

HB8 INTRODUCED



1 6Y9GZZ-1
2 By Representative Wood R.
3 RFD: Public Safety and Homeland Security
4 First Read: 07-Mar-23
5 PFD: 20-Jan-23



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SYNOPSIS:

Under existing law, a person is prohibited from using a wireless telecommunications device to write, send, or read a text-based communication while operating a motor vehicle, with exceptions.

This bill would prohibit a person from watching, viewing, recording, or capturing a photograph or video while operating a motor vehicle; would prohibit a person from physically holding a wireless telecommunications device while operating a motor vehicle; and would prohibit a person from physically holding a wireless telecommunications device to conduct voice-based communications while operating a motor vehicle, with exceptions to the prohibitions.

This bill would further provide for the criminal penalties associated with a violation.

Under existing law, a conviction for using a wireless telecommunications device to write, send, or read a text-based communication is a two-point violation on the individual's driving record.

This bill would provide that on a third or subsequent conviction the individual would receive a three-point violation on the individual's driving record.

This bill would provide a comprehensive list of



29 circumstances under which the prohibitions of the bill
30 would not apply.

31 This bill would provide that when a person is
32 first charged with a violation and the person did not
33 have a device to conduct substantially hands-free
34 voice-based technology, the trial court may dismiss the
35 charge upon proof that the person obtained a device to
36 enable substantially hands-free voice-based technology.

37 This bill would also distribute a portion of the
38 fines collected to the Alabama Department of Economic
39 and Community Affairs for the purchase of devices to
40 enable substantially hands-free voice-based
41 communications in a motor vehicle and to provide the
42 devices to low-income families in the state.

43 Section 111.05 of the Constitution of Alabama of
44 2022, prohibits a general law whose purpose or effect
45 would be to require a new or increased expenditure of
46 local funds from becoming effective with regard to a
47 local governmental entity without enactment by a 2/3
48 vote unless: it comes within one of a number of
49 specified exceptions; it is approved by the affected
50 entity; or the Legislature appropriates funds, or
51 provides a local source of revenue, to the entity for
52 the purpose.

53 The purpose or effect of this bill would be to
54 require a new or increased expenditure of local funds
55 within the meaning of the amendment. However, the bill
56 does not require approval of a local governmental



57 entity or enactment by a 2/3 vote to become effective
58 because it comes within one of the specified exceptions
59 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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66 Relating to motor vehicles; to amend Sections
67 32-5A-350, 32-5A-351, and 32-5A-352, Code of Alabama 1975, and
68 to add Sections 32-5A-350.1 and 32-5A-353 to 32-5A-359,
69 inclusive, to the Code of Alabama 1975, to provide
70 prohibitions on the use of a wireless telecommunications
71 device while operating a motor vehicle, with exceptions; to
72 further provide criminal penalties; to provide exemptions; to
73 distribute a portion of any fines collected to the Alabama
74 Department of Economic and Community Affairs for the purchase
75 of devices to enable substantially hands-free voice-based
76 communications in a motor vehicle and to provide the devices
77 to certain low-income families in the state; and in connection
78 therewith would have as its purpose or effect the requirement
79 of a new or increased expenditure of local funds within the
80 meaning of Section 111.05 of the Constitution of Alabama of
81 2022.

82 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. Sections 32-5A-350, 32-5A-351, and

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32-5A-352, Code of Alabama 1975, are amended to read as



85 follows:

86 "§32-5A-350

87 ~~(a) For purposes of this article, the following words~~
88 have the following meanings:

89 ~~(1) WIRELESS TELECOMMUNICATION DEVICE. A handheld~~
90 ~~cellular telephone, a text-messaging device, a personal~~
91 ~~digital assistant, a stand alone computer, or any other~~
92 ~~similar wireless device that is readily removable from a~~
93 ~~vehicle and is used to write, send, or read text or data~~
94 ~~through manual input. The term "wireless telecommunication~~
95 ~~device" does not include a device which is voice-operated and~~
96 ~~which allows the user to send or receive a text-based~~
97 ~~communication without the use of either hand except to~~
98 ~~activate or deactivate a feature or function.~~

99 ~~(2) WRITE, SEND, OR READ A TEXT-BASED COMMUNICATION.~~
100 ~~Using a wireless telecommunication device to manually~~
101 ~~communicate with any person using text-based communication,~~
102 ~~including, but not limited to, communications referred to as a~~
103 ~~text message, instant message, or electronic mail. The term~~
104 ~~does not include reading, selecting, or entering a telephone~~
105 ~~number or name in a cell or wireless telephone or~~
106 ~~communication device for the purpose of making a telephone~~
107 ~~call.~~

108 ~~(b) A person may not operate a motor vehicle on a public~~
109 ~~road, street, or highway in Alabama while using a wireless~~
110 ~~telecommunication device to write, send, or read a text-based~~
111 ~~communication.~~

112 ~~(c) A person who violates subsection (b) is subject to~~



113 ~~finest as follows:~~

114 ~~(1) Twenty-five dollars (\$25) for a first violation.~~

115 ~~(2) Fifty dollars (\$50) for a second violation.~~

116 ~~(3) Seventy-five dollars (\$75) for a third or subsequent~~
117 ~~violation.~~

118 ~~(d) Law enforcement officers enforcing this section may~~
119 ~~treat a violation of this section as the primary or sole~~
120 ~~reason for issuing a citation to a driver.~~

121 ~~(e) The following uses of wireless communication devices~~
122 ~~shall not be subject to the restrictions in this section:~~

123 ~~(1) An individual using a wireless communication device~~
124 ~~to obtain emergency services including, but not limited to, an~~
125 ~~emergency call to a law enforcement agency, health care~~
126 ~~provider, fire department, or other emergency services agency~~
127 ~~or entity.~~

128 ~~(2) An individual using a wireless communication device~~
129 ~~while the motor vehicle is parked on the shoulder of the~~
130 ~~highway, road, or street.~~

131 ~~(3) An individual using a wireless communication device~~
132 ~~as a global positioning or navigation system to receive~~
133 ~~driving directions which has been pre-programmed with the~~
134 ~~desired coordinates. The programming of coordinates while~~
135 ~~operating a vehicle remains a violation of this section.~~

136 (1) TEXT-BASED COMMUNICATION. The term includes, but is
137 not limited to, a text message, instant message, e-mail, or
138 Internet data communicated through a wireless
139 telecommunications device.

140 (2) UTILITY SERVICES. Electric, natural gas, water,



141 wastewater, cable, telephone, or telecommunications services
142 or the repair, location, relocation, improvement, or
143 maintenance of utility poles, transmission structures, pipes,
144 wires, fibers, cables, easements, rights-of-way, or associated
145 infrastructures.

146 (3) WIRELESS TELECOMMUNICATIONS DEVICE. A cellular
147 telephone, text-messaging device, personal digital assistant,
148 standalone computer, or any other wireless device that is used
149 to initiate or receive a wireless communication with another
150 person. The term does not include a radio, citizens band
151 radio, citizens band radio hybrid, commercial two-way radio
152 communication device or its functional equivalent,
153 subscription-based emergency communication device, prescribed
154 medical device, amateur or ham radio device, or in-vehicle
155 security, navigation, or remote diagnostic system."

156 "§32-5A-351

157 (a) A first or second conviction of this article within
158 a 24-month period shall be entered on the driving record of
159 any individual charged under this article as a two-point
160 violation.

161 (b) A third or subsequent conviction of this article
162 within a 24-month period shall be entered on the driving
163 record of any individual charged under this article as a
164 three-point violation."

165 "§32-5A-352

166 ~~(a) In any case brought by a law enforcement officer~~
167 ~~employed by the Department of Public Safety all fines shall be~~
168 ~~allocated to the State General Fund.~~



169 ~~(b) Each state, county, and municipal law enforcement~~
170 ~~agency shall maintain statistical information on traffic stops~~
171 ~~made pursuant to this article on minority groups and report~~
172 ~~that information monthly to the Department of Public Safety.~~

173 (a) When a law enforcement officer issues a citation for
174 a violation of this article, the law enforcement officer shall
175 record the race and ethnicity of the violator. Each state,
176 county, and municipal law enforcement agency shall maintain
177 the recorded information and report the information to the
178 Alabama State Law Enforcement Agency in a form and manner as
179 required by the Alabama State Law Enforcement Agency. Data
180 collected under this subsection shall be used only for
181 statistical purposes and may not contain information that may
182 reveal the identity of any individual who was issued a
183 citation or the identity of any law enforcement officer.

184 (b) Beginning in calendar year 2025, and every year
185 thereafter, on the tenth day of the regular session of the
186 Legislature, the Alabama State Law Enforcement Agency shall
187 report the data collected under subsection (a) to the
188 Governor, Lieutenant Governor, Speaker of the House of the
189 Representatives, House Minority Leader, President Pro Tempore
190 of the Senate, and Senate Minority Leader.

191 (c) The Secretary of the Alabama State Law Enforcement
192 Agency shall adopt rules for the implementation and
193 administration of this section."

194 Section 2. Sections 32-5A-350.1 and Sections 32-5A-353
195 to 32-5A-359, inclusive, are added to Article 16 of Chapter 5A
196 of Title 32, Code of Alabama 1975, to read as follows:



197 §32-5A-350.1

198 Except as provided in Section 32-5A-353, a person may
199 not operate a motor vehicle on a public road, street, or
200 highway while doing any of the following:

201 (1) Using a wireless telecommunications device to write,
202 send, read, or otherwise engage in a text-based communication.

203 (2) Watching, recording, or capturing a photograph or
204 video.

205 (3) Using a handheld wireless telecommunications device
206 to engage in a voice-based communication.

207 (4) Physically holding or otherwise supporting with any
208 part of his or her body a wireless telecommunications device.

209 §32-5A-353

210 The following are not subject to the restrictions of
211 this article:

212 (1) The use of a wireless telecommunications device to
213 obtain emergency services, including, but not limited to, an
214 emergency call to a law enforcement agency, health care
215 provider, fire department, or other emergency services agency
216 or entity.

217 (2) The use of a wireless telecommunications device
218 while the motor vehicle is parked on the shoulder of the
219 highway, road, or street.

220 (3) The use of a wireless telecommunications device as a
221 global positioning or navigation system to receive driving
222 directions; provided, however, the manual input of navigation
223 coordinates while operating a motor vehicle is a violation of
224 this article.



225 (4) The use of an earpiece, a headphone device, steering
226 wheel controls, speaker phone or any voice-activated
227 technology, or other device worn on the person or mounted onto
228 the dashboard, center console, windshield, or other part of
229 the vehicle to conduct substantially hands-free voice-based
230 wireless communications.

231 (5) The use of a continuous recording device that
232 operates within or outside the vehicle, including, but not
233 limited to, a dash camera or backup camera.

234 (6) The use of a wireless telecommunications device by
235 an employee or contractor of a utility services provider
236 within the scope of his or her employment while responding to
237 a utility emergency or performing other critical utility
238 services.

239 (7) The use of a wireless telecommunications device by a
240 law enforcement officer, emergency medical services personnel,
241 ambulance operator, firefighter, volunteer firefighter, or
242 other similarly employed public safety first responder during
243 the performance of his or her official duties.

244 (8) The use of an ignition interlock device, as defined
245 in Section 32-5A-191.4.

246 (9) For an individual 18 years of age or older, the use
247 of a wireless telecommunications device in a manner that
248 requires the physical use of the individual's hand while
249 operating a motor vehicle if both of the following occur:

250 a. The device is mounted to the vehicle, including the
251 windshield, dashboard, or center console of the vehicle, and
252 the device does not create an unsafe obstruction of the



253 person's view of the road.

254 b. The individual's hand is used to activate or
255 deactivate a feature or function of the device with the motion
256 of one swipe or tap of the individual's finger, and the swipe
257 or tap does not activate the camera, video, or gaming features
258 or functions for viewing, recording, amusement, or other
259 non-navigational functions, other than functions or features
260 related to the transportation of persons or property for
261 compensation or payment of a fee.

262 (10) The use of a wireless telecommunications device by
263 a licensed physician while responding to an emergency medical
264 situation.

265 §32-5A-354

266 (a) A person who is convicted of violating this article
267 shall be guilty of a violation and shall be punished as
268 follows:

269 (1) For a first conviction of violating this article
270 within a 24-month period of time, a person shall be punished
271 by a fine of one hundred dollars (\$100) or by 15 hours of
272 community service.

273 (2) For a second conviction of violating this article
274 within a 24-month period of time, a person shall be punished
275 by a fine of two hundred dollars (\$200) or by 30 hours of
276 community service.

277 (3) For a third or subsequent conviction of violating
278 this article within a 24-month period of time, a person shall
279 be punished by a fine of three hundred dollars (\$300) or 45
280 hours of community service, or both.



281 (b) No court costs may be imposed solely in connection
282 with the prosecution of a violation of this article.

283 §32-5A-355

284 (a) A law enforcement officer enforcing this article may
285 treat a violation of this article as the primary or sole
286 reason for issuing a citation to the operator of a motor
287 vehicle.

288 (b) A law enforcement officer enforcing this article may
289 not search a motor vehicle or the operator or passenger of the
290 motor vehicle solely because of a violation of this article.

291 (c) A law enforcement officer may not use a violation of
292 this article to establish probable cause for any other
293 violation.

294 (d) A law enforcement officer who stops a motor vehicle
295 solely for a violation of this article may not do any of the
296 following:

297 (1) Access the wireless communications device without a
298 warrant.

299 (2) Confiscate the wireless communications device while
300 awaiting the issuance of a warrant to access the device.

301 (3) Obtain consent from the motor vehicle operator to
302 search the wireless communications device through coercion or
303 other improper method. Consent to search a motor vehicle
304 operator's wireless communications device shall be free and
305 voluntary.

306 (4) Make a custodial arrest, except upon a warrant
307 issued for failure to appear for a felony or misdemeanor
308 charge.



309 (5) Search or inspect a motor vehicle or the contents
310 thereof, or search or inspect the operator or a passenger of
311 the motor vehicle.

312 (e) For purposes of enforcing this article only, a law
313 enforcement officer does not have probable cause and may not
314 stop the operator of a motor vehicle for a violation of this
315 article unless the officer visually observes the operator
316 using, holding, or physically supporting with any part of the
317 operator's body the wireless electronic communications device
318 in violation of this article.

319 §32-5A-356

320 (a) Any person appearing before a court for a first
321 charge of a violation of this article may petition the court
322 to have the charge dismissed by filing an affidavit affirming
323 the following:

324 (1) At the time of the violation, the person did not
325 possess a device to conduct substantially hands-free
326 voice-based communications.

327 (2) The person has since acquired a device or other
328 technology to enable the person to conduct substantially
329 hands-free voice-based communications in accordance with this
330 article, including an earpiece, a headphone device, steering
331 wheel controls, any voice-activated technology, or other
332 device worn on the person, installed in the vehicle, or
333 mounted onto the dashboard, center console, windshield, or
334 other part of the vehicle to conduct substantially hands-free
335 voice-based wireless communications.

336 (b) The provisions of subsection (a) shall only apply to



337 a person who has not previously been charged for a violation
338 of this article.

339 (c) A court receiving an affidavit under subsection (a)
340 may accept the affidavit and dismiss the charge upon a finding
341 that the person has not previously been charged under this
342 article; that the person has not previously utilized the
343 protections of this section; and that the person has
344 demonstrated in a manner satisfactory to the court that the
345 person has acquired a device or other technology to conduct
346 substantially hands-free voice-based communications.

347 (d) No court costs shall be assessed upon a dismissal
348 under this section.

349 (e) The Administrative Office of Courts (ADC), with the
350 approval of the Chief Justice, shall adopt uniform rules for
351 the administration of this section. To assist in the
352 administration of this section, ADC shall maintain an online
353 database of individuals who have been charged with a violation
354 of this article. Any information contained in any database
355 created or maintained pursuant to this subsection shall be
356 used strictly for purposes of administering this section; and
357 such information shall not be a public record and shall be
358 exempt from disclosure under the Alabama Open Records Act,
359 Section 36-12-40.

360 §32-5A-357

361 Twenty-five dollars (\$25) of each fine imposed under
362 this article shall be deposited in the State Treasury to the
363 credit of the Traffic Safety Trust Fund, administered by the
364 Traffic Safety Section of the Alabama Department of Economic



365 and Community Affairs, which amount shall be used to
366 distribute to families of limited income in the state vouchers
367 for a device or technology to conduct substantially hands-free
368 voice-based wireless communications. The department shall
369 administer the program free of charge.

370 §32-5A-358

371 Nothing contained in this article shall be deemed a
372 violation of any law which would otherwise nullify or change
373 in any way the provisions or coverage of any insurance
374 contract.

375 §32-5A-359

376 Beginning July 1, 2023, and continuing through December
377 31, 2023, for any violation of this article, a law enforcement
378 officer may only issue a written warning.

379 Section 3. Although this bill would have as its purpose
380 or effect the requirement of a new or increased expenditure of
381 local funds, the bill is excluded from further requirements
382 and application under Section 111.05 of the Constitution of
383 Alabama of 2022, because the bill defines a new crime or
384 amends the definition of an existing crime.

385 Section 4. This act shall become effective July 1, 2023,
386 following its passage and approval by the Governor, or its
387 otherwise becoming law.