

The Senate Committee on Public Safety offered the following substitute to HB 247:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, relating to the "Fair Business Practices Act of 1975," so as to prohibit certain
3 actions by certain digital application distribution platforms with regard to application store
4 processing services and devices used by residents of this state; to provide for definitions; to
5 amend Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to uniform
6 rules of the road, so as to provide for penalties for the commission of an offense of distracted
7 driving; to remove a process for being found not guilty of a violation in certain instances; to
8 provide for related matters; to provide for an effective date and applicability; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
13 relating to the "Fair Business Practices Act of 1975," is amended by adding a new Code
14 section to read as follows:

15 "10-1-393.16.

16 (a) For purposes of this Code section, the term:

(1) 'Developer' means any creator of a software application made available for download by a user through a digital application distribution platform or other digital distribution platform.

(2) 'Digital application distribution platform' means a digital distribution platform for applications and services provided to a user on general-purpose hardware.

(3) 'General-purpose hardware' means a general-purpose device capable of being connected to the internet, including, but not limited, to a mobile phone, smartphone, tablet, and personal computer.

(4) 'In-application payment system' means an application, service, or user interface used to process a payment from a user to a developer for a software application and digital and physical product distributed through a software application.

(b) A proprietor of a digital application distribution platform that in the previous or current calendar year has cumulative gross receipts exceeding \$100 million from sales on such digital application distribution platform to residents of this state shall not:

(1) Use the digital application distribution platform to intentionally misrepresent that installing an application or using a service that deliberately deteriorates battery performance of general-purpose hardware is necessary for security or privacy;

(2) Require a developer to use an in-application payment system as the exclusive mode of accepting payment from a user to download a software application or purchase a digital or physical product through a software application; or

(3) Remove a developer for choosing to offer an alternative in-application payment system to residents of this state.

(c) Any agreement that violates any provision of this Code section be shall void and unenforceable."

SECTION 2.

Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to uniform rules of the road, is amended by revising Code Section 40-6-241, relating to distracted driving, restrictions on operation of wireless telecommunications devices and stand-alone electronic devices, penalty, and exceptions, as follows:

"40-6-241.

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

(1) 'Stand-alone electronic device' means a device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

(2) 'Utility services' means and includes 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, cables, easements, rights of way, or associated infrastructure.

(3) 'Wireless telecommunications device' means a cellular telephone, a portable telephone, a ~~text-messaging~~ 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. Such term shall 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.

(b) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle.

(c) While operating a motor vehicle on any highway of this state, no individual shall:

(1) Physically hold or support, with any part of his or her body, a:

(A) Wireless telecommunications device, provided that such exclusion shall not prohibit the use of an earpiece, headphone device, or device worn on a wrist to conduct a voice based communication; or

(B) Stand-alone electronic device;

(2) Write, send, or read any text based communication, including but not limited to a text message, instant message, ~~e-mail, or Internet email, or internet~~ data on a wireless telecommunications device or stand-alone electronic device; provided, however, that such prohibition shall not apply to:

(A) A voice based communication which is automatically converted by such device to be sent as a message in a written form; or

(B) The use of such device for navigation of such vehicle or for global positioning system purposes;

(3) 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

(4) 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.

(d) While operating a commercial motor vehicle on any highway of this state, no individual shall:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be:

(A) In a seated driving position; or

(B) Properly restrained by a safety belt.

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

95 ~~(f)(1) Except as provided for in paragraph (2) of this subsection, any~~ Any person convicted
96 of violating this Code section shall be guilty of a misdemeanor which shall be punished as
97 follows:

98 ~~(A)(1)~~ For a first conviction with no conviction of and no plea of nolo contendere
99 accepted to a charge of violating this Code section within the previous 24 month period
100 of time, as measured from the dates any previous convictions were obtained or pleas of
101 nolo contendere were accepted to the date the current conviction is obtained or plea of
102 nolo contendere is accepted, a fine of ~~not more than~~ \$50.00, but the provisions of
103 Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the
104 costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or
105 surcharge to a fine for such offense be assessed against a person for conviction thereof;

106 ~~(B)(2)~~ For a second conviction within a 24 month period of time, as measured from the
107 dates any previous convictions were obtained or pleas of nolo contendere were accepted
108 to the date the current conviction is obtained or plea of nolo contendere is accepted, a fine
109 of ~~not more than~~ \$100.00, but the provisions of Chapter 11 of Title 17 and any other
110 provision of law to the contrary notwithstanding, the costs of such prosecution shall not
111 be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be
112 assessed against a person for conviction thereof; or

113 ~~(C)(3)~~ For a third or subsequent conviction within a 24 month period of time, as
114 measured from the dates any previous convictions were obtained or pleas of nolo
115 contendere were accepted to the date the current conviction is obtained or plea of nolo
116 contendere is accepted, a fine of ~~not more than~~ \$150.00, but the provisions of Chapter 11
117 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of
118 such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to
119 a fine for such offense be assessed against a person for conviction thereof.

120 ~~(2) Any person appearing before a court for a first charge of violating paragraph (1) of~~
121 ~~subsection (c) of this Code section who produces in court a device or proof of purchase~~

~~of such device that would allow such person to comply with such paragraph in the future
shall not be guilty of such offense. The court shall require the person to affirm that they
have not previously utilized the privilege under this paragraph.~~

(g) Subsections (c) and (d) of this Code section shall not apply when the prohibited
conduct ~~occurred~~ occurs:

(1) 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;

(2) By an employee or contractor of a utility services provider acting within the scope
of his or her employment while responding to a utility emergency;

(3) 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~~

(4) While in a motor vehicle which is lawfully parked; or

(5) While in a motor vehicle which is at a full and complete stop in compliance with the
direction of a traffic-control device or signal."

SECTION 3.

This Act shall become effective on July 1, 2021, and shall apply to all offenses committed
on and after such date.

SECTION 4.

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