

Enrolled
House Bill 2597

Sponsored by Representatives OLSON, LININGER, Senator BURDICK; Representatives BARKER, ESQUIVEL, MCKEOWN, RAYFIELD (Presession filed.)

CHAPTER

AN ACT

Relating to the offense of operating a motor vehicle while using a mobile electronic device; creating new provisions; amending ORS 811.507; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 811.507 is amended to read:

811.507. (1) As used in this section:

(a)(A) “Driving” means operating a motor vehicle on a highway or premises open to the public, and while temporarily stationary because of traffic, a traffic control device or other momentary delays.

(B) “Driving” does not include when the motor vehicle has stopped in a location where it can safely remain stationary and:

(i) Is pulled over on the side of, or is pulled off, a roadway;

(ii) Is in a designated parking space; or

(iii) Is required to park in the roadway to conduct necessary utility maintenance work.

[(a)] **(b) “Hands-free accessory” means an attachment or built-in feature for or an addition to a mobile [communication] electronic device[, whether or not permanently installed in a motor vehicle,] that when used [allows a person to maintain] gives a person the ability to keep both hands on the steering wheel.**

[(b) “Mobile communication device” means a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication.]

(c)(A) “Mobile electronic device” means an electronic device that is not permanently installed in a motor vehicle.

(B) “Mobile electronic device” includes but is not limited to a device capable of text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(d) “Using a mobile electronic device” includes but is not limited to using a mobile electronic device for text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(2) A person commits the offense of [operating] driving a motor vehicle while using a mobile [communication] electronic device if the person, while [operating] driving a motor vehicle on a highway[,] or premises open to the public:

(a) Holds a mobile electronic device in the person’s hand; or

(b) Uses a mobile [communication] electronic device for any purpose.

(3) This section does not apply to a person:

(a) Who activates or deactivates a mobile *[communication]* **electronic** device or a function of the device *[or who]*;

(b) Who is employed as a commercial motor vehicle driver, or as a school bus driver, and is using a mobile electronic device within the scope of the person's employment if the use is permitted under regulations promulgated pursuant to 49 U.S.C. 31136;

(c) Who is operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while transporting forest products, or while operating a vehicle to assist in logging operations, within the scope of the person's employment;

(d) Who is using a two-way radio device while operating a school bus or school activity vehicle within the scope of the person's employment; or

(e) Who is using a two-way radio device or operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, within the scope of the person's employment.

(4) It is an affirmative defense to a prosecution of a person under this section that the person:

(a) *[Uses]* Used the mobile electronic device *[for voice communication]* to communicate if the person^[:]

[(a) Is] was summoning or providing medical or other emergency help if no other person in the vehicle *[is]* was capable of summoning help;

[(b) Is using a mobile communication device for the purpose of farming or agricultural operations;]

[(c) Is operating an ambulance or emergency vehicle;]

[(d) (b) [Is] Was 18 years of age or older and [is] was using a hands-free accessory;

(c) Was driving an ambulance or emergency vehicle while acting within the scope of the person's employment;

(d) Was a police officer, firefighter or emergency medical services provider and was acting within the scope of the person's employment;

[(e) Is operating a motor vehicle while providing public safety services or emergency services;]

[(f) Is operating a motor vehicle while acting in the scope of the person's employment as a public safety officer, as defined in ORS 348.270;]

[(g) Is operating a tow vehicle or roadside assistance vehicle while acting in the scope of the person's employment;]

[(h) (e) [Holds] Was 18 years of age or older, held a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and [is] was operating an amateur radio;

[(i) (f) [Is] Was operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission[;] to summon medical or other emergency help; or

(g) Was using a medical device.

[(j) Is operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, while acting in the scope of the person's employment; or]

[(k) Is using a function of the mobile communication device that allows for only one-way voice communication while the person is:]

[(A) Operating a motor vehicle in the scope of the person's employment;]

[(B) Providing transit services; or]

[(C) Participating in public safety or emergency service activities.]

[(4)] **(5)** The offense described in this section, *[operating]* **driving** a motor vehicle while using a mobile *[communication]* **electronic** device, is:

(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction, a Class [C] B traffic violation.

(b) For a person's first conviction, if commission of the offense contributes to an accident described in ORS 811.720, a Class A traffic violation.

(c) For a person's second conviction within a 10-year period following the date of the person's first conviction, a Class A traffic violation.

(d) For a person's third or subsequent conviction within a 10-year period preceding the date of the person's current conviction, a Class B misdemeanor.

(6) In addition to any other sentence that may be imposed, the court shall impose a minimum fine of \$2,000 on a person convicted of a Class B misdemeanor under subsection (5)(d) of this section.

(7) For purposes of this section, sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence.

[(5)] **(8)** The Department of Transportation shall place signs on state highways to notify drivers that *[violation of this section is subject to a maximum fine of \$500]* **it is unlawful to drive a motor vehicle on the highways of this state while using a mobile electronic device and violators are subject to criminal penalties.**

SECTION 2. ORS 811.507, as amended by section 1 of this 2017 Act, is amended to read:

811.507. (1) As used in this section:

(a)(A) "Driving" means operating a motor vehicle on a highway or premises open to the public, and while temporarily stationary because of traffic, a traffic control device or other momentary delays.

(B) "Driving" does not include when the motor vehicle has stopped in a location where it can safely remain stationary and:

(i) Is pulled over on the side of, or is pulled off, a roadway;

(ii) Is in a designated parking space; or

(iii) Is required to park in the roadway to conduct necessary utility maintenance work.

(b) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mobile electronic device that when used gives a person the ability to keep both hands on the steering wheel.

(c)(A) "Mobile electronic device" means an electronic device that is not permanently installed in a motor vehicle.

(B) "Mobile electronic device" includes but is not limited to a device capable of text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(d) "Using a mobile electronic device" includes but is not limited to using a mobile electronic device for text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(2) A person commits the offense of driving a motor vehicle while using a mobile electronic device if the person, while driving a motor vehicle on a highway or premises open to the public:

(a) Holds a mobile electronic device in the person's hand; or

(b) Uses a mobile electronic device for any purpose.

(3) This section does not apply to a person:

(a) Who activates or deactivates a mobile electronic device or a function of the device;

(b) Who is employed as a commercial motor vehicle driver, or as a school bus driver, and is using a mobile electronic device within the scope of the person's employment if the use is permitted under regulations promulgated pursuant to 49 U.S.C. 31136;

(c) Who is operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in

accordance with rules of the Federal Communications Commission while transporting forest products, or while operating a vehicle to assist in logging operations, within the scope of the person's employment;

(d) Who is using a two-way radio device while operating a school bus or school activity vehicle within the scope of the person's employment; or

(e) Who is using a two-way radio device or operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, within the scope of the person's employment.

(4) It is an affirmative defense to a prosecution of a person under this section that the person:

(a) Used the mobile electronic device to communicate if the person was summoning or providing medical or other emergency help if no other person in the vehicle was capable of summoning help;

(b) Was 18 years of age or older and was using a hands-free accessory;

(c) Was driving an ambulance or emergency vehicle while acting within the scope of the person's employment;

(d) Was a police officer, firefighter or emergency medical services provider and was acting within the scope of the person's employment;

(e) Was 18 years of age or older, held a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and was operating an amateur radio;

(f) Was operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission to summon medical or other emergency help; or

(g) Was using a medical device.

(5) The offense described in this section, driving a motor vehicle while using a mobile electronic device, is:

(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction, a Class B traffic violation.

(b) For a person's first conviction, if commission of the offense contributes to an accident described in ORS 811.720, a Class A traffic violation.

(c) For a person's second conviction within a 10-year period following the date of the person's first conviction, a Class A traffic violation.

(d) For a person's third or subsequent conviction within a 10-year period preceding the date of the person's current conviction, a Class B misdemeanor.

(6) In addition to any other sentence that may be imposed, the court shall impose a minimum fine of \$2,000 on a person convicted of a Class B misdemeanor under subsection (5)(d) of this section.

(7) For purposes of this section, sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence.

(8)(a) For a person's first conviction of driving a motor vehicle while using a mobile electronic device, the court may suspend the fine to be imposed under subsection (5)(a) of this section on the condition that the person, within 120 days of sentencing:

(A) Complete at the person's own expense a distracted driving avoidance course approved by the Department of Transportation under section 4 of this 2017 Act; and

(B) Provide proof of completion to the court.

(b) The court may schedule a hearing to determine whether the person successfully completed the distracted driving avoidance course.

(c) If the person has successfully completed the requirements described in paragraph (a) of this subsection, the court shall enter a sentence of discharge.

(d) If the person has not successfully completed the requirements described in paragraph (a) of this subsection, the court shall:

- (A) Grant the person an extension based on good cause shown; or
- (B) Impose the fine under subsection (5)(a) of this section.

[(8)] (9) The department [of *Transportation*] shall place signs on state highways to notify drivers that it is unlawful to drive a motor vehicle on the highways of this state while using a mobile electronic device and violators are subject to criminal penalties.

SECTION 3. Section 4 of this 2017 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 4. (1) The Department of Transportation by rule shall establish standards for a distracted driving avoidance course provided to persons who violate ORS 811.507. The standards must describe the contents and quality of a curriculum for the course, specify requirements for obtaining a certificate or other evidence of having completed the course and otherwise determine the level and depth of knowledge a person must have obtained from the course.

(2) The department shall maintain a list of providers approved to lead the course described in this section and shall update the list monthly. The department shall prescribe procedures for providing the provider list to courts.

SECTION 5. The amendments to ORS 811.507 by section 1 of this 2017 Act apply to conduct that occurs on or after the effective date of this 2017 Act.

SECTION 6. (1) Section 4 of this 2017 Act and the amendments to ORS 811.507 by section 2 of this 2017 Act become operative on January 1, 2018.

(2) The Department of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, on and after the operative date specified in subsection (1) of this section, to exercise the duties, functions and powers conferred on the department by section 4 of this 2017 Act and the amendments to ORS 811.507 by section 2 of this 2017 Act.

SECTION 7. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect October 1, 2017.

Passed by House May 1, 2017

Received by Governor:

Repassed by House June 30, 2017

.....M.,....., 2017

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 29, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State