

**B-Engrossed**  
**House Bill 2597**

Ordered by the Senate June 26  
Including House Amendments dated April 21 and Senate Amendments  
dated June 26

Sponsored by Representatives OLSON, LININGER, Senator BURDICK; Representatives BARKER, ESQUIVEL,  
MCKEOWN, RAYFIELD (Presession 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]* **driving** motor vehicle while using mobile electronic device. Defines "mobile electronic device." Beginning January 1, 2018, provides for suspension of execution of fine for first offense if person completes distracted driving avoidance course.

Increases penalty for offense. Increases penalty further if offense contributes to accident or is second or subsequent offense. Punishes by maximum fine of \$2,000.

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 electronic device; creating  
3 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)(A) "Driving" means operating a motor vehicle on a highway or premises open to the**  
8 **public, and while temporarily stationary because of traffic, a traffic control device or other**  
9 **momentary delays.**

10 **(B) "Driving" does not include when the motor vehicle has stopped in a location where**  
11 **it can safely remain stationary and:**

12 **(i) Is pulled over on the side of, or is pulled off, a roadway;**

13 **(ii) Is in a designated parking space; or**

14 **(iii) Is required to park in the roadway to conduct necessary utility maintenance work.**

15 *[(a)]* **(b) "Hands-free accessory" means an attachment or built-in feature for or an addition to a**  
16 **mobile [communication] electronic device, whether or not permanently installed in a motor vehicle,**  
17 **that when used [allows a person to maintain] gives a person the ability to keep both hands on the**  
18 **steering wheel.**

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

21 **(c)(A) "Mobile electronic device" means an electronic device that is not permanently in-**  
22 **stalled in a motor vehicle.**

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

**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 **producing electronic mail.**

2 (d) **“Using a mobile electronic device” includes but is not limited to using a mobile elec-**  
3 **tronic device for text messaging, voice communication, entertainment, navigation, accessing**  
4 **the Internet or producing electronic mail.**

5 (2) A person commits the offense of *[operating]* **driving** a motor vehicle while using a mobile  
6 *[communication]* **electronic** device if the person, while *[operating]* **driving** a motor vehicle on a  
7 highway[,] **or premises open to the public:**

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

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

10 (3) This section does not apply to a person:

11 (a) **Who activates or deactivates a mobile *[communication]* electronic device or a function of the**  
12 **device *[or who]*;**

13 (b) **Who is employed as a commercial motor vehicle driver, or as a school bus driver, and**  
14 **is using a mobile electronic device within the scope of the person’s employment if the use is**  
15 **permitted under regulations promulgated pursuant to 49 U.S.C. 31136;**

16 (c) **Who is operating a two-way radio device that transmits radio communication trans-**  
17 **mitted by a station operating on an authorized frequency within the citizens’ or family radio**  
18 **service bands in accordance with rules of the Federal Communications Commission while**  
19 **transporting forest products, or while operating a vehicle to assist in logging operations,**  
20 **within the scope of the person’s employment;**

21 (d) **Who is using a two-way radio device while operating a school bus or school activity**  
22 **vehicle within the scope of the person’s employment; or**

23 (e) **Who is using a two-way radio device or operating a two-way radio device that trans-**  
24 **mits radio communication transmitted by a station operating on an authorized frequency**  
25 **within the citizens’ or family radio service bands in accordance with rules of the Federal**  
26 **Communications Commission while operating a vehicle owned or contracted by a utility for**  
27 **the purpose of installing, repairing, maintaining, operating or upgrading utility service, in-**  
28 **cluding but not limited to natural gas, electricity, water or telecommunications, within the**  
29 **scope of the person’s employment.**

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

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

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

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

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

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

40 (c) **Was driving an ambulance or emergency vehicle while acting within the scope of the**  
41 **person’s employment;**

42 (d) **Was a police officer, firefighter or emergency medical services provider and was act-**  
43 **ing within the scope of the person’s employment;**

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

45 *[(f) Is operating a motor vehicle while acting in the scope of the person’s employment as a public*

1 *safety officer, as defined in ORS 348.270;*

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

4 *[(h) (e) [Holds] Was 18 years of age or older, held a valid amateur radio operator license is-*  
5 *sued or any other license issued by the Federal Communications Commission and [is] was operating*  
6 *an amateur radio;*

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

11 **(g) Was using a medical device.**

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

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

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

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

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

20 *[(4) (5) The offense described in this section, [operating] driving a motor vehicle while using a*  
21 *mobile [communication] electronic device, is:*

22 **(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction,**  
23 **a Class [C] B traffic violation.**

24 **(b) For a person's first conviction, if commission of the offense contributes to an acci-**  
25 **dent described in ORS 811.720, a Class A traffic violation.**

26 **(c) For a person's second conviction within a 10-year period following the date of the**  
27 **person's first conviction, a Class A traffic violation.**

28 **(d) For a person's third or subsequent conviction within a 10-year period preceding the**  
29 **date of the person's current conviction, a Class B misdemeanor.**

30 **(6) In addition to any other sentence that may be imposed, the court shall impose a**  
31 **minimum fine of \$2,000 on a person convicted of a Class B misdemeanor under subsection**  
32 **(5)(d) of this section.**

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

35 *[(5) (8) The Department of Transportation shall place signs on state highways to notify drivers*  
36 *that [violation of this section is subject to a maximum fine of \$500] it is unlawful to drive a motor*  
37 *vehicle on the highways of this state while using a mobile electronic device and violators are*  
38 *subject to criminal penalties.*

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

40 811.507. (1) As used in this section:

41 (a)(A) "Driving" means operating a motor vehicle on a highway or premises open to the public,  
42 and while temporarily stationary because of traffic, a traffic control device or other momentary de-  
43 lays.

44 (B) "Driving" does not include when the motor vehicle has stopped in a location where it can  
45 safely remain stationary and:

- 1 (i) Is pulled over on the side of, or is pulled off, a roadway;
- 2 (ii) Is in a designated parking space; or
- 3 (iii) Is required to park in the roadway to conduct necessary utility maintenance work.

4 (b) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mo-  
5 bile electronic device that when used gives a person the ability to keep both hands on the steering  
6 wheel.

7 (c)(A) "Mobile electronic device" means an electronic device that is not permanently installed  
8 in a motor vehicle.

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

11 (d) "Using a mobile electronic device" includes but is not limited to using a mobile electronic  
12 device for text messaging, voice communication, entertainment, navigation, accessing the Internet  
13 or producing electronic mail.

14 (2) A person commits the offense of driving a motor vehicle while using a mobile electronic de-  
15 vice if the person, while driving a motor vehicle on a highway or premises open to the public:

- 16 (a) Holds a mobile electronic device in the person's hand; or
- 17 (b) Uses a mobile electronic device for any purpose.

18 (3) This section does not apply to a person:

19 (a) Who activates or deactivates a mobile electronic device or a function of the device;

20 (b) Who is employed as a commercial motor vehicle driver, or as a school bus driver, and is  
21 using a mobile electronic device within the scope of the person's employment if the use is permitted  
22 under regulations promulgated pursuant to 49 U.S.C. 31136;

23 (c) Who is operating a two-way radio device that transmits radio communication transmitted by  
24 a station operating on an authorized frequency within the citizens' or family radio service bands in  
25 accordance with rules of the Federal Communications Commission while transporting forest pro-  
26 ducts, or while operating a vehicle to assist in logging operations, within the scope of the person's  
27 employment;

28 (d) Who is using a two-way radio device while operating a school bus or school activity vehicle  
29 within the scope of the person's employment; or

30 (e) Who is using a two-way radio device or operating a two-way radio device that transmits ra-  
31 dio communication transmitted by a station operating on an authorized frequency within the  
32 citizens' or family radio service bands in accordance with rules of the Federal Communications  
33 Commission while operating a vehicle owned or contracted by a utility for the purpose of installing,  
34 repairing, maintaining, operating or upgrading utility service, including but not limited to natural  
35 gas, electricity, water or telecommunications, within the scope of the person's employment.

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

37 (a) Used the mobile electronic device to communicate if the person was summoning or providing  
38 medical or other emergency help if no other person in the vehicle was capable of summoning help;

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

40 (c) Was driving an ambulance or emergency vehicle while acting within the scope of the person's  
41 employment;

42 (d) Was a police officer, firefighter or emergency medical services provider and was acting  
43 within the scope of the person's employment;

44 (e) Was 18 years of age or older, held a valid amateur radio operator license issued or any other  
45 license issued by the Federal Communications Commission and was operating an amateur radio;

1 (f) 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 (g) Was using a medical device.

6 (5) The offense described in this section, driving a motor vehicle while using a mobile electronic  
7 device, is:

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

10 (b) For a person's first conviction, if commission of the offense contributes to an accident de-  
11 scribed in ORS 811.720, a Class A traffic violation.

12 (c) For a person's second conviction within a 10-year period following the date of the person's  
13 first conviction, a Class A traffic violation.

14 (d) For a person's third or subsequent conviction within a 10-year period preceding the date of  
15 the person's current conviction, a Class B misdemeanor.

16 (6) In addition to any other sentence that may be imposed, the court shall impose a minimum  
17 fine of \$2,000 on a person convicted of a Class B misdemeanor under subsection (5)(d) of this section.

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 driving 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 drive 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 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.

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