

ASSEMBLY, No. 855

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Expands distracted driving violations to include additional forms of communication and transmission of data on wireless telephone or electronic communication device.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning distracted driving and amending P.L.2003,
2 c.310.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 1 of P.L.2003, c.310 (C.39:4-97.3) is amended to
8 read as follows:

9 1. (1) a. The use of a wireless telephone or electronic
10 communication device by an operator of a moving motor vehicle on
11 a public road or highway shall be unlawful **[except when the**
12 **telephone is]** .

13 (2) Notwithstanding paragraph (1) of this subsection, the
14 operator of a moving motor vehicle may use a hands-free wireless
15 telephone or [the] electronic communication device for voice-
16 based communication that is used hands-free, provided that its
17 placement does not:

18 (a) allow a person to stream or otherwise view video content or
19 engage in video conferencing while operating the moving motor
20 vehicle; or

21 (b) interfere with the operation of federally required safety
22 equipment and the operator exercises a high degree of caution in the
23 operation of the motor vehicle. For the purposes of this section, an
24 "electronic communication device" shall not include an amateur
25 radio.

26 Nothing in P.L.2003, c.310 (C.39:4-97.3 et seq.) shall apply to
27 the use of a citizen's band radio or two-way radio by an operator of
28 a moving commercial motor vehicle or authorized emergency
29 vehicle on a public road or highway.

30 b. The operator of a motor vehicle may use a hand-held
31 wireless telephone while driving with one hand on the steering
32 wheel only if:

33 (1) The operator has reason to fear for his life or safety, or
34 believes that a criminal act may be perpetrated against himself or
35 another person; or

36 (2) The operator is using the telephone to report to appropriate
37 authorities a fire, a traffic accident, a serious road hazard or medical
38 or hazardous materials emergency, or to report the operator of
39 another motor vehicle who is driving in a reckless, careless or
40 otherwise unsafe manner or who appears to be driving under the
41 influence of alcohol or drugs. A hand-held wireless telephone
42 user's telephone records or the testimony or written statements from
43 appropriate authorities receiving such calls shall be deemed
44 sufficient evidence of the existence of all lawful calls made under
45 this paragraph.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 As used in this act:

2 "Citizen's band radio" means a mobile communication device
3 designed to allow for the transmission and receipt of radio
4 communications on frequencies allocated for citizen's band radio
5 service use.

6 "Hands-free wireless telephone" means a mobile telephone that
7 has an internal feature or function, or that is equipped with an
8 attachment or addition, whether or not permanently part of such
9 mobile telephone, by which a user engages in a conversation
10 without the use of either hand; provided, however, this definition
11 shall not preclude the use of either hand to activate, deactivate, or
12 initiate a function of the telephone.

13 "Stream" means the act of sending or receiving sound, video, or
14 other data to a computer, mobile phone, or other electronic device
15 directly from the internet and does not require the sound, video, or
16 other data to be downloaded or saved prior to transmission.

17 "Two-way radio" means two-way communications equipment
18 that uses VHF frequencies approved by the Federal
19 Communications Commission.

20 "Use" of a wireless telephone or electronic communication
21 device shall include, but not be limited to, talking or listening to or
22 video conferencing with another person **【on the telephone】**, text
23 messaging, streaming, or sending an electronic message via the
24 wireless telephone or electronic communication device. However,
25 this definition shall not include the transmission of global
26 positioning system data for the purposes of navigating a motor
27 vehicle, or a voice-based communication that is automatically
28 converted by the wireless telephone or electronic communication
29 device to be sent as a message in a written form.

30 "Video conferencing" shall include, but not be limited to, a
31 communication between two or more participants at different
32 locations using computer networks to transmit audio and video data.

33 c. (Deleted by amendment, P.L.2007, c.198).

34 d. A person who violates this section shall be fined as follows:

35 (1) for a first offense, not less than \$200 or more than \$400;

36 (2) for a second offense, not less than \$400 or more than \$600;

37 and

38 (3) for a third or subsequent offense, not less than \$600 or more
39 than \$800 .

40 For a third or subsequent violation, the court, in its discretion,
41 may order the person to forfeit the right to operate a motor vehicle
42 over the highways of this State for a period of 90 days. In addition,
43 a person convicted of a third or subsequent violation shall be
44 assessed three motor vehicle penalty points pursuant to section 1 of
45 P.L.1982, c.43 (C.39:5-30.5).

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second or subsequent offender in
48 the complaint made against him in order to render him liable to the

1 punishment imposed by this section on a second or subsequent
2 offender, but if the second offense occurs more than 10 years after
3 the first offense, the court shall treat the second conviction as a first
4 offense for sentencing purposes and if a third offense occurs more
5 than 10 years after the second offense, the court shall treat the third
6 conviction as a second offense for sentencing purposes.

7 e. Except as provided in subsection d. of this section, no motor
8 vehicle penalty points or automobile insurance eligibility points
9 pursuant to section 26 of P.L.1990, c.8 (C.17:33B-14) shall be
10 assessed for this offense.

11 f. The Chief Administrator of the New Jersey Motor Vehicle
12 Commission shall develop and undertake a program to notify and
13 inform the public as to the provisions of this act. Notwithstanding
14 the provisions of R.S.39:5-41, the fines assessed pursuant to
15 subsection d. of this section shall be collected by the court and
16 distributed as follows: 50 percent of the fine imposed shall be paid
17 to the county and municipality wherein the violation occurred, to be
18 divided equally, and 50 percent of the fine imposed shall be paid to
19 the State Treasurer, who shall allocate the fine monies to the chief
20 administrator to be used for this public education program, which
21 shall include informing motorists of the dangers of texting while
22 driving.

23 g. Whenever this section is used as an alternative offense in a
24 plea agreement to any other offense in Title 39 of the Revised
25 Statutes that would result in the assessment of motor vehicle points,
26 the penalty shall be the same as the penalty for a violation of
27 section 1 of P.L.2000, c.75 (C.39:4-97.2), including the surcharge
28 imposed pursuant to subsection f. of that section, and a conviction
29 under this section shall be considered a conviction under section 1
30 of P.L.2000, c.75 (C.39:4-97.2) for the purpose of determining
31 subsequent enhanced penalties under that section.
32 (cf: P.L.2013, c.70, s.1)

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34 2. This act shall take effect immediately.

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STATEMENT

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39 This bill expands distracted driving violations to include additional
40 forms of communication and transmission of data on a wireless
41 telephone or electronic communication device.

42 Under current law, a person is prohibited from using a wireless
43 telephone or electronic communication device while operating a motor
44 vehicle on a public road or highway. However, a person is permitted
45 to use a hands-free wireless telephone or electronic communication
46 device while operating a moving motor vehicle. This bill clarifies that
47 a person is prohibited from streaming or otherwise viewing video
48 content or engaging in video conferencing while operating the moving

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1 motor vehicle regardless of whether the operator is holding the
2 telephone or device.

3 The bill allows a motor vehicle operator to use global positioning
4 system data for the purposes of navigating a motor vehicle, and voice-
5 based communication that is automatically converted by the wireless
6 telephone or electronic communication device to be sent as a message
7 in a written form.

8 The bill defines “stream” to mean the act of sending or receiving
9 sound, video, or other data to a computer, mobile phone, or other
10 electronic device directly from the internet and does not require the
11 sound, video, or other data to be downloaded or saved prior to
12 transmission. “Video conferencing” is defined to include, but not
13 be limited to, a communication between two or more participants at
14 different locations using computer networks to transmit audio and
15 video data.