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## DIGEST

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HB 376 Reengrossed

2022 Regular Session

Huval

**Abstract:** Prohibits the use of a wireless telecommunications device while operating a motor vehicle, provides for exceptions and penalties for such use, and provides for enforcement and reporting of such violations.

Present law prohibits the use of wireless telecommunications devices in school zones.

Proposed law extends the prohibition to include general usage of wireless telecommunications devices while driving.

Present law defines the term "engage in a call" as talking or listening on a wireless telecommunications device.

Proposed law modifies the definition of "engage in a call" in present law to include talking or listening during a voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call, except when using a hands-free wireless device.

Present law defines "wireless telecommunications device" and prohibits the definition from including any device or component that is permanently affixed to a motor vehicle, a hands-free wireless telephone, an electronic communication device used hands-free, citizen band radios, citizen band radio hybrids, commercial two-way radio communication devices, two-radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with push-to-talk functions.

Proposed law modifies the definition of "wireless telecommunications device" in present law by also excluding any other electronic device or any other substantially similar portable wireless device used to create, edit, post, or view video, photographs, or other images. Proposed law modifies present law by removing a hands-free wireless telephone from the exclusion.

Present law defines the term "write, send, or read a text-based communication" as using a wireless telecommunications device to manually communicate with any person by text-based communication including but not limited to a text message, instant message, or electronic mail.

Proposed law modifies present law by defining the term "write, send, or read a text-based communication" to include other text-based applications used to manually communicate with any person and removes the use of a wireless telecommunications device to manually communicate with any person by text-based communication.

Present law specifies that operating a wireless telecommunications device includes engaging in a call; writing, sending, or reading a text-based communication; and accessing, reading, or posting to a social networking site.

Proposed law adds to present law accessing, viewing, posting, editing, or creating a video, photograph, or other image; accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application or other media; using any application or feature of such a device by making manual entries of letters, numbers, symbols, or any combination thereof; and holding or physically supporting a wireless telecommunications device in either or both hands or with any part of the body, except for an earpiece, headphone device, or a wrist device to talk or listen during a voice transmission.

Proposed law provides exceptions for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for law enforcement officers, firefighters, and emergency services or EMS practitioners in the performance of their official duties during an emergency situation.

Present law provides exceptions for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for a person who uses a wireless telecommunications device: to report a traffic collision, medical emergency, or serious road hazard; to report a situation in which the person believes his personal safety is in jeopardy; to report or avert the perpetration or potential perpetration of a criminal act against the driver or another person; or while the motor vehicle is parked.

Proposed law modifies the exception in present law by specifying that it applies to a person using a wireless telecommunications device: to report other emergencies; to report a situation in which the person believes that an individual is in jeopardy of serious injury or death; to relay information between a transit or for-hire operator, including a transportation network company driver, and that operator's dispatcher, in which the device is affixed to the vehicle; to view data or images to navigate using a hands-free global positioning system; to operate a device for a purpose other than texting or accessing social media while the motor vehicle is lawfully stationary and not in violation of any other law; and to dial 9-1-1 to report a crime in progress. Proposed law removes the exceptions for a person using a wireless telecommunications device to: report a situation in which the person believes their personal safety is in jeopardy or to report or avert the perpetration or potential perpetration of a criminal act against the driver or another person.

Present law requires the first violation be punishable by a fine of not more than \$500.

Proposed law modifies present law by reducing the fine for a first violation from \$500 to a fine ranging from \$50 to \$100.

Present law requires each subsequent violation be punishable by a fine of not more than \$1000 and a 60-day driver's license suspension.

Proposed law modifies present law to provide that a second violation is punishable by a fine of \$100.

Proposed law requires the third violation be punishable by a fine of not more than \$100.

Present law requires a person involved in a collision at the time of the violation to be fined double the amount of the standard fine imposed. Present law requires the law enforcement officer investigating the collision to indicate on a written report that the person was using a wireless telecommunications device at the time of the collision.

Proposed law modifies the double fine imposed in present law to be designated for the operator of a motor vehicle involved in a crash at the time of the violation.

Proposed law requires law enforcement officers to issue a written warning for any violation occurring before Jan. 1, 2023.

Proposed law authorizes a law enforcement officer to issue a citation but prohibits the law enforcement officer from making an arrest for a violation of proposed law.

Present law requires use of a wireless telecommunications device for any purpose provided in proposed law be an affirmative defense and authorizes the operator of a motor vehicle to produce documentary or other evidence in support of this defense. Proposed law modifies present law to only allow enumerated exceptions (first responders, concerned citizens, navigation, and stationary).

Proposed law requires law enforcement officers issuing citations under present and proposed law to record the race and ethnicity of the violator to be reported by the law enforcement agency to the Dept. of Public Safety and Corrections (DPSC). Proposed law requires the DPSC, beginning Aug. 1, 2023, to annually report the collected data to the governor, president of the Senate, and speaker of the House of Representatives. Proposed law requires the data collected be reported, at a minimum, by statewide totals for local, state, and university law enforcement agencies, and requires the statewide total for local law enforcement agencies to combine the data collected by sheriffs and municipal police officers.

Proposed law requires a law enforcement officer who stops a motor vehicle for a violation to inform the operator of the vehicle of his right to decline a search of his wireless communications device. Proposed law prohibits the law enforcement officer during a stop from accessing the device without a warrant; confiscating the device while waiting on the warrant to access; obtaining consent from the operator of the vehicle through coercion or other improper methods; or making a custodial arrest except in situations where a warrant was issued for failure to appear for a felony or state misdemeanor charge in court when summoned. Requires consent to search a motor vehicle operator's wireless communications device be free and voluntary.

Proposed law prohibits a law enforcement officer from searching or inspecting a motor vehicle, its contents, the driver, or a passenger solely because of a violation of proposed law.

Proposed law prohibits a peace officer from stopping a driver or issuing a citation for a violation of present law unless the officer visually observes the driver using, holding, or physically supporting with any part of the driver's body the mobile electronic device.

Present law specifies that the provisions of present law only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.

Proposed law suspends the provisions of present law until Jan. 1, 2027 and restores the provisions of present law that provides for prohibited use of certain wireless telecommunication devices for text messaging and social networking, prohibited use of telecommunications devices in school zones, and provides for exceptions.

(Amends R.S. 32:300.5; Repeals R.S. 32:300.6, 300.7, and 300.8)

### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Remove provisions that deleted repealed citations and expanded present law to require \$50 from each fine collected on subsequent violations of proposed law be distributed to the indigent defender fund of the judicial district in which the citation was issued.
3. Add an exception for operating a wireless telecommunications device while operating a motor vehicle upon any public road or highway for an emergency service or EMS practitioner.
4. Add an exception to the prohibition against the use of certain wireless telecommunications devices while operating a vehicle for a person who dials 911 to report a crime in progress.
5. Remove the discretion of a judge to authorize 15 hours of community service for a first violation. Add the authorization for the penalty to include 30 hours of community service.
6. Remove the discretion of a judge to authorize 30 hours of community service for a second violation. Add the authorization for the penalty to include 30 hours of community service.
7. Remove the suspension of the person's driver's license for a period of 30 days and the discretion of a judge to authorize 60 hours of community service for a third and subsequent violation.
8. Add the authorization for the penalty to include 90 hours of community service for a third and subsequent violation.

9. Change the required consent to search a motor vehicle operator's wireless communications device from voluntary and unequivocal to free and voluntary.
10. Remove the requirement of probable cause for a violation to be based solely on the law enforcement officer's clear and unobstructed view of a person's use of a wireless telecommunications device.
11. Add a termination date of Jan. 1, 2027 for the provisions of proposed law to be in effect.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Modify the exception applicable to a law enforcement officer, a firefighter, and an emergency service or EMS practitioner to specify that the exception applies if these professionals are in the performance of their official duties during an emergency situation.
3. Remove a provision that requires up to 30 hours of community service, at least half of which must consist of participation in a litter abatement or collection program, for a first violation.
4. Change the required fine for a second violation from \$300 but not less than \$100 to \$100.
5. Remove a provision that requires up to 30 hours of community service, at least half of which must consist of participation in a litter abatement or collection program, for a second violation.
6. Change the required fine for a third violation from not more than \$300 but not less than \$100 to \$100.
7. Remove a provision that requires up to 90 hours of community service, at least half of which must consist of participation in a litter abatement or collection program, for a third violation.
8. Prohibit a peace officer from stopping a driver or issuing a citation for a violation of present law unless the officer visually observes the driver using, holding, or physically supporting with any part of the driver's body the mobile electronic device.
9. Authorize a law enforcement officer to issue a citation but prohibit the law enforcement officer from making an arrest for a violation of proposed law.
10. Suspend the provisions of present law until Jan. 1, 2027 and restore the provisions of present law that provides for prohibited use of certain wireless telecommunication devices for text messaging and social networking, prohibited use of telecommunications

devices in school zones, and provides for exceptions.