

SENATE BILL NO. 359

INTRODUCED BY S. NOVAK, M. LEE, D. HARVEY, L. SMITH, S. DEMAROIS, J. LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISTRACTED DRIVING RELATING TO MOBILE DEVICES; REQUIRING THE USE OF HANDS-FREE DEVICES WHILE OPERATING A MOTOR VEHICLE; PROHIBITING THE USE OF PORTABLE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING EXCEPTIONS; PROVIDING PENALTIES; PROVIDING DEFINITIONS; AND AMENDING SECTION 61-11-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Distracted driving -- hands-free device. (1) Unless a motor vehicle is ~~stopped, standing, or parked~~, a person may not operate a motor vehicle on a street or highway if the person does any of the following:

- (a) physically holds or supports with any part of the person's body either of the following:
 - (i) a portable wireless communication device, except that a person may use a portable wireless communication device with an earpiece, a headphone device, or a device worn on a wrist to conduct a voice-based communication if the wrist device is operated without the use of hands; or
 - (ii) a stand-alone electronic device;
- (b) writes, sends, watches, or reads any text-based or video-based communication, including a text message, instant message, email, video, or any internet data, on a portable wireless communication device or a stand-alone electronic device;
- (c) watches a video or movie on a portable wireless communication device or a stand-alone electronic device, unless the person is watching data related to the navigation of the vehicle; or
- (d) records, posts, sends, or broadcasts video, including a videoconference on a portable wireless communication device or a stand-alone electronic device, except for electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.

(2) Subsection (1) does not apply to:

(a) the use of voice-based communications, including through the use of a portable wireless communication device or a stand-alone electronic device, to direct the writing, sending, reading, or other communicating of any text-based communication; or

(b) the use of a portable wireless communication device or a stand-alone device when used in a hands-free manner for:

(i) navigation of the motor vehicle;

(ii) use of a global positioning system; or

(iii) obtaining motor vehicle information or information related to driving a motor vehicle.

(3) This section does not prohibit:

(a) the operation of a motor vehicle while using a device, including a device that is accessible through an interface that is embedded in a motor vehicle and allows communication without the use of either of the driver's hands, except to activate or deactivate a function of the device; or

(b) the use of technology that is physically integrated into the vehicle.

(4) This section does not apply to:

(a) an operator of an authorized emergency, law enforcement, or probation vehicle who uses a portable wireless communication device while acting in an official capacity;

(b) an operator who is licensed by the federal communications commission while that person is operating a radio frequency device other than a portable wireless communication device;

(c) an operator who uses a two-way radio or private land mobile radio system, within the meaning of 47 CFR 90, while in the performance and scope of the operator's work-related duties and who is operating a fleet vehicle or who possesses a commercial driver license; or

(d) an operator who uses a portable wireless communication device either:

(i) to report illegal activity or summon emergency help; or

(ii) to relay information, provided the device is permanently or temporarily affixed to the motor vehicle, in the course of the operator's occupational duties between the operator and either:

(A) a dispatcher; or

(B) a digital network or software application service.

(5) A person who violates this section is subject to a civil penalty as follows:

(a) a fine of ~~not less than \$75 or more than \$149~~ for a first violation; and

(b) a fine of ~~not less than \$150 or more than \$250~~ for a second or subsequent violation.

(6) A peace officer who stops a motor vehicle for an alleged violation of this section may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless otherwise authorized by law.

(7) The regulation and use of portable wireless communication devices while operating a motor vehicle are of statewide concern.

(8) For the purposes of this section, the following definitions apply:

(a) "Internet data" includes but is not limited to any conceivable application in which information is conveyed by the internet that requires the visual or tactile attention of the user. The term includes social media in any form.

(b) (i) "Portable wireless communication device" means a cellular telephone, a portable telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, a global positioning system receiver, or a substantially similar portable wireless device that is used to initiate or receive communication, information, or data.

(ii) The term does not include a radio, a citizens band radio, a citizens band radio hybrid, a commercial two-way radio communication device or its functional equivalent, a subscription-based emergency communication device, a prescribed medical device, an amateur or ham radio device or in-vehicle security, or a navigation or remote diagnostics system.

(c) "Stand-alone electronic device" means a portable device other than a portable wireless communication device that stores audio or video data files to be retrieved on demand by a user.

Section 2. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions -- habitual traffic offenders -- point schedule. (1) As used in this part, the following definitions apply:

(a) "Conviction" has the meaning provided in 61-5-213 resulting from a violation of traffic regulations on highways in this state or a traffic statute or traffic regulation in another jurisdiction.

(b) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or