

9-1-2003

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Recommended Citation

J. A. Schneider, *LAW ENFORCEMENT OFFICERS AND AGENCIES Georgia Bureau of Investigation: Clarify Procedures for Submission of Bar Applicants' Fingerprints for Criminal Background Checks*, 20 GA. ST. U. L. REV. (2003).

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LAW ENFORCEMENT OFFICERS AND AGENCIES

Georgia Bureau of Investigation: Clarify Procedures for Submission of Bar Applicants' Fingerprints for Criminal Background Checks

CODE SECTIONS:	O.C.G.A. §§ 15-2-8, 35-3-33 (amended)
BILL NUMBER:	HB 90
ACT NUMBER:	72
GEORGIA LAWS:	2003 Ga. Laws 334
SUMMARY:	The Act gives the Georgia Crime Information Center the responsibility of receiving fingerprints from bar applicants and submitting these fingerprints to the Federal Bureau of Investigation. The Act also removes the restriction on the use of information obtained by the background check.
EFFECTIVE DATE:	May 29, 2003

History

The Georgia General Assembly has historically authorized the Georgia Supreme Court to regulate the admission of attorneys to the bar.¹ In 1986, the General Assembly expanded on this authority by mandating the Georgia Supreme Court to require applicants to submit fingerprints for the purpose of conducting criminal background checks.² The General Assembly also authorized the Georgia Crime Information Center ("GCIC") to release to the court any records relating to the applicants.³ The 1986 legislation specified that the court could only use this information for the specific purpose of

1. See 1851 COBB'S DIGEST LAWS OF GA. 446, § 14, at 452; GA. CODE ANN. § 5498-5 (1895); GA. CODE ANN. § 24-3901 (1933).

2. See 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)).

3. See *id.*

determining the applicants' fitness for practicing law in Georgia.⁴ The law remained unchanged until 2003.⁵

HB 90, as originally introduced, would have simply added the requirement that the Georgia Supreme Court submit the bar applicants' fingerprints to the Federal Bureau of Investigation ("FBI") to conduct a national criminal background check.⁶ This had always been the routine practice of the court's Office of Bar Admissions prior to the bill.⁷ However, the FBI's Criminal Justice Information Services Division, Access Integrity Unit, notified the Georgia Supreme Court that Georgia's statute, as previously written, failed to meet the criteria of Public Law 92-544 for the submission of fingerprints to the FBI.⁸ To meet the criteria, Georgia's statute needed to contain language expressly authorizing the submission of fingerprints to the FBI or, alternatively, needed to contain language such as "submit for a national check" implying this authority.⁹

Passing the legislation this year was essential for the General Assembly because the FBI had informed the Georgia Bureau of Investigation ("GBI") that it would not accept fingerprint cards for Georgia bar applicants after April 1, 2003, unless legislation to amend the law was pending or enacted.¹⁰

HB 90

Representatives Mike Boggs, Tom Bordeaux, and Nick Moraitakis of the 145th, 125th, and 42nd districts, respectively, sponsored HB 90.¹¹ The bill was first introduced in the House on January 16, 2003.¹² The Speaker assigned the bill to the House Judiciary Committee on January 17, 2003, which offered a substitute to HB 90 on March 5, 2003.¹³

4. *See id.*

5. *See* O.C.G.A. § 15-2-8 (Supp. 2003).

6. *See* HB 90, as introduced, 2003 Ga. Gen. Assem.

7. *See* Electronic Mail Interview with Rep. Mike Boggs, House District No. 145 (Apr. 14, 2003) [hereinafter Boggs Interview].

8. *See id.*; *see also* Pub. L. No. 92-544.

9. *See* Boggs Interview, *supra* note 7.

10. *See id.*

11. *See* HB 90, as introduced, 2003 Ga. Gen. Assem.

12. *See* State of Georgia Final Composite Status Sheet, HB 90, Apr. 25, 2003.

13. *See id.*

House Committee Substitute

The House Committee substitute significantly altered the bill's structure but not its substance.¹⁴ As introduced, the bill would have simply inserted a reference to the FBI into Code subsection 15-2-8(5).¹⁵ The substitute, however, would have struck most of the 1986 amendment and would have inserted a new paragraph at the end of Code section 35-3-33.¹⁶ The House Committee substitute included these changes at the Georgia Supreme Court's suggestion.¹⁷ The court suggested that the General Assembly address the powers of the GCIC rather than "draft the bill as a dictate upon the court."¹⁸

The House Committee substitute eliminated the limitation on the use of information gathered through the bar applicants' background checks to official court use and administrative purposes.¹⁹ While the House Committee did not necessarily intend this change, House Judiciary Committee Chairman Tom Bordeaux acknowledged that the bill removed the restriction on the Georgia Supreme Court's use of the information gathered.²⁰ The House adopted and passed the Committee substitute on March 24, 2003, by a unanimous vote of 172 to 0.²¹

Senate Consideration

The bill was first read on the Senate floor on March 25, 2003.²² The bill was assigned to the Senate Judiciary Committee, which favorably reported the bill without change on March 28, 2003.²³ The bill was read for the second time in the Senate on April 7, 2003, and

14. Compare HB 90, as introduced, 2003 Ga. Gen. Assem., with HB 90 (HCS), 2003 Ga. Gen. Assem.

15. See HB 90, as introduced, 2003 Ga. Gen. Assem.

16. Compare HB 90, as introduced, 2003 Ga. Gen. Assem., with HB 90 (HCS), 2003 Ga. Gen. Assem., and 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)).

17. See Boggs Interview, *supra* note 7.

18. See *id.*

19. Compare HB 90 (HCS), 2003 Ga. Gen. Assem., with HB 90, as introduced, 2003 Ga. Gen. Assem., and 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)).

20. See Telephone Interview with Rep. Tom Bordeaux, House District No. 125 (June 24, 2003).

21. See State of Georgia Final Composite Status Sheet, HB 90, Apr. 25, 2003; Georgia House of Representatives Voting Record, HB 90 (Mar. 24, 2003).

22. See State of Georgia Final Composite Status Sheet, HB 90, Apr. 25, 2003.

23. See *id.*

the Senate tabled the bill on April 22, 2003.²⁴ The Senate passed the bill by a vote of 38 to 0 on April 25, 2003, the final day of the legislative session.²⁵ The bill was sent to Governor Sonny Perdue on May 12, 2003, and he signed the bill into law on May 29, 2003.²⁶

The Act

The Act strikes language at the end of Code section 15-2-8 which gave the Georgia Supreme Court the authority to require bar applicants to submit fingerprints to the GCIC and also limited the court's use of the information gathered thereby to its administrative operations.²⁷

The Act authorizes the GCIC to receive and process fingerprints from the Georgia Supreme Court and allows the GCIC to submit such fingerprints to the GBI and the FBI.²⁸ The Act also eliminates any limitation on the court's use of the information gathered.²⁹

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24. *See id.*

25. *See id.*; Georgia Senate Voting Record, HB 90 (Apr. 25, 2003).

26. *See* 2003 Ga. Laws 334.

27. *Compare* 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)), *with* O.C.G.A. § 15-2-8 (Supp. 2003).

28. *Compare* 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)), *with* O.C.G.A. § 15-2-8 (Supp. 2003), *and* O.C.G.A. § 35-3-33 (Supp. 2003).

29. *Compare* 1986 Ga. Laws 279, § 1, at 280 (formerly found at O.C.G.A. § 15-2-8 (2002)), *with* O.C.G.A. § 15-2-8 (Supp. 2003), *and* O.C.G.A. § 35-3-33 (Supp. 2003).