

1 HB391  
2 188733-4  
3 By Representatives Hanes, Pettus and Whorton (R)  
4 RFD: Public Safety and Homeland Security  
5 First Read: 08-FEB-18

2  
3  
4  
5  
6  
7  
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.

3  
4                           A BILL  
5                           TO BE ENTITLED  
6                           AN ACT

7  
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) A peace officer, as defined in Section  
27 36-21-60, a firefighter, a member of the Armed Forces of the

1 United States, or any other individual operating an authorized  
2 emergency vehicle while in the performance of his or her  
3 official duties and within the scope of his or her employment.

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.