

2020 Regular Session

SENATE BILL NO. 50

BY SENATOR MCMATH AND REPRESENTATIVE HUVAL

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 **on a first violation** pursuant to R.S. 32:300.5, ~~300.6, 300.7,~~  
14 ~~and 300.8~~ shall be distributed to the indigent defender fund of the judicial district in  
15 which the citation was issued **and fifty dollars from each fine collected on any**  
16 **subsequent violation pursuant to R.S. 32:300.5 shall be distributed to the**  
17 **indigent defender fund of the judicial district in which the citation was issued.**

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

2 §300.5. Use of wireless telecommunications devices; ~~for text messaging and social~~  
3 ~~networking; prohibited; exceptions~~

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

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

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

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

28 (c) ~~"Access, read, or post to a social networking site" means using a wireless~~  
29 ~~telecommunications device to access, read, or post on such device to any web-based~~

1 ~~service that allows individuals to construct a profile within a bounded system,~~  
2 ~~articulate a list of other users with whom they share a connection, and communicate~~  
3 ~~with other members of the site.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20                   **(b) A firefighter.**

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

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

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

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

29                   **(c) Relay information between a transit or for-hire operator, including**

1 a transportation network company driver, and that operator's dispatcher, in  
2 which the device is affixed to the vehicle.

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

5 (e) Operate a wireless telecommunications device while the motor  
6 vehicle is lawfully stationary and not in violation of any other law. Except as  
7 otherwise provided in Subparagraphs (2)(a) through (d) of this Subsection,  
8 using the telecommunication device to write, send, or read a text-based  
9 communication or using the telecommunication device to access, read, or post  
10 to a social media website shall not be permitted while a vehicle is positioned in  
11 a travel lane.

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

13 (2)(a) The first violation of the provisions of this Section shall be  
14 punishable by a fine of not less than fifty dollars and not more than one  
15 hundred dollars and, at the judge's discretion, community service not to exceed  
16 fifteen hours, at least half of which shall consist of participation in a litter  
17 abatement or collection program.

18 (b) The second violation of the provisions of this Section shall be  
19 punishable by a fine of not more than three hundred dollars but not less than  
20 one hundred dollars and, at the judge's discretion, community service not to  
21 exceed thirty hours, at least half of which shall consist of participation in a litter  
22 abatement or collection program.

23 (c) The third violation shall be punishable by a fine of not more than  
24 three hundred dollars but not less than one hundred dollars and shall include  
25 the suspension of the person's driver's license for a period of thirty days and,  
26 at the judge's discretion, community service not to exceed sixty hours, at least  
27 half of which shall consist of participation in a litter abatement or collection  
28 program.

29 (d) If the operator of a motor vehicle is involved in a crash at the time of

1 the violation, that fine shall be equal to double the amount of the standard fine  
 2 imposed in this Subsection. The law enforcement officer investigating the crash  
 3 shall indicate on the written accident report that the operator of a motor vehicle  
 4 was using a wireless telecommunications device at the time of the crash.

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

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

11 E. A law enforcement officer shall not do any of the following based  
 12 solely on a violation of this Section:

13 (1) Seize, search, view, or require the forfeiture of a wireless  
 14 telecommunication device.

15 (2) Search or request to search a motor vehicle, motor vehicle operator,  
 16 or passenger.

17 (3) Make a custodial arrest except upon a warrant issued for failure to  
 18 appear in court when summoned or for failure to pay an imposed fine.

19 Section 3. R.S. 32:300.6, 300.7, and 300.8 are hereby repealed.

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The original instrument was prepared by Sharon F. Lyles. The following digest, which does not constitute a part of the legislative instrument, was prepared by Christine Arbo Peck.

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DIGEST

SB 50 Reengrossed                      2020 Regular Session                      McMath

Present law distributes \$25 of all fines collected pursuant to R.S. 32:300.5, 300.6, 300.7, and 300.8 to the indigent defender fund of the judicial district where the citation was issued.

Proposed law retains present law only as to fines collected pursuant to R.S. 32:300.5 and provides that the \$25 collected applies to fines collected on first violations and \$50 on any subsequent violation to be distributed into the indigent defender fund of the judicial district where the citation was issued.

Present law prohibits the use of a cellular telephone for any purpose by any person, regardless of age, issued a first driver's license for a period of one year commencing from the date of issuance of his first driver's license [R.S. 32:289.1]; the use of wireless telecommunication devices for text messaging and social networking for all drivers [R.S.

32:300.5]; prohibits the use of wireless telecommunication devices to engage in a call by drivers who hold a Class "E" learner's license or intermediate license unless the telecommunications device is a hands-free wireless telephone [R.S. 32:300.6]; prohibits the use of wireless telecommunication devices to engage in a call or write, send, or read a text-based communication by minors [persons 17 years of age or younger] [R.S. 32:300.7]; and prohibits the use of handheld telecommunication devices by drivers in a school zone during school hours [R.S. 32:300.8] when operating a motor vehicle upon a public road or highway.

Proposed law amends present law [R.S. 32:300.5] to extend the prohibition to the use of wireless telecommunication devices for text messaging and social networking to include handheld use of a telecommunication device to engage in a call to all drivers who operate a motor vehicle on a public roadway in this state [R.S. 32:300.5] and repeals present law specific to certain classes of drivers [R.S. 32:300.6 and 300.7] and to drivers in a school zone [R.S. 32:300.8].

Present law provides that "access, read, or post to a social networking site" means 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 retains present law.

Proposed law adds definition for "engage in a call" to mean 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 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 an 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 allowed by proposed law an individual shall not use 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 when the vehicle is positioned in a travel lane.

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 to an amount not more than \$100 or less than \$50 and, at the judge's discretion, community service not to exceed 15 hours, at least half of which shall consist of participation in a litter abatement or collection program.

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 and, at the judge's discretion, community service not to exceed 30 hours, at least half of which shall consist of participation in a litter abatement or collection program.

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 driver's license for 30 days and, at the judge's discretion, community service not to exceed 60 hours, at least half of which shall consist of participation in a litter abatement or collection program. Proposed law further provides that if the operator of the vehicle is involved in a crash at the time of 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.

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Provides that pursuant to R.S. 32:300.5 the \$25 fine collected on a first violation and \$50 fine collected on any subsequent violation shall be distributed into the indigent defender fund of the judicial district where the citation was issued.
2. Provides that except for the times specifically allowed by law, an individual shall not use the telecommunication device to write, send, or read a text based communication or use the telecommunication device to access, read, or post to a social media website when the vehicle is positioned in a travel lane.
3. Changes first violation fines from not more than \$100 or less than \$25 to not more than \$100 or less than \$50.

4. Provides that, in addition to monetary fines, a judge may impose community service not to exceed 15 hours for a first violation, 30 hours for a second violation, and 60 hours for a third violation, at least half of which shall consist of participation in a litter abatement or collection program.