

2018 Regular Session

HOUSE BILL NO. 619

BY REPRESENTATIVES HUVAL, STEVE CARTER, AND TALBOT

TRAFFIC/VIOLATIONS: Provides with respect to the use of a wireless telecommunications device while operating a motor vehicle

1 AN ACT

2 To amend and reenact R.S. 15:571.11(A)(4) and R.S. 32:300.5 and to repeal R.S. 32:300.6,
3 300.7, and 300.8, relative to the use of certain wireless telecommunications devices
4 while operating a motor vehicle; to provide for definitions; to provide relative to
5 penalties for moving violations; to provide for exceptions; to provide with respect
6 to traffic stops; to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 15:571.11(A)(4) is hereby amended and reenacted to read as follows:

9 §571.11. Dispositions of fines and forfeitures

10 A.

11 * * *

12 (4) Notwithstanding any provision of law to the contrary, twenty-five dollars
13 from all fines collected pursuant to R.S. 32:300.5, ~~300.6, 300.7, and 300.8~~ shall be
14 distributed to the indigent defender fund of the judicial district in which the citation
15 was issued.

16 * * *

17 Section 2. R.S. 32:300.5 is hereby amended and reenacted to read as follows:

18 ~~§300.5. Use of certain wireless telecommunications devices for text messaging and~~
19 ~~social networking prohibited~~

20 ~~A.(1) Except as provided in Subsection B of this Section, no person shall~~
21 ~~operate any motor vehicle upon any public road or highway of this state while using~~

1 ~~a wireless telecommunications device to write, send, or read a text-based~~
2 ~~communication. For purposes of this Section, a person shall not be deemed to be~~
3 ~~writing, reading, or sending a text message if the person reads, selects, or enters a~~
4 ~~telephone number or name in a wireless telecommunications device for the purpose~~
5 ~~of making a telephone call.~~

6 ~~(2) No person shall operate any motor vehicle upon any public road or~~
7 ~~highway of this state while using a wireless telecommunications device to access,~~
8 ~~read, or post to a social networking site.~~

9 ~~(3)(a) "Wireless telecommunications device" means a cellular telephone, a~~
10 ~~text-messaging device, a personal digital assistant, a stand-alone computer, or any~~
11 ~~other substantially similar wireless device that is readily removable from the vehicle~~
12 ~~and is used to write, send, or read text or data through manual input. A "wireless~~
13 ~~telecommunications device" shall not include any device or component that is~~
14 ~~permanently affixed to a motor vehicle. It does not include citizens band radios,~~
15 ~~citizens band radio hybrids, commercial two-way radio communication devices, two-~~
16 ~~way radio transmitters or receivers used by licensees of the Federal Communication~~
17 ~~Commission in the Amateur Radio Service, or electronic communication devices~~
18 ~~with a push-to-talk function.~~

19 ~~(b) "Write, send, or read a text-based communication" means using a~~
20 ~~wireless telecommunications device to manually communicate with any person by~~
21 ~~using a text-based communication referred to as a text message, instant message, or~~
22 ~~electronic mail.~~

23 ~~(c) "Access, read, or post to a social networking site" means using a wireless~~
24 ~~telecommunications device to access, read, or post on such device to any web-based~~
25 ~~service that allows individuals to construct a profile within a bounded system,~~
26 ~~articulate a list of other users with whom they share a connection, and communicate~~
27 ~~with other members of the site.~~

28 ~~B. The provisions of Paragraph (A)(1) of this Section shall not apply to the~~
29 ~~following:~~

1 ~~(1) Any law enforcement officer, firefighter, or operator of an authorized~~
2 ~~emergency vehicle while engaged in the actual performance of his official duties.~~

3 ~~(2) An operator of a moving motor vehicle using a wireless~~
4 ~~telecommunications device to:~~

5 ~~(a) Report illegal activity.~~

6 ~~(b) Summon medical or other emergency help.~~

7 ~~(c) Prevent injury to a person or property.~~

8 ~~(d) Relay information between a transit or for-hire operator and that~~
9 ~~operator's dispatcher, in which the device is permanently affixed to the vehicle.~~

10 ~~(e) Navigate using a global positioning system.~~

11 ~~(3) A physician or other health care provider using a wireless~~
12 ~~telecommunications device to communicate with a hospital, health clinic or the~~
13 ~~office of the physician, or to otherwise provide for the health care of an individual~~
14 ~~or medical emergency through a text-based communication.~~

15 ~~C.(1) The first violation of the provisions of this Section shall be punishable~~
16 ~~by a fine of not more than five hundred dollars.~~

17 ~~(2) Each subsequent violation shall be punishable by a fine of not more than~~
18 ~~one thousand dollars.~~

19 ~~(3) If the person is involved in a crash at the time of violation, then the fine~~
20 ~~shall be equal to double the amount of the standard fine imposed in this Subsection~~
21 ~~and the law enforcement officer investigating the crash shall indicate on the written~~
22 ~~accident form that the person was using a wireless telecommunications device at the~~
23 ~~time of the crash.~~

24 ~~(4) Any violation of this Section shall constitute a moving violation.~~

25 ~~§300.8.~~ §300.5. Use of wireless telecommunications devices ~~in school zones~~
26 ~~prohibited; exceptions~~

27 A. As used in this Section, the following terms shall have the meanings
28 ascribed to them in this Section, unless the context clearly indicates a different
29 meaning:

1 (1) "Access, read, or post to a social networking site" means using a wireless
2 telecommunications device to access, read, ~~or post on such device~~ view,
3 communicate, post, or transmit electronic data, including text, video, or photographs
4 from or to any web-based service that allows individuals to construct a profile within
5 a bounded system, articulate a list of other users with whom they share a connection,
6 and communicate with other members of the site.

7 (2) "Engage in a call" means talking or listening during a voice transmission
8 on a wireless telecommunications device or manually entering names or phone
9 numbers to initiate a call.

10 (3) "Wireless telecommunications device" means a cellular telephone, a text-
11 messaging device, a personal digital assistant, a stand-alone computer, or any other
12 substantially similar wireless device that is readily removable from the vehicle and
13 is used to write, access, send, or read, ~~text~~ view, communicate, post, or transmit
14 audio, or electronic data, including text, video, or photographs through manual input.
15 ~~A "wireless~~ "Wireless telecommunications device" shall not mean ~~include~~ any
16 device or component that is permanently affixed to a motor vehicle, including those
17 that provide a hands-free capability for a wireless telecommunications device. ~~It~~
18 ~~does not include~~ a portable hands-free wireless telephone, an electronic
19 communication device used hands-free, an electronic communication device used
20 with a wired or wireless headset or through a short-range wireless interconnection,
21 citizens band radios, citizens band radio hybrids, commercial two-way radio
22 communications devices, two-way radio transmitters or receivers used by licensees
23 of the Federal Communication Commission in the Amateur Radio Service, or
24 electronic communication devices with a push-to-talk function.

25 (4) "Write, send, or read a text-based communication" means using a
26 wireless telecommunications device to manually communicate with any person by
27 using a text-based communication including but not limited to a text message, instant
28 message, or electronic mail.

1 B.(1) Except as provided in Subsection C of this Section, no person shall
2 operate any wireless telecommunications device while operating a motor vehicle
3 upon any public road or highway ~~during the posted hours within a school zone on~~
4 ~~such public road or highway.~~

5 (2) Operating a wireless telecommunications device shall include:

6 ~~(1)~~ (a) Engaging in a call.

7 ~~(2)~~ (b) Writing, sending, or reading a text-based communication.

8 ~~(3)~~ (c) Accessing, reading, or posting to a social networking site.

9 (d) Accessing, viewing, posting, editing, or creating a video, photograph, or
10 other image.

11 (e) Accessing, reading, viewing, composing, browsing, transmitting, saving,
12 or retrieving electronic data from any application or other media.

13 (f) Using any other application or feature of a wireless telecommunications
14 device by making manual entries of letters, numbers, symbols, commands, or any
15 combination thereof.

16 (g) Holding a wireless telecommunications device in either or both hands.

17 C.(1) The provisions of Subsection B of this Section shall not apply to any
18 of the following persons while they are performing their official duties:

19 (a) A law enforcement officer.

20 (b) A firefighter.

21 (c) An operator of an authorized emergency vehicle.

22 ~~C.~~ (2) The provisions of Subsection B of this Section shall not apply to a
23 person who uses a wireless telecommunications device ~~and to~~ does do any of the
24 following:

25 ~~(1)~~ (a) ~~Reports~~ Report a traffic collision, medical emergency, other
26 emergency, or serious road hazard.

27 ~~(2)~~ (b) ~~Reports~~ Report a situation in which the person believes that an
28 individual ~~his personal safety~~ is in jeopardy of serious injury or death.

1 ~~(3) Reports or averts the perpetration or potential perpetration of a criminal~~
2 ~~act against the driver or another person.~~

3 (c) Relay information between a transit or for-hire operator, including a
4 transportation network company driver, and that operator's dispatcher, in which the
5 device is affixed to the vehicle.

6 (d) Navigate using a global positioning system.

7 ~~(4) (e) Operates~~ Operate a wireless telecommunications device while the
8 motor vehicle is stationary or lawfully parked.

9 ~~(5) Uses a wireless telecommunications device in an official capacity as an~~
10 ~~operator of an authorized emergency vehicle.~~

11 D.(1) Any ~~violation of person who violates~~ person who violates this Section shall ~~constitute a~~
12 ~~moving violation~~ be subject to the following penalties:-

13 (2)(a) The first violation of the provisions of this Section shall be punishable
14 by a fine of not more than ~~five hundred~~ one hundred twenty-five dollars.

15 (b) ~~Each subsequent~~ The second violation shall be punishable by a fine of
16 not more than ~~one thousand~~ two hundred fifty dollars, ~~and a suspension of driver's~~
17 ~~license for a sixty-day period.~~

18 (c) Any subsequent violation shall be punishable by a fine of not more than
19 two hundred fifty dollars and suspension of the violator's driver's license for a fifteen
20 day period.

21 ~~(e)(d) If a person~~ the operator of a motor vehicle is involved in a ~~collision~~
22 ~~crash~~ at the time of the violation, ~~then~~ the fine shall be equal to double the amount
23 of the standard fine imposed in this Subsection. The ~~and the~~ law enforcement officer
24 investigating the collision shall indicate on the written accident report that the person
25 was using a wireless telecommunications device at the time of the collision.

26 (3) ~~Use of a wireless telecommunications device for any of the purposes~~
27 provided for in Subsection C of this Section shall be an affirmative defense ~~against~~
28 ~~an alleged~~ to a violation of this Section and the alleged violator for the person may
29 ~~to produce documentary or other evidence in support of this defense that the wireless~~

1 ~~telecommunications device that is the basis of the alleged violation was used for~~
2 ~~emergency purposes as provided in Subsection C of this Section.~~

3 ~~E. The provisions of this Section shall only apply within a school zone upon~~
4 ~~a public road or highway during posted hours when signs are located in a visible~~
5 ~~manner in each direction that indicate the use of a hand-held wireless~~
6 ~~communications device is prohibited while operating a motor vehicle.~~

7 E. Probable cause for violation of this Section shall be based solely upon a
8 law enforcement officer's clear and unobstructed view of a person using a wireless
9 telecommunications device as prohibited by this Section. A law enforcement officer
10 shall not search or inspect a motor vehicle, its contents, the driver, or a passenger
11 solely because of a violation of this Section.

12 Section 3. R.S. 32:300.6, 300.7, and 300.8 are hereby repealed in their entirety.

13 Section 4. This Act shall become effective January 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 619 Reengrossed

2018 Regular Session

Huval

Abstract: Modifies provisions applicable to the use of a wireless communications device while operating a motor vehicle.

Present law prohibits the use of wireless telecommunications devices in school zones.

Proposed law extends the prohibition to include the general usage of wireless telecommunications devices while driving.

Present law defines "access, read, or post to a social networking site" as using a wireless telecommunications device to access, read, or post on such device to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

Proposed law modifies present law by defining the term "access, read, or post to a social networking site" as using a wireless telecommunications device to access, read, view, communicate, post, or transmit electronic data, including text, video, or photographs from or to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

Present law defines the term "engage in a call" as talking or listening on a wireless telecommunications device.

Proposed law modifies present law by defining the term "engage in a call" as talking or listening during a voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call.

Present law defines the term "wireless telecommunications device" as a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input.

Proposed law modifies present law by defining the term "wireless telecommunications device" as a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and used to access, send, read, view, communicate, post, or transmit audio, text, or electronic data including text, video, or photographs through manual input or manipulation.

Present law provides that a "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. Further provides that it does not include a hands-free wireless telephone, an electronic communication device used hands-free, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.

Proposed law modifies present law by adding to the exclusion for the term of "wireless telecommunications device", an electronic communication device used with a wired or wireless headset or through a short -range wireless interconnection.

Present law specifies that operating a wireless telecommunications device includes engaging in a call; writing, sending, or reading a text-based communication; and accessing, reading, or posting to a social networking site.

Proposed law adds to present law the use of any other application or feature of a wireless telecommunications device by making manual entries of letters, numbers, symbols, or any combination thereof; accessing, viewing, posting, editing, or creating a video, photograph, or other image; accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application or other media; or holding a wireless telecommunications device in either or both hands.

Proposed law provides exceptions for operating a wireless telecommunication device while operating a motor vehicle upon any public road or highway for law enforcement officers, firefighters, and operators of authorized emergency vehicles while they are performing their official duties.

Present law provides exceptions for operating a wireless telecommunication device while operating a motor vehicle upon any public road or highway for a person who uses a wireless telecommunication device to report a traffic collision, medical emergency, or serious road hazard; to report a situation in which the person believes his personal safety is in jeopardy; to report or avert the perpetration or potential perpetration of a criminal act against the driver or another person; or while the motor vehicle is in park.

Proposed law modifies the exception in present law by specifying that it applies to a person using a wireless telecommunications device to report any other emergency; to report a situation in which the person believes that an individual is in jeopardy of serious injury or death; to relay information between a transit or for-hire operator, including a transportation network company driver, and that operator's dispatcher, in which the device is affixed to the vehicle; to navigate using a global positioning system; or while the vehicle is stationary.

Proposed law removes the exceptions for a person using a wireless telecommunications device to report a situation in which the person believes his person safety is in jeopardy, or report or avert the perpetration or potential perpetration of a criminal act against the driver or another person.

Present law provides that any violation of present law will constitute a moving violation including a fine of not more than \$500 for the first violation and a fine of not more than \$1,000 and a 60-day suspension of the violator's driver's license.

Proposed law removes the provision making such violations a moving violation and decreases the fine for the first violation to not more than \$125, decreases the fine for the second offense to not more than \$250, and adds a fine for a third violation not to exceed \$250 with a 15-day suspension of the violator's driver's license.

Present law requires that a person involved in a collision at the time of the violation of present law be fined equal to double the amount of the standard fine imposed in present law.

Proposed law modifies present law by declaring that the operator of a motor vehicle involved in a crash at the time of the violation of present law must be fined equal the amount of the standard fine imposed in present law.

Present law establishes an affirmative defense against an alleged violation of present law by allowing the person to produce documentary or other evidence that the wireless telecommunications device that is the basis of the alleged violation was used for emergency purposes as provided for in present law.

Proposed law modifies present law by specifying that use of a wireless telecommunications device for any of the exceptions provided for in present law is an affirmative defense to a violation of present law in support of which the alleged violator may produce documentary or other evidence.

Present law specifies that the provisions of present law only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand held wireless communications device is prohibited while operating a motor vehicle.

Proposed law repeals this provision.

Proposed law specifies that probable cause for a violation of proposed law must be based solely upon a law enforcement officer's clear and unobstructed view of a person violating proposed law. Further provides that a violation of proposed law will not be used as a basis to search or inspect a motor vehicle, its contents, the driver, or a passenger.

Effective date Jan. 1, 2019.

(Amends R.S. 15:571.11(A)(4) and R.S. 32:300.5; Repeals R.S. 32:300.6, 300.7, and 300.8)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Provide relative to using a wireless telecommunications device to access, communicate, post, or transmit electronic data, including text, video, or photographs from or to any web-based service.

3. Add using any other application or feature of a wireless telecommunications device by making a command and holding a wireless telecommunications device in either or both hands to the list of what operating a wireless telecommunications device includes.
4. Add operating a wireless telecommunications device while the vehicle is stationary to the list of exceptions for using a wireless telecommunications device.
5. Change the amount of the fine for the first violation from \$500 to \$125.
6. Change the amount of the fine for the second violation from \$1,000 to \$250 and removes the 60-day suspension of the violator's driver's license.
7. Add a fine for any subsequent violation after the second of \$250 and adds a 15-day suspension of the violator's driver's license.
8. Clarify that if the operator of a motor vehicle is involved in a crash at the time of the violation, the fine shall be equal to double the amount of the standard fine imposed in present law.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Remove references in present law to present law statutes that are being repealed.
3. Remove language that designates a violation of present law and proposed law as a moving violation.
4. Provide an effective date of Jan. 1, 2019.
5. Provide that probable cause for a violation of proposed law must be based solely upon a law enforcement officer's clear and unobstructed view of a person violating proposed law.
6. Provide that a violation of proposed law will not be used as a basis to search or inspect a motor vehicle, its contents, the driver, or a passenger.
7. Provide that an electronic communication device used with a wired or wireless headset or through a short-range wireless interconnection does not mean a wireless communication device as provided for in proposed law.