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## EDUCATION Education Flexibility and Accountability: Change Provisions Relating to School Councils; Change Provisions Relating to the Powers and Duties of Local Boards of Education; Allow the State Board of Education to Prescribe the Manner and Grade Level for Certain Required Courses in History and Government; Authorize Alternative Methods for Certain Transfer Students; Change Certain Provisions Regarding Early Intervention Programs; Change Certain Provisions Relating to Maximum Class Size for the 2004-2005 School Year; Change Provisions Relating to Charter Schools; Revise Certain

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## EDUCATION

***Education Flexibility and Accountability: Change Provisions Relating to School Councils; Change Provisions Relating to the Powers and Duties of Local Boards of Education; Allow the State Board of Education to Prescribe the Manner and Grade Level for Certain Required Courses in History and Government; Authorize Alternative Methods for Certain Transfer Students; Change Certain Provisions Regarding Early Intervention Programs; Change Certain Provisions Relating to Maximum Class Size for the 2004-2005 School Year; Change Provisions Relating to Charter Schools; Revise Certain Provisions Relating to Drivers' Licenses; Change Penalties for Failure to Comply with Compulsory Attendance Requirements; Provide for Student Attendance Protocols; Require School Principals to Support the Authority of Teachers to Remove Certain Students from a Classroom; Provide that Local School Board Policies Require Local School Superintendents to Support the Authority of Principals and Teachers to Remove Certain Students from a Classroom; Revise Certain Provisions Relating to Disciplinary Hearings by a Disciplinary Hearing Officer, Panel, or Tribunal; Provide for Changes to Accountability Assessment; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 20-2-86, -142, -153, -167.1, -182, -281, -290, -320, -690.1, -697, -701, -720, -738, -751.2, -751.5, -751.6, -753, -754, -759, -2061, -2064 (amended), 20-2-244, -285.1, -323, -690.2, -2063.1, -2068.2 (new), 20-14-26, -30 to -41; 39-2-11; 40-5-22 (amended)

BILL NUMBER: HB 1190

ACT NUMBER: 449

GEORGIA LAWS: 2004 Ga. Laws 107

SUMMARY: HB 1190 amends Title 20 of the Official Code of Georgia Annotated. The bill, among other things, changes certain responsibilities of local boards

of education and school officials, addresses budgetary concerns, provides for curriculum and testing procedures, improves disciplinary practices in schools, and changes the consequences for failure to comply with compulsory attendance requirements. Additionally, the bill changes certain portions of Title 39 regarding employment of minors and Title 40 relating to driver's license requirements for minors.

EFFECTIVE DATE: May 5, 2004

### *History*

While introducing SB 428, the bill ultimately tacked onto HB 1190, Senator Preston Smith of the 52nd district stated that SB 428 “seeks to get kids back in school, to have better discipline in those classrooms, and to get more students to graduate from high school.”<sup>1</sup> He went on to speak more specifically about the driver's license provisions of the bill:

[This bill] uses a tool at the state's disposal, the privilege of driving, to improve student discipline and to address our state's appalling dropout rate. As the newspaper said just last week, Georgia now ranks as 48th out of 50 states in the nation in high school graduation. Students who drop out are known to earn less money. In fact, there is a correlation with the poverty rate and student dropout. They also commit more crimes. For our students and for our state, we need these kids to stay in school and create a better environment for learning in our state.<sup>2</sup>

Although HB 1190 made many changes and additions to Code Titles 20, 39, and 40, this article will focus on the provisions

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1. Audio Recording of Senate Proceedings, Feb. 3, 2004 (remarks by Sen. Preston Smith), at [http://www.georgia.gov/00/channel\\_title/0,2094,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html) [hereinafter Senate Audio].

2. *Id.*

regarding driver's license requirements for minors as they relate to compulsory attendance requirements.

*Bill Tracking of HB 1190*

Code section 40-5-22, which sets out the requirements for a minor to obtain a driver's license, previously stated that a person under the age of 18 must be enrolled in school unless they have permission from their parent or guardian to obtain a license.<sup>3</sup> The Department of Motor Vehicle Safety ("DMVS") would suspend the license of a minor who dropped out of school for ten consecutive days or who had more than ten consecutive unexcused absences unless the minor had permission from their parent or guardian.<sup>4</sup> This suspension would end at the earlier of (1) the minor's 18th birthday or (2) the receipt of evidence by the DMVS that the student had returned to school.<sup>5</sup> The section also required that the DMVS revoke a student's license for 90 days when a school suspended that student for "[t]hreatening, striking, or causing bodily harm to a teacher or other school personnel; possess[ing] or [selling] [] drugs or alcohol on school property; or possess[ing] or us[ing] [] a weapon on school property."<sup>6</sup> Further, the DMVS was required to notify the minor after revoking the license, and the minor had a right to a hearing if he or she made a request within ten days of receiving the notice.<sup>7</sup>

The driver's license provisions in HB 1190 originated from separate bills.<sup>8</sup> Senator Preston Smith drafted and filed SB 392 in the summer of 2003.<sup>9</sup> During this same time, unbeknownst to Senator Smith, the Governor's Education Policy staff drafted SB 428—a bill that contained the same goals as SB 392.<sup>10</sup> Senator Smith carried SB 428, rather than SB 392, through the Senate; yet, the language in HB

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3. 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. See Telephone Interview with Sen. Preston Smith, Senate District No. 52 (June 10, 2004) [hereinafter Smith Interview].

9. *Id.*

10. See *id.*

1190's final version is virtually identical to the language in SB 392.<sup>11</sup> However, because the House never voted on SB 392 and since both the Senate and House voted on SB 428, this article will focus on legislators' changes to SB 428 as they pertain to HB 1190's final version.<sup>12</sup>

### *SB 428*

SB 428 proposed several changes to the requirements for obtaining a driver's license as a minor.<sup>13</sup> The bill deleted the provision allowing a minor who has dropped out of school to obtain a driver's license if they have permission from a parent or guardian.<sup>14</sup> Thus, any school drop-out under the age of 18 would not be allowed to have a Georgia driver's license.<sup>15</sup> SB 428 also removed the word "consecutive" from the provision requiring the DMVS to suspend the license of a student who has more than ten consecutive unexcused absences.<sup>16</sup> Finally, it proposed that, in addition to having their license suspended for threatening a school official or possessing drugs, alcohol, or a weapon on school grounds, students suspended for a sexual offense, for causing bodily harm to any other person (including other students), or for a period of more than ten cumulative days should also have their license suspended.<sup>17</sup> The bill increased the driver's license suspension period from 90 days to the longer of 6 months or the duration of the suspension from school.<sup>18</sup> The Senate Education Committee substitute for SB 428 modified the bill to allow a person "pursuing a general educational development (GED) diploma" to obtain a driver's license.<sup>19</sup>

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11. Compare SB 392, as passed in the Senate, 2004 Ga. Gen. Assem., with O.C.G.A. § 40-5-22 (Supp. 2004).

12. State of Georgia Final Composite Status Sheet, SB 392, Mar. 19, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, SB 428, Feb. 3, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, SB 428, Mar. 31, 2004 (May 19, 2004).

13. See SB 428, as introduced, 2004 Ga. Gen. Assem.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Compare SB 428 (SCS), 2004 Ga. Gen. Assem., with SB 428, as introduced, 2004 Ga. Gen. Assem.

Senators offered several amendments regarding the driver's license provisions during the Senate debate; however, none of these amendments were successful.<sup>20</sup> SB 428 passed the Senate by a vote of 41 to 15.<sup>21</sup> The driver's license provisions in the bill also changed as SB 428 traveled through the House of Representatives.<sup>22</sup> The version that passed in the House included a parent or guardian consent provision and changed the driver's license suspension period for a student suspended from school to the longer of 90 days or the end of the suspension period.<sup>23</sup> This version did not include driver's license suspension for any student receiving a term of school suspension longer than ten days, for which the Senate version provided.<sup>24</sup> SB 428 passed the House of Representatives by a vote of 171 to 2.<sup>25</sup> There was no conference committee for SB 428; thus, it did not pass. However, most of the provisions in SB 428, including the driver's license provisions, were added to HB 1190.<sup>26</sup>

### *HB 1190*

HB 1190 initially passed the House by a vote of 175 to 2 on March 17, 2004.<sup>27</sup> The bill then went to the Senate, where it passed by substitute in a 45 to 10 vote on April 1, 2004.<sup>28</sup> The House and Senate appointed members to a Conference Committee on April 1, 2004.<sup>29</sup> On April 7, 2004, the House and the Senate, respectively,

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20. See, e.g., Failed Senate Floor Amendment to SB 428, introduced by Sen. Michael Meyer von Bremen, Feb. 3, 2004 (suggesting that the Department of Education reimburse local school systems for costs associated with implementation); Failed Senate Floor Amendment to SB 428, introduced by Sens. Michael Meyer von Bremen, Steve Thompson and Horacena Tate, Feb. 3, 2004 (recommending that consent from a parent or guardian enable a minor to obtain a permit to travel to and from work); Failed Senate Floor Amendment to SB 428, introduced by Sens. Sam Zamarripa and Kasim Reed, Feb. 3, 2004 (suggesting that the statute allow for consent by parent, guardian, or religious official authorized to perform marriages).

21. Georgia Senate Voting Record, SB 428 (Feb. 3, 2004).

22. Compare SB 428, as passed by the Senate, 2004 Ga. Gen. Assem., with SB 428 (HCS), 2004 Ga. Gen. Assem.

23. SB 428 (HCS), 2004 Ga. Gen. Assem.

24. Compare SB 428 (HCS), 2004 Ga. Gen. Assem., with SB 428, as passed by the Senate, 2004 Ga. Gen. Assem.

25. Georgia House of Representatives Voting Record, SB 428 (Mar. 31, 2004) (five Representatives did not vote and two were excused).

26. See State of Georgia Final Composite Status Sheet, SB 428, Apr. 7, 2004 (May 19, 2004). Compare SB 428, as introduced, 2004 Ga. Gen. Assem., with O.C.G.A. § 40-5-22 (Supp. 2004).

27. Georgia House of Representatives Voting Record, HB 1190 (Mar. 17, 2004).

28. Georgia Senate Voting Record, HB 1190 (Apr. 1, 2004).

29. State of Georgia Final Composite Status Sheet, HB 1190, Apr. 1, 2004 (May 19, 2004).

adopted the Conference Committee report.<sup>30</sup> The Conference Committee report passed the Senate by a vote of 47 to 7, and it passed the House of Representatives by a 168 to 0 vote.<sup>31</sup>

The original version of HB 1190 did not include a section changing the current driver's license provision regarding compulsory school attendance.<sup>32</sup> However, the final version included almost all of SB 428, including this driver's license provision.<sup>33</sup>

### *The Act*

The Act removes the parent or guardian permission provision from the statute, which means that under no circumstances will the State allow a minor who is not in school to have a driver's license.<sup>34</sup> To receive a driver's license, a student must show satisfactory attendance for one academic year.<sup>35</sup> The DMVS must notify students at the time of their application for a license if they are not eligible under this provision.<sup>36</sup>

Students who miss ten or more school days "in any semester or combination of two consecutive quarters" will lose their license if such absences are unexcused.<sup>37</sup> In addition, the Act expands the list of school offenses which trigger a driver's license suspension.<sup>38</sup> The Act includes in this category a student who commits a sexual offense or causes "substantial physical or visible bodily harm to or seriously disfigur[es] another person, including another student."<sup>39</sup>

Any student who loses his or her license will receive instructions to return the license to the DMVS and to send any information that may give the student the right to an exemption.<sup>40</sup> The section providing for an exemption under the Act states:

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30. State of Georgia Final Composite Status Sheet, HB 1190, Apr. 7, 2004 (May 19, 2004).

31. Georgia Senate Voting Record, HB 1190 (Apr. 7, 2004); Georgia House of Representatives Voting Record, HB 1190 (Apr. 7, 2004).

32. HB 1190, as introduced, 2004 Ga. Gen. Assem.

33. See O.C.G.A. § 40-5-22 (Supp. 2004).

34. Compare O.C.G.A. § 40-5-22 (Supp. 2004), with 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

35. See O.C.G.A. § 40-5-22 (Supp. 2004).

36. *Id.*

37. *Id.*

38. Compare O.C.G.A. § 40-5-22 (Supp. 2004), with 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

39. O.C.G.A. § 40-5-22 (Supp. 2004).

40. *Id.*

The [DMVS] shall be authorized to grant an exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor.<sup>41</sup>

The DMVS worked with the legislature in drafting this bill and suggested that the bill include this exemption.<sup>42</sup> The exemption recognizes that there are students who are teen parents, students who have to care for a sick parent, and students in other situations that may force them to stay out of school.<sup>43</sup> Finally, the Act increases the license suspension time for students who fail to meet attendance requirements to one year or until the minor's 18th birthday, whichever comes first.<sup>44</sup> It also removes the provision that allows a student with unsatisfactory attendance to have their license reinstated upon a showing of improved attendance.<sup>45</sup>

### *Analysis*

West Virginia has a law similar to this recently amended Georgia statute which requires school attendance to obtain a driver's license.<sup>46</sup> In *Means v. Sidiropolis*, a student challenged the constitutionality of the West Virginia law, arguing that the law violated due process.<sup>47</sup> The court in that case found that the statute did not violate due process as long as the State provided the student with notice and a right to a hearing because the statute is a rational way for the State to

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41. Compare O.C.G.A. § 40-5-22 (Supp. 2004), with 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

42. Telephone Interview with Jennifer Ammons, General Counsel, Department of Motor Vehicle Safety ("DMVS") (June 28, 2004).

43. *Id.*

44. Compare O.C.G.A. § 40-5-22 (Supp. 2004), with 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

45. Compare O.C.G.A. § 40-5-22 (Supp. 2004), with 1997 Ga. Laws 760, § 10, at 771 (formerly found at O.C.G.A. § 40-5-22 (2003)).

46. W. VA. CODE § 18-8-11 (2003).

47. *Means v. Sidiropolis*, 401 S.E.2d 447, 449-50 (W. Va. 1990).

encourage students to stay in school.<sup>48</sup> The statute in that case “excused [a student] from the requirement due to circumstances beyond his or her control,” which is similar to the new provision in HB 1190.<sup>49</sup>

There are several arguments against tying compulsory school attendance to a minor’s right to have a driver’s license. The court in *Means* recognized that keeping an unwilling student in school disrupts the learning of other students in the classroom.<sup>50</sup> Further, some critics feel that the state should not have the authority to regulate school attendance in this manner and have stated:

Regulatory power over the right to drive is delegated by the people to the state for one purpose alone—to ensure safety on the public highways. It is a manifest abuse for the state to use its licensing power for any purpose whatsoever except to ensure safe driving. If the state has an important enough interest in compelling school attendance, it may use prison terms, fines, or any other sanction of general applicability, but driver’s licenses should not be used for this purpose. A parent may take away the keys to the family car if a teenager fails to do her homework, but we should never tolerate the idea that the state is a parent. Unlike a parent, the state is a creature of law.<sup>51</sup>

In response to this argument, Senator Preston Smith stated the following:

I do think that the ability to license drivers of the state creates a privilege, not a right, to drive on the public roadways of the state. This idea . . . has been a part of Georgia law for more than a decade. There just hasn’t been a mechanism in place to enforce it . . . . In a sense, we haven’t changed the state of the law, we’ve just closed the loophole . . . . I do think the state has the ability to

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48. *Id.* at 450-51.

49. Compare W. VA. CODE § 18-8-11 (2003), with O.C.G.A. § 40-5-22 (Supp. 2004).

50. See *Means*, 401 S.E.2d at 452.

51. Charles A. Reich, *The Individual Sector*, 100 YALE L.J. 1409, 1428 (1991).

use its licensing regulation for the public good, and I think that's what we're trying to do.<sup>52</sup>

Despite critics of non-safety related regulation of the right to drive, the Georgia Legislature has determined that driving in Georgia is a privilege for minors, reserved for those who stay in school.

*Jennifer Evans*

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52. Smith Interview, *supra* note 8.