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MOTOR VEHICLES AND TRAFFIC Abandoned Motor Vehicles: Change Certain Provisions Relating to Definitions; Change Certain Provisions Relating to Lien Foreclosure Procedure; Change Certain Provisions Relating to Duty of Person Removing or Storing Motor Vehicle; Provide Provision Relating to the Towing or Immobilization of Motor Vehicles in Paid Private Parking Facilities Located Within Five-hundred Feet of an Establishment Which Sells Alcohol for Consumption on the Premises

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MOTOR VEHICLES AND TRAFFIC

Abandoned Motor Vehicles: Change Certain Provisions Relating to Definitions; Change Certain Provisions Relating to Lien Foreclosure Procedure; Change Certain Provisions Relating to Duty of Person Removing or Storing Motor Vehicle; Provide Provision Relating to the Towing or Immobilization of Motor Vehicles in Paid Private Parking Facilities Located Within Five-hundred Feet of an Establishment Which Sells Alcohol for Consumption on the Premises

CODE SECTIONS: O.C.G.A. §§ 40-11-1, -2, -5 (amended), 40-11-3.2 (new)

BILL NUMBER: SB 334

ACT NUMBER: 752

GEORGIA LAWS: 2002 Ga. Laws 563

SUMMARY: The Act simplifies and clarifies certain provisions relating to the definition of “abandoned motor vehicle.” The Act changes certain provisions relating to the duty of persons removing or storing abandoned motor vehicles. The Act adds a new section, which provides that the owner of a paid private parking lot or paid private parking facility located within five-hundred feet of a drinking establishment, which sells alcohol to be consumed 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. Additionally, the new section allows the owner or operator of the lot to charge a reasonable fee for vehicles left on the lot. Finally, the new section provides that business owners and residents are not prohibited from removing motor vehicles from their property.

EFFECTIVE DATE: January 1, 2003

History

SB 334 was introduced by legislators at the behest of local law enforcement authorities and local business owners responsible for towing and storing abandoned cars.¹ “The basic problem[] [was] that the statute, as it stood, allowed for a longer time for the car to be abandoned before it could be towed and stored.”² An additional problem was evidenced in the fact that it was difficult to get title to the abandoned car under the previous statute.³ The time period allowed by the previous statute was so long that vandals would destroy the vehicle as it remained abandoned.⁴ “They would break the windows and do additional damage that would ultimately depreciate the value of the car.”⁵ Finally, according to SB 334 sponsor, Seth Harp, the bill was introduced on behalf of the public at large.⁶ Allowing cars to remain abandoned (and often vandalized) on roadways, without being towed and stored, created a safety hazard.⁷

Representative Doug Teper of House District 61 fought to get his amendment passed as the final day of the 2002 session came to a close.⁸ Representative Teper referred to this bill as a “peoples bill” rather than a “lobbyist bill,” meaning that he had to do all the footwork on behalf of concerned local citizens in order to get this legislation passed through the Georgia General Assembly.⁹ The central purpose for introducing this amendment was to protect young people who “do the right thing” by leaving their cars in parking lots overnight after drinking, rather than driving home.¹⁰ “Parking [facilities] near drinking establishments shouldn’t be towing people overnight.”¹¹ After Representative Teper’s amendment failed earlier

1. Telephone Interview with Sen. Seth Harp, Senate District No. 16 (June 5, 2002) [hereinafter Harp Interview].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Harp Interview, *supra* note 1.

8. Interview with Rep. Doug Teper, House District No. 61 (May 25, 2002) [hereinafter Teper Interview].

9. *Id.*

10. *Id.*

11. *Id.*

that day, he worked diligently to address the concerns expressed by his colleagues before finding another vehicle for his amendment.¹² After “hijacking” Senator Rene Kemp’s bill (SB 334) during the final hours of the session, the amendment passed in the House with a vote of 160 yeas to 0 nays.¹³ Upon the return of SB 334 to the Senate floor, Senator Rene Kemp “objected to the amendment.”¹⁴ “There had to be a passing [in the Senate] or else the bill would die.”¹⁵ Senator Rene Kemp ultimately agreed to the language of Representative Teper’s amendment and no Conference Committee was required.¹⁶ Representative Teper requested a signing ceremony for SB 334 Governor Roy Barnes and signed the bill into law on May 3, 2002.¹⁷

SB 334

Introduction

Senators Rene Kemp of the 3rd, Michael Meyer von Bremen of the 12th, Doug Haines of the 46th, Seth Harp of the 16th, and Ed Harbison of the 15th sponsored SB 334.¹⁸ The bill was introduced on the Senate floor on January 17, 2002.¹⁹ The Senate assigned the bill to its Judiciary Committee, which favorably reported the bill, as introduced, on January 18, 2002.²⁰ The Senate passed the bill, as introduced, on January 29, 2002.²¹

The House assigned SB 334 to its Judiciary Committee, which created its own substitute and favorably reported the bill, as substituted, on April 2, 2002.²² The House adopted the Committee substitute, adopted a floor amendment introduced by Representative

12. *Id.*

13. *Id.*

14. Teper Interview, *supra* note 8.

15. *Id.*

16. *Id.*

17. 2002 Ga. Laws 563, § 6, at 569; Teper Interview, *supra* note 8.

18. SB 334, as introduced, 2002 Ga. Gen. Assem.

19. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002.

20. *Id.*

21. *Id.*

22. *Id.*

Doug Teper of the 61st district,²³ and passed the bill on April 9, 2002.²⁴

Upon the return of SB 334 to the Senate floor on April 10, 2002, the Senate disagreed with the House Committee substitute and floor amendment.²⁵ On April 12, 2002 the House insisted, and the Senate receded.²⁶ The Governor signed the bill into law on May 3, 2002 at a signing ceremony requested by Representative Doug Teper.²⁷

Consideration by the Senate

On January 17, 2002, SB 334 was introduced on the Senate floor.²⁸ The bill was referred to the Senate's Judiciary Committee.²⁹ The Committee favorably reported the bill, as introduced, on January 18, 2002.³⁰ As introduced, SB 334 amended Code section 40-11-2 by striking and adding language in subparagraphs (C), (D), and (E) of paragraph (1) to the effect that a vehicle meets the statutory definition of "abandoned motor vehicle" if no one has paid all current charges for towing and storage, rather than simply failure to make claim to the vehicle.³¹ Additionally, the bill amended paragraph (3) of Code section 40-11-1 to the effect that it clarified the definition of "owner" by adding the language "registered owner" and the language owner "as recorded on the title."³²

As introduced, SB 334 amended Code section 40-11-2 by changing the duties of those removing or storing abandoned vehicles.³³ Specifically, under subsection (a) the bill required removers of abandoned vehicles to ascertain the identity and address of the last known owner of the vehicle from the local law enforcement agency for the jurisdiction in which the remover's or storer's place of business is located.³⁴ The Act struck language

23. Teper Interview, *supra* note 8.

24. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002.

25. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002; Teper Interview, *supra* note 8.

26. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002.

27. 2002 Ga. Laws 563; Teper Interview, *supra* note 8.

28. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002.

29. *Id.*

30. *Id.*

31. SB 334, as introduced, 2002 Ga. Gen. Assem.

32. *Id.*

33. *Id.*

34. *Id.*

referring to a seventy-two hour requirement and added language requiring the remover or storer to seek the identity of owners within three business days of removal.³⁵ Similarly, the Act added language, requiring law enforcement agencies to provide the identifying information to removers and storers within three business days of removal (rather than seventy-two hours).³⁶ Under subparagraph (b), the bill, again, amended all language to reflect a three business day deadline rather than a seventy-two hour deadline.³⁷ Under subparagraph (d) the bill, as introduced, added language requiring that if a vehicle is not stolen, being repaired by a repair facility, or stored by an insurance company, the remover or storer of the abandoned vehicle must notify all owners by signed, written acknowledgment within seven days of removal or within one business day after owner identification is provided, whichever is later.³⁸ As introduced, SB 334 added language to subparagraph (e) of paragraph (1) to the effect that if the storer or remover has knowledge that the vehicle is registered in another state, the person should ascertain the identity of the owner and research requests and fees should be made to the office of Tax Commissioner and deposited in the general fund for the county in which the remover's or storer's place of business is located.³⁹

As introduced, SB 344 amended Code section 40-11-5, which refers to lien foreclosure procedure.⁴⁰ Specifically, the bill added language to paragraph (2) to the effect that upon foreclosure of a lien on an abandoned vehicle, the person shall, by written demand and form provided by the Department of Motor Vehicle Safety, notify the owner of his right to a judicial hearing to determine the validity of the lien.⁴¹ Additionally, language was added to the effect that failure to return the written demand, file with a court of competent jurisdiction a petition for hearing, and provide the lien claimant with a copy of such petition, all within ten days of the delivery of the demand, shall effect a waiver of the right to a hearing.⁴² Finally,

35. *Id.*

36. SB 334, as introduced, 2002 Ga. Gen. Assem.

37. *Id.*

38. *Id.*

39. SB 334, as introduced, 2002 Ga. Gen. Assem.

40. *Id.*

41. *Id.*

42. SB 334, as introduced, 2002 Ga. Gen. Assem.

under the same paragraph, language was added to the effect that possible owners are provided with the option to disclaim ownership of the vehicle through affidavit.⁴³ SB 334, as introduced, amended paragraph (3)(A) by adding language that if an owner of an abandoned vehicle fails to pay or fails to respond to the demand pursuant to paragraph (2), the person removing or storing the vehicle may foreclose the lien.⁴⁴

Additionally, the bill added language requiring the person asserting the lien to make an affidavit to a court of competent jurisdiction on a form prescribed by rule or regulation of the Department of Motor Vehicle Safety.⁴⁵ Additional language was added to make paragraph (3)(A) consistent with the language added to paragraph (2).⁴⁶ The bill amended paragraph (4) by striking subparagraph (B) entirely, leaving no subparagraphs.⁴⁷ SB 334, as introduced, struck the language requiring the lien claimant to provide the clerk with known the address of all owners of the abandoned vehicle and struck the language requiring the clerk to serve notice on the owners of the abandoned vehicle, in order to determine cause.⁴⁸ The bill added language to paragraph (5) to make the paragraph consistent with the language in paragraph (2).⁴⁹

Additionally, paragraph (5) was amended to the effect that language referring to a “probable” cause hearing and language referring to possible hearing outcomes and remedies, was stricken.⁵⁰ The bill simplified paragraph (6) by striking language referring to a “probable cause hearing” and language referring to action to be taken following a hearing.⁵¹ The bill added language to paragraph (6) to reflect that upon filing of a petition for a hearing by an owner, neither the lien claimant nor the court may sell the vehicle, but the lien claimant may retain or the court may obtain the vehicle pursuant to

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. SB 334, as introduced, 2002 Ga. Gen. Assem..

49. *Id.*

50. *Id.*

51. *Id.*

court order.⁵² Finally, the bill amended paragraph (9) by adding language consistent with paragraph (3).⁵³

Consideration by the House Judiciary Committee

Upon introduction, the House assigned the bill to its Judiciary Committee, which favorably reported the bill, as substituted, on April 2, 2002.⁵⁴ The House Committee offered a substitute to SB 334, making minor changes throughout the bill.⁵⁵ The substitute amended Code section 40-11-1, relating to definitions by adding the word “reasonable” to subparagraphs (C), (D), and (E) of paragraph (1).⁵⁶ This added language defined “abandoned motor vehicle” as a vehicle that has been abandoned without anyone having paid all current reasonable charges for towing or storage.⁵⁷ The substitute simplified language throughout Code section 40-11-2 to the effect that the bill no longer listed possible owners of the abandoned vehicle (i.e. title owner, security interest holder, lien holder), but simply referred to “all known owners,” “all owners,” or “none of the owners.”⁵⁸ The substitute amended Code section 40-11-5 slightly by striking the phrase “respond to such demand” in paragraph (3)(A) so that the paragraph allowed a person to foreclose a lien in the event that an owner fails to pay or to file a petition for a judicial hearing.⁵⁹

Consideration by the House

The House adopted one floor amendment introduced by Representative Doug Teper of the 61st district.⁶⁰ The amendment inserted a new Code section, section 40-11-3.2 to the bill.⁶¹ The amendment provided that, an owner of a paid private parking lot or

52. *Id.*

53. *Id.*

54. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002.

55. Compare SB 334, as introduced, 2002 Ga. Gen. Assem., with SB 334 (HCS), 2002 Ga. Gen. Assem.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. State of Georgia Final Composite Status Sheet, SB 334, Apr. 12, 2002;

Teper Interview, *supra* note 8.

61. Compare SB 334(HCS), 2002 Ga. Gen. Assem., with SB 334 (HCSFA), 2002 Ga. Gen. Assem.

paid private parking facility located within five-hundred feet of a drinking establishment that sells alcohol to be consumed on the premises, may not tow or immobilize, or cause to be towed or immobilized, a vehicle left on the lot between the hours of midnight and noon the next day.⁶² In an attempt to address the concerns of fellow representatives, Representative Teper added four other provisions to the new section.⁶³ First, the towing restriction does not apply to a resident or a private business owner.⁶⁴ Second, the parking lot owner or operator is not prohibited from charging a reasonable fee for vehicles left on the lot without authorization.⁶⁵ Third, the new section provided a definition for “paid private parking lot” and “paid private parking facility.”⁶⁶ Fourth, the section provided that, the owner or operator of the paid private parking facility shall not be liable for damages to vehicles left on the lot without authorization.⁶⁷

The Act

Code Section 40-11-1

The Act amends Code section 40-11-1 by partially defining “abandoned motor vehicle” as a vehicle that has been abandoned without anyone having paid all current reasonable charges for towing and storage.⁶⁸ Additionally, the Act amends Code section 40-11-1 by defining “owner” as a registered owner, the owner as recorded on the title, lessor, lessee, security interest holders, and all lienholders.⁶⁹

Code Section 40-11-2

The Act amends Code section 40-11-2 by requiring that, when removing an abandoned vehicle from public property, the remover or storer must seek the identity of all known owners from the law

62. *Id.*

63. Compare SB 334 (HCS), 2002 Ga. Gen. Assem., with SB 334 (HCSFA), 2002 Ga. Gen. Assem.; Teper Interview, *supra* note 8.

64. Compare SB 334 (HCS), 2002 Ga. Gen. Assem., with SB 334 (HCSFA), 2002 Ga. Gen. Assem.

65. *Id.*

66. *Id.*

67. *Id.*

68. Compare 1985 Ga. Laws 1265, § 1, at 1265 (formerly found at O.C.G.A. § 40-11-1 (2001)), with O.C.G.A. § 40-11-1 (Supp. 2002).

69. *Id.*

enforcement officer requesting the removal or from a local law enforcement agency for the jurisdiction in which the remover's or storer's place of business is located.⁷⁰ This requirement must take place within three business days.⁷¹ The Act also requires that the local law enforcement agency furnish identifying information to the remover or storer within three business days of the request.⁷² The Act requires that upon removal of an abandoned vehicle from private property, the person must report vehicle identification information to the local law enforcement agency and seek the identity of all known owners within three business days of removal.⁷³ Additionally, the Act provides that local law enforcement must furnish the information within three business days of the request.⁷⁴

The Act further amends this Code section by requiring that, if a vehicle is not stolen, being repaired by a repair facility, or stored by an insurance company, the remover or storer of the abandoned vehicle must notify all owners by signed, written acknowledgement within seven days of removal or within one business day after the owner identification is provided, whichever is later.⁷⁵ The Act further provides that, if the storer or remover has knowledge that the vehicle is registered in another state, the person should attempt to ascertain the identity of the owner, and give research requests and fees to the Tax Commissioner's office.⁷⁶ Such fees will be deposited in the general fund for the county in which the remover's or storer's place of business is located.⁷⁷

Code Section 40-11-3.2

The Act adds a new Code section, 40-11-3.2.⁷⁸ This new section provides that an owner of a paid private parking lot or paid private parking facility located within five-hundred feet of a drinking

70. Compare 1995 Ga. Laws 663, § 1, at 663 (formerly found at O.C.G.A. § 40-11-2(2001)), with O.C.G.A. § 40-11-2 (Supp. 2002).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Compare 1995 Ga. Laws 663, § 1, at 663 (formerly found at O.C.G.A. § 40-11-2 (2001)), with O.C.G.A. § 40-11-2 (Supp. 2002).

77. *Id.*

78. O.C.G.A. § 40-11-3.2 (Supp. 2002).

establishment that sells alcohol to be consumed on the premises, may not tow or immobilize, or cause to be towed or immobilized, a vehicle left on the lot between the hours of midnight and noon the next day.⁷⁹ It further provides that business owners and residents are not prohibited from removing abandoned vehicles from their property.⁸⁰

Additionally, the section provides that a parking lot owner or operator is not prohibited from charging a reasonable fee for vehicles left on the lot.⁸¹ The section defines “paid private parking lot” and “paid private parking facility” as “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.”⁸² Finally, the section provides that the owner or operator of a paid private parking facility shall not be liable for damages to vehicles left on the lot without authorization.⁸³

Code Section 40-11-5

The Act amends Code section 40-11-5 by allowing the written demand for removal and/or storage fees to be made at the same time as the written notice pursuant to Code section 40-11-2.⁸⁴ Additionally, the Act requires that upon foreclosure of a lien on an abandoned vehicle, the person shall, by written demand and form provided by the Department of Motor Vehicle Safety, notify the owner of his right to a judicial hearing to determine the validity of the lien.⁸⁵ The Act provides that failure to return the written demand, to file with a court of competent jurisdiction a petition for hearing, and to provide the lien claimant with a copy of such petition, all within ten days of the delivery of the demand, shall effect a waiver of the right to a hearing.⁸⁶ The Act allows the suspected owners of abandoned vehicles to disclaim ownership of the vehicle through

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. Compare 1985 Ga. Laws 1267, § 3 at 1267 (formerly found at O.C.G.A. § 40-11-5 (2001)), with O.C.G.A. § 40-11-5 (Supp. 2002).

85. *Id.*

86. *Id.*

affidavit.⁸⁷ The Act further amends Code section 40-11-5 by providing that if an owner of an abandoned vehicle fails to pay or fails to respond to the demand pursuant to this Code section, the person removing or storing the vehicle may foreclose the lien.⁸⁸ The Act requires the lien claimant to file an affidavit with a court of competent jurisdiction on the appropriate form, required by the Department of Motor Vehicle Safety, showing the validity and reasonableness of the lien.⁸⁹ The Act allows that, if no “timely petition for a hearing has been filed,” and the lien claimant has filed the appropriate affidavit, the lien will be deemed valid and foreclosure allowed.⁹⁰ The Act also requires that, if a petition for a hearing is filed within ten days of receipt of the demand, a court will set the hearing within ten days of the filing of the petition.⁹¹ Finally, the Act allows the lien claimant to retain or the court to obtain the abandoned motor vehicle pursuant to court order.⁹²

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87. *Id.*

88. *Id.*

89. *Id.*

90. Compare 1985 Ga. Laws 1267, § 3 at 1267 (formerly found at O.C.G.A. § 40-11-5 (2001)), with O.C.G.A. § 40-11-5 (Supp. 2002).

91. *Id.*

92. *Id.*