

House Bill 1093

By: Representatives Smith of the 19th, Mobley of the 69th, Watson of the 70th, Campbell of the 42nd, Sailor of the 71st and others

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 11 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated,
2 relating to miscellaneous provisions of uniform rules of the road, so as to change certain
3 provisions relating to drivers' exercise of due care and proper use of radios and mobile
4 telephones; to prohibit certain use of mobile telephones; to provide penalties for violations;
5 to provide for warnings regarding the provisions of this Act during a limited period; to
6 provide for studies and reports; to provide effective dates; to repeal conflicting laws; and for
7 other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 11 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
11 miscellaneous provisions of uniform rules of the road, is amended by striking Code Section
12 40-6-241, relating to drivers' exercise of due care and proper use of radios and mobile
13 telephones, and inserting in lieu thereof the following:

14 "40-6-241.

15 A driver shall exercise due care in operating a motor vehicle on the highways of this state
16 and shall not engage in any actions which shall distract such driver from the safe operation
17 of such vehicle, provided; provided, however, that the proper use of a radio; or citizens
18 band radio, or mobile telephone shall not be a violation of this Code section; and provided,
19 further, that use of a mobile telephone shall be subject to the provisions of Code Section
20 40-6-241.1."

21 **SECTION 2.**

22 Said article is further amended by inserting a new Code section to read as follows:

23 "40-6-241.1.

24 (a) As used in this Code section, the term:

25 (1) 'Commercial mobile radio service' means a mobile service that is:

1 (A)(i) Provided with the intent of receiving compensation or monetary gain;
2 (ii) An interconnected service; and
3 (iii) Available to the general public, or to such classes of eligible users as to be
4 effectively available to a substantial portion of the general public; or

5 (B) The functional equivalent of such a mobile service described in subparagraph (A)
6 of this paragraph.

7 (2) 'Engage in a call' shall mean talking into or listening on a hand-held mobile telephone
8 but shall not include holding a mobile telephone to activate, deactivate, or initiate a
9 function of such telephone.

10 (3) 'Hand-held mobile telephone' shall mean a mobile telephone with which a user
11 engages in a call using at least one hand.

12 (4) 'Hands-free mobile telephone' shall mean a mobile telephone that has an internal
13 feature or function, or that is equipped with an attachment or addition, whether or not
14 permanently part of such mobile telephone, by which a user engages in a call without the
15 use of either hand, whether or not the use of either hand is necessary to activate,
16 deactivate, or initiate a function of such telephone.

17 (5) 'Immediate proximity' shall mean that distance as permits the operator of a mobile
18 telephone to hear telecommunications transmitted over such mobile telephone but shall
19 not require physical contact with such operator's ear.

20 (6) 'Mobile telephone' means the device used by subscribers and other users of wireless
21 telephone service to access such service.

22 (7) 'Using' shall mean holding a mobile telephone to, or in the immediate proximity of,
23 the user's ear.

24 (8) 'Wireless telephone service' shall mean two-way real time voice telecommunications
25 service that is interconnected to a public switched telephone network and is provided by
26 a commercial mobile radio service.

27 (b)(1) Except as otherwise provided in this Code section, no person shall operate a motor
28 vehicle upon a public highway while using a mobile telephone to engage in a call while
29 such motor vehicle is in motion.

30 (2) The trier of fact may, in its discretion, infer that an operator of a motor vehicle who
31 held a mobile telephone to, or in the immediate proximity of, his or her ear while such
32 motor vehicle was in motion was engaged in a call within the meaning of this subsection.
33 Such inference may be rebutted by evidence tending to show that the operator was not
34 engaged in a call.

35 (c) Subsection (b) of this Code section shall not apply to:

36 (1) The use of a mobile telephone for the sole purpose of communicating with any of the
37 following regarding an emergency situation: an emergency response operator; a hospital,

physician's office, or health clinic; an ambulance company or corps; a fire department; or a police department;

(2) Any of the following persons while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of an emergency vehicle designated as such under Code Section 40-8-92; or

(3) The use of a hands-free mobile telephone.

(d)(1) A violation of subsection (b) of this Code section shall be a misdemeanor punishable by a fine of not more than \$100.00.

(2) The court shall waive any fine for which a person who violates the provisions of subsection (b) of this Code section would be liable if such person supplies the court with proof that, between the date on which he or she is charged with having violated such subsection and the appearance date for such violation, such person acquired a hands-free mobile telephone as defined in subsection (a) of this Code section for his or her personal use and still possesses the same; provided, however, that such waiver of fine shall not apply to a second or subsequent violation of subsection (b) of this Code section.

(e) This Code section shall not authorize the seizure or forfeiture of a mobile telephone. Any seizure or forfeiture of a mobile telephone shall be only as otherwise may be provided by law."

SECTION 3.

For the purpose of informing and educating persons who operate motor vehicles in this state, any law enforcement officer authorized to enforce the provisions of Chapter 6 of Title 40 of the Official Code of Georgia Annotated or a local ordinance adopting the provisions of said chapter may, during the period commencing with the effective date of this section and ending June 30, 2002, stop motor vehicles and issue verbal warnings to persons who would be in violation of the provisions of Code Section 40-6-241.1 as enacted by this Act were the provisions of said Code section effective on the day such warning is issued.

SECTION 4.

The commissioner of public safety shall study the effects of the use of mobile telephones and similar equipment in conjunction with the operation of a motor vehicle and the effects of other forms of driver inattention and distraction on highway and traffic safety and shall submit a report of his or her findings to the Governor, the majority leader of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, the minority leader of the House of Representatives, and the chairs of the Senate Public Safety Committee and the House Committee on Motor Vehicles, not later than June 30, 2006. Such report shall include without limitation:

- 1 (1) An examination of motor vehicle accident, fatality, and injury statistics relating to the
2 use of mobile telephones or similar equipment while operating a motor vehicle and a
3 comparison of the same with motor vehicle accident, fatality, and injury statistics relating
4 to other forms of driver inattention and distraction;
 - 5 (2) A review and analysis of studies examining the effects of the use of mobile
6 telephones or similar equipment on highway and traffic safety and comparing the same
7 with the effects of other types of driver inattention and distraction which affect highway
8 and traffic safety; and
 - 9 (3) Recommendations for improving highway and traffic safety and reducing motor
10 vehicle accidents, if any, related to driver inattention and distraction.

SECTION 5.

12 Section 1 of this Act shall become effective on July 1, 2002. All other sections of this Act
13 shall become effective upon approval of this Act by the Governor or upon its becoming law
14 without such approval.

SECTION 6.

16 All laws and parts of laws in conflict with this Act are repealed.