

1 HB353
2 188733-2
3 By Representatives Hanes, Pettus, Whorton (R) and Greer
4 RFD: Public Safety and Homeland Security
5 First Read: 01-FEB-18

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8 SYNOPSIS: Under existing law, the use of a wireless
9 telecommunication device to write, send, or read a
10 text-based communication while operating a motor
11 vehicle on a public road, street, or highway in the
12 state is a violation.

13 This bill would increase the penalty for the
14 violation.

15 Existing law provides exemptions from the
16 prohibition against using a wireless
17 telecommunication device to write, send, or read a
18 text-based communication while operating a motor
19 vehicle.

20 This bill would also exempt an individual
21 operating an authorized emergency vehicle.

22 Existing law provides for the assessment and
23 distribution of fines collected in criminal cases.

24 This bill would further provide for the
25 distribution of fines and would add an additional
26 fee to be distributed to the Alabama State Law
27 Enforcement Agency.

1 This bill would provide criminal penalties
2 for a person who causes a traffic accident while
3 writing, sending, or reading a text message while
4 operating a motor vehicle on a public road.

5 This bill also would provide additional
6 criminal penalties for a person convicted of
7 violating this act when at the time of the offense
8 there was a child in the vehicle or the person was
9 operating a commercial motor vehicle.

10 Amendment 621 of the Constitution of Alabama
11 of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of
13 Alabama of 1901, as amended, prohibits a general
14 law whose purpose or effect would be to require a
15 new or increased expenditure of local funds from
16 becoming effective with regard to a local
17 governmental entity without enactment by a 2/3 vote
18 unless: it comes within one of a number of
19 specified exceptions; it is approved by the
20 affected entity; or the Legislature appropriates
21 funds, or provides a local source of revenue, to
22 the entity for the purpose.

23 The purpose or effect of this bill would be
24 to require a new or increased expenditure of local
25 funds within the meaning of the amendment. However,
26 the bill does not require approval of a local
27 governmental entity or enactment by a 2/3 vote to

1 become effective because it comes within one of the
2 specified exceptions contained in the amendment.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 Relating to texting while driving; to amend Section
9 32-5A-350, Code of Alabama 1975, to further provide for the
10 criminal penalty; to further provide exemptions; to provide
11 further for the assessment and distribution of certain fines
12 and fees; to add Section 32-5A-350.1 to the Code of Alabama
13 1975, to provide criminal penalties for causing a traffic
14 accident while writing, sending, or reading a text message
15 while operating a motor vehicle; to provide additional
16 criminal penalties under certain circumstances; and in
17 connection therewith would have as its purpose or effect the
18 requirement of a new or increased expenditure of local funds
19 within the meaning of Amendment 621 of the Constitution of
20 Alabama of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of Alabama of 1901,
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 32-5A-350, Code of Alabama 1975,
25 is amended to read as follows:

26 "§32-5A-350.

1 "(a) For purposes of this article, the following
2 words have the following meanings:

3 "(1) WIRELESS TELECOMMUNICATION DEVICE. A handheld
4 cellular telephone, a text-messaging device, a personal
5 digital assistant, a stand alone computer, or any other
6 similar wireless device that is readily removable from a
7 vehicle and is used to write, send, or read text or data
8 through manual input. The term "wireless telecommunication
9 device" does not include a device which is voice-operated and
10 which allows the user to send or receive a text-based
11 communication without the use of either hand except to
12 activate or deactivate a feature or function.

13 "(2) WRITE, SEND, OR READ A TEXT-BASED
14 COMMUNICATION. Using a wireless telecommunication device to
15 manually communicate with any person using text-based
16 communication, including, but not limited to, communications
17 referred to as a text message, instant message, or electronic
18 mail. The term does not include reading, selecting, or
19 entering a telephone number or name in a cell or wireless
20 telephone or communication device for the purpose of making a
21 telephone call.

22 "(b) A person may not operate a motor vehicle on a
23 public road, street, or highway in Alabama while using a
24 wireless telecommunication device to write, send, or read a
25 text-based communication.

26 "(c) Subject to Section 32-5A-350.1, a ~~A~~ person who
27 violates subsection (b) is subject to fines as follows:

1 "(1) ~~Twenty-five dollars (\$25)~~ Fifty dollars (\$50)
2 for a first violation.

3 "(2) ~~Fifty dollars (\$50)~~ One hundred dollars (\$100)
4 for a second violation.

5 "(3) ~~Seventy-five dollars (\$75)~~ Two hundred dollars
6 (\$200) for a third or subsequent violation.

7 "(d) Law enforcement officers enforcing this section
8 may treat a violation of this section as the primary or sole
9 reason for issuing a citation to a driver.

10 "(e) The following uses of wireless communication
11 devices shall not be subject to the restrictions in this
12 section:

13 "(1) An individual using a wireless communication
14 device to obtain emergency services including, but not limited
15 to, an emergency call to a law enforcement agency, health care
16 provider, fire department, or other emergency services agency
17 or entity.

18 "(2) An individual using a wireless communication
19 device while the motor vehicle is parked on the shoulder of
20 the highway, road, or street.

21 "(3) An individual using a wireless communication
22 device as a global positioning or navigation system to receive
23 driving directions which has been pre-programmed with the
24 desired coordinates. The programming of coordinates while
25 operating a vehicle remains a violation of this section.

26 "(4) An individual operating an authorized emergency
27 vehicle. The exemption granted in this subdivision shall apply

1 under any circumstances, regardless of whether the individual
2 operating the vehicle is responding to an emergency call or is
3 in pursuit of a suspected violator of the law.

4 "(f) In addition to the fine for a violation under
5 subsection (c), a person convicted under this section shall
6 pay a five dollar (\$5) fee. Fees collected under this
7 subsection shall be deposited in the Public Safety Fund of the
8 Alabama State Law Enforcement Agency. Amounts deposited into
9 the Law Enforcement Fund shall be budgeted and allotted in
10 accordance with Sections 41-4-80 through 41-4-96 and Sections
11 41-19-1 through 41-19-12, Code of Alabama 1975.

12 "(g) If the law enforcement officer who issues a
13 citation to a driver under this section is an employee of the
14 Alabama State Law Enforcement Agency, any fine collected shall
15 be deposited in the Public Safety Fund of the Alabama State
16 Law Enforcement Agency. Amounts deposited into the Law
17 Enforcement Fund shall be budgeted and allotted in accordance
18 with Sections 41-4-80 through 41-4-96 and Sections 41-19-1
19 through 41-19-12, Code of Alabama 1975."

20 Section 2. Section 32-5A-350.1 is added to the Code
21 of Alabama 1975, to read as follows:

22 §32-5A-350.1.

23 (a) A person who operates a motor vehicle on a
24 public road, street, or highway while using a wireless
25 communication device to write, send, or read a text-based
26 communication in violation of Section 32-5A-350, Code of

1 Alabama 1975, and who causes a traffic accident shall be
2 punished as follows:

3 (1) On a first conviction, the person shall be
4 punished by imprisonment for not more than one year, or by a
5 fine of not less than six hundred dollars (\$600) nor more than
6 two thousand one hundred dollars, or by both a fine and
7 imprisonment. In addition, the Secretary of the Alabama State
8 Law Enforcement Agency shall suspend the driving privilege or
9 driver's license of the person convicted for a period of 90
10 days.

11 (2) On a second conviction, the person shall be
12 punished by imprisonment for not more than one year and by a
13 fine of not less than one thousand one hundred dollars
14 (\$1,100) nor more than five thousand one hundred dollars
15 (\$5,100). In addition, the Secretary of the Alabama State Law
16 Enforcement Agency shall revoke the driving privileges or
17 driver's license of the person convicted for a period of one
18 year.

19 (3) On a third conviction, the person shall be
20 punished by imprisonment for not more than one year and by a
21 fine of not less than two thousand one hundred dollars
22 (\$2,100) nor more than ten thousand one hundred dollars
23 (\$10,100). In addition, the Secretary of the Alabama State Law
24 Enforcement Agency shall revoke the driving privilege or
25 driver's license of the person convicted for a period of three
26 years.

1 (4) On a fourth or subsequent conviction, the person
2 shall be guilty of a Class C felony and punished by
3 imprisonment of not less than one year and one day nor more
4 than 10 years and by a fine of not less than four thousand one
5 hundred dollars (\$4,100) nor more than ten thousand one
6 hundred dollars (\$10,100). In addition, the Secretary of the
7 Alabama State Law Enforcement Agency shall revoke the driving
8 privilege or driver's license of the person convicted for a
9 period of five years.

10 (b) In addition to any penalty authorized by
11 subsection (a), when a person is convicted of violating this
12 section and it is found that at the time of the offense the
13 person was driving or in actual physical control of a
14 commercial motor vehicle, as defined in 49 C.F.R. Part 383.5
15 of the Federal Motor Carrier Safety Regulations, the person
16 shall be punished as follows:

17 (1) Upon a first conviction, the person's commercial
18 driver's license or commercial driving privilege shall be
19 revoked for a period of one year.

20 (2) Upon a second conviction, the person's
21 commercial driver's license or commercial driving privilege
22 shall be revoked for life.

23 (c) When a person is convicted of violating this
24 section and it is found that a child under the age of 16 was a
25 passenger at the time of the offense, the person shall be
26 sentenced to at least double the minimum punishment that the

1 person would have received if the child had not been a
2 passenger in the vehicle.

3 (d) The Alabama habitual felony offender law shall
4 not apply to a conviction of a felony pursuant to this
5 section, and a conviction of a felony pursuant to this section
6 shall not be a felony conviction for purposes of the
7 enhancement of punishment pursuant to Alabama's habitual
8 felony offender law.

9 Section 3. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

17 Section 4. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.