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MOTOR VEHICLES AND TRAFFIC Driver's Licenses: Provide that Learner's Permits May Be Obtained at Age Fifteen, Permit Holders Must Be Accompanied by Person Twenty-one Years or Older; Provide that Intermediate Class D License May Be Obtained at Age Sixteen and Holder May Not Drive Between 1:00 a.m. and 5:00 a.m. Except Under One of Four Exceptions; Provide for Zero Tolerance for Alcohol in Drivers Under Age Twenty-One; Provide for Mandatory Twenty-Four Hour Jail Sentence for All Young Drivers Convicted of Driving with .08 grams or Higher Blood Alcohol Concentration and that Offenders Will Be

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MOTOR VEHICLES AND TRAFFIC

Driver's Licenses: Provide that Learner's Permits May Be Obtained at Age Fifteen, Permit Holders Must Be Accompanied by Person Twenty-one Years or Older; Provide that Intermediate Class D License May Be Obtained at Age Sixteen and Holder May Not Drive Between 1:00 a.m. and 5:00 a.m. Except Under One of Four Exceptions; Provide for Zero Tolerance for Alcohol in Drivers Under Age Twenty-one; Provide for a Mandatory Twenty-four Hour Jail Sentence for All Young Drivers Convicted of Driving with 0.08 grams or Higher Blood Alcohol Concentration and that Offenders Will Be Segregated from Other Inmates; Provide for Mandatory Community Service for Young Drivers Convicted of Driving with a 0.02 grams to 0.07 grams Blood Alcohol Concentration; Provide for Suspension of Young Drivers' Permit or Class D License for Any Conviction for Hit and Run, Racing, Fleeing the Police, Reckless Driving, or for Any Offense Which Adds Four Points to a Driver's Record; Provide that a Permit or License Will Be Suspended for a Minor Who Drops Out of School, Has More than Ten Consecutive Unexcused Absences in a Semester, or Has Been Suspended for Threatening a Teacher, Selling, or Possessing Drugs, Alcohol, or Carrying a Weapon to School; Provide that a Nolo Contendre Plea Will Be Interpreted as a Conviction

CODE SECTIONS: O.C.G.A. §§ 15-11-35 (amended), 17-10-3.1 (new), 20-2-320, -690, -697, 37-7-2 (amended), 40-2-136 (new), 40-5-1, -21 to -25, -27 (amended), -57.1 (new), -63 (amended), -63.1 (new), -64, -67 (amended), -67.1 (new), -68 to -69, 40-6-391, -391.1, -392, 42-8-110 (amended)

BILL NUMBER: HB 681

ACT NUMBER: 290

GEORGIA LAWS: 1997 Ga. Laws 760

SUMMARY: The Act provides that youths convicted of driving with alcohol in their blood shall be confined at a camp, institution, or, if neither of those are available, a regional youth detention center, and the youth shall be segregated from youths convicted of other offenses. Youths under the age of twenty-one convicted of driving with a blood alcohol concentration of 0.02 grams to 0.07 grams shall be required to perform twenty hours of community service for a first offense and forty hours for a second. Adults and youths convicted of driving with a blood alcohol concentration of 0.08 grams or above shall serve a minimum twenty-four hour jail term, but such

offenders shall be segregated from inmates serving for other offenses. A youth may take a written test and obtain a drivers' permit at age fifteen. The permit requires that the holder be accompanied by a person age twenty-one or older while driving. If the permit holder is convicted of driving under the influence, fleeing, racing, hit and run or reckless driving, or any offense that would add four or more points to her driving record, her permit will be suspended for six months for a first offense and twelve months for a second offense. If the permit is not under suspension, the permit holder may take a driving test and obtain a Class D intermediate license at age sixteen. The holder of a Class D license may not drive between the hours of 1:00 a.m. and 5:00 a.m. and may not carry more than three unrelated passengers under the age of twenty-one in the vehicle. The holder of a Class D license will have his license suspended if he is suspended from school for threatening or hitting a teacher, selling or possessing drugs or alcohol, or carrying a weapon on campus. The license will also be suspended if the holder drops out of school. A regular license may be obtained at age eighteen, but only if the applicant has not been convicted of previously mentioned violations for twelve consecutive months. A plea of *nolo contendere* will be considered a conviction.

EFFECTIVE DATE: O.C.G.A. §§ 15-11-35, 17-10-3.1, 20-2-320, -690, -697, 37-7-2, 40-2-136, 40-5-1, -21 to -25, -27, -57.1, -63, -63.1, -64, -67, -67.1, -68 to -69, 40-6-391, -391.1, -392, 42-8-110, July 1, 1997; § 40-5-22, January 1, 1998¹

History

HB 681 was long in the making. Governor Zell Miller moved aggressively for the passage of this legislation in 1997, the year in

1. The later effective date gave the Georgia Department of Education time to prepare to provide the enrollment records as required by this Act. See Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 22, 1997) [hereinafter Skipper Interview].

which it was passed, blaming House Speaker Tom Murphy for scuttling similar bills for the past six years.² Governor Miller said that DUI bills that have come out of the Assembly in the past are “as weak as dishwater.”³

HB 681 was undoubtedly influenced by tragedies like the one that occurred in Cobb County, Georgia, in early 1997. There, a group of teenage girls were out toilet-papering a friend’s house late one evening. Several of them were killed when the young driver drove off the road while being chased by the man whose home the group had “papered.”⁴

Governor Miller was so adamant about this bill that he said he would not sign any bill that did not include his recommended features requiring a twenty-four hour jail stay for DUI, eliminating the *nolo contendere* plea, and providing for a graduated license system with the license being contingent on school attendance.⁵ In the end, the Governor was happy with the bill that passed.⁶ His theory that people who drink and drive should be responsible for their actions, regardless of their age, had been passed into law in the form of twenty-four hour jail stays for offenders.⁷ The legislative process of give-and-take had given and taken very little from his vision for a new driving law.⁸

In response to accusations by the administration, Speaker Murphy denied responsibility for failed DUI laws and announced that he favored tough laws for repeat offenders, but disagreed with the Governor’s proposal of zero tolerance and the required jail stay for youths.⁹ Rather, House leadership believed that community service would be a punishment that would fit the crime.¹⁰

Amidst this back-drop of disagreement, the Senate introduced a DUI measure, SB 17, which provided for a graduated license system.¹¹ The House, however, introduced HB 681, which also provided for the graduated license system, completely overshadowing SB 17.¹²

2. See Kathey Alexander, *DUI Bills Dividing Georgia Politicians*, ATLANTA CONST., Feb. 16, 1997, at H1.

3. *Id.*

4. See Doug Payne, *Cleared in Deaths, Tonkin Faces Suit*, ATLANTA J. & CONST., Sept. 13, 1997, at A1.

5. See Alexander, *supra* note 2.

6. See Telephone Interview with Steve Tompkins, Governor Miller’s Deputy Press Secretary (July 2, 1997).

7. See Alexander, *supra* note 2.

8. See *id.*

9. See *id.*

10. See *id.*

11. See Skipper Interview, *supra* note 1.

12. See *id.*

*HB 681**Introduction*

Governor Miller announced his vision for a bill such as HB 681 in his State of the State address on the opening day of the 1997 legislative session.¹³ The bill was first read in the House on February 20, 1997, and then again on February 21.¹⁴ The House assigned the bill to the House Judiciary Committee. The Committee made a few minor changes to the bill before it recommended the bill to the House floor.¹⁵ The House passed the bill by a vote of 171 to 6.¹⁶ The Senate referred the bill to the Senate Judiciary Committee, which made two technical changes to the bill before recommending it to the Senate floor.¹⁷ On the Senate floor a few amendments were offered, including an amendment to repeal the motorcycle helmet law and an amendment to repeal the fingerprint law for obtaining a license, but all were eventually withdrawn.¹⁸ The Senate passed the Oliver-Ralston Amendment, which removed a couple of changes that the Senate Judiciary Committee had made to the bill.¹⁹ The Senate then passed the bill unanimously and on March 14, 1997, it was signed into law by the Governor.²⁰

Section 1 and 1A

Section 1 of the bill provides a short title, which is "Teen-age and Adult Driver Responsibility Act."²¹ Section 1A was added by the Senate Judiciary Committee on the advice of legislative council to provide for jurisdiction in the juvenile court.²² When a juvenile is found to have been driving under the influence in violation of subsection (k) of Code section 40-6-391,²³ the juvenile court judge shall assess the same penalties as provided in the Code section for adult offenders.²⁴ However, juveniles will serve their jail time in a youth facility and will be segregated from offenders interned for other violations.²⁵

13. Miller, *State of the State Address*, Jan. 14, 1997.

14. See Final Composite Status Sheet, Mar. 28, 1997.

15. See *id.*

16. See *id.*

17. See HB 681 (SCS), 1997 Ga. Gen. Assem.

18. See Record of Proceedings in the Senate (Mar. 20, 1997) [hereinafter Senate Proceedings] (available in Georgia State University College of Law Library).

19. See Skipper Interview, *supra* note 1; HB 681 (HCS), 1997 Ga. Gen. Assem.

20. See Final Composite Status Sheet, Mar. 28, 1997.

21. O.C.G.A. § 40-6-391(a) (1997).

22. See Skipper Interview, *supra* note 1; HB 681 (HCS), 1997 Ga. Gen. Assem.

23. O.C.G.A. § 40-6-391(k) (1997).

24. See *id.* § 15-11-35(b.1).

25. See *id.*

Section 2

Section 2 of the bill was also altered by the Senate Judiciary Committee.²⁶ This Section adds a new Code section 17-10-3.1, which allows the sentencing judge discretion to allow sentences to be served on weekends or during nonworking hours.²⁷ In the original version and the House substitute, Section 2 also contained language similar to that which was moved to Section 1A of the bill.²⁸ The remaining language provides the same segregation rule for adult offenders as provided in Section 1A for juvenile offenders.²⁹

Section 3

Like most of the Act, Section 3 was not altered in any way between its introduction in the House and its signing by the Governor.³⁰ It adds new subsection (g) to Code section 20-2-320 to allow the Georgia Department of Education to provide information on attendance and suspension of students, with the limitation that such information will only be used for purposes of this Act.³¹

Sections 4 and 5

Sections 4 and 5 make minor language changes to enable the Department of Education to provide information to the Department of Public Safety.³² Section 4 alters the reporting requirements of the Department of Education to enable it to provide the specific information, such as school attendance and suspension records, which the Department of Public Safety will need in order to carry out the provisions of this Act.³³ Subsection (b)(5) of Code section 20-2-690³⁴ was changed by adding that school records will include notice of suspension and the reason for such suspension.³⁵ Such information is made necessary by the Act because a Class D driver's license will be

26. Compare HB 681, as introduced, 1997 Ga. Gen. Assem., with HB 681 (SCS), 1997 Ga. Gen. Assem.

27. O.C.G.A. § 17-10-3.1 (1997).

28. Compare HB 681, as introduced, 1997 Ga. Gen. Assem., with HB 681 (HCS), 1997 Ga. Gen. Assem.

29. See O.C.G.A. § 17-10-3.1 (1997).

30. Compare HB 681, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 20-2-320(b) (Supp. 1997).

31. O.C.G.A. § 20-2-320(g) (Supp. 1997).

32. *Id.* §§ 20-2-690, -697(a).

33. *Id.* § 20-2-690.

34. 1984 Ga. Laws 1266, § 5, at 1268 (formerly found at O.C.G.A. § 20-2-690(b)(5) (1984)).

35. See O.C.G.A. § 20-2-690(b)(5) (Supp. 1997).

suspended when a student is suspended from school for certain specific reasons.³⁶

Section 6

Section 6 empowers the Board of Human Resources to issue regulations relating to clinical evaluations and substance abuse programs.³⁷ Evaluations and programs are provided in this Act as a punishment for repeat DUI offenders.³⁸ The regulations will set reasonable fees for providers of such programs and shall allow for approval of providers.³⁹

Section 7

Section 7 adds a new Code section.⁴⁰ When a person is convicted under the Act and is declared a repeat offender, his license will be suspended, and he will lose his license plate.⁴¹ Such person's family can apply for a special license plate, which may be used by persons other than the offender.⁴² Such a plate is not probable cause for a traffic stop.⁴³ When the suspension is concluded, the offender may apply for a regular license plate.⁴⁴

Section 8

Section 8 of the bill provides some new definitions to Code section 40-5-1.⁴⁵ Paragraph (1) makes minor changes to the definition of "Assessment Component" and new Code section 40-5-3.1 defines "Clinical Evaluation."⁴⁶ New Code section 40-5-16.2 defines "Substance Abuse Treatment Program."⁴⁷

Section 9

Section 9 provides that restrictions on a license that apply to a Georgia citizen also apply to drivers driving under the authority of an

36. *Id.* § 40-5-22(a.1).

37. *See id.* § 37-7-2(a.1).

38. *See id.* § 40-5-63.1.

39. *See id.* § 37-7-2.

40. *Id.* § 40-2-136.

41. *See id.*

42. *See id.*

43. *See id.*

44. *See id.*

45. *Id.* § 40-5-1.

46. *Id.* § 40-5-3.1.

47. *Id.* § 50-5-16.2.

out-of-state license.⁴⁸ Thus, teenagers who come into Georgia from out-of-state are under the same curfew restrictions and passenger limits that this Act places on teenage citizens.⁴⁹

Section 10

Section 10 provides for the graduated license system.⁵⁰ A youth cannot obtain an unrestricted Class C drivers license until he turns eighteen.⁵¹ Instead, at age fifteen he may apply for a drivers permit if he successfully passes a written exam and if he can show that he is in school or has finished school.⁵² The student may not obtain a permit if he is suspended from school.⁵³ Such a permit will be suspended after it has been issued if the student drops out of school or is absent for ten consecutive, unexcused days, or is suspended for threatening or striking a teacher, for possessing or selling drugs at school, or for possessing a weapon at school.⁵⁴

During the debate in the House Special Judiciary Committee, Representative Barbara Mobley voiced her concern about students being suspended and thus losing their license when they bring an artifact to school for a project they are working on and the school administration decides the artifact is a weapon and suspends the student.⁵⁵ Thus, language was added, defining "weapon" as not including "archeological or cultural exhibits brought to school in connection with a school project."⁵⁶

Suspension of the license pursuant to this Code section will be effective for a minimum of ninety days.⁵⁷ After ninety days, the youth may apply to have his license reinstated by paying \$50 and showing that he has resumed his regular studies.⁵⁸ If such reapplication is not made, the suspension will remain in place until the youth's eighteenth birthday.⁵⁹

48. *Id.* § 40-5-21.

49. *See id.*

50. *Id.* § 40-5-22(a)-(a.1).

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

55. Record of Proceedings in the House Special Judiciary Committee (Feb. 25, 1997) [hereinafter House Proceedings] (remarks by Rep. Barbara Mobley) (available in Georgia State University College of Law Library).

56. O.C.G.A. § 40-5-22(a.1)(2)(C)(iii) (1997).

57. *See id.* § 40-5-22(a.1)(2).

58. *See id.*

59. *See id.*

The Act does not address whether driver's safety courses are required.⁶⁰ This issue was addressed in SB 17, which was not passed into law.⁶¹ On the Senate floor, Senator Robert Lamutt voiced his concern that unlike SB 17, the Act does not require fifty hours of driver's education.⁶² In response, Senator Jack Hill, the Senate sponsor of the bill, said that this Act is strong, in many ways much stronger than SB 17.⁶³ He urged the Senate to pass the bill even if some desired provisions were missing. He suggested that such issues could be addressed later.⁶⁴

Sections 11 and 12

Section 11 defines a Class D license as a "[p]rovisional license."⁶⁵ Section 12 requires that an applicant for a Class D license have a valid instruction permit for twelve months; and for at least twelve months prior to applying, the applicant must not have been convicted of hit and run, racing, fleeing an officer, reckless driving, or any offense that would add four or more points to his driving record.⁶⁶ The Class D license has the following restrictions: the holder may not drive between the hours of 1:00 a.m. and 5:00 a.m. unless (1) going to or from work; (2) going to or from a school activity; (3) going to or from a religious activity; or (4) responding to a medical, fire, or law enforcement related emergency.⁶⁷

Representative Jimmy Skipper, a sponsor of the bill, believed that these four exceptions made the curfew fair.⁶⁸ Representative Brian Joyce spoke in the House Special Judiciary Committee debate saying that he did not think that the state should dictate when his children can be out and he argued that the curfew should be taken out of the bill.⁶⁹ Representative Skipper replied that not all parents are as responsible as they should be and the curfew is important to protect other drivers on the roads.⁷⁰ He added that there really is nothing good that kids can be out doing between 1:00 a.m. and 5:00 a.m. anyway.⁷¹ Representative Crews suggested that maybe kids should be allowed to drive during the curfew if they have a note from their

60. *Id.*

61. SB 17, as introduced, 1997 Ga. Gen. Assem.

62. Senate Proceedings, *supra* note 18 (remarks of Sen. Robert Lamutt).

63. *See id.* (remarks by Sen. Jack Hill).

64. *See id.*

65. O.C.G.A. § 40-5-23(c) (1997).

66. *Id.* § 40-5-24(a)(2), (b)(1).

67. *See id.* 40-5-24(3)(A).

68. Skipper Interview, *supra* note 1.

69. House Proceedings, *supra* note 55 (remarks of Rep. Brian Joyce).

70. *See id.* (remarks of Rep. Jimmy Skipper).

71. *See* Skipper Interview, *supra* note 1.

parents, but Representative Skipper suggested that such an exception would make the curfew unenforceable.⁷² As he said, "In high school I could sign my mother's name better than she could."⁷³

Perhaps as a result of the controversy over the curfew, the House Special Judiciary Committee did amend the curfew provision from the original 12:00 a.m. to 6:00 a.m. curfew to the 1:00 a.m. to 5:00 a.m. curfew that was ultimately enacted.⁷⁴

A holder of the Class D license may not drive with more than three unrelated passengers under the age of twenty-one in the vehicle.⁷⁵ The number three was apparently chosen so that teenagers could double date.⁷⁶ The Committee added to the original bill that such an offense would only constitute a secondary offense.⁷⁷ This amendment was perhaps in response to Representative Arnold Ragas' concern that looking young and having more than four people in the car would provide a police officer with probable cause to stop a driver.⁷⁸

When a Class D license holder reaches age eighteen she may apply for and obtain a Class C license if, for at least twelve months, she has not been convicted of any of the offenses mentioned above.⁷⁹

Sections 13 and 14

These Sections make minor changes to the law to reflect the newly-created Class D license.⁸⁰

Section 15

For any person under age twenty-one who is convicted of hit and run, leaving the scene of an accident, racing, fleeing, reckless driving, purchasing an alcoholic beverage, violating Code section 40-6-391,⁸¹ or other enumerated violation, upon a first offense, the offender will lose his license and may reapply for a license after six months.⁸² Upon a second or subsequent conviction, the offender may reapply after twelve

72. *Id.*

73. House Proceedings, *supra* note 55 (remarks of Rep. Skipper).

74. Compare HB 681 (as introduced), 1997 Ga. Gen. Assem., with HB 681 (HCS), 1997 Ga. Gen. Assem.

75. See O.C.G.A. § 40-5-24(b)(1)(B) (1997).

76. See Senate Proceedings, *supra* note 18.

77. Compare HB 681 (as introduced), 1997 Ga. Gen. Assem., with HB 681 (HCS), 1997 Ga. Gen. Assem.

78. See House Proceedings, *supra* note 55.

79. See O.C.G.A. § 40-5-24(b)(2) (1997).

80. See *id.* §§ 40-5-25(a), -27(a).

81. *Id.* § 40-6-391 (making it illegal to drive under influence of alcohol, drugs, and other intoxicants). In Georgia, blood alcohol concentration is measured as "grams of alcohol per 100 milliliters of blood." See *id.* § 40-1-1(1).

82. See *id.* § 40-5-57.1(b)(1)(A).

months.⁸³ If the offender is convicted of driving with a blood alcohol concentration of 0.08 grams or more, he will not be eligible for a license for twelve months.⁸⁴ Driving with a blood alcohol concentration of 0.08 grams or more results in a mandatory twelve-month revocation of a license, even for a first offense.⁸⁵ Such offenders may not get a new license until they show proof of completing a DUI Alcohol or Drug Use Risk Reduction program.⁸⁶ Violators of the other offenses must show that they have completed a defensive driving course.⁸⁷

Sections 16 to 19

Section 16 amends Code section 40-5-63,⁸⁸ relating to periods of suspension, so that pleas of *nolo contendere* shall be considered convictions.⁸⁹ Section 17 requires repeat offenders to undergo a clinical evaluation and, if the evaluation indicates a need, the offender must complete a substance abuse program, paid for by the offender.⁹⁰ Section 18 makes necessary amendments to existing Code sections to reflect the provisional driving permit that the Act makes available to some offenders while their license is under suspension.⁹¹ Section 19 makes necessary amendments to reflect the fact that a *nolo contendere* plea shall be considered a conviction.⁹²

Section 20

Previously, if a person under the age of eighteen was found to have a blood alcohol concentration of 0.04 grams or more, his license was suspended.⁹³ The Act provides that if a person younger than twenty-one years of age is found to have a blood alcohol concentration of 0.02 grams or more, his license shall be suspended.⁹⁴ If the concentration is 0.04 grams or more, the suspension shall be for one year.⁹⁵

83. *See id.* § 40-5-57.1(b)(1)(B).

84. *See id.* § 40-5-57.1(b)(2).

85. *See id.*

86. *See id.* § 40-5-57.1(c).

87. *See id.* § 40-5-57.1(d).

88. 1994 Ga. Laws 730 (formerly found at O.C.G.A. § 40-5-63 (1994)).

89. *See* O.C.G.A. § 40-5-63(a)(1) (1997).

90. *Id.* § 40-5-63.1.

91. *Id.* § 40-5-64.

92. *Id.* § 40-5-67.

93. *See* 1994 Ga. Laws 1600 (formerly found at O.C.G.A. § 40-5-67.1 (1994)).

94. O.C.G.A. § 40-5-67.1(c) (1997).

95. *See id.*

Sections 21 and 22

Section 21 deletes former Code section 40-5-68⁹⁶ and reserves the section. Section 22 corrects Code section 40-5-69⁹⁷ to reflect newly created Code sections.⁹⁸

Section 23

This Section amends Code section 40-6-391 to require a mandatory twenty-four hour jail term and twenty hours of community service for a first offense of driving with a blood alcohol concentration of less than 0.08 grams.⁹⁹ For a second or third offense, forty hours of community service is required.¹⁰⁰ The community service must be completed within sixty days.¹⁰¹ These new provisions pertain to youth offenders under the "no tolerance" policy of the Act, which makes it a crime for a minor to drive with a blood alcohol concentration of 0.02 grams or above.¹⁰²

Section 24

Section 24 amends Code section 40-6-391.1 to reflect that a nolo contendere plea will no longer be accepted for a charge of DUI.¹⁰³ The effect of this provision is that a nolo contendere plea serves as a conviction and the pleader will lose his license as if he had pleaded guilty.¹⁰⁴ Such plea "counts as a conviction toward a habitual violator status."¹⁰⁵

Section 25

Section 25 amends Code section 40-6-392 making it a violation of Code section 40-6-391(k) to have a blood alcohol concentration of 0.02 grams rather than the former concentration of 0.06 grams.¹⁰⁶

96. 1983 Ga. Laws 1000 (formerly found at O.C.G.A. § 40-5-68 (1983)).

97. *Id.* (formerly found at O.C.G.A. § 40-5-69 (1996)).

98. *See* O.C.G.A. § 40-5-69 (1997).

99. *Id.* § 40-6-391(c)(1)(C).

100. *See id.* § 40-6-391(c)(2)(C).

101. *See id.* § 40-6-391(k)(2).

102. *See id.* § 40-6-391(k)(1).

103. *See id.* § 40-6-391.1.

104. *See* EXECUTIVE SUMMARY: HB 681-HIGHLIGHTS (available in Georgia State University College of Law Library).

105. *Id.*

106. *See* O.C.G.A. § 40-6-392 (1997).

Section 26

Section 26 gives the Department of Public Safety the authority to authorize the amount a provider center may charge for installing an ignition interlock device.¹⁰⁷

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107. *See id.* § 42-8-110.