

A-Engrossed Senate Bill 2

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by Senator COURTNEY; Senator MANNING JR (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Renames offense of operating motor vehicle while using mobile communication device as offense of operating motor vehicle while using mobile electronic device. Defines "mobile electronic device."

Increases penalty for offense. [*Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Further increases penalty for multiple violations within 10 years. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.*] **Punishes by maximum fine of \$2,000. Increases penalty for second conviction. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both. Increases penalty further for third or subsequent conviction. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.**

Permits court to suspend fine following person's first conviction if person completes distracted driving avoidance course within 120 days of sentencing.

Prescribes additional minimum fines for third or subsequent conviction.

Declares emergency, effective October 1, 2017.

A BILL FOR AN ACT

1
2 Relating to the offense of operating a motor vehicle while using a mobile communication device;
3 creating new provisions; amending ORS 811.507; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 811.507 is amended to read:

6 811.507. (1) As used in this section:

7 (a) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mo-
8 bile [*communication*] **electronic** device[, *whether or not permanently installed in a motor vehicle,*] that
9 when used [*allows a person to maintain*] **gives a person the ability to keep** both hands on the
10 steering wheel.

11 [*(b) "Mobile communication device" means a text messaging device or a wireless, two-way commu-*
12 *nication device designed to receive and transmit voice or text communication.*]

13 **(b)(A) "Mobile electronic device" means an electronic device that is not permanently in-**
14 **stalled in a motor vehicle.**

15 **(B) "Mobile electronic device" includes but is not limited to a device capable of text**
16 **messaging, voice communication, entertainment, navigation, accessing the Internet or**
17 **producing electronic mail.**

18 **(c) "Using a mobile electronic device" includes but is not limited to using a mobile elec-**
19 **tronic device for text messaging, voice communication, entertainment, navigation, accessing**
20 **the Internet or producing electronic mail.**

21 (2) A person commits the offense of operating a motor vehicle while using a mobile [*communi-*
22 *cation*] **electronic** device if the person, while operating a motor vehicle on a highway[,];

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(a) Holds a mobile electronic device in the person's hand; or**

2 **(b) Uses a mobile [communication] electronic device for any purpose.**

3 (3) This section does not apply to a person who activates or deactivates a mobile
4 [communication] **electronic** device or a function of the device [or who].

5 **(4) It is an affirmative defense to a prosecution of a person under this section that the**
6 **person:**

7 **(a) [Uses] Used the mobile electronic device [for voice communication] to communicate** if the
8 person:

9 [(a)] **(A) [Is] Was summoning or providing** medical or other emergency help if no other person
10 in the vehicle [is] **was** capable of summoning help; **or**

11 [(b)] *Is using a mobile communication device for the purpose of farming or agricultural*
12 *operations;*

13 [(c)] *Is operating an ambulance or emergency vehicle;*

14 **(B) Was an individual employed as a commercial motor vehicle driver or a school bus**
15 **driver who uses a mobile electronic device within the scope of the person's employment if**
16 **the use is permitted under regulations promulgated pursuant to 49 U.S.C. 31136 as in effect**
17 **on January 1, 2017;**

18 [(d)] **(b) [Is] Was** 18 years of age or older and [is] **was** using a hands-free accessory;

19 **(c) Was operating an ambulance or emergency vehicle while acting in the scope of the**
20 **person's employment;**

21 **(d) Was a police officer, firefighter or emergency medical services provider and was act-**
22 **ing in the scope of the person's employment;**

23 [(e)] *Is operating a motor vehicle while providing public safety services or emergency services;*

24 [(f)] *Is operating a motor vehicle while acting in the scope of the person's employment as a public*
25 *safety officer, as defined in ORS 348.270;*

26 [(g)] *Is operating a tow vehicle or roadside assistance vehicle while acting in the scope of the*
27 *person's employment;*

28 [(h)] *Holds a valid amateur radio operator license issued or any other license issued by the Federal*
29 *Communications Commission and is operating an amateur radio;*

30 [(i)] **(e) [Is] Was** operating a two-way radio device that transmits radio communication trans-
31 mitted by a station operating on an authorized frequency within the citizens' or family radio service
32 bands in accordance with rules of the Federal Communications Commission[;] **to summon medical**
33 **or other emergency help; or**

34 **(f) Was using a medical device.**

35 [(j)] *Is operating a vehicle owned or contracted by a utility for the purpose of installing, repairing,*
36 *maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity,*
37 *water or telecommunications, while acting in the scope of the person's employment; or]*

38 [(k)] *Is using a function of the mobile communication device that allows for only one-way voice*
39 *communication while the person is:]*

40 [(A)] *Operating a motor vehicle in the scope of the person's employment;*

41 [(B)] *Providing transit services; or]*

42 [(C)] *Participating in public safety or emergency service activities.]*

43 [(4)] **(5) The offense described in this section, operating a motor vehicle while using a mobile**
44 **[communication] electronic device, is:**

45 **(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction,**

1 a Class [C] A traffic violation.

2 **(b) For a person’s first conviction, if commission of the offense contributes to an acci-**
3 **dent that is required under ORS 811.725 to be reported to the Department of Transportation,**
4 **a Class B misdemeanor.**

5 **(c) For a person’s second conviction, a Class B misdemeanor.**

6 **(d) For a person’s third or subsequent conviction, a Class A misdemeanor.**

7 **(6) In addition to any other sentence that may be imposed, the court shall impose a**
8 **minimum fine of \$2,000 on a person for a third or subsequent conviction of operating a motor**
9 **vehicle while using a mobile electronic device.**

10 **(7) For purposes of this section, sentences for two or more convictions that are imposed**
11 **in the same sentencing proceeding are considered to be one sentence.**

12 [(5)] **(8) The Department of Transportation shall place signs on state highways to notify drivers**
13 **that [violation of this section is subject to a maximum fine of \$500] it is unlawful to operate a motor**
14 **vehicle on the highways of this state while using a mobile electronic device and violators are**
15 **subject to criminal penalties.**

16 **SECTION 2.** ORS 811.507, as amended by section 1 of this 2017 Act, is amended to read:

17 811.507. (1) As used in this section:

18 (a) “Hands-free accessory” means an attachment or built-in feature for or an addition to a mo-
19 bile electronic device that when used gives a person the ability to keep both hands on the steering
20 wheel.

21 (b)(A) “Mobile electronic device” means an electronic device that is not permanently installed
22 in a motor vehicle.

23 (B) “Mobile electronic device” includes but is not limited to a device capable of text messaging,
24 voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

25 (c) “Using a mobile electronic device” includes but is not limited to using a mobile electronic
26 device for text messaging, voice communication, entertainment, navigation, accessing the Internet
27 or producing electronic mail.

28 (2) A person commits the offense of operating a motor vehicle while using a mobile electronic
29 device if the person, while operating a motor vehicle on a highway:

30 (a) Holds a mobile electronic device in the person’s hand; or

31 (b) Uses a mobile electronic device for any purpose.

32 (3) This section does not apply to a person who activates or deactivates a mobile communication
33 device or a function of the device.

34 (4) It is an affirmative defense to a prosecution of a person under this section that the person:

35 (a) Used the mobile electronic device to communicate if the person:

36 (A) Was summoning or providing medical or other emergency help if no other person in the
37 vehicle was capable of summoning help; or

38 (B) Was an individual employed as a commercial motor vehicle driver or a school bus driver
39 who uses a mobile electronic device within the scope of the person’s employment if the use is per-
40 mitted under regulations promulgated pursuant to 49 U.S.C. 31136 as in effect on January 1, 2017;

41 (b) Was 18 years of age or older and was using a hands-free accessory;

42 (c) Was operating an ambulance or emergency vehicle while acting in the scope of the person’s
43 employment;

44 (d) Was a police officer, firefighter or emergency medical services provider and was acting in
45 the scope of the person’s employment;

1 (e) Was operating a two-way radio device that transmits radio communication transmitted by a
2 station operating on an authorized frequency within the citizens' or family radio service bands in
3 accordance with rules of the Federal Communications Commission to summon medical or other
4 emergency help; or

5 (f) Was using a medical device.

6 (5) The offense described in this section, operating a motor vehicle while using a mobile elec-
7 tronic device, is:

8 (a) Except as provided in paragraph (b) of this subsection, for a person's first conviction, a Class
9 A traffic violation.

10 (b) For a person's first conviction, if commission of the offense contributes to an accident that
11 is required under ORS 811.725 to be reported to the Department of Transportation, a Class B
12 misdemeanor.

13 (c) For a person's second conviction, a Class B misdemeanor.

14 (d) For a person's third or subsequent conviction, a Class A misdemeanor.

15 (6) In addition to any other sentence that may be imposed, the court shall impose a minimum
16 fine of \$2,000 on a person for a third or subsequent conviction of operating a motor vehicle while
17 using a mobile electronic device.

18 (7) For purposes of this section, sentences for two or more convictions that are imposed in the
19 same sentencing proceeding are considered to be one sentence.

20 **(8)(a) For a person's first conviction of operating a motor vehicle while using a mobile**
21 **electronic device, the court may suspend the fine to be imposed under subsection (5)(a) of**
22 **this section on the condition that the person, within 120 days of sentencing:**

23 **(A) Complete at the person's own expense a distracted driving avoidance course approved**
24 **by the Department of Transportation under section 4 of this 2017 Act; and**

25 **(B) Provide proof of completion to the court.**

26 **(b) The court may schedule a hearing to determine whether the person successfully**
27 **completed the distracted driving avoidance course.**

28 **(c) If the person has successfully completed the requirements described in paragraph (a)**
29 **of this subsection, the court shall enter a sentence of discharge.**

30 **(d) If the person has not successfully completed the requirements described in paragraph**
31 **(a) of this subsection, the court shall:**

32 **(A) Grant the person an extension based on good cause shown; or**

33 **(B) Impose the fine under subsection (5)(a) of this section.**

34 ~~[(8)]~~ **(9)** The Department of Transportation shall place signs on state highways to notify drivers
35 that it is unlawful to operate a motor vehicle on the highways of this state while using a mobile
36 electronic device and violators are subject to criminal penalties.

37 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of the Oregon Vehicle**
38 **Code.**

39 **SECTION 4. (1) The Department of Transportation by rule shall establish standards for**
40 **a distracted driving avoidance course provided to persons who violate ORS 811.507. The**
41 **standards must describe the contents and quality of a curriculum for the course, specify**
42 **requirements for obtaining a certificate or other evidence of having completed the course**
43 **and otherwise determine the level and depth of knowledge a person must have obtained from**
44 **the course.**

45 **(2) The department shall maintain a list of providers approved to lead the course de-**

1 scribed in this section and shall update the list monthly. The department shall prescribe
2 procedures for providing the provider list to local courts.

3 **SECTION 5.** The amendments to ORS 811.507 by section 1 of this 2017 Act apply to con-
4 duct that occurs on or after the effective date of this 2017 Act.

5 **SECTION 6.** (1) Section 4 of this 2017 Act and the amendments to ORS 811.507 by section
6 2 of this 2017 Act become operative on January 1, 2018.

7 (2) The Department of Transportation may take any action before the operative date
8 specified in subsection (1) of this section that is necessary to enable the department, on and
9 after the operative date specified in subsection (1) of this section, to exercise the duties,
10 functions and powers conferred on the department by section 4 of this 2017 Act and the
11 amendments to ORS 811.507 by section 2 of this 2017 Act.

12 **SECTION 7.** This 2017 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
14 October 1, 2017.