



Department of Law  
State of Georgia

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**VIA FACSIMILE/U.S. MAIL**

July 23, 2004

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David R. Williams, Executive Director  
Georgia Superior Court Clerks' Cooperative Authority  
Suite 100  
1875 Century Boulevard  
Atlanta, Georgia 30345

Re: House Bill 1EX; O.C.G.A. § 40-8-76.1(2)

Dear David:

This follows up your request regarding the provisions of O.C.G.A. §§ 15-21-73(a) and 40-8-76.1(2).

As amended by House Bill 1 EX, O.C.G.A. § 15-21-73(a) provides as follows:

- (1) In every case in which any state court, probate court, juvenile court, police, recorder's, or mayor's court, municipal court, magistrate court, or superior court in this state shall impose a fine, which shall be construed to include costs, for any criminal or quasi-criminal offense against a criminal or traffic law, including civil traffic violations and violations of local criminal ordinances, of this state or political subdivision thereof, there shall be imposed as an additional penalty a sum equal to:
  - (A) The lesser of \$50.00 or 10 percent of the original fine; plus
  - (B) An additional 10 percent of the original fine.
- (2) At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or political subdivision thereof, an additional sum equal to:
  - (A) The lesser of \$50.00 or 10 percent of the original amount of bail or bond; plus
  - (B) The lesser of an additional \$50.00 or 10 percent of the original amount of bail or bond

shall be posted. In every case in which any state court, probate court, municipal court, magistrate court, recorder's court, mayor's

court, or superior court shall order the forfeiture of bail or bond, the additional amounts provided for in this paragraph shall be paid over as provided in Code Section 15-21-74.

The surcharge provided for in O.C.G.A. § 15-21-73(a)(1)(A) broadly applies “[i]n every case in which any . . . court . . . in this state shall impose a fine . . . for any criminal or quasi-criminal offense against a criminal or traffic law, including civil traffic violations and violations of local criminal ordinances, of this state or political subdivision thereof.”

As we have discussed, O.C.G.A. § 40-8-76.1 generally provides for the imposition of a fine of \$15.00 for the failure to wear a seat safety belt in a motor vehicle. O.C.G.A. § 40-8-76.1(e) specifically provides in relevant part that:

(e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person failing to comply with the requirements of subsection (b) of this Code section **shall not be guilty of any criminal act and shall not be guilty of violating any ordinance. A violation of this Code section shall not be a moving traffic violation** for purposes of Code Section 40-5-57.

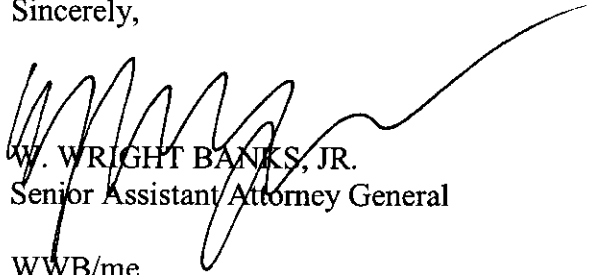
(2) A person failing to comply with the requirements of subsection (b) of this Code section shall be guilty of the offense of failure to wear a seat safety belt and, upon conviction thereof, may be fined not more than \$15.00; but, the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed **nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof**. The court imposing such fine shall forward a record of the disposition of the case of failure to wear a seat safety belt to the Department of Motor Vehicle Safety.

(emphasis added). From my reading of O.C.G.A. § 40-8-76.1(e)(2), it appears to specifically prohibit the imposition of any additional penalty, fee, or surcharge to the \$15.00 fine for the failure to wear a seat safety belt. Thus, it appears fairly clear that the surcharge provided for in O.C.G.A. § 15-21-73(a)(1) does not apply to violations based on the failure to wear a seat safety belt.

David R. Williams  
July 23, 2004  
Page 3

I hope that this is helpful. Please keep in mind that this letter is informal advice and does not constitute the official or unofficial opinion of the Attorney General.

Sincerely,



W. WRIGHT BANKS, JR.  
Senior Assistant Attorney General

WWB/me