

SECOND REGULAR SESSION

HOUSE BILL NO. 1487

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PORTER.

3851H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 302.400 and 304.820, RSMo, and to enact in lieu thereof two new sections relating to distracted driving, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 302.400 and 304.820, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 302.400 and 304.828, to read as follows:

302.400. 1. A court of competent jurisdiction shall, upon a finding of guilt, or, if the
2 court is a juvenile court, upon a finding of fact that the offense was committed by a juvenile,
3 enter an order suspending or revoking the driving privileges of any person determined to have
4 committed one of the following offenses and who, at the time said offense was committed,
5 was under twenty-one years of age:

6 (1) Any alcohol-related traffic offense in violation of state law or a county or
7 municipal ordinance, where the defendant was represented by an attorney or waived the right
8 to an attorney in writing;

9 (2) Any offense in violation of state law or a county or municipal ordinance, where
10 the defendant was represented by an attorney or waived the right to an attorney in writing,
11 involving the possession or use of alcohol, committed while operating a motor vehicle;

12 (3) Any offense involving the possession or use of a controlled substance as defined
13 in chapter 195 in violation of state law or a county or municipal ordinance, where the
14 defendant was represented by an attorney or waived the right to an attorney in writing;

15 (4) Any offense involving the alteration, modification, or misrepresentation of a
16 license to operate a motor vehicle in violation of section 311.328;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (5) Any subsequent offense in violation of state law or a county or municipal
18 ordinance, where the defendant was represented by, or waived in writing the right to, an
19 attorney, involving the possession or use of alcohol; except that a determination of guilt or its
20 equivalent shall have been made for the first offense and both offenses shall have been
21 committed by the person when the person was under eighteen years of age;

22 **(6) Any offense involving distracted driving while operating a vehicle in violation**
23 **of section 304.828.**

24 2. A court of competent jurisdiction shall, upon a finding of guilt, or, if the court is a
25 juvenile court, upon a finding of fact that the offense was committed by a juvenile, enter an
26 order suspending or revoking the driving privileges of any person determined to have
27 committed a violation of section 311.325 and who, at the time said violation was committed,
28 was more than fifteen years of age and under twenty-one years of age.

29 3. The court shall require the person against whom a court has entered an order
30 suspending or revoking driving privileges under subsections 1 and 2 of this section to
31 surrender any license to operate a motor vehicle, temporary instruction permit, intermediate
32 driver's license, or any other driving privilege then held by such person.

33 4. The court, if other than a juvenile court, shall forward to the director of revenue the
34 order of suspension or revocation of driving privileges and any licenses, temporary
35 instruction permits, intermediate driver's licenses, or any other driving privilege acquired
36 under subsection 3 of this section.

37 5. (1) Notwithstanding chapter 211 to the contrary, the court, if a juvenile court, shall
38 forward to the director of revenue the order of suspension or revocation of driving privileges
39 and any licenses, temporary instruction permits, intermediate driver's licenses, or any other
40 driving privilege acquired under subsection 3 of this section for any person sixteen years of
41 age or older.

42 (2) Notwithstanding chapter 211 to the contrary, the court, if a juvenile court, shall
43 hold the order of suspension or revocation of driving privileges for any person less than
44 sixteen years of age until thirty days before the person's sixteenth birthday, at which time the
45 juvenile court shall forward to the director of revenue the order of suspension or revocation of
46 driving privileges.

47 6. The period of suspension for a first offense under subsection 1 of this section shall
48 be ninety days. Any second or subsequent offense under subsection 1 of this section shall
49 result in revocation of the offender's driving privileges for one year. The period of suspension
50 for a first offense under subsection 2 of this section shall be thirty days. The period of
51 suspension for a second offense under subsection 2 of this section shall be ninety days. Any
52 third or subsequent offense under subsection 2 of this section shall result in revocation of the
53 offender's driving privileges for one year.

304.828. 1. As used in this section, the following terms mean:

2 **(1) "Electronic message", a digital communication that is designed or intended**
3 **to be transmitted between physical devices and includes, but is not limited to, electronic**
4 **mail, text message, instant message, messaging within a software application, social**
5 **media posts or reactions, video call or message, or a command or request to access an**
6 **internet site;**

7 **(2) "Electronic wireless communications device", a cellular telephone; portable**
8 **telephone; text-messaging device; personal digital assistant; stand-alone computer**
9 **including, but not limited to, a tablet, laptop or notebook computer; global positioning**
10 **system receiver; device capable of displaying a video, movie, broadcast television image,**
11 **or visual image; or any substantially similar portable wireless device that is used to**
12 **initiate or receive communication, information, images, or data. Such term does not**
13 **include a radio; citizens band radio; citizens band radio hybrid; commercial two-way**
14 **radio communication device or its functional equivalent; subscription-based emergency**
15 **communication device; prescribed medical device; amateur or ham radio device; or in-**
16 **vehicle security, navigation, communications, or remote diagnostics system;**

17 **(3) "Operating", physically driving or operating a motor vehicle on a roadway,**
18 **including operation while temporarily stationary because of traffic, a traffic light or**
19 **stop sign, or otherwise. A person is not operating a motor vehicle for purposes of this**
20 **section when the vehicle has pulled to the side of or off a roadway and has stopped in a**
21 **location where it can safely remain stationary;**

22 **(4) "Roadway", any public thoroughfare for vehicles including, but not limited**
23 **to, interstates, highways, state roads, county roads, public streets, avenues, boulevards,**
24 **parkways, or alleys in any municipality;**

25 **(5) "Stand-alone electronic device", a portable device other than an electronic**
26 **wireless communications device that stores audio or video data files to be retrieved on**
27 **demand by a user including, but not limited to, video games;**

28 **(6) "Voice-operated", "hands-free feature", or "hands-free function", a feature**
29 **or function that allows a person to use an electronic wireless communications device**
30 **without the use of either hand, except to activate, deactivate, or initiate the feature or**
31 **function.**

32 **2. Except as otherwise provided in this section, a person commits the offense of**
33 **distracted driving if he or she:**

34 **(1) Operates a noncommercial motor vehicle or commercial motor vehicle, as**
35 **such terms are defined in section 302.700, upon the roadways of this state while using an**
36 **electronic wireless communications device to send, read, view, or write an electronic**
37 **message unless such electronic message can be accomplished by touching a single button**

38 while the driver remains seated and is properly restrained by a seat belt. This
39 prohibition includes, but is not limited to, reading, composing, viewing, or posting any
40 electronic message; initiating, receiving, or conducting a conversation through video; or
41 manually typing data into any electronic wireless communications device;

42 (2) Operates a noncommercial motor vehicle or commercial motor vehicle, as
43 such terms are defined in section 302.700, upon any roadway in this state while using an
44 electronic wireless communications device or stand-alone electronic device to view
45 videos, movies, images or broadcasting content, social media posts, play games, or
46 operate and interact with any applications or software on an electronic wireless
47 communications device. For operators of noncommercial motor vehicles, this
48 prohibition shall not apply to applications or software related to the navigation of the
49 motor vehicle;

50 (3) Operates a commercial motor vehicle, as such term is defined in section
51 302.700, upon any roadway in this state while using a hand-held electronic wireless
52 communications device or stand-alone electronic device; or

53 (4) Operates a school bus, as defined in section 302.700, upon any roadway in
54 this state while using an electronic wireless communications device or stand-alone
55 electronic device for any reason, unless the device is being used in a similar manner as a
56 two-way radio to allow live communication between the driver and school officials or
57 public safety officials.

58 3. A person less than twenty-one years of age, or with an instruction permit or
59 intermediate license regardless of age, commits the offense of distracted driving if he or
60 she uses an electronic wireless communications device or stand-alone electronic device
61 for any reason while driving, unless the device is being used for navigation assistance or
62 to contact emergency services and the driver remains seated and is properly restrained
63 by a seat belt. This subsection shall not preclude a driver using an electronic wireless
64 communications device in hands-free or voice-activated mode or the use of either hand
65 to activate, deactivate, or initiate a function of the electronic wireless communications
66 device.

67 4. This section does not apply to:

68 (1) An authorized emergency vehicle as defined in section 304.022;

69 (2) A law enforcement officer or operator of an emergency vehicle while
70 performing his or her official duties;

71 (3) A driver using an electronic wireless communications device when the vehicle
72 is stopped and the driver has the motor vehicle transmission in neutral or park;

73 (4) A motor vehicle that is responding to another motor vehicle's request for
74 roadside assistance upon the highways of this state when such response is conducted in
75 the course and scope of a commercial activity;

76 (5) A motor vehicle while using a hand-held electronic wireless communications
77 device to:

78 (a) Contact emergency services; or

79 (b) Relay information between a transit or for-hire motor vehicle operator and
80 that operator's dispatcher when the device is affixed to the motor vehicle.

81 5. The state preempts the field of regulating the use of hand-held electronic
82 wireless communications devices by the operators of motor vehicles, and the provisions
83 of this section shall supersede any local laws, ordinances, orders, rules, or regulations
84 enacted by a county, municipality, or other political subdivision to regulate the use of
85 hand-held electronic wireless communications devices by the operator of a motor
86 vehicle.

87 6. Beginning January 1, 2024, a violation of this section by any person who
88 commits the offense of distracted driving shall be deemed an infraction and shall be
89 deemed a moving violation for purposes of point assessment under section 302.302. The
90 initial point value is as follows:

91 (1) For the first conviction with no previous conviction of and no plea of no
92 contest accepted to a charge of violating this section within the previous twenty-four
93 months, as measured from the dates any previous convictions were obtained or pleas of
94 no contest were accepted to the date the current conviction is obtained or plea of no
95 contest is accepted, a fine of not more than fifty dollars and four points assessed under
96 section 302.302;

97 (2) For a second conviction within a twenty-four-month period of time, as
98 measured from the dates any previous convictions were obtained or pleas of no contest
99 were accepted to the date the current conviction is obtained or plea of no contest is
100 accepted, a fine of not more than one hundred dollars and six points assessed under
101 section 302.302;

102 (3) For a third or subsequent conviction within a twenty-four-month period of
103 time, as measured from the dates any previous convictions were obtained or pleas of no
104 contest were accepted to the date the current conviction is obtained or plea of no contest
105 is accepted, a fine of not more than two hundred fifty dollars and eight points assessed
106 under section 302.302 and, at the court's discretion, suspension of the offender's driver's
107 license for a period of not more than thirty days;

108 (4) For any convictions that occur within a work zone, as defined in section
109 304.580, when highway workers as defined in section 304.580 are present or in an area

110 designated as a school zone and marked in any way to alert a reasonably prudent driver
111 to the presence of such school zone, a fine of not more than five hundred dollars and two
112 additional points assessed under section 302.302;

113 (5) For any convictions where any person violates any law or ordinance
114 pertaining to speed when the speed exceeds the lawful limit by ten miles per hour or
115 more and the person also commits the offense of driving distracted as defined in this
116 section, the fine shall be doubled and two additional points assessed under section
117 302.302.

118 7. Beginning January 1, 2024, any person convicted of violating this section who
119 causes physical damage to property in excess of five thousand dollars as the proximate
120 result of committing a violation of this section is guilty of a class C misdemeanor.

121 8. Beginning January 1, 2024, any person convicted of violating this section who
122 causes serious physical harm to another person as the proximate result of committing a
123 violation of this section is guilty of a class A misdemeanor.

124 9. Beginning January 1, 2024, any person convicted of violating this section who
125 causes the death of another person as the proximate result of committing a violation of
126 this section is guilty of class D felony.

127 10. A peace officer who stops a motor vehicle for a violation of this section shall
128 inform the motor vehicle operator of his or her right to decline a search of his or her
129 electronic wireless communications device or stand-alone electronic device, and the
130 peace officer shall not:

131 (1) Access the device without a warrant; or

132 (2) Confiscate the device while awaiting issuance of a warrant to access such
133 device.

134

135 The provisions in this subsection shall be subject to the reporting requirements under
136 section 590.650.

137 11. Notwithstanding provisions of this section to the contrary, a peace officer
138 who stops a motor vehicle for a violation of this section shall not issue a citation for such
139 offense before January 2, 2024, and may issue only a warning prior to such date.

2 ~~[304.820. 1. Except as otherwise provided in this section, no person~~
3 ~~twenty-one years of age or younger operating a moving motor vehicle upon~~
4 ~~the highways of this state shall, by means of a hand held electronic wireless~~
5 ~~communications device, send, read, or write a text message or electronic~~
6 ~~message.~~

7 ~~2. Except as otherwise provided in this section, no person shall operate~~
~~a commercial motor vehicle while using a hand held mobile telephone.~~

8 3. ~~Except as otherwise provided in this section, no person shall operate~~
9 ~~a commercial motor vehicle while using a wireless communications device to~~
10 ~~send, read, or write a text message or electronic message.~~

11 4. ~~The provisions of subsection 1 through subsection 3 of this section~~
12 ~~shall not apply to a person operating:~~

13 (1) ~~An authorized emergency vehicle; or~~

14 (2) ~~A moving motor vehicle while using a hand-held electronic~~
15 ~~wireless communications device to:~~

16 (a) ~~Report illegal activity;~~

17 (b) ~~Summon medical or other emergency help;~~

18 (c) ~~Prevent injury to a person or property; or~~

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

21 5. ~~Nothing in this section shall be construed or interpreted as~~
22 ~~prohibiting a person from making or taking part in a telephone call, by means~~
23 ~~of a hand-held electronic wireless communications device, while operating a~~
24 ~~noncommercial motor vehicle upon the highways of this state.~~

25 6. ~~As used in this section, "electronic message" means a self-contained~~
26 ~~piece of digital communication that is designed or intended to be transmitted~~
27 ~~between hand-held electronic wireless communication devices. "Electronic~~
28 ~~message" includes, but is not limited to, electronic mail, a text message, an~~
29 ~~instant message, or a command or request to access an internet site.~~

30 7. ~~As used in this section, "hand-held electronic wireless~~
31 ~~communications device" includes any hand-held cellular phone, palm pilot,~~
32 ~~blackberry, or other mobile electronic device used to communicate verbally or~~
33 ~~by text or electronic messaging, but shall not apply to any device that is~~
34 ~~permanently embedded into the architecture and design of the motor vehicle.~~

35 8. ~~As used in this section, "making or taking part in a telephone call"~~
36 ~~means listening to or engaging in verbal communication through a hand-held~~
37 ~~electronic wireless communication device.~~

38 9. ~~As used in this section, "send, read, or write a text message or~~
39 ~~electronic message" means using a hand-held electronic wireless~~
40 ~~telecommunications device to manually communicate with any person by~~
41 ~~using an electronic message. Sending, reading, or writing a text message or~~
42 ~~electronic message does not include reading, selecting, or entering a phone~~
43 ~~number or name into a hand-held electronic wireless communications device~~
44 ~~for the purpose of making a telephone call.~~

45 10. ~~A violation of this section shall be deemed an infraction and shall~~
46 ~~be deemed a moving violation for purposes of point assessment under section~~
47 ~~302.302.~~

48 11. ~~The state preempts the field of regulating the use of hand held~~
49 ~~electronic wireless communications devices in motor vehicles, and the~~
50 ~~provisions of this section shall supercede any local laws, ordinances, orders,~~
51 ~~rules, or regulations enacted by a county, municipality, or other political~~
52 ~~subdivision to regulate the use of hand-held electronic wireless~~
53 ~~communication devices by the operator of a motor vehicle.~~

54 12. ~~The provisions of this section shall not apply to:~~

55 (1) ~~The operator of a vehicle that is lawfully parked or stopped;~~

56 ~~(2) Any of the following while in the performance of their official~~
57 ~~duties: a law enforcement officer; a member of a fire department; or the~~
58 ~~operator of a public or private ambulance;~~
59 ~~(3) The use of factory installed or aftermarket global positioning~~
60 ~~systems (GPS) or wireless communications devices used to transmit or receive~~
61 ~~data as part of a digital dispatch system;~~
62 ~~(4) The use of voice-operated technology;~~
63 ~~(5) The use of two-way radio transmitters or receivers by a licensee of~~
64 ~~the Federal Communications Commission in the Amateur Radio Service.]~~

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