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SYNOPSIS:

Under existing law, a person is prohibited from using a wireless telecommunications device to write, send, or read a text-based communication while operating a motor vehicle, with exceptions.

This bill would prohibit a person from watching, viewing, recording, or capturing a photograph or video while operating a motor vehicle; would prohibit a person from physically holding a wireless telecommunications device while operating a motor vehicle; and would prohibit a person from physically holding a wireless telecommunications device to conduct voice-based communications while operating a motor vehicle, with exceptions to the prohibitions.

This bill would further provide for the criminal penalties associated with a violation.

Under existing law, a conviction for using a wireless telecommunications device to write, send, or read a text-based communication is a two-point violation on the individual's driving record.

This bill would provide that on a third or subsequent conviction the individual would receive a three-point violation on the individual's driving record.

This bill would provide a comprehensive list of



29 circumstances under which the prohibitions of the bill  
30 would not apply.

31 This bill would provide that when a person is  
32 first charged with a violation and the person did not  
33 have a device to conduct substantially hands-free  
34 voice-based technology, the trial court may dismiss the  
35 charge upon proof that the person obtained a device to  
36 enable substantially hands-free voice-based technology.

37 Section 111.05 of the Constitution of Alabama of  
38 2022, prohibits a general law whose purpose or effect  
39 would be to require a new or increased expenditure of  
40 local funds from becoming effective with regard to a  
41 local governmental entity without enactment by a 2/3  
42 vote unless: it comes within one of a number of  
43 specified exceptions; it is approved by the affected  
44 entity; or the Legislature appropriates funds, or  
45 provides a local source of revenue, to the entity for  
46 the purpose.

47 The purpose or effect of this bill would be to  
48 require a new or increased expenditure of local funds  
49 within the meaning of the amendment. However, the bill  
50 does not require approval of a local governmental  
51 entity or enactment by a 2/3 vote to become effective  
52 because it comes within one of the specified exceptions  
53 contained in the amendment.

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A BILL



57 TO BE ENTITLED

58 AN ACT

59  
60 Relating to motor vehicles; to amend Sections  
61 32-5A-350, 32-5A-351, and 32-5A-352, Code of Alabama 1975, and  
62 to add Sections 32-5A-350.1 and Sections 32-5A-353 to  
63 32-5A-358, inclusive, to Article 16 of Chapter 5A of Title 32  
64 of the Code of Alabama 1975, to further provide prohibitions  
65 on the use of a wireless telecommunications device while  
66 operating a motor vehicle; to provide exceptions; to further  
67 provide criminal penalties for a violation; to provide  
68 enforcement procedures; and in connection therewith would have  
69 as its purpose or effect the requirement of a new or increased  
70 expenditure of local funds within the meaning of Section  
71 111.05 of the Constitution of Alabama of 2022.

72 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

76 Section 2. Sections 32-5A-350, 32-5A-351, and  
77 32-5A-352, Code of Alabama 1975, are amended to read as  
78 follows:

79 "§32-5A-350

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

82 ~~(1) WIRELESS TELECOMMUNICATION DEVICE. A handheld~~  
83 ~~cellular telephone, a text-messaging device, a personal~~  
84 ~~digital assistant, a stand alone computer, or any other~~



85 ~~similar wireless device that is readily removable from a~~  
86 ~~vehicle and is used to write, send, or read text or data~~  
87 ~~through manual input. The term "wireless telecommunication~~  
88 ~~device" does not include a device which is voice-operated and~~  
89 ~~which allows the user to send or receive a text-based~~  
90 ~~communication without the use of either hand except to~~  
91 ~~activate or deactivate a feature or function.~~

92 ~~(2) WRITE, SEND, OR READ A TEXT-BASED COMMUNICATION.~~

93 ~~Using a wireless telecommunication device to manually~~  
94 ~~communicate with any person using text-based communication,~~  
95 ~~including, but not limited to, communications referred to as a~~  
96 ~~text message, instant message, or electronic mail. The term~~  
97 ~~does not include reading, selecting, or entering a telephone~~  
98 ~~number or name in a cell or wireless telephone or~~  
99 ~~communication device for the purpose of making a telephone~~  
100 ~~call.~~

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

105 ~~(c) A person who violates subsection (b) is subject to~~  
106 ~~finest as follows:~~

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

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

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

111 ~~(d) Law enforcement officers enforcing this section may~~  
112 ~~treat a violation of this section as the primary or sole~~



113 ~~reason for issuing a citation to a driver.~~

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

116 ~~(1) An individual using a wireless communication device~~  
117 ~~to obtain emergency services including, but not limited to, an~~  
118 ~~emergency call to a law enforcement agency, health care~~  
119 ~~provider, fire department, or other emergency services agency~~  
120 ~~or entity.~~

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

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

129 (1) TEXT-BASED COMMUNICATION. The term includes, but is  
130 not limited to, a text message, instant message, e-mail, or  
131 Internet data communicated through a wireless  
132 telecommunications device.

133 (2) UTILITY SERVICES. Electric, natural gas, water,  
134 wastewater, cable, telephone, or telecommunications services  
135 or the repair, location, relocation, improvement, or  
136 maintenance of utility poles, transmission structures, pipes,  
137 wires, fibers, cables, easements, rights-of-way, or associated  
138 infrastructures.

139 (3) WIRELESS TELECOMMUNICATIONS DEVICE. A cellular  
140 telephone, text-messaging device, personal digital assistant,



141 standalone computer, or any other wireless device that is used  
142 to initiate or receive a wireless communication with another  
143 person. The term does not include a radio, citizens band  
144 radio, citizens band radio hybrid, commercial two-way radio  
145 communication device or its functional equivalent,  
146 subscription-based emergency communication device, prescribed  
147 medical device, amateur or ham radio device, or in-vehicle  
148 security, navigation, or remote diagnostic system."

149 "§32-5A-351

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

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

158 "§32-5A-352

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

163 (b) Each state, county, and municipal law enforcement  
164 agency shall maintain statistical information on all traffic  
165 stops made pursuant to this article, including traffic stops  
166 made on minority groups, and shall report that information on  
167 a monthly basis to the ~~Department of Public Safety~~ Alabama  
168 State Law Enforcement Agency."













281 other improper method. Consent to search a motor vehicle  
282 operator's wireless communications device shall be free and  
283 voluntary.

284 (4) Make a custodial arrest solely for a violation of  
285 this article.

286 (5) Search or inspect a motor vehicle or the contents  
287 thereof, or search or inspect the operator or a passenger of  
288 the motor vehicle.

289 (e) For purposes of enforcing this article only, a law  
290 enforcement officer does not have probable cause and may not  
291 stop the operator of a motor vehicle for a violation of this  
292 article unless the officer visually observes the operator  
293 using, holding, or physically supporting with any part of the  
294 operator's body the wireless electronic communications device  
295 in violation of this article.

296 §32-5A-356

297 (a) Any person appearing before a court for a first  
298 charge of a violation of this article may petition the court  
299 to have the charge dismissed by filing an affidavit affirming  
300 the following:

301 (1) At the time of the violation, the person did not  
302 possess a device to conduct substantially hands-free  
303 voice-based communications.

304 (2) The person has since acquired a device or other  
305 technology to enable the person to conduct substantially  
306 hands-free voice-based communications in accordance with this  
307 article, including an earpiece, a headphone device, steering  
308 wheel controls, any voice-activated technology, or other



309 device worn on the person, installed in the vehicle, or  
310 mounted onto the dashboard, center console, windshield, or  
311 other part of the vehicle to conduct substantially hands-free  
312 voice-based wireless communications.

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

316 (c) A court receiving an affidavit under subsection (a)  
317 may accept the affidavit and dismiss the charge upon a finding  
318 that the person has not previously been charged under this  
319 article; that the person has not previously utilized the  
320 protections of this section; and that the person has  
321 demonstrated in a manner satisfactory to the court that the  
322 person has acquired a device or other technology to conduct  
323 substantially hands-free voice-based communications.

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

326 §32-5A-357

327 Nothing contained in this article shall be deemed a  
328 violation of any law which would otherwise nullify or change  
329 in any way the provisions or coverage of any insurance  
330 contract.

331 §32-5A-358

332 Beginning July 1, 2023, and continuing through December  
333 31, 2023, for any violation of this article, a law enforcement  
334 officer may only issue a written warning.

335 Section 4. Although this bill would have as its purpose  
336 or effect the requirement of a new or increased expenditure of



337 local funds, the bill is excluded from further requirements  
338 and application under Section 111.05 of the Constitution of  
339 Alabama of 2022, because the bill defines a new crime or  
340 amends the definition of an existing crime.

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