

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**PROHIBITION OF TEXT MESSAGING OR  
ELECTRONIC MAIL COMMUNICATION WHILE  
DRIVING**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Kay L. McIff

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ prohibits a person from using a handheld wireless communication device for text messaging or electronic mail communication while operating a moving motor vehicle on a highway in this state;
- ▶ provides exceptions to the handheld wireless communication device prohibition;
- ▶ provides penalties for violating the prohibition on using a handheld wireless communication device for text messaging or electronic mail communication while operating a moving motor vehicle;
- ▶ provides that criminal homicide is automobile homicide if a person operates a moving vehicle in a negligent or criminally negligent manner causing the death of



26 another and was using a handheld wireless communication device for text messaging or  
 27 electronic mail communication at the time of operation;

28       ▶ provides penalties for automobile homicide in certain circumstances;

29       ▶ provides that a judge ~~§~~→ [or justice] ←~~§~~ may order that a person's driver license be  
 29a suspended

30 for three months upon conviction ~~§~~→ **for a violation** ←~~§~~ of the prohibition on using a handheld  
 30a wireless

31 communication device for text messaging or electronic mail communication while  
 32 operating a moving motor vehicle;

33       ▶ requires the Driver License Division to immediately revoke, deny, suspend, or  
 34 disqualify a person's license upon receiving a record of the person's conviction of  
 35 automobile homicide while using a handheld wireless communication device for  
 36 text messaging or electronic mail communication; and

37       ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39       None

40 **Other Special Clauses:**

41       None

42 **Utah Code Sections Affected:**

43 AMENDS:

44       **53-3-218**, as last amended by Laws of Utah 2006, Chapter 18

45       **53-3-220**, as last amended by Laws of Utah 2008, Chapters 3, 226, and 296

46 ENACTS:

47       **41-6a-1716**, Utah Code Annotated 1953

48       **76-5-207.5**, Utah Code Annotated 1953

49

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

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

52       **41-6a-1716. Prohibition on using a handheld wireless communication device for**  
 53 **text messaging communication while operating a moving motor vehicle -- Penalties.**

54       (1) As used in this section:

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

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

58 (A) wireless telephone;

59 (B) personal digital assistant;

60 (C) pager; or

61 (D) text messaging device.

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

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

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

68 (a) during a medical emergency;

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

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

72 (d) when used by a law enforcement officer or emergency service personnel acting  
73 within the course and scope of their employment.

74 (4) A person convicted the first or second time of a violation of this section is guilty of  
75 a:

76 (a) class B misdemeanor; or

77 (b) class A misdemeanor if the person has also inflicted bodily injury upon another as a  
78 proximate result of using a handheld wireless communication device for text messaging or  
79 electronic mail communication while operating a moving motor vehicle on a highway in this  
80 state.

81 (5) A person convicted of a violation of this section is guilty of a third degree felony if:

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

85 (b) the person has two or more prior convictions under this section, each of which is  
86 within ten years of:

87 (i) the current conviction under this section; or

88 (ii) the commission of the offense upon which the current conviction is based; or  
89 (c) the conviction of this section is at any time after a conviction of automobile  
90 homicide under Section 76-5-207.5.

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

92 **53-3-218. Court to report convictions and may recommend suspension of license**  
93 **-- Severity of speeding violation defined.**

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

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

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

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

- 107 (a) the name, date of birth, and address of the party charged;
- 108 (b) the license certificate number of the party charged, if any;
- 109 (c) the registration number of the motor vehicle or motorboat involved;
- 110 (d) whether the motor vehicle was a commercial motor vehicle;
- 111 (e) whether the motor vehicle carried hazardous materials;
- 112 (f) whether the motor vehicle carried 16 or more occupants;
- 113 (g) whether the driver presented a commercial driver license;
- 114 (h) the nature of the offense;
- 115 (i) whether the offense involved an accident;
- 116 (j) the driver's blood alcohol content, if applicable;
- 117 (k) if the offense involved a speeding violation:
  - 118 (i) the posted speed limit;

119 (ii) the actual speed; and  
 120 (iii) whether the speeding violation occurred on a highway that is part of the interstate  
 121 system as defined in Section 72-1-102;

122 (l) the date of the hearing;

123 (m) the plea;

124 (n) the judgment or whether bail was forfeited; and

125 (o) the severity of the violation, which shall be graded by the court as "minimum,"  
 126 "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

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

130 (5) Upon a conviction ~~§~~ → **for a violation** ← ~~§~~ of the prohibition on using a handheld  
 130a wireless communication  
 131 device for text messaging or electronic mail communication while operating a moving motor  
 132 vehicle under Section 41-6a-1716, a judge ~~§~~ → [**or justice**] ← ~~§~~ may order a suspension of the  
 132a convicted  
 133 person's license for a period of three months.

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

135 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**  
 136 **disqualification of license -- Offense requiring an extension of period -- Hearing --**  
 137 **Limited driving privileges.**

138 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter  
 139 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division  
 140 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's  
 141 conviction for:

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

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

148 (iii) driving or being in actual physical control of a motor vehicle while having a blood  
 149 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an ordinance that

- 150 complies with the requirements of Subsection 41-6a-510(1);
- 151 (iv) perjury or the making of a false affidavit to the division under this chapter, Title  
152 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or  
153 regulating driving on highways;
- 154 (v) any felony under the motor vehicle laws of this state;
- 155 (vi) any other felony in which a motor vehicle is used to facilitate the offense;
- 156 (vii) failure to stop and render aid as required under the laws of this state if a motor  
157 vehicle accident results in the death or personal injury of another;
- 158 (viii) two charges of reckless driving, impaired driving, or any combination of reckless  
159 driving and impaired driving committed within a period of 12 months; but if upon a first  
160 conviction of reckless driving or impaired driving the judge or justice recommends suspension  
161 of the convicted person's license, the division may after a hearing suspend the license for a  
162 period of three months;
- 163 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as  
164 required in Section 41-6a-210;
- 165 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that  
166 requires disqualification;
- 167 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
168 allowing the discharge of a firearm from a vehicle;
- 169 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or  
170 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);
- 171 (xiii) operating or being in actual physical control of a motor vehicle while having any  
172 measurable controlled substance or metabolite of a controlled substance in the person's body in  
173 violation of Section 41-6a-517;
- 174 (xiv) until July 30, 2015, operating or being in actual physical control of a motor  
175 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;
- 176 (xv) operating or being in actual physical control of a motor vehicle while having any  
177 measurable or detectable amount of alcohol in the person's body in violation of Section  
178 41-6a-530;
- 179 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in  
180 violation of Section 41-6a-606; or

181 (xvii) operating or being in actual physical control of a motor vehicle in this state  
182 without an ignition interlock system in violation of Section 41-6a-518.2.

183 (b) The division shall immediately revoke the license of a person upon receiving a  
184 record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

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

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

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

192 (i) any violation of:

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

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

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

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

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

198 (ii) any criminal offense that prohibits:

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

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

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

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

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

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

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

213 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is  
214 driving while the person's license is denied, suspended, disqualified, or revoked, the person is  
215 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,  
216 or revocation originally imposed under Section 53-3-221.

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

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

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

224 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
225 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
226 41-6a-517, a local ordinance which complies with the requirements of Subsection  
227 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person  
228 was charged with violating as a result of a plea bargain after having been originally charged  
229 with violating one or more of these sections or ordinances.

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

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

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

238 **76-5-207.5. Automobile homicide involving text messaging or electronic mail**  
239 **communication while driving.**

240 (1) As used in this section:

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



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

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

246 (2) (a) As used in this Subsection (2), "negligent" means simple negligence, the failure  
247 to exercise that degree of care that reasonable and prudent persons exercise under like or  
248 similar circumstances.

249 (b) Criminal homicide is automobile homicide, a third degree felony, if the person  
250 operates a moving motor vehicle in a negligent manner while using a handheld wireless  
251 communication device for text messaging or electronic mail communication at the time of  
252 operation causing the death of another.

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

255 (b) Criminal homicide is automobile homicide, a second degree felony, if the person  
256 operates a moving motor vehicle in a criminally negligent manner while using a handheld  
257 wireless communication device for text messaging or electronic mail communication at the  
258 time of operation causing the death of another.

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**Fiscal Note****S.B. 149 1st Sub. (Green) - Prohibition of Text Messaging or Electronic Mail Communication While Driving**

2009 General Session

State of Utah

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**State Impact**

Corrections and the Board of Pardons will require General Funds of \$29,700 in FY 2009 and \$59,400 in FY 2010. Costs to Corrections and the Board will increase by \$29,700 annually in fiscal years 2012 and 2013 and will stabilize at \$133,800 in FY 2014 and each fiscal year thereafter. The Courts will require \$7,000 ongoing General Funds beginning in FY 2010. The Department of Public Safety will spend \$3,000 one-time Restricted Funds for programming which can be handled within the Department's existing budget. The bill will generate \$7,200 per year in new General Fund revenue beginning 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	\$66,400	\$66,400	\$0	\$7,200	\$7,200
General Fund, One-Time	\$0	(\$29,700)	\$0	\$0	\$0	\$0
Transportation Fund Restricted	\$0	\$3,000	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$39,700</b>	<b>\$66,400</b>	<b>\$0</b>	<b>\$7,200</b>	<b>\$7,200</b>

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**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 will be impacted by additional adjudications and incarcerations.

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