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## HB 673 - Motor Vehicles and Traffic


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## MOTOR VEHICLES AND TRAFFIC

***Uniform Rules of the Road: Amend Title 40 of the Official Code of Georgia Annotated, Relating to Motor Vehicles and Traffic, so as to Prohibit Actions which Distract a Driver While Operating a Motor Vehicle; To Provide for the Proper and Safe Use of Wireless Telecommunications Devices and Stand-Alone Electronic Devices while Driving; To Provide for Definitions; To Prohibit Certain Actions While Operating a Commercial Motor Vehicle; To Provide for Violations; To Provide for Punishment; To Provide for Exemptions; To Provide for Conditions Under Which a Citation May Be Issued for Violations; To Provide for the Assessment of Points Upon Conviction; To Repeal Sections 241.1 and 241.2 of Article 11 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, Relating to Definitions, Prohibition on Certain Persons Operating a Motor Vehicle While Engaging in Wireless Communications, Exceptions, and Penalties and Prohibition on Persons Operating a Motor Vehicle While Writing, Sending, or Reading Text Based Communications, Prohibited Uses of Wireless Telecommunication Devices by Drivers of Commercial Vehicles, Exceptions, and Penalties for Violation, Respectively; To Correct Cross-References; To Provide for a Short Title; To Provide for Related Matters; To Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 40-6-241.1 (amended), 40-6-241.2 (amended), 40-5-57 (amended) 40-6-165 (amended) 40-5-142 (amended) 40-5-159 (amended)
BILL NUMBER:	HB 673
ACT NUMBER:	298
GEORGIA LAWS:	2018 Ga. Laws 127
SUMMARY:	The Act prohibits holding any electronic device or using text-based communication while driving. Drivers are further prohibited from watching or

creating videos. These prohibitions exclude: electronic headsets; smart watches; navigation systems; dash cam systems; and programs that convert voice messages into text messages. Commercial vehicle drivers are prohibited from using more than a single button to engage in voice communication or reaching for a communication device in an unsafe manner. Violators will be fined and assessed points to their license based on the amount of times that they have previously violated this Act. Notably, these provisions do not apply when the violation occurred while reporting an emergency; when made by a utility service provider in response to an emergency; when made by public-safety first responders pursuant to their duties; or when lawfully parked.

EFFECTIVE DATE: July 1, 2018

### *History*

One thousand, five hundred and forty-nine lives were lost to roadway fatalities in Georgia in 2017.<sup>1</sup> The death count was the fourth highest out of all U.S. states that year,<sup>2</sup> representing a 32% increase in motor-vehicle deaths in Georgia in only three years.<sup>3</sup> Increased roadway fatalities in Georgia have been accompanied by the nation's highest increases in personal auto insurance rates over

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1. Sharon Swanepoel, *Georgia DOT: 7 out of 10 Deaths on Georgia Roads are Preventable*, MONROE LOC. (Apr. 10, 2018), <http://news.monroelocal.org/georgia-dot-7-out-of-10-deaths-on-georgia-roads-are-preventable/> [https://perma.cc/A9CS-RVHV].

2. STATISTICS DEP'T, *NSC Motor Vehicle Fatality Estimates*, NAT'L SAFETY COUNCIL, [https://www.nsc.org/Portals/0/Documents/NewsDocuments/2018/December\\_2017.pdf](https://www.nsc.org/Portals/0/Documents/NewsDocuments/2018/December_2017.pdf) [https://perma.cc/URN9-UUG3] (last visited June 23, 2018) [hereinafter STATISTICS DEP'T].

3. Swanepoel, *supra* note 1.

the same period.<sup>4</sup> The estimated cost of motor-vehicle deaths, injuries, and property damage in Georgia in 2017 is approximately \$15.7 billion.<sup>5</sup> The Georgia Department of Transportation attributes 70% of deaths on state roadways to unsafe driving behaviors, including distracted driving.<sup>6</sup>

The Georgia General Assembly passed Senate Bill (SB) 360, also known as “Caleb’s Law,” in 2010, which then-Governor Sonny Purdue (R) signed into law.<sup>7</sup> The legislation was given the moniker in honor of Caleb Sorohan, an eighteen-year-old college student from Morgan County, Georgia, who died while texting and driving in 2009.<sup>8</sup> The law prohibited sending text messages while driving and instituted the penalty of a \$150 fine and one point being assessed against the driver’s license for a violation.<sup>9</sup> Unfortunately, the enforceability of the law was immediately called into question.<sup>10</sup> In practice, fewer than fifty people per month were convicted of the offense.<sup>11</sup>

Various law enforcement agencies and advocates pushed Georgia’s legislators to fix perceived shortcomings in existing laws’ effect on driving behaviors.<sup>12</sup> Meanwhile, municipalities passed their

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4. James Salzer, *Auto Insurance Bills Skyrocket in Georgia but Regulator Powerless*, ATLANTA J.-CONST. (July 24, 2017), <https://www.ajc.com/news/state—regional-govt—politics/auto-insurance-bills-skyrocket-georgia-but-regulator-powerless/UdGlleregt8QeTqj0foqwI/> [https://perma.cc/W3X7-PG3P].

5. STATISTICS DEP’T, *supra* note 2.

6. *Id.*

7. Georgia General Assembly, SB 360, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20092010/SB/360> [hereinafter SB 360 Bill Tracking].

8. Todd Duncan, *Legislation from the 2010 General Assembly*, ATLANTA J.-CONST. (May 1, 2010), <https://www.ajc.com/news/local-govt—politics/legislation-from-the-2010-general-assembly/L3fQhInXkyuRadDziwZBtN/> [https://perma.cc/6QB2-DYPV]; Allison Williard, *Caleb’s Law Bans Texting While Driving*, RED & BLACK (June 16, 2010), [https://www.redandblack.com/news/caleb-s-law-bans-texting-while-driving/article\\_44cf176a-8ee3-5ea5-8bd6-f1e8dbe28dd0.html](https://www.redandblack.com/news/caleb-s-law-bans-texting-while-driving/article_44cf176a-8ee3-5ea5-8bd6-f1e8dbe28dd0.html) [https://perma.cc/DBK5-G28N].

9. Brandon Arnold, Michael Baumrind & Patrick Wheaton, *Motor Vehicles and Traffic: Uniform Rules of the Road*, 27 GA. ST. U. L. REV. 155, 172 (2010).

10. Kathy Lohr, *Enforcement Issues Loom with Texting While Driving Bans*, NPR (July 1, 2010, 9:00 AM), <https://www.npr.org/templates/story/story.php?storyId=128220944> [https://perma.cc/T55S-485Q].

11. Andria Simmons, *Texting While Driving Law Rarely Enforced*, ATLANTA J.-CONST. (Oct. 30, 2012), <https://www.ajc.com/news/texting-while-driving-law-rarely-enforced/5VHIInmvPrIsSkuBLn76bZJ/> [https://perma.cc/GB8C-QBUF].

12. Jill Nolin, *Push Back on for Hands-free Law*, TIFTON GAZETTE (Mar. 27, 2018), [http://www.tiftongazette.com/news/push-back-on-for-hands-free-law/article\\_7a811c2a-31e8-11e8-b2a3-cf3c3fd61db1.html](http://www.tiftongazette.com/news/push-back-on-for-hands-free-law/article_7a811c2a-31e8-11e8-b2a3-cf3c3fd61db1.html) [https://perma.cc/2BNV-52XG].

own ordinances aimed at these issues.<sup>13</sup> At the same time, critics of the legislation opposed any attempt to further “insert government” into the daily commutes of Georgians, opting instead to encourage citizens to take “personal responsibility” for their actions while driving.<sup>14</sup>

In an effort to reverse the trends of increasing fatalities and insurance premiums, the Georgia General Assembly passed House Resolution 282 in 2017, which created the House Study Committee on Distracted Driving.<sup>15</sup> The Speaker of the House, Representative David Ralston (R-7th), appointed Representative John Carson (R-46th) as Chairman of the Study Committee. The Study Committee produced a report detailing the shortcomings of the anti-texting and driving law and reviewed the results of other states’ hands-free laws.<sup>16</sup>

The Study Committee’s report also detailed the feedback of Georgia law enforcement agents, who lamented the difficulty of determining whether drivers were using their phones to dial a phone number or write a text message. Additionally, in the fifteen states that had passed hands-free laws, legislation banning the hand-held use of cell phones by drivers,<sup>17</sup> twelve of those states saw decreased roadway fatalities within two years of enactment of a hands-free law.<sup>18</sup> In six states, the number decreased by more than 20%.<sup>19</sup>

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13. Ben Brasch, *Smyrna Becomes First City in Georgia to Pass Hands-free Driving Law*, ATLANTA J.-CONST. (Jan. 3, 2018), <https://www.ajc.com/news/local/smyrna-becomes-first-city-georgia-pass-hands-free-driving-law/cSAWdq2A6TDs6aGTW4QmEI/> [https://perma.cc/S6DH-48D8]; WGCL DIGITAL TEAM, *Marietta Passes Hands-free Ordinance, to Take Effect in April*, WGCL-TV, <http://www.cbs46.com/story/37512227/marietta-passes-hands-free-ordinance-to-take-effect-in-april> [https://perma.cc/6UDS-LVQB] (last updated Mar. 15, 2018).

14. Jim Galloway, Greg Bluestein & Tamar Hallerman, *The Jolt: A Georgia Ban on Cell Phone Use While Driving Just Hit a Wall*, POLITICALLY GA. (Mar. 7, 2018), <https://politics.myajc.com/blog/politics/ban-cell-phone-use-while-driving-just-hit-wall/88U1mVc4tYmYpUXdjmVbBM/> [https://perma.cc/VV83-T334].

15. HOUSE STUDY COMM. ON DISTRACTED DRIVING, GA. GEN. ASSEMBLY HOUSE BUDGET AND RESEARCH OFFICE, REPORT OF THE COMMITTEE 2 (Dec. 31, 2017), [http://www.house.ga.gov/Documents/CommitteeDocuments/2017/Distracted\\_Driving/Final\\_Report\\_DistractedDriving.pdf](http://www.house.ga.gov/Documents/CommitteeDocuments/2017/Distracted_Driving/Final_Report_DistractedDriving.pdf) [https://perma.cc/KDK6-WWD7] [hereinafter HOUSE STUDY].

16. *Id.*

17. *Distracted Driving*, NAT’L CONF. OF ST. LEGISLATURES (May 31, 2018), <http://www.ncsl.org/research/transportation/spotlight-distracted-driving.aspx> [https://perma.cc/3U2W-8S3G].

18. HOUSE STUDY, *supra* note 15.

19. *Id.*

Based on the findings included in the Study Committee's final report, published on December 31, 2017, the Study Committee strongly recommended the passage of a hands-free law in Georgia. As a result, House Bill (HB) 673 was introduced on January 10, 2018.<sup>20</sup>

### *Bill Tracking of HB 673*

#### *Consideration and Passage by the House*

Representatives John Carson (R-46th), Eddie Lumsden (R-12th), Rich Golick (R-40th), Robert Trammell (D-132nd), and Richard Smith (R-161st) sponsored HB 673 in the Georgia House of Representatives.<sup>21</sup> The House read the bill for the first time on January 11, 2018.<sup>22</sup> The House read the bill for the second time on January 18, 2018.<sup>23</sup> Speaker David Ralston (R-7th) assigned the bill to the House Judiciary Non-Civil Committee, which favorably reported the bill by Committee substitute on February 22, 2018.<sup>24</sup> The House read HB 673 for a third time, adopted the Committee substitute, and passed the bill on February 28, 2018, by a vote of 151 to 20.<sup>25</sup>

#### *Consideration and Passage by the Senate*

Senator P.K. Martin IV (R-9th) sponsored HB 673 in the Georgia Senate.<sup>26</sup> The Senate first read HB 673 on March 1, 2018.<sup>27</sup> HB 673 was referred to the Senate Committee on Judiciary, which favorably reported it by Committee substitute on March 23, 2018, the same date it was read in the Senate for a second time.<sup>28</sup> On March 27,

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20. State of Georgia Final Composite Status Sheet, HB 673, May 10, 2018.

21. SB 360 Bill Tracking, *supra* note 7.

22. State of Georgia Final Composite Status Sheet, HB 673, May 10, 2018.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. State of Georgia Final Composite Status Sheet, HB 673, May 10, 2018.

2018, HB 673 was read for a third time in the Senate, which unanimously passed the Committee substitute of HB 673.<sup>29</sup>

The Senate transmitted the bill to the House on March 29, 2018, whereupon the House agreed to the Senate substitute as amended.<sup>30</sup> Following the House's approval of the Senate substitute, the Senate agreed to the House amendments to the Senate substitute.<sup>31</sup> Lastly, the House agreed to the Senate amendments to the House's version of HB 673 that incorporated the Senate substitute.<sup>32</sup>

The House sent the bill to Governor Nathan Deal (R) on April 6, 2018. Governor Deal signed the bill into law on May 2, 2018, and the bill became effective on July 1, 2018.<sup>33</sup>

### *The Act*

The Act repeals Articles 241.1 and 241.2 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated relating to motor vehicles. The Act amends and adds to the following sections of the Official Code of Georgia Annotated: Article 57 of Chapter 5 of Title 40, Article 165 of Chapter 6 of Title 40, and Article 241 of Chapter 6 of Title 40.<sup>34</sup> The overall purpose of this Act is “to provide for the proper and safe use of wireless telecommunications devices and stand-alone electronic devices while driving.”<sup>35</sup>

### *Section 1*

Section 1 titles the Act the “Hands-Free Georgia Act.”<sup>36</sup>

### *Section 2*

Section 2 of the Act amends Article 57 of Chapter 5 of Title 40 by changing the Georgia license points system.<sup>37</sup> Specifically, this

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. 2018 Ga. Laws 127.

35. *Id.*

36. 2018 Ga. Laws 127, § 1, at 128.

section changes the language in the points system from “[o]perating a motor vehicle while text messaging” to “[f]irst violation of Code [s]ection 40-6-241” and from “[v]iolation of usage of wireless telecommunications device requirements” to “[s]econd Violation of Code [s]ection 40-6-241.”<sup>38</sup> The Act further adds to the points system language by including a subsection for the “[t]hird or subsequent violation of Code [s]ection 40-6-241.”<sup>39</sup> The first violation under this section remains a one-point moving violation. The Act changes the second violation under this section from a one-point moving violation to a two-point moving violation. The Act adds that a third violation of this section will be a three-point moving violation.<sup>40</sup>

### *Section 3*

Section 3 amends Article 165 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to the operation of school buses, by removing any language referencing “cellular telephone[s]” or Article 241.2 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated relating to motor vehicles and replacing it with “wireless telecommunications device, as the term is defined in Code Section 40-6-241.”<sup>41</sup>

### *Section 4*

Section 4 amends Article 241 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated by creating the following prohibition:

While operating a motor vehicle on any highway of this state, no individual shall: physically hold or support, with any part of his or her body a: wireless telecommunications device . . . or [s]tand alone electronic device; [w]rite, send, or read any text-based communication, including, but not

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37. 2018 Ga. Laws 127, § 2, at 128–29.

38. *Id.*

39. *Id.*

40. *Id.*

41. 2018 Ga. Laws 127, § 3, at 129.



limited to a text message, instant message, e-mail, or Internet data on a wireless telecommunications device or stand-alone electronic device . . . watch a video or movie on a wireless telecommunications device or stand-alone electronic device other than watching data related to the navigation of such vehicle; or record or broadcast a video on a wireless telecommunications device or stand-alone electronic device; provided that such prohibition shall not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.<sup>42</sup>

This section explicitly allows the use of Global Positioning Satellite (GPS) systems and programs that convert voice messages to text messages.<sup>43</sup> Further, Section 4 explicitly allows using earpieces, listening through headphones, or wearing communication devices on one's wrist.<sup>44</sup>

Subsection (g) of Section 4 creates exceptions that allow an individual to use a wireless telecommunications device when such communications are made while “reporting a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or road condition which causes an immediate and serious traffic or safety hazard”; “[b]y an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency”; “[by] a law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties”; or “while in a motor vehicle which is lawfully parked.”<sup>45</sup>

Additionally, Section 4 defines any new terms added by the amendments to Article 241 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated and removes any reference to Article 241.1 of Chapter 6 of Title 40 of the Official Code of Georgia

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42. 2018 Ga. Laws 127, § 4, at 130.

43. *Id.*

44. *Id.*

45. 2018 Ga. Laws 127, § 4, at 131.

Annotated.<sup>46</sup> Specifically, the Act defines a stand-alone electronic device as “a device other than a wireless telecommunication device which stores audio or video data files to be retrieved on demand by a user.”<sup>47</sup> The Act defines utility services as including “electric, natural gas, water, waste-water, cable, telephone, or telecommunications services or the repair location, relocation, improvement or maintenance of utility poles, transmission structures, pipes, wires fibers, cable, easements, rights of way, or associated infrastructure.”<sup>48</sup> The Act further defines a wireless telecommunication device as a “cellular telephone, a portable telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, a global positioning system receiver, or substantially similar portable wireless device that is used to initiate or receive communication, information, or data.” The Act clarifies that wireless telecommunication devices does not include “a radio, citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, [subscription-based] emergency communication device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, or remote diagnostics system.”<sup>49</sup>

Section 4 also outlines the monetary penalties for violating the Act and states that any violation of the Act is a misdemeanor.<sup>50</sup> The penalty for an individual’s first violation of the hands-free law is a maximum fine of \$50.<sup>51</sup> Upon receiving his or her first citation for violating the Act, however, an individual may appear in court and present evidence that they subsequently purchased a hands-free device, in order to avoid the imposition of any penalty or adjudication of guilt.<sup>52</sup> The penalty for an individual’s second violation within twenty-four months of his or her first violation is a maximum fine of \$100.<sup>53</sup> Lastly, the penalty for an individual’s third

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46. 2018 Ga. Laws 127, § 4, at 129–30.

47. 2018 Ga. Laws 127, § 4, at 129.

48. *Id.*

49. 2018 Ga. Laws 127, § 4, at 130.

50. *Id.* at 131.

51. O.C.G.A. § 40-6-241(f)(1)(A) (2018).

52. O.C.G.A. § 40-6-241(f)(2) (2018).

53. O.C.G.A. § 40-6-241(f)(1)(B) (2018).

or subsequent violation within twenty-four months of his or her first violation is a maximum fine of \$150.<sup>54</sup>

Section 4 also places additional restraints on commercial vehicle drivers.<sup>55</sup> Commercial vehicle drivers are subject to the same restrictions as any other Georgia driver but are also subject to two additional rules.<sup>56</sup> First, a commercial vehicle driver must only use a single button to initiate or end a voice conversation.<sup>57</sup> Second, a commercial vehicle driver can only “reach for a wireless telecommunications device or stand-alone electronic device” if doing so does not cause the driver to be seated improperly or inadequately restrained by the seatbelt.<sup>58</sup> Each violation of the Act counts as a separate offense for commercial vehicle drivers.<sup>59</sup>

### *Sections 5 and 6*

Section 5 repeals, in its entirety, Article 241.1 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated.<sup>60</sup> Section 6 repeals, in its entirety, Article 241.2 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated.<sup>61</sup>

### *Section 7*

Section 7 amends Article 142 of Chapter 5 of Title 40 and Article 159 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated by “replacing ‘Code Section 40-6-241.2’ with ‘Code Section 40-6-241’ wherever the former occurs in” the above-listed Code sections.<sup>62</sup>

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54. O.C.G.A. § 40-6-241(f)(1)(C) (2018).

55. 2018 Ga. Laws 127, § 4, at 130.

56. *Id.*

57. O.C.G.A. § 40-6-241(d)(1) (2018).

58. O.C.G.A. § 40-6-241(d)(2) (2018).

59. *Id.*

60. 2018 Ga. Laws 127, § 5, at 132.

61. 2018 Ga. Laws 127, § 6, at 132.

62. 2018 Ga. Laws 127, § 7, at 132.

*Analysis*

Lawmakers drafted HB 673 in response to two events: (1) a significant increase in fatal roadway accidents in Georgia and (2) the previous legislation's inability to reduce those accidents.<sup>63</sup> In fact, Georgia has been ranked as the state with the fourth highest number of fatalities due to automobile accidents.<sup>64</sup> Both proponents and opponents of HB 673 attribute Georgia's high automobile fatality rates to distracted driving. Although the two sides agree that the legislature needed to address distracted driving, some legislators disagree with the way in which the Act accomplishes that goal.<sup>65</sup> Proponents of the bill suggested, and succeeded in, creating a law that would be as "strong" as possible. Opponents of the bill, however, argue that it is a drastic government overreach that does not logically flow from the automobile accident statistics.<sup>66</sup>

*Creating an Enforceable Distracted Driving Law*

The Georgia legislature previously attempted to address the distracted driving issue in 2010 with the introduction of a bill that ultimately became Code section 40-6-241.1.<sup>67</sup> That legislation failed to curb distracted driving.<sup>68</sup> In turn, when writing this Act, legislators were determined to put something on the books that police officers could easily enforce.<sup>69</sup> Representative Rich Golick (R-40th) echoed the sentiments of the Act's proponents, who were hopeful that this Act could reach Georgia's distracted drivers, stating:

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63. Tyler Estep, *Georgia Hands-free Law: Nearly 1,000 Tickets and Warnings in 4 Days*, ATLANTA J.-CONST. (Jul. 6, 2018), <https://www.ajc.com/news/local-govt—politics/hands-free-law-forcing-georgia-drivers-kick-phone-habit/u8nHEYaYZOP1R6puU4V31J/> [<https://perma.cc/5RV3-WXS6>].

64. Interview with Rep. Rich Golick (R-40th) at 1 min., 20 sec. (May 22, 2018) (on file with Georgia State University Law Review) [hereinafter Golick Interview]; NAT'L HIGHWAY TRAFFIC ADMIN., U.S. DEP'T OF TRANSP., *Distracted Driving*, <https://www.nhtsa.gov/risky-driving/distracted-driving> [<https://perma.cc/FKX6-B2RC>] (last visited Sept. 14, 2018) [hereinafter NHTSA].

65. Interview with Rep. Ed Setzler (R-35th) at 0 min., 20 sec. (Aug. 22, 2018) (on file with Georgia State University Law Review) [hereinafter Setzler Interview]; Golick Interview, *supra* note 64, at 3 min., 15 sec.

66. Setzler Interview, *supra* note 65, at 1 min., 57 sec.

67. *See supra* notes 7–10 and accompanying text.

68. Simmons, *supra* note 11.

69. Golick Interview, *supra* note 64, at 7 min., 22 sec.

[D]riving, as we both know, is a privilege, not a right. I don't care what people do as long as they don't pose a threat to other people. Once they are in a two thousand pound bullet on the road and all of the sudden they become a public safety threat to someone else, then it does become our business.<sup>70</sup>

When the families of distracted driving victims showed up to floor debates and committee hearings, that two thousand pound bullet was at the forefront of almost every legislator's mind.<sup>71</sup> The victims were the true drivers of this Act as it made its way through the House, Senate, and ultimately to Governor Nathan Deal's (R) desk.<sup>72</sup>

In turn, there is little doubt that when the legislation's proponents set out to draft this Act, they aimed to make the strongest prohibition against distracted driving that they possibly could.<sup>73</sup> Thus, it is unsurprising that the Georgia legislature looked to create a hands-free law, which fifteen other states had already implemented, as the strongest way to curb distracted driving.<sup>74</sup> Although the legislature based this Act on the success that hands-free legislation has had in other states, there was no consensus that a specific state served as the template for Georgia's hands-free law.<sup>75</sup>

The main benefit of a hands-free law is ease of enforcement.<sup>76</sup> The previous law was criticized and largely unenforced because law enforcement officers claimed they were unable to distinguish whether someone was texting or legally using their phone.<sup>77</sup> Captain Brad Wolfe of the Bibb County Police Department commented that after stopping someone for swerving or some other dangerous behavior, an officer would have to be able to prove that the individual was "either receiving or sending a text, whereas if they said I was looking up a contact, [or] looking to make a phone call, you couldn't really

70. *Id.* at 19 min., 10 sec.

71. Setzler Interview, *supra* note 65, at 11 min., 15 sec.; David Wickert, *Governor Deal Signs Georgia Distracted Driving Bill in Emotional Ceremony*, ATLANTA J.-CONST. (May 2, 2018, 4:22 PM), <https://www.myajc.com/news/state—regional-govt—politics/deal-signs-georgia-distracted-driving-bill-emotional-ceremony/KfMiMnXzPk33L8TpExWsJN/> [<https://perma.cc/PK2S-Q8BG>].

72. Wickert, *supra* note 71.

73. Golick Interview, *supra* note 64, at 16 min., 13 sec.

74. *See id.*; INS. INST. FOR HIGHWAY SAFETY, *Cellphones and Texting*, <https://www.iihs.org/iihs/topics/laws/cellphonelaws> [<https://perma.cc/B7JW-GHB8>] (last updated Nov. 2018).

75. Golick Interview, *supra* note 64, at 5 min., 10 sec.

76. *Id.* at 7 min., 22 sec.; Simmons, *supra* note 11.

77. Golick Interview, *supra* note 64, at 7 min., 22 sec.; Simmons, *supra* note 11.

enforce that.”<sup>78</sup> This Act greatly narrows the reasons an individual can explain away a potential violation, and in turn there is a consensus from law enforcement officers that this Act should be much easier to enforce than the previous law.<sup>79</sup>

*Overreach and Inconsistency Caused by Speeding to Pass Legislation*

The Act’s opponents believe that the prohibition on holding or supporting one’s phone is a broader prohibition than necessary and a prohibition that is not supported by the data on distracted driving.<sup>80</sup> Representative Ed Setzler (R-35th) distilled the opposition to this bill as it made its way through the legislative process, stating that “[n]o amount of family members of victims who died due to distracted drivers sitting in committee looking us in the eyes or sitting in the gallery of the House should be able to quiet the common sense of six million Georgians who agree with the fact that this is an overreach.”<sup>81</sup>

Representative Setzler, other opponents of the bill, and even some of the Act’s supporters agree that holding a phone to your ear does not pose any more of a danger than having a conversation with someone who is physically in the same vehicle.<sup>82</sup> The distracted driving data that the legislators examined when drafting this Act suggests that actually looking at your phone and texting or viewing content are the activities that led to the increase in accidents on Georgia’s roadways.<sup>83</sup> The consideration of this data is evident in the Act’s language, which allows individuals to have telephone conversations using hands-free devices, talk on radios, and, even use

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78. Jacob Reynolds, *Law Enforcement Preparing for Distracted Driving Ban*, 11ALIVE.COM (Mar. 30, 2018, 5:16 PM), <https://www.11alive.com/article/news/local/law-enforcement-preparing-for-distracted-driving-ban/93-533619368> [<https://perma.cc/A84A-ZMXF>]. Law enforcement officers note that there are still some issues with enforcing this bill because officers see fewer distracted drivers in their marked police cars than they would in their personal vehicles. *Id.*

79. *Id.*; Golic Interview, *supra* note 64, at 7 min., 22 sec.; Setzler Interview, *supra* note 65, at 3 min., 32 sec.

80. Setzler Interview, *supra* note 65, at 3 min., 32 sec.

81. *Id.* at 11 min., 15 sec.

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

83. *See id.* at 7 min., 20 sec.

voice to text programs, which are undoubtedly distracting.<sup>84</sup> The Act's proponents argue that texting or viewing content are specifically dangerous because they require the driver to take his or her eyes off of the road.<sup>85</sup>

Additionally, the Act's opponents are not persuaded by the argument that police officers will only be able to enforce a law that prohibits this much activity.<sup>86</sup> The opponents point to the fact that police officers make difficult and intricate judgment calls on a daily basis.<sup>87</sup> When those judgment calls include investigating felony offenses and determining whether or not to potentially take an individual's life, police officers should be able to easily tell the difference between someone texting, viewing content, or holding his phone to his ear.<sup>88</sup>

*Examining the Exceptions, Misconceptions, and the Long Road to Compliance*

The exact amount of activity that this Act restricts and does not restrict has confused a number of Georgians and even some law enforcement departments.<sup>89</sup> This confusion did not go unnoticed by the Act's proponents, who note that one of the main challenges the Act will face is educating the public about what the Act requires.<sup>90</sup> A central point of confusion that emerged when the public first became aware of the Act was whether an individual could stream music while driving.<sup>91</sup> Some police departments even warned individuals not to use streaming applications. This question, however, has been unequivocally answered: Georgia drivers can use music streaming services if they initiate the service before they begin driving.<sup>92</sup>

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84. NHTSA, *supra* note 64.

85. *Id.*; Setzler Interview, *supra* note 65, at 5 min., 15 sec.

86. Setzler Interview, *supra* note 65, at 0 min., 20 sec.

87. *Id.* at 11 min., 51 sec.

88. *Id.*

89. *Fact Check: Does Georgia's New Hands-free Law Apply to Music Streaming Apps?*, 11ALIVE.COM, <https://www.11alive.com/article/news/local/fact-check-does-georgias-new-hands-free-law-apply-to-music-streaming-apps/85-562432874> [<https://perma.cc/3BW4-DT35>] (last updated June 7, 2018, 9:51 PM).

90. Golick Interview, *supra* note 64, at 14 min., 23 sec.

91. *Fact Check*, *supra* note 89.

92. 2018 Ga. Laws 127; *Fact Check*, *supra* note 89.

Another exception that has sparked debate is the GPS exception.<sup>93</sup> The GPS exception allows a Georgia driver to “write, send, or read any [GPS] text-based communication.” Georgia drivers still cannot, however, “[p]hysically hold or support” such a device. Critics of the Act point out that taking one’s eyes off the road to use GPS systems can be just as distracting as texting while driving and more distracting than having a telephone conversation.<sup>94</sup> The Act’s opponents suggest that if the legislature was weighing the merit of using GPS systems while driving against the danger of taking one’s eyes off the road, then they should have also weighed the “liberty interest” of an individual’s ability to talk on the phone.<sup>95</sup> Specifically, opponents argue that the legislature should have weighed in favor of allowing drivers to hold phones to their ears because it is less distracting than taking their eyes off the road to look at a GPS.<sup>96</sup>

The Act’s proponents recognize that it will take time for Georgia drivers to understand exactly what the Act requires.<sup>97</sup> Representative Golick compares this knowledge barrier with the long road to compliance which occurred in the 1970s when seatbelt laws were introduced, stating: “It took a long time. Now it’s second nature. Everybody gets in, what do they do? They buckle up. You don’t even think about it, you just do it. But, that took a while to occur. I think we are in the same posture as relates to distracted driving”.<sup>98</sup> Representative Golick goes on to posit that he thinks it will take approximately one and a half to two years to appropriately educate the public about the Act. He also states that the public education campaign is a top concern at the Governor’s Office of Highway Safety due to the urgency surrounding Georgia’s automobile fatality rate.<sup>99</sup> Opponents reference this knowledge gap as a main reason that the bill passed, stating that Georgians wanted to address texting and viewing content while driving, not holding a phone to your ear.<sup>100</sup> Ultimately, despite any overreach or weakening of the bill,

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93. Setzler Interview, *supra* note 65, at 9 min., 20 sec.

94. *Id.*

95. *Id.* at 2 min., 22 sec.

96. *Id.*

97. Golick Interview, *supra* note 64, at 14 min., 23 sec.

98. *Id.*

99. *Id.*

100. Setzler Interview, *supra* note 65, at 11 min., 1 sec.



Representative Golick remarked, “[the Act] will save lives. The only question is how many. You think about it and you say how many. Well, you know what, if it saved just one life, it would be worth it.”<sup>101</sup>

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101. Golick Interview, *supra* note 64, at 21 min., 27 sec.