

- 1 NGEM8T-1
- 2 By Senator Waggoner
- 3 RFD: Judiciary
- 4 First Read: 09-May-23

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6 2023 Regular Session



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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 further provide prohibitions against the use of a wireless telecommunications device and would provide additional clarifications and exceptions on the prohibition, including specifying that the prohibition does not apply to: (1) the use of an earpiece, headphone device, or device worn on a wrist to conduct voice-based communications; (2) voice-based communications that are automatically converted by the device to be sent as a message in a written form; and (3) the use of the device for navigation of the vehicle or for global positioning system purposes.

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 revise the points received for a violation.



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.

48 A BILL

TO BE ENTITLED

50 AN ACT

Relating to motor vehicles; to add Section 32-5A-350.1 to the Code of Alabama 1975, to further provide for the prohibition against using a wireless telecommunications device while operating a motor vehicle; to further provide for the prohibition; to further provide exceptions; to further provide



- 57 criminal penalties for a violation; to provide a warning
- period for a violation; to amend Section 32-5A-351, Code of
- 59 Alabama 1975, to further provide for the assessment of
- administrative penalties; to repeal Section 32-5A-350, Code of
- 61 Alabama 1975; and in connection therewith would have as its
- 62 purpose or effect the requirement of a new or increased
- 63 expenditure of local funds within the meaning of Section
- 111.05 of the Constitution of Alabama of 2022.
- 65 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
- Section 1. Section 2 of this act shall be known and may
- 67 be cited as the Representative Koven L. "K.L." Brown Act and
- is enacted in memory of Leah Grace Tarvin and "CiCi" and Jay.
- Section 2. Section 32-5A-350.1 is added to Article 16
- 70 of Chapter 5A of Title 32, Code of Alabama 1975, to read as
- 71 follows:
- 72 \$32-5A-350.1
- 73 (a) As used in this section, the following terms have
- 74 the following meanings:
- 75 (1) STAND-ALONE ELECTRONIC DEVICE. A device other than
- 76 a wireless telecommunications device which stores audio or
- 77 video data files to be retrieved on demand by a user.
- 78 (2) UTILITY SERVICES. Includes electric, natural gas,
- 79 water, waste-water, cable, telephone, or telecommunications
- 80 services or the repair, location, relocation, improvement, or
- 81 maintenance of utility poles, transmission structures, pipes,
- 82 wires, fibers, cables, easements, rights of way, or associated
- 83 infrastructure.
- 84 (3) WIRELESS TELECOMMUNICATIONS DEVICE. A cellular



85	telephone,	а	portable	telephone,	а	text-messaging	device,	а

86 personal digital assistant, a stand-alone computer, a global

- positioning system receiver, or substantially similar portable
- 88 wireless device that is used to initiate or receive
- 89 communication, information, or data. The term shall not
- 90 include a radio, citizens band radio, citizens band radio
- 91 hybrid, commercial two-way radio communication device or its
- 92 functional equivalent, subscription-based emergency
- 93 communication device, prescribed medical device, amateur or
- 94 ham radio device, or in-vehicle security, navigation, or
- 95 remote diagnostics system.
- 96 (b) A person shall exercise due care in operating a
- 97 motor vehicle on the highways of this state and shall not
- 98 engage in any actions which shall distract the person from the
- 99 safe operation of the vehicle.
- 100 (c) While operating a motor vehicle on any highway of
- 101 this state, no person shall do any of the following:
- 102 (1) Physically hold or support, with any part of his or
- 103 her body, either of the following:
- 104 a. A wireless telecommunications device, provided that
- the exclusion shall not prohibit the use of an earpiece,
- 106 headphone device, or device worn on a wrist to conduct a
- 107 voice-based communication.
- 108 b. A stand-alone electronic device.
- 109 (2) Write, send, or read any text-based communication,
- including but not limited to a text message, instant message,
- 111 e-mail, or Internet data on a wireless telecommunications
- device or stand-alone electronic device; provided, however,



- 113 that such prohibition shall not apply to either of the
- 114 following:
- 115 a. A voice-based communication that is automatically
- 116 converted by the device to be sent as a message in a written
- 117 form.
- b. The use of the device for navigation of the vehicle
- or for global positioning system purposes.
- 120 (3) Watch a video or movie on a wireless
- 121 telecommunications device or stand-alone electronic device
- 122 other than watching data related to the navigation of the
- 123 vehicle.
- 124 (4) Record or broadcast a video on a wireless
- 125 telecommunications device or stand-alone electronic device;
- 126 provided that the prohibition shall not apply to electronic
- devices used for the sole purpose of continuously recording or
- 128 broadcasting video within or outside of the motor vehicle.
- 129 (d) While operating a commercial motor vehicle on any
- 130 highway of this state, no individual shall do any of the
- 131 following:
- 132 (1) Use more than a single button on a wireless
- 133 telecommunications device to initiate or terminate a
- 134 voice-communication.
- 135 (2) Reach for a wireless telecommunications device or
- 136 stand-alone electronic device in such a manner that requires
- 137 the driver to no longer be in a seated driving position
- 138 properly restrained by a safety belt.
- 139 (e) Each violation of this section shall constitute a
- separate offense.



- (f) (1) Except as provided for in subdivision (2), any person convicted of violating this section shall be guilty of a Class C misdemeanor which shall be punished as follows:
- a. For a first conviction to a charge of violating this section within the previous 24-month period of time, as measured from the dates any previous convictions were obtained to the date the current conviction is obtained, a fine of not more than fifty dollars (\$50).
- b. For a second conviction within the previous 24-month period of time, as measured from the dates any previous convictions were obtained to the date the current conviction is obtained, a fine of not more than one hundred dollars (\$100).
- 154 c. For a third or subsequent conviction within the
 155 previous 24-month period of time, as measured from the dates
 156 any previous convictions were obtained to the date the current
 157 conviction is obtained, a fine of not more than one hundred
 158 fifty dollars (\$150).

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- (2) Any person appearing before a court for a first charge of violating subdivision (c)(1) who produces in court a device or proof of purchase of a device that would allow the person to comply with the subdivision in the future shall not be guilty of the offense. The court shall require the person to affirm that they have not previously utilized the privilege under this subdivision.
- 166 (3) No court costs may be assessed for a violation of this section.
 - (g) A person may not be placed under custodial arrest



- 169 solely for a violation of this section.
- (h) Subsections (c) and (d) shall not apply when the
- 171 prohibited conduct occurred under any of the following
- 172 conditions:
- 173 (1) While reporting a traffic accident, medical
- 174 emergency, fire, an actual or potential criminal or delinquent
- 175 act, or road condition which causes an immediate and serious
- 176 traffic or safety hazard.
- 177 (2) By an employee or contractor of a utility services
- 178 provider acting within the scope of his or her employment
- 179 while responding to a utility emergency.
- 180 (3) By a law enforcement officer, firefighter,
- 181 emergency medical services personnel, ambulance driver, or
- 182 other similar public safety first responder during the
- 183 performance of his or her official duties.
- 184 (4) While in a motor vehicle that is lawfully parked.
- 185 (i) Beginning on the effective date of this act, and
- 186 continuing for 12 months thereafter, for any violation of this
- 187 section, a law enforcement officer may only issue a written
- 188 warning. No points shall be entered on the driving record of
- any individual who receives a warning under this subsection.
- 190 Section 3. Section 32-5A-351, Code of Alabama 1975, is
- 191 amended to read as follows:
- 192 "\$32-5A-351
- 193 (a) A first conviction of this article shall be entered
- on the driving record of any individual charged under this
- 195 article as a one-point violation.
- 196 (b) A second conviction of this article shall be

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197	entered on the driving record of any individual charged under
198	this article as a two-point violation.
199	(c) A third or subsequent conviction of this article
200	shall be entered on the driving record of any individual
201	charged under this article as a three-point violation."
202	Section 4. Section 32-5A-350, Code of Alabama 1975,
203	relating to texting while driving, is repealed.
204	Section 5. Although this bill would have as its purpose
205	or effect the requirement of a new or increased expenditure of
206	local funds, the bill is excluded from further requirements
207	and application under Section 111.05 of the Constitution of
208	Alabama of 2022, because the bill defines a new crime or
209	amends the definition of an existing crime.
210	Section 6. This act shall become effective immediately
211	following its passage and approval by the Governor, or its

212 otherwise becoming law.