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DRIVERS' LICENSES; REQUIREMENT; DRIVING WHILE LICENSE SUSPENDED/ REVOKED General Provisions: Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Change Certain Provisions Relating to Driver's License Requirement, Surrender of Prior Licenses, and Prohibition of Local Licenses; Require the Department of Driver Services to Maintain Records of Convictions for Driving Without a License; Provide that Courts with Jurisdiction over Traffic Offenses Shall Report Convictions of Driving Without a License to the Department of

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DRIVERS' LICENSES; REQUIREMENT; DRIVING WHILE LICENSE SUSPENDED/REVOKED

General Provisions: Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Change Certain Provisions Relating to Driver's License Requirement, Surrender of Prior Licenses, and Prohibition of Local Licenses; Require the Department of Driver Services to Maintain Records of Convictions for Driving Without a License; Provide that Courts with Jurisdiction over Traffic Offenses Shall Report Convictions of Driving Without a License to the Department of Driver Services; Change Certain Provisions Relating to Driving While License Suspended or Revoked; Specify Punishments and Exceptions for Driving Without Being Licensed; Amend Article 14 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, Relating to Determination of Nationality of Person Charged with Felony or Driving Under the Influence and Confined in a Jail Facility, so as to Provide for Determination of Nationality of Person Convicted of Driving Without being Licensed; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 40-5-2 (amended); 42-4-14 (amended)
BILL NUMBER:	SB 350
ACT NUMBER:	778
GEORGIA LAWS:	2008 Ga. Laws 1137
SUMMARY:	The Act increases penalties for drivers operating a vehicle without a valid driver's license or a suspended or revoked license. The Act imposes a misdemeanor for the first offense, required fingerprinting, and at least two days in jail if stopped driving without a license or with a suspended or revoked license. Violators can avoid conviction by presenting a valid Georgia Driver's License. The second or third offense within five years of the date of the last

offense requires at least ten days of imprisonment and a fine of not less than \$1000. The fourth offense in five years will be a felony.

EFFECTIVE DATE:

July 1, 2008

History

Two years ago, the 2006 Georgia General Assembly was one of the first state legislatures to create policies regarding illegal immigration.¹ In the past few years, Georgia legislators have proposed several bills to address the increasing concern over the growing number of undocumented immigrants in the state. For example, Senator Chip Rogers (R-21st) proposed to “prohibit adult illegal immigrants from getting taxpayer-funded benefits to which they are not entitled.”² Additionally the same bill attempted “to ensure that companies with public contracts hire only workers in the country legally,” and it would have “financially penalize[d] private employers who hire illegal immigrants.”³ Legislators also introduced a bill on human trafficking with a provision that would have required undocumented “immigrants to pay a five percent surcharge on money they wire out of the country.”⁴ In 2007, the state senate approved a bill “clarifying that judges and parole board members can consider someone’s immigration status.”⁵ This bill would have allowed judges to investigate someone’s immigration status before determining bail, handing down a sentence, or deciding on probation.⁶

According to the Center for Immigration Studies in Georgia, the majority of the 953,000 immigrants currently “living in Georgia are

1. See Mike King, *Our Opinions: Knee-Jerk Nativism*, ATLANTA J.-CONST., Feb. 20, 2008, at 16A, available at 2008 WLNR 3282996.

2. See James Salzer, *Legislature 2006: Leaders Bend Time When End is Near*, ATLANTA J.-CONST., Mar. 27, 2006, at B1, available at 2006 WLNR 5028976.

3. *Id.*

4. *Id.*

5. See Brian Feagans & Bill Hendricks, *Legislative Briefs: Immigration Status Bill Approved*, ATLANTA J.-CONST., Apr. 20, 2007 at D4.

6. *Id.*

in the country illegally.”⁷ Furthermore, Georgia has one of the fastest growing immigrant populations in the United States.⁸ The Center for Immigration Studies analysis found that “[o]verall, one in eight people living the United States is an immigrant,” which is the highest level since the 1920s.⁹ The large immigrant population in Georgia is connected to the state’s labor needs in the poultry, agriculture, and carpet industries.¹⁰

Despite illegal immigration being viewed as a federal problem, Representative Buddy Carter (R-159th) says “the state of Georgia has been very pro-active in dealing with the situation.”¹¹ In Georgia, immigration is a top concern among voters.¹² So, in the 2007 legislative session, members of the Georgia General Assembly introduced over 20 bills related to immigration.¹³ However, opponents of this type of legislation warned that these measures could damage Georgia’s reputation with legal and undocumented immigrants.¹⁴ They also stated that immigrants could view this as “a backlash against Georgia’s fast-growing Hispanic population.”¹⁵

Several of the suggested bills were aimed at drivers.¹⁶ In January 2007, Senator John Wiles (R-37th) introduced SB 15, the predecessor to SB 350, which “would have increased the penalty for driving without a license and was clearly aimed at putting illegal immigrants who drive without a driver’s license in jail.”¹⁷ SB 15 also would have “force[d] authorities to determine the immigration status of any foreign nationals jailed for driving without a license.”¹⁸ In Senator Wiles’ home county, “deputies were seeking federal training that

7. See Bob Dart, *Most Immigrants in Georgia are Here Illegally*, ATLANTA J.-CONST., Nov. 30, 2007, at E1, available at 2007 WLNR 23648998.

8. *Id.* (citing an analysis conducted by the Center for Immigration Studies based on Census Bureau data).

9. *Id.*

10. *Id.*

11. See Buddy Carter, *State Has Legitimate Concerns About Immigration Reform*, SAVANNAH MORNING NEWS, June 4, 2007, available at <http://savannahnow.com/node/298602>.

12. See Brian Feagans, *Bills Aim To Tighten Clamps on Illegals*, ATLANTA J.-CONST., Feb. 11, 2007, at D1, available at 2007 WLNR 2706597.

13. See Carter, *supra* note 11.

14. See Feagans, *supra* note 12.

15. *Id.*

16. *Id.*

17. See Carter, *supra* note 11; Feagans, *supra* note 12.

18. See Feagans, *supra* note 12.

would allow them to put violators into the deportation process themselves,” thus allowing local police to act as federal immigration agents.¹⁹ Senator John Douglas (R-17th), a supporter of SB 15 stated “We can not [sic] deprive anyone of taxpayer-funded medical care in our emergency rooms or taxpayer-funded educations [sic] in our public schools . . . [b]ut we can try to control who drives on our roads and cut down on the killing that is going on.”²⁰ Representative Pedro Marin (D-96th) believes driving-related legislation would force undocumented immigrants underground and could possibly destroy the bridges between immigrants and the Gwinnett County authorities.²¹ Additionally, the Georgia Association of Latino Elected Officials said “the unlicensed driver crackdown would actually undermine public safety by making illegal immigrants less likely to report crimes or serve as witnesses.”²²

Senator Wiles said SB 15 was inspired by the death of a Cobb County sheriff’s deputy, who was killed in a traffic accident involving two undocumented immigrants.²³ On December 31, 2006 Cobb County sheriff’s deputy Loren Lilly was on his way to work at 5:45 A.M. when he was killed by Joel Camacho Perez, an undocumented immigrant.²⁴ Perez struck Lilly’s car from behind and Lilly lost control, the car turned over and Lilly was killed.²⁵

The original SB 15 would have made driving without a license a felony on the third offense.²⁶ Senator Wiles said Cobb County has rampant violations from people who have never passed the Georgia driver’s test.²⁷ However the bill drew negative feedback from many immigrant advocates as “a thinly veiled attempt to target illegal immigrants.”²⁸ Only three committee members were present when

19. *Id.* (Sen. Wiles lives in Cobb County).

20. *Id.*

21. *Id.*

22. *Id.*

23. Associated Press, *Unlicensed Driver’s Bill Passes Ga. Senate*, ROME NEWS TRIBUNE, Mar. 28, 2008, available at <http://news.mywebpal.com/partners/680/public/news889663.html>.

24. See Bill Montgomery, *What Ever Happened To Illegal Immigrants in Car that Struck Cobb Lawman Still in Jail*, Mar. 26, 2007, at B1, available at 2007 WLNR 5820745.

25. *Id.*

26. Brian Feagans, *Legislature 2007: Driver’s License Bill Fails to Gain a Vote, But Isn’t Dead*, ATLANTA J.-CONST., Apr. 12, 2007, at 4B, available at 2007 WLNR 6951771.

27. *Id.*

28. *Id.*

SB 15 went before the House Judiciary Committee, including, Representative Roger Bruce (D-64th) who was opposed to the bill.²⁹ Representative Mack Crawford (R-91st) supported the bill, but, as chairman, he could not second the motion, so he chose not to allow a vote on SB 15.³⁰ By not allowing the vote, Representative Crawford left an opening for the Chairman of the full Judiciary Committee to bring it up for consideration.³¹ During the House consideration of SB 15, several members expressed concerns about treating convictions for traffic violations as felonies.³² Senator Wiles said the bill was about public safety and was designed to discourage people who hadn't taken the driver's exam from driving.³³ SB 15 eventually passed the House, but Governor Sonny Perdue vetoed the bill.³⁴ The Governor vetoed SB 15 because he "identified the unintended consequences of subjecting people with valid out-of-state driver's licenses to stout criminal penalties."³⁵

Senator Wiles introduced SB 350, a new version of SB 15, this year, hoping that it would overcome Perdue's objections to last year's bill, because it would allow first time offenders to obtain a valid Georgia license and escape punishment.³⁶ Senator Wiles stated, "If you have the ability to get a Georgia license, we're not going to punish you."³⁷

Bill Tracking of SB 350

Consideration and Passage by the Senate

On January 17, 2008, the Senate first read SB 350 and the Lieutenant Governor and President of the Senate, Casey Cagle (R), assigned it to the Senate Public Safety Committee.³⁸ Without making

29. *Id.*

30. *Id.*

31. *Id.*

32. Feagans & Hendricks, *supra* note 5.

33. *Id.*

34. Carter, *supra* note 11.

35. *See id.*

36. *See* Associated Press, *supra* note 23.

37. *See* Dave Williams, *License Laws May Tighten*, ALBANY HERALD, Feb. 8, 2008, available at <http://www.albanyherald.com/archives/News/2008/front020808c.html>.

38. State of Georgia Final Composite Status Sheet, SB 350, Jan. 17, 2008 (Apr. 4, 2008).

any changes, the Senate Public Safety Committee favorably reported SB 350 on January 30, 2008.³⁹ The Senate second read SB 350 the next day, on January 31, 2008 and a third reading occurred on February 7, 2008.⁴⁰

The bill, as introduced required that anyone charged with a felony or driving under the influence would be subject to an immigration check.⁴¹ SB 350 mandated that anyone caught driving without a valid Georgia driver's license four times within five years would automatically be charged with a felony.⁴²

During the Senate Floor debate, the bill's sponsor, Senator John Wiles (R-37th), reminded the Senate that SB 350 was nearly identical to SB 15, which passed the Senate 40 to 8 in 2007.⁴³ Governor Perdue vetoed SB 15, in part because of his concern for individuals who move to Georgia and forgot to change their driver's licenses.⁴⁴ SB 350 addressed this worry by including a provision which allows a person who has been charged with their first offense of driving without a valid Georgia license to appear in court with a new Georgia driver's license and have the charge dismissed.⁴⁵ Senator Wiles stated that "it makes it absolutely clear that if you have the ability to get a Georgia' driver's license, we're not going to punish you."⁴⁶ Senator Wiles emphasized that the bill basically said "[i]f you want to drive in Georgia, get a driver's license."⁴⁷ He also relayed the story of Deputy Loren Lilly of the Cobb County Sheriff's Department, who was killed in an accident involving a driver that was unlicensed.⁴⁸

Several senators expressed concerns relating to SB 350.⁴⁹ Senator Emanuel Jones (D-10th) raised several issues.⁵⁰ Senator Jones

39. *Id.* at Jan. 30, 2008.

40. *Id.* at Jan. 31, 2008; *Id.* at Feb. 7, 2008.

41. SB 350, § 3, as introduced, 2008 Ga. Gen. Assem.

42. SB 350, § 2, as introduced, 2008 Ga. Gen. Assem.

43. See Video Recording of Senate Proceedings, Feb. 7, 2008 at 1 hr., 29 min., 50 sec., (remarks by Sen. John Wiles (R-37th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744254,00.html [hereinafter Feb. Senate Video].

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. See *infra* notes 50-64 and accompanying text..

50. See *infra* notes 51-55 and accompanying text.

specifically asked whether or not it was wise to create a new felony when Georgia was “already leading the nation in the incarceration rate per capita.”⁵¹ Senator Wiles responded by stating that the Superior Court Judges of Georgia, the prosecutors, and law enforcement, those who would enforce SB 350, supported SB 15 and therefore supported SB 350.⁵² Senator Wiles also referred to the *Marietta Daily Journal*, which showed that out of twenty-six people listed in the police blotter, eight of them were driving either on a suspended license or had no license at all, thus demonstrating the seriousness of the problem.⁵³ Senator Jones then asked Senator Wiles about the potential for racial profiling.⁵⁴ After explaining the concept of probable cause, Senator Wiles stated that his belief was that the only people who would be profiled were those who appeared too young to possess a valid driver’s license.⁵⁵

Senator David Adelman (D-42nd) asked for elaboration on judicial discretion regarding sentencing.⁵⁶ Senator Wiles explained that the prosecuting district attorney has the discretion to charge a felony for the fourth offense of driving without a license within a five-year period.⁵⁷ While the punishment for a felony is a minimum of a one-year sentence, that sentence could be served on probation, thereby maintaining judicial discretion.⁵⁸ The concern Senator Adelman expressed was that someone could have a “bad day” and be pulled over four times in one day and this would result in a mandatory one-year sentence.⁵⁹ Since each citation would be a distinct violation, the driver would still be subject to a felony charge.⁶⁰ Senator Wiles responded that in the situation put forth by Senator Adelman, he “would trust the elected prosecutor and elected superior court judge

51. Feb. Senate Video, *supra* note 43, at 1 hr., 35 min., 33 sec. (remarks by Sen. Emanuel Jones (D-10th)).

52. *Id.* at 1 hr., 36 min., 02 sec. (remarks by Sen. John Wiles (R-37th)).

53. *Id.*

54. *Id.* at 1 hr. 37 min., 06 sec. (remarks by Sen. Emanuel Jones (D-10th)).

55. *Id.* at 1 hr. 37 min., 07 sec. (remarks by Sen. John Wiles (R-37th)).

56. *Id.* at 1 hr., 44 min., 15 sec. (remarks by Sen. David Adelman (D-42nd)).

57. Feb. Senate Video, *supra* note 43, at 1 hr. 45 min., 19 sec. (remarks by Sen. John Wiles (R-37th)).

58. *Id.* at 1 hr. 45 min., 57 sec. (remarks by Sen. John Wiles (D-37th)).

59. *Id.* at 1 hr., 50 min., 00 sec. (remarks by Sen. David Adelman (D-42nd)).

60. *Id.*

to exercise the discretion we give them.”⁶¹ Later, Senator Adelman reiterated his concerns by saying, “As Legislators we must be particularly careful of potential, unintended consequences, especially in revisions to the criminal code.”⁶²

Senator Jones then took the well and spoke to his reasons opposing SB 350, in particular the effect SB 350 would have on international companies and their employers throughout Georgia.⁶³ An unintended consequence of SB 350 would be that guest workers would be forced to give up their driver’s license in order to obtain a Georgia license that they may only use for six months, thus making Georgia less attractive to foreign companies.⁶⁴ Senator Jones stated that “Georgia should be opening its arms and welcoming people from China, Israel, from all over the world to do business right here in the great state of Georgia[, but] . . . this legislation . . . would be looked at very unfavorably by those outside the borders of Georgia.”⁶⁵ Senator Jones spoke to other unintended consequences including the increased potential for racial profiling, both in the African-American community as well as within the various immigrant communities, and increasing the number of inmates at Georgia’s already overburdened penal institutions.⁶⁶ Senator Gloria Butler (D-55th) shared Senator Jones’ concerns that the bill could lead to racial profiling and over crowding of jails.⁶⁷

Senator Ronald B. Ramsey, Sr. (D-43rd) spoke in favor of passing the bill.⁶⁸ Having voted against SB 15 in the previous year, and having served as a municipal court judge for seven years in Georgia, Senator Ramsey expressed his frustration with repeat offenders who do not drive with a valid license.⁶⁹ When the vote was taken, SB 350 passed the Senate by 38 to 13.⁷⁰

61. *Id.* at 1 hr. 50 min., 59 sec. (remarks by Sen. John Wiles (D-37th)).

62. *See* Interview with Sen. David Adelman (D-42nd) (Nov. 17, 2008) [hereinafter Adelman Interview].

63. Feb. Senate Video, *supra* note 43, at 1 hr., 54 min., 35 sec. (remarks by Sen. Emanuel Jones (D-10th)).

64. *Id.* at 1 hr., 55 min., 40 sec. (remarks by Sen. Emanuel Jones (D-10th)).

65. *Id.*

66. *Id.*

67. *Id.* at 2 hr., 05 min., 40 sec. (remarks by Sen. Gloria Butler (D-55th)).

68. *Id.* at 2 hr., 2 min., 2 sec. (remarks by Sen. Ronald B. Ramsey, Sr. (D-43rd)).

69. *Id.*

70. Georgia Senate Voting Record, SB 350 (Feb. 7, 2008).

Consideration and Passage by the House

On February 8, 2008, the House first read SB 350.⁷¹ The bill was read for a second time in the House and assigned to the Judiciary Non-Civil Committee on February 11, 2008.⁷²

Senator John Wiles spoke to the Committee, reiterating that he brought the bill last year because on December 31, 2006, Deputy Loren Lilly, of the Cobb County Sheriff's Department was killed in a traffic accident by an unlicensed driver.⁷³

During the Committee meeting there were several witnesses, including a woman whose child was killed by a driver who drove without having a license.⁷⁴ Additionally, the Regional Counsel for Mexican American Legal Defense and Education Fund (MALDEF) spoke about the concerns her organization had with the bill.⁷⁵ She stated that the bill would cause racial profiling of people who looked foreign and discourage international trade partners from coming to Georgia.⁷⁶ She also mentioned that if this bill was truly about safety then the legislature should also look at other traffic violations that don't ever result in a felony conviction.⁷⁷ The committee also heard from D.A. King, President of the Dustin Inman Society.⁷⁸ He stated that the goal of the bill was to make the penalty such that people will actually think twice about driving without a license.⁷⁹

The House Judiciary Non-Civil Committee made several changes to the original bill. Representative Lunsford was concerned that some

71. State of Georgia Final Composite Status Sheet, SB 350, Feb. 8, 2008 (Apr. 4, 2008).

72. *Id.* at Feb. 11, 2008.

73. See Video Recording of House Judiciary Non-Civil Meeting part 1, Mar. 12, 2008 at 40 min., 58 sec. (remarks by Sen. John Wiles (R-37th)), http://www.legis.state.ga.us/legis/2007_08/house/Committees/judiciaryNonCivil/judyncArchives.htm [hereinafter House Judiciary Non-Civil Meeting part 1].

74. See Video Recording of House Judiciary Non-Civil Meeting part 2, Mar. 12, 2008 at 14 min., 14 sec. (remarks by Stacy Maligney), http://www.legis.state.ga.us/legis/2007_08/house/Committees/judiciaryNonCivil/judyncArchives.htm [hereinafter House Judiciary Non-Civil Meeting part 2].

75. See *id.* at 34 min., 38 sec. (remarks by Elise Shore).

76. See *id.*

77. See *id.*

78. See *id.* at 25 min., 26 sec. (remarks by D.A. King). The Dustin Inman Society "is dedicated to educating the public and our elected officials on the consequences of illegal immigration, our unsecured borders and the breakdown of the rule of law in our Republic." The Dustin Inman Society, <http://www.thedustininmansociety.org/index.html> (last visited Nov. 1, 2008).

79. See *id.*

people would be stopped and not fingerprinted and would never show up to court.⁸⁰ Senator Wiles was concerned that language requiring the police to fingerprint an unlicensed driver prior to an arrest or conviction would cause another veto.⁸¹ Representative Ed Setzler (R-35th) was concerned about how a person who accidentally left their license at home would be treated under a bill that requires arrest and fingerprinting of unlicensed drivers.⁸² Representative John Lunsford (R-110th) explained that he was not trying to take discretion away from local jurisdictions, which can choose whether or not to arrest and fingerprint someone for driving without a license.⁸³ Rather, he wanted any fingerprinting information that was obtained to be sent to the Georgia Crime Information Center.⁸⁴ So, Representative Lunsford offered an amendment that made it possible for municipalities, *at their discretion*, to take a first time offender to the police station and have them arrested and fingerprinted.⁸⁵ He amended the bill to state that “such fingerprints whether taken upon conviction or at the time of arrest shall be forwarded to the Georgia Crime Information Center, where an identification number shall be assigned to the fingerprints for use of detecting any future violations by the criminal offender.”⁸⁶ The amendment was adopted.⁸⁷

Although not present, Representative Rich Golick (34th) asked Senator Wiles to present his bill, HB 1288, as an amendment to SB 350.⁸⁸ HB 1288 would allow for the Department of Driver Services (“DDS”) to get a record of the fingerprints taken in relation to the

80. See Video Recording of House Judiciary Non-Civil Meeting part 1, *supra* note 73 at 57 min., 43 sec. (remarks by Rep. John Lunsford (R-110th)).

81. See *id.* at 1 hr., 1 min., 1 sec. (remarks by Sen. Wiles (R-37th)).

82. See Video Recording of House Judiciary Non-Civil Meeting part 2, *supra* note 74, at 00 min., 35 sec. (remarks by Rep. Ed Setzler (R-35th)).

83. See Video Recording of House Judiciary Non-Civil Meeting part 1, *supra* note 73 at 1 hr., 4 min., 13 sec. (remarks by Rep. John Lunsford (R-110th)).

84. See Video Recording of House Judiciary Non-Civil Meeting part 2, *supra* note 74, at 03 min., 16 sec. (remarks by Rep. John Lunsford (R-110th)).

85. See *id.* at 52 min., 53 sec. (remarks by Rep. John Lunsford (R-110th)).

86. See *id.* at 53 min., 21 sec. (remarks by Jill Travis, Sen. Wiles’ Legislative Counsel) (restating the amendment proposed by Rep. Lunsford).

87. See *id.* at 1 hr., 00 min., 00 sec. (remarks by Committee Chairman, Sen. David Ralston (R-7th)).

88. See Video Recording of House Judiciary non-Civil Meeting part 1, *supra* note 73 at 45 min., 17 sec. (remarks by Sen. John Wiles (R-37th)).

offense of driving without a license.⁸⁹ Representative Kevin Levitas (D-82nd) made a motion for the amendment and it was adopted.⁹⁰

Representative Timothy Bearden (R-68th) also considered proposing an amendment that would have made driving without a license a “finger printable offense.”⁹¹ However, Senator Wiles opposed this change because the policy of each individual department determines whether an individual is arrested and fingerprinted for driving without a license and it should not be included in this bill.⁹² Senator Wiles was concerned with the difficulty departments that still use roller fingerprinting, as opposed to electronic fingerprinting, would have with a mandate that the person must be fingerprinted.⁹³

Another amendment, offered by Representative Setzler, would have changed Section 3(a) of the Act to make four convictions in ten years, rather than four convictions in five years, a felony.⁹⁴ However, the language requiring four conviction in five years had been proposed by the Speaker of the House for SB 15 in the previous session and Senator Wiles feared that changing the language would result in opposition from the Speaker, so he asked that the amendment not be made by the committee.⁹⁵

After amending the bill, the Judiciary Non-Civil Committee favorably reported SB 350 on March 18, 2008.⁹⁶ On March 20, 2008 the House passed the bill in a 99-68 vote and sent the bill back to the Senate for reconsideration.⁹⁷ The House of Representatives made a few alterations to SB 350.⁹⁸ Without much discussion, the Senate voted 38 to 8 to pass the House Substitute on March 28, 2008.⁹⁹ On

89. *See id.* at 46 min., 31 sec. (remarks by Sen. John Wiles (R-37th)).

90. *See* Video Recording of House Judiciary non-Civil Meeting part 2, *supra* note 74 at 1hr., 03 min., 21 sec. (remarks by Rep. Kevin Levitas (D-82nd)); *id.* at 1 hr., 10 min., 28 sec. (remarks by Chairman of the Committee, Sen. David Ralston (R-7th)).

91. *See id.* at 1 hr., 01 min., 13 sec. (remarks by Rep. Timothy Bearden (R-68th)).

92. *See id.* at 1 hr., 02 min., 04 sec. (remarks by Sen. John Wiles (R-37th)).

93. *Id.* at 1 hr., 02 min., 49 sec. (remarks by Sen. John Wiles (R-37th)).

94. *See id.* at 1 hr., 08 min., 34 sec. (remarks by Rep. Ed Setzler (R-35th)).

95. *See id.* at 1 hr., 09 min., 24 sec. (remarks by Sen. John Wiles (R-37th)).

96. State of Georgia Final Composite Status Sheet, SB 350, Mar. 18, 2008 (Apr. 4, 2008).

97. *Id.*, Mar. 20, 2008.

98. *Id.*

99. Video Recording of Senate Proceedings, Mar. 28, 2008 at 2 hr., 2 min., 32 sec. (Remarks by President of the Senate, Casey Cagle (R)), mms://mediam1.gpb.org/ga/leg/2008/ga-leg-senate-3_28_2008-8_57_00AM.wmv; Georgia Senate Voting Record, SB 350 (Mar. 28, 2008).

May 14, 2008, the bill was signed into law by Governor Sonny Perdue.¹⁰⁰

The Act

The main crux of the Act is to amend Code section 40-5-21, making it a felony to drive without a license or with a suspended license upon the fourth conviction within five years.¹⁰¹ The Act states that “such person shall be guilty of a felony and shall be punished by imprisonment for not less than one year.”¹⁰² A fine may also be assessed, ranging between \$2,500 and \$5,000.¹⁰³ The Act makes it mandatory for any traffic court to report the “name and any other identifying information of any individual convicted of driving without a license.”¹⁰⁴ The Act requires that fingerprints are taken upon conviction and sent to the Georgia Crime Information Center.¹⁰⁵ The Act also amends Code section 42-4-14 by requiring that when a person is convicted of driving without a license, the nationality of such individual should be ascertained by all reasonable efforts.¹⁰⁶

Analysis

Throughout the Act’s passage, hardly a single word was mentioned relating to illegal immigration.¹⁰⁷ Although the words were never mentioned in the debate on SB 350, most legislators knew the Act targeted undocumented immigrants.¹⁰⁸ State Representative Chuck Sims (R-169th), when asked by reporters of the AJC, stated, “That’s what it’s about.”¹⁰⁹

100. State of Georgia Final Composite Status Sheet, SB 350, May 14, 2008 (Apr. 4, 2008).

101. O.C.G.A. § 40-5-121 (Supp. 2008).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. O.C.G.A. § 40-2-20 (Supp. 2008).

107. See Ben Smith & Mary Lou Pickel, *Driving Without License Felony Under House Bill*, ATLANTA J.-CONST., Mar. 20, 2008, available at http://www.ajc.com/metro/content/metro/stories/2008/03/20/illegals_0321.html.

108. See *id.*

109. *Id.*

Undocumented immigrants are unable to legally obtain driver's licenses in Georgia, making them particularly sensitive to this Act.¹¹⁰ Not all lawmakers, though, were anxious to label the debate as related to illegal immigration.¹¹¹ Representative James Mills (R-25th) focused on the broader picture, reiterating that the Act is aimed at anyone who is not legally driving in Georgia, not just immigrants.¹¹² Additionally, Senator Adelman (D-42nd) stated that he did not view the Act through an immigration prism.¹¹³

Atlanta-area law enforcement view this Act as having a much wider impact.¹¹⁴ According to a local law enforcement officer, when people are pulled over for a traffic violation, probable cause is necessary.¹¹⁵ Ethnicity, socioeconomic status, and other factors are not taken into consideration.¹¹⁶ When a person is caught driving without a license for the fourth time, the former form of punishment, a misdemeanor, did not have the necessary impact; a felony with harsher terms may be what that particular driver needs as an incentive to stop the illegal activity.¹¹⁷

A large number of undocumented immigrants receive valid North Carolina driver's licenses because proof of immigration status is not required to obtain a license in that state.¹¹⁸ The Act directly targets undocumented immigrants with out-of-state licenses because under the Act, a valid U.S. driver's license from another state is not sufficient, it must be a valid Georgia driver's license.¹¹⁹ Although often having the alternative of obtaining licenses in North Carolina, 60-70% of the time Hispanic drivers pulled over, they do not have any license.¹²⁰ A frequent transaction between such a driver and law

110. *Id.*

111. See Jake Armstrong, *Language Referring to Illegal Immigrants and Vehicle Seizures Deleted*, THE TIMES-UNION, Mar. 26, 2008, available at http://www.jacksonville.com/tu-online/stories/032608/geo_261699124.shtml.

112. *Id.*

113. See Adelman Interview, *supra* note 62.

114. See Interview with Detective, Atlanta-Metro Law Enforcement (May 2, 2008) [hereinafter Detective Interview].

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

120. See Detective Interview, *supra* note 114.

enforcement has the officer asking, “¿Hay licencia?”¹²¹ and the driver then pulls out a national ID from a Latin American country.¹²² Of course, drivers who do not possess a valid Georgia driver’s license hail from around the globe, and it is not uncommon for a European, for example, to be driving on a license from his or her home country.¹²³

The timeliness of the unlicensed driver issue was made clear on March 16, 2008.¹²⁴ An undocumented immigrant, and thus unlicensed driver, was killed in an accident in Cobb County when he side-swiped a van carrying four members of the same family.¹²⁵ A father and son were also pronounced dead at the scene.¹²⁶ The driver had just been involved in another minor accident and was fleeing that scene, presumably afraid he was going to be apprehended by law officials who would discover his lack of status in the United States.¹²⁷ This is the outcome that immigration attorneys fear – that people, aware of the consequences of being caught driving without a valid Georgia driver’s license – will lead to these drivers fleeing from minor accidents, perhaps even fleeing in haste.¹²⁸ Just three days after this tragic accident, Senator Wiles presented SB 350 to members of the House Rules Committee.¹²⁹

Elise Shore, regional counsel for the Mexican American Legal Defense and Educational Fund, testified against the bill, demonstrating that there is concern among the immigrant community regarding racial profiling.¹³⁰ Her fear is that there will be distrust between law enforcement and the immigrant community because police could potentially pull someone over for the simple fact that

121. *See id.* (Spanish for “Where is your license?”).

122. *See id.*

123. *See id.*

124. *See* Talia Mollett, *Police Say Driver in Fatal Wreck Had No License, Prior Collisions*, MARIETTA DAILY JOURNAL, Mar. 19, 2008, available at <http://www.mdjonline.com/content/index/showcontentitem/area/1/section/15/item/107377.html>.

125. *Id.*

126. *Id.*

127. *Id.*

128. *See* Interview with Socheat Chea, Attorney at Law, The Law Office of Socheat Chea, P.C. (Apr. 29, 2008) [hereinafter Chea Interview].

129. Mollett, *supra* note 124.

130. *See* Josh Green, *Residents Troubled by Unlicensed Motorists*, GWINNETT DAILY POST, Mar. 2, 2008.

they look like an immigrant.¹³¹ Part of the tragedy of the March 16, 2008 fatal accident was that the driver was fleeing the scene of a minor accident, presumably afraid he was going to be apprehended by law officials who would discover his lack of status in the United States.¹³²

Other Impacts in the Immigrant Community

In addition to the concerns presented by the March 16, 2008 accident, the immigration community is worried about the impact of this Act on business, temporary non-working visitors, future immigration benefits, and the accuracy of immigration databases available to the Department of Driver Services and in the field with law enforcement officers.¹³³

Some worry that the Act sends the wrong message to potential foreign companies who may wish to open operations in Georgia.¹³⁴ Typically, temporary workers are allowed to stay in the United States for increments of six months or a year and do not always want to go through the hassle involved with obtaining a Georgia driver's license.¹³⁵ Current companies operating in Georgia will also feel the impact of the Act.¹³⁶ The hospitality industry, construction workers and landscapers, all of whom spend a significant part of their work day on the road, run a greater risk of being caught without a valid Georgia driver's license.¹³⁷

An unintended consequence of the Act falls on the shoulders of immigrants who are in the U.S. legally, but cannot obtain the proper paperwork to obtain a driver's license.¹³⁸ In order to apply for a driver's license in Georgia, a person must have a Social Security Number.¹³⁹ For the Social Security Administration to provide a non-U.S. citizen with a number, the person must provide evidence of both

131. *Id.*

132. *See* Mollett, *supra* note 124.

133. *See* Chea Interview, *supra* note 128.

134. Feb. Senate Video, *supra* note 43, at 1 hr., 56 min., 09 sec. (remarks by Sen. Emanuel Jones (D-10th)).

135. *See* Chea Interview, *supra* note 128.

136. *See id.*

137. *See id.*

138. *See id.*

139. *See id.*

work authorization and a job offer.¹⁴⁰ The Catch-22 comes for immigrants who are in the United States legally but do not have authorization from Customs and Immigration Services to work.¹⁴¹ Examples of such types of status holders are dependents of F-1 students and dependents of H-1B temporary workers.¹⁴² The Act makes no provisions for individuals in such a position.¹⁴³

There is also concern that since law enforcement would be required to check on the immigration status of anyone in violation of the Act, that the databases may not be the most accurate.¹⁴⁴ In the field, law enforcement can be reluctant to even check for an individual's immigration status.¹⁴⁵ Officers can become jaded, knowing that the frequency of its incidence, the level of recidivism, and the knowledge that a failure to appear in court will mean no consequences other than a bench warrant that will only be served the next time the driver is stopped while driving without a license.¹⁴⁶

Moreover, once an officer checks a database, there is a risk that the database may provide incorrect information.¹⁴⁷ Socheat Chea, an immigration attorney, gave an example involving a naturalized U.S. citizen who was deported because his "paperwork never came through."¹⁴⁸ Once his attorney proved that he was in fact a U.S. Citizen, the U.S. State Department had to find him and pay for his expenses to re-enter the United States.¹⁴⁹ He then went to the Department of Driver Services, but because their database showed his immigration status as "pending," they refused to issue him a license, despite the fact that he provided them with letters from the State Department and the local Immigration Court.¹⁵⁰ Although the Act has an escape-clause where an individual cited for driving without a license can have the charges dropped if they procure a license before

140. *See id.*

141. *See* Chea Interview, *supra* note 128.

142. *See id.*

143. O.C.G.A. §§ 40-5-2, 42-4-14 (Supp. 2008).

144. *See* Chea Interview, *supra* note 128.

145. *See* Detective Interview, *supra* note 114.

146. *See id.*

147. *See* Chea Interview, *supra* note 128.

148. *Id.*

149. *See id.*

150. *See id.*

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the initial hearing, in this gentlemen's case, he would have no relief available to him.¹⁵¹

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151. SB 350, § 3, ln. 2, as passed, 2008 Ga. Gen. Assem.

