

Senator Lyle W. Hillyard proposes the following substitute bill:

1 **PROHIBITION OF WIRELESS**
2 **COMMUNICATION DEVICE USE IN A MOTOR**
3 **VEHICLE**

4 2009 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Stephen D. Clark**

7 Senate Sponsor: Lyle W. Hillyard

8 Cosponsor: Paul Ray

9
10 **LONG TITLE**

11 **General Description:**

12 This bill modifies the Motor Vehicles Code, the Uniform Driver License Act, and the
13 Criminal Code by amending provisions relating to the use of a handheld wireless
14 communication device for text messaging or electronic mail communication while
15 operating a moving motor vehicle.

16 **Highlighted Provisions:**

17 This bill:

- 18 ▶ prohibits a person from using a handheld wireless communication device for text
19 messaging or electronic mail communication while operating a moving motor
20 vehicle on a highway in this state;
- 21 ▶ provides exceptions to the handheld wireless communication device prohibition;
- 22 ▶ provides penalties for violating the prohibition on using a handheld wireless
23 communication device for text messaging or electronic mail communication while
24 operating a moving motor vehicle;



- 25 ▶ provides that criminal homicide is automobile homicide if a person operates a
- 26 moving vehicle in a negligent or criminally negligent manner causing the death of
- 27 another and was using a handheld wireless communication device for text
- 28 messaging or electronic mail communication at the time of operation;
- 29 ▶ provides penalties for automobile homicide in certain circumstances;
- 30 ▶ provides that a judge may order that a person's driver license be suspended for three
- 31 months upon conviction for a violation of the prohibition on using a handheld
- 32 wireless communication device for text messaging or electronic mail
- 33 communication while operating a moving motor vehicle;
- 34 ▶ requires the Driver License Division to immediately revoke, deny, suspend, or
- 35 disqualify a person's license upon receiving a record of the person's conviction of
- 36 automobile homicide while using a handheld wireless communication device for
- 37 text messaging or electronic mail communication; and
- 38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

45 **53-3-218**, as last amended by Laws of Utah 2006, Chapter 18

46 **53-3-220**, as last amended by Laws of Utah 2008, Chapters 3, 226, and 296

47 ENACTS:

48 **41-6a-1716**, Utah Code Annotated 1953

49 **76-5-207.5**, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **41-6a-1716** is enacted to read:

53 **41-6a-1716. Prohibition on using a handheld wireless communication device for**
54 **text messaging communication while operating a moving motor vehicle -- Penalties.**

55 (1) As used in this section:

56 (a) (i) "Handheld wireless communication device" means a handheld device used for
57 the transfer of information without the use of electrical conductors or wires.

58 (ii) "Handheld wireless communication device" includes a:

59 (A) wireless telephone;

60 (B) personal digital assistant;

61 (C) pager; or

62 (D) text messaging device.

63 (b) "Text messaging" has the same meaning as defined in Section 76-4-401.

64 (2) Except as provided in Subsection (3), a person may not use a handheld wireless
65 communication device for text messaging or electronic mail communication while operating a
66 moving motor vehicle on a highway in this state.

67 (3) Subsection (2) does not prohibit a person from using a handheld wireless
68 communication device while operating a moving motor vehicle:

69 (a) during a medical emergency;

70 (b) when reporting a safety hazard or requesting assistance relating to a safety hazard;

71 (c) when reporting criminal activity or requesting assistance relating to a criminal
72 activity;

73 (d) when providing roadside or medical assistance; or

74 (e) when used by a law enforcement officer or emergency service personnel acting
75 within the course and scope of the law enforcement officer's or emergency service personnel's
76 employment.

77 (4) A person convicted of a violation of this section is guilty of a:

78 (a) class C misdemeanor; or

79 (b) class B misdemeanor if the person:

80 (i) has also inflicted serious bodily injury upon another as a proximate result of using a
81 handheld wireless communication device for text messaging or electronic mail communication
82 while operating a moving motor vehicle on a highway in this state; or

83 (ii) has a prior conviction under this section, that is within three years of:

84 (A) the current conviction under this section; or

85 (B) the commission of the offense upon which the current conviction is based.

86 Section 2. Section **53-3-218** is amended to read:

87 **53-3-218. Court to report convictions and may recommend suspension of license**
88 **-- Severity of speeding violation defined.**

89 (1) As used in this section, "conviction" means conviction by the court of first
90 impression or final administrative determination in an administrative traffic proceeding.

91 (2) (a) A court having jurisdiction over offenses committed under this chapter or any
92 other law of this state, or under any municipal ordinance regulating driving motor vehicles on
93 highways or driving motorboats on the water, shall forward to the division within ten days, an
94 abstract of the court record of the conviction or plea held in abeyance of any person in the court
95 for a reportable traffic or motorboating violation of any laws or ordinances, and may
96 recommend the suspension of the license of the person convicted.

97 (b) When the division receives a court record of a conviction or plea in abeyance for a
98 motorboat violation, the division may only take action against a person's driver license if the
99 motorboat violation is for a violation of Title 41, Chapter 6a, Part 5, Driving Under the
100 Influence and Reckless Driving.

101 (3) The abstract shall be made in the form prescribed by the division and shall include:

102 (a) the name, date of birth, and address of the party charged;

103 (b) the license certificate number of the party charged, if any;

104 (c) the registration number of the motor vehicle or motorboat involved;

105 (d) whether the motor vehicle was a commercial motor vehicle;

106 (e) whether the motor vehicle carried hazardous materials;

107 (f) whether the motor vehicle carried 16 or more occupants;

108 (g) whether the driver presented a commercial driver license;

109 (h) the nature of the offense;

110 (i) whether the offense involved an accident;

111 (j) the driver's blood alcohol content, if applicable;

112 (k) if the offense involved a speeding violation:

113 (i) the posted speed limit;

114 (ii) the actual speed; and

115 (iii) whether the speeding violation occurred on a highway that is part of the interstate
116 system as defined in Section 72-1-102;

117 (l) the date of the hearing;

- 118 (m) the plea;
- 119 (n) the judgment or whether bail was forfeited; and
- 120 (o) the severity of the violation, which shall be graded by the court as "minimum,"
- 121 "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

122 (4) When a convicted person secures a judgment of acquittal or reversal in any
123 appellate court after conviction in the court of first impression, the division shall reinstate his
124 license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

125 (5) Upon a conviction for a violation of the prohibition on using a handheld wireless
126 communication device for text messaging or electronic mail communication while operating a
127 moving motor vehicle under Section 41-6a-1716, a judge may order a suspension of the
128 convicted person's license for a period of three months.

129 Section 3. Section **53-3-220** is amended to read:

130 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
131 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
132 **Limited driving privileges.**

133 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
134 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division
135 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's
136 conviction for:

137 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or
138 automobile homicide under Section 76-5-207 or 76-5-207.5;

139 (ii) driving or being in actual physical control of a motor vehicle while under the
140 influence of alcohol, any drug, or combination of them to a degree that renders the person
141 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited
142 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

143 (iii) driving or being in actual physical control of a motor vehicle while having a blood
144 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an ordinance that
145 complies with the requirements of Subsection 41-6a-510(1);

146 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
147 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
148 regulating driving on highways;

- 149 (v) any felony under the motor vehicle laws of this state;
- 150 (vi) any other felony in which a motor vehicle is used to facilitate the offense;
- 151 (vii) failure to stop and render aid as required under the laws of this state if a motor
152 vehicle accident results in the death or personal injury of another;
- 153 (viii) two charges of reckless driving, impaired driving, or any combination of reckless
154 driving and impaired driving committed within a period of 12 months; but if upon a first
155 conviction of reckless driving or impaired driving the judge or justice recommends suspension
156 of the convicted person's license, the division may after a hearing suspend the license for a
157 period of three months;
- 158 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
159 required in Section 41-6a-210;
- 160 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that
161 requires disqualification;
- 162 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or
163 allowing the discharge of a firearm from a vehicle;
- 164 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or
165 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);
- 166 (xiii) operating or being in actual physical control of a motor vehicle while having any
167 measurable controlled substance or metabolite of a controlled substance in the person's body in
168 violation of Section 41-6a-517;
- 169 (xiv) until July 30, 2015, operating or being in actual physical control of a motor
170 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;
- 171 (xv) operating or being in actual physical control of a motor vehicle while having any
172 measurable or detectable amount of alcohol in the person's body in violation of Section
173 41-6a-530;
- 174 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in
175 violation of Section 41-6a-606; or
- 176 (xvii) operating or being in actual physical control of a motor vehicle in this state
177 without an ignition interlock system in violation of Section 41-6a-518.2.
- 178 (b) The division shall immediately revoke the license of a person upon receiving a
179 record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

180 (i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or
181 allowing the discharge of a firearm from a vehicle; or

182 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or
183 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

184 (c) Except when action is taken under Section 53-3-219 for the same offense, the
185 division shall immediately suspend for six months the license of a person upon receiving a
186 record of conviction for:

187 (i) any violation of:

188 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

189 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

190 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

191 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

192 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

193 (ii) any criminal offense that prohibits:

194 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance
195 that is prohibited under the acts described in Subsection (1)(c)(i); or

196 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
197 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

198 (2) The division shall extend the period of the first denial, suspension, revocation, or
199 disqualification for an additional like period, to a maximum of one year for each subsequent
200 occurrence, upon receiving:

201 (a) a record of the conviction of any person on a charge of driving a motor vehicle
202 while the person's license is denied, suspended, revoked, or disqualified;

203 (b) a record of a conviction of the person for any violation of the motor vehicle law in
204 which the person was involved as a driver;

205 (c) a report of an arrest of the person for any violation of the motor vehicle law in
206 which the person was involved as a driver; or

207 (d) a report of an accident in which the person was involved as a driver.

208 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
209 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
210 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,

211 or revocation originally imposed under Section 53-3-221.

212 (4) (a) The division may extend to a person the limited privilege of driving a motor
213 vehicle to and from the person's place of employment or within other specified limits on
214 recommendation of the trial judge in any case where a person is convicted of any of the
215 offenses referred to in Subsections (1) and (2) except:

216 (i) automobile homicide under Subsection (1)(a)(i);

217 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
218 (1)(b), and (1)(c); and

219 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
220 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,
221 41-6a-517, a local ordinance which complies with the requirements of Subsection
222 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person
223 was charged with violating as a result of a plea bargain after having been originally charged
224 with violating one or more of these sections or ordinances.

225 (b) This discretionary privilege is limited to when undue hardship would result from a
226 failure to grant the privilege and may be granted only once to any person during any single
227 period of denial, suspension, revocation, or disqualification, or extension of that denial,
228 suspension, revocation, or disqualification.

229 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform
230 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or
231 denied under this chapter.

232 Section 4. Section **76-5-207.5** is enacted to read:

233 **76-5-207.5. Automobile homicide involving text messaging or electronic mail**
234 **communication while driving.**

235 (1) As used in this section:

236 (a) "Handheld wireless communication device" has the same meaning as defined in
237 Section 41-6a-1716.

238 (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile,
239 truck, van, motorcycle, train, engine, watercraft, or aircraft.

240 (c) "Text messaging" has the same meaning as defined in Section 76-4-401.

241 (2) (a) As used in this Subsection (2), "negligent" means simple negligence, the failure

242 to exercise that degree of care that reasonable and prudent persons exercise under like or
243 similar circumstances.

244 (b) Criminal homicide is automobile homicide, a third degree felony, if the person
245 operates a moving motor vehicle in a negligent manner:

246 (i) while using a handheld wireless communication device for text messaging or
247 electronic mail communication in violation of Section 41-6a-1716; and

248 (ii) causing the death of another.

249 (3) (a) As used in this Subsection (3), "criminally negligent" means criminal
250 negligence as defined by Subsection 76-2-103(4).

251 (b) Criminal homicide is automobile homicide, a second degree felony, if the person
252 operates a moving motor vehicle in a criminally negligent manner:

253 (i) while using a handheld wireless communication device for text messaging or
254 electronic mail communication in violation of Section 41-6a-1716; and

255 (ii) causing the death of another.

Fiscal Note**H.B. 290 3rd Sub. (Cherry) - Prohibition of Wireless Communication Device
Use in a Motor Vehicle**

2009 General Session

State of Utah

State Impact

Enactment of this bill will require \$4,400 per year from the General Fund appropriated to the Courts beginning in FY 2010. The Department of Public Safety will spend \$3,000 in one-time restricted funds in FY 2010 for programming. The Department can handle this expenditure with existing budgets. The bill will also generate \$6,000 per year in new General Fund revenue beginning in FY 2010.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$4,400	\$4,400	\$0	\$6,000	\$6,000
Transportation Fund Restricted	\$0	\$3,000	\$0	\$0	\$0	\$0
Total	\$0	\$7,400	\$4,400	\$0	\$6,000	\$6,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments through Justice Courts adjudications may benefit.