House Bill 323 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 32nd, Taylor of the 173rd, Lumsden of the 12th, Glanton of the 75th, Hitchens of the 161st, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to identification and regulation of motor vehicles, so as to modify the age for operation of certain commercial motor vehicle operators; to require commercial motor vehicle operators to utilize safety belts; to change the names of sections within the Motor Carrier Compliance Division of the Department of Public Safety; to authorize the commissioner of public safety to immediately suspend a motor carrier or limousine carrier certificate in emergency situations; to authorize the department to retain and set certain fees imposed against motor carriers and limousine carriers; to authorize the department to seize vehicles for the nonpayment of assessed fines and penalties; to provide a definition for corporate sponsored vanpool; to modify provisions relating to the suspension of motor carrier permits and certificates; to modify provisions relating to motor carriers of passengers; to amend Code Section 40-1-167, relating to required information on license plates of limousines, so as to modify provisions relating to requirements on limousine license plates; to amend Code Section 44-1-13, relating to the removal of improperly parked cars or trespassing personal property, concurrent jurisdiction, procedure, automatic surveillance prohibited, and penalties, so as to authorize the Department of Public Safety to assess an undetermined application fee for towing companies; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to identification and regulation of motor vehicles, is amended by revising Code Section 40-1-8, relating to definitions, safe operations of motor carriers and commercial motor vehicles, civil and criminal penalties, and operation of out-of-service vehicles, as follows:

"40-1-8.

(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.

(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, and equipment shall meet such safety requirements as the commissioner shall from time to time promulgate;

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

(A) Be ~~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 ~~meet~~ the qualification requirements the commissioner shall from time to time promulgate~~,~~;

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

(D) Possess ~~possess~~ a valid driver's license~~,~~;

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

(F) Be ~~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~~ 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 Internet site. 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 the:

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

(2) Seatbelt usage requirements found 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.

~~(h)~~(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."

SECTION 2.

Said chapter is further amended in Code Section 40-1-52, relating to the establishment of the Motor Carrier Compliance Division, as follows:

"40-1-52.

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. ~~The Motor Carrier Compliance Division shall consist of two sections, the Motor Carrier Compliance Enforcement Section and the Motor Carrier Regulation Compliance Section.~~ Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance ~~Enforcement Section~~ Division shall be known and

designated as law enforcement officers. The ~~Motor Carrier Regulation~~ Regulatory Compliance Section shall be responsible for the regulation of the operation of motor carriers and limousine carriers in accordance with this article, ~~and motor carrier safety and the transportation of hazardous materials as provided in~~ Code Section 40-1-8, and Article 2 of this chapter."

SECTION 3.

Said chapter is further amended in Code Section 40-1-53, relating to methods of enforcement for the Georgia Motor Carrier Act of 2012, as follows:

"40-1-53.

(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."

SECTION 4.

Said chapter is further amended by repealing in its entirety Code Section 40-1-56, relating to penalties for failure to register, administrative procedures, and judicial review, and enacting a new Code Section 40-1-56 to read as follows:

"40-1-56.

(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.'"

SECTION 5.

Said chapter is further amended by adding a new Code section to read as follows:

"40-1-56.1.

(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.″

SECTION 6.

Said chapter is further amended by revising Code Section 40-1-100, relating to definitions relative to certification of motor carriers, as follows:

″40-1-100.

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 the Department of Public Safety~~ 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.

~~(5)~~(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.

~~(6)~~(8) 'For compensation' or 'for hire' means ~~an activity wherein for payment or other compensation a motor vehicle and driver are furnished to a person by another person, acting directly or knowingly and willfully acting with another to provide the combined service of the vehicle and driver, and includes every person acting in concert with, under the control of, or under common control with a motor carrier who shall offer to furnish transportation for compensation or for hire, provided that no exempt rideshare shall be deemed to involve any element of transportation for compensation or for hire~~ an activity relating to a person engaged in the transportation of goods or passengers for compensation.

~~(7)~~(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.

~~(8)~~(10) 'GRTA' means the Georgia Regional Transportation Authority, which is itself exempt from regulation as a carrier under Code Section 50-32-71.

~~(9)~~(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.

~~(10)~~(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 ~~van pool~~ 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.

~~(11)~~(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.

~~(12)~~(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.

~~(13)~~(16) 'Public highway' means every public street, road, highway, or thoroughfare of any kind in this state.

~~(14)~~(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.″

SECTION 7.

Said chapter is further amended in subsection (a) of Code Section 40-1-102, relating to certificates as prerequisite to the operation of motor carriers and minimum insurance requirements, as follows:

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

SECTION 8.

Said chapter is further amended in Code Section 40-1-104 relating to the revocation, alteration, or amendment of a motor carrier certificate, suspension of a certificate, and out-of-service orders, as follows:

"40-1-104.

(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 ~~to~~ protect life, health, or safety~~, or~~;

(2) ~~to protect the public and~~ 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 ~~Procedures~~ 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."

SECTION 9.

Said chapter is further amended in Code Section 40-1-106, relating to fitness of applicant and protesting certificate, as follows:

"40-1-106.

(a) The commissioner shall issue a motor carrier certificate to a person authorizing transportation as a motor carrier of passengers or household goods ~~or property~~ 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 protestant to show that the authority sought should not be granted.

(d) A protest of a motor carrier of passengers or of household goods ~~or property~~ to an application ~~will~~ 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."

SECTION 10.

Said chapter is further amended in Code Section 40-1-110, relating to hearing and notice of pending application, as follows:

"40-1-110.

The commissioner, upon the filing of an application for a motor carrier certificate, shall ~~fix a time and place for hearing thereon and shall, at least ten days before the hearing, give notice thereof by advertising the same at the expense of the applicant in a newspaper in Atlanta, in which sheriffs' notices are published~~ 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."

SECTION 11.

Said chapter is further amended in Code Section 40-1-117, relating to registered agents, service, and vehicles excluded from motor common or contract carriers, as follows:

"40-1-117.

(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 ~~issue~~ 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."

SECTION 12.

Said chapter is further amended in Code Section 40-1-117, relating to registered agents, service, and vehicles excluded from motor common or contract carriers, as follows:

"40-1-117.

(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 ~~issue~~ 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.″

SECTION 13.

Said chapter is further amended in Code Section 40-1-119, relating to charges by motor carriers and unjust discrimination by carriers prohibited, as follows:

″40-1-119.

No motor carrier of household goods or ~~property~~ passengers shall charge, demand, collect, or receive a greater or lesser or different compensation for the transportation of ~~property~~ 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 ~~household goods~~ passengers may issue passes or free transportation; may prescribe reduced rates for special occasions; and may fix and prescribe rates and schedules.″

SECTION 14.

Said chapter is further amended in paragraph (8) of Code Section 40-1-151, relating to definitions for Georgia limousine carrier provisions, as follows:

″(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 ~~commission~~ commissioner."

SECTION 15.

Said chapter is further amended in Code Section 40-1-161, relating to revocation, alteration, or amendment of limousine certificates, as follows:

"40-1-161.

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."

SECTION 16.

Said chapter is further amended in Code Section 40-1-163, relating to rates and charges for limousine carriers, as follows:

"40-1-163.

(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 ~~40-1-118~~ 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 ~~40-1-118~~ 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier shall be void."

SECTION 17.

Said chapter is further amended in Code Section 40-1-167, relating to required information on license plates of limousines, as follows:

"40-1-167.

Each limousine carrier which registers any vehicle under this article 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 ~~limousine~~ carrier name~~,~~;

(2) City ~~city~~ and state of principal domicile~~,~~;

(3) Company ~~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 vehicle classification, IE-1~~.

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 ~~said~~ such vehicle being placed in service."

SECTION 18.

Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to uniform rules of the road, is amended by revising Code Section 40-6-248.1, relating to securing loads on vehicles, as follows:

"40-6-248.1.

(a) As used in this Code section, the term 'litter' has the meaning provided by paragraph (1) of Code Section 16-7-42.

(a.1) No vehicle shall be driven or moved on any public road unless such vehicle is constructed or loaded or covered so as to prevent any of its load from dropping, escaping, or shifting in such a manner as to:

(1) Create a safety hazard; or

(2) Deposit litter on public or private property while such vehicle is on a public road.

However, this Code section shall not prohibit the necessary spreading of any substance in public road maintenance or construction operations.

(b) No person shall operate or load for operation, on any public road, any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent ~~said~~ such covering or load from:

(1) Becoming loose, detached, or in any manner becoming a hazard to other users of the public road; or

(2) Depositing litter on public or private property while such vehicle is on a public road.

(c) No motor carrier shall allow a commercial motor vehicle to be driven and no person shall operate a commercial motor vehicle with a load that is not secure. Loads shall be secured as required by state and federal law, rule, and regulation. As used in this

subsection, the term 'load' shall include loads consisting of liquids and gases as well as solid materials.

~~(c)~~(d) Nothing in this Code section nor any regulations based thereon shall conflict with federal, ~~Georgia~~ Department of Public Safety, or ~~Georgia~~ Board of Public Safety regulations applying to the securing of loads on motor vehicles.

~~(d)~~(e) The provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b) of this Code section and regulations based thereon shall not apply to organic debris that escapes during the transportation of silage from field or farm to storage and storage to feedlot or during the transportation of agricultural or farm products or silvicultural products from farm or forest to a processing plant or point of sale or use."

SECTION 19.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by revising paragraph (2) of subsection (d) of Code Section 44-1-13, relating to the removal of improperly parked cars or trespassing personal property, concurrent jurisdiction, procedure, automatic surveillance prohibited, and penalties, as follows:

"(2) Towing and storage firms operating within a municipality's corporate limits shall obtain a nonconsensual towing permit from the department and shall file its registered agent's name and address with the department. The department may assess and collect an application fee in an amount to be determined by the commissioner and such amount shall not exceed the total direct and indirect costs of administering the program or activity with which the fee is associated. Pursuant to Code Section 45-12-92.1, the fees collected shall be retained by the department and expended solely for the purpose of implementing this Code section."

SECTION 20.

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.

SECTION 21.

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