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GEORGIA STATE UNIVERSITY LAW REVIEW

REVIEW OF SELECTED 2011 GEORGIA LEGISLATION

Affected Georgia Code Sections and Legislative Reviews

VOLUME 28 NUMBER 1 FALL 2011

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COLLEGE OF LAW

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REVIEW OF SELECTED 2011 GEORGIA LEGISLATION

The 2011 legislative session was an important year for the State of Georgia. The legislature tackled multiple contentious issues, including immigration, reforms to the HOPE scholarship program, tax reform, and the long awaited adoption of the Federal Rules of Evidence for Georgia courts. Despite the enormous impact that the enactment of legislation such as this has on the citizenry of Georgia, the state has no official legislative history. To make up for this, after every session of the Georgia General Assembly, the Georgia State University Law Review publishes a volume on selected pieces of legislation. This volume, known as the "Peach Sheets," documents the legislative history of bills believed to be especially significant to the citizens of Georgia and its legal community. It is our hope that the Peach Sheets will assist legal practitioners, courts, and Georgia citizens with understanding the effects of newly enacted legislation.

Each Peach Sheet includes the title of the bill, a brief summary of the legislation, a history section, a tracking section that explains changes made during the bill's passage, and a section explaining the final legislation. At the end of the Peach Sheet, an analysis section explores issues such as the legislation's constitutionality, its impact on other laws, and possible unintended consequences. Every edition of the Peach Sheets includes both a Table of Code Sections Affected, listing all Code sections affected by the covered legislation, and a House and Senate Bill Index, listing all House and Senate bill numbers addressed in the Peach Sheets.

We salute the hard work our student writers invested in this edition of the Peach Sheets. Finally, we extend our thanks to the numerous legislators, lobbyists, and issue advocates who contributed to this edition. We greatly appreciate their insight, patience, and assistance.

Andrew Mullen & Brian Thomas
Legislation Editors

NOTE ON ABBREVIATIONS

The following abbreviations, taken from those used by the General Assembly, are used in each *Peach Sheet* when reference is made to a particular version of a bill:

Term	Abbreviation
House	H
Senate	S
Bill	B
Failed	F
Committee Substitute	CS
Committee Amendment	CA
Floor Substitute	FS
Floor Amendment	FA
Conference Committee Substitute	CCS
Conference Committee Amendment	CCA

In many instances, these terms are combined when describing a particular version of a bill. Thus, a bill that was amended by a House committee might be abbreviated as "HCA," while the version of the same bill that was further amended on the floor of the House might be abbreviated as "HCAFA," or a failed Senate floor amendment would appear as "FSFA."

GEORGIA STATE UNIVERSITY
LAW REVIEW

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Bill Number: HB 24

Georgia Laws: 2011 Ga. Laws 99

Effective Date: Jan. 1, 2013

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Bill Number: HB 30

Georgia Laws: 2011 Ga. Laws 399

Effective Date: May 11, 2011

Summary: The Act primarily focuses on restrictive covenants in employer-employee relationships, specifically defining and codifying reasonable restraints on trade. The Act is in response to a constitutional amendment ratified by the voters on November 2, 2010, which was said to have left uncertainty in the realm of restrictive covenant agreements. This Act intends to remove any such uncertainty by reenacting the substantive provisions from the 2010 constitutional amendment and also by enacting new Code sections. The Act provides that any contract against the public policy of law cannot be enforced. Overall, the Act states that reasonable restrictive covenants in employment contracts are valid and enforceable. The Act repeals existing Code sections and replaces those sections with new Code sections that give directives to the court that lean towards upholding restrictive covenants.....21

INSURANCE

Individual Health Insurance Coverage

Code Sections: O.C.G.A. §§ 33-29A-30, -34 (new)

Bill Number: HB 47

Georgia Laws: 2011 Ga. Laws 789

Effective Date: July 1, 2011

Summary: The Act seeks to increase the availability of health insurance coverage in the state by allowing insurers authorized to transact in the State of Georgia to offer individual accident and sickness insurance policies in Georgia that are currently approved for issuance in other states. Each out-of-state insurance policy shall be approved by the Georgia Commissioner of Insurance, who retains the authority to determine whether an insurer satisfies the standards required by this

Code section, and whether a policy complies with this Code section. Once the out-of-state insurance policy is approved, any insurer in Georgia may sell a policy with similar benefits. The Act requires that each out-of-state policy contain a disclosure notifying consumers that the policies may be governed by a state other than Georgia and thus may contain benefits different from other policies that can be purchased, in addition to requiring a side-by-side chart comparing the benefits covered in the out-of-state policy with the benefits covered under current Georgia laws and regulations 35

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Bill Number: HB 87

Georgia Laws: 2011 Ga. Laws 794

Effective Date: July 1, 2011

Summary: The Act provides penalties for failure of a public employer to utilize the federal work authorization program, requires certain private employers to utilize the federal work authorization program, and requires proof of such participation. The Act creates offenses involving illegal aliens, including knowingly transporting, harboring, or inducing an illegal alien, and creates the offense of aggravated identity fraud. The Act gives law enforcement officers the authority to enforce federal immigration laws, allows them to investigate illegal alien status under certain circumstances, and provides for their immunity. The Act provides penalties for the failure of agency heads to verify the lawful immigration status of applicants for public benefits. The Act also creates the "Secure and Verifiable Identify Document Act" and the Immigration Enforcement Review Board 51

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Code Sections: O.C.G.A. §§ 32-6-74, -75.3 (amended)

Bill Number: HB 179

Georgia Laws: 2011 Ga. Laws 601

Effective Date: July 1, 2011

Summary: The Act allows billboard companies to clear-cut all state-owned roadside trees that grow in front of their signs, except for trees the government has designated historic or part of a beautification program that will not grow to obstruct the signs. It also requires billboard owners to pay enough in application and renewal fees to make the program revenue neutral. The Act requires billboard owners to lower "skyscraper" billboards in order to acquire vegetation-trimming permits, denies vegetation permits to any company that fails to remove

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Bill Number: HB 186

Georgia Laws: 2011 Ga. Laws 635

Effective Date: May 13, 2011

Summary: The Act amends the current requirements for obtaining a high school diploma by expanding career pathway options and minimizing the need for remediation in postsecondary institutions. Curriculums will embed core standards in career, technical, and agricultural education (CTAE) courses, provide end of course tests for those CTAE courses, and allow credit for demonstrated proficiency. The Act also provides for the establishment of soft skills certification by the Governor's Office of Workforce Development.....115

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Georgia Laws: 2011 Ga. Laws 217

Effective Date: July 1, 2011

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Department of Public Health

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Bill Number: HB 214

Georgia Laws: 2011 Ga. Laws 705

Effective Date: July 1, 2011

Summary: The Act establishes the Department of Public Health by reassigning functions of the Division of Public Health of the Department of Community Health, thereby creating a cabinet level position with the Commissioner of Public Heath reporting directly to the Governor 147

CONSERVATION AND NATURAL RESOURCES

Waste Management

Code Sections: O.C.G.A. §§ 12-8-21, -39, -40.1, -40.2 (amended)

Bill Number: HB 274

Georgia Laws: 2011 Ga. Laws 283

Effective Date: July 1, 2011

Summary: The Act removes the ban on the disposal of yard trimmings into municipal solid waste landfills that are equipped with landfill gas collection systems in furtherance of the promotion of bioenergy and renewable energy goals. The Act also extends until June 30, 2014, the authorization to collect tire fees that fund the Solid Waste Trust Fund 165

GAME AND FISH

Wildlife Generally

Code Sections: O.C.G.A. §§ 27-3-9, -24 (amended)

Bill Number: HB 277

Georgia Laws: 2011 Ga. Laws 249

Effective Date: July 1, 2011

Summary: The Act removes the restriction of being at least 200 yards away from and not within sight of feed or bait when hunting deer in the southern zone of Georgia. However, while hunting on private property in the southern zone, placing feed or bait for the enticement of deer shall not result in an adjacent property owner being prohibited from hunting any game bird or game animal on his property. The Board of Natural Resources may restrict the hunting of deer over feed or bait if there is any documented occurrence of communicable disease in the deer population. A person who takes any big game animal, other than a deer, within 200 yards of feed or bait that constitutes enticement of any game bird or game animal shall be guilty of a misdemeanor of a high and aggravated nature. The Act removes the restriction on hunting feral hogs over feed or bait, but the Board of Natural Resources may restrict the hunting of feral hogs over feed or bait if there is any documented occurrence of communicable disease in the feral hog population. However, a person may not place feed or bait for the enticement of feral hogs within fifty yards of any property ownership boundary 181

EDUCATION

Postsecondary Education

Code Section: O.C.G.A § 20-2-73, -157 (amended); 20-3-250, -395, -400, -411, -519 (amended); 50-27-12, -13, -17 (amended)

Bill Number: HB 326

Georgia Laws: 2011 Ga. Laws 1

Effective Date: March 15, 2011

Summary: The Act limits the HOPE scholarship and grant by a factor rate determined each fiscal year. The Act provides for Zell Miller Scholars—students who will receive the full HOPE scholarship amount. The Act creates a loan forgiveness program for teaching in a Georgia public school at the elementary, middle, or secondary level. The Act limits the compensation and bonuses of the Georgia Lottery Corporation. The Act increases a reserve account for the HOPE program. The Act limits the incentive compensation for lottery retailers.....193

REVENUE AND TAXATION

Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively, to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government

Code Section: O.C.G.A. §§ 2-1-5 (amended); 20-2A-1, -2, -3, -4, -5, -6 (repealed); 28-5-40 to -44 (amended); 28-5-45, -46 (new); 28-5-46.1, 46.2, 46.3, 46.4 (new); 28-7-21 (amended); 33-1-18 (amended); 33-8-4, -8.1, -8.2 (amended); 36-62-5.1 (amended); 36-76-2, -4, -6, -10 (amended); 46-5-1 (amended); 48-2-6 (amended); 48-6-93, -95 (amended); 48-7-1, -20, -21, -26, -27 (amended); 48-7-27.1 (new); 48-7-28, -28.2 (amended); 48-7-29, -29.1, -29.2, -29.3, -29.4, -29.5, -29.6, -29.7, -29.8, -29.9, -29.10, -29.11, -29.12, -29.13, -29.14, -29.15, -29.16, -29.17 (repealed); 48-7-30, -31.1, -38 (amended); 48-7-40, -40.1, -40.2, -40.3, -40.4, -40.5, -40.6, -40.7, -40.8, -40.9, -40.10, -40.11, -40.12, -40.13, -40.14, -40.15, -40.15A, -40.16, -40.17, -40.18, -40.19, -40.20, -40.21, -40.22, -40.23, -40.24, -40.25, -40.26, -40.27, -40.28, -40.29, -40.30, -41, -42 (repealed); 48-7A-3 (amended); 48-8-2 (amended); 48-8-2.1 (new); 48-8-3 (amended); 48-8-3.2, -3.3 (new); 48-8-17 (amended); 48-8-17.1 (repealed); 48-8-30, -32, -39, -42, -49, -77 (amended); 48-8-78 (new); 48-8-82, -102, -110.1, -201, -241 (amended); 48-9-3, -14, -16 (amended); 48-11-2 (amended); 48-18-1, -2, -3, -4, -5, -6 (new); 50-7-100 (new); 50-16-41 (amended); 50-23-21 (amended)

Bill Number: HB 385–88

Georgia Laws: N/A

Effective Date: N/A

Summary: The bills would have enacted comprehensive tax reform that began with HB1405 in the 2010 legislative session, and would have lowered income tax rates while making various changes to deductions, exemptions, and credits. 217

ALCOHOLIC BEVERAGES

Regulation of Alcoholic Beverages Generally

Code Section: O.C.G.A. § 3-3-7 (amended)

Bill Number: SB 10

Georgia Laws: 2011 Ga. Laws 49

Effective Date: July 1, 2011

Summary: The Act authorizes counties and municipalities to allow the sale of alcoholic beverages on Sundays from 12:30 P.M. until 11:30 P.M., if it is approved by a referendum vote. The Act only permits the sale of alcoholic beverages which are lawfully allowed to be sold in the county or municipality. If a county or municipality does not allow the sale of distilled spirits, it may not use this Act to allow for the sale of distilled spirits on Sundays.....255

CRIMES AND OFFENSES

Controlled Substances

Code Sections: O.C.G.A. §§ 16-13-21 (amended), -57 (new), -58 (new), -59 (new), -60 (new), -61 (new), -62 (new), -63 (new), -64 (new), -65 (new); 26-4-5 (amended); 26-4-80.1 (new); 26-4-80.2 (new)

Bill Number: SB 36

Georgia Laws: 2011 Ga. Laws 659

Effective Date: July 1, 2011

Summary: The Act authorizes the Georgia Drugs and Narcotics Agency to establish and maintain a program to record and monitor the prescription and dispensing of Schedule II, III, IV, and V controlled substances. It provides for confidentiality of the submitted information and establishes penalties for the breach of these provisions. It also provides for the establishment of an Electronic Database Review Advisory Committee and for its membership. The Act requires that Schedule II written prescriptions be on security paper.....269

COURTS

General Provisions

Code Sections: O.C.G.A. § 15-1-16 (new)

Bill Number: SB 39

Georgia Laws: 2011 Ga. Laws 224

Effective Date: July 1, 2011

Summary: The Act creates a framework for the creation and implementation of mental health courts throughout individual Georgia localities. It seeks to reduce recidivism by mentally ill criminal offenders by diverting mentally ill criminal offenders into mental health court divisions. The Act calls for the establishment of planning groups containing both legal and mental health professionals to develop written work plans for the implementation of mental health court divisions. The Act specifies the types of mentally ill participants that may be diverted to the mental health court division and excludes mentally ill offenders from participating if they have been charged with one of a specific, enumerated set of crimes. The Act also provides for the confidentiality of statements, reports, and records concerning a mental health court participant and protects such information from subpoena, discovery, or introduction into evidence into any civil or criminal proceeding.....293

STATE GOVERNMENT

Department of Community Affairs

Code Sections: O.C.G.A. §§ 50-8-2, -7.1, -31, (amended); 50-8-35.1, -240 (new)

Bill Number: SB 86

Georgia Laws: N/A

Effective Date: N/A
Summary: The bill would have simplified the definition of a "qualified local government" and comprehensive plan requirements for local jurisdictions. It would have changed the requirement from a comprehensive plan to a basic local plan, which may or may not be developed by the regional commission. It would have changed the guidelines for the process by which local governments submit for review developments of regional impact. The bill also would have established the Georgia Certified Retirement Community Program. It would have provided for the purpose of this program and outlined the requirements by which communities may apply for Georgia certified retirement community status 305

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