

House Bill 673

By: Representatives Carson of the 46<sup>th</sup>, Lumsden of the 12<sup>th</sup>, Golick of the 40<sup>th</sup>, Trammell of the 132<sup>nd</sup>, Smith of the 134<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and  
2 traffic, so as to prohibit actions which distract a driver while operating a motor vehicle; to  
3 provide for the proper and safe use of wireless telecommunications devices while driving;  
4 to provide for definitions; to provide for violations; to provide for punishments; to provide  
5 for the assessment of points upon conviction; to provide for additional fines to be collected  
6 by the Department of Driver Services; to provide for applicability; to provide for  
7 punishments for homicide by vehicle and for serious bodily injury by vehicle when driver  
8 was operating such motor vehicle while using a wireless telecommunications device; to  
9 correct cross-references; to provide for related matters; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

13 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
14 amended by revising paragraph (1) of subsection (c) of Code Section 40-5-57, relating to  
15 suspension or revocation of license of habitually negligent or dangerous driver and point  
16 system, as follows:

17 "(c)(1)(A) Except as provided in subparagraph (C) of this paragraph, the points to be  
18 assessed for each offense shall be as provided in the following schedule:

- 19 (i) Aggressive driving . . . . . 6 points
- 20 (ii) Reckless driving . . . . . 4 points
- 21 (iii) Unlawful passing of a school bus . . . . . 6 points
- 22 (iv) Improper passing on a hill or a curve . . . . . 4 points
- 23 (v) Exceeding the speed limit by more than 14 miles per hour
- 24 but less than 19 miles per hour . . . . . 2 points

25        (vi) Exceeding the speed limit by 19 miles per hour or more  
 26        but less than 24 miles per hour . . . . . 3 points  
 27        (vii) Exceeding the speed limit by 24 miles per hour or more  
 28        but less than 34 miles per hour . . . . . 4 points  
 29        (viii) Exceeding the speed limit by 34 miles per hour or more . . . . . 6 points  
 30        (ix) Disobedience of any traffic-control device or traffic officer . . . . . 3 points  
 31        (x) Too fast for conditions . . . . . 0 points  
 32        (xi) Possessing an open container of an alcoholic beverage  
 33        while driving . . . . . 2 points  
 34        (xii) Failure to adequately secure a load, except fresh farm  
 35        produce, resulting in loss of such load onto the roadway  
 36        which results in an accident . . . . . 2 points  
 37        (xiii) Violation of child safety restraint requirements, first offense . . . . 1 point  
 38        (xiv) Violation of child safety restraint requirements, second or  
 39        subsequent offense . . . . . 2 points  
 40        (xv) Violation of usage of wireless telecommunications device        ~~1 point~~  
 41        requirements . . . . . 3 points  
 42        (xvi) Second or subsequent violation of usage of wireless  
 43        telecommunications device requirements ~~Operating a vehicle~~        ~~1 point~~  
 44        ~~while text messaging~~ . . . . . 4 points  
 45        (xvii) All other moving traffic violations which are not speed limit  
 46        violations . . . . . 3 points

47        (B) The commissioner shall suspend the driver's license of any person who has  
 48        accumulated a violation point count of 15 or more points in any consecutive 24 month  
 49        period, as measured from the dates of previous arrests for which convictions were  
 50        obtained to the date of the most current arrest for which a conviction is obtained. A  
 51        second or subsequent plea of nolo contendere, within the preceding five years, as  
 52        measured from the dates of previous arrests for which pleas of nolo contendere were  
 53        accepted to the date of the most current arrest for which a plea of nolo contendere is  
 54        accepted, to a charge of committing an offense listed in this subsection shall be  
 55        considered a conviction for the purposes of this Code section. At the end of the period  
 56        of suspension, the violation point count shall be reduced to zero points.

57        (C) A court may order a person to attend a defensive driving course approved by the  
 58        commissioner pursuant to Code Section 40-5-83 for any violation for which points are  
 59        assessed against a driver's license under this subsection or may accept the attendance  
 60        by a person at a driver improvement clinic approved by the commissioner pursuant to

61 Code Section 40-5-83 after the issuance of a citation for such offense and prior to such  
 62 person's appearance before the court, in which event the court shall reduce the fine  
 63 assessed against such person by 20 percent, and no points shall be assessed by the  
 64 department against such driver. The disposition and court order shall be reported to the  
 65 department and shall be placed on the motor vehicle record with a zero point count.  
 66 This plea may be accepted by the court once every five years as measured from date of  
 67 arrest to date of arrest."

## 68 SECTION 2.

69 Said title is further amended by revising Code Section 40-6-241, relating to driver to exercise  
 70 due care and proper use of radios and mobile telephones allowed, as follows:

71 "40-6-241.

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

73 (1) 'Department' means the Department of Driver Services.

74 (2) 'Hands-free accessory' means an attachment or feature on a wireless  
 75 telecommunications device that allows the driver of a motor vehicle to engage in wireless  
 76 communication without such individual holding such wireless telecommunications device  
 77 in his or her hands or supporting such wireless telecommunications device with his or her  
 78 head and shoulder.

79 (3) 'Wireless communication' means any of the following actions performed using a  
 80 wireless telecommunications device:

81 (A) Writing or reading a text based communication;

82 (B) Initiating the exchange of data; or

83 (C) Talking.

84 (4) 'Wireless telecommunications device' means a cellular telephone, a text-messaging  
 85 device, a personal digital assistant, a stand-alone computer, a global positioning system  
 86 receiver, a wearable device, or any other substantially similar wireless device that is used  
 87 to initiate or receive communication or information. A wireless telecommunications  
 88 device does not include a radio, citizens band radio, citizens band radio hybrid,  
 89 commercial two-way radio communication devices, subscription based emergency  
 90 communications, prescribed medical devices, amateur or ham radio devices, or in-vehicle  
 91 security, navigation, and remote diagnostics systems.

92 (b) A driver shall exercise due care in operating a motor vehicle on the highways of this  
 93 state and shall not engage in any actions which shall distract such driver from the safe  
 94 operation of such vehicle, provided that, except as prohibited by Code Sections 40-6-241.1  
 95 and 40-6-241.2, the proper use of a radio, citizens band radio, mobile telephone, or amateur  
 96 or ham radio shall not be a violation of this Code section.

97 (c)(1) No individual shall operate a motor vehicle on any highway of this state while:  
98 (A) Conducting wireless communication without a hands-free accessory engaged;  
99 (B) Using more than a single touch or swipe of a finger on a wireless  
100 telecommunications device to initiate or terminate wireless communication; or  
101 (C) Reaching for a wireless telecommunications device in such a manner that requires  
102 the driver to maneuver in such a way that he or she is no longer in a seated driving  
103 position properly restrained by a safety belt.

104 (2) No individual shall operate a motor vehicle on any highway of this state while  
105 watching motion upon the screen of a wireless telecommunications device other than  
106 those related to the functioning or navigation of the vehicle.

107 (d) Each violation of this Code section shall constitute a separate offense.

108 (e) Any person convicted of violating this Code section shall be guilty of a misdemeanor  
109 which shall be punishable with a fine of not less than \$150.00 and upon the second and any  
110 subsequent conviction shall also be required to complete a defensive driving course  
111 approved by the commissioner pursuant to Code Section 40-5-83 within 120 days  
112 following his or her conviction; provided, however, that if the defendant is incarcerated and  
113 such course cannot be completed within 120 days, such course shall be completed within  
114 90 days of his or her release from custody.

115 (f)(1) In addition to any other fines or penalties imposed by any local jurisdiction or the  
116 department, the department shall administer and collect a fee from any driver who is  
117 convicted of a violation of subsection (c) of this Code section. Such additional fine shall  
118 be set by the judge and included in the notice of conviction to the department. Upon the  
119 first conviction of such offense, the additional fine shall be not less than \$150.00 nor  
120 more than \$300.00. Upon the second conviction of such offense, the additional fine shall  
121 be not less than \$250.00 nor more than \$500.00. Upon the third or subsequent conviction  
122 of such offense, the additional fine shall be not less than \$500.00 nor more than \$750.00.

123 (2) The department shall notify offenders of the imposition of a fee under this subsection  
124 within 30 days after receipt of a qualifying ticket and notice of conviction. Failure to pay  
125 the fee imposed by this subsection within 90 days after receipt of the notice shall result  
126 in the suspension of the driver's license or driving privileges of the offender, and, in  
127 addition to the existing fees and penalties, an additional fee of \$50.00 shall be assessed,  
128 payable upon the application for reinstatement of the driver's license or driving privileges.  
129 Notice shall be provided by the department to the offender by first-class mail to the  
130 address shown on the records of the department. Such mailed notice shall be adequate  
131 notification of the fee imposed by this subsection and of the offender's ability to avoid a  
132 driver's license suspension by paying such fee prior to the effective date of the

133 suspension. No other notice shall be required to make the driver's license suspension  
 134 effective.

135 (3) The department shall be authorized to promulgate rules and regulations to implement  
 136 the provisions of this subsection.

137 (4) All fees collected under the provisions of this subsection shall be deposited in the  
 138 general fund of this state with the intent that these moneys be used to fund a trauma care  
 139 system in Georgia and the direct and indirect costs associated with the administration of  
 140 this subsection. The Office of the State Treasurer shall separately account for all of the  
 141 moneys received under the provisions of this subsection.

142 (g) The provisions of subsection (c) of this Code section shall not apply when the  
 143 prohibited conduct was engaged in:

144 (1) While reporting a traffic accident, medical emergency, fire, criminal act or potential  
 145 criminal act, or serious road hazard;

146 (2) By a public utility employee or contractor acting within the scope of his or her  
 147 employment while responding to a public utility emergency;

148 (3) By a law enforcement officer, firefighter, emergency medical services personnel,  
 149 ambulance driver, or other similarly employed public safety first responder during the  
 150 performance of his or her official duties; or

151 (4) While in a motor vehicle which is lawfully parked."

152 **SECTION 3.**

153 Said title is further amended by revising Code Section 40-6-241.1, relating to definitions,  
 154 prohibition on certain persons operating a motor vehicle while engaging in wireless  
 155 communications, exceptions, and penalties, as follows:

156 "40-6-241.1.

157 ~~(a) As used in the Code section, the term:~~

158 ~~(1) 'Engage in a wireless communication' means talking, writing, sending, or reading a~~  
 159 ~~text-based communication, or listening on a wireless telecommunications device.~~

160 ~~(2) 'Wireless telecommunications device' means a cellular telephone, a text-messaging~~  
 161 ~~device, a personal digital assistant, a stand-alone computer, or any other substantially~~  
 162 ~~similar wireless device that is used to initiate or receive a wireless communication with~~  
 163 ~~another person. It does not include citizens band radios, citizens band radio hybrids,~~  
 164 ~~commercial two-way radio communication devices, subscription-based emergency~~  
 165 ~~communications, in-vehicle security, navigation, and remote diagnostics systems or~~  
 166 ~~amateur or ham radio devices.~~

167 ~~(b) Except in a driver emergency and as provided in subsection (c) of this Code section,~~  
 168 ~~no person who has an instruction permit or a Class D license and is under 18 years of age~~

169 shall operate a motor vehicle on any public road or highway of this state while engaging  
 170 in a wireless communication using a wireless telecommunications device.

171 ~~(c) The provisions of this Code section shall not apply to a person who has an instruction~~  
 172 ~~permit or a Class D license and is under 18 years of age who engages in a wireless~~  
 173 ~~communication using a wireless telecommunications device to do any of the following:~~

174 ~~(1) Report a traffic accident, medical emergency, or serious road hazard;~~  
 175 ~~(2) Report a situation in which the person believes his or her personal safety is in~~  
 176 ~~jeopardy;~~

177 ~~(3) Report or avert the perpetration or potential perpetration of a criminal act against the~~  
 178 ~~driver or another person; or~~

179 ~~(4) Engage in a wireless communication while the motor vehicle is lawfully parked.~~

180 ~~(d)(1) Any conviction for a violation of the provisions of this Code section shall be~~  
 181 ~~punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17 and any other~~  
 182 ~~provision of law to the contrary notwithstanding, the costs of such prosecution shall not~~  
 183 ~~be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be~~  
 184 ~~assessed against a person for conviction thereof. The court imposing such fine shall~~  
 185 ~~forward a record of the disposition of the case of unlawfully operating a motor vehicle~~  
 186 ~~while using a wireless telecommunications device to the Department of Driver Services.~~

187 ~~(2) If the operator of the moving motor vehicle is involved in an accident at the time of~~  
 188 ~~a violation of this Code section, then the fine shall be equal to double the amount of the~~  
 189 ~~fine imposed in paragraph (1) of this subsection. The law enforcement officer~~  
 190 ~~investigating the accident shall indicate on the written accident form whether such~~  
 191 ~~operator was engaging in a wireless communication at the time of the accident.~~

192 ~~(e) Each violation of this Code section shall constitute a separate offense Reserved."~~

193 **SECTION 4.**

194 Said title is further amended by revising Code Section 40-6-241.2, relating to prohibition on  
 195 persons operating a motor vehicle while writing, sending, or reading text based  
 196 communications, prohibited uses of wireless telecommunication devices by drivers of  
 197 commercial vehicles, exceptions, and penalties for violation, as follows:

198 "40-6-241.2.

199 ~~(a) As used in this Code section, the term 'wireless telecommunications device' means a~~  
 200 ~~cellular telephone, a text messaging device, a personal digital assistant, a stand alone~~  
 201 ~~computer, or any other substantially similar wireless device that is used to initiate or~~  
 202 ~~receive a wireless communication with another person. It does not include citizens band~~  
 203 ~~radios, citizens band radio hybrids, commercial two-way radio communication devices,~~

204 ~~subscription based emergency communications, in-vehicle security, navigation devices, and~~  
 205 ~~remote diagnostics systems, or amateur or ham radio devices.~~

206 ~~(b)(1) No person who is 18 years of age or older or who has a Class C license shall~~  
 207 ~~operate a motor vehicle on any public road or highway of this state while using a wireless~~  
 208 ~~telecommunications device to write, send, or read any text based communication,~~  
 209 ~~including but not limited to a text message, instant message, e-mail, or Internet data.~~

210 ~~(2) No person shall operate a commercial motor vehicle on any public road or highway~~  
 211 ~~of this state while:~~

212 ~~(A) Holding a wireless telecommunications device to conduct a voice communication;~~

213 ~~(B) Using more than a single button on a wireless telecommunications device to~~  
 214 ~~initiate or terminate a voice communication; or~~

215 ~~(C) Reaching for a wireless telecommunications device in such a manner that requires~~  
 216 ~~the driver to maneuver so that he or she is no longer in a seated driving position~~  
 217 ~~properly restrained by a safety belt.~~

218 ~~(c) The provisions of this Code section shall not apply to:~~

219 ~~(1) A person reporting a traffic accident, medical emergency, fire, serious road hazard,~~  
 220 ~~or a situation in which the person reasonably believes a person's health or safety is in~~  
 221 ~~immediate jeopardy;~~

222 ~~(2) A person reporting the perpetration or potential perpetration of a crime;~~

223 ~~(3) A public utility employee or contractor acting within the scope of his or her~~  
 224 ~~employment when responding to a public utility emergency;~~

225 ~~(4) A law enforcement officer, firefighter, emergency medical services personnel,~~  
 226 ~~ambulance driver, or other similarly employed public safety first responder during the~~  
 227 ~~performance of his or her official duties; or~~

228 ~~(5) A person engaging in wireless communication while in a motor vehicle which is~~  
 229 ~~lawfully parked.~~

230 ~~(d) Any conviction for a violation of the provisions of this Code section shall be a~~  
 231 ~~misdemeanor punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17~~  
 232 ~~and any other provision of law to the contrary notwithstanding, the costs of such~~  
 233 ~~prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine~~  
 234 ~~for such offense be assessed against a person for conviction thereof. The court imposing~~  
 235 ~~such fine shall forward a record of the disposition to the Department of Driver Services.~~  
 236 ~~Any violation of this Code section shall constitute a separate offense Reserved."~~

237 **SECTION 5.**

238 Said title is further amended by revising Code Section 40-6-393, relating to homicide by  
 239 vehicle, as follows:

240 "40-6-393.

241 (a) Any person who, without malice aforethought, causes the death of another person  
 242 through the violation of subsection (a) of Code Section 40-6-163, subsection (c) of Code  
 243 Section 40-6-241, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section  
 244 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon  
 245 conviction thereof, shall be punished by imprisonment for not less than three years nor  
 246 more than 15 years.

247 (b) Any driver of a motor vehicle who, without malice aforethought, causes an accident  
 248 which causes the death of another person and leaves the scene of the accident in violation  
 249 of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in  
 250 the first degree and, upon conviction thereof, shall be punished by imprisonment for not  
 251 less than three years nor more than 15 years.

252 (c) Any person who causes the death of another person, without an intention to do so, by  
 253 violating any provision of this title other than subsection (a) of Code Section 40-6-163,  
 254 subsection (c) of Code Section 40-6-241, subsection (b) of Code Section 40-6-270, Code  
 255 Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the  
 256 offense of homicide by vehicle in the second degree when such violation is the cause of  
 257 said death and, upon conviction thereof, shall be punished as provided in Code Section  
 258 17-10-3.

259 (d) Any person who, after being declared a habitual violator as determined under Code  
 260 Section 40-5-58 and while such person's license is in revocation, causes the death of  
 261 another person, without malice aforethought, by operation of a motor vehicle, commits the  
 262 offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be  
 263 punished by imprisonment for not less than five years nor more than 20 years, and  
 264 adjudication of guilt or imposition of such sentence for a person so convicted may be  
 265 suspended, probated, deferred, or withheld but only after such person shall have served at  
 266 least one year in the penitentiary."

267 **SECTION 6.**

268 Said title is further amended by revising Code Section 40-6-394, relating to serious injury  
 269 by vehicle, as follows:

270 "40-6-394.

271 Whoever, without malice, shall cause bodily harm to another by depriving him or her of  
 272 a member of his or her body, by rendering a member of his or her body useless, by  
 273 seriously disfiguring his or her body or a member thereof, or by causing organic brain  
 274 damage which renders the body or any member thereof useless through the violation of  
 275 subsection (c) of Code Section 40-6-241 or Code Section 40-6-390 or 40-6-391 shall be



276 guilty of the crime of serious injury by vehicle. A person convicted under this Code  
277 section shall be guilty of a felony and shall be punished by imprisonment for not less than  
278 one year nor more than 15 years."

279 **SECTION 7.**

280 Said title is further amended by replacing "Code Section 40-6-241.2" with "Code Section  
281 40-6-241" wherever the former occurs in:

- 282 (1) Code Section 40-5-142, relating to definitions relative to commercial drivers' licenses;  
283 (2) Code Section 40-5-159, relating to violations by commercial drivers' license holders; and  
284 (3) Code Section 40-6-165, relating to operation of school buses.

285 **SECTION 8.**

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