Senate Bill 334

By: Senators Kemp of the 3rd, Meyer von Bremen of the 12th, Haines of the 46th, Harp of the 16th and Harbison of the 15th

A BILL TO BE ENTITLED

AN ACT

To amend Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to abandoned motor vehicles, so as to change certain provisions relating to definitions; to change certain provisions relating to lien foreclosure procedure; to change certain provisions relating to duty of person removing or storing motor vehicle; to provide that the owner or operator of a paid private parking lot or paid private parking facility located within 500 feet of an establishment which sells alcohol for consumption on the premises may not tow or immobilize or cause to be towed or immobilized a vehicle left on the lot between midnight and noon; to provide that such person may charge a penalty; to provide a penalty; to provide a definition; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to abandoned motor vehicles, is amended in Code Section 40-11-1, relating to definitions, by striking subparagraphs (C), (D), and (E) of paragraph (1) and paragraph (3) and inserting in lieu thereof the following:

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

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

(E) Which has been left unattended on private property for a period of not less than 30 days ~~without anyone's having made claim thereto~~."

″(3) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title, lessor, lessee, security interest holders, and all lienholders as shown on the records of the Department of Motor Vehicle Safety.″

SECTION 2.

Said article is further amended by striking Code Section 40-11-2, relating to duty of person removing or storing motor vehicle, and inserting in lieu thereof the following:

″40-11-2.

(a) Any person who removes a motor vehicle from public property at the request of a law enforcement officer or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, seek the identity of and address of ~~the last~~ all known ~~registered owner of such vehicle, the owner of the vehicle as recorded on the title of such vehicle, and any security interest holder or lienholder~~ owners of such vehicle from the law enforcement officer requesting removal of such, ~~or~~ from such officer´s agency, or from a local law enforcement agency for the jurisdiction in which the remover´s or storer´s place of business is located, within ~~72 hours~~ three business days of removal. The local law enforcement agency shall furnish such information to the person removing such vehicle within ~~72 hours~~ three business days after receipt of such request.

(b) Any person who removes a motor vehicle from private property at the request of the property owner or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, notify in writing a local law enforcement agency of the location of the vehicle, the manufacturer´s vehicle identification number, license number, model, year, and make of the vehicle within ~~72 hours~~ three business days of the removal of such vehicle and shall seek from the local law enforcement agency the identity and address of ~~the last~~ all known ~~registered owner~~ owners of such vehicle, ~~the owner of the vehicle as recorded on the title, and any security interest holder or lienholder~~ and any information indicating that such vehicle is a stolen motor vehicle. The local law enforcement agency shall furnish such information to the person removing such vehicle within ~~72 hours~~ three business days after receipt of such request.

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

(d) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined not to be a stolen vehicle or is not a vehicle being repaired by a repair facility or is not being stored by an insurance company providing insurance to cover damages to the vehicle, the person removing or storing such motor vehicle shall,

within seven calendar days of the day such motor vehicle was removed or one business day after the information is furnished to the remover or storer pursuant to subsection (a) or (b) of this Code section, whichever is later, notify ~~the owner and any security interest holder or lienholder~~ all owners, if known, by written acknowledgment signed thereby or by certified or registered mail or statutory overnight delivery, of the location of such motor vehicle, the fees connected with removal and storage of such motor vehicle, and the fact that such motor vehicle will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle within 30 days of the day such vehicle was removed.

(e) If ~~the owner, security interest holder, or lienholder fails to redeem~~ none of the owners redeems such motor vehicle as described in subsection (d) of this Code section, or if a vehicle being repaired by a repair facility or being stored by an insurance company providing insurance to cover damages to the vehicle becomes abandoned, the person removing or storing such motor vehicle shall, within seven calendar days of the day such vehicle became an abandoned motor vehicle, give notice in writing, by sworn statement, on the form prescribed by the commissioner, to the Department of Motor Vehicle Safety with a research fee of $2.00 payable to the Department of Motor Vehicle Safety, stating the manufacturer´s vehicle identification number, the license number, the fact that such vehicle is an abandoned motor vehicle, the model, year, and make of the vehicle, the date the vehicle became an abandoned motor vehicle, the date the vehicle was removed, and the present location of such vehicle and requesting the name and address of all owners~~, lessors, lessees, security interest holders, and lienholders~~ of such vehicle. If the form submitted ~~to the Department of Motor Vehicle Safety~~ is rejected because of inaccurate or missing information, the person removing or storing the vehicle shall resubmit, within seven calendar days of the date of the rejection, a corrected notice form ~~to the Department of Motor Vehicle Safety~~ together with an additional research fee of $2.00 payable to the Department of Motor Vehicle Safety. Each subsequent corrected notice, if required, shall be submitted with an additional research fee of $2.00 payable to the Department of Motor Vehicle Safety. If a person removing or storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is registered or titled in a certain other state, such person shall check the motor vehicle records of that other state in the attempt to ascertain the identity of the owner of the vehicle. Research requests may be submitted and research fees made payable to the office of the tax commissioner and deposited in the general fund for the county in which the remover´s or storer´s place of business is located in lieu of the Department of Motor Vehicle Safety, but in like manner, if such office processes motor vehicle records of the Department of Motor Vehicle Safety.

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

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

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

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

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

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

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

SECTION 3.

Said article is further amended by inserting a new Code section to read as follows:

"40-11-3.2.

(a) It shall be unlawful for the owner or operator of a paid private parking lot or paid private parking facility located within 500 feet of an establishment which serves alcoholic beverages for consumption on the premises to remove, tow, or immobilize or cause to be removed, towed, or immobilized a motor vehicle left in such lot or facility between midnight and noon of the following day. Nothing in this Code section shall prohibit the owner of such a parking lot or facility from charging a penalty not to exceed $25.00 in excess of normal parking fees for vehicles which remain on the property during such period without authorization. No owner or operator of such a parking lot or facility shall be liable for any damages to any motor vehicle remaining on the property during such period without authorization. Nothing in this Code section shall prohibit a resident or a business owner from towing or removing or causing to be towed or removed a motor vehicle left on private property. For purposes of this subsection, the terms "paid private parking lot" and 'paid private parking facility' mean private parking lots where the owner or operator of a motor vehicle pays a valuable consideration for the right to park in such parking lot or parking facility.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor."

SECTION 4.

Said article is further amended by striking Code Section 40-11-5, relating to lien foreclosure procedure, and inserting in lieu thereof the following:

"40-11-5.

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

(1) Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention;

(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by certified or registered mail or statutory overnight delivery, make a demand upon the ~~owner~~ owners for the payment of the reasonable fees for removal and storage plus the costs of any notification or advertisement. Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation of the Department of Motor Vehicle Safety and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant,

file with a court of competent jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant´s written demand, shall effect a waiver of the owner´s right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Motor Vehicle Safety. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with;

(3)(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle fails to ~~respond to such demand~~ pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this subsection ~~or refuses to pay~~, or if the owner of the abandoned motor vehicle cannot be ascertained, the person removing or storing the abandoned motor vehicle may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction, on a form prescribed by rule or regulation of the Department of Motor Vehicle Safety, showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment in accordance with paragraph (2) of this subsection has been made ~~and refused~~ without satisfaction or without a timely filing of a petition for a judicial hearing or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his or her signature thereto.

(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall be $10.00 per motor vehicle upon which a lien is asserted;

(4)~~(A)~~ If no timely petition for a hearing has been filed with a court of competent jurisdiction, then, upon ~~Upon~~ such affidavit´s being filed by the lien claimant pursuant to paragraph (3) of this subsection, ~~the lien claimant shall give the clerk or judge of the court the address (if known) of the owner, lessor, lessee, security interest holders, and lienholders of the abandoned vehicle. The clerk or judge of the court shall serve notice upon such owner, lessor, lessee, security interest holders, and lienholders of the abandoned motor vehicle of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing must be petitioned for within ten days after receipt of such 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~~.~~;

~~(B) Any notice required by this paragraph shall be by certified mail or statutory overnight delivery or, if the owner, lessor, lessee, security interest holder, or lienholder is unknown, by posting such notice at the county courthouse in such place where other public notices are posted;~~

(5) If a petition for a ~~probable cause~~ hearing is filed ~~within the time allowed~~ with a court of competent jurisdiction within ten days after delivery of the lien claimant´s demand, a copy of which demand shall be attached to the petition, the court shall set such a hearing within ten days of filing of the petition~~. If, at the hearing, the court determines that reasonable cause exists to believe that a valid debt exists, then the person asserting the lien shall retain possession of the motor vehicle or the court shall obtain possession of the motor vehicle, as ordered by the court. The owner-debtor may obtain possession of the motor vehicle by giving bond and security in the amount determined to be probably due and costs of the action~~;

(6) ~~Within five days of the probable cause hearing, a party 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 for the amount determined reasonably due shall conclusively be deemed a valid one and foreclosure thereof allowed. If such a petition is filed, the court shall set a full hearing thereon within 15 days of the filing of the petition.~~ Upon the filing of such petition by ~~a party defendant~~ an owner, neither the ~~prosecuting lienholder~~ lien claimant nor the court may sell the motor vehicle, although possession of the motor vehicle may be retained by the lien claimant or obtained by the court in accordance with the order of the court which sets the date for the hearing;

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

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

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

a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle.″

SECTION 5.

This Act shall become effective on January 1, 2003.

SECTION 6.

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