

The Senate Committee on Public Safety offered the following substitute to HB 474:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding abandoned motor vehicles, so as to provide for
3 creation of a lien and foreclosure process relating to abandoned motor vehicles; to provide
4 for definitions; to provide for value of a vehicle in consideration of determining a derelict
5 vehicle; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7 Article 1 of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to
8 general provisions regarding abandoned motor vehicles, is amended by revising Code
9 Section 40-11-1, relating to definitions, as follows:
10

11 "40-11-1.

12 As used in this article, the term:

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

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

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

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

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

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

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

38 ~~(2)(3)~~ (3) 'Motor vehicle' or 'vehicle' means ~~a motor vehicle or~~:

39 (A) Every device in, upon, or by which any person or property is or may be transported
 40 or drawn upon a highway, excepting devices used exclusively upon stationary rails or
 41 tracks, which is self-propelled other than an electric personal assistive mobility device
 42 (EPAMD); or

43 (B) A trailer.

44 ~~(3)(4)~~ (4) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title,
 45 lessor, lessee, security interest holders, and all lienholders of a motor vehicle as shown
 46 on the records of the Department of Revenue or the records from the vehicle's state of
 47 registration.

48 (5) 'Trailer' means every vehicle with or without motive power designed for being drawn
 49 by a motor vehicle excluding manufactured homes as defined in Code Section 8-2-131."

50 SECTION 2.

51 Said article is further amended by revising subsections (a), (b), (e), and (i) of Code Section
 52 40-11-2, relating to duty of person removing or storing motor vehicle, as follows:

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

61 such information to the person removing such vehicle within three business days after
62 receipt of such request.

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

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

98 business is located in lieu of the Department of Revenue, but in like manner, if such office
99 processes motor vehicle records of the Department of Revenue."

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

104 **SECTION 3.**

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

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

113 **SECTION 4.**

114 Said article is further amended by revising paragraph (3) of Code Section 40-11-5, relating
115 to lien foreclosure procedure, as follows:

116 "(3)(A) If, within ten days of delivery to the appropriate address of the written demand
117 required by paragraph (2) of this Code section, the owner of the abandoned motor
118 vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to
119 the lien claimant in accordance with the notice provided pursuant to paragraph (2) of
120 this Code section, or if the owner of the abandoned motor vehicle cannot be
121 ascertained, the person removing or storing the abandoned motor vehicle may foreclose
122 such lien. The person asserting such lien may move to foreclose by making an affidavit
123 to a court of competent jurisdiction, including a magistrate court, on a standard form
124 ~~prescribed by rule or regulation of the Department of Revenue, showing all facts~~
125 ~~necessary~~ approved by the Judicial Council of Georgia attesting that all requirements
126 of this article to constitute such lien have been complied with and the amount claimed
127 to be due. Such affidavit shall aver that the notice requirements of Code Section
128 40-11-2 have been complied with, and such affidavit shall also aver that a demand for
129 payment in accordance with paragraph (2) of this Code section has been made without
130 satisfaction or without a timely filing of a petition for a judicial hearing or that the
131 identity of the owner cannot be ascertained. Documentation demonstrating that the
132 required notices have been sent by the lien claimant or an authorized entity shall be

133 attached to such affidavit. The person foreclosing shall verify the statement by oath or
 134 affirmation and shall affix his or her signature thereto.

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

139 **SECTION 5.**

140 Said article is further amended by revising subsection (a) of Code Section 40-11-9, relating
 141 to derelict motor vehicles, determination of status, disposition, violations, and penalties, as
 142 follows:

143 "(a) If a motor vehicle has been left unattended on private property for not less than two
 144 days or on public property for not less than three days without the owner or driver making
 145 any attempt to recover such vehicle or to leave a conspicuously placed note that such owner
 146 or driver intends to return for such vehicle; or, if a conspicuous note was left, if the motor
 147 vehicle has been left unattended for not less than five days and if because of damage,
 148 vandalism, theft, or fire the vehicle is damaged to the extent that its restoration to an
 149 operable condition would require the replacement of one or more major component parts
 150 or involves any structural damage that would affect the safety of the vehicle; or if there is
 151 evidence that the vehicle was inoperable due to major mechanical breakdown at the time
 152 it was left on the property, such as the engine, transmission, or wheels missing, no coolant
 153 in the cooling system, no oil in the engine, or burned fluid in the transmission; or if the
 154 vehicle is seven or more years old; or if the vehicle is not currently tagged or is not
 155 verifiable by the state as to who is the current owner or lienholder of the vehicle; or if the
 156 vehicle has been abandoned to a wrecker service by an insurance company and the owner
 157 following the insurance company's making a total loss payment, then any person removing
 158 such vehicle shall within 72 hours of removing such vehicle obtain the identity of and
 159 address of the last known registered owner of the vehicle, the owner of the vehicle as
 160 recorded on the certificate of title of such vehicle, and any security interest holder or
 161 lienholder on such vehicle from the local law enforcement agency of the jurisdiction in
 162 which the vehicle was located. If the law enforcement agency shows no information on the
 163 vehicle, then a request for such information shall be sent to the Department of Revenue.
 164 Within 72 hours after obtaining such information, the person removing such vehicle shall,
 165 by certified mail or statutory overnight delivery, return receipt requested, notify the
 166 registered owner, title owner, and security interest holder or lienholder of the vehicle that
 167 such vehicle will be declared a derelict vehicle and the title to such vehicle will be canceled
 168 by the Department of Revenue if such person or persons fail to respond within ten days of

169 receipt of such notice. The state revenue commissioner shall prescribe the form and
170 content of such notice. If the registered owner, title owner, or security interest holder or
171 lienholder fails to respond within 30 days from the date of such notice by certified mail or
172 statutory overnight delivery, and if the vehicle is appraised as having a total value of less
173 than ~~\$300.00~~ \$600.00, the vehicle shall be considered to be a derelict vehicle. The value
174 of the vehicle shall be determined as 50 percent of the wholesale value of a similar car in
175 the rough section of the *National Auto Research Black Book, Georgia Edition*, or if a
176 similar vehicle is not listed in such book or, regardless of the model year or book value of
177 the vehicle, if the vehicle is completely destroyed by fire, flood, or vandalism or is
178 otherwise damaged to the extent that restoration of the vehicle to a safe operable condition
179 would require replacement of more than 50 percent of its major component parts, the
180 person shall obtain an appraisal of the motor vehicle from the local law enforcement
181 agency's auto theft section with jurisdiction in the county or municipality where such
182 vehicle is located. Any person removing a vehicle shall complete a form, to be provided
183 by the Department of Revenue, indicating that the vehicle meets at least four of the
184 above-stated eight conditions for being a derelict vehicle and shall file such form with the
185 Department of Revenue and the law enforcement agency with jurisdiction from which such
186 vehicle was removed."

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SECTION 6.

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