

Regular Session, 2011

HOUSE BILL NO. 338

BY REPRESENTATIVES STIAES AND BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES: Prohibits drivers from using handheld cellular devices while driving

1 AN ACT

2 To enact R.S. 32:300.8 and to repeal R.S. 32:300.5 and 300.6, relative to motor vehicles; to  
3 prohibit the use of hand-held wireless telecommunications devices while operating  
4 motor vehicles; to provide for penalties; to repeal current prohibitions on texting  
5 while driving and use of wireless telecommunication devices by certain drivers; and  
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 32:300.8 is hereby enacted to read as follows:

9 §300.8. Motor vehicle; use of hand-held wireless telecommunication devices  
10 prohibited; penalty

11 A. The use of a hand-held wireless telecommunication device to engage in  
12 a call or write, send, or read text-based communication while operating a motor  
13 vehicle is prohibited. A hands-free wireless telecommunications device may be used  
14 to engage in a call or communicate data or text.

15 B. This Section does not apply to the use of a hand-held wireless  
16 telecommunications device for the following purposes:

17 (1) Communicating with an emergency system response operator, 911 public  
18 safety communications dispatcher, or school administrator about an emergency  
19 situation.

1           (2) Communicating with a hospital or emergency room about an emergency  
2           situation.

3           (3) Communicating with a physician's office or health clinic about an  
4           emergency situation.

5           (4) Communicating with emergency response personnel while in the  
6           performance of their duty, including firefighters of fire departments, fire protection  
7           districts, or volunteer fire departments, emergency medical service personnel, and  
8           law enforcement or peace officers about an emergency situation.

9           (5) Reporting a traffic crash.

10          (6) Reporting a situation in which the person believes his personal safety is  
11          in jeopardy.

12          (7) Reporting or averting the perpetration or potential perpetration of a  
13          criminal act against the driver or another person.

14          (8) Navigate using a global positioning system.

15          (9) Relay information between a transit or for-hire operator and that  
16          operator's dispatcher, in which the device is permanently affixed to the vehicle.

17          C. This Section shall not apply to a person engaging in a call or writing,  
18          sending, or reading a text-based communication while the motor vehicle is lawfully  
19          parked.

20          D. As used in this Section, the following terms shall have the following  
21          meanings:

22               (1) "Engage in a call" means talking or listening on a hands-free  
23               telecommunication device or a hand-held wireless telecommunication device.

24               However, this definition shall not preclude the use of either hand to activate,  
25               deactivate, or initiate a function of the hands-free wireless telecommunication  
26               device.

27               (2) "Hands-free wireless telecommunications device" shall mean any type  
28               of instrument, device, or machine that is capable of transmitting or receiving  
29               telephonic, electronic, radio, text, or data communications, including but not limited

1        to a cellular telephone, a text-messaging device, a personal digital assistant, a  
2        computer, or any other similar wireless device that allows a user to engage in a call  
3        or communicate text with an internal feature or function or additional attachment  
4        without the use of either hand.

5                (3) "Hand-held wireless telecommunications device" shall mean any type of  
6        instrument, device, or machine that is capable of transmitting or receiving  
7        telephonic, electronic, radio, text, or data communications, including but not limited  
8        to a cellular telephone, a text-messaging device, a personal digital assistant, a  
9        computer, or any other similar wireless device, that is designed to engage in a call  
10       or communicate text or data using at least one hand. It does not include citizens  
11       band radios, citizens band radio hybrids, devices with a push-to-talk function, or  
12       commercial two-way radio communication devices or any device or component that  
13       is permanently affixed to a motor vehicle.

14               (4) "Text-based communication" shall mean using a hand-held wireless  
15       telecommunications device to manually communicate with any person or business  
16       by communication referred to as a text message, instant message, or electronic mail.

17               E.(1) Whoever violates the provisions of this Section shall be fined one  
18       hundred twenty-five dollars, in addition to court costs.

19               (2) If a person is involved in a crash at the time of a violation, then the fine  
20       shall be equal to double the amount of the standard fine imposed in this Subsection  
21       and the law enforcement officer investigating the crash shall indicate on the written  
22       accident form that the person was using a hand-held wireless telecommunication  
23       device at the time of the crash.

24               F. In any action to recover damages arising out of the ownership, common  
25       maintenance, or operation of a motor vehicle, use of a hand-held wireless  
26       telecommunication device in violation of this Section shall not be considered  
27       evidence of comparative negligence. Use of a hand-held wireless telecommunication  
28       device in violation of this Section shall not be admitted to mitigate damages.

- 1                    G. The provisions of this Section shall not apply to persons seventeen years  
2                    of age or younger.  
3                    Section 2. R.S. 32:300.5 and 300.6 are hereby repealed in their entirety.
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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Stiaes

HB No. 338

**Abstract:** Prohibits operators of motor vehicles from using hand-held wireless communication devices and provides for penalties.

Present law provides that texting while driving is prohibited for all drivers and that the violation is enforced as a primary offense.

Proposed law repeals present law and provides that operators of motor vehicles shall not text or communicate using a hand-held wireless telecommunications device and that the violation shall be enforced as a primary offense.

Present law provides that no person who holds a Class "E" learner's license or intermediate license shall operate a motor vehicle while using any wireless telecommunications device to engage in a call, unless the wireless telecommunications device is a hands-free wireless telephone and that the violation is enforced as a primary offense.

Proposed law repeals present law and provides that all operators of motor vehicles shall not communicate using a hand-held wireless telecommunications device and that the violation shall be enforced as a primary offense.

Proposed law provides for definitions of "engage in a call", "hand-held wireless telecommunications device", "hands-free wireless telecommunications device", and "text-based communication".

Proposed law provides for exceptions for using a hand-held wireless telecommunications device while driving.

Proposed law provides for penalties.

Proposed law provides that if a person is involved in a crash at the time of a violation, then the fine shall be equal to double the amount of the standard fine imposed in proposed law and the law enforcement officer investigating the crash shall indicate on the written accident form that the person was using a hand-held wireless telecommunication device at the time of the crash.

Proposed law provides that in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, use of a hand-held wireless telecommunication device in violation of proposed shall not be considered evidence of comparative negligence. Use of a hand-held wireless telecommunication device in violation of proposed law shall not be admitted to mitigate damages.

Present law provides that drivers 17 years of age or younger shall not operate a motor vehicle on any public road or highway in this state while using any wireless

telecommunications device to engage in a call or write, send, or read a text-based communication.

Proposed law retains present law and provides that the provisions of proposed law shall not apply to persons 17 years of age or younger.

(Adds R.S. 32:300.8; Repeals R.S. 32:300.5 and 300.6)

Summary of Amendments Adopted by House

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

1. Added that a hand-held wireless telecommunication device can be used to navigate using a global positioning system and to relay information between a transit or for-hire operator and that operator's dispatcher, in which the device to communicate with the dispatcher is permanently affixed to the vehicle.
2. Defined "engage in a call" and "text-based communication".
3. Added that devices with a push-to talk function are not included in the definition of "hand-held wireless telecommunications device".
4. Provided that if a person is involved in a crash at the time of a violation, then the fine shall be equal to double the amount of the standard fine imposed in proposed law and the law enforcement officer investigating the crash shall indicate on the written accident form that the person was using a hand-held wireless telecommunication device at the time of the crash.
5. Provided that in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, use of a hand-held wireless telecommunication device in violation of proposed law shall not be considered evidence of comparative negligence. Use of a hand-held wireless telecommunication device in violation of proposed law shall not be admitted to mitigate damages.
6. Provided that the provisions of proposed law shall not apply to persons 17 years of age or younger.
7. Repealed current prohibitions on texting while driving for all drivers and using hand-held wireless telecommunication device to engage in a call while driving by persons who hold Class "E" learner's licenses or intermediate licenses.