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STATE GOVERNMENT State Printing and Documents: Provide for Legislative Findings; Repeal the Prohibition of Inspection or Copying of Law Enforcement Records for Commercial Solicitation; Change Provisions Relating to Inspection Reports; Provide for Circumstances When Such Reports May Be Inspected or Copied; Provide that the Prohibitions, Procedures, and Fees of the Article Do Not Apply When Public Records are Requested in Writing by a Grand Jury, Taxing Authority, Law Enforcement Agency, or Prosecuting Attorney in Certain Circumstances

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STATE GOVERNMENT

State Printing and Documents: Provide for Legislative Findings; Repeal the Prohibition of Inspection or Copying of Law Enforcement Records for Commercial Solicitation; Change Provisions Relating to Inspection Reports; Provide for Circumstances When Such Reports May Be Inspected or Copied; Provide that the Prohibitions, Procedures, and Fees of the Article Do Not Apply When Public Records are Requested in Writing by a Grand Jury, Taxing Authority, Law Enforcement Agency, or Prosecuting Attorney in Certain Circumstances

CODE SECTIONS: O.C.G.A. §§ 35-1-9, 40-5-2, 50-18-72
(amended), -77 (new)

BILL NUMBER: SB 20

ACT NUMBER: 393

GEORGIA LAWS: 1999 Ga. Laws 809

SUMMARY: The Act repeals the portion of the Open Records Act that formerly authorized the State to criminally penalize those who copied Georgia Uniform Motor Vehicle Accident Reports for the purpose of soliciting lawsuits. The Act prohibits access to and copying of Georgia Uniform Motor Vehicle Accident Reports except by those individuals or entities that demonstrate in writing their need for the reports. Under the Act, only ten classes of individuals or entities qualify for this exception.

EFFECTIVE DATE: July 1, 1999

History

Many Georgia citizens use their social security number as their driver's license number.¹ As a result, whenever these drivers are involved in a motor vehicle accident, police record their driver's

1. See Telephone Interview with Rep. Robert A.B. Reichert, House District No. 126 (May 20, 1999) [hereinafter Reichert Interview].

license number—their social security number—as well as other personal information such as their residential address, telephone numbers, insurance carrier and insurance policy numbers on a Georgia Uniform Motor Vehicle Accident Report.² These accident reports provide a convenient and easy method for some to invade the privacy interests of Georgia citizens; they also place Georgia drivers at a risk of potential financial identity fraud.³

Senators Clay Land of the 16th District and Billy Ray of the 48th District sponsored SB 20 to protect the privacy interests of Georgia drivers who are involved in a motor vehicle accident; the Act prevents the personal information contained in the accident report from being made accessible for public inspection and copying except upon a written showing of need as defined by the bill.⁴

SB 20

Introduction

Upon request by Senator Land, legislative counsel drafted the original version of SB 20 as it was introduced into the Senate.⁵ The Act repeals in its entirety a previous Georgia law that addressed similar privacy issues but allowed for criminal penalties against individuals who used the information contained in any law enforcement record for commercial solicitation.⁶ In consideration of the broad and sweeping

2. *See id.* Representative Reichert stated that through the Georgia Uniform Accident Reports, “individuals who haven’t done anything to provoke themselves into the public domain” suddenly find their privacy interests unprotected regarding this type of personal information. *Id.*

3. *See* 1999 Ga. Laws 809, § 1, at 810. The Act mentions legislative findings that the information contained within accident reports have been used for financially fraudulent purposes against Georgia drivers listed in the reports as well as “insurance carriers, other business entities, and agencies and political subdivisions of the state government.” *Id.*

4. *See id.*; Telephone Interview with Sen. Clay Land, Senate District No. 16 (Apr. 23, 1999) [hereinafter Land Interview].

5. *See* Land Interview, *supra* note 4.

6. *See* *Speer v. Miller*, 864 F. Supp. 1294 (N.D. Ga. 1994) (holding the statute from 1991 unconstitutional as a violation of commercial free-speech protected by the First Amendment). Specifically, the court found that protection of the privacy interests of those citizens whose names and personal information appeared upon any law enforcement record otherwise subject to public access established a substantial government interest. *See id.* at 1300. The law, however, failed to directly advance the State’s interest because the focus of the statute was to prevent commercial solicitations rather than “preventing significant access” to the records. *Id.* at 1300-02. *Compare* 1991 Ga. Laws 1868, § 1, at 1868-69 (formerly found at O.C.G.A. § 35-1-9 (1993)), *with* O.C.G.A.

language of this former law, the drafters deliberately narrowed the Act's scope, focusing exclusively upon public inspection and copying of Georgia Uniform Motor Vehicle Accident Reports.⁷

Addressing legitimate access provisions to these accident reports rather than restrictions on commercial solicitations generated by public inspection and copying of these accident reports,⁸ the Act makes these accident reports available only to individuals who demonstrate their need for the reports to the custodian.⁹ The Act goes on to expressly define the term "need."¹⁰ Unless the individual or entity requesting the accident report(s) is one of the individuals expressly mentioned under the Act, the Act prohibits the custodian of the records from making the records available to the requesting party.¹¹ Finally, in its original form, the bill expressly denied public requests for inspecting and copying of motor vehicle accident reports in bulk.¹²

Consideration by the Senate Public Safety Committee

The Public Safety Committee made minor changes to SB 20.¹³ However, the Committee did expand the definition of the need exception by including individuals who may be potentially liable to

§ 35-1-9 (Supp. 1999).

7. Compare 1991 Ga. Laws 1868, § 1, at 1868-69 (formerly found at O.C.G.A. § 35-1-9 (1993)), with O.C.G.A. § 35-1-9 (Supp. 1999).

8. See Land Interview, *supra* note 4.

9. See O.C.G.A. § 50-18-72 (Supp. 1999).

10. See *id.* The list which would have defined who may satisfy the need requirement under the original version of the bill included the following individuals:

a personal, professional, or business connection with a party to the accident; owns or leases an interest in property allegedly or actually damaged in the accident; was allegedly or actually injured by the accident; was a witness to the accident; is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident; or is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes.

SB 20, as introduced, 1999 Ga. Gen. Assem.

11. See SB 20, as introduced, 1999 Ga. Gen. Assem.; Land Interview, *supra* note 4.

12. Compare SB 20, as introduced, 1999 Ga. Gen. Assem., with 1991 Ga. Laws 584, § 1, at 1868-69 (formerly found at O.C.G.A. 35-1-9 (1993)).

13. Compare SB 20, as introduced, 1999 Ga. Gen. Assem., with SB 20 (SCS), 1999 Ga. Gen. Assem.

another party because of the accident.¹⁴ The Act includes these changes.¹⁵

From Senate Public Safety Committee Substitute to Senate Floor Amendment

After the Senate Public Safety Committee passed the bill by substitute, the bill proceeded to the Senate floor where Senator Land proposed two amendments.¹⁶ First, Senator Land proposed including “a prosecutor or a publicly employed law enforcement officer” as individuals who satisfy the need exception.¹⁷ Second, Senator Land sought to include the news media¹⁸ under the need exception.¹⁹ Both of these amendments passed.²⁰

Before the Senate voted on SB 20, Senator Land urged his colleagues to support the bill.²¹ Senator Land explained:

14. Compare SB 20, as introduced, 1999 Ga. Gen. Assem., with SB 20 (SCS), 1999 Ga. Gen. Assem. The provision here is self-explanatory and provides insight into Sen. Land’s remarks that the bill traveled through the General Assembly virtually unopposed; rather, the legislators focused primarily upon identifying and providing for every possible legitimate need for the accident report. See Land Interview, *supra* note 4.

15. See O.C.G.A. § 50-18-72(a)(4.1) (Supp. 1999).

16. See SB 20 (SFA), 1999 Ga. Gen. Assem.

17. *Id.*

18. See *id.* Compare SB 20 (SFA), 1999 Ga. Gen. Assem., with 1991 Ga. Laws 584, § 1, at 1868-69 (formerly found at O.C.G.A. § 35-1-9 (1993)). The former law contained a similar provision which allowed for the news media’s access to and subsequent publication of any law enforcement record. See *id.*; see also *Speer v. Miller*, 15 F.3d 1007 (11th Cir. 1994). There, the circuit court remanded the case to the district court for further consideration but remarked in dicta, “[w]e note that any privacy arguments the state asserts are disingenuous in light of the fact that the statute carves out an exception for the media to place any information they obtain on the front page of any newspaper in Georgia.” *Id.* at 1011 n.7.

19. See Telephone Interview with Mary Riddle, Assistant Legislative Counsel (July 7, 1999) [hereinafter Riddle Interview]. Ms. Riddle recognized the possibility that a future constitutional challenge to the Act might be based in part upon this broad dicta mentioned by the circuit court. See *id.* She added, however, that the State could argue that it has an interest in protecting the citizens of Georgia from fraud by theft of identity. See *id.* Ms. Riddle states the legislative intent, as expressed within the Act, is the direct advancement of this State interest by preventing all of the personal information recorded within motor vehicle accident reports from being made available for unrestricted public inspection. See *id.* Finally, it seems most unlikely that a newspaper would print either the social security number or any other private information prohibited by the Act from public inspection. See *id.*

20. See O.C.G.A. § 50-18-72(a)(4.1)(F), (I) (Supp. 1999).

21. See *Lawmakers '99* (GPTV broadcast Jan. 28, 1999) (remarks by Sen. Land) (available in Georgia State University College of Law Library).

[C]urrently, under the Open Records Act, runners can get these accident reports without demonstrating a need for the report. Runners will go to the police station and get stacks of accident reports, contact the people identified by the report and harass these people by encouraging them to file lawsuits. This bill is designed to prohibit this type of abuse from occurring in our civil justice system.²²

The Senate unanimously passed SB 20 by substitute.²³

From Senate Floor Amendment to House Judiciary Committee

The House referred the bill to the House Judiciary Committee, where it passed by substitute.²⁴ The House Judiciary Committee added a provision that allowed a party to satisfy the "need" requirement by submitting a written statement to the custodian of the accident report.²⁵ This written statement must set forth the need for the accident report by identifying the requester as an individual who satisfies the need requirement expressly defined in this Code section.²⁶

Regarding the problem of requests for accident reports in bulk, the Committee further changed the original version of the bill to allow for these requests provided that the requester submits a written statement of need for each individual report.²⁷

The Committee also changed the structure of the bill by transforming the single-subsection "need" definition of the original version of the bill into separate subsections. These subsections expressly and individually identified those persons or entities who satisfy the need requirement.²⁸

22. *Id.*

23. *See Georgia Senate Voting Record*, SB 20 (Jan. 28, 1999). *Compare* SB 20 (SCS), 1999 Ga. Gen. Assem., *with* SB 20 (SCSFA), 1999 Ga. Gen. Assem.

24. *See State of Georgia Final Composite Status Sheet*, May 3, 1999.

25. *Compare* SB 20 (SCSFA), 1999 Ga. Gen. Assem., *with* SB 20 (HCS), 1999 Ga. Gen. Assem.

26. *See* O.C.G.A. § 50-18-72 (Supp. 1999); Land Interview, *supra* note 4. Senator Land stated that the written statement provision provided the means by which accountability of the requesting party could be established because presentation of identification by the requester is not required. *See id.*

27. *Compare* SB 20 (SCSFA), 1999 Ga. Gen. Assem., *with* SB 20 (HCS), 1999 Ga. Gen. Assem.; *see* Land Interview, *supra* note 4. Senator Land said that even if an unscrupulous individual lied in their written statements in order to acquire bulk copies of the reports, the scheme would have to be very sophisticated because pursuant to the bill, the dishonest person simply would not be able to satisfy the requisite showing of need for each report individually among so many reports. *See id.*

28. *Compare* SB 20 (SCSFA), 1999 Ga. Gen. Assem., *with* SB 20 (HCS), 1999 Ga. Gen. Assem.

The Committee substitute further provided that attorneys who need the accident reports for information about a criminal case or as part of an investigation of a possible unsafe roadway, railroad crossing, or intersection also meet the need exception.²⁹

The Committee also amended the public interest exception (when accident reports are needed for purposes of researching dangerous intersections, etc.) by requiring that custodians wait thirty days before giving the accident reports to the requesting party.³⁰

Finally, the Committee amended the bill by inserting a cost-free provision for the benefit of requests from a grand jury, taxing authority, law enforcement agency, or a prosecuting attorney who are involved in an ongoing administrative, criminal, or tax investigation.³¹ Further, the Committee added that custodians must provide the requested reports under the aforementioned circumstances unless they are either privileged or specifically restricted by law.³²

From House Judiciary Committee Substitute to House Floor Amendment

Representative Reichert proposed a floor amendment to the bill, which the House adopted.³³ The amendment focused upon the specific area in the bill of most concern to the legislators—the public interest exception—because the legislators believed it had the potential to become an easily manipulated “catch all” provision.³⁴ The House Judiciary Committee had already adopted restrictions to the public interest exception via the thirty-day delay provision, but

29. Compare SB 20 (SCSFA), 1999 Ga. Gen. Assem., with SB 20 (HCS), 1999 Ga. Gen. Assem.

30. Compare SB 20 (SCSFA), 1999 Ga. Gen. Assem., with SB 20 (HCS), 1999 Ga. Gen. Assem. See Record of Proceedings in the House Judiciary Committee (Mar. 15, 1999) (remarks by Rep. Reichert) (available in Georgia State University College of Law Library). Representative Reichert stated in committee that there was nothing special about thirty days as opposed to another period of duration; however, the delay seemed reasonable because any drivers who sought legal counsel regarding their accident would most likely do so within thirty days after their accident. See *id.* Therefore, the objective of the bill would be maintained. See *id.* In other words, runners, who might be falsely posing as individuals conducting research in the public interest pursuant to this public interest exception, would be too late in soliciting business from the parties listed in the report. See *id.*

31. Compare SB 20 (SCSFA), 1999 Ga. Gen. Assem., with SB 20 (HCS), 1999 Ga. Gen. Assem.

32. Compare SB 20 (SCSFA), 1999 Ga. Gen. Assem., with SB 20 (HCS), 1999 Ga. Gen. Assem.

33. Compare SB 20 (HCS), 1999 Ga. Gen. Assem., with SB 20 (HFA), 1999 Ga. Gen. Assem.

34. Reichert Interview, *supra* note 1.

Representative Reichert's proposal further limited this exception by requiring custodians to redact the name, street address, telephone number and driver's license number whenever the reports became available to the public.³⁵

The House passed SB 20 by substitute.³⁶ When it returned to the Senate, SB 20 met no opposition to the changes made in the House and passed by a unanimous vote.³⁷ Governor Roy Barnes signed SB 20 into law on April 28, 1999.³⁸

The Act

The Act amends the Georgia laws in four ways. First, the Act repeals in its entirety the general provisions of Chapter 1 of Title 35, which imposes criminal penalties upon the inspection and copying of any law enforcement records for commercial solicitation.³⁹ Second, the Act amends the Open Records Act by removing Georgia Uniform Motor Vehicle Accident Reports from the list of law enforcement records subject to disclosure pursuant to Chapter 18 of Title 50.⁴⁰ Third, the Act further amends Chapter 18 of Title 50 by inserting a new paragraph regarding when custodians must make Georgia Uniform Motor Vehicle Accident Reports available for public inspection and copying.⁴¹ The Act clarifies that these records shall be made available only if the requesting party submits a written statement, which shows their need for the accident reports.⁴² Further, the Act expressly defines and identifies the individuals and entities who satisfy this need exception.⁴³ Unless the custodian of the accident reports receives this written statement establishing the need for the reports pursuant to the express provisions of the Act, the Custodian shall not make the reports

35. See Reichert Interview, *supra* note 1. Compare SB 20 (HCS), 1999 Ga. Gen. Assem., with SB 20 (HFA), 1999 Ga. Gen. Assem. Individuals who investigate allegedly dangerous intersections would need only the narrative of the accident report, not the private information of the parties listed in the report. See Reichert Interview, *supra* note 1. The amendment also provided further clarification of the legislative intent from the preamble. See *id.*

36. See Georgia House of Representatives Voting Record, SB 20 (Mar. 17, 1999).

37. See Georgia Senate Voting Record, SB 20 (Mar. 23, 1999).

38. See State of Georgia Final Composite Status Sheet, May 3, 1999.

39. Compare 1991 Ga. Laws 1868, § 1, at 1868-69 (formerly found at O.C.G.A. § 35-1-9 (1993)), with O.C.G.A. § 35-1-9 (Supp. 1999).

40. Compare 1997 Ga. Laws 1446, § 2, at 1448 (formerly found at O.C.G.A. § 40-5-2(b) (1997)), with O.C.G.A. § 40-5-2(b) (Supp. 1999).

41. Compare 1998 Ga. Laws 993, § 1, at 1653 (formerly found at O.C.G.A. § 50-18-72 (1998)), with O.C.G.A. § 50-18-72 (Supp. 1999).

42. See O.C.G.A. § 50-18-72 (Supp. 1999).

43. See *id.* § 50-18-72(a)(4.1).

available for public inspection or copying.⁴⁴ Fourth, the Act inserts a new section under Chapter 18 of Title 50 providing that the fees associated with the production of these records shall not apply to various state agencies, as identified within the Act.⁴⁵ Pursuant to this provision, the Act denies access to the reports by these state agencies where the records are privileged or otherwise restricted by law from inspection.⁴⁶

The Act outlines three specific legislative findings. First, a great deal of personal information about Georgia drivers is recorded on the Georgia Uniform Motor Vehicle Accident Report.⁴⁷ Unless the reports are exempt from public disclosure, the Georgia drivers listed in these reports lose their privacy interests over this personal information.⁴⁸ In some cases, the accessibility of this information to the public has subjected drivers to financial identity fraud.⁴⁹ The availability of these accident reports provides an "easy and convenient method" for this type of fraudulent activity to occur.⁵⁰

The Act seeks to protect the privacy interests of Georgia drivers by severely narrowing the individual members of the public who may inspect and copy accident reports.⁵¹ The Act makes access to these accident reports available only if the requesting person falls under one of the ten express "need" provisions, as defined by the Act.⁵²

44. *See id.*

45. *See id.* § 50-18-77.

46. *See id.*

47. 1999 Ga. Laws 809, § 1, at 809-10.

48. *See id.*

49. *See id.*

50. *Id.*

51. *See id.*; Telephone Interview with Sue Saleska-Hamilton, Georgia Trial Lawyers Association (May 21, 1999) [hereinafter Saleska-Hamilton Interview]. Ms. Saleska-Hamilton stated that the General Assembly cannot outlaw "running" per se because of the constitutional protections of commercial free-speech. *See id.* However, she added that the General Assembly may, notwithstanding this constitutional mandate, limit the access, in certain instances, to public records that contain private information about Georgia citizens. *See id.*

52. *See* O.C.G.A. § 50-18-72(a)(4.1) (Supp. 1999); Telephone Interview with Sen. Billy Ray, Senate District No. 48 (May 20, 1999). Senator Ray indicated that the Act is narrowly tailored to advance the State's substantial government interests in protecting the privacy of its citizens because the Act includes ten rational exceptions of individuals or entities who may need the reports for appropriate and legitimate uses. *See id.* The Act furthers the State's need to diligently try to prevent the type of fraudulent behavior that can result from the personal information contained in these reports being made available to the public so easily. *See id.*

Opposition to SB 20

The Act encountered very little opposition.⁵³ A lobbyist on behalf of the American Civil Liberties Union (ACLU) voiced some opposition to SB 20 while the House Judiciary Committee considered it.⁵⁴ This organization expressed concerns that the Act was not narrowly tailored in its scope and argued that the State should be careful when legislation restricts access to public information.⁵⁵

Despite opposition from the ACLU, the Act passed unanimously in both the Senate and the House.⁵⁶

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53. *See id.*; Land Interview, *supra* note 4; Reichert Interview, *supra* note 1; Saleska-Hamilton Interview, *supra* note 50; *see also* Record of Proceedings in the House Judiciary Committee (Mar. 15, 1999) (remarks by a lobbyist for the Georgia Chiropractors Association) (available in Georgia State University College of Law Library). The lobbyist stated the organization's support of SB 20. *See id.*

54. *See* Land Interview, *supra* note 4.

55. *See id.* Senator Land stated that the alternative of redaction was considered but rejected for two reasons:

- 1) redaction would impose an undue burden upon the custodian of the records, i.e., having to cross out the personal information on each report. The custodian, being the only person in a position to redact the information, would literally have to perform this tedious task by hand on every report requested; 2) the individuals listed in the statute should be entitled to non-redacted reports. Finally, redacting the information for individuals who did not "need" the report(s) was "an absurd" proposition.

Id.

56. *See* Georgia Senate Voting Record, SB 20 (Mar. 23, 1999); Georgia House of Representatives Voting Record, SB 20 (Mar. 17, 1999).