

COMMENTS

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

By JOHN M. WYATT*

The Motor Vehicle Certificate of Title Act¹ is an act for the purpose of establishing: (1) a title system for motor vehicles; (2) an exclusive method of recording liens and other security interests in vehicles; and (3) a system of reports and controls to prevent the theft and conversion of vehicles. The act is a substantial enactment of the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act² as approved by the Conference of Commissioners on Uniform State Law in 1955.³

The Georgia act will allow an easier voluntary transfer of ownership since the certificate of title itself will contain all valid liens against the vehicle.⁴ The statute provides for a warranty of title and an assignment, which must be sworn and subscribed to by the transferor. The transfer will not be effective, except between the parties, until a new certificate of title⁵ is obtained.

The act should curtail, and if strictly enforced, stop the traffic in stolen vehicles now current in Georgia⁶ through the act's provisions⁷ regarding offenses relating to the certificate;⁸ to stolen, converted, recovered and unclaimed vehicles;⁹ and to removal, falsification or unauthorized use of identification numbers or registration license plates on vehicles or engines.¹⁰

PRESENT PERSONALTY RECORDING LAW

The new act¹¹ preempts existing Georgia personalty recording law¹² in its application to motor vehicles. The existing personalty record-

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1. Motor Vehicle Certificate of Title Act, Ga. Laws 1961, p. 68. Made effective March 1, 1962, by Executive Order of the Governor dated May 9, 1961.
2. Uniform Motor Vehicle Certificate Title and Anti-Theft Act, 9B U.L.A.
3. The only other state which has adopted this act is Connecticut. See GEN. STAT. OF CONN., §14-165-211 (1958 Rev.).
4. Motor Vehicle Certificate of Title Act, Ga. Laws 1961, p. 82, §22.
5. *Id.* at 79, §15 (a) - (d).
6. The Macon Telegraph, Monday, May 15, 1961, p. 5.
7. Motor Vehicle Certificate of Title Act, Ga. Laws 1961, pp. 88-92, §§31-37, Part III.
8. *Id.* at 88, §31.
9. *Id.* at 89-90, §32.
10. *Id.* at 90-91, §34.
11. *Id.* at 87, §27. This section makes the new statute exclusive in this area of the law and should thus remove the present confusion regarding the recording of security interests.
12. Comment, *The Effect of Failure to Record Conditional Sales Contracts in Georgia*, 11 MERCER L. REV. 358 (1959-60).

ing law provisions which affect motor vehicle transactions encompassed in the new act may be divided into three categories: (1) conditional sales, (2) chattel mortgages, and (3) liens.

Conditional sales, the most used of the three, are governed by a 1957 statute¹³ providing for recordation in the same manner as chattel mortgages. If such instruments are recorded within 30 days, the recordation is effective from the date of execution. The effect of failure to record ". . . shall be the same as is the effect of failure to record a deed of bargain and sale."¹⁴ The effect of failure to record deeds of bargain and sale is found in cases¹⁵ construing GA. CODE ANN. §29-401 (1952 Rev.) which merely provides that every deed shall be recorded but if not recorded only loses its priority over a subsequently recorded deed from the same vendor. Thus, if the courts construe section 67-1403 as completely including section 29-401, the effect will be that an unrecorded conditional sales contract will be superior to liens created by law.¹⁶

Chattel mortgages are governed by a statute¹⁷ providing for recordation in the county of the mortgagor's residence and if the goods are located in another county, the mortgage must also be recorded there. GA. CODE ANN. §67-109 (1952 Rev.) provides that the effect of failure to record is the same as the effect of failure to record a deed of bargain and sale hence the brief discussion above concerning conditional sales would apply.

Mechanics liens for labor and materials expended in repairing or manufacturing personal property are governed by GA. CODE ANN. §67-2003 (1957 Rev.). That section provides for assertion of such lien by either retaining possession of the property or by giving credit. These liens are enforced as provided in GA. CODE ANN. §67-2401 (1957 Rev.) and are superior to all liens except liens for taxes and liens of which the mechanic has actual notice. When credit has been given, the lien must be recorded within 30 days after completion of the job.

COMPARISON OF THE UNIFORM ACTS OF 1930 AND 1955

For a better understanding of the Georgia act a brief comparison of the Uniform Act¹⁸ with the prior Uniform Act,¹⁹ adopted by at

13. GA. CODE ANN. §67-1403 (1957 Rev.).

14. *Ibid.*

15. See, annotations to GA. CODE ANN. §29-401 (1952 Rev.).

16. Dictum in *Central Bond and Trust Company v. Creede*, 103 Ga. App. 203, 118 S.E.2d 844 (1961), an evidence case citing a real property case, *Mackler v. Lahman*, 196 Ga. 535 (1), 27 S.E.2d 35 (1943), in connection with admitting conditional sales contract in evidence.

17. GA. CODE ANN. §67-108 (1957 Rev.).

18. Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, 9B U.L.A.

19. Uniform Motor Vehicle Anti-Theft Act, 11 U.L.A., declared obsolete by the National Conference of Commissioners on Uniform State Laws in 1943.

least six states²⁰ shows the striking effectiveness and specificity of the current act and especially its attention to security interest. The purpose clause of each shows the basic difference in approach. The 1930 act requires the certificate of title merely to show ownership and facilitate the recovery of stolen or converted vehicles. The 1955 act includes these and extends to ". . . facilitate vehicle sales and sales financing by simplifying procedures for transfers and the creation and perfection of liens; . . ." ²¹ and also to protect from undisclosed liens.²²

While the 1930 act provides for the notation of all liens existent at the time of a transfer of ownership²³ it does not include the specific sections dealing solely with security interests, their creation, transfer and perfection.²⁴

In comparing the two Uniform Acts provision by provision, the 1955 Act is specific in every detail while the 1930 Act gives general statements, often giving in general, basically the same provision which is spelled out in detail in the 1955 Act.

AN ANALYSIS OF GEORGIA'S ACT

The four parts²⁵ of the act make a convenient breakdown for discussion. The first part,²⁶ Definitions and Exclusions, defines words of the act in such a manner as to avoid ambiguity and misinterpretation. It also gives the Commissioner general powers to effectuate the act, and excludes certain vehicles from the operation of the act. Finally it excepts two categories of liens and security interests from the provisions of the act—a statutory lien given to a governmental body and security interest created by a manufacturer or dealer. The last item, exception of the two categories of liens, is of importance in avoiding problems with the sovereign, his right to allow or disallow suit as he pleases and the effect of punitive measures against him. The exception obtainable by a manufacturer or dealer with the accompanying provision allowing a buyer in the ordinary course of trade to take free of such a security interest is in line with the Uniform Conditional Sales Act²⁷ and may be a signpost toward future Georgia legislation.

20. Delaware, Idaho, Illinois, Nevada, New Mexico, North Dakota and Utah.

21. Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, p. 235, Commissioner's Prefatory Note, No. 1.

22. *Id.* at 235, No. 2.

23. Uniform Motor Vehicle Anti-Theft Act, §5-6.

24. Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, §21-5.

25. Ga. Laws 1961, p. 68, Part I, Definitions and Exclusions §1-5; Part II Certificate of Title §6-30; Part III Offense Provisions §31-7; Part IV Implementation Provisions for Previously Registered Vehicles, §38-48.

26. *Id.* Part I, §1-5.

27. Uniform Conditional Sales Act, §9, 2 U.L.A. 15.

In the second part,²⁸ Certificates of Title, the meat of the act is reached—the lien and security interests provisions. After requiring the certificate, specifying an application and its contents, and examination and issuance of records, the provisions begin to relate to liens. The certificate shall contain “the names and addresses of any lien holders, in the order of priority”²⁹ Photographic or photostatic copies may be provided for in such manner as the Commissioner deems expedient, and a record shall be maintained by title number, identifying number of the vehicle, alphabetically by owner's name, the tag number, or by any other means the Commissioner requires.³⁰ “A certificate of title issued by the Commissioner is *pima facie* evidence of the facts appearing on it,”³¹ therefore any purchaser shall have notice of all liens on the vehicle from the certificate of title itself. To ensure the correctness of the lien statements thereon, the certificate shall be delivered to the first lien holder³² who, if it is correct, shall then forward it to the next,³³ and so on down the line. A further control is the provision for refusal to issue a certificate³⁴ if the application contains false or fraudulent statements or if there is a failure to provide information.

In a transfer of ownership,³⁵ other than to a dealer, a sworn and subscribed to assignment and warranty of title, which will be provided on the certificate, must be executed at the time of delivery of the vehicle and even then the transfer is not effective, except between the parties, until a new certificate of title is obtained. The purchaser acquires no right, title, or interest in the vehicle unless he obtains the duly transferred certificate of title from the transferor. A transfer to a dealer³⁶ need not be accompanied by an application for a new certificate. The dealer may transfer the vehicle by a further assignment and warranty of title on the same certificate, then his vendee must comply with the above discussed rules and regulations.

Upon a transfer by operation of law,³⁷ the above applies plus an affidavit by the reposessing lien holder to the effect that the owner's interest was terminated by the terms of the security agreement which must accompany the application for a new certificate. A special provi-

28. Ga. Laws 1961, pp. 73-88. Part II, §6-30.

29. *Id.* at 76, §11 (a) (3).

30. *Id.* at 75, §10.

31. *Id.* at 77, §11 (c).

32. *Id.* at 77, §12 (b).

33. *Id.* at 85, §22 (c).

34. *Id.* at 78, §13 (c) & (d).

35. *Id.* at 78, §15 (a) - (e).

36. *Id.* at 79, §16.

37. *Id.* at 80, §17.

sion has been made for transfer by inheritance,³⁸ requiring, in addition to a regular application for a new certificate, either a certified copy of the will, letters of administration, or if no administration, an affidavit to the effect that the estate is not indebted and that the surviving spouse and the heirs have agreed to this disposition of the vehicle.

A security interest is perfected³⁹ from the time of delivery of the application for a certificate containing the name and address of the lien holder, the date of the lien, the required fee and the old certificate, if any. If this is done within ten days of the creation of the security interest, perfection dates from creation. A problem could arise here concerning security interests created while a prior interest is being processed by the Commissioner were it not for the provision requiring the old certificate to accompany the application for a new certificate noting the lien.⁴⁰ This seems to place Georgia in the group of states which eliminates local recording and makes the liens noted on the certificate constructive notice thereof.⁴¹ This impression is strengthened by the provision⁴² making such notation the exclusive method of perfecting and giving notice of security interests in vehicles within the act.

The validity and perfection of foreign liens is provided for in section 21 (c) ⁴³ of the act. The section provides for continuance of perfection for six months and if it is noted on a valid foreign certificate of title the lien continues in Georgia and is transferred to the Georgia certificate. A valid lien from a state without a certificate of title act may be perfected under Georgia law within the six months period and dates from issuance of the Georgia certificate, but, if not perfected within the six months, the lien dates from the time of actual perfection.

Part three of the act is Offence Provisions,⁴⁴ providing for offences to the certificate, reports of stolen, converted, recovered, or unclaimed vehicles, engine number and tag offences and the penalties therefor. The report provisions⁴⁵ are important in locating abandoned vehicles,

38. *Id.* at 81, §17 (d).

39. *Id.* at 83, §21.

40. *Id.* at 85, §22.

41. Comment, *The Impact of Automobile Certificate of Title Laws on Ownership and Encumbrances*, 36 MINN. L. REV. 77, 84, note 51 (1951). The comment also discusses the approach of two other groups of states having certificate of title acts: (1) those requiring liens to be noted whenever there is a transfer of ownership; and (2) those requiring all liens to be noted; but, is constructive notice in neither case.

42. Ga. Laws 1961, p. 87, §27.

43. *Id.* at 84, §21 (c).

44. *Id.* at 88, §§31-7.

45. *Id.* at 89, §32.

as well as stolen ones, and restoring them to the rightful owner through the Commissioner's records and should lead to the return of many vehicles which would now be hopelessly lost.

The removal, alteration and falsification of engine number provisions⁴⁶ should stop such situations as sales at auctions of vehicles with substituted identification numbers as happened at Macon, Georgia.⁴⁷ An evidence provision⁴⁸ permits proof of prior commission of act or acts of the same kind to show criminal intent or knowledge.

The fourth part⁴⁹ of the act deals with implementing this act over a three year period. As cars are sold by dealers they come within the act thus new and used cars as sold will be the first within the act, followed by voluntary entrance by application for a certificate of title, and finally forced entrance by those brought in by the lapse of time. This part⁵⁰ allows perfection of security interests by delivery of notice in the form prescribed by the Commissioner, whether the vehicle is presently within the act or not. He shall keep a record which shall be checked, and no certificate will be issued unless the lien is satisfied or listed in the application as previously provided.

It remains to be seen if Georgia will treat this as a Uniform Act and adhere to the decisions and interpretations of other states, now only Connecticut, under similar acts.

46. *Id.* at 90, §33.

47. The Macon Telegraph, Monday, May 15, 1961, p. 5.

48. GA. LAWS 1961, p. 91, §35.

49. *Id.* at 92, §38-47.

50. *Id.* at 93, §40-2.