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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



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

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

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

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

56 A BILL



5 /	IO BE ENITITED
58	AN ACT
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60	Relating to motor vehicles; to amend Sections
61	32-5A-350, 32-5A-351, and 32-5A-352, Code of Alabama 1975, and
62	to add Sections 32-5A-350.1 and Sections 32-5A-353 to
63	32-5A-358, inclusive, to Article 16 of Chapter 5A of Title 32
64	of the Code of Alabama 1975, to further provide prohibitions
65	on the use of a wireless telecommunications device while
66	operating a motor vehicle; to provide exceptions; to further
67	provide criminal penalties for a violation; to provide
68	enforcement procedures; and in connection therewith would have
69	as its purpose or effect the requirement of a new or increased
70	expenditure of local funds within the meaning of Section
71	111.05 of the Constitution of Alabama of 2022.
72	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
73	Section 1. This act shall be known and may be cited as
74	the Koven L. Brown Act and is enacted in memory of Leah Grace
75	Tarvin.
76	Section 2. Sections 32-5A-350, 32-5A-351, and
77	32-5A-352, Code of Alabama 1975, are amended to read as
78	follows:
79	"§32-5A-350
80	(a) For purposes of this article, the following words
81	have the following meanings:
82	(1) WIRELESS TELECOMMUNICATION DEVICE. A handheld
83	cellular telephone, a text-messaging device, a personal
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similar wireless device that is readily removable from a 85 86 vehicle and is used to write, send, or read text or data through manual input. The term "wireless telecommunication 87 device" does not include a device which is voice-operated and 88 89 which allows the user to send or receive a communication without the use of either hand except to 90 activate or deactivate a feature or function. 91 92 (2) WRITE, SEND, OR READ A TEXT-BASED COMMUNICATION. Using a wireless telecommunication device to manually 93 communicate with any person using text-based communication, 94 95 including, but not limited to, communications referred to text message, instant message, or electronic mail. The term 96 97 does not include reading, selecting, or entering a telephone number or name in a cell or wireless telephone or 98 communication device for the purpose of making a telephone 99 call. 100 101 (b) A person may not operate a motor vehicle on a public 102 road, street, or highway in Alabama while using a wireless 103 telecommunication device to write, send, 104 communication. 105 (c) A person who violates subsection (b) is subject 106 fines as follows: 107 (1) Twenty-five dollars (\$25) for a first violation. (2) Fifty dollars (\$50) for a second violation. 108 109 (3) Seventy-five dollars (\$75) for a third or subsequent 110 violation. (d) Law enforcement officers enforcing this section may 111 112 treat a violation of this section as the primary or sole



reason for issuing a citation to a driver. 113 (c) The following uses of wireless communication device 114 115 shall not be subject to the restrictions in this section: 116 (1) An individual using a wireless communication device to obtain emergency services including, but not limited to, an 117 118 emergency call to a law enforcement agency, health care 119 provider, fire department, or other emergency services agency 120 or entity. 121 (2) An individual using a wireless communication device 122 while the motor vehicle is parked on the shoulder of the 123 highway, road, or street. (3) An individual using a wireless communication device 124 125 as a global positioning or navigation system to receive 126 driving directions which has been pre-programmed with the 127 desired coordinates. The programming of coordinates while operating a vehicle remains a violation of this section. 128 129 (1) TEXT-BASED COMMUNICATION. The term includes, but is 130 not limited to, a text message, instant message, e-mail, or 131 Internet data communicated through a wireless 132 telecommunications device. 133 (2) UTILITY SERVICES. Electric, natural gas, water, 134 wastewater, cable, telephone, or telecommunications services 135 or the repair, location, relocation, improvement, or 136 maintenance of utility poles, transmission structures, pipes, 137 wires, fibers, cables, easements, rights-of-way, or associated 138 infrastructures. (3) WIRELESS TELECOMMUNICATIONS DEVICE. A cellular 139 telephone, text-messaging device, personal digital assistant, 140



141 standalone computer, or any other wireless device that is used 142 to initiate or receive a wireless communication with another 143 person. The term does not include a radio, citizens band 144 radio, citizens band radio hybrid, commercial two-way radio 145 communication device or its functional equivalent, 146 subscription-based emergency communication device, prescribed 147 medical device, amateur or ham radio device, or in-vehicle 148 security, navigation, or remote diagnostic system." "\$32-5A-351 149

- 150 <u>(a) A first or second conviction of this article within</u>
 151 <u>a 24-month period</u> shall be entered on the driving record of
- 152 any individual charged under this article as a two-point
- 153 violation.
- 154 (b) A third or subsequent conviction of this article

 155 within a 24-month period shall be entered on the driving

 156 record of any individual charged under this article as a

 157 three-point violation."
- 158 "\$32-5A-352
- 159 (a) In any case brought by a law enforcement officer

 160 employed by the Department of Public Safety Alabama State Law

 161 Enforcement Agency, all fines shall be allocated to the State

 162 General Fund.
- (b) Each state, county, and municipal law enforcement

 agency shall maintain statistical information on <u>all</u> traffic

 stops made pursuant to this article, including traffic stops

 made on minority groups, and <u>shall</u> report that information <u>on</u>

 a monthly <u>basis</u> to the <u>Department of Public Safety Alabama</u>

 State Law Enforcement Agency."



- 169 Section 3. Sections 32-5A-350.1 and Sections 32-5A-353
- to 32-5A-358, inclusive, are added to Article 16 of Chapter 5A
- of Title 32, Code of Alabama 1975, to read as follows:
- 172 \$32-5A-350.1
- 173 Except as provided in Section 32-5A-353, a person may
- 174 not operate a motor vehicle on a public road, street, or
- highway while doing any of the following:
- 176 (1) Using a wireless telecommunications device to write,
- send, read, or otherwise engage in a text-based communication.
- 178 (2) Watching, recording, or capturing a photograph or
- 179 video.
- 180 (3) Using a handheld wireless telecommunications device
- 181 to engage in a voice-based communication.
- 182 (4) Physically holding or otherwise supporting with any
- part of his or her body a wireless telecommunications device.
- 184 §32-5A-353
- The following are not subject to the restrictions of
- 186 this article:
- 187 (1) The use of a wireless telecommunications device to
- 188 obtain emergency services, including, but not limited to, an
- 189 emergency call to a law enforcement agency, health care
- 190 provider, fire department, or other emergency services agency
- 191 or entity.
- 192 (2) The use of a wireless telecommunications device
- 193 while the motor vehicle is parked.
- 194 (3) The use of a wireless telecommunications device as a
- 195 global positioning or navigation system to receive driving
- 196 directions; provided, however, the manual input of navigation



- 197 coordinates while operating a motor vehicle is a violation of 198 this article.
- (4) The use of an earpiece, a headphone device, steering wheel controls, speaker phone or any voice-activated technology, or other device worn on the person or mounted onto the dashboard, center console, windshield, or other part of the vehicle to conduct substantially hands-free voice-based wireless communications.
- 205 (5) The use of a continuous recording device that
 206 operates within or outside the vehicle, including, but not
 207 limited to, a dash camera or backup camera.
- 208 (6) The use of a wireless telecommunications device by
 209 an employee or contractor of a utility services provider
 210 within the scope of his or her employment while responding to
 211 a utility emergency or performing other critical utility
 212 services.

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- (7) The use of a wireless telecommunications device by a law enforcement officer, emergency medical services personnel, ambulance operator, firefighter, volunteer firefighter, towing and recovery vehicle operator, or other similarly employed public safety first responder during the performance of his or her official duties.
- 219 (8) The use of an ignition interlock device, as defined 220 in Section 32-5A-191.4.
- 221 (9) For an individual 18 years of age or older, the use 222 of a wireless telecommunications device in a manner that 223 requires the physical use of the individual's hand while 224 operating a motor vehicle if both of the following occur:



- 225 a. The device is mounted to the vehicle, including the 226 windshield, dashboard, or center console of the vehicle, and 227 the device does not create an unsafe obstruction of the 228 person's view of the road.
- 229 b. The individual's hand is used to activate or 230 deactivate a feature or function of the device with the motion 231 of one swipe or tap of the individual's finger, and the swipe 232 or tap does not activate the camera, video, or gaming features or functions for viewing, recording, amusement, or other 233 non-navigational functions, other than functions or features 234 235 related to the transportation of persons or property for 236 compensation or payment of a fee.
- 237 (10) The use of a wireless telecommunications device by 238 a licensed physician while responding to an emergency medical 239 situation.
- 240 (11) The admissibility of any evidence offered or 241 collected by a licensed private investigator acting in the 242 scope and duty of the profession.
- 243 \$32-5A-354
- 244 (a) A person who is convicted of violating this article 245 shall be guilty of a violation and shall be punished as 246 follows:
- 247 (1) For a first conviction of violating this article
 248 within a 24-month period of time, a person shall be punished
 249 by a fine of one hundred dollars (\$100) or by 15 hours of
 250 community service.
- 251 (2) For a second conviction of violating this article 252 within a 24-month period of time, a person shall be punished



- 253 by a fine of two hundred dollars (\$200) or by 30 hours of community service.
- 255 (3) For a third or subsequent conviction of violating
 256 this article within a 24-month period of time, a person shall
 257 be punished by a fine of three hundred dollars (\$300) or 45
 258 hours of community service, or both.
- 259 (b) No court costs may be imposed solely in connection 260 with the prosecution of a violation of this article.
- 261 \$32-5A-355
- 262 (a) A law enforcement officer enforcing this article may
 263 treat a violation of this article as the primary or sole
 264 reason for issuing a citation to the operator of a motor
 265 vehicle.
- 266 (b) A law enforcement officer enforcing this article may
 267 not search a motor vehicle or the operator or passenger of the
 268 motor vehicle solely because of a violation of this article.
- 269 (c) A law enforcement officer may not use a violation of
 270 this article to establish probable cause for any other
 271 violation.
- 272 (d) A law enforcement officer who stops a motor vehicle 273 solely for a violation of this article may not do any of the 274 following:
- 275 (1) Access the wireless communications device without a 276 warrant.
- 277 (2) Confiscate the wireless communications device while 278 awaiting the issuance of a warrant to access the device.
- 279 (3) Obtain consent from the motor vehicle operator to 280 search the wireless communications device through coercion or



- other improper method. Consent to search a motor vehicle operator's wireless communications device shall be free and voluntary.
- 284 (4) Make a custodial arrest solely for a violation of this article.
- (5) Search or inspect a motor vehicle or the contents thereof, or search or inspect the operator or a passenger of the motor vehicle.
- (e) For purposes of enforcing this article only, a law
 enforcement officer does not have probable cause and may not
 stop the operator of a motor vehicle for a violation of this
 article unless the officer visually observes the operator
 using, holding, or physically supporting with any part of the
 operator's body the wireless electronic communications device
 in violation of this article.

296 \$32-5A-356

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- 297 (a) Any person appearing before a court for a first
 298 charge of a violation of this article may petition the court
 299 to have the charge dismissed by filing an affidavit affirming
 300 the following:
- 301 (1) At the time of the violation, the person did not 302 possess a device to conduct substantially hands-free 303 voice-based communications.
 - (2) The person has since acquired a device or other technology to enable the person to conduct substantially hands-free voice-based communications in accordance with this article, including an earpiece, a headphone device, steering wheel controls, any voice-activated technology, or other



- device worn on the person, installed in the vehicle, or
 mounted onto the dashboard, center console, windshield, or
 other part of the vehicle to conduct substantially hands-free
 voice-based wireless communications.
- 313 (b) The provisions of subsection (a) shall only apply to 314 a person who has not previously been charged for a violation 315 of this article.
- 316 (c) A court receiving an affidavit under subsection (a) 317 may accept the affidavit and dismiss the charge upon a finding that the person has not previously been charged under this 318 319 article; that the person has not previously utilized the protections of this section; and that the person has 320 321 demonstrated in a manner satisfactory to the court that the 322 person has acquired a device or other technology to conduct 323 substantially hands-free voice-based communications.
- 324 (d) No court costs shall be assessed upon a dismissal under this section.
- 326 \$32-5A-357
- Nothing contained in this article shall be deemed a violation of any law which would otherwise nullify or change in any way the provisions or coverage of any insurance contract.
- 331 \$32-5A-358
- Beginning July 1, 2023, and continuing through December
 333 31, 2023, for any violation of this article, a law enforcement
 officer may only issue a written warning.
- 335 Section 4. Although this bill would have as its purpose 336 or effect the requirement of a new or increased expenditure of



local funds, the bill is excluded from further requirements
and application under Section 111.05 of the Constitution of
Alabama of 2022, because the bill defines a new crime or
amends the definition of an existing crime.

Section 5. This act shall become effective July 1, 2023,
following its passage and approval by the Governor, or its
otherwise becoming law.