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CRIMES AND OFFENSES Controlled Substances: Revoke Licenses for Drug Offenses

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DRUG LEGISLATION

The 1990 Georgia General Assembly passed thirty-five anti-drug bills and resolutions.[1] Waging a "War on Drugs" was a top priority for the Session.[2] The Governor's Commission on Drug Awareness and Prevention studied the issues associated with drug abuse for two years before providing the Governor with suggestions and recommendations.[3] The recommendations were then reviewed by a group of state department heads who offered additional suggestions.[4] The Committee drafted legislation that was introduced, on behalf of the Governor's Office, by various Senate and House members.

The focus of the bills was to reduce demand for illegal drugs.[5] Attempts to attack the drug problem from the supply side had been unsuccessful and were viewed by many as ineffective.[6] In an attempt to avoid further prison overcrowding, an effort was made to impose civil, rather than criminal, penalties on the casual user.[7] The legislation addresses middle class drug users by revoking professional licenses, denying or limiting participation in state-funded programs, and suspending those convicted of illegal drug use from public colleges or state employment.[8] The following Peach Sheets represent some of the major drug legislation passed in the 1990 Session.[9]

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1. Newsletter from Michael F. Volmer, Executive Director, The Governor's Commission on Drug Awareness and Prevention (March 1990) (available in Georgia State University College of Law Library) (an overview of anti-drug legislation passed by the 1990 Session of the Georgia General Assembly).

2. *See* Whitt, *General Assembly Opens with Lawmakers Calling for All-Out War on Drugs*, Atlanta J. & Const., Jan. 9, 1990, at C3, col. 4.

3. Telephone interview with Rusty Sewell, Executive Counsel to the Governor (Mar. 23, 1990).

4. *Id.*

5. *See From Drugs to Dentures: The 1990 General Assembly and You*, Atlanta J. & Const., Mar. 11, 1990, at C4, col. 2; Cook & Whitt, *Harris Offers Drug Package Aimed at Middle-Class Users*, Atlanta J. & Const., Jan. 10, 1990, at C1, col. 5.

6. Telephone interview with Senator C. Donald Johnson, Judiciary Committee Vice-Chairman, Senate District No. 47 (Mar. 23, 1990).

7. Cook and Whitt, *Drug Bills Proliferating Despite Costs*, Atlanta J. & Const., Jan. 2 , 1990, C1, col. 5.

8. *See* Cook & Whitt, *Harris Offers Drug Package Aimed at Middle-Class Users*, Atlanta J. & Const., Jan. 10, 1990, at C1, col.5; Whitt, *Drug Bills Go Too Far, Some Say, Gung-Ho Proposals Could Take Away Rights*, Atlanta J. & Const., Jan. 16, 1990, at D5, Col.1.

9. The General Assembly also passed HB 1263, providing for drug testing of all applicants for state employment. *See* O.C.G.A. §§ 45-20-90—91 (Supp. 1990). The Georgia Association of Educators challenged the constitutionality of the statute in the Northern District Court of Georgia. Telephone interview with Wayne Yancey, Senior Assistant District Attorney for the State of Georgia (Oct. 10, 1990). The District Judge granted a temporary restraining order against enforcement of the statute in July. The court ruled the statute unconstitutional on October 19, 1990. No. 90-CV-1587-R88 (N.D. Ga. 1990). The state is not appealing the decision. Atlanta J. & Const., Nov. 20, 1990 at B1, col. 1-5.

CRIMES AND OFFENSES

Controlled Substances: Revoke Licenses for Drug Offenses

CODE SECTIONS:	O.C.G.A. §§ 16-13-110 to -14 (new)
BILL NUMBER:	SB 503
ACT NUMBER:	1437
SUMMARY:	The Act mandates sanctions against individuals licensed to conduct a business or practice a profession who are convicted of offenses involving controlled substances or marijuana. The Act requires licensed persons to report their convictions to the granting authority which must either suspend or revoke the license. The Act also provides for license reinstatement upon successful completion of an approved drug rehabilitation program.
EFFECTIVE DATE:	July 1, 1990

SB 552

The Act adds a new article to Chapter 13 of the Code mandating the suspension or revocation of licenses to individuals convicted of an offense involving controlled substances or marijuana.[1] All licenses issued by any state authority are affected by the Act, including such diverse occupations as real estate agents, beauticians, junk dealers, and plumbers.[2] Licenses issued by cities or counties are not covered.[3] Previously, such sanctions were left to the discretion of the licensing authority.[4]

As introduced, the bill included offenses involving "dangerous drugs."[5] The House and Senate substitutes[6] dropped this language because this definition of dangerous drugs included prescription drugs; the sponsor's objective was to stop the intentional use of illegal drugs.[7] Prescription

1. O.C.G.A. §§ 16-13-110—114 (Supp. 1990). "Controlled substance" is defined in O.C.G.A. § 16-13-21(4) (1988). "Marijuana" is defined in O.C.G.A. § 16-13-21(16) (1988).

2. Telephone Interview with Senator C. Donald Johnson, Senate District No. 47 (Mar. 19, 1990) [hereinafter Johnson Interview].

3. *Id.*; *see* O.C.G.A. § 16-13-110(a)(5) (Supp. 1990).

4. Johnson Interview, *supra* note 2.

5. SB 503, as introduced, 1990 Ga. Gen. Assem.

6. *See* SB 503 (HCS), 1990 Ga. Gen. Assem. and SB 503 (SCS), 1990 Ga. Gen. Assem. The House and Senate substitutes are identical.

7. Johnson Interview, *supra* note 2.

drugs can be misused unintentionally and it was feared that a law which punished such misuse was over-inclusive and would violate the equal protection clauses of the State and Federal Constitutions.[8] Offenses involving marijuana were added by both substitutes since the definition of "controlled substance" does not embrace marijuana.[9]

Any entity of state government which authorizes a person to operate a licensed occupation is considered a "licensing authority" under the Act.[10] All licensing authorities are required to enforce the Act's provisions.[11] All occupations which receive authorization to operate from a state agency are affected.[12] Special mention is given in the Act to the practice of law.[13] It is considered a profession requiring a state license, with the Georgia Supreme Court the licensing authority.[14] General business licenses issued by a state agency are also covered by the scope of the Act.[15]

For a first conviction, the Act requires any type of occupational license or permit to be suspended for at least three months unless the conviction is for a misdemeanor.[16] In that case, the licensing authority has the discretion to impose a lesser penalty.[17] A second conviction, including misdemeanors, results in an automatic revocation of the individual's occupational license.[18]

The failure to report a conviction is considered sufficient grounds for revocation of the occupational license.[19] The licensing authority may authorize additional sanctions.[20] Sanctions mandated by this new Article are considered minimum sanctions.[21] Only convictions after July 1, 1990 are actionable.[22] Reinstatement of a license to an individual who

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8. *Id.*

9. O.C.G.A. § 16-13-21(4) (1982).

10. Telephone Interview with Senator Donn Peevy, Senate District No. 48 (Mar. 19, 1990) [hereinafter Peevy Interview]; *see* O.C.G.A. § 16-13-110(a)(5) (Supp. 1990).

11. Peevy Interview, *supra* note 10; *see* O.C.G.A. § 16-13-111(b) (Supp. 1990).

12. Peevy Interview, *supra* note 10; *see* O.C.G.A. § 16-13-111(a)(4) (Supp. 1990).

13. O.C.G.A. § 16-13-110(b) (Supp. 1990).

14. *Id.* Georgia courts consider attorneys who are certified to practice law in the state as "licensed." *See* State Bar of Georgia v. Haas, 133 Ga. App. 311, 211 S.E.2d 161 (1974) (attorney who practiced law in the United States Air Force considered in "licensed" practice for the prescribed time to be certified by the Georgia Bar); *see also* Ex parte Ross, 196 Ga. 499, 502, 26 S.E.2d 880, 882 (1943) (in response to plaintiff's protest against State Bar's decision not to grant him a license to practice law, the court stated that "no person can successfully assert a claim to a *license* to practice law in this State") (emphasis added).

15. Johnson Interview, *supra* note 2.

16. O.C.G.A. § 16-13-111(b)(1) (Supp. 1990).

17. *Id.*

18. O.C.G.A. § 16-13-111(b)(2) (Supp. 1990).

19. O.C.G.A. § 16-13-111(c)(2) (Supp. 1990).

20. O.C.G.A. § 16-13-111(e) (Supp. 1990).

21. *Id.*

22. O.C.G.A. § 16-13-114 (Supp. 1990).

successfully completes a drug abuse and educational program is permitted if the program is approved by the pertinent licensing authority.[23]

Proposed amendments which either strengthened or weakened the Act were hotly debated.[24] The original version of the bill did not specify penalties for failure to report offenses.[25] The committee substitutes put the burden to report offenses on the offending party by including penalties for not reporting an offense to the proper state authority.[26] The proponents believed the bill would have little effect if the reporting requirements were not made mandatory and enforced with penalties.[27]

Two amendments introduced on the Senate floor became part of the committee substitute, but failed to become part of the final Act.[28] The first made the court, in addition to the offender, responsible for reporting violations.[29] The second allowed the issuance of a limited occupational license for first offenders who entered a drug rehabilitation center.[30] These amendments met with strong opposition from the bill's sponsors because they were seen as weakening the effect of the bill.[31] The court would have difficulty in reporting a violation to the proper licensing authority since the court has no ready means to determine what licenses an offending party holds. In addition, requiring the court to report violations would shift some of the burden from the target of the bill, the offending party.[32] The limited occupational license amendment was opposed since it would dampen the seriousness of the charge and the overall intent of the Act.[33]

The provision allowing for reinstatement of a license upon completion of a drug rehabilitation program was one floor amendment which did survive to become part of the final Act.[34] It was seen by the opposition as the only redeeming factor of the bill.[35] Such programs, plus drug education, are felt by many to be more effective in fighting the drug war than punitive measures.[36]

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23. O.C.G.A. § 16-13-111(d) (Supp. 1990).
24. Johnson Interview, *supra* note 2.
25. SB 503, as introduced, 1990 Ga. Gen. Assem.
26. *See* SB 503 (HCS), 1990 Ga. Gen. Assem. and SB 503 (SCS), 1990 Ga. Gen. Assem.
27. Johnson Interview, *supra* note 2.
28. SB 503 (SCSFA), 1990 Ga. Gen. Assem.
29. *Id.*
30. *Id.*
31. Johnson Interview, *supra* note 2.
32. *Id.*
33. *Id.*
34. O.C.G.A. § 16-13-111(d) (Supp. 1990).
35. Peevy Interview, *supra* note 10. However, rehabilitation programs are expensive and taking people's livelihood away by suspending their business licenses makes it even more difficult for them to pay for such programs. *Id.*
36. *Id.* In the last few years Georgia's prisons have become overcrowded because of the increased desire to punish drug users and suppliers, yet the drug problem has

Both the House and Senate substitutes added a provision specifying members of the bar as holders of professional licenses issued by the Georgia Supreme Court.[37] This provision was introduced in the Senate by nonattorneys to ensure that attorneys did not find a way to exempt themselves from the law.[38] The provision may have planted a serious constitutional problem since the legislature, by ordering the court to take specific actions, may have violated the separation of powers principle.[39]

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become worse. This supports changing the method of dealing with the drug problem from punitive measures to education and rehabilitation. *Id.* Indeed, the shortage of rehabilitation programs makes the reinstatement of a license more of a fiction than reality. *Id.*

37. *See* SB 503 (HCS), 1990 Ga. Gen. Assem. and SB 503 (SCS), 1990 Ga. Gen. Assem.

38. Johnson Interview, *supra* note 2.

39. Peevy Interview, *supra* note 10. Historically, the Georgia Supreme Court has held that it is the judiciary's responsibility to regulate the practice of law, not the legislature's. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, 723 (1969) (Power to create the State Bar by the Supreme Court of Georgia not an unlawfully delegated legislative power). *See also* Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969) (judiciary has an inherent power to regulate the practice of law). Constitutional questions about the judiciary's power have been raised in cases involving disciplinary actions or rejection of applications to practice law. State Bar of Georgia v. Haas, 133 Ga. App. 311, 211 S.E.2d 161 (1974) (plaintiff protesting rejection of license to practice law); Ex parte Ross, 196 Ga. 499, 26 S.E.2d 880 (1943) (plaintiff questioning power of judiciary to require bar exam); Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969) (disciplinary action for practicing law without a license); Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969) (allegation that the State Bar Act is unconstitutional and, therefore, disciplinary action is unlawful). These attacks were rejected because the judiciary has the inherent power to regulate the practice of law. Wallace, 225 Ga. at 109, 166 S.E.2d at 723.

At the same time, the courts have stated that the police power of the legislature allows it to act in the public interest as long as such action does not encroach upon the power of the judiciary. *Id.* The courts have long recognized the right of the legislature to codify requirements an attorney must meet to practice law in the state. *Ex parte* Ross, 196 Ga. 499, 502, 26 S.E.2d 880, 882 (1943). (The *Ross* court stated that the codes providing requirements to be licensed to practice law in Georgia "are valid provisions of law, designed by the legislature in the exercise of its constitutional authority to protect the public. They may not be set at naught by any action of the courts.") Indeed, it was the legislature which, in 1963, authorized the Supreme Court of Georgia to establish the State Bar of Georgia. O.C.G.A. § 15-19-30 (1982). At that time, vesting the power to establish a State Bar in the judiciary was questioned as an unconstitutional expansion of the jurisdiction of the supreme court granted by the Georgia Constitution. GA. CONST. art. VI, § 6, (p). II The Georgia constitution states that "The Supreme Court shall be a court of review and shall exercise exclusive appellate jurisdiction ...." *Id.* In *Sams v. Olah*, 225 Ga. 497, 169 S.E.2d 790 (1969), the argument that the constitution was violated when the Legislature granted power to the supreme court to establish a state bar was rejected. The court ruled that the constitution limited the jurisdiction of the court, but not its inherent powers, one of which is the power to regulate the practice of law. *Id.* It was also questioned as an unconstitutional delegation of legislative powers to the judiciary. Wallace v. Wallace, 225 Ga. 102, 109, 166 S.E.2d 718, 723 (1969). Both of these arguments failed because the courts recognized that they have inherent *power* over the practice of law. *Id.* However, since the legislature gave the courts the power to create the state bar, and the legislature has the power to create laws regulating the licensing

Conclusion

Although there was broad support for drug legislation, the licensing bill was heavily debated and criticized.[40] Several legislators argued that the Act is over-inclusive because it applies regardless of the impact a drug conviction may have upon an individual's ability to continue in the licensed occupation.[41] It was argued that the Act violated the equal protection clause of the fourteenth amendment of the United States Constitution because it singles out license holders for additional penalties due to drug convictions.[42] Also, the penalty was seen as too harsh since it takes away a person's livelihood and punishes the innocent members of a breadwinner's family.[43] Such factors, according to several legislators, were ignored in the frenzy to pass any type of drug legislation.[44]

Other constitutional questions are also raised by SB 503. First, the punishment appears to be too broad since it does not fit the crime.[45] Traditional punishments are matched with the crime in order to remove the incentive to commit such crimes.[46] Repeated traffic violations result in the suspending of drivers' licenses; violations of health codes result in the closing of restaurants; the profit in robberies is removed by placing the criminal in jail.[47] In these examples, there is a connection between the wrong and the punishment. Drug abuse is not directly related to holding an occupational license or conducting a licensed activity; therefore, the civil penalty of revocation of a business license does not fit the criminal conviction for drug abuse.[48]

Second, the Act punishes a license holder for drug abuse, but does not penalize people who commit felonies or other crimes.[49] An equal protection claim could be raised alleging that the Act discriminates against holders of occupational licenses by not placing a similar penalty on nonlicense holders.[50] A person convicted of armed robbery could

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of attorneys, the legislature may have the power to mandate disqualification of attorneys for drug convictions. *See* Payne v. State, 52 Ga. 425, 426, 183 S.E. 638, 639 (1936) ("The statutes do not limit the general powers of the courts over the attorneys at law, and they may be disbarred for other than statutory grounds; and this inherent power cannot be defeated by the legislative and executive departments, although its exercise may be regulated by statute.").

40. Peevy Interview, *supra* note 10.

41. *Id.* Generally, Senator Peevy sees the Act as a short-sighted political solution in an election year. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* Johnson Interview, *supra* note 2.

49. *Id.* Peevy Interview, *surpa* note 10.

50. *Id.*

keep his license, while a person convicted of a misdemeanor drug offense would lose his.[51] The likelihood that the Act will be challenged on constitutional grounds is great.[52]

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51. *Id.*
52. *Id.*