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DIGEST

SB 50 Engrossed 2020 Regular Session McMath

Present law distributes \$25 of all fines collected pursuant to R.S. 32:300.5, 300.6, 300.7, and 300.8 to the indigent defender fund of the judicial district where the citation was issued.

Proposed law retains present law only as to fines collected pursuant to R.S. 32:300.5.

Present law prohibits the use of a cellular telephone for any purpose by any person, regardless of age, issued a first driver's license for a period of one year commencing from the date of issuance of his first driver's license [R.S. 32:289.1]; the use of wireless telecommunication devices for text messaging and social networking for all drivers [R.S. 32:300.5]; prohibits the use of wireless telecommunication devices to engage in a call by drivers who hold a Class "E" learner's license or intermediate license unless the telecommunications device is a hands-free wireless telephone [R.S. 32:300.6]; prohibits the use of wireless telecommunication devices to engage in a call or write, send, or read a text-based communication by minors [persons 17 years of age or younger] [R.S. 32:300.7]; and prohibits the use of handheld telecommunication devices by drivers in a school zone during school hours [R.S. 32:300.8] when operating a motor vehicle upon a public road or highway.

Proposed law amends present law [R.S. 32:300.5] to extend the prohibition to the use of wireless telecommunication devices for text messaging and social networking to include handheld use of a telecommunication device to engage in a call to all drivers who operate a motor vehicle on a public roadway in this state [R.S. 32:300.5] and repeals present law specific to certain classes of drivers [R.S. 32:300.6 and 300.7] and to drivers in a school zone [R.S. 32:300.8].

Present law provides that "access, read, or post to a social networking site" means using a wireless telecommunications device to access, read, or post on such device to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

Proposed law retains present law.

Proposed law adds definition for "engage in a call" to mean talking or listening during a voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call.

Present law provides that "wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand alone computer or other electronic device, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device"

shall not include any device or component that is permanently affixed to a motor vehicle. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.

Proposed law amends present law to add that a "wireless telecommunications device" shall not mean a cellular telephone used hands-free or an electronic communication device used hands-free.

Present law provides that "write, send, or read a text-based communication" means using a text message, instant message, or electronic mail, or other text-based application to annually communicate with any person.

Proposed law retains present law.

Present law provides with some exceptions that (1) no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to write, send, or read a text-based communication, and that a person shall not be deemed to be writing, reading, or sending a text message if the person reads, selects, or enters a telephone number or name in a wireless telecommunications device for the purpose of making a telephone call, and that (2) no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to access, read, or post to a social networking site.

Proposed law amends present law to provide that with some exceptions that no person shall operate a motor vehicle upon any public roadway in this state while using any wireless telecommunication device to access, read, or post to a social networking site, to engage in a call, or to write, send, or read a text-based communication. Proposed law adds that using a wireless telecommunications device shall include:

- (1) Engaging in a call.
- (2) Writing, sending, or reading a text-based communication.
- (3) Accessing, reading, or posting to a social networking site.
- (4) Accessing, viewing, posting, editing, or creating a video, photograph, or other image.
- (5) Accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application other than media.
- (6) Using any other application or feature of such a device by making manual entries of letters, numbers, symbols, or any combination thereof.
- (7) Holding or physically supporting a wireless telecommunication device in either or both hands or with any part of the body, except for an earpiece or head phone device or a device worn

on the wrist to talk or listen during voice transmission.

Present law provides that it shall not apply to:

- (1) Any law enforcement officer, firefighter, or operator of an authorized emergency vehicle while engaged in the actual performance of his official duties.
- (2) An operator of a moving motor vehicle using a wireless telecommunications device to:
 - (a) Report illegal activity.
 - (b) Summon medical or other emergency help.
 - (c) Prevent injury to a person or property.
 - (d) Relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.
 - (e) Navigate using a global positioning system.
- (3) A physician or other healthcare provider using a wireless telecommunications device to communicate with a hospital, health clinic or the office of the physician, or to otherwise provide for the healthcare of an individual or medical emergency through a text-based communication.

Proposed law amends present law exceptions to provide that proposed law:

- (1) Does not apply to any of the following persons while they are performing their official duties:
 - (a) A law enforcement officer.
 - (b) A firefighter.
 - (c) The operator of an authorized emergency vehicle.
- (2) Does not apply to a person:
 - (a) Who reports a traffic collision, medical emergency, other emergency, or serious road hazard.
 - (b) Who reports a situation where the person believes that an individual is in jeopardy of serious bodily injury or death.
 - (c) Who relays 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.

- (d) Who navigates using a global positioning system.
- (e) Who operates a wireless telecommunications device while the motor vehicle is lawfully stationary and not in violation of any other law, except when an individual is using the telecommunication device to write, send or read a text based communication or using the telecommunication device to access, read, or post to a social media website.

Proposed law removes present law exceptions which were applicable to persons using a wireless telecommunications device to report a situation when a person believed his own personal safety was in jeopardy, or to avert the perpetration or potential perpetration of a criminal act against the driver or another person.

Present law provides that any violation of its provisions is a moving violation.

Proposed law retains present law.

Present law provides penalties for violation of its provisions as follows:

- (1) The first violation is punishable by a fine of \$500.
- (2) Each subsequent violation is punishable by a fine of not more than \$1,000.
- (3) Double the amount of the standard fine is imposed if a person is involved in a collision at the time of the violation and the law enforcement officer investigating the collision is required to indicate on the written accident report that the person was using a wireless telecommunications device at the time of the collision.

Proposed law amends present law by reducing the fine for a first violation from not more than \$100 or less than \$25.

Proposed law amends present law to add a second violation that is punishable by a fine of not more than \$300 but not less than \$100.

Proposed law amends present law to add a third violation that is punishable by a fine of not more than \$300 but not less than \$100 and shall include suspension of drivers license for 30 days. Proposed law further provides that if the operator of the vehicle is involved in a crash at the time violation, the fine should be double the amount of the standard fine.

Proposed law provides that any violation occurring before January 1, 2021, the law enforcement officer shall only issue a written warning.

Proposed law provides that use of a wireless telecommunications device for any of the exceptions is an affirmative defense to a violation and the alleged violator may produce documentary or other evidence in support of this defense.

Proposed law provides that law enforcement officers shall not do any of the following based solely on the violation. Seize, search view or require the forfeiture of a wireless telecommunication device, search or request to search a motor vehicle, motor vehicle operator, or passenger, or make a custodial arrest except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine.

Effective August 1, 2020.

(Amends R.S. 15:571.11(A)(4) and R.S. 32:300.5; repeals R.S. 32:300.6, 300.7, and 300.8)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Technical amendments.
2. Amends definition of "Engaging in call".
3. Amends definition of "Wireless telephone communication".
4. Amends definition of "Write, send, or text-based communication".
5. Adds holding or supporting a wireless telecommunication device as a form of using a wireless telecommunication device.
6. Amends fees to violation under this Section.
7. Adds a written warning to violations occurring before January 1, 2021.
8. Adds search and seizure restrictions to law enforcement officers.