

2020 Regular Session

SENATE BILL NO. 50

BY SENATOR MCMATH

TRAFFIC. Prohibits use of a handheld wireless telecommunications device by a person when operating a motor vehicle upon any public roadway in this state. (8/1/20)

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 prohibition of the use of certain wireless
4 telecommunications devices while operating a motor vehicle; to provide for
5 definitions; to provide for exceptions and penalties relative to the use of certain
6 wireless telecommunications devices while operating a motor vehicle; and to provide
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

10 §571.11. Dispositions of fines and forfeitures

11 A.(1) * * *

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

17 §300.5. Use of wireless telecommunications devices; ~~for text messaging and social~~

1 ~~networking; prohibited;~~ **exceptions**

2 ~~A.(1) Except as provided in Subsection B of this Section, no person shall~~
3 ~~operate any motor vehicle upon any public road or highway of this state while using~~
4 ~~a wireless telecommunications device to write, send, or read a text-based~~
5 ~~communication. For purposes of this Section, a person shall not be deemed to be~~
6 ~~writing, reading, or sending a text message if the person reads, selects, or enters a~~
7 ~~telephone number or name in a wireless telecommunications device for the purpose~~
8 ~~of making a telephone call.~~

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

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

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

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

1 ~~with other members of the site.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 meaning:

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

7 (2) "Engage in a call" means talking or listening during a voice
8 transmission on a wireless telecommunications device or manually entering
9 names or telephone numbers to initiate a voice transmission, except when using
10 a hands-free wireless telephone.

11 (3) "Wireless telecommunications device" means a cellular telephone,
12 a text-messaging device, a personal digital assistant, a stand-alone computer or
13 other electronic device, or any other substantially similar portable wireless
14 device that is readily removable from the vehicle and is used to write, send, or
15 read text or data through manual input. "Wireless telecommunications device"
16 shall not mean any device or component permanently affixed to a motor vehicle,
17 nor shall it mean any device used hands-free, citizens band radios, citizens band
18 radio hybrids, commercial two-way radio communications devices, two-way
19 radio transmitters or receivers used by licensees of the Federal Communication
20 Commission in the Amateur Radio Service, or electronic communication devices
21 with a push-to-talk function.

22 (4) "Write, send, or read a text-based communication" means using a
23 text message, instant message, or electronic mail, or other text-based application
24 to manually communicate with any person.

25 B.(1) Except as provided in Subsection C of this Section, no person shall
26 operate any wireless telecommunications device while operating a motor vehicle
27 upon any public road or highway.

28 (2) Operating a "wireless telecommunication device" shall mean any of
29 the following:

1 **(a) Engaging in a call.**

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

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

4 **(d) Accessing, viewing, posting, editing, or creating a video, photograph,**
5 **or other image.**

6 **(e) Accessing, reading, viewing, composing, browsing, transmitting,**
7 **saving, or retrieving electronic data from any application other than media.**

8 **(f) Using any other application or feature of a wireless**
9 **telecommunications device by making manual entries of letters, numbers,**
10 **symbols, or any combination thereof.**

11 **(g) Holding or physically supporting a wireless telecommunications**
12 **device in either or both hands or with any part of the body, except for an**
13 **earpiece or head phone device or a device worn on the wrist to talk or listen**
14 **during voice transmission.**

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

17 **(a) A law enforcement officer.**

18 **(b) A firefighter.**

19 **(c) The operator of an authorized emergency vehicle.**

20 **(2) The provisions of Subsection B of this Section shall not apply to a**
21 **person who uses a wireless telecommunications device to do any of the**
22 **following:**

23 **(a) Report a traffic collision, medical emergency, other emergency, or**
24 **serious road hazard.**

25 **(b) Report a situation in which the person believes that an individual is**
26 **in jeopardy of serious bodily injury or death.**

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

1 (d) View data or images related to navigation of a motor vehicle using a
2 hands-free global positioning system.

3 (e) Operate a wireless telecommunications device while the motor
4 vehicle is lawfully stationary and not in violation of any other law, except when
5 an individual is using the telecommunication device to write, send, or read a text
6 based communication or using the telecommunication device to access, read, or
7 post to a social media website.

8 D.(1) Any violation of this Section shall constitute a moving violation.

9 (2)(a) The first violation of the provisions of this Section shall be
10 punishable by a fine of not more than one hundred dollars or less than twenty-
11 five dollars.

12 (b) The second violation of the provisions of this Section shall be
13 punishable by a fine of not more than three hundred dollars but not less than
14 one hundred dollars.

15 (c) The third violation shall be punishable by a fine of not more than
16 three hundred dollars but not less than one hundred dollars and shall include
17 the suspension of the person's driver's license for a period of thirty days.

18 (d) If the operator of a motor vehicle is involved in a crash at the time of
19 the violation that fine shall be equal to double the amount of the standard fine
20 imposed in this Subsection. The law enforcement officer investigating the crash
21 shall indicate on the written accident report that the operator of a motor vehicle
22 was using a wireless telecommunications device at the time of the crash.

23 (3) Use of a wireless telecommunications device for any of the purposes
24 provided for in Subsection C of this Section shall be an affirmative defense to
25 a violation of this Section in support of which the operator of a motor vehicle
26 may produce documentary or other evidence in support of this defense.

27 (4) For any violation occurring before January 1, 2021, the law
28 enforcement officer shall only issue a written warning.

29 E. A law enforcement officer shall not do any of the following based

voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call.

Present law provides that "wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand alone computer or other electronic device, 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. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication 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 amends present law to add that a "wireless telecommunications device" shall not mean a cellular telephone used hands-free or an electronic communication device used hands-free.

Present law provides that "write, send, or read a text-based communication" means using a text message, instant message, or electronic mail, or other text-based application to annually communicate with any person.

Proposed law retains present law.

Present law provides with some exceptions that (1) no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to write, send, or read a text-based communication, and that a person shall not be deemed to be writing, reading, or sending a text message if the person reads, selects, or enters a telephone number or name in a wireless telecommunications device for the purpose of making a telephone call, and that (2) no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to access, read, or post to a social networking site.

Proposed law amends present law to provide that with some exceptions that no person shall operate a motor vehicle upon any public roadway in this state while using any wireless telecommunication device to access, read, or post to a social networking site, to engage in a call, or to write, send, or read a text-based communication. Proposed law adds that using a wireless telecommunications device shall include:

- (1) Engaging in a call.
- (2) Writing, sending, or reading a text-based communication.
- (3) Accessing, reading, or posting to a social networking site.
- (4) Accessing, viewing, posting, editing, or creating a video, photograph, or other image.
- (5) Accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application other than media.
- (6) Using any other application or feature of such a device by making manual entries of letters, numbers, symbols, or any combination thereof.
- (7) Holding or physically supporting a wireless telecommunication device in either or both hands or with any part of the body, except for an earpiece or head phone device or a device worn on the wrist to talk or listen during voice transmission.

Present law provides that it shall not apply to:

- (1) Any law enforcement officer, firefighter, or operator of an authorized emergency vehicle while engaged in the actual performance of his official duties.
- (2) An operator of a moving motor vehicle using a wireless telecommunications device to:
 - (a) Report illegal activity.
 - (b) Summon medical or other emergency help.
 - (c) Prevent injury to a person or property.
 - (d) Relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.
 - (e) Navigate using a global positioning system.
- (3) A physician or other healthcare provider using a wireless telecommunications device to communicate with a hospital, health clinic or the office of the physician, or to otherwise provide for the healthcare of an individual or medical emergency through a text-based communication.

Proposed law amends present law exceptions to provide that proposed law:

- (1) Does not apply to any of the following persons while they are performing their official duties:
 - (a) A law enforcement officer.
 - (b) A firefighter.
 - (c) The operator of an authorized emergency vehicle.
- (2) Does not apply to a person:
 - (a) Who reports a traffic collision, medical emergency, other emergency, or serious road hazard.
 - (b) Who reports a situation where the person believes that an individual is in jeopardy of serious bodily injury or death.
 - (c) Who relays 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.
 - (d) Who navigates using a global positioning system.
 - (e) Who operates a wireless telecommunications device while the motor vehicle is lawfully stationary and not in violation of any other law, except when an individual is using the telecommunication device to write, send or read a text based communication or using the telecommunication device to access, read, or post to a social media website.

Proposed law removes present law exceptions which were applicable to persons using a wireless telecommunications device to report a situation when a person believed his own personal safety was in jeopardy, or to avert the perpetration or potential perpetration of a criminal act against the driver or another person.

Present law provides that any violation of its provisions is a moving violation.

Proposed law retains present law.

Present law provides penalties for violation of its provisions as follows:

- (1) The first violation is punishable by a fine of \$500.
- (2) Each subsequent violation is punishable by a fine of not more than \$1,000.
- (3) Double the amount of the standard fine is imposed if a person is involved in a collision at the time of the violation and the law enforcement officer investigating the collision is required to indicate on the written accident report that the person was using a wireless telecommunications device at the time of the collision.

Proposed law amends present law by reducing the fine for a first violation from not more than \$100 or less than \$25.

Proposed law amends present law to add a second violation that is punishable by a fine of not more than \$300 but not less than \$100.

Proposed law amends present law to add a third violation that is punishable by a fine of not more than \$300 but not less than \$100 and shall include suspension of drivers license for 30 days. Proposed law further provides that if the operator of the vehicle is involved in a crash at the time violation, the fine should be double the amount of the standard fine.

Proposed law provides that any violation occurring before January 1, 2021, the law enforcement officer shall only issue a written warning.

Proposed law provides that use of a wireless telecommunications device for any of the exceptions is an affirmative defense to a violation and the alleged violator may produce documentary or other evidence in support of this defense.

Proposed law provides that law enforcement officers shall not do any of the following based solely on the violation. Seize, search view or require the forfeiture of a wireless telecommunication device, search or request to search a motor vehicle, motor vehicle operator, or passenger, or make a custodial arrest except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine.

Effective August 1, 2020.

(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 Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Technical amendments.
2. Amends definition of "Engaging in call".
3. Amends definition of "Wireless telephone communication".
4. Amends definition of "Write, send, or text-based communication".
5. Adds holding or supporting a wireless telecommunication device as a form of using a wireless telecommunication device.

6. Amends fees to violation under this Section.
7. Adds a written warning to violations occurring before January 1, 2021.
8. Adds search and seizure restrictions to law enforcement officers.