

2022 Regular Session

HOUSE BILL NO. 376

BY REPRESENTATIVES HUVAL, GREEN, AND WRIGHT AND SENATORS TALBOT
AND MCMATH

MTR VEHICLE/VIOLATIONS: Provides relative to the operation of a motor vehicle while
using a wireless telecommunication device

1 AN ACT

2 To amend and reenact R.S. 32:300.5 and to repeal R.S. 32:300.6, 300.7, and 300.8, relative
3 to the prohibition of the use of certain wireless telecommunications devices while
4 operating a motor vehicle; to provide for definitions; to provide for exceptions and
5 penalties; to provide for enforcement and reporting; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

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

9 §300.5. ~~Use of certain wireless telecommunications devices for text messaging and~~
10 ~~social networking prohibited~~

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

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

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

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

18 ~~(c) "Access, read, or post to a social networking site" means using a wireless~~
19 ~~telecommunications device to access, read, or post on such device to any web-based~~
20 ~~service that allows individuals to construct a profile within a bounded system,~~
21 ~~articulate a list of other users with whom they share a connection, and communicate~~
22 ~~with other members of the site.~~

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

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

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

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

1 ~~(b) Summon medical or other emergency help.~~
2 ~~(c) Prevent injury to a person or property.~~
3 ~~(d) Relay information between a transit or for-hire operator and that~~
4 ~~operator's dispatcher, in which the device is permanently affixed to the~~
5 ~~vehicle.~~

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

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

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

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

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

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

21 ~~§300.8. Use of wireless telecommunications devices in school zones; prohibited;~~
22 ~~exceptions~~

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

26 (1) "Access, read, or post to a social networking site" means using a wireless
27 telecommunications device to access, read, or post on such device to any web-based
28 service that allows individuals to construct a profile within a bounded system,

1 articulate a list of other users with whom they share a connection, and communicate
2 with other members of the site.

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

7 (3) "Wireless telecommunications device" means a cellular telephone, a text-
8 messaging device, a personal digital assistant, a stand-alone computer or other
9 electronic device, or any other substantially similar portable wireless device that is
10 readily removable from the vehicle and is used to write, send, or read text or data
11 through manual input or create, edit, post, or view video, photography, or other
12 images. ~~A "wireless~~ "Wireless telecommunications device" shall not mean ~~include~~
13 any device or component ~~that is permanently affixed to a motor vehicle,~~ nor shall it
14 mean any. ~~It does not include a hands-free wireless telephone, an electronic~~
15 ~~communication~~ device used hands-free, citizens band radios, citizens band radio
16 hybrids, commercial two-way radio communications devices, two-way radio
17 transmitters or receivers used by licensees of the Federal ~~Communication~~
18 Communications Commission in the Amateur Radio Service, or electronic
19 communication devices with a push-to-talk function.

20 (4) "Write, send, or read a text-based communication" means using a
21 ~~wireless telecommunications device to manually communicate with any person by~~
22 ~~using a text-based communication including but not limited to a text message, instant~~
23 ~~message, or electronic mail,~~ or other text-based application to manually
24 communicate with any person.

25 B.(1) Except as provided in Subsection C of this Section, no person shall
26 operate any wireless telecommunications device while operating a motor vehicle
27 upon any public road or highway ~~during the posted hours within a school zone on~~
28 ~~such public road or highway.~~

1 (2) Operating a "wireless telecommunications device" shall ~~include~~ mean
2 any of the following:

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

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

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

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

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

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

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

17 C.(1) The provisions of Subsection B of this Section shall not apply to any
18 of the following persons in the performance of their official duties:

19 (a) A law enforcement officer.

20 (b) A firefighter.

21 (c) An emergency service or EMS practitioner.

22 ~~€.~~ (2) The provisions of Subsection B of this Section shall not apply to a
23 person who uses a wireless telecommunications device ~~and does~~ while doing any of
24 the following:

25 (1) ~~(a) Reports~~ Reporting a traffic collision, medical emergency, other
26 emergency, or serious road hazard.

27 (2) ~~(b) Reports~~ Reporting a situation in which the person believes a person
28 his personal safety is in jeopardy of serious injury or death.

1 ~~(3) Reports or averts the perpetration or potential perpetration of a criminal~~
2 ~~act against the driver or another person.~~

3 (c) Relaying information between a transit, for-hire operator, or a
4 transportation network company driver, and that operator's dispatcher or affiliated
5 transportation network company, in which the device is affixed to the vehicle.

6 (d) Viewing data or images related to navigation of a motor vehicle using a
7 hands-free global positioning system.

8 ~~(4) (e) Operates~~ Operating ~~a wireless telecommunications device while the~~
9 ~~motor vehicle is~~ lawfully stationary and not in violation of any other law. ~~lawfully~~
10 ~~parked.~~

11 (f) Dialing 9-1-1 to report a crime in progress.

12 (3) Except as otherwise provided in Subparagraphs (2)(a) through (d) of this
13 Subsection, using the telecommunications device to write, send, or read a text-based
14 communication or using the telecommunication device to access, read, or post to a
15 social media website shall not be permitted while a vehicle is positioned in a travel
16 lane.

17 ~~(5) Uses a wireless telecommunications device in an official capacity as an~~
18 ~~operator of an authorized emergency vehicle.~~

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

20 (2)(a) The first violation of the provisions of this Section shall be punishable
21 by a fine of not more than ~~five~~ one hundred dollars but not less than fifty dollars and
22 may include up to thirty hours of community service, at least half of which shall
23 consist of participation in a litter abatement or collection program.

24 ~~(b) Each subsequent~~ The second violation of the provisions of this Section
25 shall be punishable by a fine of not more than ~~one thousand~~ three hundred dollars
26 ~~and a suspension of driver's license for a sixty-day period~~ but not less than one
27 hundred dollars and may include up to thirty hours of community service, at least
28 half of which shall consist of participation in a litter abatement or collection
29 program.

1 (c) The third and any subsequent violation of the provisions of this Section
2 shall be punishable by a fine of not more than three hundred dollars but not less than
3 one hundred dollars and may include up to ninety hours of community service, at
4 least half of which shall consist of participation in a litter abatement or collection
5 program.

6 ~~(e)~~ (d) If a person the operator of a motor vehicle is involved in a collision
7 crash at the time of the violation, then the fine shall be equal to double the amount
8 of the standard fine imposed in this Subsection, and the The law enforcement officer
9 investigating the collision crash shall indicate on the written accident report that the
10 ~~person~~ operator of a motor vehicle was using a wireless telecommunications device
11 at the time of the collision crash.

12 (3) Use of a wireless telecommunications device for any purpose provided
13 for in Subsection C of this Section shall be an affirmative defense against an alleged
14 to a violation of this Section and for the operator of a motor vehicle person to may
15 produce documentary or other evidence in support of this defense that the wireless
16 telecommunications device that is the basis of the alleged violation was used for
17 emergency purposes as provided in Subsection C of this Section.

18 (4) For any violation occurring before January 1, 2023, the law enforcement
19 officer shall issue only a written warning.

20 E. ~~The provisions of this Section shall only apply within a school zone upon~~
21 ~~a public road or highway during posted hours when signs are located in a visible~~
22 ~~manner in each direction that indicate the use of a hand-held wireless~~
23 ~~communications device is prohibited while operating a motor vehicle.~~

24 (1) When a law enforcement officer issues a citation for a violation of this
25 Section, the law enforcement officer shall record the race and ethnicity of the
26 violation. All law enforcement agencies shall maintain such information and report
27 the information to the Department of Public Safety and Corrections in a form and
28 manner as determined by the department. Beginning August 1, 2023, the
29 Department of Public Safety and Corrections shall annually report the data collected

1 under this Subsection to the governor, the president of the Senate, and the speaker
2 of the House of Representatives. The data collected shall be reported, at a minimum,
3 by statewide totals for local law enforcement agencies, state law enforcement
4 agencies, and state university law enforcement agencies. The statewide total for
5 local law enforcement agencies shall combine the data for the parish sheriffs and the
6 municipal law enforcement agencies.

7 (2) A law enforcement officer who stops a motor vehicle for a violation of
8 this Section shall inform the motor vehicle operator of his right to decline a search
9 of his wireless communications device and shall not do any of the following:

10 (a) Access the wireless communications device without a warrant.

11 (b) Confiscate the wireless communications device while awaiting the
12 issuance of a warrant to access such device.

13 (c) Obtain consent from the motor vehicle operator to search his wireless
14 communications device through coercion or other improper method. Consent to
15 search a motor vehicle operator's wireless communications device shall be free and
16 voluntary.

17 (d) Make a custodial arrest except upon a warrant issued for failure to appear
18 for a felony or state misdemeanor charge in court when summoned.

19 F. A law enforcement officer shall not search or inspect a motor vehicle, its
20 contents, the driver, or a passenger solely because of a violation of this Section.

21 Section 2. R.S. 32:300.6, 300.7, and 300.8 are hereby repealed in their entirety.

22 Section 3. The provisions of this Act shall cease to exist on January 1, 2027.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 376 Engrossed

2022 Regular Session

Huval

Abstract: Prohibits the use of a wireless telecommunications device while operating a motor vehicle, provides for exceptions and penalties for such use, and provides for enforcement and reporting of such violations.

Present law prohibits the use of wireless telecommunications devices in school zones.

Proposed law extends the prohibition to include general usage of wireless telecommunications devices while driving.

Present law defines the term "engage in a call" as talking or listening on a wireless telecommunications device.

Proposed law modifies the definition of "engage in a call" in present law to include talking or listening during a voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call, except when using a hands-free wireless device.

Present law defines "wireless telecommunications device" and prohibits the definition from including any device or component that is permanently affixed to a motor vehicle, a hands-free wireless telephone, an electronic communication device used hands-free, citizen band radios, citizen band radio hybrids, commercial two-way radio communication devices, two-radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with push-to-talk functions.

Proposed law modifies the definition of "wireless telecommunications device" in present law by also excluding any other electronic device or any other substantially similar portable wireless device used to create, edit, post, or view video, photographs, or other images. Proposed law modifies present law by removing a hands-free wireless telephone from the exclusion.

Present law defines the term "write, send, or read a text-based communication" as using a wireless telecommunications device to manually communicate with any person by text-based communication including but not limited to a text message, instant message, or electronic mail.

Proposed law modifies present law by defining the term "write, send, or read a text-based communication" to include other text-based applications used to manually communicate with any person and removes the use of a wireless telecommunications device to manually communicate with any person by text-based communication.

Present law specifies that operating a wireless telecommunications device includes engaging in a call; writing, sending, or reading a text-based communication; and accessing, reading, or posting to a social networking site.

Proposed law adds to present law accessing, viewing, posting, editing, or creating a video, photograph, or other image; accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application or other media; using any application or feature of such a device by making manual entries of letters, numbers, symbols, or any combination thereof; and holding or physically supporting a wireless telecommunications device in either or both hands or with any part of the body, except for an earpiece, headphone device, or a wrist device to talk or listen during a voice transmission.

Proposed law provides exceptions for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for law enforcement officers, firefighters, and emergency services or EMS practitioners.

Present law provides exceptions for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for a person who uses a wireless telecommunications device: to report a traffic collision, medical emergency, or serious road hazard; to report a situation in which the person believes his personal safety is in jeopardy; to report or avert the perpetration or potential perpetration of a criminal act against the driver or another person; or while the motor vehicle is parked.

Proposed law modifies the exception in present law by specifying that it applies to a person using a wireless telecommunications device: to report other emergencies; to report a situation in which the person believes that an individual is in jeopardy of serious injury or death; to relay 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; to view data or images to navigate using a hands-free global positioning system; to operate a device for a purpose other than texting or accessing social media while the motor vehicle is lawfully stationary and not in violation of any other law; and to dial 9-1-1 to report a crime in progress. Proposed law removes the exceptions for a person using a wireless telecommunications device to: report a situation in which the person believes their personal safety is in jeopardy or to report or avert the perpetration or potential perpetration of a criminal act against the driver or another person.

Present law requires the first violation be punishable by a fine of not more than \$500.

Proposed law modifies present law by reducing the fine for a first violation from \$500 to a fine of \$100 but not less than \$50 and up to 30 hours of community service, at least half of which must consist of participation in a litter abatement or collection program.

Present law requires each subsequent violation be punishable by a fine of not more than \$1000 and a 60-day driver's license suspension.

Proposed law modifies present law to provide that a second violation is punishable by a fine of \$300 but not less than \$100 and up to 30 hours of community service, at least half of which must consist of participation in a litter abatement or collection program. Proposed law requires the third violation be punishable by a fine of not more than \$300 but not less than \$100 and up to 90 hours of community service, at least half of which must consist of participation in a litter abatement or collection program.

Present law requires a person involved in a collision at the time of the violation to be fined double the amount of the standard fine imposed. Present law requires the law enforcement officer investigating the collision to indicate on a written report that the person was using a wireless telecommunications device at the time of the collision.

Proposed law modifies the double fine imposed in present law to be designated for the operator of a motor vehicle involved in a crash at the time of the violation.

Proposed law requires law enforcement officers to issue a written warning for any violation occurring before Jan. 1, 2023.

Present law requires use of a wireless telecommunications device for any purpose provided in proposed law be an affirmative defense and authorizes the operator of a motor vehicle to produce documentary or other evidence in support of this defense. Proposed law modifies present law to only allow enumerated exceptions (first responders, concerned citizens, navigation, and stationary).

Proposed law requires law enforcement officers issuing citations under present and proposed law to record the race and ethnicity of the violator to be reported by the law enforcement agency to the Dept. of Public Safety and Corrections (DPSC). Proposed law requires the DPSC, beginning Aug. 1, 2023, to annually report the collected data to the governor, president of the Senate, and speaker of the House of Representatives. Proposed law requires the data collected be reported, at a minimum, by statewide totals for local, state, and university law enforcement agencies, and requires the statewide total for local law enforcement agencies to combine the data collected by sheriffs and municipal police officers.

Proposed law requires a law enforcement officer who stops a motor vehicle for a violation to inform the operator of the vehicle of his right to decline a search of his wireless

communications device. Proposed law prohibits the law enforcement officer during a stop from accessing the device without a warrant; confiscating the device while waiting on the warrant to access; obtaining consent from the operator of the vehicle through coercion or other improper methods; or making a custodial arrest except in situations where a warrant was issued for failure to appear for a felony or state misdemeanor charge in court when summoned. Requires consent to search a motor vehicle operator's wireless communications device be free and voluntary.

Proposed law prohibits a law enforcement officer from searching or inspecting a motor vehicle, its contents, the driver, or a passenger solely because of a violation of proposed law.

Present law specifies that the provisions of present law only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.

Proposed law repeals present law and makes prohibitions applicable to intrastate travel subject to enumerated exceptions.

Proposed law requires the provisions of proposed law to cease to exist on Jan. 1, 2027.

(Amends R.S. 32:300.5; Repeals R.S. 32:300.6, 300.7, and 300.8)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Remove provisions that deleted repealed citations and expanded present law to require \$50 from each fine collected on subsequent violations of proposed law be distributed to the indigent defender fund of the judicial district in which the citation was issued.
3. Add an exception for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for an emergency service or EMS practitioner.
4. Add an exception to the prohibition against the use of certain wireless telecommunications devices while operating a vehicle for a person who dials 911 to report a crime in progress.
5. Remove the discretion of a judge to authorize 15 hours of community service for a first violation. Add the authorization for the penalty to include 30 hours of community service.
6. Remove the discretion of a judge to authorize 30 hours of community service for a second violation. Add the authorization for the penalty to include 30 hours of community service.
7. Remove the suspension of the person's driver's license for a period of 30 days and the discretion of a judge to authorize 60 hours of community service for a third and subsequent violation.
8. Add the authorization for the penalty to include 90 hours of community service for a third and subsequent violation.

9. Change the required consent to search a motor vehicle operator's wireless communications device from voluntary and unequivocal to free and voluntary.
10. Remove the requirement of probable cause for a violation to be based solely on the law enforcement officer's clear and unobstructed view of a person's use of a wireless telecommunications device.
11. Add a termination date of Jan. 1, 2027 for the provisions of proposed law to be in effect.