

9-1-1990

## MOTOR VEHICLES AND TRAFFIC Vehicle Registration and the Protection of Consumers, Security Interest Holders, and Lienholders

P. Ray

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

### Recommended Citation

P. Ray, *MOTOR VEHICLES AND TRAFFIC Vehicle Registration and the Protection of Consumers, Security Interest Holders, and Lienholders*, 7 GA. ST. U. L. REV. (1990).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol7/iss1/17>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

## MOTOR VEHICLES AND TRAFFIC

### *Vehicle Registration and the Protection of Consumers, Security Interest Holders, and Lienholders*

CODE SECTIONS: O.C.G.A. §§ 40-2-5, -20 (amended), 40-3-2(12) (amended), 40-3-35 (amended), 40-11-2, -3 (amended), 40-1-5 (new)

BILL NUMBER: SB 450

ACT NUMBER: 1375

SUMMARY: The Act requires dealers of motor vehicles to disclose to purchasers the existence of damage to any vehicle sold if the amount of damage exceeds five percent of the manufacturer's suggested retail price. Concealing or misrepresenting a vehicle's identity through the use of license plates is prohibited. Any person transferring a motor vehicle must provide the transferee with a certificate of registration. The Act adds to the definition of "salvage motor vehicle" any motor vehicle for which an insurance company has paid a total loss claim, and provides for cancellation of certificates of title for salvage motor vehicles.

EFFECTIVE DATE: April 12, 1990

### *History*

Before the 1990 Session of the General Assembly, problems had developed in several areas of vehicle registration.<sup>1</sup> Problem areas included protection of consumers, security interest holders, and lienholders of vehicles.<sup>2</sup> The main purchaser protection issue was whether to require sellers to give notice to buyers if insurance companies had paid total

---

1. Telephone Interview with Senator Culver Kidd, Senate District No. 25, (Apr. 20, 1990) [hereinafter Kidd Interview]. Senator Kidd sponsored SB 450 as a result of hearings held by the Wrecker Service Interim Committee between the 1989 and the 1990 Legislative Sessions. *Id.* Senator Kidd chaired the Interim Committee. *Id.*

2. *Id.*

loss claims on vehicles being transferred.<sup>3</sup> Allowing these vehicles to be rebuilt and used without inspection was a concern relative to consumer protection interests.<sup>4</sup> The police also use vehicle registration records extensively to identify vehicles and owners for a variety of law enforcement purposes.<sup>5</sup> Other purchaser protection issues included notice to buyers of damage to new vehicles and notice to buyers of the last registered owners of vehicles sold.<sup>6</sup>

An important issue to security interest holders and lienholders of vehicles was whether the wrecker companies should be required to seek the identities of security interest holders and lienholders of vehicles they tow and store.<sup>7</sup> Another issue was whether security interest holders and lienholders should receive notice that vehicles are being held by towing companies.<sup>8</sup> These issues all affect the integrity of the vehicle tag and title system.<sup>9</sup>

Within the same calendar year of a vehicle's transfer, the purchaser had the duty to register the vehicle with the State Revenue Commissioner.<sup>10</sup> The seller, however, did not have a duty to provide to the purchaser the most recent certificate of registration.<sup>11</sup>

3. Telephone Interview with Clint Moyer, Director, Georgia Motor Vehicle Division, in Atlanta, (Apr. 20, 1990) [hereinafter Moyer Interview]. Mr. Moyer oversees the inspection of salvage motor vehicles and vehicle registration process for the State. *Id.* Mr. Moyer stated that before the Act, sellers could sell vehicles for which an insurance company had paid a total loss claim without any inspection by the State. *Id.* Mr. Moyer also stated that in one case a car split in half while driving along the roadway. *Id.*

4. *Id.*

5. Telephone Interview with Representative Jerry D. Jackson, House District No. 9, (Apr. 18, 1990).

6. Moyer Interview, *supra* note 3.

7. Kidd Interview, *supra* note 1. Storage fees for towed cars can mount up quickly. *Id.* Prior to the bill, security interest holders and lienholders could lose their interest on vehicles to storage charges without any notice from the wrecking companies. *Id.*

8. *Id.*

9. Kidd Interview, *supra* note 1. The main purpose of SB 450 is to protect "the integrity of the tag and title system." *Id.* Mr. Moyer actively participated with Senator Kidd and the legislative counsel in drafting the bill. He expressed his agreement with Senator Kidd's assessment of the legislative purpose. Mr. Moyer explained that the various committee substitutes and floor amendments simply reflected additional provisions and concerns of the legislators, but that the House and Senate actually had no significant disagreement about SB 450. He also stated that the bill is not modelled after any other state's law, but that daily problems of vehicle identification and traffic court administration led to his request for the changes for a more updated system. Moyer interview, *supra* note 3.

10. O.C.G.A. § 40-3-39(b) (1989).

11. The vehicle title and license registration records are two separate records. For example, if a person receiving title to a vehicle has not registered the license tag, then the record title and registration systems respectively show two different owners. Moyer Interview, *supra* note 3. The new system should provide better control for updating titles and registration. This is a serious concern for law enforcement as well as for private individuals. Kidd Interview, *supra* note 1.

Registration procedures for salvage motor vehicles did not require that insurance companies notify the Commissioner of Insurance upon payment of a total loss claim of a vehicle.<sup>12</sup> The Commissioner of Insurance had no statutory duty to notify any security interest holder or lienholder of a vehicle that an insurance company had paid a total loss claim on the vehicle.<sup>13</sup> Sellers were not required to disclose to a buyer that a vehicle fell into this category.<sup>14</sup> The registered owner of the vehicle was not required to notify the Commissioner of Insurance, nor to apply for title of the vehicle as a salvage motor vehicle.<sup>15</sup> Any insurance company paying a total loss claim and keeping possession of the vehicle also did not have to apply for title of the vehicle as a salvage motor vehicle.<sup>16</sup> Anyone possessing a salvage motor vehicle had no statutory duty to return the vehicle license plate to the Commissioner of Insurance.<sup>17</sup>

Before the 1990 Legislative Session, new car dealers and distributors had no statutory duty to disclose to buyers any damage to a vehicle of which the seller had actual knowledge. Manufacturers, distributors, and importers also had no such statutory duty. Illegally removing a license plate was a felony.<sup>18</sup> No provision existed explicitly allowing the placement of an expired prestige license plate on the front of a vehicle.

Persons removing vehicles from public or private property at the request of a law enforcement officer were required only to seek the name of the last known registered owner of the vehicle.<sup>19</sup> The person removing the vehicle, however, had no duty to seek the record title owner, or any security interest holder or lienholder. Although the local law enforcement agency had to furnish the name of the last known registered owner, no duty existed to furnish information about the record title owner, security interest holder, or lienholder. The person removing the vehicle had a duty to notify the owner within seven days of removing the vehicle,<sup>20</sup> but the person owed no such duty to any security interest holder or lienholder. Prior law deemed such a vehicle abandoned unless the owner redeemed the vehicle within thirty days of removal.<sup>21</sup> No statutory provision for redemption by any security interest holder or lienholder existed.

---

12. 1987 Ga. Laws 949 (formerly found at O.C.G.A. § 40-2-20 (1989)).

13. Kidd Interview, *supra* note 1.

14. Moyer Interview, *supra* note 3.

15. *Id.*

16. *Id.*

17. *Id.*

18. 1966 Ga. Laws 10 (formerly found at O.C.G.A. § 40-2-5 (1989)). Illegally tampering with a license plate is now an aggravated misdemeanor. O.C.G.A. § 40-2-5(b) (Supp. 1990).

19. 1988 Ga. Laws 1750 (formerly found at O.C.G.A. § 40-11-2(a)-(b) (1989)).

20. 1988 Ga. Laws 1750 (formerly found at O.C.G.A. § 40-11-2(d) (1988)).

21. *Id.*

## SB 450

The Act revised the definitional section of the Certificate of Title, Security Interests, and Liens chapter of the Code.<sup>22</sup> It expands the definition of "salvage motor vehicle" to include a motor vehicle for which an insurance company has paid a total loss claim.<sup>23</sup> It does not differentiate among vehicles by extent of actual damage.<sup>24</sup> Vehicles for which insurance companies have paid a total loss claim are not included if the vehicle is later recovered without damage, or with damage requiring the replacement of less than two component parts.<sup>25</sup> The Senate Committee on Governmental Operations substitute first added these provisions to the original bill.<sup>26</sup> The Senate committee substitute, however, did not provide an exception for vehicles recovered that required the placement of less than two component parts to restore the vehicle to operable condition after payment of a total loss claim.<sup>27</sup> The House Motor Vehicles Committee substitute added this exception which the conference committee incorporated into the final version of the bill.<sup>28</sup> All vehicles must have a manufacturer's vehicle identification plate to qualify for salvage motor vehicle registration.<sup>29</sup>

The Act amends the Code provision relating to the cancellation of certificates of title for extensively damaged vehicles. If an insurance company holds title to a damaged vehicle because it has paid a total loss claim, the company must notify the State Revenue Commissioner and deliver the title certificate to the Commissioner for cancellation of the certification of title or to receive a salvage certificate of title.<sup>30</sup> If the company pays a total loss claim but does not acquire title, the company must notify the Commissioner but need not surrender the title certificate.<sup>31</sup> Security interest holders or lienholders holding title certificates of vehicles for which a total loss claim has been paid are required to surrender the title certificate to the Commissioner for cancellation or to receive a salvage certificate of title.<sup>32</sup> If the Commissioner does not receive a title certificate from an insurance

---

22. O.C.G.A. § 40-3-2 (Supp. 1990).

23. O.C.G.A. § 40-3-2(12)(C) (Supp. 1990). See Moye Interview, *supra* note 3.

24. O.C.G.A. § 40-3-2(12)(C) (Supp. 1990).

25. *Id.*

26. SB 450 (SCS), 1990 Ga. Gen. Assem.

27. *Id.*

28. SB 450 (HCS), 1990 Ga. Gen. Assem.

29. O.C.G.A. § 40-3-2(12)(C) (Supp. 1990).

30. O.C.G.A. § 40-3-35(a)(3)(A) (Supp. 1990). Insurance companies argued that these requirements posed administrative burdens on their businesses; these arguments did persuade the General Assembly and are not reflected in SB 450. Moye Interview, *supra* note 3.

31. O.C.G.A. § 40-3-35(a)(3)(B) (Supp. 1990).

32. O.C.G.A. § 40-3-35(a)(4) (Supp. 1990).

company or a security interest holder or lienholder after thirty days, the Commissioner must cancel the current certificate and issue a salvage certificate.<sup>33</sup> A salvage certificate, however, does not affect the security interest of the lienholder.<sup>34</sup> These provisions were added by the Senate Committee on Governmental Operations.<sup>35</sup>

Before operating or transferring a salvage motor vehicle, a registered owner or security interest holder must apply for a salvage certificate of title.<sup>36</sup> Insurance companies taking possession of a salvage motor vehicle must also apply for a salvage certificate of title within thirty days of paying a total loss claim.<sup>37</sup> Any persons, firms, or corporations other than insurance companies who acquire a salvage motor vehicle must also apply for a salvage title certificate within thirty days of acquisition; such persons or entities may not transfer a salvage motor vehicle without a salvage certificate of title.<sup>38</sup>

A registered owner who receives a payment on a total loss claim and who retains possession of a salvage motor vehicle must remove and return the license plate to the Commissioner.<sup>39</sup> The Senate Committee on Governmental Operations added this requirement, because otherwise the vehicle registration would not reflect the vehicle's condition.<sup>40</sup> An insurer paying a total loss claim must notify the owner that return of the license plate is required.<sup>41</sup> The House Motor Vehicles Committee added this provision to facilitate the registration process.<sup>42</sup> If the insurer takes possession of a salvage motor vehicle with a Georgia title after paying a total loss claim, the insurer must return the plate to the Commissioner, or notify the Commissioner if the plate is unavailable.<sup>43</sup> The Conference Committee added this last provision so that insurers must also comply with the registration requirements.<sup>44</sup> The final version of the bill includes all of these notice and license plate provisions to protect the integrity of the registration system.<sup>45</sup>

The Act amends the Code section relating to registration and license requirements.<sup>46</sup> Any person, company, or corporation selling or

33. *Id.*

34. *Id.*

35. SB 450 (SCS), 1990 Ga. Gen. Assem.

36. O.C.G.A. § 40-3-35(b)(1) (Supp. 1990).

37. O.C.G.A. § 40-3-35(b)(2) (Supp. 1990).

38. O.C.G.A. § 40-3-35(b)(3) (Supp. 1990). Mr. Moyer finds this to be a "good change . . . [because] people were buying tags off of junk cars." Now these cars must be registered for a salvage certificate of title. Moyer Interview, *supra* note 3.

39. O.C.G.A. § 40-3-35(i) (Supp. 1990).

40. SB 450 (SCS), 1990 Ga. Gen. Assem.

41. O.C.G.A. § 40-3-35(i) (Supp. 1990).

42. SB 450 (HCS), 1990 Ga. Gen. Assem.; Moyer Interview, *supra* note 3.

43. O.C.G.A. § 40-3-35(j) (Supp. 1990).

44. SB 450 (CCS), 1990 Ga. Gen. Assem.

45. Moyer Interview, *supra* note 3; see also O.C.G.A. § 40-3-35(i)-(j) (Supp. 1990).

46. O.C.G.A. § 40-2-20 (Supp. 1990).

transferring a motor vehicle must provide the transferee with the current Georgia certificate of registration, or the last certificate of registration, if none is current and valid.<sup>47</sup> Involuntary transferors are exempt from providing the transferee with a certificate of registration.<sup>48</sup> Involuntary transfers include repossessed or leased vehicles, court ordered sales, salvage vehicles, or stolen vehicles recovered by an insurance company after payment of a loss claim.<sup>49</sup> In cases of involuntary transfer, the owner must instead surrender the vehicle license plate to the county tag agent.<sup>50</sup> In any case, if a transferor does not have a valid certificate of registration, and if the buyer is a licensed motor vehicle dealer, the dealer may apply for a replacement certificate of registration.<sup>51</sup>

The Act adds a new section to the General Provisions chapter of the Motor Vehicles Title. Dealers of motor vehicles must now disclose to the buyer any damage which totals more than five percent of the manufacturer's suggested retail price.<sup>52</sup> The dealer must also disclose any damage to the paint, if the damage totals more than 500 dollars.<sup>53</sup> The provision applies only to dealers who have actual knowledge of such damage.<sup>54</sup> The same disclosure requirements apply to importers, manufacturers, distributors, and carriers of vehicles.<sup>55</sup> Failure to disclose may result in civil liability.<sup>56</sup> Buyers may not revoke or rescind a sales contract or recover damages on the basis of damage and repair to a vehicle prior to a sale if this section does not require disclosure.<sup>57</sup> A violation of this section is a *per se* violation of the Unfair Business Practices Act.<sup>58</sup> Both chambers passed a House floor amendment requiring disclosure of damage to new vehicles.<sup>59</sup>

Using a license plate to conceal or misrepresent a vehicle's identity is defined as an aggravated misdemeanor, punishable by a fine of at least 500 dollars, imprisonment of not more than one year, or both.<sup>60</sup> The House Motor Vehicles Committee substitute added a provision

47. O.C.G.A. § 40-2-20(a) (Supp. 1990).

48. *Id.*

49. *Id.*

50. O.C.G.A. § 40-2-20(a) (Supp. 1990). Surrender of the license plate notifies the Motor Vehicles Division of the transfer, enabling the Division to update the registration records. Moye Interview, *supra* note 3.

51. O.C.G.A. § 40-2-20(a) (Supp. 1990).

52. O.C.G.A. § 40-1-5(b) (Supp. 1990).

53. *Id.*

54. *Id.*

55. O.C.G.A. § 40-1-5(d) (Supp. 1990).

56. O.C.G.A. § 40-1-5(d)-(e) (Supp. 1990).

57. O.C.G.A. § 40-1-5(f) (Supp. 1990).

58. O.C.G.A. § 40-1-5(g) (Supp. 1990). See O.C.G.A. § 10-1-393 (1989).

59. SB 450 (HFA), 1990 Ga. Gen. Assem.; O.C.G.A. § 40-1-5 (Supp. 1990).

60. O.C.G.A. § 40-2-5(b) (Supp. 1990).

which prohibits transferring a license plate<sup>61</sup> or using a vehicle with a license plate improperly transferred or removed from another vehicle.<sup>62</sup> The House committee substitute defined any such violation as a felony.<sup>63</sup> The Conference Committee version which passed both houses decreased the violation from a felony to an aggravated misdemeanor.<sup>64</sup> The final version of the bill also permits a vehicle which bears a current valid license plate on the rear to bear an expired prestige license plate on the front.<sup>65</sup>

The Act amends the Abandoned Motor Vehicles chapter of the Code relating to the duty of notification by persons removing or storing a motor vehicle.<sup>66</sup> Any person who removes a motor vehicle from public property at the request of a law enforcement officer must now seek the identity of the record title owner, security interest holder, and lienholder on the vehicle within seventy-two hours of the law enforcement officer's request for removal.<sup>67</sup> The local law enforcement agency must provide the names of the record title owner, security interest holder, and lienholder within seventy-two hours of a request by the person who has removed the vehicle.<sup>68</sup> The Act adds the same notification requirements for persons removing vehicles from private property at the request of a law enforcement officer.<sup>69</sup>

The Act also defines the duty of persons removing a vehicle from either public or private property when the vehicles removed are not stolen, being held for repair, nor being stored by an insurance company.<sup>70</sup> The person removing the vehicle must notify by certified or registered mail any security interest holder or lienholder within seven days of the date of the vehicle's removal.<sup>71</sup> The notice must inform the party that failure to redeem the vehicle within thirty days after the vehicle is removed will result in a determination of abandonment.<sup>72</sup>

---

61. O.C.G.A. § 40-2-5(a)(2) (Supp. 1990).

62. O.C.G.A. § 40-2-5(a)(4) (Supp. 1990).

63. SB 450 (HCS), 1990 Ga. Gen. Assem.

64. O.C.G.A. § 40-2-5(b) (Supp. 1990). Mr. Moye stated that this is a good change because felony cases must be tried in the Superior Court, but high and aggravated misdemeanors may be more effectively prosecuted in State Court. The Superior Court cannot place a high priority on the use or concealment of a license plate case over its other cases of murder and rape. The State Court is the appropriate forum. Moye Interview, *supra* note 3.

65. O.C.G.A. § 40-2-5(c) (Supp. 1990).

66. O.C.G.A. § 40-11-2 to -3 (Supp. 1990). These requirements were included in spite of objections by wrecking companies at the Wrecker Service Interim Committee hearings. Moye Interview, *supra* note 3. See also Kidd Interview, *supra* note 1.

67. O.C.G.A. § 40-11-2(a) (Supp. 1990).

68. *Id.*

69. O.C.G.A. § 40-11-2(b) (Supp. 1990).

70. O.C.G.A. § 40-11-2(d) (Supp. 1990).

71. *Id.* This also protects security interest holders and lienholders by letting them "know where their car is." Kidd Interview, *supra* note 1.

72. *Id.*



The Act also amends the Code provision defining when peace officers may remove vehicles from public property.<sup>73</sup> Peace officers requesting removal of a vehicle must provide to the person removing the vehicle the names and addresses of the record title owner and all security interest holders or lienholders.<sup>74</sup> This procedure will facilitate providing notice to all of the security interest holders and lienholders.<sup>75</sup>

*P. Ray*

---

73. O.C.G.A. § 40-11-3 (Supp. 1990).

74. O.C.G.A. § 40-11-3(d)(2) (Supp. 1990).

75. Kidd Interview, *supra* note 1.