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STATE GOVERNMENT

Georgia Development Authority: Exclude Persons From Program Participation

CODE SECTION: O.C.G.A. § 50-10-4(c) (new)
BILL NUMBER: HB 1160
ACT NUMBER: 1444
SUMMARY: The Act excludes persons convicted of certain illegal drug activity from participation in any program financed or administered by the Georgia Development Authority.
EFFECTIVE DATE: April 16, 1990

HB 1160

The Act amends Title 50 of the Code, relating to the Georgia Development Authority, by adding a provision specifying that persons convicted of illegal drug activity are excluded from its programs.¹ The Act mandates that “[t]he Georgia Development Authority shall not provide, secure, or guarantee a loan to any person” who is convicted of illegal drug manufacture, distribution, use, or possession.² “Person” includes not only individuals but also corporations, partnerships, and associations who have an officer or member who has been convicted of a drug-related offense.³ The purpose of such an expanded definition is to place pressure on those entities to maintain a drug-free workplace.⁴ HB 1160 originally applied only to corporations if the corporation was “controlled by a convicted person.”⁵ The House committee substitute and floor amendment specifically defined the type of person who could exert such control as an officer or member of the board of directors of the corporation.⁶

In addition to guilty pleas and a jury’s finding of guilty, the definition of “convicted” originally included nolo contendere pleas and first offender treatment.⁷ Individuals who fall into the latter two categories are no

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1. O.C.G.A. § 50-10-4(c) (Supp. 1990).
 2. O.C.G.A. § 50-10-4(c)(2)(A) (Supp. 1990).
 3. O.C.G.A. § 50-10-4(c)(1)(C) (Supp. 1990).
 4. Telephone interview with Representative Roy H. Watson, Jr., House District No. 114 (Feb. 26, 1990) [hereinafter Watson Interview].
 5. HB 1160, as introduced, 1990 Ga. Gen. Assem.
 6. O.C.G.A. § 50-10-4(c)(1)(C) (Supp. 1990).
 7. HB 1160, as introduced, 1990 Ga. Gen. Assem.

longer affected by the Act; an amendment made in the House Industry Committee substitute and House amendment deleted *nolo contendere* pleas and first offender treatment from the definition of "convicted".⁸

The Act does not require the Development Authority to verify or investigate loan applicants to determine whether they have been convicted of a drug offense.⁹ The Development Authority does not maintain an independent investigative unit. Therefore, it was believed that any requirement for verification and investigation would be too burdensome.¹⁰ Instead, at the loan closing, the individual or representative of the borrower will be required to sign an affidavit certifying that they maintain a drug-free workplace and have not been convicted of an illegal drug offense.¹¹

The Development Authority is not required to foreclose on a loan upon learning that an individual or representative has been convicted of one of the proscribed offenses before application.¹² Such a requirement might force the Development Authority to foreclose on loans which were performing satisfactorily.¹³ Foreclosure would be a particular problem for corporations, partnerships, and associations.¹⁴ Regardless of the fair dealing and good faith of the legal entity, the loan could be foreclosed because of the actions of one individual associated with that entity. Foreclosure is generally more damaging than the initial denial of the loan.¹⁵

The Act excepts from the program participation exclusion persons who, although convicted, did not lose their civil rights or who had their civil rights restored before the loan was "provided, secured, or guaranteed."¹⁶ This exception was added in the House Industry Committee substitute and House floor amendment.¹⁷

The Act provides that the Development Authority will not grant, secure, or guarantee a loan to a person who has been convicted of abusing a controlled substance, including marijuana.¹⁸ As introduced, HB 1160 did not include marijuana within its definition of a controlled substance.¹⁹ This oversight occurred because marijuana is not included within the definition of "controlled substance" contained in the Code.²⁰

8. HB 1160 (HCSFA), 1990 Ga. Gen. Assem.

9. O.C.G.A. § 50-10-4(c)(2)(B) (Supp. 1990).

10. Watson Interview, *supra* note 4.

11. *Id.*

12. O.C.G.A. § 50-10-4(c)(2)(B) (Supp. 1990).

13. Watson Interview, *supra* note 4.

14. *Id.*

15. *Id.*

16. O.C.G.A. § 50-10-4(c)(2)(A) (Supp. 1990).

17. HB 1160 (HCSFA), 1990 Ga. Gen. Assem.

18. O.C.G.A. § 50-10-4(c)(2)(A) (Supp. 1990).

19. HB 1160, as introduced, 1990 Ga. Gen. Assem.

20. O.C.G.A. § 16-13-21 (1988).

1990]

LEGISLATIVE REVIEW

393

The House committee substitute and floor amendment added marijuana to the definition.²¹

By floor amendment, the Senate made one minor change to the bill prior to its enactment.²² A subsection defining “dangerous drugs” by reference to Code section was deleted.

C. Michel

21. O.C.G.A. 50-10-4(c)(1)(A) (Supp. 1990).

22. HB 1160 (SFA), 1990 Ga. Gen. Assem.