

#### **40-11-1. Definitions.**

As used in this article, the term:

1. "Abandoned motor vehicle" means a motor vehicle or trailer:

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

(B) Which is left unattended on a public street, road, or highway or other public property for a period of at least five days and when it reasonably appears to a law enforcement officer that the individual who left such motor vehicle unattended does not intend to return and remove such motor vehicle. However, on the state highway system, any law enforcement officer or employee of the Department of Transportation to whom enforcement authority has been designated pursuant to Code Section 32-6-29 may authorize the immediate removal of vehicles posing a threat to public health or safety or to mitigate congestion;

(C) Which has been lawfully towed onto the property of another at the request of a law enforcement officer and left there for a period of not less than 30 days without anyone's having made claim thereto;

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

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

2. "Motor vehicle" or "vehicle" means motor vehicle or trailer.

3. "Owner" means the owner, lessor, lessee, security interest holders, and all lienholders as shown on the records of the Department of Revenue.

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#### **40-11-2. Duty of person removing or storing motor vehicle**

(A) Any person who removes a motor vehicle from public property at the request of a law enforcement officer or stores such vehicle shall, if the owner of the vehicle is unknown, seek the identity and address of the last known registered owner of such vehicle, the owner of the vehicle as recorded on the title of such vehicle, and any security interest holder or lienholder from the law enforcement officer requesting removal of such or from such officer's agency within 72 hours of removal. The local law enforcement agency shall furnish such information to the person removing such vehicle within 72 hours after receipt of such request.

(B) Any person who removes a motor vehicle from private property at the request of the property owner or stores such vehicle shall, if the owner of the vehicle is unknown, notify in writing a local law enforcement agency of the location of the vehicle, the manufacturer's vehicle identification number, license number, model, year, and make of the vehicle within 72 hours of the removal of such vehicle and shall seek from the local law enforcement agency the identity and address of the last known registered owner of such vehicle, the owner of the vehicle as recorded on the title, and any security interest holder or lienholder and any information indicating that such vehicle is a stolen motor vehicle. The local law enforcement agency shall furnish such information to the person removing such vehicle within 72 hours after receipt of such request.

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

(D) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined not to be a stolen vehicle or is not a vehicle being repaired by a repair facility or is not being stored by an insurance company providing insurance to cover damages to the vehicle, the person removing or storing such motor vehicle shall, within seven calendar days of the day such motor vehicle was removed, notify the owner and any security interest holder or lienholder, if known, by certified or registered mail of the location of such motor vehicle, the fees connected with removal and storage of such motor vehicle, and the fact that such motor vehicle will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle within 30 days of the day such vehicle was removed.

(E) If the owner, security interest holder, or lienholder fails to redeem such motor vehicle as described in subsection (d) of this Code section, or if a vehicle being repaired by a repair facility or being stored by an insurance company providing insurance to cover damages to the vehicle becomes abandoned, the person removing or storing such motor vehicle shall, within seven calendar days of the day such vehicle became an abandoned motor vehicle, give notice in writing, by sworn statement, on the form prescribed by the commissioner, to the Department of Revenue with a research fee of \$2.00 payable to the Motor Vehicle Division of the Department of Revenue, stating the manufacturer's vehicle identification number, the license number, the fact that such vehicle is an abandoned motor vehicle, the model, year, and make of the vehicle, the date the vehicle became an abandoned motor vehicle, the date the vehicle was removed, and the present location of such vehicle and requesting the name and address of all owners, lessors, lessees, security interest holders, and lienholders of such vehicle. If the form submitted to the commissioner is rejected because of inaccurate or missing information, the person removing or storing the vehicle shall resubmit, within seven calendar days of the date of the rejection, a corrected notice form to the commissioner together with an additional research fee of \$2.00 payable to the Motor Vehicle Division of the Department of Revenue. Each subsequent corrected notice, if required, shall be submitted with an additional research fee of \$2.00 payable to the Motor Vehicle Division of the Department of Revenue. If a person removing or storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is registered or titled in a certain other state, such person shall check the motor vehicle records of that other state in the attempt to ascertain the identity of the owner of the vehicle.

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

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

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

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

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

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

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

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#### **40-11-3. When peace officers may remove vehicles from public property; notification requirements**

(A) Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property for a period of at least five days shall be authorized to cause such motor vehicle to be removed to a garage or other place of safety, if such peace officer reasonably believes that the person who left such motor vehicle unattended does not intend to return and remove such motor vehicle.

(B) Any law enforcement officer or employee of the Department of Transportation to whom law enforcement authority has been designated pursuant to Code Section 32-6-29 who finds a motor vehicle which has been left unattended on the state highway system shall be authorized to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion. Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property, other than the state highway system, shall be authorized immediately to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion.

(C) Any peace officer who, under this Code section, causes any motor vehicle to be removed to a garage or other place of safety shall be liable for gross negligence only.

(D)

(1) Any peace officer or the law enforcement agency which causes a motor vehicle to be removed to a garage or other place of safety or which is notified of the removal of a motor vehicle from private property shall within 72 hours from the time of removal or notice and if the owner is unknown attempt to determine vehicle ownership through official inquiries to the Department of Revenue vehicle registration and vehicle title files. These inquiries shall be made from authorized criminal justice information system network terminals.

- (2) If the name and address of the last known registered owner of the motor vehicle is obtained from the Georgia Crime Information Center, the peace officer who causes the motor vehicle to be removed shall, within three calendar days, make available to the person removing such motor vehicle the name and address of the last known registered owner of such motor vehicle, the owner of the motor vehicle as recorded on the title of such vehicle, and all security interest holders or lienholders. If such information is not available, the peace officer shall, within three calendar days, notify the person removing or storing such vehicle of such fact.
  
- (3) Law enforcement agencies shall make record entries in Georgia criminal justice information system files through authorized criminal justice information system network terminals after an unsuccessful attempt to obtain vehicle ownership information and shall remove the record entries when ownership is determined.

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**40-11-3.1. Unattended vehicle checks.**

(A) It shall be the duty of any peace officer who discovers a motor vehicle which has been left unattended on a public street, road, or highway or other public property to immediately perform an unattended vehicle check on such motor vehicle, unless there is displayed on such motor vehicle an unattended vehicle check card indicating that another peace officer has already performed such an unattended vehicle check. For purposes of this Code section, an unattended vehicle check shall consist of such actions as are reasonably necessary to determine that the unattended vehicle does not contain an injured or incapacitated person and to determine that the unattended vehicle does not pose a threat to public health or safety.

(B) A peace officer completing an unattended vehicle check shall complete and attach to the vehicle an unattended vehicle check card. Unattended vehicle check cards shall be in such form, and shall be attached to vehicles in such manner, as may be specified by rule or regulation of the Department of Public Safety; and to the extent that sufficient funds are available to the department, the department may distribute such forms free of charge to law enforcement agencies in this state. Unattended vehicle check cards shall be serially numbered; shall be of a distinctive color and shape, so as to be readily visible to passing motorists; and shall contain spaces for the investigating police officer to indicate the location of the vehicle, the date and time of the completion of the unattended vehicle check, and the name of such peace officer's law enforcement agency. A detachable stub, which shall be filed with the investigating peace officer's law enforcement agency, shall bear the same serial number and shall contain the same information, together with the identity of the investigating peace officer and the license plate number and other pertinent identifying information relating to the abandoned vehicle.

(C) Nothing in the Code section shall limit the otherwise applicable authority of a peace officer to have an unattended motor vehicle removed to a garage or other place of safety.

(D) It shall be unlawful for any person other than a peace officer to attach a genuine or counterfeit unattended motor vehicle check card to a motor vehicle; and any person convicted of violating this subsection shall be guilty of a misdemeanor.

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**40-11-4. Creation of lien; courts authorized to foreclose lien.**

(A) Any person who removes or stores any motor vehicle which is or becomes an abandoned motor vehicle shall have a lien on such vehicle for the reasonable fees connected with such removal or storage plus the cost of any advertisement. Prior to acquiring such lien, the person must have complied with the requirements of Code Section 40-11-2.

(B) The lien acquired under subsection (a) of this Code section may be foreclosed in any court which is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts.

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#### **40-11-5. Lien foreclosure procedure.**

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

1. Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention;
2. The person desiring to foreclose a lien on an abandoned motor vehicle shall, by certified or registered mail, make a demand upon the owner for the payment of the reasonable fees for removal and storage plus the costs of any advertisement. Such written demand shall include an itemized statement of all charges. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with;
- 3.

(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle fails to respond to such demand or refuses to pay, or if the owner of the abandoned motor vehicle cannot be ascertained, the person removing or storing the abandoned motor vehicle may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment has been made and refused or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his signature thereto.

(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall be \$5.00 per motor vehicle upon which a lien is asserted;

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(A) Upon such affidavit's being filed, the lien claimant shall give the clerk or judge of the court the address (if known) of the owner, lessor, lessee, security interest holders, and lienholders of the abandoned vehicle. The clerk or judge of the court shall serve notice upon such owner, lessor, lessee, security interest holders, and lienholders of the abandoned motor vehicle of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing must be petitioned for within ten days after receipt of such notice; and that, if no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof allowed.

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

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

6. Within five days of the probable cause hearing, a party defendant must petition the court for a full hearing on the validity of the debt if a further determination of the validity of the debt is desired. If no such petition is filed, the lien for the amount determined reasonably due shall conclusively be deemed a valid one and foreclosure thereof allowed. If such a petition is filed, the court shall set a full hearing thereon within 15 days of the filing of the petition. Upon the filing of such petition by a party defendant, neither the prosecuting lienholder nor the court may sell the motor vehicle, although possession of the motor vehicle may be retained;

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

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

(9) If no petition for a hearing is filed, or if, after a full hearing, the court determines that a valid debt exists, the court shall issue an order authorizing the sale of such motor vehicle. However, the holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he shall have the right to possession of the vehicle, and his security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle.

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**40-11-6. Sale of vehicle pursuant to foreclosure.**

(A) Upon order of the court, the person holding the lien on the abandoned motor vehicle shall be authorized to sell such motor vehicle at public sale, as defined by Code Section 11-1-201.

(B) After satisfaction of the lien, the person selling such motor vehicle shall turn the remaining proceeds of such sale, if any, over to the clerk of the court.

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**40-11-7. How purchaser at foreclosure sale may obtain certificate of title.**

The purchaser at a sale as authorized in this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such motor vehicle by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances.

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**40-11-8. Disposition of proceeds of foreclosure sale.**

The clerk of the court shall retain the remaining balance of the proceeds of a sale under Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned motor vehicle or any interested party, then he shall pay such remaining balance as follows:

1. If the abandoned motor vehicle came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made;
2. If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be paid into the general fund of the municipality;
3. If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made;
4. If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.

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**40-11-9. Derelict motor vehicles; determination of status; disposition; violations and penalties.**

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

revenue commissioner if such person or persons fail to respond within ten days of receipt of such notice. The state revenue commissioner shall prescribe the form and content of such notice. If the registered owner, title owner, or security interest holder or lienholder fails to respond within 30 days from the date of such notice by certified mail, and if the vehicle is appraised as having a total value of less than \$300.00, the vehicle shall be considered to be a derelict vehicle. The value of the vehicle shall be determined as 50 percent of the wholesale value of a similar car in the rough section of the National Auto Research Black Book, Georgia Edition, or if a similar vehicle is not listed in such book, the person shall obtain an appraisal of the motor vehicle from the local law enforcement agency's auto theft section with jurisdiction in the county or municipality where such vehicle is located. Any person removing a vehicle shall complete a form, to be provided by the state revenue commissioner, indicating that the vehicle meets at least four of the above-stated eight conditions for being a derelict vehicle and shall file such form with the Department of Revenue and the law enforcement agency with jurisdiction from which such vehicle was removed.

(b) Upon determination that a vehicle is a derelict motor vehicle as provided in subsection (a) of this Code section, it may be disposed of by sale to a person who scraps, dismantles, or demolishes motor vehicles, provided that such vehicle may be sold for scrap or parts only and shall in no event be rebuilt or sold to the general public. Any person disposing of a derelict motor vehicle shall, prior to disposing of such vehicle, photograph such vehicle and retain with such photograph the appraisal required in subsection (a) of this Code section and the notice to the state revenue commissioner required in this subsection for a period of three years after its disposition. Such person shall also notify the state revenue commissioner of the disposition of such vehicle in such manner as may be prescribed by the state revenue commissioner. The state revenue commissioner shall cancel the certificate of title for such vehicle and shall not issue a rebuilt or salvage title for such vehicle.

(c) For purposes of this Code section, the term "derelict vehicle" shall not include a vehicle which does not bear a manufacturer's vehicle identification number plate or a vehicle identification number plate assigned by a state jurisdiction.

(d) Any person who abandons a derelict motor vehicle on public or private property shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 and shall pay all costs of having such derelict motor vehicle removed, stored, and sold as provided for in this Code section.

(e) Any person removing a derelict motor vehicle who fails to comply with the requirements of this Code section or who knowingly provides false or misleading information when providing any notice or information required by this Code section shall be guilty of a misdemeanor.

(f) The Department of Revenue, the state revenue commissioner, and the State of Georgia and the person removing, storing, and processing the vehicle unless recklessly or grossly negligent shall not be liable to the owner of a vehicle declared to be a derelict motor vehicle pursuant to this Code section.