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MOTOR VEHICLES AND TRAFFIC

Suspension of Drivers' Licenses: Change Legal Requirements

CODE SECTIONS: O.C.G.A. §§ 40-5-54 (amended), 40-5-58 (amended), 40-5-63 (amended), 40-5-86 (amended)

BILL NUMBER: HB 266

ACT NUMBER: 725

SUMMARY: The Act amends the Code relating to motor vehicles by providing for notice of suspension of drivers' licenses by the court, changes in the definition of an habitual violator, suspension of the driver's license of an habitual violator by the court or the prosecutor, change in the period of time within which an habitual violator may apply for a probationary driver's license, change in the period for suspension of a driver's license for a person charged with or convicted of causing serious injury by a motor vehicle, and change in the number and method of point reductions for attending certain courses as well as designating additional courses for which point reductions will be awarded.

EFFECTIVE DATE: July 1, 1987

HB 266, §§ 1, 3

Sections 1 and 3 of HB 266 amend the Code dealing with notification of driver's license suspensions and of habitual offender status. As originally introduced, the bill only amended the section dealing with suspension of drivers' licenses.¹ The Senate Special Judiciary Committee added the section addressing habitual offender status.² County solicitors encouraged the legislature to pass a bill expediting this notification process.³

A number of defendants have alleged that they failed to receive notice

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1. HB 266, as introduced, 1987 Ga. Gen. Assem.
 2. O.C.G.A. § 40-5-58(b) (Supp. 1987).
 3. Telephone interview with Representative DuBose Porter, House District No. 119 (July 9, 1987).

of their habitual violator status and/or notice of the revocation or suspension of their drivers' licenses.⁴ For example, in *Hardison v. Booker*,⁵ the trial court found that officials improperly served the defendant with notice. Under the trial court's analysis, which was rejected on appeal, only a person "impliedly or expressly authorized by the Commission of the Department of Public Safety to act as an agent for service as required by Law"⁶ could serve a notice of a revocation of a driver's license. Since the police officer who completed service was not expressly or impliedly authorized by the Commissioner of the Department of Public Safety, the defendant argued such service was improper.⁷

The Act provides an alternative method for notification, thus alleviating potentially frivolous claims alleging lack of sufficient notification. Instead of only certified mail return receipt service or personal service, the Act amends O.C.G.A. § 40-5-54 to provide that a judge, at the time of sentencing, may give notice to the defendant of the suspension of the defendant's driver's license.⁸ Further, the Act provides that notification at the time of sentencing may be used by the judge or the prosecutor to advise a defendant of his status as an habitual offender.⁹

The Act also changes the method whereby a person can be declared an habitual offender.¹⁰ Previously, a person could only be declared an habitual offender by the Department of Public Safety. The Act provides that, in addition to the Department of Public Safety, the sentencing judge or prosecutor may classify a defendant as an habitual violator.¹¹ If the Department of Public Safety declares a person an habitual violator, notice must be given by certified mail or by personal service; but if the judge or prosecutor classifies a person as an habitual violator at sentencing, personal notice can be given at that time.¹²

HB 226 § 2

Formerly, O.C.G.A. § 40-5-58(a) listed ten offenses for which three or more arrests and convictions would lead to classification as an habitual offender.¹³ The Act eliminates this list and instead makes habitual offender status depend on the arrest and conviction within a five-year period of three or more offenses under O.C.G.A. §§ 40-5-54, 40-6-391 through 40-6-395, or any federal law or regulation, state or municipal law

4. *Id.*

5. 179 Ga. App. 693, 347 S.E.2d 681 (1986).

6. *Id.* at 694, 347 S.E.2d at 683.

7. *Id.*

8. O.C.G.A. § 40-5-54(b) (Supp. 1987).

9. O.C.G.A. § 40-5-58(b) (Supp. 1987).

10. O.C.G.A. § 40-5-58 (Supp. 1987).

11. *Id.*

12. *Id.*

13. 1978 Ga. Laws 225 (formerly found at O.C.G.A. § 40-5-58(a)).

substantially in conformance with these Code sections.¹⁴ A person also is deemed an habitual offender for three or more offenses within a five-year period of "operating a vehicle after cancellation, suspension, or revocation of his operator's license. . . ."¹⁵ A combination of any of these offenses also results in habitual offender status.¹⁶ The Act eliminates the Code section which provided that habitual offender status could be based on fifteen or more moving violations in a five-year period.

HB 266, §§ 4, 5

The Act amends O.C.G.A. § 40-5-63(b) and (f) to provide that in addition to a charge of vehicular homicide or a refusal to submit to tests as provided in O.C.G.A. § 40-5-55, a charge of causing serious injury with a vehicle will subject the defendant to stricter rules governing the suspension of a driver's license and the application for a probationary license.¹⁷ Persons so charged will have their license suspended for twelve months.¹⁸ A conviction will result in the license being suspended for three years.¹⁹ Such a conviction will make the driver ineligible for early reinstatement of the license or for a limited driving permit, and pleas of *nolo contendere* for serious injury by vehicle will constitute a conviction.²⁰

The Act also amends O.C.G.A. § 40-5-86 by adding an approved alcohol or drug course in addition to the defensive driving course as a method whereby a person who has accumulated eight points may reduce those points.²¹ The Act further provides that a person may reduce his points by seven rather than the previously provided three points.²²

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14. O.C.G.A. § 40-5-58(a)(1) (Supp. 1987). The effect of the Act is to add one offense to the list giving rise to habitual offender status. This one offense is "racing on highways and streets." O.C.G.A. § 40-5-54 (1985).

15. O.C.G.A. § 40-5-58(a)(2) (Supp. 1987).

16. O.C.G.A. § 40-5-58(a)(3) (Supp. 1987).

17. O.C.G.A. § 40-5-63(b), (f) (Supp. 1987).

18. O.C.G.A. § 40-5-63(b) (Supp. 1987).

19. O.C.G.A. § 40-5-63(f) (Supp. 1987).

20. *Id.*

21. O.C.G.A. § 40-5-86 (Supp. 1987).

22. *Id.*