehicle involved was owned by a person with whom the defendant lived; the defendant had driven the vehicle on other occasions while the defendant's license was suspended; the vehicle was driven to the defendant's home by a driver whom an officer believed to be the defendant; and after the vehicle was abandoned at the defendant's residence, the defendant arrived on the scene wearing clothes similar to those of the driver. Williams v. State, 285 Ga. App. 190, 645 S.E.2d 676, 2007 Ga. App. LEXIS 472 (2007).

Although a police car video of a defendant's traffic stop had poor audio quality resulting in inaudible portions, the defendant's admissions that the defendant's license was suspended were admissible as part of the res gestae pursuant to former O.C.G.A. § 24-3-3 (see now O.C.G.A. § 24-8-803). The defendant could attack the weight and credibility of the recording, but not the recording's admissibility; thus, the evidence was sufficient to convict the defendant of driving with a suspended license. Steed v. State, 309 Ga. App. 546, 710 S.E.2d 696, 2011 Ga. App. LEXIS 393 (2011), cert. dismissed, No. S12C0138, 2012 Ga. LEXIS 381 (Ga. Apr. 24, 2012).

Defendant's own testimony that the defendant had no license and had knowledge that the defendant's license was suspended and the officer's observation of the defendant exiting the driver's side of the vehicle was sufficient to support the conviction for driving with a suspended license. Daniels v. State, 321 Ga. App. 748, 743 S.E.2d 440, 2013 Ga. App. LEXIS 401 (2013).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Evidence supported the defendant's conviction for DUI and driving with a suspended license, O.C.G.A. §§ 40-5-121 and 40-6-391, based on evidence that the homeowners called 911 to report the defendant leaving their home intoxicated, that police observed signs of impairment (odor of alcohol, horizontal gaze nystagmus clues, and positive breath test), and a blood test. Danley v. State, 342 Ga. App. 61, 802 S.E.2d 851, 2017 Ga. App. LEXIS 306 (2017), overruled in part, McClure v. State, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. LEXIS 643 (2019).

There was sufficient evidence to support the defendant's conviction for driving with a suspended license, including the defendant's admission that at the time of the incident the defendant's driver's license was suspended and that the defendant was driving to the apartment complex to pick up a friend, and evidence that under the conditions of the suspended or limited license, the defendant was only allowed to drive to and from work and in other limited situations, which did not include picking up a friend. Thelusma v. State, 356 Ga. App. 495, 847 S.E.2d 852, 2020 Ga. App. LEXIS 470 (2020).

Effect of premature issuance. — Premature issuance of a driver's license to the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and

as permitted by statutory procedure. Payne v. State, 209 Ga. App. 780, 434 S.E.2d 543, 1993 Ga. App. LEXIS 985 (1993); Grisson v. State, 237 Ga. App. 559, 515 S.E.2d 857.

Sentence of 30 days in jail for a violation of Ga. L. 1937, p. 322 is lawful. Bush v. State, 108 Ga. App. 638, 134 S.E.2d 490, 1963 Ga. App. LEXIS 728 (1963) (decided under Ga. L. 1937, p. 322).

Evidence supported finding that defendant had actual notice that defendant's license was suspended since a police officer had advised defendant, after running a computer check, that the license was suspended. Arnold v. State, 189 Ga. App. 900, 377 S.E.2d 918, 1989 Ga. App. LEXIS 55 (1989).

Prosecutorial discretion. — Even if the defendant admitted notice that the defendant had the legal status of a habitual violator, the state was not bound to charge the defendant with a O.C.G.A. § 40-5-58 felony and was not precluded from charging defendant with a O.C.G.A. § 40-5-121 misdemeanor. The decision of whether to prosecute and what charges to file are decisions that rest in the prosecutor's discretion. Noeske v. State, 181 Ga. App. 778, 353 S.E.2d 635, 1987 Ga. App. LEXIS 1555 (1987).

Prosecutor was fully authorized to charge defendant by accusation, and nothing within O.C.G.A. § 40-5-121 governed the prosecutor's authority to charge the defendant. Allman v. State, 258 Ga. App. 792, 575 S.E.2d 710, 2002 Ga. App. LEXIS 1573 (2002).

Habitual violator felony status. — It is a misdemeanor for one to drive while one's license is suspended or revoked, but if, pursuant to O.C.G.A. § 40-5-58, the license of the driver had been revoked because the driver was a habitual violator, then the action is considered a more serious offense and constitutes a felony. That is the meaning of the exception contained in subsection (a) of O.C.G.A. § 40-5-121. Noeske v. State, 181 Ga. App. 778, 353 S.E.2d 635, 1987 Ga. App. LEXIS 1555 (1987).

Lesser included offense of operating motor vehicle after revocation as habitual violator. — Driving with a suspended or revoked license was a lesser included offense of operating a motor vehicle after revocation of one's license as an habitual violator since the defendant had been stopped by the police while operating an automobile on an interstate highway at a time when the defendant's Georgia driver's license was revoked due to the defendant's having been declared a habitual violator. Parks v. State, 180 Ga. App. 31, 348 S.E.2d 481, 1986 Ga. App. LEXIS 2073 (1986).

Double jeopardy plea when both §§ 40-5-58 and 40-5-121 charged. — After a defendant was convicted of driving with a suspended license in violation of O.C.G.A. § 40-5-121 and was later indicted for a violation of O.C.G.A. § 40-5-58, based upon the defendant's operation of a motor vehicle after defendants had been notified that the defendant had been declared a habitual violator, the trial court was ordered to reconsider the court's denial of the defendant's double-jeopardy plea on grounds that the same conduct established the commission of all crimes. Whaley v. State, 260 Ga. 384, 393 S.E.2d 681, 1990 Ga. LEXIS 280 (1990).

Attack on underlying conviction in de novo appeal. — In view of an Alabama conviction for driving with a suspended license, the Department of Public Safety notified the driver that their license would be suspended for an additional year, on appeal to the superior court, the driver contended the driver had been improperly convicted because the driver had not received notice of the suspension before the driver's arrest, and the superior court determined that in fact the driver did not receive notice that the driver's license had been suspended until eight or ten hours after the driver was charged with driving with a suspended license and thus concluded that the additional suspension period was improper, it was held that a collateral attack on an underlying conviction which is used to support a license suspension may not be made in a de novo appeal unless the conviction is void on the conviction's face and the driving with a suspended license conviction in Alabama was not void on the conviction's face. Accordingly, the superior court erred in ruling the license suspension to be

improper. Earp v. Fletcher, 183 Ga. App. 593, 359 S.E.2d 456, 1987 Ga. App. LEXIS 2032 (1987).

Record of suspension properly admitted. — When the defendant was charged with driving with a suspended license, a certified copy of the defendant's notice of suspension prepared in connection with an earlier DUI conviction and a computer printout establishing the date of the suspension were properly admitted under former O.C.G.A. § 24-3-17 (see now O.C.G.A. § 24-9-924). Before the printout was submitted to the jury, the trial court required that the prejudicial information on the printout be redacted. Hann v. State, 292 Ga. App. 719, 665 S.E.2d 731, 2008 Ga. App. LEXIS 851 (2008).

Driving on private parking lot. — Conviction for driving with suspended license was reversed since the defendant only drove around a private parking lot, and never drove on a "public highway" as required by statute. Barrett v. State, 172 Ga. App. 485, 323 S.E.2d 654, 1984 Ga. App. LEXIS 2552 (1984).

Officers knowledge of driver's DUI as probable cause for stop. — *Unpublished decision:* Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers to believe the defendant had not yet applied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. United States v. Woods, 385 Fed. Appx. 914, 2010 U.S. App. LEXIS 13642 (11th Cir. 2010).

OPINIONS OF THE ATTORNEY GENERAL

No verification needed that records show date of receipt of notice. — The 1989 amendment to O.C.G.A. § 40-5-121 permits a law enforcement officer to charge a driver with the offense of driving with a suspended license without verifying that the records of the Georgia Department of Public Safety show a date of receipt of an official notice of suspension, but the amendment does not authorize a conviction without proof of receipt of actual or legal notice of the suspension. 1989 Op. Att'y Gen. No. U89-27.

Mandatory imprisonment on first conviction. — O.C.G.A. § 40-5-121 requires a mandatory imprisonment of not less than two days nor more than six months upon the first misdemeanor conviction for driving while a license is suspended, revoked, or disqualified. The sentence may be suspended or probated pursuant to the authority provided in O.C.G.A. § 17-10-1(a). 1992 Op. Att'y Gen. No. U92-10.

Fingerprinting required for violators. — Persons violating O.C.G.A. § 40-5-121 for driving while suspended, disqualified, or revoked should be fingerprinted. 2008 Op. Att'y Gen. No. 2008-6; 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 260, 261.
C.J.S.
60 C.J.S., Motor Vehicles, § 349 et seq.
ALR.
Second offense, in operating vehicle or other instrumentality without proper license or permit, as applied to several vehicles or instrumentalities owned or operated by same person, 158 A.L.R. 772.
Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

40-5-122. Permitting unlicensed person to drive.

No person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter or who is not licensed for the type or class of vehicles to be driven or in violation of any of the provisions of this chapter.

History.
Code 1933, § 68B-404, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Purpose. — O.C.G.A. § 40-5-122 was intended to protect the public by preventing incompetent, inexperienced, or improper drivers from gaining access to public highways and causing injury and damage thereon. It was not enacted to allow unlicensed drivers to obtain recovery for personal injuries. Spivey v. Sellers, 185 Ga. App. 241, 363 S.E.2d 856, 1987 Ga. App. LEXIS 2514 (1987).

Effect of international agreement on licensing. — International agreement known as the Convention on Road Traffic supersedes the statutory provisions of the State of Georgia to the extent state statutory provisions are in conflict with the provisions of that agreement. A driver authorized to drive in participating countries pursuant to the agreement is required only to "hold a driving permit." Schofield v. Hertz Corp., 201 Ga. App. 830, 412 S.E.2d 853, 1991 Ga. App. LEXIS 1598 (1991), cert. denied, No. S92C0324, 1992 Ga. LEXIS 39 (Ga. Jan. 10, 1992).

Negligent entrustment. — Under the doctrine of negligent entrustment, the entrustor's negligence must concur with the driver's negligence to proximately cause damage to the plaintiff. Unless the plaintiff can prove the driver of the automobile was negligent, the entrustor's failure to ascertain whether the driver had a valid license is of no consequence. Schofield v. Hertz Corp., 201 Ga. App. 830, 412 S.E.2d 853, 1991 Ga. App. LEXIS 1598 (1991), cert. denied, No. S92C0324, 1992 Ga. LEXIS 39 (Ga. Jan. 10, 1992).

Duty to discover "reputation" of driver. — There is no duty on the owner of an automobile to investigate the competency of one to whom the owner lends a car and to discover one's "reputation" as a driver in order to avoid being negligent if it should subsequently be determined that the driver indeed had a reputation for recklessness and incompetency in driving. Worthen v. Whitehead, 196 Ga. App. 678, 396 S.E.2d 595, 1990 Ga. App. LEXIS 1014 (1990).

Operator driving outside area given to operator by owner. — An owner of an automobile who knowingly permits a vehicle to be operated by an untrained and unlicensed driver who was learning to drive is not relieved of liability

for damages resulting from the operator's incompetence by the fact that the operator was driving outside of the area in which the owner had given the operator permission to drive. Medlock v. Barfield, 90 Ga. App. 759, 84 S.E.2d 113, 1954 Ga. App. LEXIS 806 (1954) (decided under Ga. L. 1937, p. 322).

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 262.

C.J.S.

60 C.J.S., Motor Vehicles, § 349.

ALR.

Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 A.L.R. 475.

Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R.2d 978.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

Rental agency's liability for negligent entrustment of vehicle, 78 A.L.R.3d 1170.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

40-5-123. Permitting unauthorized minor to drive.

No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized under this chapter or in violation of any of the provisions of this chapter. This Code section shall not apply to any vehicle not required to be registered by the laws of this state.

History.

Code 1933, § 68B-403, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.

RESEARCH REFERENCES

Am. Jur. 2d.

7A Am. Jur. 2d, Automobiles and Highway Traffic, § 262.

C.J.S.

60 C.J.S., Motor Vehicles, § 349.

ALR.

Liability of owner for negligence of one permitted by the former's servant, or member of his family, to drive automobile, 44 A.L.R. 1382; 54 A.L.R. 851; 98 A.L.R. 1043; 134 A.L.R. 974.

Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R.2d 978.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

40-5-124. Jurisdiction of offenses.

(a) Any person charged with an offense under this chapter may be tried in any municipal court of any municipality if the offense occurred within the corporate limits of such municipality. Such courts are

granted the jurisdiction to try and dispose of such cases. The jurisdiction of such courts shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases. Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality. Any person charged with an offense under this chapter shall be entitled to request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(b) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter.

History.
Code 1933, § 68B-405, enacted by Ga. L. 1977, p. 1038, § 1; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Cross references.
Prosecution of traffic offenses generally, § 40-13-1 et seq.

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

40-5-125. Fraudulent driver's license or identification card; false statements or commission of fraud in applications; criminal violation.

(a) It is a misdemeanor for any person to:

(1) Lend his or her driver's license or identification card to any other person or permit knowingly the use thereof by another person; or

(2) Display or represent as his or her own any driver's license or identification card not issued to him or her.

(b) Any person who uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license provided for by this chapter shall be guilty of a violation of Code Section 16-10-20.

(c) Any person who knowingly makes any false statement, conceals a material fact, or otherwise commits a fraud during the driver's license examination for a driver's license, including a commercial driver's license or commercial driver's instruction permit, shall be guilty of a violation of Code Section 16-10-20.

History.
Code 1981, § 40-5-125, enacted by Ga. L. 1989, p. 519, § 16; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 8; Ga. L. 2000,

p. 951, § 5-50; Ga. L. 2002, p. 551, § 6; Ga. L. 2015, p. 1370, § 1/HB 118.

Cross references.

Identity fraud, § 16-9-120 et seq.

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 81 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offenses arising under O.C.G.A. § 40-5-125(a) require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

ARTICLE 7

COMMERCIAL DRIVERS' LICENSES

40-5-140. Short title.

This article shall be known and may be cited as the "Uniform Commercial Driver's License Act."

History.

Code 1981, § 40-5-140, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.

JUDICIAL DECISIONS

Commercial truck driver was independent contractor. — Considerable skill and licensing requirements for plaintiff's profession as a commercial truck driver (49 U.S.C. § 31302; O.C.G.A. § 40-5-140) indicated that the plaintiff was an independent contractor, not an employee for purposes of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e to 2000e-17. Taylor v. BP Express, Inc., No. CV 407-182, 2008 U.S. Dist. LEXIS 95313 (S.D. Ga. Nov. 24, 2008).

40-5-141. Purpose and applicability of article; liberal construction.

The purpose of this article is to implement the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting commercial drivers to hold only one license; disqualifying commercial drivers who have committed certain criminal or other offenses or serious traffic violations; and strengthening commercial driver licensing and testing standards. This article is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this article conflicts with general driver licensing provisions, this article shall prevail. Where this article is silent, the general driver licensing provisions shall apply.

History.

Code 1981, § 40-5-141, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.

40-5-142. Definitions.

As used in this article, the term:

(1) "Alcohol" means:

(A) Beer, ale, port, or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(B) Wine of not less than one-half of 1 percent of alcohol by volume;

(C) Distilled spirits which means that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced; or

(D) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per 100 milliliters of blood;

(B) The number of grams of alcohol per 210 liters of breath; or

(C) The number of grams of alcohol per 67 milliliters of urine.

(3) "Commerce" means:

(A) Trade, traffic, and transportation within the jurisdiction of the United States between locations in a state and between a location in a state and a location outside such state including a location outside the United States; and

(B) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A) of this paragraph.

(4) "Commercial Driver License Information System" (CDLIS) means the information system established pursuant to the Commercial Motor Vehicle Safety Act of 1986, Title XII, Public Law 99-570, to serve as a clearing-house for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued pursuant to subsection (c) of Code Section 40-5-147.

(6) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this article to an individual

which authorizes the individual to drive a class of commercial motor vehicle.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating as determined by federal regulation;

(B) If the vehicle is designed to transport 16 or more passengers, including the driver; or

(C) If the vehicle is transporting hazardous materials as designated under 49 U.S.C. Section 5103 and is required to be placarded in accordance with the Motor Carrier Safety Rules prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, subpart F or is transporting any quantity of a material listed as a select agent or toxin in Title 42 C.F.R. Part 73;

provided, however, that, for the purposes of this article, no agricultural vehicle, commercial vehicle operated by military personnel for military purposes, recreational vehicle, or fire-fighting or emergency equipment vehicle shall be considered a commercial motor vehicle. As used in this paragraph, the term "fire-fighting or emergency equipment vehicle" means an authorized emergency vehicle; provided, however, that the vehicle must be equipped with audible and visible signals and shall be subject to traffic regulations in accordance with the requirements of Code Section 40-6-6. As used in this paragraph, the term "agricultural vehicle" means a farm vehicle which is controlled and operated by a farmer, including operation by employees or family members; used to transport agricultural products, farm machinery, or farm supplies to or from a farm; and operated within 150 miles of such person's farm; which vehicle is not used in the operations of a common or contract carrier. Any other waiver by the Federal Motor Carrier Safety Administration pursuant to Federal Law 49 C.F.R. Parts 383 and 384 of the United States Department of Transportation shall supersede state law in authorizing the Department of Driver Services to exempt said classes.

(8) "Controlled substance" means any substance so defined under Code Section 16-13-21 and includes all substances listed in Schedules I through V of 21 C.F.R. Part 1308, as they may be revised from time to time.

(9) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the

law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(10) "Disqualification" means any of the following:

(A) The suspension, revocation, or cancellation of a commercial driver's license by any state or jurisdiction of issuance;

(B) The withdrawal of a person's privilege to drive a commercial motor vehicle by any state or by any other jurisdiction as the result of a violation of any state or local law relating to motor vehicle traffic control, other than parking, vehicle weight, or vehicle defect violations; or

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle.

(11) "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Code Sections 40-5-151 and 40-5-152, "drive" includes operation or actual physical control of a motor vehicle anywhere in this state, in any other state, or in any foreign jurisdiction.

(12) "Driver" means any person who drives, operates, or is in actual physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic or who is required to hold a commercial driver's license.

(13) "Driver's license" means a license issued by a state to any individual which authorizes the individual to drive a motor vehicle.

(13.1) "Driving a vehicle under the influence" means committing any one or more of the following acts while a person is driving or in actual physical control of a moving commercial or noncommercial vehicle:

(A) Driving under the influence, as prescribed by Code Section 40-6-391 or any law or ordinance equivalent thereto in this state, in any other state, or in any foreign jurisdiction; or

(B) Refusal to submit to state administered chemical testing when requested to do so by a law enforcement officer.

(14) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a

commercial motor vehicle or assigns a person to drive a commercial motor vehicle on its behalf.

(14.1) "Fatality" means the death of a person as a result of a motor vehicle crash.

(15) "Felony" means any offense under state or federal law that is punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.

(16) "Foreign jurisdiction" means any jurisdiction other than a state of the United States.

(17) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle, commonly referred to as the "gross combination weight rating" (GCWR), is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units. In the absence of a value specified for the towed unit or units by the manufacturer or manufacturers, the gross vehicle weight rating of a combination (articulated) vehicle is the gross vehicle weight rating of the power unit plus the total weight of the towed unit or units, including the loads on them.

(18) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Section 5103 and is required to be placarded in accordance with the Motor Carrier Safety Rules prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, subpart F or any quantity of a material listed as a select agent or toxin in Title 42 C.F.R. Part 73.

(18.1) "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(18.2) "Major traffic violation" means a conviction of any of the following offenses or a conviction of any law or ordinance equivalent thereto in this state, in any other state, or in any foreign jurisdiction, when operating either a commercial motor vehicle or, unless otherwise specified, a noncommercial motor vehicle:

(A) Driving a vehicle under the influence in violation of Code Section 40-6-391;

(B) Hit and run or leaving the scene of an accident in violation

of Code Section 40-6-270, failure to report striking an unattended vehicle in violation of Code Section 40-6-271, failure to report striking a fixed object in violation of Code Section 40-6-272, or failure to report an accident in violation of Code Section 40-6-273;

(C) Except as provided in subsection (b) of Code Section 40-5-151, any felony in the commission of which a motor vehicle is used;

(D) Driving a commercial motor vehicle while the person's commercial driver's license or commercial driving privilege is revoked, suspended, canceled, or disqualified;

(E) Homicide by vehicle in violation of Code Section 40-6-393;

(F) Racing on highways or streets in violation of Code Section 40-6-186;

(G) Using a motor vehicle in fleeing or attempting to elude an officer in violation of Code Section 40-6-395;

(H) Fraudulent or fictitious use of or application for a license as provided in Code Section 40-5-120 or subsection (c) of Code Section 40-5-125;

(I) Operating a motor vehicle with a revoked, canceled, or suspended registration in violation of Code Section 40-6-15;

(J) Violating Code Sections 16-8-2 through 16-8-9, if the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto or the cargo being transported therein or thereon; or

(K) Refusing to submit to a state administered chemical test requested by a law enforcement officer pursuant to Code Section 40-5-55.

(19) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(19.1) "Noncommercial motor vehicle" means a motor vehicle or combination of vehicles not defined by the term "commercial motor vehicle" in this Code section or in the regulations of the department for the purpose of licensure.

(20) "Nonresident commercial driver's license" means a commercial driver's license issued by a state to any individual who resides in a foreign jurisdiction.

(21) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(21.1) "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events. The term does not include a bus used as a common carrier.

(22) "Serious traffic violation" means conviction of any of the following offenses or a conviction of any law or ordinance equivalent thereto in this state, in any other state, or in any foreign jurisdiction, when operating either a commercial motor vehicle or, unless otherwise specified, a noncommercial motor vehicle:

(A) Speeding 15 or more miles per hour above the posted speed limit;

(B) Reckless driving;

(C) Following another vehicle too closely;

(D) Improper or erratic lane change, including failure to signal a lane change;

(E) A violation, arising in connection with a fatal crash, of state law or a local ordinance, relating to motor vehicle traffic control, excluding parking, weight, length, height, and vehicle defect violations, and excluding homicide by vehicle as defined in Code Section 40-6-393;

(F) A railroad grade crossing violation in a noncommercial motor vehicle;

(G) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(H) Driving a commercial motor vehicle without a commercial driver's license in the driver's immediate possession, and excluding such violations when the person's commercial driver's license or commercial driving privilege is suspended, revoked, canceled, or disqualified;

(I) Driving a commercial motor vehicle without a commercial driver's license of the proper class and endorsements for the specific vehicle being operated or for the passengers or type of cargo transported; or

(J) Use of a wireless telecommunications device in violation of Code Section 40-6-241 while driving a commercial motor vehicle.

(23) "State" means a state of the United States and the District of Columbia.

(24) "Tank vehicle" means any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks as defined by federal law. However, the term "tank vehicle" shall not include a portable tank having a rated capacity under 1,000 gallons.

(25) "United States" means the 50 states and the District of Columbia.

History.

Code 1981, § 40-5-142, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 1058, § 1; Ga. L. 2000, p. 951, § 5-51; Ga. L. 2002, p. 1378, § 4; Ga. L. 2003, p. 484, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-22/HB 501; Ga. L. 2006, p. 449, § 13/HB 1253; Ga. L. 2007, p. 117, § 2/HB 419; Ga. L. 2008, p. 324, § 40/SB 455; Ga. L. 2011, p. 355, § 15/HB 269; Ga. L. 2015, p. 1370, § 2/HB 118; Ga. L. 2018, p. 127, § 7/HB 673; Ga. L. 2019, p. 1056, § 40/SB 52; Ga. L. 2024, p. 1052, § 4(59)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in the undesignated text at the end of subparagraph (7)(C), revised punctuation and deleted "as defined in paragraph (5) of Code Section 40-1-1" following "emergency vehicle" in the second sentence.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, a comma was deleted following "Department of Transportation" at the end of the undesignated language of paragraph (7).

Pursuant to Code Section 28-9-5, in 2007, "state administered" was substituted for "state-administered" in subparagraph (13.1)(B).

Editor's notes.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

U.S. Code.

Provisions concerning the Transportation of Hazardous Materials are codified at 49 U.S.C. § 5101.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Georgia St. U.L. Rev. 139 (2018).

JUDICIAL DECISIONS

Operating vehicle without commercial driver's license. — Evidence presented during the bench trial was sufficient for the trial court to find the defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-146(a), because the state produced evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle (trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "Class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). Williams v. State, 303 Ga. App. 407, 693 S.E.2d 613, 2010 Ga. App. LEXIS 366 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Application to State Forestry Commission vehicles. — There is no exemption from O.C.G.A. § 40-5-142 for vehicles assigned to the State Forestry Commission simply on the basis of that assignment, and any State Forestry Commission vehicle which would otherwise meet the definition of a commercial motor vehicle which is a fire-fighting vehicle or an emergency equipment vehicle is not to be treated as a commercial vehicle. This exemption does not appear to be dependent on exclusive use of this equipment in responding to emergencies so long as the vehicles are fire-fighting or emergency equipment vehicles. All persons who drive any other nonexempt motor vehicle assigned to the State Forestry Commission which meets the definition of a commercial motor vehicle must obtain and possess a commercial driver's license. 1989 Op. Att'y Gen. 89-27.

Weight rating of vehicle requiring commercial driver's license for operation. — Commercial driver's license is required for a driver to operate a motor vehicle when the gross vehicle weight rating as registered with the county tag agent exceeds the amount specified in O.C.G.A. § 40-5-142(7)(A). 1994 Op. Att'y Gen. No. U94-11.

40-5-143. Driving commercial motor vehicle with more than one license prohibited.

No person who drives a commercial motor vehicle shall have more than one driver's license.

History.
Code 1981, § 40-5-143, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.

40-5-144. Notice required by driver of commercial vehicle of certain convictions or license restrictions; information required to be provided to prospective employer.

(a) Any driver of a commercial motor vehicle holding a license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state or any federal, provincial, territorial, or municipal laws of Canada relating to motor vehicle traffic control, other than parking violations, shall notify the department in the manner specified by the department within 30 days of the date of conviction. If the court notifies the department of such conviction, the responsibility of the driver to notify the department shall be waived.

(b) Any driver of a commercial motor vehicle holding a license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or any federal, provincial, territorial, or municipal laws of Canada relating to motor vehicle traffic control, other than parking violations, shall notify his or her employer in writing of the conviction within 30 days of the date of conviction.

(c) Each driver whose driver's license is suspended, revoked, or

canceled by any state; who loses the privilege to drive a commercial motor vehicle in any state for any period; or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) Each person who applies to be a commercial motor vehicle driver shall, at the time of the application, provide the employer with the following information for the ten years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

History. Code 1981, § 40-5-144, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-52.

40-5-145. Duties of employer.

(a) Each employer shall require every commercial motor vehicle driver applicant to provide the information specified in subsection (d) of Code Section 40-5-144.

(b) No employer may knowingly allow, require, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has a driver's license suspended, revoked, or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state; or has been disqualified from driving a commercial motor vehicle;

(2) In which the driver has more than one driver's license;

(3) In which the driver, or the commercial motor vehicle that he or she is driving, or the motor carrier operation, is subject to an out of service order; or

(4) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

History. Code 1981, § 40-5-145, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2003, p. 484, § 4.

Code Commission notes. Pursuant to Code Section 28-9-5, in 2003, a misspelling of "subject" was corrected in paragraph (b)(3).

40-5-146. Operation of commercial motor vehicle without valid license or driving privilege.

(a) Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may operate a commercial motor vehicle unless the person has been issued and is in immediate possession of a commercial driver's license valid for the vehicle he or she is driving.

(b)(1) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, or while subject to a disqualification.

(2) No person may drive a commercial motor vehicle in violation of an out of service order.

History. Code 1981, § 40-5-146, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2006, p. 449, § 14/HB 1253.

JUDICIAL DECISIONS

Evidence sufficient to find defendant guilty of violating O.C.G.A. § 40-5-146(a). — Evidence presented during the bench trial was sufficient for the trial court to find the defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-140 et seq., specifically O.C.G.A. § 40-5-146(a), because the state produced evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle (trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "Class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). Williams v. State, 303 Ga. App. 407, 693 S.E.2d 613, 2010 Ga. App. LEXIS 366 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Weight rating of vehicle requiring commercial driver's license for operation. — Commercial driver's license is required for a driver to operate a motor vehicle when the gross vehicle weight rating as registered with the county tag agent exceeds the amount specified. 1994 Op. Att'y Gen. No. U94-11.

40-5-147. Requirements for issuance of license or instruction permit; administration of skills test by third party; waiver or exemption; disqualification and notice.

(a)(1)(A) Except as otherwise provided in Code Section 40-5-148, no

person shall be issued a commercial driver's license unless that person:

(i) Is a resident of this state;

(ii) Is at least 18 years of age;

(iii) Has completed a commercial driver training course which complies with 49 C.F.R. Parts 383 and 384;

(iv) Has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part 383, subparts G and H; and

(v) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, in addition to any other requirements imposed by state law or federal regulation.

(B) Any test required pursuant to this Code section shall be conducted by the department in English only.

(2) The department may authorize a third party, including an agency of this or another state, an employer, a driver training school, or a public or private high school or a department, agency, or instrumentality of a local government, to administer the skills test specified by this Code section, provided that:

(A) The test is the same which would otherwise be administered by the state;

(B) The third party has entered into an agreement with the state which complies with the requirements set forth in 49 C.F.R. Part 383.75;

(C) The third party complies with all other requirements set by the department by regulations; and

(D) The third party possesses and maintains a surety bond in an amount to be set by the department through regulations. Such amount shall be sufficient to pay for retesting of drivers if required due to examiners engaging in fraudulent activities related to the skills test.

(3) Only the department or the American Association of Motor Vehicle Administrators shall certify examiners to administer the road skills test specified by this Code section. Such certification shall include the performance of a national criminal history background check in accordance with Code Section 35-3-34.2 and the passage of an initial training course that provides the examiner with a fundamental understanding of the objectives of the skills test for

driving a commercial vehicle. A certified examiner shall complete a refresher training course every four years in order to retain certification. Certification shall be revoked for any examiner who fails to complete the refresher course or any other examination deemed appropriate for certification by the department through rules or regulations.

(4) No person who trains or instructs an applicant shall be eligible to administer the skills test required by this Code section to such applicant.

(b) The department may waive the skills test specified in this Code section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. Part 383.77.

(c)(1) A commercial driver's instruction permit may be issued to any individual who holds a valid noncommercial Class C license or has passed all required tests for the operation of a noncommercial Class C vehicle and is 18 years of age.

(2) Before issuing a commercial driver's instruction permit, the department shall obtain the driving record of an applicant through the Commercial Driver's License Information System, through the National Driver Register (NDR), and from each state in which the applicant has been licensed.

(3) An applicant for the commercial driver's instruction permit must pass the vision test and the knowledge and skills tests for the type of vehicle he or she intends to operate along with any knowledge and skills test required for any desired endorsements.

(4) The commercial driver's instruction permit shall not be issued for a period to exceed 365 days. Upon the expiration of the 365 day term, the commercial driver's instruction permit holder shall upgrade to a commercial driver's license or submit a new application, pay the required fees, and retake the required knowledge and skills tests to obtain a commercial driver's instruction permit. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the class of vehicle being operated, along with all required endorsements and restrictions, who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(5) The department shall issue a commercial driver's instruction permit to a qualified applicant prior to the issuance of any endorsement which requires the administration of a commercial driver's license skills test or prior to the removal of any restrictions.

(6) No commercial driver's license shall be issued until an applicant has first obtained a commercial driver's instruction permit. No

skills test required for the issuance of a commercial driver's license shall be given until 14 days have expired from the issuance of a commercial driver's instruction permit.

(d)(1) Commercial drivers' instruction permits may be issued with the endorsements and restrictions enumerated in 49 C.F.R. Part 383.153(b).

(2) Commercial drivers' licenses may be issued with the endorsements and restrictions enumerated in 49 C.F.R. Part 383.153(a).

(e)(1) A commercial driver's license or commercial driver's instruction permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle or while the person's driver's license or driving privilege is suspended, revoked, or canceled in this or any other licensing jurisdiction; nor may a driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all driver's licenses issued by any other state, which shall be returned to the issuing state or states for cancellation.

(2) The department shall obtain the driving record of any person who applies for a commercial driver's license or commercial driver's instruction permit from any other states in which he or she has been licensed or convicted. Upon receipt of conviction information for such a person, said convictions shall become part of the person's driving record in the State of Georgia as provided in Code Section 40-5-2. The department shall review each such person's prior driving record and impose any commercial driving disqualification to which such person is subject that was not imposed by another jurisdiction as required under federal law.

(f)(1) Any person who violates subsection (b) of Code Section 40-5-125 shall be disqualified from obtaining a commercial driver's license or commercial driver's instruction permit for a period of not less that 60 days.

(2) Any person who violates subsection (c) of Code Section 40-5-125 shall be disqualified from driving a commercial motor vehicle and reapplying for a commercial driver's license or commercial driver's instruction permit for a period of not less than one year.

(3) The department shall notify the holder of a commercial driver's license or commercial driver's instruction permit through first-class mail if the department suspects a person has committed a violation of subsection (b) or (c) of Code Section 40-5-125, but no conviction for such offenses has been entered, or if the department has received credible information that a person's examination results

may have been compromised due to fraud by either the applicant or a third party. Such notice shall include a statement regarding the specific allegations of suspected fraud, including the identification of the credible source if applicable, and that such person is required to retake the skills test or knowledge test or both. Within 30 days of receiving notification from the department that retesting is necessary, the affected commercial driver's instruction permit holder or commercial driver's license holder shall make an appointment or otherwise schedule to take the next available test. If the commercial driver's instruction permit holder or commercial driver's license holder fails to make an appointment within 30 days, the department shall disqualify such person from obtaining a commercial driver's instruction permit or commercial driver's license. If the commercial driver's instruction permit holder or commercial driver's license holder either fails the knowledge or skills test or does not take the test, the department shall disqualify such person from obtaining a commercial driver's instruction permit or commercial driver's license. If a commercial driver's instruction permit holder or commercial driver's license holder has been disqualified from obtaining a commercial driver's instruction permit or commercial driver's license, he or she shall reapply for a commercial driver's instruction permit or commercial driver's license under department procedures applicable to all commercial driver's instruction permit and commercial driver's license applicants in order to operate a commercial motor vehicle.

(g) The department is authorized to promulgate rules necessary to grant a waiver or exemption of the physical requirements for a commercial driver's license or a commercial driver's instruction permit in 49 C.F.R. Part 391, Subpart E; provided, however, that the person who is applying for a commercial driver's license or a commercial driver's instruction permit or who has previously been issued a commercial driver's license and who is granted the waiver or exemption shall only be authorized to drive a commercial motor vehicle in this state. Notwithstanding this subsection, the department shall not grant any type of waiver or exemption of said physical requirements unless such type of waiver or exemption has previously been granted by the Federal Motor Carrier Safety Administration.

History.

Code 1981, § 40-5-147, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 2; Ga. L. 2000, p. 951, § 5-53; Ga. L. 2006, p. 449, § 15/HB 1253; Ga. L. 2007, p. 117, § 3/HB 419; Ga. L. 2008, p. 171, § 9/HB 1111; Ga. L. 2015, p. 1370, § 3/HB 118; Ga. L. 2021, p. 347, § 1/HB 169; Ga. L. 2021, p. 403, § 8/HB 466.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, the word "Part" was capitalized in references to the Code of Federal Regulations throughout the Code section.

Pursuant to Code Section 28-9-5, in 2007, the second comma after "'subparts G and H,'" in paragraph (a)(1) was deleted.

Editor's notes.

Ga. L. 2021, p. 347, § 2/HB 169, not

codified by the General Assembly, provides, in part, that the amendment by that Act shall apply to the issuance of any commercial driver's license on or after January 1, 2022.

40-5-148. Nonresident license.

The department may issue a nonresident commercial driver's license to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards of the foreign jurisdiction do not meet the testing standards established in 49 C.F.R. Part 383. The word "nonresident" must appear on the face of the nonresident commercial driver's license. An applicant must surrender any nonresident commercial driver's license issued by another state. Prior to issuing a nonresident commercial driver's license, the department must establish the practical capability of revoking, suspending, and canceling the nonresident commercial driver's license and disqualifying that person from driving a commercial motor vehicle under the same conditions applicable to the commercial driver's license issued to a resident of this state.

History.

Code 1981, § 40-5-148, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-54.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" near the end of the first sentence.

40-5-148.1. Restricted commercial licenses for persons in agricultural industry.

(a) Pursuant to a waiver of the United States Secretary of Transportation, issued April 17, 1992, the department is authorized to issue Class B or Class C restricted commercial drivers' licenses to certain persons employed in the agricultural industry. Such restricted licenses shall be issued annually but shall not be valid for more than a total of 180 days in a 12 month period.

(b) A person shall not be required to pass a knowledge or skills test for issuance of a restricted commercial driver's license, except that such person shall possess a valid noncommercial driver's license, have at least one year's driving experience, submit an application for and submit proof of all information required for a commercial driver's license except for the testing requirements, and not be subject to any other disqualification from driving a commercial motor vehicle or be under any suspension or revocation of such person's regular driver's license.

(c) The holder of a restricted commercial driver's license issued pursuant to this Code section may operate a commercial motor vehicle only within 150 miles of the place of business at which such person is

employed and only during such seasonal periods as indicated on such person's restricted driver's license. The holder of a restricted commercial driver's license shall be authorized to transport only the following hazardous materials requiring placarding: diesel fuel in quantities of 1,000 gallons or less; liquid fertilizers in vehicles with total capacities of 3,000 gallons or less, including anhydrous ammonia and other types of liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less; and solid fertilizers not mixed with any organic substance.

(d) All holders of restricted commercial drivers' licenses shall be subject to disqualifications and penalties under Code Sections 40-5-151 through 40-5-153 and shall be subject to all notices, verifications, and license checks otherwise required under this article.

(e) The department shall promulgate rules and regulations as necessary to implement this Code section by September 1, 1993.

History.
Code 1981, § 40-5-148.1, enacted by Ga. L. 1993, p. 797, § 1; Ga. L. 2000, p. 951, § 5-55.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, "to issue" was substituted for "to issued" in subsection (a) and, in subsection (c), "restricted driver's license" was substituted for "restricted, driver's license" in the first sentence and "diesel fuel" was substituted for "Diesel fuel" in the second sentence.

Administrative rules and regulations.
Restricted Commercial Driver's License, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Driver Services, Driver License Services, Rule 375-3-11-.17 et seq.

40-5-148.2. Issuance of nonresident commercial drivers' licenses.

If an individual is a resident of another state while that other state is prohibited from issuing commercial drivers' licenses pursuant to 49 C.F.R. Section 384.405, that individual is eligible to obtain a nonresident commercial driver's license. The individual shall provide the information specified in Code Section 40-5-149. The department shall promulgate rules and regulations as necessary to implement this Code section within 90 days of being notified that a state will be prohibited from issuing commercial drivers' licenses.

History.
Code 1981, § 40-5-148.2, enacted by Ga. L. 2006, p. 449, § 16/HB 1253.

40-5-148.3. Submission of medical examiner's certificate; penalty for false submissions.

(a) Any person applying for issuance or renewal of a commercial driver's license shall submit a certification of his or her type of driving

and a current medical examiner's certificate to the department as required by 49 C.F.R. Parts 383 and 391. Receipt of such current medical examiner's certificate shall be reflected upon such person's driving record and posted to his or her CDLIS driver record as his or her medical certification status.

(b) Upon the expiration of the medical examiner's certificate submitted to the department pursuant to this Code section, the department shall update the medical certification status of such person on his or her driving record and his or her CDLIS driving record. The department shall notify such person of the change of his or her medical certification status and advise such person that he or she will be disqualified from operating a commercial motor vehicle indefinitely if such person does not submit a current medical examiner's certificate to the department within 60 days. Such notice shall be sent via certified mail or such other delivery service obtained by the department that results in delivery confirmation to the address reflected on its records as the driver's mailing address.

(c) A commercial driving disqualification imposed as the result of the expiration of a medical examiner's certificate shall be reinstated, and changes to a person's medical certification status shall be updated, upon receipt of a current medical examiner's certificate.

(d) The department shall suspend the commercial driving privilege or commercial driver's license of any person who submits a medical examiner's certificate containing false information. The period of such suspension shall be 60 days.

History.

Code 1981, § 40-5-148.3, enacted by Ga. L. 2011, p. 355, § 16/HB 269; Ga. L. 2024, p. 1052, § 4(60)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

40-5-149. Contents of application; application required when name, mailing address, or residence changed.

(a) The application for a commercial driver's license or commercial driver's instruction permit shall include the following:

(1) The full legal name and current mailing and residential address of the person;

(2) A physical description of the person including sex, height, weight, and eye color;

(3) Full date of birth;

(4) Reserved;

(5) The person's signature;

(6) The person's current photograph;

(7) Certifications, including those required by 49 C.F.R. Part 383.71(a);

(8) Any other information required by the department; and

(9) Consent to release driving record information to the Commercial Driver License Information System clearing-house and whatever agent or agency the Commercial Driver License Information System deems necessary by federal requirements.

Each application shall be accompanied by an application fee of $35.00, except for those who operate or are applying to operate a public school bus and inmates of state or county correctional institutions who operate or are applying to operate commercial motor vehicles under the supervision of such institutions during the period of such inmates' confinement, in which cases there shall be no application fee.

(b) When a licensee changes his or her name, mailing address, or residence, an application for a new license shall be made within 30 days of such change. The fee for such new license shall be as provided in Code Section 40-5-25.

(c) No person who has been a resident of this state for 30 days or longer may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. It shall be the responsibility of the employer to notify the employee of the license issuance law of this state.

(d) Except as provided in Code Section 40-5-36, relating to veterans' licenses and except as provided in this Code section for public school bus drivers, there shall be no exceptions to the application and licenses fees required for issuance of a commercial driver's license or a commercial driver's instruction permit.

History.

Code 1981, § 40-5-149, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1284, § 2; Ga. L. 1997, p. 1443, § 3; Ga. L. 2000, p. 951, § 5-56; Ga. L. 2008, p. 171, § 10/HB 1111.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" in paragraph (a)(7).

JUDICIAL DECISIONS

Review of individuals who suffer alterations of consciousness. — Regulation providing for review of individuals who suffer alterations of consciousness was constitutional. Bowman v. Knight, 263 Ga. 222, 430 S.E.2d 582, 1993 Ga. LEXIS 493 (1993).

40-5-150. Contents of license; classifications; endorsements and restrictions; information to be obtained before issuance; notice of issuance; expiration of license; renewal.

(a) The commercial driver's license shall be marked "Commercial Driver's License" or "CDL" and shall be, to the maximum extent practicable, tamperproof, and shall include, but not be limited to, the following information:

(1) The full legal name and residential address of the person;

(2) The person's photograph;

(3) A physical description of the person, including sex, height, weight, and eye color;

(4) Full date of birth;

(5) The license number or identifier assigned by the department;

(6) The person's signature;

(7) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive, together with any endorsements or restrictions;

(8) The name of this state; and

(9) The dates between which the license is valid.

(b) Commercial driver's licenses may be issued with the following classifications:

(1) Class A — Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds;

(2) Class B — Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating;

(3) Class C — Any single vehicle with a gross vehicle weight rating of less than 26,001 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, or any such vehicle towing a vehicle with a gross vehicle weight rating in excess of 10,000 pounds, provided that the combination of vehicles has a gross combined vehicle weight rating less than 26,001 pounds. This classification shall apply to vehicles designed to transport 16 or more passengers, including the driver, and vehicles used in the transportation of hazardous materials which require the vehicles to be placarded under 49 C.F.R. Part 172, subpart F;

(4) Class M — A motorcycle; and

(5) Class P — A commercial driver's instruction permit used in conjunction with the commercial driver's instruction permit vehicle classification.

(c) Commercial driver's licenses may be issued with the following endorsements and restrictions:

(1) "H" — Authorizes the driver to drive a vehicle transporting hazardous materials;

(2) "L" — Restricts the driver to vehicles not equipped with air brakes;

(3) "T" — Authorizes driving double and triple trailers;

(4) "P" — Authorizes driving vehicles carrying 16 or more passengers, including the driver, but does not authorize the driver to drive a school bus;

(5) "N" — Authorizes driving tank vehicles;

(5.1) "S" — Authorizes the driver to drive a school bus; and

(6) "X" — Represents a combination of hazardous materials and tank vehicle endorsements.

The fee for Classes A, B, C, M, and P licenses and for the endorsements and restrictions shall be as provided in Code Section 40-5-25.

(d) The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles. No person shall drive a vehicle which requires an endorsement unless the proper endorsement appears on the driver's license.

(e) Before issuing a commercial driver's license, the department shall obtain driving record information through the Commercial Driver License Information System, through the National Driver Register (NDR), and from each state in which the applicant has been licensed.

(f) Within ten days after issuing a commercial driver's license, the department shall notify the Commercial Driver License Information System of that fact and provide all information required to ensure identification of the licensee.

(g) Except as provided for in Code Section 40-5-21.1, the commercial driver's license shall expire on the licensee's birthdate in the eighth year following the issuance of such license.

(h) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by subsection (a)

of Code Section 40-5-149, providing updated information and required medical certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

(i)(1) Before issuing, renewing, upgrading, or transferring a commercial driver's license with a hazardous materials endorsement, the department shall obtain a Transportation Security Administration determination that the individual does not pose a security risk warranting denial of the endorsement. The department shall promulgate rules and regulations as necessary to implement this subsection.

(2) If, after issuing a commercial driver's license bearing a hazardous materials endorsement, the department receives notification that the Transportation Security Administration has determined that the holder thereof poses a security risk, it shall cancel the commercial driver's license. The department may issue a new commercial driver's license without a hazardous materials endorsement to said licensee upon surrender of the license bearing the cancelled endorsement.

(3) If a person to whom the department previously issued a commercial driver's license with a hazardous materials endorsement has provided all of the required information to the Transportation Security Administration for the completion of a security threat assessment, but the Transportation Security Administration has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment before the expiration date of said commercial driver's license, the department may renew the commercial driver's license for a period of 90 days if the licensee wishes to retain the hazardous materials endorsement. Notwithstanding the foregoing, the person's commercial driver's license may be renewed for the full renewal period if the licensee wishes to drop the hazardous materials endorsement.

(4) If a person to whom another state previously issued a commercial driver's license with a hazardous materials endorsement applies prior to the expiration thereof to transfer said license, the department may issue a temporary commercial driver's license with a hazardous materials endorsement valid for a period of 90 days upon the person's successful completion of all other statutory requirements. It shall be a prerequisite to the issuance of such a temporary license that the person has provided all of the required information to the Transportation Security Administration for the completion of a security threat assessment, but the Transportation Security Administration has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment prior to the expiration date of the person's commercial driver's license issued by the previous state.

History.

Code 1981, § 40-5-150, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 1250, § 9; Ga. L. 1997, p. 1443, § 4; Ga. L. 2000, p. 951, §§ 5-57, 5-58; Ga. L. 2003, p. 484, § 5; Ga. L. 2005, p. 854, § 2/SB 273; Ga. L. 2006, p. 449, §§ 17, 18/HB 1253; Ga. L. 2007, p. 117, § 4/HB 419; Ga. L. 2008, p. 171, § 11/HB 1111; Ga. L. 2014, p. 710, § 7-2/SB 298; Ga. L. 2015, p. 60, § 4-22/SB 100; Ga. L. 2016, p. 385, § 10/HB 806; Ga. L. 2024, p. 1052, § 4(61)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "motorcycle; and" for "motorcycle as defined in Code Section 40-1-1; and" in paragraph (b)(4).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" in paragraph (b)(3).

Pursuant to Code Section 28-9-5, in 1990, a comma was deleted following "C.F.R." in paragraph (b)(3).

Editor's notes.

Ga. L. 1997, p. 1443, § 6, not codified by the General Assembly, provides that the 1997 amendment to this Code section shall be applicable to licenses, permits, and indentification cards issued on or after July 1, 1997.

Ga. L. 2005, p. 854, § 3/SB 273, not codified by the General Assembly, provides that the 2005 amendment applies to offenses occurring on or after July 1, 2005.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

JUDICIAL DECISIONS

Operating vehicle without commercial driver's license. — Evidence presented during the bench trial was sufficient for the trial court to find the defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-146(a), because the state produced evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle (trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). Williams v. State, 303 Ga. App. 407, 693 S.E.2d 613, 2010 Ga. App. LEXIS 366 (2010).

40-5-151. Disqualification from driving; action required after suspending, revoking, or canceling license or nonresident privileges.

(a) Any person is disqualified from driving a commercial vehicle for a period of not less than 60 days if convicted of a first violation of subsection (b) of Code Section 40-5-125.

(a.1) Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of a major traffic violation.

(b) Any person is disqualified from driving a commercial motor

vehicle for a period of three years if convicted of a first violation of using a commercial motor vehicle in the commission of a felony or a major traffic violation, provided that the vehicle being operated or used in connection with such violation or commission of such felony is transporting a hazardous material required to be placarded under the Hazardous Materials Transportation Act, 49 C.F.R. 105.

(c) Any person is disqualified from driving a commercial motor vehicle for life if convicted of a second or subsequent major traffic violation or any combination of such violations arising from two or more separate incidents.

(d) The department may issue regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) of this Code section may be reduced to a period of not less than ten years. The department is not authorized to make any other reduction in a term of disqualification or to issue a limited or other permit or license that would allow the operation of a commercial motor vehicle during the term of disqualification mandated by this Code section.

(e) Notwithstanding the provisions of subsection (d) of this Code section, any person is disqualified from driving a commercial motor vehicle for life who knowingly uses a:

(1) Motor vehicle in the commission of any felony involving the manufacture, distribution, cultivation, sale, transfer of, trafficking in, or dispensing of a controlled substance or marijuana, or possession with intent to manufacture, distribute, cultivate, sell, transfer, traffic in, or dispense a controlled substance or marijuana; or

(2) Commercial motor vehicle in the commission of an offense of trafficking an individual for labor servitude or sexual servitude in violation of Code Section 16-5-46.

(f) Any person is disqualified from driving a commercial motor vehicle for a period of:

(1) Not less than 60 days if convicted of two serious traffic violations arising from separate incidents occurring within a three-year period as measured from the dates of arrests for which convictions were obtained; or

(2) Not less than 120 days if convicted of a third or subsequent serious traffic violation arising from separate incidents occurring within a three-year period as measured from the dates of arrests for which convictions were obtained.

(g)(1) Any person is disqualified from driving a commercial motor vehicle based on the following violations of out-of-service orders:

(A) First violation — a driver who is convicted of a first violation of an out-of-service order is disqualified for a period of not less than 180 days and not more than one year;

(B) Second violation — a driver who is convicted of two violations of out-of-service orders in separate incidents is disqualified for a period of not less than two years and not more than five years; and

(C) Third or subsequent violation — a driver who is convicted of three or more violations of out-of-service orders in separate incidents is disqualified for a period of not less than three years and not more than five years.

(2) Whenever the operator of a commercial motor vehicle is issued an out-of-service order, a copy of such order shall be issued to the operator of the commercial motor vehicle, the operator of the commercial motor vehicle's employer, and a copy or notice of such out-of-service order shall be provided to the department. The form of such out-of-service order, the procedures for notifying the department upon the issuance of such an order, and other matters relative to the issuance of out-of-service orders and violations thereof shall be provided in rules and regulations promulgated by the commissioner.

(3) Any person is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 C.F.R. 105, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any ten-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 C.F.R. 105, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

(4) In addition to any other penalty imposed pursuant to this article, any driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $2,500.00 for a first offense and not less than $5,000.00 for a second or subsequent offense.

(h) After suspending, revoking, or canceling a commercial driver's license, the department shall update its records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licens-

ing authority of the state which issued the commercial driver's license within ten days.

(i) Any person is disqualified from driving a commercial motor vehicle for a period of not less than 60 consecutive days if it is determined, in a check of an applicant's license status and record prior to issuing a commercial driver's instruction permit or commercial driver's license or at any time after the commercial driver's instruction permit or commercial driver's license is issued, that the applicant has falsified information on his or her application or any related filing.

(i.1) Any person is disqualified from operating a commercial motor vehicle upon receipt of notification by the department from the Federal Motor Carrier Safety Administration in accordance with 49 C.F.R. Parts 382, 383, and 384. Such person shall be reinstated upon notification to the department from the Federal Motor Carrier Safety Administration in accordance with 49 C.F.R. Parts 382 and 383.

(j)(1) Any person is disqualified from driving a commercial vehicle for a period of not less than 30 days if the department receives notification from the Federal Motor Carrier Safety Administration that the person poses an imminent hazard.

(2) If the Federal Motor Carrier Safety Administration notifies the department that a person's driving constitutes an imminent hazard and imposes a disqualification greater than 30 days, the person shall be disqualified from driving a commercial vehicle for the period designated by the Federal Motor Carrier Safety Administration, not to exceed one year.

(k)(1) Any person is disqualified from operating a commercial motor vehicle if convicted of any of the following railroad grade crossing offenses while operating a commercial motor vehicle:

(A) Failing to slow down and check the tracks are clear of an approaching train before proceeding;

(B) Failing to stop before reaching the crossing if the tracks are not clear;

(C) Failing to stop before driving onto the crossing;

(D) Failing to leave sufficient space to drive completely through a railroad crossing without stopping;

(E) Failing to obey a traffic-control device or the directions of an enforcement official at a railroad crossing; or

(F) Failing to negotiate a crossing because of insufficient undercarriage clearance.

(2)(A) Upon a first conviction for an offense listed in paragraph (1) of this subsection, the period of disqualification shall be 60 days.

(B) Upon a second conviction within a three-year period for an offense listed in paragraph (1) of this subsection arising from a separate incident within a three-year period, the period of disqualification shall be 120 days.

(C) Upon a third or subsequent conviction within a three-year period for an offense listed in paragraph (1) of this subsection arising from a separate incident, the period of disqualification shall be one year.

(l)(1) All disqualifications as provided for in subsection (f) of this Code section shall become effective upon the date that the department processes the citation or conviction, provided that no such disqualification is in effect; if such disqualification is in effect the subsequent disqualification shall not take effect until the current disqualification expires.

(2) Notwithstanding paragraph (1) of this subsection, any other disqualification as provided for in this Code section shall become effective upon the date that the department processes the citation or conviction and may run concurrently to any other disqualifications in effect.

(m) All disqualifications provided for in this Code section shall be imposed based on offenses in state law or on offenses of any laws or ordinances equivalent thereto in this state, in any other state, or in any foreign jurisdiction.

History.

Code 1981, § 40-5-151, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 3; Ga. L. 1992, p. 2785, § 21; Ga. L. 1995, p. 229, § .5; Ga. L. 2000, p. 951, § 5-59; Ga. L. 2002, p. 1378, § 5; Ga. L. 2003, p. 484, § 6; Ga. L. 2004, p. 631, § 40; Ga. L. 2006, p. 329, § 3/HB 1275; Ga. L. 2006, p. 449, § 19/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 117, § 5/HB 419; Ga. L. 2008, p. 171, § 12/HB 1111; Ga. L. 2008, p. 324, § 40/SB 455; Ga. L. 2015, p. 1370, § 4/HB 118; Ga. L. 2020, p. 240, § 2/HB 823; Ga. L. 2024, p. 138, § 1/HB 997, effective July 1, 2024; Ga. L. 2024, p. 1052, § 4(62)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, added subsection (i.1).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "as defined in paragraph (18.2) of Code Section 40-5-142" following "traffic violation" in subsections (a.1), (b), and (c); substituted "the Hazardous Materials Transportation Act, 49 C.F.R. 105" for "Section 105 of the Hazardous Materials Transportation Act, 49 U.S.C. app. 1804" at the end of subsection (b) and twice in paragraph (g)(3); and, deleted "as defined in paragraph (22) of Code Section 40-5-142" preceding "arising" in paragraphs (f)(1) and (f)(2).

Cross references.

Disqualifying offense of cargo theft, § 16-8-22.

Editor's notes.

Ga. L. 2020, p. 240, § 3/HB 823, not codified by the General Assembly, provides that the addition of paragraph (e)(2) shall apply to offenses committed on or after July 21, 2020.

JUDICIAL DECISIONS

Order upheld when driver afforded sufficient due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592, 2008 Ga. LEXIS 254 (2008).

Implied consent requirements. — Implied consent notice given to a defendant under O.C.G.A. § 40-5-67.1(b)(2) did not violate due process; the ability to refuse to submit to chemical testing was not a constitutional right and as a trooper advised the defendant that a refusal to submit to testing could result in the suspension of the defendant's personal driver's license, the trooper was not required to also advise the defendant that under O.C.G.A. § 40-5-151(c), the defendant could also lose the defendant's commercial driver's license for life. Chancellor v. State, 284 Ga. 66, 663 S.E.2d 203, 2008 Ga. LEXIS 532 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

40-5-152. Operating a commercial motor vehicle while having measurable alcohol in system; refusal to take chemical test.

(a) Notwithstanding any other provision of this article, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system.

(b) A person who drives, operates, or is in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system or who refuses to take a test prescribed by Code Section 40-5-55 to determine his or her alcohol content must be placed out of service for 24 hours.

History.
Code 1981, § 40-5-152, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2003, p. 484, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

40-5-153. Implied consent to chemical test; administration of test; procedure.

(a) Any person who drives a commercial motor vehicle anywhere in the state shall be deemed to have given consent, subject to the provisions of Code Sections 40-5-55 and 40-6-392, to a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having any measurable alcohol in his or her system.

(c) A person requested to submit to a test as provided in subsection (a) of this Code section must be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in that person's being disqualified from operating a commercial motor vehicle for one year under Code Section 40-5-151 and from operating a private motor vehicle as provided in Code Section 40-5-67.1.

(d) If the person refuses testing, the law enforcement officer must submit an affidavit to the department within ten days of such refusal certifying that the test was requested pursuant to subsection (a) of this Code section and that the person refused to submit to testing.

(e) Upon receipt of the affidavit submitted by a law enforcement officer under subsection (d) of this Code section, the department must disqualify the driver from driving a commercial motor vehicle for a period of one year as provided under Code Section 40-5-151 and, if the driver refused testing, from operating a private motor vehicle as provided under Code Section 40-5-67.1. If the driver is in possession of a driver's license, the officer shall take possession of the license and attach it to the affidavit.

History.
Code 1981, § 40-5-153, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 11; Ga. L. 2000, p. 951, § 5-60.

Law reviews.
For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Consent obtained by misleading information. — Police officer's warning to a nonresident defendant that: "Under OCGA § 40-5-55 and this section, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect the defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and State v. Reich, 210 Ga. App. 407, 436 S.E.2d 703 (1993). State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604, 1995 Ga. App. LEXIS 232 (1995).

Right to an alternative test. — Defendant's failure to complete a breath test without justification negated the defendant's right to an alternative test. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229, 1997 Ga. App. LEXIS 1536 (1997), cert. denied, No. S98C0530, 1998 Ga. LEXIS 400 (Ga. Mar. 6, 1998).

Adequacy of warning. — Notices advising the defendant that if the defendant refused testing the defendant would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. State v. Becker, 240 Ga. App. 267, 523 S.E.2d 98, 1999 Ga. App. LEXIS 1314 (1999), cert. denied, No. S00C0238, 2000 Ga. LEXIS 195 (Ga. Feb. 25, 2000).

Warning not required for alco-sensor test. — O.C.G.A. § 40-5-153(c), regarding implied consent warnings of commercial drivers, did not apply to an alco-sensor test, which merely detected the presence, not concentration, of alcohol that was given to a driver who drove past an inspection station in a truck with a hazardous materials placard. Tunali v. State, 311 Ga. App. 844, 717 S.E.2d 341, 2011 Ga. App. LEXIS 862 (2011).

40-5-154. Notice to licensing state of conviction of nonresident licensee for violation of state law or local ordinance.

Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the department shall notify the licensing state of such conviction.

History.
Code 1981, § 40-5-154, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-61.

40-5-155. Information to be available to driver's license administrators of other states, employers, and insurers.

Notwithstanding any other provision of law to the contrary, the department shall furnish full information regarding the driving record of any person to:

(1) The driver's license administrator of any other state or of any province or territory of Canada requesting that information;

(2) Any employer or prospective employer upon the request of such employer and the payment of a fee of not more than $10.00; and

(3) Insurers upon request and payment of a fee of not more than $10.00.

History. Code 1981, § 40-5-155, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-62.

40-5-156. Rules and regulations.

The commissioner may adopt any rules and regulations necessary to carry out the provisions of this article.

History. Code 1981, § 40-5-156, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-63.

40-5-157. Authority for commissioner to enter into agreements, arrangements, or declarations.

The commissioner or his or her designee may enter into or make agreements, arrangements, or declarations to carry out the provisions of this article.

History. Code 1981, § 40-5-157, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-64.

40-5-158. Driving with license issued by state or province or territory of Canada in accordance with minimum federal standards.

Notwithstanding any other law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license issued by any state or any province or territory of Canada in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses; if the person's license is not suspended, revoked, or canceled; and if the person is not disqualified from driving a commercial motor vehicle or subject to an out of service order.

History. Code 1981, § 40-5-158, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.

40-5-159. Violations.

(a) Any person who drives a commercial motor vehicle while in violation of the provisions of Code Section 40-5-143 or any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of the provisions of subsection

(b) of Code Section 40-5-145 shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) Except as provided for in subsections (d) and (e) of this Code section, by a civil penalty of $2,500.00 for each offense; and

(2) By a fine of $5,000.00, imprisonment for not more than 90 days, or both, for each offense.

(b) Any employer who reports fraudulent information to the department regarding an employee's employment or experience as required under 49 C.F.R. Part 383 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500.00.

(c) Any person who drives a commercial motor vehicle while in violation of the provisions mandated under Code Section 40-5-146 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500.00.

(d) Any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of any federal, state, or local law or regulation pertaining to an out-of-service order shall be subject to a civil penalty in an amount not less than $2,750.00 and not to exceed $25,000.00.

(e) Any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of any federal, state, or local law or regulation pertaining to railroad grade crossings shall be subject to a civil penalty not to exceed $10,000.00.

(f) Any person who drives a commercial motor vehicle while in violation of the provisions mandated under Code Section 40-6-241 shall be subject to a civil penalty not to exceed $2,750.00 in addition to any criminal fines applicable to such violation. Any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of Code Section 40-6-241 shall be subject to a civil penalty not to exceed $11,000.00.

History.

Code 1981, § 40-5-159, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-65; Ga. L. 2003, p. 484, § 8; Ga. L. 2006, p. 449, § 20/HB 1253; Ga. L. 2007, p. 117, § 6/HB 419; Ga. L. 2008, p. 171, § 13/HB 1111; Ga. L. 2015, p. 1370, § 5/HB 118; Ga. L. 2018, p. 127, § 7/HB 673.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" in subsection (b).

Editor's notes.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Georgia St. U.L. Rev. 139 (2018).

ARTICLE 8

IDENTIFICATION CARDS FOR PERSONS WITH DISABILITIES

Code Commission notes.
Pursuant to Code Section 28-9-5, Article 7 (Code Sections 40-5-140 through 40-5-149), enacted by Ga. L. 1989, p. 628, was renumbered as Article 8 (Code Sections 40-5-170 through 40-5-179), since an Article 7 was also enacted by Ga. L. 1989, p. 519.

40-5-170. Definitions.

As used in this article, the term:

(1) "Disability" means any physical, mental, or neurological impairment which severely restricts a person's mobility, manual dexterity, or ability to climb stairs; substantial loss of sight or hearing; loss of one or more limbs or use thereof; or significantly diminished reasoning capacity.

(2) "Identification card for persons with disabilities" means an identification card issued as provided in this article.

(3) "Permanent disability" means any disability which is permanent in nature or which is expected to continue for a period of at least five years.

(4) "Person with disabilities" means any person with a permanent or temporary disability.

(5) "Temporary disability" means any disability which is expected to continue for at least six months but less than five years.

History.
Code 1981, § 40-5-170, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.

40-5-171. Issuance and contents of identification cards for persons with disabilities.

(a) The department shall issue identification cards to persons with disabilities who make application to the department in accordance with rules and regulations prescribed by the commissioner. The identification card for persons with disabilities shall contain a recent photograph of the applicant and the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Date identification card expires;

(6) Sex;

(7) Height;

(8) Weight;

(9) Eye color;

(10) Signature of person identified or facsimile thereof; and

(11) Such other information as required by the department; provided, however, that the department shall not require an applicant to submit or otherwise obtain from an applicant any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) The identification card for persons with disabilities shall bear the signatures of the commissioner and the Governor and shall bear an identification card number which shall not be the same as the applicant's social security number.

(c) In addition to the information required in subsection (a) of this Code section, identification cards issued to persons with disabilities shall display the international handicapped symbol on a location designated by the department. The department may display the international handicapped symbol on any driver's license or identification card issued pursuant to the provisions of this chapter upon receipt of the required documentation from the person requesting its inclusion.

History.

Code 1981, § 40-5-171, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 1996, p. 1250, § 10; Ga. L. 1997, p. 1443, § 5; Ga. L. 2000, p. 951, § 5-66; Ga. L. 2005, p. 1122, § 5/HB 577; Ga. L. 2008, p. 171, § 14/HB 1111; Ga. L. 2010, p. 932, § 21/HB 396; Ga. L. 2015, p. 60, § 4-23/SB 100; Ga. L. 2024, p. 1052, § 4(63)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "personal" preceding "identification" in subsection (a).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, in paragraph (a)(12) (now paragraph (a)(11)), a comma was deleted following "limitation" and a comma was added following "photograph".

Editor's notes.

Ga. L. 1997, p. 1443, § 6, not codified by the General Assembly, provides that the 1997 amendment to this Code section shall be applicable to licenses, permits, and indentification cards issued on or after July 1, 1997.

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att'y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-171 regarding fingerprinting. 1997 Op. Att'y Gen. No. U97-33.

40-5-172. Term of card issued to person with permanent disability; issuance to person with temporary disability; renewal.

(a) An identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of eight years and shall be renewable on the applicant's birthday in the seventh year following such issuance. Such identification cards shall be issued to persons:

(1) With obvious permanent disabilities without further verification of disability; and

(2) With disabilities which are not obvious upon presentation of the current sworn affidavit of at least one medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal.

(b) The identification card for persons with disabilities shall be issued to a person with a temporary disability upon presentation of a sworn affidavit of at least one medical doctor attesting to such disability and estimating the duration of such disability. Such identification cards shall be issued for periods of six months. A current affidavit of a medical doctor attesting to the continuance of such disability shall be presented at each request for renewal thereafter.

(c) The commissioner may by rule authorize renewal of an identification card issued to a person with a permanent disability by means other than personal appearance. No further documentation of such person's disability shall be required for such renewal.

History.
Code 1981, § 40-5-172, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2011, p. 355, § 17/HB 269; Ga. L. 2016, p. 385, § 11/HB 806.

40-5-173. Format of card.

The face of the identification card for persons with disabilities shall prominently bear wording selected by the department that is indicative of the presence of urgent medical information on the reverse of the card. On the reverse side of the identification card shall be a space within which the department shall enter such medical information as the

applicant may request. The department may print the urgent medical indicator and wording on the reverse of any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion.

History.
Code 1981, § 40-5-173, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 22/HB 396.

40-5-174. Proof of need for special transportation services for persons with disabilities.

The face of the identification card for persons with disabilities shall bear the word "TRANSPORTATION" with a box or blank space adjacent thereto. The department shall place an "X" in such box or blank space if the applicant's disability creates mobility limitations which prevent him or her from climbing stairs or otherwise from entering normally designed buses or other vehicles normally used for public transportation. When so marked, the identification card for persons with disabilities shall serve as sufficient proof of the need for special transportation services for persons with disabilities provided by any entity in this state. The department may print the transportation indicator on any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion.

History.
Code 1981, § 40-5-174, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 23/HB 396.

40-5-175. Admission to seating for persons with disabilities at public events.

The identification card for persons with disabilities shall bear the word "SEATING" with a box or blank space adjacent thereto. The department shall place an "X" in such box or blank space if the applicant's disability creates mobility or health limitations which prevent him or her from climbing stairs or steep inclines. When so marked, the identification card for persons with disabilities shall be sufficient to admit the holder to seating for persons with disabilities at public events in this state. The department may print the priority seating indicator on any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion.

History.
Code 1981, § 40-5-175, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 24/HB 396.

40-5-176. Rules and regulations.

The commissioner shall promulgate rules and regulations under which this article shall be implemented.

History.
Code 1981, § 40-5-176, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2000, p. 951, § 5-67.

40-5-177. Evidence of applicant's birth date required.

The department shall require an applicant for an identification card for persons with disabilities to furnish a birth certificate or other verifiable evidence stating the applicant's birth date.

History.
Code 1981, § 40-5-177, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.

40-5-178. Fee for card; waiver for person with veteran's driver's license.

(a) The department shall collect a fee of $5.00 for an identification card for persons with disabilities, which fee shall be deposited in the state treasury in the same manner as motor vehicle driver's license fees.

(b) The department shall not be authorized to collect a fee for an identification card for persons with disabilities from those persons who meet the qualifications for a veteran's driver's license under the provisions of Code Section 40-5-36.

History.
Code 1981, § 40-5-178, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1995, "the" was deleted preceding "an identification" in subsection (a).
Cross references.
Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

40-5-179. Fraudulent identification cards; penalties.

It is a misdemeanor for any person:

(1) To lend his or her identification card for persons with disabilities to any other person or knowingly to permit the use thereof by another; and

(2) To display or represent as his or her own any identification card for persons with disabilities not issued to him or her.

History.
Code 1981, § 40-5-179, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048,

§ 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2002, p. 551, § 7.

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 81 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offenses arising under O.C.G.A. § 40-5-179(1) and (2) require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.