



House Public Safety and Homeland Security
Engrossed Substitute for HB8

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A BILL
TO BE ENTITLED
AN ACT

Relating to motor vehicles; to amend Sections 32-5A-350, 32-5A-351, and 32-5A-352, Code of Alabama 1975, and to add Sections 32-5A-350.1 and Sections 32-5A-353 to 32-5A-358, inclusive, to Article 16 of Chapter 5A of Title 32 of the Code of Alabama 1975, to further provide prohibitions on the use of a wireless telecommunications device while operating a motor vehicle; to provide exceptions; to further provide criminal penalties for a violation; to provide enforcement procedures; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Koven L. Brown Act and is enacted in memory of Leah Grace Tarvin.

Section 2. Sections 32-5A-350, 32-5A-351, and 32-5A-352, Code of Alabama 1975, are amended to read as follows:



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29 "§32-5A-350

30 ~~(a) For purposes of this article, the following words~~
31 have the following meanings:

32 ~~(1) WIRELESS TELECOMMUNICATION DEVICE. A handheld~~
33 ~~cellular telephone, a text-messaging device, a personal~~
34 ~~digital assistant, a stand alone computer, or any other~~
35 ~~similar wireless device that is readily removable from a~~
36 ~~vehicle and is used to write, send, or read text or data~~
37 ~~through manual input. The term "wireless telecommunication~~
38 ~~device" does not include a device which is voice-operated and~~
39 ~~which allows the user to send or receive a text-based~~
40 ~~communication without the use of either hand except to~~
41 ~~activate or deactivate a feature or function.~~

42 ~~(2) WRITE, SEND, OR READ A TEXT-BASED COMMUNICATION.~~
43 ~~Using a wireless telecommunication device to manually~~
44 ~~communicate with any person using text-based communication,~~
45 ~~including, but not limited to, communications referred to as a~~
46 ~~text message, instant message, or electronic mail. The term~~
47 ~~does not include reading, selecting, or entering a telephone~~
48 ~~number or name in a cell or wireless telephone or~~
49 ~~communication device for the purpose of making a telephone~~
50 ~~call.~~

51 ~~(b) A person may not operate a motor vehicle on a public~~
52 ~~road, street, or highway in Alabama while using a wireless~~
53 ~~telecommunication device to write, send, or read a text-based~~
54 ~~communication.~~

55 ~~(c) A person who violates subsection (b) is subject to~~
56 ~~fines as follows:~~



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57 ~~(1) Twenty-five dollars (\$25) for a first violation.~~

58 ~~(2) Fifty dollars (\$50) for a second violation.~~

59 ~~(3) Seventy-five dollars (\$75) for a third or subsequent~~
60 ~~violation.~~

61 ~~(d) Law enforcement officers enforcing this section may~~
62 ~~treat a violation of this section as the primary or sole~~
63 ~~reason for issuing a citation to a driver.~~

64 ~~(e) The following uses of wireless communication devices~~
65 ~~shall not be subject to the restrictions in this section:~~

66 ~~(1) An individual using a wireless communication device~~
67 ~~to obtain emergency services including, but not limited to, an~~
68 ~~emergency call to a law enforcement agency, health care~~
69 ~~provider, fire department, or other emergency services agency~~
70 ~~or entity.~~

71 ~~(2) An individual using a wireless communication device~~
72 ~~while the motor vehicle is parked on the shoulder of the~~
73 ~~highway, road, or street.~~

74 ~~(3) An individual using a wireless communication device~~
75 ~~as a global positioning or navigation system to receive~~
76 ~~driving directions which has been pre-programmed with the~~
77 ~~desired coordinates. The programming of coordinates while~~
78 ~~operating a vehicle remains a violation of this section.~~

79 (1) TEXT-BASED COMMUNICATION. The term includes, but is
80 not limited to, a text message, instant message, e-mail, or
81 Internet data communicated through a wireless
82 telecommunications device.

83 (2) UTILITY SERVICES. Electric, natural gas, water,
84 wastewater, cable, telephone, or telecommunications services



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85 or the repair, location, relocation, improvement, or
86 maintenance of utility poles, transmission structures, pipes,
87 wires, fibers, cables, easements, rights-of-way, or associated
88 infrastructures.

89 (3) WIRELESS TELECOMMUNICATIONS DEVICE. A cellular
90 telephone, text-messaging device, personal digital assistant,
91 standalone computer, or any other wireless device that is used
92 to initiate or receive a wireless communication with another
93 person. The term does not include a radio, citizens band
94 radio, citizens band radio hybrid, commercial two-way radio
95 communication device or its functional equivalent,
96 subscription-based emergency communication device, prescribed
97 medical device, amateur or ham radio device, or in-vehicle
98 security, navigation, or remote diagnostic system."

99 "§32-5A-351

100 (a) A first or second conviction of this article within
101 a 24-month period shall be entered on the driving record of
102 any individual charged under this article as a two-point
103 violation.

104 (b) A third or subsequent conviction of this article
105 within a 24-month period shall be entered on the driving
106 record of any individual charged under this article as a
107 three-point violation."

108 "§32-5A-352

109 (a) In any case brought by a law enforcement officer
110 employed by the ~~Department of Public Safety~~ Alabama State Law
111 Enforcement Agency, all fines shall be allocated to the State
112 General Fund.



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113 (b) Each state, county, and municipal law enforcement
114 agency shall maintain statistical information on all traffic
115 stops made pursuant to this article, including traffic stops
116 made on minority groups, and shall report that information on
117 a monthly basis to the ~~Department of Public Safety~~ Alabama
118 State Law Enforcement Agency."

119 Section 3. Sections 32-5A-350.1 and Sections 32-5A-353
120 to 32-5A-358, inclusive, are added to Article 16 of Chapter 5A
121 of Title 32, Code of Alabama 1975, to read as follows:

122 §32-5A-350.1

123 Except as provided in Section 32-5A-353, a person may
124 not operate a motor vehicle on a public road, street, or
125 highway while doing any of the following:

126 (1) Using a wireless telecommunications device to write,
127 send, read, or otherwise engage in a text-based communication.

128 (2) Watching, recording, or capturing a photograph or
129 video.

130 (3) Using a handheld wireless telecommunications device
131 to engage in a voice-based communication.

132 (4) Physically holding or otherwise supporting with any
133 part of his or her body a wireless telecommunications device.

134 §32-5A-353

135 The following are not subject to the restrictions of
136 this article:

137 (1) The use of a wireless telecommunications device to
138 obtain emergency services, including, but not limited to, an
139 emergency call to a law enforcement agency, health care
140 provider, fire department, or other emergency services agency



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141 or entity.

142 (2) The use of a wireless telecommunications device
143 while the motor vehicle is parked.

144 (3) The use of a wireless telecommunications device as a
145 global positioning or navigation system to receive driving
146 directions; provided, however, the manual input of navigation
147 coordinates while operating a motor vehicle is a violation of
148 this article.

149 (4) The use of an earpiece, a headphone device, steering
150 wheel controls, speaker phone or any voice-activated
151 technology, or other device worn on the person or mounted onto
152 the dashboard, center console, windshield, or other part of
153 the vehicle to conduct substantially hands-free voice-based
154 wireless communications.

155 (5) The use of a continuous recording device that
156 operates within or outside the vehicle, including, but not
157 limited to, a dash camera or backup camera.

158 (6) The use of a wireless telecommunications device by
159 an employee or contractor of a utility services provider
160 within the scope of his or her employment while responding to
161 a utility emergency or performing other critical utility
162 services.

163 (7) The use of a wireless telecommunications device by a
164 law enforcement officer, emergency medical services personnel,
165 ambulance operator, firefighter, volunteer firefighter, towing
166 and recovery vehicle operator, or other similarly employed
167 public safety first responder during the performance of his or
168 her official duties.



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169 (8) The use of an ignition interlock device, as defined
170 in Section 32-5A-191.4.

171 (9) For an individual 18 years of age or older, the use
172 of a wireless telecommunications device in a manner that
173 requires the physical use of the individual's hand while
174 operating a motor vehicle if both of the following occur:

175 a. The device is mounted to the vehicle, including the
176 windshield, dashboard, or center console of the vehicle, and
177 the device does not create an unsafe obstruction of the
178 person's view of the road.

179 b. The individual's hand is used to activate or
180 deactivate a feature or function of the device with the motion
181 of one swipe or tap of the individual's finger, and the swipe
182 or tap does not activate the camera, video, or gaming features
183 or functions for viewing, recording, amusement, or other
184 non-navigational functions, other than functions or features
185 related to the transportation of persons or property for
186 compensation or payment of a fee.

187 (10) The use of a wireless telecommunications device by
188 a licensed physician while responding to an emergency medical
189 situation.

190 (11) The admissibility of any evidence offered or
191 collected by a licensed private investigator acting in the
192 scope and duty of the profession.

193 §32-5A-354

194 (a) A person who is convicted of violating this article
195 shall be guilty of a violation and shall be punished as
196 follows:



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197 (1) For a first conviction of violating this article
198 within a 24-month period of time, a person shall be punished
199 by a fine of one hundred dollars (\$100) or by 15 hours of
200 community service.

201 (2) For a second conviction of violating this article
202 within a 24-month period of time, a person shall be punished
203 by a fine of two hundred dollars (\$200) or by 30 hours of
204 community service.

205 (3) For a third or subsequent conviction of violating
206 this article within a 24-month period of time, a person shall
207 be punished by a fine of three hundred dollars (\$300) or 45
208 hours of community service, or both.

209 (b) No court costs may be imposed solely in connection
210 with the prosecution of a violation of this article.

211 §32-5A-355

212 (a) A law enforcement officer enforcing this article may
213 treat a violation of this article as the primary or sole
214 reason for issuing a citation to the operator of a motor
215 vehicle.

216 (b) A law enforcement officer enforcing this article may
217 not search a motor vehicle or the operator or passenger of the
218 motor vehicle solely because of a violation of this article.

219 (c) A law enforcement officer may not use a violation of
220 this article to establish probable cause for any other
221 violation.

222 (d) A law enforcement officer who stops a motor vehicle
223 solely for a violation of this article may not do any of the
224 following:



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225 (1) Access the wireless communications device without a
226 warrant.

227 (2) Confiscate the wireless communications device while
228 awaiting the issuance of a warrant to access the device.

229 (3) Obtain consent from the motor vehicle operator to
230 search the wireless communications device through coercion or
231 other improper method. Consent to search a motor vehicle
232 operator's wireless communications device shall be free and
233 voluntary.

234 (4) Make a custodial arrest solely for a violation of
235 this article.

236 (5) Search or inspect a motor vehicle or the contents
237 thereof, or search or inspect the operator or a passenger of
238 the motor vehicle.

239 (e) For purposes of enforcing this article only, a law
240 enforcement officer does not have probable cause and may not
241 stop the operator of a motor vehicle for a violation of this
242 article unless the officer visually observes the operator
243 using, holding, or physically supporting with any part of the
244 operator's body the wireless electronic communications device
245 in violation of this article.

246 §32-5A-356

247 (a) Any person appearing before a court for a first
248 charge of a violation of this article may petition the court
249 to have the charge dismissed by filing an affidavit affirming
250 the following:

251 (1) At the time of the violation, the person did not
252 possess a device to conduct substantially hands-free



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253 voice-based communications.

254 (2) The person has since acquired a device or other
255 technology to enable the person to conduct substantially
256 hands-free voice-based communications in accordance with this
257 article, including an earpiece, a headphone device, steering
258 wheel controls, any voice-activated technology, or other
259 device worn on the person, installed in the vehicle, or
260 mounted onto the dashboard, center console, windshield, or
261 other part of the vehicle to conduct substantially hands-free
262 voice-based wireless communications.

263 (b) The provisions of subsection (a) shall only apply to
264 a person who has not previously been charged for a violation
265 of this article.

266 (c) A court receiving an affidavit under subsection (a)
267 may accept the affidavit and dismiss the charge upon a finding
268 that the person has not previously been charged under this
269 article; that the person has not previously utilized the
270 protections of this section; and that the person has
271 demonstrated in a manner satisfactory to the court that the
272 person has acquired a device or other technology to conduct
273 substantially hands-free voice-based communications.

274 (d) No court costs shall be assessed upon a dismissal
275 under this section.

276 §32-5A-357

277 Nothing contained in this article shall be deemed a
278 violation of any law which would otherwise nullify or change
279 in any way the provisions or coverage of any insurance
280 contract.



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281 §32-5A-358

282 Beginning July 1, 2023, and continuing through December
283 31, 2023, for any violation of this article, a law enforcement
284 officer may only issue a written warning.

285 Section 4. Although this bill would have as its purpose
286 or effect the requirement of a new or increased expenditure of
287 local funds, the bill is excluded from further requirements
288 and application under Section 111.05 of the Constitution of
289 Alabama of 2022, because the bill defines a new crime or
290 amends the definition of an existing crime.

291 Section 5. This act shall become effective July 1, 2023,
292 following its passage and approval by the Governor, or its
293 otherwise becoming law.