

Senate Bill 440

By: Senator Tate of the 38th

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 while operating a motor vehicle; to prohibit certain uses of mobile telephones  
5 while operating a motor vehicle; to provide penalties for violations; to provide for warnings  
6 regarding the provisions of this Act during a limited period; to provide for studies and  
7 reports; to provide effective dates; to provide for related matters; to repeal conflicting laws;  
8 and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

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

15 "40-6-241.

16 A driver shall exercise due care in operating a motor vehicle on the highways of this state  
17 and shall not engage in any actions which shall distract such driver from the safe operation  
18 of such vehicle, ~~provided;~~ provided, however, that the proper use of a radio; or citizens  
19 band radio; ~~or mobile telephone~~ shall not be a violation of this Code section; and provided,  
20 further, that use of a mobile telephone shall be subject to the provisions of Code Section  
21 40-6-241.1."

22 style="text-align:center">**SECTION 2.**

23 Said article is further amended by adding after Code Section 40-6-241, relating to drivers'  
24 exercise of due care, a new Code section to read as follows:

1 "40-6-241.1.

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

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

4 (A)(i) Provided with the intent of receiving compensation or monetary gain;

5 (ii) An interconnected service; and

6 (iii) Available to the general public, or to such classes of eligible users as to be  
7 effectively available to a substantial portion of the general public; or

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

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

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

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

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

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

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

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

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

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

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

2 (1) The use of a mobile telephone for the sole purpose of communicating with any of the  
3 following regarding an emergency situation: an emergency response operator; a hospital,  
4 physician's office, or health clinic; an ambulance company or corps; a fire department;  
5 or a police department;

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

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

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

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

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

### 22 SECTION 3.

23 For the purpose of informing and educating persons who operate motor vehicles in this state,  
24 any law enforcement officer authorized to enforce the provisions of Chapter 6 of Title 40 of  
25 the Official Code of Georgia Annotated or a local ordinance adopting the provisions of said  
26 chapter may, during the period commencing with the effective date of this section and ending  
27 December 31, 2002, stop motor vehicles and issue verbal warnings to persons who would be  
28 in violation of the provisions of Code Section 40-6-241.1 as enacted by this Act were the  
29 provisions of said Code section effective on the day such warning is issued.

### 30 SECTION 4.

31 The commissioner of public safety shall study the effects of the use of mobile telephones and  
32 similar equipment in conjunction with the operation of a motor vehicle and the effects of  
33 other forms of driver inattention and distraction on highway and traffic safety and shall  
34 submit a report of his or her findings to the Governor, the majority leader of the Senate, the  
35 Speaker of the House of Representatives, the minority leader of the Senate, the minority

1 leader of the House of Representatives, and the chairs of the Senate Public Safety Committee  
2 and the House Committee on Motor Vehicles not later than December 31, 2004. Such report  
3 shall include without limitation:

4 (1) An examination of motor vehicle accident, fatality, and injury statistics relating to the  
5 use of mobile telephones or similar equipment while operating a motor vehicle and a  
6 comparison of the same with motor vehicle accident, fatality, and injury statistics relating  
7 to other forms of driver inattention and distraction;

8 (2) A review and analysis of studies examining the effects of the use of mobile  
9 telephones or similar equipment on highway and traffic safety and comparing the same  
10 with the effects of other types of driver inattention and distraction which affect highway  
11 and traffic safety; and

12 (3) Recommendations for improving highway and traffic safety and reducing motor  
13 vehicle accidents, if any, related to driver inattention and distraction.

14 **SECTION 5.**

15 Sections 1 and 2 of this Act shall become effective on July 1, 2002. All other sections of this  
16 Act shall become effective upon approval of this Act by the Governor or upon its becoming  
17 law without such approval.

18 **SECTION 6.**

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