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## MOTOR VEHICLES AND TRAFFIC Uniform Rules of the Road

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## MOTOR VEHICLES AND TRAFFIC

***Uniform Rules of the Road: Establish the "Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving"; Amend Title 40 of the Official Code of Georgia Annotated, Relating to Motor Vehicles and Traffic, so as to Change Certain Provisions Relating to the Suspension or Revocation of the Licenses of Habitually Negligent or Dangerous Drivers and the Point System; Change Certain Provisions Relating to Drivers' Exercise of Due Care; Prohibit Writing, Sending, or Reading a Text Based Communication by Certain Persons While Operating A Motor Vehicle; Provide Penalties for Violations; Exempt Headsets Used for Communication Purposes; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.***

CODE SECTION:	O.C.G.A. §§ 40-5-57 (amended), 40-6-241 (amended), 40-6-241.1 (new), 40-6-250 (amended)
BILL NUMBERS:	SB 360
ACT NUMBER:	677
GEORGIA LAWS:	2010 Ga. Laws 1158
SUMMARY:	The Act prohibits all drivers from using text-based communications while operating a motor vehicle on any public highway in the state. The Act provides for acceptable text-based communications for public safety workers and similarly situated individuals, as well as for all drivers in certain circumstances. A violator of the Act's provisions is subject to a fine of \$150 and an assessment of one point on the violator's driver's license.
EFFECTIVE DATE:	July 1, 2010

## 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 Change Certain Provisions Relating to Suspension or Revocation of the Licenses of Habitually Negligent or Dangerous Drivers and the Point System; Change Certain Provisions Relating to Drivers' Exercise of Due Care; Prohibit Use of Wireless Telecommunications Devices by Persons Under 18 Years of Age with an Instruction Permit or Class D License While Operating a Motor Vehicle; Provide Penalties for Violations; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.***

CODE SECTION:	O.C.G.A. §§ 40-5-57 (amended), 40-6-241 (amended), 40-6-241.1(new)
BILL NUMBERS:	HB 23
ACT NUMBER:	676
GEORGIA LAWS:	2010 Ga. Laws 1156
SUMMARY:	The Act prohibits any driver under the age of eighteen who has an instruction permit or Class D license from using a cellular phone while operating a motor vehicle. It provides certain exceptions for safety reasons. The Act imposes a \$150 fine and one-point assessment on the violator's license for each offense. If the minor driver is involved in an accident at the time of a violation of this Act, the fine is doubled.
EFFECTIVE DATE:	July 1, 2010

*History*

On December 15, 2009, eighteen-year-old Caleb Sorohan was driving along a Morgan county road when he drifted over the centerline, collided head-on with a truck, and died instantly.<sup>1</sup> According to his cellular phone records, in the minutes before his death, Caleb was rapidly sending and receiving text-based communications; he was “texting.”<sup>2</sup> In the wake of this tragedy, Caleb’s family led an initiative calling for a law banning texting while driving.<sup>3</sup> On June 4, 2010, Governor Sonny Purdue signed such a measure into law entitled the Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving (“Caleb’s Law”).<sup>4</sup>

Long before Caleb Sorohan’s tragic death, concern over driving while texting, and using a cell phone generally, had been growing nationally. By 2007, several states had already entirely banned cell phone use while driving.<sup>5</sup> In May of 2007, Washington became the first state to specifically enact a total texting ban.<sup>6</sup> Since then, twenty-nine states have followed suit, including most recently, Georgia.<sup>7</sup> In

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1. Patrick Yost, *Texting Turned Fatal: Reading Text Messages While Driving The Cause Behind Local Teen’s Death*, MORGAN CO. CITIZEN (Madison, Ga.), Dec. 24, 2009, available at <http://www.morgancountycitizen.com/?q=node/12363>; *Texting Incidents: Family Mourns Teen Who Died in Crash After Multiple Texts*, AUGUSTA CHRON., Jan. 30, 2010, available at <http://chronicle.augusta.com/news/metro/2010-01-30/texting-incidents> [hereinafter *Texting Incidents*].

2. Yost, *supra* note 1. In the seven minutes before he died, Sorohan had received and sent six text messages, “the last at 3:26 p.m. His phone was found on his lap.” *Id.*

3. See *Texting Incidents*, *supra* note 1.

4. Don McKee, *Texting Ban’s Aim Good Despite Enforcement Problems*, MARIETTA DAILY J., June 6, 2010, [http://www.mdjonline.com/view/full\\_story/7821038/article-Don-McKee--Texting-ban-s-aim-good-despite-enforcement-problems?instance=lead\\_story\\_left\\_column](http://www.mdjonline.com/view/full_story/7821038/article-Don-McKee--Texting-ban-s-aim-good-despite-enforcement-problems?instance=lead_story_left_column); Ariel Hart & Aaron Gould Sheinin, *Purdue Signs Ban on Texting While Driving*, ATLANTA J.-CONST., June 4, 2010, <http://www.ajc.com/news/georgia-politics-elections/purdue-signs-ban-on-541877.html>.

5. For example, New York, New Jersey, Connecticut, and the District of Columbia all had blanket bans on cell phone use while driving by 2007. N.Y. VEH. & TRAF. LAW § 1225-c (McKinney Supp. 2010); N.J. STAT. ANN. § 39:4-97.3 (West Supp. 2008); D.C. CODE § 50-1731.04 (Supp. 2008); CONN. GEN. STAT. § 14-296aa (2006). See generally Shannon L. Noder, *Talking and Texting While Driving: A Look at Regulating Cell Phone Use Behind the Wheel*, 44 VAL. U. L. REV. 237, 252–255 (2009). New York was one of the first to pass such a law in 2001. *Id.*; N.Y. VEH. & TRAF. LAW § 1225-c (McKinney Supp. 2010); see also *People v. Neville*, 737 N.Y.S.2d 251, 253 (2002) (affirming the constitutionality of New York’s cell-phone ban and stating this law was “perhaps the first in the Nation to govern this new area of legislation”).

6. Governor’s Highway Safety Ass’n, *Distracted Driving*, <http://www.ghsa.org/html/issues/cellphone.html> (last visited Oct. 17, 2010).

7. INS. INST. FOR HIGHWAY SAFETY, *CELLPHONE LAWS* (July 2010), <http://www.iihs.org/laws/cellphonelaws.aspx> (last visited July 3, 2010) (on file with the authors and

addition, the federal government has increased its regulation and rhetoric against driving while texting.<sup>8</sup> This concern permeates popular media as well. For example, media mogul Oprah Winfrey announced April 30 as “No Phone Zone Day” to raise awareness about the dangers of driving while using a cell phone.<sup>9</sup>

The dangers of cell phone use while driving are well documented. The National Highway Traffic Safety Administration (NHTSA) considers the use of a cell phone to be a form of distracted driving.<sup>10</sup> The NHTSA found that distracted driving accounted for 16% of all fatal crashes in 2008.<sup>11</sup> This is an increase from 11% in 2004.<sup>12</sup> Cell phone use is a particularly dangerous distraction. One recent study suggests that merely dialing on a cell phone increases one’s risk of a crash or near crash event by almost 300%.<sup>13</sup> The study further found that a driver of a heavy vehicle who is texting is 23.2 times more likely to crash or experience a near crash event.<sup>14</sup> The study concluded that “a real key to significantly improving safety is keeping your eyes on the road.”<sup>15</sup>

The dangers of driving while using a cell phone may be more serious for novice drivers. The Insurance Institute for Highway Safety revealed that 45% of respondents aged eighteen through twenty-four reported some texting while driving compared to 13% of

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updated periodically online). In addition to the twenty-nine states with total bans on texting while driving, Washington D.C. and Guam have such bans. *Id.*

8. See Josh Mitchell, *LaHood Steps Up Campaign Against Texting While Driving*, WALL ST. J., Jan. 15, 2010, available at <http://online.wsj.com/article/SB10001424052748704381604575005283282980468.html> (discussing U.S. Transportation Secretary’s support for “legislation to deny federal funds to states that permit cellphone texting in cars”); Ashley Halsey III, *U.S. Bans Truckers, Bus Drivers From Texting While Driving*, WASH. POST, Jan. 27, 2010, at A07.

9. Press Release, Governors Highway Safety Ass’n, Oprah Winfrey and Harpo Studios Announce National “No Phone Zone Day” Friday, April 30 (Apr. 6, 2010), available at [http://www.ghsa.org/html/media/pressreleases/2010/20100406\\_npz.html](http://www.ghsa.org/html/media/pressreleases/2010/20100406_npz.html).

10. Policy Statement and Compiled FAQs on Distracted Driving, Nat’l Highway Traffic Safety Admin., <http://www.nhtsa.gov/Distracted> (follow “Policy Statement” link) (last visited Oct. 17, 2010).

11. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., PUB. NO. DOT HS 811 216, TRAFFIC SAFETY FACTS: RESEARCH NOTE, AN EXAMINATION OF DRIVER DISTRACTION AS RECORDED IN NHTSA DATABASES 1 (Sept. 2009), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811216.pdf>.

12. *Id.* at 3.

13. Press Release, Va. Tech Transp. Inst., New Data From VTTI Provides Insight Into Cell Phone Use and Driving Distraction (July 27, 2009), available at [http://www.vtti.vt.edu/PDF/7-22-09-VTTI-Press\\_Release\\_Cell\\_phones\\_and\\_Driver\\_Distraction.pdf](http://www.vtti.vt.edu/PDF/7-22-09-VTTI-Press_Release_Cell_phones_and_Driver_Distraction.pdf).

14. *Id.*

15. *Id.* at 2.

all respondents.<sup>16</sup> Ford Motor Company asserted that “teen drivers are four times more distracted than adult drivers by cell phone use.”<sup>17</sup> Data such as these, along with individual tragedies like Caleb Sorohan’s, underscore the need to at least address teenage driving while texting.

As of July 2010, twenty-eight states and the District of Columbia have restricted all cell phone use by novice drivers.<sup>18</sup> This restriction is part of a graduated driver license system (GDL) in which novice drivers receive their license in stages of decreasing restrictions.<sup>19</sup> Only nine jurisdictions have a total ban (for teenagers and adults alike) on talking on a hand-held cell phone while driving.<sup>20</sup>

Legislative bans on cell phone use or texting are not without their critics.<sup>21</sup> A major concern is that cell phone bans that include exemptions for hands-free devices mislead drivers into believing that it is safe to drive while using a cell phone with such a device.<sup>22</sup> However, some studies suggest that driving while using hands-free devices is no safer than using hand-held devices.<sup>23</sup> Many studies also

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16. KELLI A. BRAITMAN & ANNE T. MCCARTT, INS. INST. FOR HIGHWAY SAFETY, NATIONAL REPORTED PATTERNS OF DRIVER CELLPHONE USE 1 (Feb. 2010), available at <http://www.iihs.org/research/topics/pdf/r1133.pdf>.

17. Press Release, Ford Motor Co., Reducing Driver Distractions (Dec. 2, 2009), available at [http://media.ford.com/images/10031/Reducing\\_Driver\\_Distractions.pdf](http://media.ford.com/images/10031/Reducing_Driver_Distractions.pdf).

18. IIHS Cell Phone Laws, *supra* note 7.

19. See NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., PUB. NO. DOT HS 810 888W, TRAFFIC SAFETY FACTS: LAWS, GRADUATED DRIVER LICENSING SYSTEM 1 (Jan. 2008), available at <http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Teen%20Driver/files/810888GradDriverLicense.pdf>.

20. IIHS Cell Phone Laws, *supra* note 7. These jurisdictions are: California, Connecticut, Maryland, New Jersey, New York, Oregon, Utah, Washington State, and the District of Columbia. *Id.*

21. See generally Anne Barret Wallin, Note, *Cell Phones Pose a Distraction to Drivers but Legislative Ban is Not the Answer*, 93 KY. L.J. 177 (2009).

22. *Combating Distracted Driving: Hearing Before the Subcomm. on Highway and Transit of the H. Com. on Transportation and Infrastructure*, 111th Cong. 54 (Oct. 29, 2009) (statement of Vernon F. Betkey Jr., Chairman, Governor’s Highway Safety Association (GHSA)) (“GHSA believes that a hand-held ban may give drivers a false sense of security that a hands-free device is safe.”); Matthew C. Kalin, Note, *The 411 on Cellular Phone Use: An Analysis of Legislative Attempts to Regulate Cellular Phone Use by Drivers*, 39 SUFFOLK. U. L. REV. 233, 255–57; Ann Baldelli, Opinion, *Stop Me Before I Call Again*, THE DAY (New London, Conn), Jan. 3, 2010, available at 2010 WLNR 104736; Sue Doyle, *Hands-Free Cell Phones Give False Sense of Security*, SAN BERNARDINO COUNTY SUN (Cal.), Dec. 22, 2008, available at 2008 WLNR 24531040 (quoting the American Automobile Association’s Foundation for Traffic Safety and California Highway Patrol as stating that hands-free calling may create “a false sense of security”).

23. A report by the NHTSA conducted in 2003, but released in July of 2009, lists numerous studies supporting this proposition. Matt Richtel, *U.S. Withheld Data on Risks of Distracted Driving*, NY TIMES, July 21, 2009, available at <http://www.nytimes.com/2009/07/21/technology/21distracted.html>

suggest that while cell phone use distracts drivers, it is no more dangerous than many lawful driving distractions, such as adjusting the radio, eating, or looking at scenery.<sup>24</sup>

Georgia considered the regulation of cell phones while driving as early as 2003.<sup>25</sup> Much like the 2009–2010 legislative session, in 2003, there were multiple bills tackling the issue of driving while using a cell phone. Two bills, House Bill (HB) 83 and HB 125 would have prohibited any cell phone use while driving and applied to all drivers.<sup>26</sup> A separate bill, HB 1241, would have only prohibited minors from using cell phones while driving.<sup>27</sup> None of these bills became law.

In 2006, lawmakers again attempted to regulate cell phone use behind the wheel.<sup>28</sup> Based on research of the Health Legislation and Advocacy Class at Georgia State University College of Law, Representative Mary Margaret Oliver (D-83rd) proposed a bill that would limit cell phone use while driving for younger, less experienced drivers.<sup>29</sup> Her bill did not survive the 2007 legislative session perhaps because of concerns that a cell phone ban would impact cell phone sales, that government should not intrude upon private behavior, and that enforcement would be too difficult.<sup>30</sup>

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(citing NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., STATUS SUMMARY: USING WIRELESS COMMUNICATION DEVICES WHILE DRIVING (July 2003)), *available at* <http://s3.amazonaws.com/nytdocs/docs/72/72.pdf>); *see also* Press Release, AAA Found. for Traffic Safety, Majority of Americans Wrongly Believe Hands-Free Cell Phones Are Safer Than Hand-Held Devices According to a New AAA Foundation Study (Dec. 4, 2008), *available at* <http://www.aaafoundation.org/pdf/CellPhonesandDrivingPR.pdf> (referencing studies suggesting that hand-free cell phone devices are unsafe).

24. *See* Wallin, *supra* note 21 at 188–90.

25. *See* HB 1241, as introduced, 2003 Ga. Gen. Assem. In 1999, the Senate considered a resolution that would have encouraged motorists to “observe good judgment in the use of cellular mobile telephones while driving.” SR 611, as introduced, ln. 1–1 to 1–3, 1999 Ga. Gen. Assem.

26. HB 83, as introduced, 2003 Ga. Gen. Assem.; HB 125, as introduced, 2003 Ga. Gen. Assem.

27. HB 1241, as introduced, 2003 Ga. Gen. Assem.

28. *See generally* Erin K. Witcher, Note, *Drivers' Licenses: Amend Chapter 5 Of Title 40 of The Official Code Of Georgia Annotated, Relating To Drivers' Licenses*, 24 GA. ST. U. L. REV. 291, 294 (2007).

29. *Id.*

30. *Id.* at 299. Another bill in the 2007–2008 legislative session would have banned the use of cell phones while driving a school bus. HB 612, as introduced, 2007 Ga. Gen. Assem. (amending O.C.G.A. § 20-2-1127 to read “the use of a mobile, wireless, or cellular phone or other communication device by a school bus driver while there are one or more children or other passengers on the school bus shall be prohibited”). This bill did not come up for a vote.

At that time, using a cell phone while driving to text or otherwise was not in itself a violation of law.<sup>31</sup> Under Georgia's reckless driving law, police officers can issue citations to drivers who improperly use a cell phone, but only if the driver exhibits signs of recklessness.<sup>32</sup> Furthermore, while Georgia law clearly prohibits distracted driving, "the proper use of . . . [a] mobile telephone" is not considered a distraction.<sup>33</sup> By the 2010 legislative session, the issue of cellular phone use in motor vehicles was ripe for legislation, producing two bills that became law.<sup>34</sup>

House Bill 23, introduced in the 2008–2009 legislative session, was directed only at minors and prohibited all cell phone use.<sup>35</sup> This bill invited several similar bills, and one in particular, SB 360, became the Caleb Sorohan Act.<sup>36</sup> Taken together, these two laws banned texting for all drivers in Georgia and limited all cell phone use of minor drivers to emergency situations.

### *Bill Tracking of HB 23*

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

Representative Matt Ramsey (R-72nd) introduced HB 23 in the 2009 legislative session.<sup>37</sup> He sponsored this bill along with Representatives Tom Rice (R-51st), Edward Lindsey (R-54th), Mark

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31. Video Recording of House Pub. Safety and Homeland Sec. Comm. Meeting, Jan. 27, 2010 at 22 min., 21 sec. (remarks by Frank Rotundo, Executive Director of the Georgia Association of Chiefs of Police) [hereinafter House Pub. Safety Jan. 27, 2010].

32. O.C.G.A. § 40-6-390 (Supp. 2010); *see also infra* notes 99–100 and accompanying text.

33. O.C.G.A. § 40-6-241 (Supp. 2010); Interview with Sen. Jack Murphy (R-27th) (Apr. 7, 2010) [hereinafter Murphy Interview]. Some have argued that using a cell phone to text while driving, except in emergencies, may not be a "proper use of . . . a mobile phone." Telephone Interview with Rep. Allen Peake (R-137th) (Apr. 8, 2010) [hereinafter Peake Interview]; House Pub. Safety Jan. 27, 2010, *supra* note 31, at 16 min., 23 sec. (remarks by Rep. Allen Peake (R-137th)) (answering affirmatively that a police officer can issue a citation to a driver for distracted driving presumably under O.C.G.A. § 40-6-241 when the driver fails to maintain his lane or drives in a similarly dangerous manner while distracted, including while putting on make-up, disciplining children, or texting).

34. Furthermore, as Representative Allen Peake (R-137th) noted, "Public support is overwhelmingly behind banning texting while driving with ranges of 80 to 97% in studies." House Pub. Safety Jan. 27, 2010, *supra* note 31, at 4 min., 56 sec.

35. HB 23, as introduced, 2009 Ga. Gen. Assem.

36. SB 360, as introduced, 2010 Ga. Gen. Assem.

37. *Id.* Rep. Mary Margaret Oliver (D-83rd) also introduced a bill during that session that would ban all cell phone use while driving. HB 19, as introduced, 2009 Ga. Gen. Assem.

Williams (R-178th), Kevin Levitas (D-82nd), and Melvin Everson (R-106th). The House of Representatives read the bill for the first time on January 14, 2009, and for the second time the following day.<sup>38</sup> Speaker of the House David Ralson (R-7th) assigned it to the Driver's Services Subcommittee of the House Motor Vehicles Committee.<sup>39</sup>

The bill banned all cell phone use by minors driving a car with limited exceptions.<sup>40</sup> It imposed a one-point assessment for minors caught texting while driving and two points for each additional violation.<sup>41</sup> It also imposed a maximum fine of \$175 for first offenders and a \$500 fine for each subsequent offense.<sup>42</sup> Finally, drivers involved in an accident while using a cell phone would see their fines doubled. Furthermore, if the driver was determined to be at fault for the accident, his or her license would be suspended for ninety days for the first such offense and six months for each subsequent offense.<sup>43</sup>

The penalties associated with a violation of HB 23 changed as the bill went through committee. On February 24, 2009, the House Committee on Motor Vehicles introduced a bill substitute.<sup>44</sup> This new version of HB 23 imposed a fine of between \$50 and \$100, with no increase in amount for subsequent violations.<sup>45</sup> Similarly, there was no increase in point assessment for subsequent violations, but each violation resulted in a two-point assessment.<sup>46</sup> On the other hand, the bill substitute retained provisions that increased the length of a driver's license suspension for subsequent violations where the violator caused an accident.<sup>47</sup>

Lawmakers also massaged the language defining a violation. Initially, HB 23 addressed texting and talking in separate provisions, but the February 24 committee substitute combined the two using the

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38. State of Georgia Final Composite Status Sheet, HB 23, Apr. 29, 2010.

39. Video Recording of House Motor Vehicles Comm. Meeting, Jan. 27, 2009 at 4 min., 14 sec. (remarks by Chairman Burke Day (R-163rd)).

40. HB 23, as introduced, 2009 Ga. Gen. Assem.

41. *Id.* § 1, p. 2, ln. 37–40.

42. *Id.* § 5, p. 5, ln. 143–45.

43. *Id.* § 2, p. 2, ln. 53–56.

44. HB 23 (HCS), 2010 Ga. Gen. Assem.

45. *Id.* § 4, p. 3, ln. 93–94.

46. *Id.* § 1, p. 2, ln. 37.

47. *Id.* § 2, p. 2, ln. 51–54.

term “wireless communication.”<sup>48</sup> The substitute defined this term as “talking, writing, sending, or reading a text-based communication,”<sup>49</sup> and prohibited novice drivers from doing so while driving.<sup>50</sup> After a few minor changes to the driver’s license suspension provision<sup>51</sup> and violation exceptions,<sup>52</sup> HB 23 was favorably reported to the House on March 5, 2009.<sup>53</sup> The bill passed the House on March 12, 2009 with a vote of 138 to 34.<sup>54</sup>

### *Consideration and Passage by the Senate*

The Senate first read HB 23 on March 17, 2009, and Senate President Pro Tempore Tommie Williams (R-19th) referred the bill to the Senate Public Safety Committee.<sup>55</sup> One change in committee was to add a provision modifying the conditions under which fleeing or attempting to elude a police officer constitute a felony.<sup>56</sup> This change, however, did not make it into the final bill.

The Senate reduced the punishment for teenagers who use a cell phone while driving.<sup>57</sup> Senator Jack Murphy made it clear that the purpose of a bill directed at teenagers was not to punish but to educate.<sup>58</sup> The Senate substitute, which unanimously passed the Senate on April 27, 2010, reduced a minor driver’s punishment for violation of the Act from a two to a one-point assessment on his license and completely eliminated the license suspension provision

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48. Compare HB 23, as introduced, § 4–5, 2009 Ga. Gen. Assem., with HB 23 (HCS), § 4, p. 3, ln. 70–72, 2010 Ga. Gen. Assem.

49. HB 23 (HCS), § 4, p. 3, ln. 70–72, 2010 Ga. Gen. Assem.

50. *Id.* § 4, p. 3, ln. 81–83.

51. The House allowed any driver’s license suspension pursuant to this bill to expire when the offender turns eighteen years of age. HB 23 (HCS), § 2, p. 2, ln. 50–57, 2010 Ga. Gen. Assem.

52. The House carved out an additional exception for “subscription-based emergency communications, in-vehicle security navigation, and remote diagnostic systems.” HB 23 (HCS), § 4, p. 3, ln. 77–78, 2010 Ga. Gen. Assem. It also clarified that a wireless telecommunication device is one used to communicate “with another person.” *Id.* § 4, p. 3, ln. 75–76.

53. State of Georgia Final Composite Status Sheet, HB 23, Apr. 29, 2010.

54. Georgia House of Representatives Voting Record, HB 23 (Mar. 12, 2009).

55. See State of Georgia Final Composite Status Sheet, HB 23, Apr. 29, 2010.

56. HB 23 (SCS LC 34 2733S), 2010 Ga. Gen. Assem. Such fleeing constitutes a felony when, among other possibilities, the driver drives in excess of thirty miles per hour. O.C.G.A. § 40-6-395(b)(5)(A) (Supp. 2010). This provision would have reduced that speed to twenty miles per hour. HB 23 (SCS LC 34 2733S), 2010 Ga. Gen. Assem.

57. HB 23 (SCS LC 34 2733S), § 1, p. 2, ln. 37, 2010 Ga. Gen. Assem.

58. Murphy Interview, *supra* note 33.

for violators who cause an automobile accident.<sup>59</sup> However, the Senate increased the fine to \$150 and retained the fine-doubling provision for violators involved in an automobile accident.<sup>60</sup> The Senate version did not include increasing penalties for subsequent violations.<sup>61</sup>

On April 29, 2010, the House agreed to the Senate substitute and, with a vote of 137 to 23, passed HB 23 as Act 676.<sup>62</sup> The Act, along with the Caleb Sorohan Act (Act 677), discussed below, remained unsigned for over a month.<sup>63</sup> On June 4, 2010, Governor Sonny Perdue said, “We need to do everything possible to focus young drivers on the road ahead” and signed HB 23 into law.<sup>64</sup>

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59. HB 23 (SCS LC 34 2733S), § 1, p. 2, ln. 37, 2010 Ga. Gen. Assem. *Compare* HB 23 (SCS LC 34 2733S), § 2, p. 2, ln. 40–48, 2010, Ga. Gen. Assem. (providing for no license suspension provision for violators), *with* HB 23 (HCS), § 2, p. 2, ln. 43–54, 2010 Ga. Gen. Assem. (providing for license suspension for violators).

60. HB 23 (SCS LC 34 2733S), § 3, p. 3, ln. 75–86.

61. *Compare id.* (not addressing increasing penalties for subsequent violations), *with* HB 23 (HCS), § 2, p. 2, ln. 50–54, 2010 Ga. Gen. Assem. (providing for a ninety-day driver’s license suspension for a first offense of Code Section 40-6-241.1 and a six-month suspension for subsequent offenses). In its 2009 session, the Senate also suggested adding a provision modifying the conditions under which fleeing or attempting to elude a police officer constitutes a felony. *See* HB 23 (SCS LC 35 1494S), *supra* note 56. It also would have added that a violation of Georgia Code section 40-6-391 (driving while intoxicated) while simultaneously fleeing a police officer constitutes a felony. *Id.* § 5, p. 4, ln. 123–24. The Senate, however, recommitted the bill, and these changes failed to make it into the final bill substitute. *See* State of Georgia Final Composite Sheet, HB 23, Apr. 29, 2010.

62. Georgia House of Representative Voting Record, HB 23 (Apr. 29, 2010).

63. *Perdue Signs Texting, Cell Phone Bans*, CALHOUN TIMES (Ga.), June 4, 2010, [http://www.calhountimes.com/printer\\_friendly/7802708](http://www.calhountimes.com/printer_friendly/7802708).

64. *Id.* HB 23 became the basis for another texting bill, HB 938. House Pub. Safety, Jan. 27, 2010, *supra* note 31, at 1 min., 54 sec. (remarks by Rep. Allen Peake (R-137th)), *available at* [http://www.legis.state.ga.us/legis/2009\\_10/house/commroster.htm](http://www.legis.state.ga.us/legis/2009_10/house/commroster.htm) (follow link to “Public Safety and Homeland Security” and then “Archives”). HB 938 included much of the language found in HB 23 and was eventually inserted largely verbatim by the House Public Safety and Homeland Security Committee into their substitute version of SB 360. *Compare* HB 938, as passed House, 2010 Ga. Gen. Assem., *with* SB 360 (HCS), 2010 Ga. Gen. Assem. This modified version of SB 360 was subsequently rejected by the Senate, and portions of the language in HB 938 that differed from the version of SB 360 as passed by the Senate were eventually returned to an updated version of HB 23, which contained restrictions on the use of wireless devices by class D license holders while driving. HB 938, as passed House, 2010 Ga. Gen. Assem.; SB 360 (CCR), 2010 Ga. Gen. Assem.; HB 23 (CCR), 2010 Ga. Gen. Assem.

*Bill Tracking of SB 360**Consideration and Passage by the Senate*

Senators Jack Murphy (R-27th), Tate Horacena (D-38th), Bill Hamrick (R-30th), Don Balfour (R-9th), Bill Jackson (R-24th), and John Douglas (R-17th), sponsored Senate Bill (SB) 360.<sup>65</sup> The Senate read SB 360 for the first time on February 4, 2010.<sup>66</sup> Senate President Pro Tempore Tommie Williams (R-19th) assigned the bill to the Senate Committee on Public Safety.<sup>67</sup>

The bill, in its original form, amended Title 40 of the Code by prohibiting the use of wireless communication devices for the purpose of text messaging by anyone under the age of eighteen while driving.<sup>68</sup> The bill specified that violators of this prohibition would receive four points on their licenses.<sup>69</sup> The first violation was to result in a six-month suspension.<sup>70</sup> Additional violations would result in a twelve-month suspension.<sup>71</sup> A \$100 restoration fee was to be assessed at the end of the suspension period.<sup>72</sup> The bill also added a new section to the Code, defining the terms “text messaging” and “wireless telecommunications device.”<sup>73</sup> The bill then listed exceptions to the ban on text messaging for various emergency situations that might arise while driving.<sup>74</sup> The bill also exempted law enforcement officers, firefighters, emergency medical service providers, and other public safety officers from the ban.<sup>75</sup> A conviction for violating the ban would result in a \$500 fine—in addition to the driver’s license suspension and restoration fees discussed above.<sup>76</sup>

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65. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010.

66. *Id.*

67. *Id.*; see SB 360 (SCS), 2010 Ga. Gen. Assem.

68. SB 360, as introduced, 2010 Ga. Gen. Assem. The Code provided that a driver shall exercise due care in the operation of a motor vehicle and that “the proper use of a radio, citizens band radio, or mobile telephone shall not be a violation of this Code section.” O.C.G.A. 40-6-241 (Supp. 2010).

69. SB 360, as introduced, § 1, p. 2, ln. 35–36, 2010 Ga. Gen. Assem.

70. *Id.* § 2, p. 2, ln. 48–49.

71. *Id.* § 2, p. 2, ln. 50–51.

72. *Id.* § 2, p. 2, ln. 52–54.

73. *Id.* § 4, p. 3, ln. 68–76.

74. *Id.* § 4, p. 3, ln. 81–89.

75. SB 360, as introduced, § 4, p. 3, ln. 87–89, 2010 Ga. Gen. Assem.

76. *Id.* § 4, p. 3, ln. 90–91.

The Senate Public Safety Committee amended sections 2 and 3 of the bill to provide that persons holding a restricted Class D license would be unable to receive a Class C license for a period of twelve months following a second violation of the ban on text messaging while driving.<sup>77</sup> The committee further amended section 4 of the bill by reducing the original \$500 fine to \$150.<sup>78</sup> The mandatory license suspension discussed in the original bill at section 2 was deleted.<sup>79</sup> Finally, the bill was expanded in scope to include drivers of all ages in its prohibition of texting while driving.<sup>80</sup> These changes were made due to concerns that the bill as originally drafted was too punitive to teenagers and exceeded the bill's intended purpose as a deterrent to text messaging through education.<sup>81</sup> The Senate Committee on Public Safety favorably reported the Senate Committee Substitute on March 9, 2010.<sup>82</sup> Senate Bill 360 was read for the third time on March 18, 2010.<sup>83</sup> On that same day, the Senate passed SB 360 by a unanimous vote of 46 to 0.<sup>84</sup> In attendance in the Senate gallery were students from Morgan County High School, Caleb Sorohan's alma mater.<sup>85</sup> The students, along with their teacher,

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77. SB 360 (SCS), 2010 Ga. Gen. Assem. A Georgia Class C Drivers' License allows for the operation of the following:

[A]ny single vehicle with a gross vehicle weight rating not in excess of 26,000 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating in excess of 10,000 pounds, provided that the combination of vehicles has a gross combined vehicle weight rating not in excess of 26,000 pounds, and any self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal conveyance.

Georgia Department of Drivers Services, *Drivers' License Classes*, <http://www.dds.ga.gov/drivers/DLdata.aspx?con=1741951492&ty=dl> (last visited Oct. 17, 2010). A Georgia Class D driver's license is a provisional license for Class C vehicles. *Id.* Class D drivers may not operate between 12:00 midnight and 6:00 a.m. *Id.* Class D passenger restrictions include only immediate family members for the initial six-month period following a Class D issuance, only one non-family member under the age of twenty-one for the second six-month period, and no more than three non-family members under the age of twenty-one after the second six-month period. *Id.*

78. SB 360 (SCS), 2010 Ga. Gen. Assem.

79. *Id.*

80. *Id.*

81. See Murphy Interview, *supra* note 33 (SB 360 was intended to mirror seat belt laws in its deterrent effect).

82. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010.

83. *Id.*

84. Georgia Senate Voting Record, SB 360 (Mar. 18, 2010).

85. Kathryn Schilliro, *Caleb's Lesson Learned: Morgan County Students Impact Legislators' Unanimous Vote for Caleb's Law*, MORGAN COUNTY CITIZEN (Madison, Ga.), Mar. 25, 2010, at 1C.

Amy Saylor, were present to lobby senators to vote in favor of SB 360.<sup>86</sup>

*Consideration and Passage by the House*

On March 22, 2010, the Georgia House of Representatives conducted the first reading SB 360.<sup>87</sup> Afterwards, Speaker of the House David Ralston (R-7th) assigned the bill to the House Public Safety and Homeland Security Committee.<sup>88</sup> This Committee substituted the text of HB 938, a similar House bill that also banned text messaging,<sup>89</sup> with the text found in SB 360 as passed by the Senate.<sup>90</sup>

In final form, HB 938 differed from the Senate Committee's substitute version of SB 360 in several key ways. First, the House substitute of SB 360 proposed a one-point penalty for driving while texting.<sup>91</sup> It also mandated the suspension of the license of any driver under the age of eighteen deemed at fault for an accident where the driver was using a "wireless telecommunication device" at the time.<sup>92</sup> Unlike the Senate Committee substitute, the House substitute would have forbidden all drivers under the age of eighteen from using a cell phone in any capacity—including traditional telephone calls.<sup>93</sup>

The House Committee substitute also provided extensive definitions of the terms "engage in a wireless communication," and "wireless telecommunications device."<sup>94</sup> The House Committee

86. *Id.*

87. *See* State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010.

88. *Id.*

89. *See supra* note 64 and accompanying text.

90. *Compare* SB 360 (SCS), 2010 Ga. Gen. Assem., with SB 360 (HCS), 2010 Ga. Gen. Assem.

91. *Compare* SB 360 (HCS), 2010 Ga. Gen. Assem. ("operating a vehicle while engaging in a prohibited wireless communication . . . 1 point."), with SB 360 (SCS), 2010 Ga. Gen. Assem. (no mention of Georgia driver's license point system).

92. *Compare* SB 360 (HCS), 2010 Ga. Gen. Assem. ("The driver's license of any operator of a motor vehicle who is determined to be at fault for causing an automobile accident while violating [Code Section 40-6-241.1(b)] shall be suspended as provided in this Code section."), with SB 360 (SCS), 2010 Ga. Gen. Assem. (no mention of driver's license suspension).

93. *Compare* SB 360 (HCS), 2010 Ga. Gen. Assem., preamble, ("to prohibit use of wireless telecommunication devices by persons under 18 years of age . . ."), with SB 360 (SCS), 2010 Ga. Gen. Assem. (no mention of prohibition on use of telecommunication devices by persons under eighteen years of age).

94. *Compare* SB 360 (HCS), § 4, p. 3, ln. 69–71, 2010 Ga. Gen. Assem. ("Engage in a wireless communication' means writing, sending, or reading a text based communication on a wireless

version allowed exceptions to the texting ban for persons reporting emergencies and crimes, public safety officers in the course of their duties, and persons sending text messages while lawfully parked.<sup>95</sup> The provisions exempting law enforcement and public safety personnel from the ban were added to HB 938 due in part to concerns that a total ban on texting might prevent law enforcement and public safety personnel from carrying out their official duties.<sup>96</sup> This exception was initially placed in HB 23, a 2009 session predecessor to SB 360, at the request of the House.<sup>97</sup> An exception was inserted to prevent citations from being issued where a person has completely stopped in an area where one may legally park.<sup>98</sup>

The House Committee substitute's penalty for violating the Bill would be a fine ranging from \$50 to \$100.<sup>99</sup> This was a lesser amount than the \$150 fine specified in the version of SB 360 passed by the Senate.<sup>100</sup> If a court determined that a violator caused an accident at the time of violation, the fine would be doubled.<sup>101</sup> In addition, the bill required that the licenses of violators holding a Class D license be suspended if they were deemed to be at fault in a motor vehicle accident at the time of their violation.<sup>102</sup> Finally, the House Committee substitute modified Code section 40-6-250 to remove

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telecommunications device, or talking or listening on a wireless telecommunication device.”; “Wireless telecommunication device” means a cellular telephone, a text messaging device . . . or any other substantially similar wireless device . . .”), with SB 360 (SCS), 2010 Ga. Gen. Assem. (no provision incorporating such definitions).

95. Compare SB 360 (HCS), § 4, p. 3, ln. 86–96, 2010 Ga. Gen. Assem. (“The provisions of this Code section shall not apply to . . . A law enforcement officer, firefighter . . . or other similarly employed public safety first responder . . . .”); with SB 360, 2010 Ga. Gen. Assem. (no provision incorporating such exemptions).

96. House Pub. Safety Video, *supra* note 31, at 31 min. 9 sec. (remarks by Rep. Allen Peake (R-137th)).

97. *Id.* at 31 min., 41 sec. (remarks by Rep. Allen Peake (R-137th)).

98. *Id.* at 33 min., 48 sec. (Representative Peake defines lawfully parked as placing a car's transmission in “P” while in a legal parking space). HB 23 (HR), 2009 Ga. Gen. Assem.

99. SB 360 (HCS), § 4, p. 4, ln. 98–99, 2010 Ga. Gen. Assem. (“Any conviction for a violation of the provisions of this Code section shall be punishable by a fine of not less than \$50 nor more than \$100.”).

100. SB 360 (SCS), § 4, p. 3, ln. 72–75, 2010 Ga. Gen. Assem. (“Any conviction for a violation of this Code section . . . shall be punished by a fine of not more than \$150.00.”).

101. SB 360 (HCS), § 4, p. 4, ln. 106–08, 2010 Ga. Gen. Assem. (“If the operator of the moving motor vehicle causes an accident at the time of a violation of this Code section, then the fine shall be equal to double the amount . . .”).

102. *Id.* at ln. 110–112 (“The suspension of the driver's license shall be implemented only upon a finding that the operator of the motor vehicle was at fault in causing the automobile accident.”).

language limiting the use of headphones and headsets for wireless communication to the operators of motorcycles, and deleted extraneous language specifically exempting people using hearing aids and law enforcement from previous prohibitions on the use of headsets and headphones.<sup>103</sup>

Although provisions to specify probable cause for a police stop in cases where an officer suspects that a person is engaging in text messaging were discussed, the final version recommended by the House Committee removed all mention of probable cause requirements due to concerns that a bright line rule might lead to over-enforcement of the law.<sup>104</sup> As a result, the concerns voiced by Committee members as well as the Georgia Prosecutors Council regarding the enforceability of the bill were not specifically dealt with in the bill.<sup>105</sup>

*Consideration and Passage of the Conference Committee and Senate Committee Substitute Bills*

On April 27, 2010, the House passed the House Committee substitute version of SB 360.<sup>106</sup> On the same day, SB 360 was sent back to the Senate, where the Senate rejected the changes made in the House Committee substitute bill.<sup>107</sup> As a result, the bill was sent to a joint conference committee.<sup>108</sup> While in Conference Committee, SB 360 was amended and portions of the original bill prohibiting holders of Class D licenses from using cell phones while driving were

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103. *Id.*

104. Video Recording of House Pub. Safety and Homeland Security Comm. Meeting, Apr. 14, 2010 at 4 min. 7 sec. (remarks by Rep. Allen Peake (R-137th)), available at [http://www.legis.state.ga.us/legis/2009\\_10/house/commroster.htm](http://www.legis.state.ga.us/legis/2009_10/house/commroster.htm) (follow link to “Public Safety and Homeland Security” and then “Archives”) [hereinafter House Pub. Safety Apr. 14, 2010]. The Prosecutor’s Council of Georgia recommended that the bill contain language describing probable cause for a police stop where an officer suspected a driver of texting. *Id.* Under the proposed standard, holding a cellular phone in a position visible to a police officer driving alongside would create probable cause for a stop. *Id.* Representative Collins expressed concern that this standard would lead to over enforcement of the law, and make it difficult to rebut a charge of texting while driving. *Id.* The provision was later removed from the House Committee version by amendment.

105. See House Pub. Safety Apr. 14, 2010, *supra* note 104, at 4 min. 7 sec. (remarks by Rep. Allen Peake (R-137th)).

106. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010.

107. *Id.*

108. *Id.*

removed from SB 360 and taken up separately in HB 23, which had been passed by the House in 2009.<sup>109</sup> Although Representative Peake noted before the House that the Conference Committee version of SB 360 contained the exact same language that the House had passed on two occasions previously, the joint Conference Committee did in fact make one significant change to the version of SB 360 as passed by the House.<sup>110</sup> The joint Conference Committee raised the maximum fine for violations of the bill to \$150—the amount initially proposed in the Senate version of the bill.<sup>111</sup>

In addition, portions of the House Committee substitute version of SB 360 dealing with additional restrictions on holders of Class D licenses were removed and replaced by language in a reinstated HB 23 that passed the House during the 2009 session.<sup>112</sup> The Senate Committee on Public Safety modified the 2009 version of HB 23 to reflect language from the 2010 House Committee substitute version of SB 360, which itself was a reiteration of HB 938.<sup>113</sup> The Committee substitute reduced the two-point penalty found in the 2009 version of HB 23 to one point to reflect the lower penalty of the House Committee Substitute version of SB 360.<sup>114</sup>

In addition, the Senate Committee substitute abolished a requirement found in section 2 of the 2009 HB 23 that mandated license suspension for any violators involved in accidents.<sup>115</sup> In place of the original section 2, the 2010 version of HB 23 inserted language modifying Code section 40-6-241 to reflect the addition of section 40-6-241.1, and to include amateur and ham radios on the list of electronic devices exempted from the bill's restrictions on wireless communication.<sup>116</sup>

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109. See Video Recording of House Proceedings, April 29, 2010 at 1 hr., 57 min., 53 sec. (remarks by Rep. Matt Ramsey (R-72nd)), available at <http://www.gpb.org/general-assembly/2010> [hereinafter House Video, April 29, 2010].

110. *Id.* (remarks by Rep. Allen Peake (R-137th) (“This is a ban for texting on all adults and has the same exact language that we had before in the two previous bills.”)).

111. O.C.G.A. § 40-6-241.1(d) (Supp. 2010).

112. *Id.* § 40-6-241.

113. Compare HB 23, as passed House, 2009 Ga. Gen. Assem., with SB 360, as passed Senate, 2010 Ga. Gen. Assem. HB 938, as passed House, 2010 Ga. Gen. Assem.

114. Compare HB 23, as passed Senate, 2010 Ga. Gen. Assem., with SB 360 (HCS), 2010 Ga. Gen. Assem.

115. Compare HB 23, as passed Senate, 2010 Ga. Gen. Assem., with HB 23, as passed House, 2009 Ga. Gen. Assem.

116. O.C.G.A. § 40-6-241 (Supp. 2010).

The Senate Committee substitute version of HB 23 also set the fine for violations of HB 23 at \$150, increasing it from the \$50 to \$100 fine outlined in the House Committee substitute version of SB 360.<sup>117</sup> The 2010 Senate Committee version of HB 23 provided for the doubling of fines for Class D license holders deemed at fault in accidents as a result of engaging in wireless telecommunications.<sup>118</sup> Finally, the Senate Committee substitute version of HB 23 removed language unrelated to texting while driving that pertained to eluding a pursuing police officer while driving, as well as language related to the revocation of licenses for Class D license holders deemed at fault in accidents as a result of wireless telecommunications.<sup>119</sup> Thus, the final version of HB 23, as passed by the House and Senate, generally reflected language that had been added by the House Public Safety and Homeland Security Committee to SB 360.<sup>120</sup> Accordingly, this language was removed from the final version of SB 360.<sup>121</sup> The language pertained largely to restrictions on the use of wireless telecommunication devices by Class D license holders.<sup>122</sup>

On April 29, 2010, the House and Senate passed the Conference Committee version of SB 360 as well as the Senate Committee Substitute version of HB 23.<sup>123</sup> On June 4, 2010, Governor Sonny Perdue signed the Acts into law.<sup>124</sup> The Acts came into effect on July 1, 2010.<sup>125</sup>

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117. Compare O.C.G.A. § 40-6-241.1 (Supp. 2010), with SB 360, HCS, 2010 Ga. Gen. Assem.

118. O.C.G.A. § 40-6-241.1 (Supp. 2010).

119. Compare O.C.G.A. § 40-6-241.1 (Supp. 2010), with HB 23, as passed House, 2009 Ga. Gen. Assem.

120. Compare SB 360 (CCR), 2010 Ga. Gen. Assem., and HB 23 (SCS LC 34 2733S), 2010 Ga. Gen. Assem., with SB 360 (HCS), 2010 Ga. Gen. Assem.

121. Compare SB 360 (CCR), 2010 Ga. Gen. Assem., and HB 23 (SCS LC 34 2733S), 2010 Ga. Gen. Assem., with SB 360 (HCS), 2010 Ga. Gen. Assem.

122. See HB 23 (SCS LC 34 2733S), 2010 Ga. Gen. Assem.

123. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010; State of Georgia Final Composite Sheet, HB 23, Apr. 29, 2010.

124. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010; State of Georgia Final Composite Sheet, HB 23, Apr. 29, 2010.

125. State of Georgia Final Composite Status Sheet, SB 360, Apr. 29, 2010; State of Georgia Final Composite Sheet, HB 23, Apr. 29, 2010.

*SB 360: "The Texting Act"*

SB 360 ("The Texting Act") is officially entitled the "Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving."<sup>126</sup> The legislature has found that the widespread "proliferation of cellular telephone use," especially the act of sending or reading text messages, contributes to the distractions that all drivers, but especially young drivers, face on Georgia roads.<sup>127</sup> The Texting Act is comprised of seven sections.<sup>128</sup>

Section 1 of the Act simply states that it "shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"<sup>129</sup> Section 2 of the Texting Act amends Code section 40-5-57, which relates to the "point system" established in Georgia to impose penalties on reckless or unsafe drivers.<sup>130</sup> The Texting Act adds a one-point penalty to the point system for the offense of operating a vehicle while text messaging.<sup>131</sup> Section 3 makes minor changes to Code section 40-6-241, which regulates the use of communication devices during the operation of a motor vehicle.<sup>132</sup> The Texting Act refers to exceptions for prohibited communication devices found in Code section 40-6-241.<sup>133</sup>

Section 4 of the Texting Act specifically addresses texting and driving.<sup>134</sup> It lists the specific definitions and penalties for the new law.<sup>135</sup> Subsection (a) allows for the "proper use of a mobile telephone for engaging in spoken communication,"<sup>136</sup> and subsection (b) lays out the penalties for violations of the Act in addition to the aforementioned one-point penalty.<sup>137</sup> Those convicted of violations of the Act are guilty of a misdemeanor punishable by a \$150 fine with

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126. SB 360, as passed, preamble, 2010 Ga. Gen. Assem.

127. *Id.*

128. *Id.*

129. *Id.*

130. O.C.G.A. § 40-5-57 (Supp. 2010).

131. *Id.*

132. *Id.* § 40-6-241.

133. *Id.* § 40-6-241.1.

134. *Id.*

135. *Id.*

136. O.C.G.A. § 40-6-241(a) (Supp. 2010).

137. *Id.* § 40-6-241.1(d).

the possibility of other costs imposed.<sup>138</sup> Finally, sections 4 and 5 incorporate “housekeeping” provisions of the Act, including the effective date of the legislation.<sup>139</sup>

*HB 23: “The Cell Phone Act”*

HB 23 (“The Cell Phone Act”) outlines the relevant definitions and penalties related to the prohibition on drivers under the age of eighteen with instructional permits or Class D licenses from using wireless telecommunications devices while operating a motor vehicle in Georgia.<sup>140</sup> Representative Ramsey proposed this as an addition to Georgia’s graduated driver license (GDL) system.<sup>141</sup> One purpose of this system is to ensure that novice drivers learn to drive under optimal circumstances, such as during the daytime and with few passengers.<sup>142</sup> Prior to the passage of HB 23 and SB 360, there was no prohibition on a teenager’s use of cell phones while driving. Representative Ramsey’s bill was intended to “plug a hole in [Georgia’s GDL law] that’s been created by the advent of time and technology.”<sup>143</sup> Thus, the Act is directed solely at minor drivers and broad enough to apply to nearly all cell phone usage.<sup>144</sup>

The Act contains five distinct sections. The first section of the Act, like section 2 of its counterpart, the Caleb Sorohan Act, adds a one-point penalty to O.C.G.A. 40-5-57(c)(1)(A) for any violation of the

138. *Id.*

139. *Id.*

140. *Id.* § 40-6-241.1(b). HB 23 applied to anyone with an instruction permit or Class D license. *Id.*; Video Recording of House Proceedings, Mar. 12, 2009 Part II at 3 hr., 17 min., 37 sec. (remarks by Rep. Matt Ramsey (R-72th)), <http://www.gpb.org/lawmakers-tv/video-archive> (follow link to “Mar. 12, 2009 House Session Part II”) [hereinafter House Video Mar. 12, 2009]. The Class D license is the transitional license for drivers in their first year of driving. O.C.G.A. § 40-5-24(a)(2),(b)(1) (Supp. 2010).

141. Georgia was one of the first states to establish a GDL system. J.F. Bowman, Michele Fields, Tom Rice, & Arlene Greenspan, *Children, Teens, Motor Vehicles and the Law*, 35 J. L. MED. & ETHICS 81, 82 (2007). See generally Sheri Coursey, Note, *Motor Vehicles and Traffic: Driver’s Licenses*, 14 GA. ST. U. L. REV. 203 (1997).

142. See Coursey, *supra* note 141, at 205–06. Georgia’s GDL system prohibits novice drivers from driving between midnight and six a.m. and limits the number of passengers. O.C.G.A. § 40-5-24(b)(2) (Supp. 2010).

143. House Video Mar. 12, 2009, *supra* note 140, at 3 hr., 17 min., 37 sec. (remarks by Rep. Matt Ramsey (R-72th)). Georgia’s GDL was passed into law as the Teen and Adult Responsible Driving Act in 1997. *Id.*; Coursey, *supra* note 141, at 206.

144. O.C.G.A. § 40-6-241.1(b) (Supp. 2010). HB 23 also provided exceptions for safety reasons. *Id.* § 40-6-241.1(c).

wireless telecommunications device requirement.<sup>145</sup> Any driver cited for violating the requirement will have a point added to her driving record.<sup>146</sup> This requirement is intended to monitor habitually negligent and dangerous drivers.<sup>147</sup> Section 2 of the Cell Phone Act makes a slight change to Code section 40-6-241, which relates to Georgia drivers' exercise of due care in the use of radios and mobile telephones.<sup>148</sup> The Cell Phone Act incorporates the ban on texting while driving into the Code but also provides that the use of amateur or ham radios does not constitute a violation of the ban on the use of telecommunication devices.<sup>149</sup>

Section 3 of the Cell Phone Act is the bulk of the new legislation limiting minors' use of cellular phones while driving.<sup>150</sup> Section 3 inserts a newly written section 40-6-241.1 into the existing Code.<sup>151</sup> This new section begins by defining relevant terms found in the bill including the characterization of "wireless telecommunications devices" as a "cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device."<sup>152</sup> It further explains that to "engage in a wireless telecommunication means talking, writing, sending, or reading a text-based communication, or listening on a wireless telecommunications device."<sup>153</sup> Section 3 prohibits minors from engaging in wireless telecommunications while driving.<sup>154</sup> It provides that any driver in Georgia under the age of eighteen must abide by these restrictions except for situations of emergency, danger to personal safety, or reporting the perpetration of criminal acts.<sup>155</sup> Violation of the texting ban is punishable by a fine of \$150,<sup>156</sup> which doubles if the violator is involved in an accident at the time of the

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145. See discussion of SB 360, *supra* note 126. Compare HB 23, as passed, § 1, p. 1, ln. 7–10, 2010 Ga. Gen. Assem., with O.C.G.A. § 40-5-57(c)(1)(A) (Supp. 2010).

146. O.C.G.A. § 40-5-57(c)(1)(A) (Supp. 2010).

147. *Id.*

148. O.C.G.A. § 40-6-241 (1990).

149. See O.C.G.A. § 40-6-241.1(a)(2) (Supp. 2010).

150. See *id.* § 40-6-241.1(b).

151. See *id.* § 40-6-241.1.

152. See *id.* § 40-6-241.1(a).

153. See *id.* § 40-6-241.1(b).

154. See *id.*

155. O.C.G.A. § 40-6-241.1(b) (Supp. 2010).

156. HB 23, as passed, § 1, p. 2, ln. 37, § 3, p. 3, ln. 74–87, 2010 Ga. Gen. Assem.

violation.<sup>157</sup> Finally, section 3 discloses that each violation of the Act constitutes a separate punishable offense.<sup>158</sup> The final two sections of the Cell Phone Act outline certain procedural aspects of the bill.<sup>159</sup>

### *Analysis*

The Acts articulate the public policy against texting while driving by establishing punishments strong enough to deter such behavior, while also carving out sufficient exceptions so as not to interfere with public safety.<sup>160</sup> In doing so, the Acts have invited criticism regarding the feasibility and fairness of enforcement and prosecution, their applicability to civil contexts, and the preemption of county ordinances relating to wireless communications while driving.

### *Law Enforcement*

During the lawmaking process, many expressed concern over how law enforcement officers would enforce provisions of any Act that bans texting while driving.<sup>161</sup> First, there was concern that law enforcement officers would have difficulty identifying when a driver is texting while driving.<sup>162</sup> However, many dismissed these concerns,

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157. *Id.* § 3, p. 3, ln. 82–84.

158. *Id.* § 3, p. 3, ln. 87.

159. *Id.* § 4, p. 1, ln. 88–89 (stating that the bill will come into effect on July 1, 2010, and that all other laws in conflict with this act are repealed).

160. See Video Recording of Senate Proceedings, Mar. 18, 2010, at 1 hr., 55 min., 45 sec. (remarks by Sen. Jack Murphy (R-27th)), available at <http://www.gpb.org/general-assembly/2010> [hereinafter Senate Video Mar. 18, 2010]; see also House Pub. Safety Jan. 27, 2010, *supra* note 31, at 16 min., 30 sec. (Remarks by Rep. Amos Amerson (R-9th) (“[B]y passing [a ban on texting while driving] you are putting out there in public for everyone to see and you’re encouraging people to not text while driving.”) (discussing HB 938)).

161. See, e.g., Senate Video Mar. 18, 2010, *supra* note 160, at 1 hr., 54 min., 46 sec. (remarks by Sen. Jack Murphy (R-27th)); see also House Video Mar. 12, 2009, *supra* note 140, at 3 hr., 17 min., 37 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (discussing concerns over enforcement of HB 23); House Pub. Safety Jan. 27, 2010, *supra* note 31, at 8 min., 22 sec. (remarks by Rep. Gloria Frazier (D-123rd)) (expressing concern over how, with respect to HB 938, law enforcement will detect whether a driver is texting or merely lawfully using a cell phone).

162. E.g., House Pub. Safety Apr. 14, 2010, *supra* note 104, at 29 min. 18 sec. (remarks by Rep. Gloria Frazier (D-123rd)) (expressing concern over how law enforcement will prove that a driver was texting with regards to SB 360); House Pub. Safety Jan. 27, 2010, *supra* note 31, at 8 min., 22 sec. (remarks by Rep. Gloria Frazier (D-123rd)) (same with regards to HB 938).

responding that it is “pretty obvious” when a person is driving while texting.<sup>163</sup>

Next, because the Acts establish a primary enforcement mechanism, law enforcement may stop drivers where there is sufficient probable cause to believe that a driver is violating one or both of the Acts.<sup>164</sup> However, the Acts fail to define “probable cause,” leaving it to the discretion of the law enforcement officer.<sup>165</sup> Thus, concerns over whether law enforcement officers will unfairly enforce the Acts through racial profiling or other means are likely to arise.<sup>166</sup> Indeed, Representative Joe Heckstall (D-62nd) voiced such concerns regarding HB 938, a similar bill banning texting while driving.<sup>167</sup> For example, after establishing a reasonable suspicion that a driver is violating the Texting Act, a law enforcement officer may further require the driver to step out of the car and be subjected to a

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163. House Pub. Safety Jan. 27, 2010, *supra* note 31, at 20 min, 16 sec. (remarks by Frank Rotundo, Executive Director of the Georgia Association of Chiefs of Police); *see also id.* at 38 min., 24 sec. (remarks by Brian Fortner, Solicitor General of Douglas County).

164. O.C.G.A. § 40-6-241.1(b) (Supp. 2010); *see also* House Pub. Safety Apr. 14, 2010, *supra* note 104, at 6 min., 56 sec. (remarks by Rep. Allen Peake (R-137th)) (discussing how officers consider probable cause); Peake Interview, *supra* note 33 (explaining that HB 938 is a primary offense law, “meaning that . . . a law enforcement officer could pull you over for observing you texting”). In contrast, states like Iowa established a secondary offense. In Iowa, though texting while driving is a violation of law, as of July 2010, a police officer cannot stop a driver merely for texting; she must have some other reason to pull the driver over. H.F. 2456, 83d GEN. ASSEMB., 2d REG. SESS. (Iowa 2009); Iowa Code § 321.178, .180B, .194, .210, .238, .276, .482A, .555 (Supp. 2009); Insurance Institute for Highway Safety, Cellphone Laws (July 2010), <http://www.iihs.org/laws/cellphonelaws.aspx>.

165. Peake Interview, *supra* note 33 (“[W]e’re going to leave it to the good judgment of law enforcement to figure out how to enforce” a ban on texting while driving.).

166. Similar concerns have been expressed elsewhere. Kyle Cheney, *Senators Proposing Big Changes to Driving Bill*, BELMONT CITIZEN-HERALD (Belmont, Ma.), Mar. 1, 2010, *available at* [http://www.wickedlocal.com/belmont/town\\_info/government/x1013161435/Senators-proposing-big-changes-to-driving-bill](http://www.wickedlocal.com/belmont/town_info/government/x1013161435/Senators-proposing-big-changes-to-driving-bill) (“Senate President Murray said Monday that the Senate opted for secondary enforcement in part because of concerns about racial profiling.”); Jennifer Friedberg, *Council OKs Ban on Cell Phones in Active School Zones*, HOUSTON CHRON., Apr. 17, 2008, at 7, *available at* 2008 WLNR 7183012 (citing attorney Frumencio Reyes Jr.’s concern that cell phone bans could lead to racial profiling and quoting Maida M. Asofsky, director of ACLU of Texas Houston Region as expressing concern that “a cell phone ban, at least to the extent it bans hands-free devices . . . gives rise to the possibility of discretionary stops and discretionary arrests”).

167. Video Recording of House Proceedings, Mar. 26, 2010 PM 3 at 37 min., 18 sec. (remarks by Rep. Joe Heckstall (D-62nd)) (“[I]n this atmosphere of over-zealousness . . . a police officer with good intent could use [HB 938] for profiling.”), *available at* [http://mediam1.gpb.org/ga/leg/2010/ga-leg-house-032610\\_PM2.wmv](http://mediam1.gpb.org/ga/leg/2010/ga-leg-house-032610_PM2.wmv) [hereinafter House Video Mar. 26, 2010]; *see also supra* notes 64, 89 and accompanying text (discussing the similarities between HB 938 and SB 360).

pat down to ensure the driver is unarmed.<sup>168</sup> This may result in unnecessary harassment of those who violate this Act. Although Representative Heckstall generally supported a ban on texting while driving, he also saw it as another potential tool police officers could use to harass minorities—particularly immigrants and African Americans.<sup>169</sup>

These concerns over enforcement were thoroughly discussed and generally considered valid.<sup>170</sup> Nonetheless, many lawmakers took the position that, even without rigorous enforcement, merely having such a law on the books would effectively deter texting while driving, which outweighs any of the Acts' potentially detrimental effects.<sup>171</sup> In essence, the Acts seek a high degree of voluntary compliance.<sup>172</sup>

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168. See *Corley v. State*, 512 S.E.2d. 41, 236 Ga. App. 302 (1999) (holding police officer does not violate the Fourth Amendment when he pats down a driver's outer clothing for the sole purpose of insuring the safety of the officer after the driver was cited for a seatbelt violation). A police officer would violate the Fourth Amendment, however, if he does a full search without a warrant. *Id.* See generally *Terry v. Ohio*, 392 U.S. 1 (1969) (establishing the Fourth Amendment standard with which a police officer must comply before conducting a warrantless search).

169. House Video Mar. 26, 2010, *supra* note 167, at 37 min., 18 sec. (remarks by Rep. Joe Heckstall (D-62nd)) (“[I]n this atmosphere of over-zealousness . . . a police officer with good intent could use this bill for profiling.”); Telephone Interview with Rep. Joe Heckstall (D-62nd), Apr. 20, 2010. Despite his concerns, which prompted him to vote against HB 938, Rep. Heckstall voted for SB 360. Georgia House of Representatives Voting Record, HB 938 (Apr. 24, 2010); Georgia House of Representatives Voting Record, SB 360 (Apr. 29, 2010).

170. See, e.g., Peake Interview, *supra* note 33 (“Enforcement is a legitimate issue, we know that. But we believe that the positive effects of [a ban on texting while driving] far outweigh the potential for weakness of enforcement.”).

171. See, e.g., House Video Mar. 12, 2009 (II), *supra* note 140, at 3 hr., 17 min., 37 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (“I don’t think there’s going to be a huge proliferation of tickets written for cell phone use. There will be some. But we know it’s going to serve as a deterrent. We know that teenagers talk. When one or two tickets get written in a community, the word’s going to get out.”) (referring to HB 23); House Pub. Safety Jan. 27, 2010, *supra* note 31, at 9 min., 8 sec. (remarks by Rep. Amos Amerson (R-9th)) (comparing HB 938 to laws requiring seatbelts in that both are difficult to enforce, but arguing that over time, enforcement gets easier and compliance increases); *id.* at 11 min., 21 sec. (remarks by Rep. Allen Peake (R-137th)) (“[T]hough it may be tough to enforce, we believe we’ll get there and figure out how to do it, let the experts figure out how to do it. What the hope is through this legislation is that it will be a significant deterrent to folks even using and texting their cell phones.”).

172. House Pub. Safety Jan. 27, 2010, *supra* note 31 at 11 min., 21 sec. (remarks by Rep. Allen Peake (R-137th)); see also *id.* at 19 min., 6 sec. (remarks by Frank Rotundo, Executive Director of the Georgia Association of Chiefs of Police) (“[W]hat we’re really hoping for [by banning texting while driving] is voluntary compliance.”).

*Prosecution*

Enforcement of the Acts may also be difficult in the court system.<sup>173</sup> For example, there was some concern that a ban on texting while driving would eliminate a prosecutor's ability to charge a driver with vehicular homicide when the driver was also cited for a violation under the Acts.<sup>174</sup> To address this issue, Representative Allen Peake (R-137th) proposed an amendment that would have clarified that the Acts in no way affect a prosecutor's ability to seek charges for vehicular homicide where appropriate.<sup>175</sup> However, this language did not pass out of Committee and was not included in the Acts as passed.<sup>176</sup>

In addition, the Acts make no change to the offense of reckless driving and thus do not appear to broaden the definition of reckless driving to include a violation of the Acts alone. Under Georgia law, "[a]ny person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving."<sup>177</sup> This offense could result in fines of up to \$1,000 and imprisonment of up to one year.<sup>178</sup> Prior to these Acts, prosecutors could seek reckless driving charges for defendants using a phone while driving, but only if the defendant's actual maneuvering of the vehicle constituted reckless conduct. For example, in *Foster v. State*, the Georgia Court of Appeals found sufficient evidence to convict the defendant of reckless driving not merely because he was using his phone while driving, but because he was also "driving over the speed limit during rush hour traffic[,] . . . swerved at least four feet over the solid white line and into the emergency lane, . . . passed over rumble strips intended to alert a driver of his location on the road, . . . scraped the side of a truck in the emergency lane, . . . struck an officer standing inside the emergency lane, and [his] vehicle carried the officer approximately 90 feet away from where he was hit and

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173. *Id.* at 9 min., 48 sec. (remarks by Rep. Gloria Frazier (D-123rd)).

174. House Pub. Safety Meeting Apr. 14, 2010, *supra* note 104, at 4 min., 46 sec. (remarks by Rep. Allen Peake (R-137th)).

175. *Id.* at 4 min., 46 sec. (remarks by Rep. Allen Peake (R-137th)).

176. O.C.G.A. § 40-6-241 (Supp. 2010).

177. *Id.* § 40-6-390.

178. *Id.*

sent the officer into and over the retaining wall.”<sup>179</sup> It seems, therefore, that a violation of the Acts alone would not necessarily rise to the level of reckless driving.<sup>180</sup>

Finally, prosecutors may have difficulty obtaining the evidence needed to prove that a driver violated the Acts. The prosecutor will likely need a warrant or subpoena to obtain cell phone records,<sup>181</sup> and as Frank Rotondo, of the Georgia Association of Chiefs of Police stated, “It’s really unrealistic to ask for warrants and to obtain information unless it was a very serious automobile accident associated with [a violation of the Acts].”<sup>182</sup>

### *Preemption*

As of June 1, 2010, DeKalb County has a local law addressing cell phone usage while driving.<sup>183</sup> This law provides for an additional \$500 fine for any driver who causes an accident while improperly using a cell phone.<sup>184</sup> Therefore, one issue that might arise is whether the Texting Act or the Cell Phone Act preempts this local ordinance.

In Georgia, a state law may preempt a local ordinance under certain circumstances.<sup>185</sup> The state law can preempt a local law expressly, through conflicts, or by implication.<sup>186</sup> The Acts specify that aside from the penalties imposed by state law “[no] additional penalty, fee, or surcharge to a fine for such offense [may] be assessed against a person for conviction [of violating the Act].”<sup>187</sup> Thus, the

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179. *Foster v. State*, 604 S.E.2d 598, 600, 269 Ga. App. 514, 515 (2004); *see also In re L.P.*, 492 S.E.2d 757, 228 Ga. App. 786 (1997) (finding evidence that two minors were speeding and switching lanes improperly was sufficient to convict for reckless driving); *Gilbert v. State*, 476 S.E.2d 39, 222 Ga. App. 787 (1996) (finding evidence that driver followed closely behind another vehicle and swerved into the car more than once sufficient to convict for reckless driving); *Holland v. State*, 356 S.E.2d 700, 182 Ga. App. 611 (1987) (finding evidence that driver swerved and skidded almost hitting boulder sufficient to convict for reckless driving).

180. *See* House Pub. Safety Jan. 27, 2010, *supra* note 31, at 38 min., 24 sec. (remarks by Brian Fortner, Solicitor General of Douglas County).

181. *Id.* at 40 min., 17 sec. (remarks by Brian Fortner, Solicitor General of Douglas County).

182. *Id.* at 28 min., 4 sec.

183. DEKALB COUNTY, GA., CODE § 17-269, *available at* [http://library6.municode.com/default-test/home.htm?infobase=10637&doc\\_action=whatsnew](http://library6.municode.com/default-test/home.htm?infobase=10637&doc_action=whatsnew). This ordinance was passed in 2006.

184. *Id.*

185. *Franklin County v. Fieldale Farms Corp.*, 507 S.E.2d 460, 461, 270 Ga. 272, 274 (1998); GA. CONST. of 1983, art. III, sec. VI, para. IV(a).

186. *Fieldale Farms Corp.*, 507 S.E.2d at 461, 270 Ga. at 274.

187. O.C.G.A. § 40-6-241.1(d)(1) (Supp. 2010).

DeKalb county ordinance is preempted to the extent that a driver has violated the state law.<sup>188</sup> Conversely, where a driver does not violate the Texting Act but violates the DeKalb county ordinance (or others like it) instead, the driver could nonetheless be charged with violating the county ordinance.

Furthermore, under the Georgia Constitution, “[l]aws of a general nature shall have uniform operation throughout [Georgia] and no local or special law shall be enacted in any case for which provision has been made by an existing general law.”<sup>189</sup> This clause likely results in general laws such as the Texting Act and the Cell Phone Act “precluding local or special laws.”<sup>190</sup>

Finally, according to the Georgia Supreme Court, “preemption is [generally] based on legislative intent.”<sup>191</sup> Senator Jack Murphy (R-27th), who introduced the Texting Act, believes that state law would preempt the local ordinance.<sup>192</sup> In contrast, Representative Kevin Levitas (D-82nd), whose constituents are entirely within DeKalb County, does not think there is a conflict between the local and state law, and without a conflict, DeKalb County’s ordinance would survive.<sup>193</sup>

### *The Acts’ Effects on Civil Litigation in Georgia*

The effect of the Acts on civil litigation in Georgia will likely arise in cases of vehicular negligence. Georgia law provides that “when the law requires a person to perform an act for the benefit of another or to

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188. Murphy Interview, *supra* note 33 (stating that the DeKalb mobile telephone ordinance is preempted by SB 360). Whereas the fine assessed to Class D license holders who engage in wireless telecommunications undoubtedly preempts the DeKalb county ordinance, preemption is less clear-cut where a class C driver’s vehicle collision results in part from voice communication on a mobile telephone. The hypothetical class C driver would not violate O.C.G.A. Code section 40-6-241.1, and would therefore not be fined for violating the Act. Thus, the provisions of the Act specifying that no other fines or penalties may be assessed for violations of the Act would not apply. This leads to inconsistent outcomes in that a class D driver involved in a vehicle collision in unincorporated DeKalb county while using a cellular phone would be fined a maximum of \$150 for their violation (under the state law); whereas a class C driver involved in the same situation (so long as he is talking, rather than texting on his wireless device) could be fined \$500 for a vehicle collision in unincorporated DeKalb county.

189. GA. CONST. of 1983, art. III, sec. VI, para. IV(a).

190. *Fieldale Farms Corp*, 507 S.E.2d at 462,270 Ga. at 274–76.

191. *Id.* at 272.

192. Murphy Interview, *supra* note 33.

193. Interview with Kevin Levitas (D-82nd) (Apr. 19, 2010).

refrain from doing an act which may injure another, . . . the injured party may recover for the breach of such legal duty if he suffers damage thereby.”<sup>194</sup> Accordingly, plaintiffs in Georgia may shift the burden of proof in civil litigation for negligence to the defendant who is negligent per se.<sup>195</sup> In order to establish negligence per se in Georgia, the plaintiff must show that (1) the defendant violated a statute, (2) the plaintiff was a member of the class the statute was designed to protect, and (3) the violation of the statute was the proximate cause of the plaintiff’s injury.<sup>196</sup> Thus, in accidents where texting may have been a proximate cause of the accident, and a motorist has pleaded guilty to texting while driving, the defendant motorist will bear the burden in proving that he exercised ordinary care or that texting was not the proximate cause of the accident.<sup>197</sup> This outcome may lead individuals cited for texting while driving to challenge the citation itself in order to prevent an accident victim from establishing a prima facie case for negligence.<sup>198</sup> Thus, where text messaging may have contributed to an accident, the consequences of pleading guilty to a traffic citation for texting while driving may include a greater likelihood that the cited party will be liable for damages.

#### *Vagueness as a Basis for Challenging the Validity of the Acts*

Under the United States Constitution, due process requires that criminal statutes not be so vague as to make their enforcement unpredictable or arbitrary.<sup>199</sup> Constitutional challenges to the Acts may include arguments that the Acts should be voided under the vagueness doctrine.<sup>200</sup> However, such challenges are unlikely to prevail because the Acts define the term “wireless

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194. O.C.G.A. § 51-1-6 (Supp. 2010).

195. GA. JUR. *Personal Injury* § 21:62 (2010); see also *Williams v. Calhoun*, 333 S.E.2d 408, 411–12, 175 Ga.App. 332, 333–34 (1985).

196. GA. JUR. *Personal Injury* § 21:62 (2010).

197. See *id.*

198. See *id.*

199. See *Chicago v. Morales*, 527 U.S. 41, 56 (1999) (“Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement.”); see also U.S. CONST. amend. V.

200. Murphy Interview, *supra* note 33.

telecommunication” narrowly to avoid being declared unconstitutionally vague.<sup>201</sup> The Acts will likely survive vagueness challenges because they carefully define the devices and functions of devices that may not be used while driving.<sup>202</sup> Similar statutes to the Acts have been passed in other states.<sup>203</sup> In total, twenty-nine states have passed legislation prohibiting text messaging while driving.<sup>204</sup> Because the Georgia law was modeled on successful legislation in other states, Senator Jack Murphy (R-27th), the Senate sponsor of SB 360, is confident that the Georgia law will be effective in deterring texting while driving and that it will survive constitutional challenges to its validity.<sup>205</sup>

### *Other Concerns*

Lawmakers have expressed additional concerns regarding the Texting Act and other bills that would prohibit cell phone use while driving. For example, Representative Steve Davis (R-109th) felt that HB 23’s prohibition on all cell phone use by minor drivers goes too far in regulating personal behavior. “The state of Georgia cannot be the parent of my child. I am the parent of my child.”<sup>206</sup> Others expressed concerns regarding the penalties attached to any such law.<sup>207</sup> However, as Senator

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201. *Id.*; see also *People v. Neville*, 737 N.Y.S.2d 251 (2002) (rejecting constitutional challenge to a New York law banning cell phone use while driving).

202. See O.C.G.A. § 40-6-241.1(a)(1)–(2) (Supp. 2010).

203. See, e.g., ARK. CODE ANN. § 27-51-1501 et. seq. (1987); CAL. VEH. CODE § 23123.5 (Supp. 2009); LA. REV. STAT. ANN. § 32:300.5 (2008); MD. CODE ANN., TRANSP. § 21-1124.1 (2006); N.J. STAT. ANN. § 39:4-97.3 (1992).

204. Cellphone Laws, Insurance Institute for Highway Safety, <http://www.iihs.org/laws/CellPhoneLaws.aspx> (last visited Oct. 17, 2010).

205. Murphy Interview, *supra* note 33.

206. House Video Mar. 12, 2009, *supra* note 140, at 3 hr., 30 min., 45 sec. (remarks by Rep. Steve Davis (R-109th)); see also House Video Mar. 26, 2010, *supra* note 167, at 19 min., 53 sec. (remarks by Rep. Ed Setzler (R-35th)) (“[W]e don’t need to make illegal someone who can safely use their blackberry to navigate or to send messages . . .”).

207. House Video Mar. 12, 2009, *supra* note 140, at 3 hr., 30 min., 45 sec. (remarks by Rep. Steve Davis (R-109th)) (pointing out that a minor fender-bender could result in the suspension of a young driver’s license who was texting at the time of the accident). *But see* House Video Mar. 26, 2010, *supra* note 167 at 13 min., 45 sec. (remarks by Rep. Tom Rice (R-51st)) (arguing that texting while driving is the biggest distraction and as deadly as drunk driving, which has harsh penalties). Another concern that was only marginally entertained was that a ban on texting while driving might result in more dangerous behavior by encouraging drivers to use their cell phones more discreetly and thus more dangerously. House Pub. Safety Jan. 27, 2010, *supra* note 31, at 15 min., 11 sec. (remarks by Rep. Bill Maddox (R-127th)).

Jack Murphy (R-27th) has stated, the intent of the Acts was not to be punitive.<sup>208</sup> Furthermore, the Texting Act excluded language that would have imposed a doubling of the fine and license suspension for drivers who cause accidents while texting.<sup>209</sup>

### *Conclusion*

The dangers of texting while driving are well-documented, especially among younger and less experienced drivers. In their attempts to curb this problem, states have led a national movement that seeks to deter young, and in some cases all, drivers from engaging in text-based communications while operating a motor vehicle. Georgia attempted to join this movement as early as 2003, but was unable to pass any substantive law. Seven years later, Governor Sonny Purdue's signature on HB 23 and SB 360 created the first Georgia laws regulating the use of cellular phones and text-based communication by certain classes of drivers.

The legislative history behind the Acts demonstrate the complications and difficulties of securing the passage of state legislation, especially considering that improving safety on Georgia roads is an issue to which most can agree. Despite this, the Acts encountered substantive debate and change at every stage in the legislative process. State legislators were forced to account for potential issues surrounding the Acts such as enforcement, prosecution, and preemption. Additionally, fine amounts, point system penalties, and license suspension provisions also required a consensus before provisions of the bill could be finalized. However, by the end of the 2010 legislative session, the Georgia House of Representatives and the Georgia Senate were able to present bills to Governor Sonny Purdue for his signature. The Acts, as passed, prohibit all Georgia drivers from texting while driving, prohibit minors from using cellular phones while driving, and will significantly enhance driver safety on roads across the state.

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208. Murphy Interview, *supra* note 33.

209. SB 360 (HCS), 2010 Ga. Gen. Assem.; *see supra* note 61 and accompanying text.

