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MOTOR VEHICLES AND TRAFFIC Drivers' Licenses: Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Prohibit the Use of Cellular, Hands-free, or Mobile Telephones of Instruction Permits and Class D Licenses; Add a Points Penalty for the Unlawful Use of Cellular, Hands-free, or Mobile Telephones for Holders of Instruction Permits and Class D Licenses; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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MOTOR VEHICLES AND TRAFFIC

Drivers' Licenses: Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Prohibit the Use of Cellular, Hands-free, or Mobile Telephones by Holders of Instruction Permits and Class D Licenses; Add a Points Penalty for the Unlawful Use of Cellular, Hands-Free, or Mobile Telephones by Holders of Instruction Permits and Class D Licenses; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 40-5-24(a)(4) (amended), - 24(b)(2) (amended), - 24(b)(2)(C) (new), -57(b) (amended), - 57(c)(1)(A) (amended)
BILL NUMBER:	HB 174
SUMMARY:	The bill sought to prohibit Class D ¹ drivers from using cellular, hands-free, and mobile telephones while operating a motor vehicle. It also would have established a one point penalty for the unlawful use of those devices by Class D drivers and provided for primary enforcement.
EFFECTIVE DATE:	N/A

History

“You can be getting mad on the phone and you just forget about everything.”² So reported one Thomasville, Georgia, teenager to the Children’s Hospital of Philadelphia (CHP) and State Farm Insurance

1. All new drivers who are residents of Georgia, regardless of age, are issued a provisional Class D driver’s license. A Class D driver’s license carries restrictions for the licensee, including a limit on the number of passengers allowed and a restriction on the times of the day when the licensee is authorized to operate the vehicle. See O.C.G.A. § 40-5-24(a)(2) (2007).

2. CHILDREN’S HOSPITAL OF PHILADELPHIA & STATE FARM INS., DRIVING: THROUGH THE EYES OF TEENS—A RESEARCH REPORT OF THE CHILDREN’S HOSPITAL OF PHILADELPHIA AND STATE FARM 1, 12 (2007), http://stokes.chop.edu/programs/injury/files/PCPS_Reports/1289teen.pdf [hereinafter DRIVING THROUGH THE EYES OF TEENS].

in a focus group used to track teen sentiment on issues related to safety and teen driving.³ Thus, insurance companies⁴ and non-profits⁵ are not the only ones concerned about the negative effect of cell phone use on driving—teens also are aware of the risks involved in using a cell phone while operating a motor vehicle.⁶

In recent years, the concerns of these groups and individual constituents spurred legislators across the country to introduce bills and, in some states, pass legislation that restricts the use of cellular phones while driving.⁷ New York started the trend by passing legislation that prohibits the use of handheld cell phone devices while operating a vehicle.⁸ The restriction in New York applies to all drivers.⁹ California, Connecticut, and New Jersey have also enacted legislation banning the use of handheld cellular phones while operating a vehicle.¹⁰

However, not every state extends cellular phone restrictions to all drivers: thirteen states restrict the use of cell phones by inexperienced drivers only.¹¹ These restrictions range from Colorado's prohibition on the use of cell phones by holders of learner permits, to Connecticut's prohibition on the use of hand-held phones by drivers

3. *Id.*

4. *See, e.g.*, DRIVING THROUGH THE EYES OF TEENS, *supra* note 2 (report commissioned in part by State Farm); Press Release, Insurance Institute for Highway Safety, First Evidence of Effects of Cell Phone Use on Injury Crashes (July 12, 2005) (on file with Georgia State University Law Review) (authored by Insurance Institute for Highway Safety, an organization sponsored by automobile insurers nationwide).

5. *See, e.g.*, Governors Highway Safety Association: The States' Voice on Highway Safety, http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html (last visited May 18, 2007) [hereinafter Survey of State Cell Phone Laws].

6. DRIVING THROUGH THE EYES OF TEENS, *supra* note 2, at 12.

7. *See* Interview with Mary Margaret Oliver, (D-83rd) (Apr. 25, 2007) (stating that she introduced legislation on teen cell phone use in Georgia because of the concerns of her constituents) [hereinafter Oliver Interview]; Ernessa Brawley, Michelle Reese & Kathy So, Cell Phone Legislation in Georgia, (Nov. 21, 2006) (on file with the Georgia State University Law Review) (unpublished PowerPoint presentation prepared for Georgia State University College of Law's Spring 2007 Health Legislation and Advocacy Class) [hereinafter Cell Phone Legislation in Georgia] (showing that thirteen states restrict teen cell phone use while driving).

8. *See* Interview with Ernessa Brawley, Michelle Reese & Kathy So (students from Spring 2007 Health Legislation and Advocacy Class) (Mar. 27, 2007) [hereinafter Health Law Class Interview]; Survey of State Cell Phone Laws, *supra* note 5; *see also* N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2001).

9. N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2001).

10. *See* CAL. VEH. CODE § 23123 (West 2008); CONN. GEN. STAT. § 14-296aa (2005); N.J. STAT. ANN. § 39:4-97.3 (2004).

11. *See* Survey of State Cell Phone Laws, *supra* note 5.

under the age of 18 and holders of learner permits, to North Carolina's wholesale prohibition of cell phone use by drivers under the age of 18.¹²

In light of the legislative activity across the country, State Representative Mary Margaret Oliver (D-83rd) enlisted the assistance of the Health Legislation and Advocacy class (Health Law class) at the Georgia State University College of Law in researching the viability of similar legislation for the state of Georgia.¹³ Representative Oliver's intention was to narrowly craft a bill limiting the use of cellular phones by inexperienced drivers, without restricting the use of cell phones by all drivers.¹⁴ Thus, the law students' research focused on whether a limitation on cell phone use by teen drivers was justifiable.¹⁵

As part of their work for Representative Oliver, the students considered legislation in other states, studies by the Insurance Institute for Highway Safety, the CHP and State Farm study, as well as statistics from the U.S. Department of Transportation and the National Highway Traffic Safety Administration (NHTSA).¹⁶ Their research indicated that young drivers, defined as those between the ages of sixteen and twenty, make up approximately 6.2% of the population of licensed drivers in Georgia, but encompass 12.8% of drivers in crashes.¹⁷ Furthermore, in 2002 "the [nationwide] estimated economic cost of police-reported crashes involving drivers between the ages of fifteen and twenty years old was \$40.8 billion, according to the . . . NHTSA."¹⁸

The Health Law class also found a study by the National Institute of Mental Health, which reported that "the part of the brain that weighs risks, makes judgments and controls impulsive behavior develops throughout the teen years and does not mature until around age 25."¹⁹ Furthermore, "six out of ten teen passenger deaths in 2004

12. See COLO. REV. STAT. § 42-4-239 (2005); CONN. GEN. STAT. § 14-296aa (2005); N.C. GEN. STAT. ANN. § 20-137.3 (West 2006)..

13. See Health Law Class Interview, *supra* note 8; Oliver Interview, *supra* note 7.

14. See Oliver Interview, *supra* note 7.

15. See Health Law Class Interview, *supra* note 8.

16. See *id.*; Cell Phone Legislation in Georgia, *supra* note 7.

17. Cell Phone Legislation in Georgia, *supra* note 7.

18. *Id.*

19. *Id.*

occurred in crashes in which another teen was driving,” and “one in five passenger deaths among people of all ages in 2001 occurred when a teen was driving.”²⁰ From this research, the Health Law class concluded that teens and inexperienced drivers as a group present a greater risk on the roads than older and more experienced drivers.²¹

Bill Tracking

Profile and Introduction in the House

On November 15, 2006, Representative Mary Margaret Oliver (D-83rd) prefiled the bill, drafted by the Health Law class, which became House Bill 4.²² Once the session began, Representative Len Walker (R-107th) introduced the same legislation as HB 174.²³ It was sponsored by Representative Walker, along with Representatives Oliver, Sharon Cooper (R-41st), Stephanie Benfield (D-85th), Stan Watson (D-91st), and Edward Lindsey (R-54th).²⁴ The bill was assigned to the House Motor Vehicles Committee.²⁵

HB 174 was read on the house floor for the first time on January 26, 2007, and for the second time on January 29, 2007.²⁶

Committee Meeting

HB 174 went before the House Motor Vehicles Committee on February 22, 2007.²⁷ Representative Walker presented the bill’s objective—to keep cell phones out of the hands of drivers with a learner’s permit and Class D drivers.²⁸ In presenting the bill to the

20. *Id.*

21. See Health Law Class Interview, *supra* note 8.

22. Legislation Sponsored by Oliver, Mary, http://www.legis.state.ga.us/legis/2007_08/mbrs/olivermary83rd.htm (last visited May 18, 2007) [hereinafter Oliver Legislation]. See generally Oliver Interview, *supra* note 7.

23. See Georgia General Assembly Webpage, HB 174, http://www.legis.state.ga.us/legis/2007_08/sum/hb174.htm (last visited May 18, 2007).

24. *Id.*

25. State of Georgia Final Composite Status Sheet, HB 174, June 5, 2007.

26. *Id.*

27. See Video Recording of House Committee on Motor Vehicles, Feb. 22, 2007 at 2 min., 28 sec. (remarks by Rep. Tom Rice (R-51st)), http://www.legis.ga.gov/legis/2007_08/house/Committees/motorVehicles/motorArchives.htm, [hereinafter Committee Video].

28. See *id.* at 4 min., 01 sec. (remarks by Rep. Len Walker (R-107th)).

committee, he relied on information from a study by NHTSA showing that more and more drivers are using cell phones, but he also acknowledged that “studies present a conflicting view as to whether the use of cell phones causes a greater increase in accidents than other distractions.”²⁹ Despite the conflicting statistical reports, Representative Walker asserted that “common sense” tells us that it is “universally recognized that cell phone usage does increase driver distraction.”³⁰ He buffered his “common sense” argument with the statistics from the NHTSA study that revealed the risk of collision increases four-fold when a driver is using a cell phone.³¹ He further noted that, according to a study by the University of Utah, “the risk was the same as driving with a 0.08 blood alcohol level as with operating a cell phone while driving.”³² He expressed his opinion that such comparisons should “concern us” not just for the safety of teen drivers, but for the safety of all drivers on the road.³³

Representative Bobby Parham (D-141st) asked Representative Walker whether the prohibition extended to a cell phone that was “locked up and turned off” in the car.³⁴ Representative Walker assured the committee that the bill was meant only to prohibit the “use” of a cellular phone while driving, and stated that he believed it was important that drivers have a cellular phone.³⁵

Representative Rice (R-51st), the Chairman of the Motor Vehicles committee, asked for clarification on whether text messaging was a driver distraction.³⁶ Representative Walker indicated that his “sense” was that text messaging would be an “even more severe distraction” than talking on a cell phone.³⁷ Chairman Rice then inquired as to whether any cellular companies oppose the bill.³⁸ Representative Walker replied that he had “not talked to any who had opposition.”³⁹

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Committee Video, *supra* note 27, at 6 min., 45 sec. (remarks by Rep. Len Walker (R-107th)).

34. *Id.* at 8 min., 40 sec. (remarks by Rep. Bobby Parham (D-141st)).

35. *Id.* at 8 min., 51 sec. (remarks by Rep. Len Walker (R-107th)).

36. *Id.* at 9 min., 36 sec. (remarks by Rep. Tom Rice (R-51st)).

37. *Id.* at 10 min., 2 sec. (remarks by Rep. Len Walker (R-107th)).

38. *Id.* at 10 min., 8 sec. (remarks by Rep. Tom Rice (R-51st)).

39. See Committee Video, *supra* note 27, at 10 min., 12 sec. (remarks by Rep. Len Walker (R-107th)).

Before the vote, Chairman Rice allowed Representative Walker to clarify that the bill called for primary enforcement of the prohibition.⁴⁰ Primary enforcement means that suspicion that a motorist is a Class D driver using a cell phone can be the sole reason for a police officer to stop an individual.⁴¹

Once there were no more questions, the bill was put to a vote.⁴² There was no vocal opposition to the bill before being voted upon in the committee.⁴³ The committee put forth a substitute for the bill, solely to add an effective date of January 1, 2008.⁴⁴ The bill, as substituted, was favorably reported out of committee on February 27, 2007.⁴⁵ It never made it to a floor vote and the bill was recommitted on April 20, 2007.⁴⁶

The Bill

As introduced in the House, HB 174 would have amended Chapter 5 of Title 40 of the Official Code of Georgia Annotated, which deals with driver's licenses.⁴⁷ The bill's purpose was to prohibit the use of all cellular, mobile, and hands-free telephones by holders of instruction permits and Class D permits.⁴⁸ The bill would have provided for enforcement of the prohibition with a points penalty.⁴⁹

The bill would have amended Code section 40-5-24 by adding a new paragraph, (a)(4), which would have provided "[a]ny holder of an instruction permit issued under this subsection is prohibited from using a cellular, hands-free, or mobile telephone while driving a motor vehicle upon the public roads, streets, or highways of this state."⁵⁰

40. *See id.* at 10 min., 35 sec. (remarks by Rep. Tom Rice (R-51st)).

41. *See generally* Health Law Class Interview, *supra* note 8.

42. *See* Committee Video, *supra* note 27, at 10 min., 57 sec. (remarks by Rep. Tom Rice (R-51st)).

43. *See id.* at 11 min., 9 sec.

44. *Compare* HB 174, as introduced, 2007 Ga. Gen. Assem. with HB 174 (HCS), 2007 Ga. Gen. Assem.

45. State of Georgia Final Composite Status Sheet, HB 174, June 5, 2007.

46. *Id.*

47. HB 174, as introduced, 2007 Ga. Gen. Assem.; *see* O.C.G.A. § 40-5-1 (2006).

48. HB 174 (HCS), 2007 Ga. Gen. Assem.

49. *Id.*

50. *Id.*

The bill sought to further amend Code section 40-5-24 by revising paragraph (2) of subsection (b).⁵¹ Whereas section 40-5-24 currently reads that a Class D driver may drive a “Class C vehicle upon the public highways of this state” the bill would have clarified the language by saying that a Class D driver may drive a “Class C motor vehicle upon the public roads, streets, or highways.”⁵²

Furthermore, the bill would have added a subparagraph (C) to Code section 40-5-24(b)(2) which again set out the prohibition against Class D drivers using “a cellular, mobile, or hands-free telephone while driving a Class C motor vehicle on Georgia’s public roads, streets, or highways.”⁵³ The last change to Code section 40-5-24 would have been the addition of a sentence indicating that a Class D driver may be charged with a violation of “subparagraph (C) of this paragraph alone.”⁵⁴

The enforcement mechanism that the bill sought to provide would have been located in Code section 40-5-57.⁵⁵ Subsection (b) and subparagraph (c)(1)(A) would have been revised to include the new prohibition announced in Code section 40-5-24 in the offenses that are eligible for points penalties.⁵⁶ The bill would have given a one point penalty for “[v]iolations of restrictions on cellular, hands-free, or mobile telephone usage.”⁵⁷

As introduced, the bill did not provide an effective date.⁵⁸ However, when the House Committee on Motor Vehicles received the bill, it substituted its own version, which added an effective date of January 1, 2008.⁵⁹

Analysis

HB 174, though somewhat controversial, drew little media attention.⁶⁰ Constituents who spoke out on the issue were concerned

51. *Id.*

52. *Id.*

53. *Id.*

54. HB 174 (HCS), 2007 Ga. Gen. Assem.

55. *Id.*

56. *Id.*

57. *Id.*

58. *See* HB 174, as introduced, 2007 Ga. Gen. Assem.

59. *Id.*

60. *See* Health Law Class Interview, *supra* note 8.

about the limited scope of the bill.⁶¹ One individual complained that the bill had one flaw: “It seems reasonable that the restriction should be for all drivers, not teenagers.”⁶² The writer indicated that he believed that cell phone use was involved in several accidents and wondered why “drivers 18 and older [would] be exempt from the restriction.”⁶³

Despite concerns like these from constituents, both Representative Oliver (D-83rd) and the students in the Health Law class who drafted the bill are adamantly opposed to an expansion of the prohibition to drivers outside of Class D license holders.⁶⁴ The students in the Health Law class alluded to the fact that they knew that many people were concerned about the extension of the bill into a wholesale ban on cellular telephone use on the roads; they indicated that it was not their intention or desire for that to occur.⁶⁵

Representative Oliver expressed similar sentiments when she was urged to expand the measure to all drivers; she pointed out that she talks on her cellular phone while driving.⁶⁶ She stated that it was the belief that the use of cellular phones by inexperienced drivers was especially dangerous that prompted her constituents to request this legislation.⁶⁷ Once her constituents’ concerns were confirmed by the studies and statistics relied on by the Health Law students, it became clear to her that a bill limiting the use of cellular and hands-free devices by teens would sufficiently protect Georgians, while allowing more experienced drivers the freedom to choose whether to talk on their cellular phones while driving.⁶⁸

While it is still unclear how the bill will fare in the 2008 legislative session, it is likely that it will be re-introduced in either the House or the Senate.⁶⁹ After the bill failed to cross over, the Health Law

61. Editorial, *Proposal Doesn't Go Far Enough*, MACON TELEGRAPH, Jan. 30, 2007, § A, available at 2007 WLNR 1743972.

62. *Id.*

63. *Id.*

64. See Health Law Class Interview, *supra* note 8; Oliver Interview, *supra* note 7.

65. See Health Law Class Interview, *supra* note 8.

66. David Jones, Letter to the Editor, *Cell Phones and Driving*, MACON TELEGRAPH, Jan. 31, 2007, at A7, available at 2007 WLNR 1850348.

67. See Oliver Interview, *supra* note 7.

68. See generally *id.*

69. See *id.*; Health Law Class Interview, *supra* note 8.

students indicated that its future might be in question.⁷⁰ However, Representative Oliver, though acknowledging that it might be an uphill battle, plans to pursue this legislation in the upcoming legislative session.⁷¹ If the bill is brought back, Representative Oliver indicated that she may try to get it introduced in the Senate, where she perceives there is more support for safety.⁷²

Representative Oliver believes that opposition may come from cellular phone companies, who may be concerned about the effect a potential ban of all cellular phone technology would have on sales.⁷³ There may also be opposition from Representative Butch Parrish (R-156th), who spoke out against the bill, and individuals concerned about “big” government and regulations that seek to restrict private behavior, as well as particularized issues with the primary enforcement provision of the bill and the ban on hands-free devices.⁷⁴ Opposition to the primary enforcement provision reflects concern that police officers may assume someone is a Class D driver merely because they look youthful.⁷⁵ Because some people look younger than their age, law enforcement would be stopping individuals who are not violating the law.⁷⁶ Furthermore, although Representative Oliver acknowledged that the bill might garner more support if the ban on hands-free devices were taken out, she expressed her unwillingness to compromise on that point if the bill is re-introduced next session.⁷⁷

Finally, the drafters of the bill do not foresee any constitutional challenges to the bill.⁷⁸ Although Equal Protection challenges were brought in Utah when it introduced legislation banning cell phone use by teen drivers, the Utah Act, unlike HB 174, was age specific.⁷⁹ HB 174 as proposed would have restricted all inexperienced drivers in Georgia, making it more likely to withstand an Equal Protection challenge because although Class D is comprised mostly of teenage

70. See Health Law Class Interview, *supra* note 8.

71. See *id.*; Oliver Interview, *supra* note 7.

72. Oliver Interview, *supra* note 7.

73. *Id.*

74. *Id.*; Health Law Class Interview, *supra* note 8.

75. Health Law Class Interview, *supra* note 8.

76. *Id.*

77. See Oliver Interview, *supra* note 7.

78. *Id.*

79. *Id.*

drivers, the statutory class extends to all new drivers in the state.⁸⁰ As such, if this bill is brought back and passes in the 2008 legislative session, the drafters of the bill do not foresee any viable constitutional challenges.⁸¹

Erin K. Witcher

80. *Id.*

81. *Id.*