

SENATE, No. 126

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

SYNOPSIS

Extends to 90 days statute of limitations for unlawful use of cell phone while driving; increases penalties for texting while driving.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the unlawful use of a wireless telephone or
2 electronic communication device in a moving motor vehicle and
3 amending R.S.39:5-3 and P.L.2003, c.310.

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

7
8 1. R.S.39:5-3 is amended to read as follows:

9 39:5-3. a. When a person has violated a provision of this
10 subtitle, the judge may, within 30 days after the commission of the
11 offense, issue process directed to a constable, police officer, or the
12 chief administrator for the appearance or arrest of the person so
13 charged and for a violation of R.S.39:4-81, issue process within 90
14 days after the commission of the offense. In the case of a violation
15 enumerated in subsection b. of this section, this period shall
16 commence upon the filing of a complaint.

17 b. A complaint may be made to a judge for a violation of
18 R.S.39:3-12, R.S.39:3-34, R.S.39:3-37, R.S.39:4-129 or R.S.39:10-
19 24 at any time within one year after the commission of the offense;
20 for a violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-
21 50.4a), section 5 of P.L.1990, c.103 (C.39:3-10.13), section 16 of
22 P.L.1990, c.103 (C.39:3-10.24), section 3 of P.L.1952, c.157
23 (C.12:7-46), section 9 of P.L.1986, c.39 (C.12:7-57), R.S.39:3-40,
24 **[or]** section 1 of P.L.1942, c.192 (C.39:4-128.1), or section 1 of
25 P.L.2003, c.310 (C.39:4-97.3) at any time within 90 days after the
26 commission of the offense.

27 c. All proceedings shall be brought before a judge having
28 jurisdiction in the municipality in which it is alleged that the
29 violation occurred, but when a violation occurs on a street through
30 which the boundary line of two or more municipalities runs or
31 crosses, then the proceeding may be brought before the judge
32 having jurisdiction in any one of the municipalities divided by said
33 boundary line, and in the event there shall be no judge or should no
34 judge having such jurisdiction be available for the acceptance of
35 bail and disposition of the case, or should the judges having such
36 jurisdiction be disqualified because of personal interest in the
37 proceedings, or for any other legal cause, said proceeding shall be
38 brought before a judge having jurisdiction in the nearest
39 municipality to the one in which it is alleged such a violation
40 occurred.

41 (cf: P.L.2009, c.52, s.1)

42
43 2. Section 1 of P.L.2003, c.310 (C.39:4-97.3) is amended to read
44 as follows:

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 1. a. The use of a wireless telephone or electronic
2 communication device by an operator of a moving motor vehicle on
3 a public road or highway shall be unlawful except when the
4 telephone is a hands-free wireless telephone or the electronic
5 communication device is used hands-free, provided that its
6 placement does not interfere with the operation of federally required
7 safety equipment and the operator exercises a high degree of
8 caution in the operation of the motor vehicle. For the purposes of
9 this section, an "electronic communication device" shall not include
10 an amateur radio.

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

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

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

21 (2) The operator is using the telephone to report to appropriate
22 authorities a fire, a traffic accident, a serious road hazard or medical
23 or hazardous materials emergency, or to report the operator of
24 another motor vehicle who is driving in a reckless, careless or
25 otherwise unsafe manner or who appears to be driving under the
26 influence of alcohol or drugs. A hand-held wireless telephone
27 user's telephone records or the testimony or written statements from
28 appropriate authorities receiving such calls shall be deemed
29 sufficient evidence of the existence of all lawful calls made under
30 this paragraph.

31 As used in this act:

32 "Citizen's band radio" means a mobile communication device
33 designed to allow for the transmission and receipt of radio
34 communications on frequencies allocated for citizen's band radio
35 service use.

36 "Hands-free wireless telephone" means a mobile telephone that
37 has an internal feature or function, or that is equipped with an
38 attachment or addition, whether or not permanently part of such
39 mobile telephone, by which a user engages in a conversation
40 without the use of either hand; provided, however, this definition
41 shall not preclude the use of either hand to activate, deactivate, or
42 initiate a function of the telephone.

43 "Two-way radio" means two-way communications equipment
44 that uses VHF frequencies approved by the Federal
45 Communications Commission.

46 "Use" of a wireless telephone or electronic communication
47 device shall include, but not be limited to, talking or listening to
48 another person on the telephone, text messaging, or sending an

1 electronic message via the wireless telephone or electronic
2 communication device.

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

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

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

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

7 and

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

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

16 A person who violates this section by text messaging shall be
17 fined \$600 for a first offense, \$800 for a second offense, and \$1,000
18 for a third or subsequent offense and, pursuant to section 1 of
19 P.L.1982, c.43 (C.39:5-30.5), shall be assessed two motor vehicle
20 penalty points for a first offense, three motor vehicle penalty points for
21 a second offense, and four motor vehicle penalty points for a third or
22 subsequent offense. In addition, a person who violates this section
23 by sending a text message and as a direct result of that violation is
24 involved in a motor vehicle accident resulting in death or serious
25 bodily injury, upon conviction, also shall forfeit the right to operate
26 a motor vehicle for two years.

27 A person who has been convicted of a previous violation of this
28 section need not be charged as a second or subsequent offender in
29 the complaint made against him in order to render him liable to the
30 punishment imposed by this section on a second or subsequent
31 offender, but if the second offense occurs more than 10 years after
32 the first offense, the court shall treat the second conviction as a first
33 offense for sentencing purposes and if a third offense occurs more
34 than 10 years after the second offense, the court shall treat the third
35 conviction as a second offense for sentencing purposes.

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

40 f. The Chief Administrator of the New Jersey Motor Vehicle
41 Commission shall develop and undertake a program to notify and
42 inform the public as to the provisions of this act. Notwithstanding
43 the provisions of R.S.39:5-41, the fines assessed pursuant to
44 subsection d. of this section shall be collected by the court and
45 distributed as follows: 50 percent of the fine imposed shall be paid
46 to the county and municipality wherein the violation occurred, to be
47 divided equally, and 50 percent of the fine imposed shall be paid to
48 the State Treasurer, who shall allocate the fine monies to the chief

1 administrator to be used for this public education program, which
2 shall include informing motorists of the dangers of texting while
3 driving.

4 g. Whenever this section is used as an alternative offense in a
5 plea agreement to any other offense in Title 39 of the Revised
6 Statutes that would result in the assessment of motor vehicle points,
7 the penalty shall be the same as the penalty for a violation of
8 section 1 of P.L.2000, c.75 (C.39:4-97.2), including the surcharge
9 imposed pursuant to subsection f. of that section, and a conviction
10 under this section shall be considered a conviction under section 1
11 of P.L.2000, c.75 (C.39:4-97.2) for the purpose of determining
12 subsequent enhanced penalties under that section.
13 (cf: P.L.2013, c.70 s.1)

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15 3. This act shall take effect immediately.

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STATEMENT

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20 This bill extends from 30 to 90 days the statute of limitations for
21 the traffic offense of unlawfully using a cell phone while driving.

22 The bill also increases the penalty for sending text messages
23 while driving. A person who sends or receives text messages while
24 driving is to be fined \$600 and assessed two motor vehicle penalty
25 points for a first offense; \$800 and three penalty points for a second
26 offense; and \$1,000 and four penalty points for a third offense. In
27 addition, a person who causes an accident resulting in death or
28 serious bodily injury as a result of sending a text message is subject
29 to a two-year license suspension which would commence upon
30 completion of the person's prison sentence.