House Bill 381 (AS PASSED HOUSE AND SENATE)
By: Representatives Corbett of the 174th, Ealum of the 153rd, LaRiccia of the 169th, Shaw of the 176th, and Watson of the 172nd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, so as to enact provisions for the classification of abandoned mobile homes as derelict or intact for purposes of disposal or filing of liens; to provide for a short title; to provide for legislative intent; to provide for definitions; to provide for a procedure for requesting classification of an abandoned mobile home as intact or derelict; to provide for notice; to provide for a right to file a lien on abandoned mobile homes deemed to be intact; to provide for the opportunity for a hearing to confirm classification as a derelict abandoned mobile home; to provide for court authority to order the disposal of abandoned mobile homes found to be derelict; to provide for a process to foreclose a lien on an abandoned mobile home deemed to be intact; to provide for right to an appeal; to provide for the public sale of an intact abandoned mobile home; to provide for the disposition of proceeds from such public sale; to provide for a process to obtain certificate of title for mobile homes purchased at public sale; to amend Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general jurisdiction of magistrate courts, so as to provide for jurisdiction of such courts relative to foreclosure of liens of abandoned mobile homes; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, is amended by adding a new article to read as follows:

"ARTICLE 6

44-7-110. This article shall be known and may be cited as the 'Abandoned Mobile Home Act.'

H. B. 381
The General Assembly finds that abandoned mobile homes are a nuisance that cause blight and depress property values. This article is intended to provide local governing authorities with the authority to appoint an agent to determine the condition of mobile homes in order for landowners to remove or restore abandoned mobile homes left on their property. It is the further purpose of this article to provide landowners with the guidance necessary to efficiently and properly identify and dispose of abandoned mobile homes in this state while protecting the rights of any owner, lienholder, or other interested parties by performing a due diligence search, notification, and hearing process.

As used in this article, the term:

1. 'Abandoned mobile home' means a mobile home that has been left vacant by all tenants for at least 90 days without notice to the landowner and when there is evidence of one or more of the following:
   
   (A) A tenant's failure to pay rent or fees for 90 days;
   
   (B) Removal of most or all personal belongings from such mobile home;
   
   (C) Cancellation of insurance for such mobile home;
   
   (D) Termination of utility services to such mobile home; or
   
   (E) A risk to public health, safety, welfare, or the environment due to such mobile home.

2. 'Derelict' means an abandoned mobile home which is in need of extensive repair and is uninhabitable and unsafe due to the presence of one or more of the following conditions:
   
   (A) Inadequate provisions for ventilation, light, air, or sanitation; or
   
   (B) Damage caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe.

3. 'Dispose' means to destroy, recycle, or repurpose for use not as living quarters.

4. 'Intact' means an abandoned mobile home which is in livable condition under applicable state law and the building and health codes of a local governing authority.

5. 'Landowner' means the owner of real property upon which a mobile home is located.

6. 'Local government agent' means a person appointed by a local governing authority who is qualified to inspect an abandoned mobile home by demonstrating that he or she is qualified to determine if the abandoned mobile home is derelict or intact.

7. 'Manufactured home' shall have the same meaning as set forth in Code Section 8-2-160.
(8) 'Mobile home' shall have the same meaning as set forth in Code Section 8-2-160 and shall include a manufactured home.

(9) 'Responsible party' means any person with an ownership interest in an abandoned mobile home as evidenced by the last payor of record as identified by a search of deeds or instruments of title, and shall include any holder of a recorded lien or the holder of any type of secured interest in such abandoned mobile home or a local government with a claim for unpaid taxes.

44-7-113.

(a) At the request of a landowner, a local government agent shall be authorized to assess the condition of such abandoned mobile home. Upon inspection, the local government agent shall classify such abandoned mobile home as either intact or derelict and provide documentation citing such determination to the requesting landowner within 20 days of such request.

(b) If a local government agent determines an abandoned mobile home to be intact, a landowner shall have a right to file a lien on such abandoned mobile home in the superior court for the circuit where such abandoned mobile home is located and in the amount of any unpaid rent as of the date on which such lien is filed and accrued fees. Such lien may be foreclosed pursuant to the procedure set forth in Code Section 44-7-115.

(c) If a local government agent determines an abandoned mobile home to be derelict, such agent shall post notice of such determination in a conspicuous location on such abandoned mobile home. Such notice shall include a date of issuance and shall be in substantially the following form:

You are hereby notified that this mobile home (describe make, model, and color, if known) located at (address or description of location) has been deemed abandoned and derelict. You are entitled to a hearing in magistrate court to contest this determination. If you fail to request a hearing within 90 days from the date that appears on this notice or if it is confirmed by a court that this abandoned mobile home is derelict, the owner of the land upon which this mobile home sits shall be entitled to dispose of the mobile home.

(d)(1) Upon receipt of a determination that an abandoned mobile home is derelict by a local government agent, and on the same date the notice required by subsection (c) of this Code section is posted, a landowner shall send notice, which notice shall include a listing of all responsible parties and last known addresses, to all responsible parties by registered or certified mail or statutory overnight delivery. Such notice shall contain a description of the abandoned mobile home, including the make of the mobile home, the location of such mobile home, and the fact that such abandoned mobile home has been deemed
derelict. Such notice shall include a statement that such responsible party is entitled to
request a hearing in magistrate court within 90 days from the date that appears on such
notice to contest the determination that such abandoned mobile home is derelict and that
failure to request such hearing within 90 days of receipt of such notice shall entitle such
landowner to dispose of the derelict mobile home.

(2) If no responsible party can be ascertained, the landowner shall place an advertisement
in a newspaper of general circulation in the county where such mobile home is located;
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 description
of the mobile home, including the make of the mobile home, the location of such mobile
home, and the fact that such mobile home has been deemed derelict. Such advertisement
shall include a statement that such responsible party is entitled to request a hearing in
magistrate court by a date certain and the advertisement shall state the specific end date
to request such hearing by such date shall entitle such landowner to dispose of the derelict
mobile home.

(e) Neither the local governing authority nor the local government agent shall bear any
liability with respect to any lawful actions taken to make a determination that a mobile
home is abandoned or derelict.

44-7-114.

(a) Within the 90 day period described in Code Section 44-7-113, a responsible party, or
after the expiration of such 90 day period, a landowner shall petition a magistrate court to
hold a hearing to confirm or deny the decision of a local government agent that an
abandoned mobile home is derelict. If a petition is filed pursuant to this Code section, a
hearing on such issue shall be held within ten days of the filing of such petition.

(b) The court shall hear evidence of the condition of the abandoned mobile home, which
may include introduction of a copy of the determination from the local government agent,
and whether the notice provisions set forth have been met.

(c) If, after a full hearing, the court determines the abandoned mobile home to be derelict,
the court shall issue an order finding such mobile home to be derelict and authorizing the
landowner to dispose of such derelict mobile home. A landowner issued such order shall
dispose of such derelict mobile home within 180 days of the date of such order. Within 30
days of disposal of a derelict mobile home, the landowner shall notify the Department of
Revenue and local tag agent of such disposal and such department shall cancel the certificate of title for such derelict mobile home, if such certificate exists.

44-7-115.
Notwithstanding any conflicting provisions in Code Section 44-14-349, all liens acquired upon an abandoned mobile home or intact mobile home under Code Section 44-7-113 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall be instituted in the magistrate court of the county where such mobile home is located within one year from the time the lien is recorded;

(2) The person desiring to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall, by certified or registered mail or statutory overnight delivery, make a demand upon the responsible party in the amount of the lien and for the payment of rent and fees accrued after the filing of the lien; provided that the amount of such rent shall not exceed $3.00 per day. If the responsible party cannot be located, notice shall be published in a newspaper of general circulation for two consecutive weeks;

(3)(A) If, within 30 days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section or within 30 days after the last publication in a newspaper, the responsible party fails to respond to such demand or refuses to pay, or if the responsible party cannot be ascertained, the landowner may move to foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a magistrate court 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 44-7-113 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 responsible party cannot be ascertained. The landowner shall verify the statement by oath or affirmation with a signature affixed thereto.

(B) In addition to the filing fees required by Code Section 15-10-80, the fee for filing such affidavit shall be $5.00 per abandoned mobile home upon which a lien is asserted;

(4)(A) Upon the filing of such affidavit, the person asserting such lien shall give the clerk or judge of the court the address, if known, of all responsible parties and the clerk or judge of the court shall serve notice informing such responsible parties of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing shall be petitioned for within 30 days of receipt of such notice; and that, if no petition for such hearing is filed within the time allowed, the lien shall
conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale pursuant to Code Section 44-7-116 shall be authorized.

(B) Any notice required by this paragraph shall be by certified mail or statutory overnight delivery or, if the responsible party 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 hearing is filed within the time allowed pursuant to paragraph (4) of this Code section, the magistrate court shall set such a hearing within ten days of filing of the petition. Upon the filing of such petition by a party defendant, neither the prosecuting lienholder nor the court may sell the mobile home. If, at the hearing, the magistrate court determines there is reasonable cause to believe that a valid debt exists, then the person asserting the lien shall retain possession of the mobile home or the court shall obtain possession of the mobile home, as ordered by the court;

(6) If no petition for a hearing is filed, or if, after a full hearing, the magistrate court determines that a valid debt exists, the court shall authorize foreclosure upon and sale of the mobile home subject to the lien to satisfy the debt if such debt is not otherwise immediately paid. The holder of a security interest in or a lien on the mobile home, other than the holder of a lien created by Code Section 44-7-113, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs no later than 15 days after a magistrate court's order to authorize the foreclosure. If the holder of a security interest or lien does so pay the debt and court costs, such person shall have the right to possession of the mobile home, and that person's security interest in or lien on such mobile home shall be increased by the amount so paid. A magistrate court order shall be issued to this effect, and in this instance there shall not be a sale of the mobile home. If the debt owed is not timely paid by the holder of a security interest or an appeal of the magistrate court decision has not been timely filed pursuant to paragraph (8) of this Code section, the court shall issue an order authorizing the sale of such mobile home;

(7) If the magistrate court finds the actions of the person asserting the lien in retaining possession of the mobile home were not taken in good faith, then the court, in its discretion, may award damages to the mobile home owner and to any party which has been deprived of the rightful use of the mobile home; and

(8) Any order issued by the magistrate court shall be appealable pursuant to Article 2 of Chapter 3 of Title 5, provided that any such appeal shall be filed within seven days of the date such order was entered and provided, further, that, after the notice of appeal is filed with the clerk of the trial court, the clerk shall immediately notify the magistrate court of the notice of appeal. If the order of the magistrate court is against the responsible party and the responsible party appeals such order, the responsible party shall be required to pay into the registry of the court all sums found by the magistrate court to be due in order
to remain in possession of the mobile home. The responsible party shall also be required
to pay all future rent into the registry of the court as it becomes due in such amounts
specified in paragraph (2) of this Code section until the issue has been finally determined
on appeal.

44-7-116.

(a)(1) As used in this subsection, the term 'public sale' means a sale:
    (A) Held at a place reasonably available to persons who might desire to attend and
        submit bids;
    (B) At which those attending shall be given the opportunity to bid on a competitive
        basis;
    (C) At which the sale, if made, shall be made to the highest and best bidder; and
    (D) Except as otherwise provided in Title 11 for advertising or dispensing with the
        advertising of public sales, of which notice is given by advertisement once a week for
        two weeks in the newspaper in which the sheriff's advertisements are published in the
        county where the sale is to be held, and which notice shall state the day and hour,
        between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the
        goods to be sold.

(2) Upon order of the magistrate court, the person holding the lien on the abandoned
    mobile home shall be authorized to sell such mobile home at public sale.

(b) After satisfaction of the lien, the person selling such mobile home shall, not later
    than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill
    of sale as provided to the purchaser and remit the remaining proceeds of such sale, if any,
    to the clerk of the court. Any person who fails to comply with the requirements of this
    subsection shall be guilty of a misdemeanor.

44-7-117.
The clerk of the magistrate court shall retain the remaining balance of the proceeds of a
sale under Code Section 44-7-116, 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 mobile home or any interested party, then the clerk shall pay such
remaining balance into the general fund of the municipality or county that employs the
local government agent that made the determination that such mobile home was intact
pursuant to Code Section 44-7-113.
The purchaser at a sale as authorized by 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 mobile home 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.

Nothing in this article shall be construed to require a local governing authority to appoint a local government agent."

SECTION 2.

Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general jurisdiction of magistrate courts, is amended by revising paragraphs (14) and (15) and adding a new paragraph to read as follows:

"(14) The trial and sentencing of misdemeanor violations of other Code sections as provided by Article 13 of this chapter; and
(15) The foreclosure of liens on animals as established in Title 4; and
(16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of Chapter 7 of Title 44."

SECTION 3.

This Act shall become effective on May 1, 2019.

SECTION 4.

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