

# Enrolled House Bill 4116

Sponsored by Representative NOBLE, Senator PROZANSKI; Representatives BARKER, BARRETO, ESQUIVEL, HAYDEN, HELFRICH, LEWIS, NEARMAN, OLSON, POST, RESCHKE, SMITH DB, SOLLMAN, STARK, VIAL, WHISNANT, WITT, Senator BOQUIST (Pre-session filed.)

CHAPTER .....

## AN ACT

Relating to the offense of driving a motor vehicle while using a mobile electronic device; creating new provisions; amending ORS 811.507 and section 5, chapter 629, Oregon Laws 2017; and declaring an emergency.

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

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

811.507. (1) As used in this section:

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

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

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

(b) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mobile electronic device that *[when used]* gives a person the ability to keep both hands on the steering wheel **at all times while using the device or requires only the minimal use of a finger, via a swipe or tap, to activate or deactivate a function of the device.**

(c) "**Livestock**" has the meaning given that term in ORS 609.125.

*[(c)(A)]* (d)(A) "Mobile electronic device" means an electronic device that is not permanently installed in a motor vehicle.

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

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

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

- (a) Holds a mobile electronic device in the person's hand; or
  - (b) Uses a mobile electronic device for any purpose.
- (3) This section does not apply to a person:

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

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

**(b) Who is employed as a driver of a vehicle having a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds and is using a mobile electronic device within the scope of the person's employment and as required under regulations promulgated pursuant to 49 U.S.C. 31137;**

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

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

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

**(f) Who is using a two-way radio device while operating a vehicle wider than the lane of travel, a vehicle transporting livestock or a vehicle requiring a slow-moving vehicle emblem under ORS 815.110, and the use of the device facilitates the safe operation of the vehicle; or**

**(g) Who is using a two-way radio device while operating a pilot or safety vehicle used to assist the safe movement of a vehicle described in paragraph (f) of this subsection, and the use of the device facilitates the safe movement of the vehicle described in paragraph (f) of this subsection.**

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

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

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

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

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

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

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

(g) Was using a medical device.

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

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

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

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

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

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

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

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

(A) Complete at the person's own expense a distracted driving avoidance course approved by the Department of Transportation under ORS 811.508; and

(B) Provide proof of completion to the court.

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

(c) If the person has successfully completed the requirements described in paragraph (a) of this subsection, the court shall enter a sentence of discharge. **Notwithstanding ORS 153.021, a sentence of discharge imposed under this paragraph may not include a fine.**

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

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

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

(9) The department shall place signs on state highways to notify drivers that it is unlawful to drive a motor vehicle on the highways of this state while using a mobile electronic device and violators are subject to criminal penalties.

**SECTION 2. The amendments to ORS 811.507 by section 1 of this 2018 Act apply to offenses committed on or after the effective date of this 2018 Act.**

**SECTION 3.** Section 5, chapter 629, Oregon Laws 2017, is amended to read:

**Sec. 5.** The amendments to ORS 811.507 by section 1, **chapter 629, Oregon Laws 2017**, [of this 2017 Act] apply to: [conduct that occurs on or after the effective date of this 2017 Act.]

(1) **Offenses committed on or after October 1, 2017; and**

(2) **For purposes of determining prior convictions within a 10-year period under ORS 811.507 (5)(c) or (d), prior convictions occurring on or after July 1, 2018.**

**SECTION 4. (1) A person convicted of an offense under ORS 811.507 (5)(c) or (d), the classification of which was enhanced due to the court taking into account one or more prior convictions occurring before July 1, 2018, may request in writing that the court redetermine the classification of the offense.**

(2) **Upon receipt of a request under this section, if the court determines that the classification of the offense was based upon the court taking into account one or more prior convictions occurring before July 1, 2018, the court shall vacate the judgment of conviction and enter a new judgment of conviction for a Class B or Class A traffic violation in accordance with ORS 811.507 (5)(a) or (b).**

**SECTION 5. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.**

**Passed by House February 21, 2018**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate March 1, 2018**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2018

**Approved:**

.....M,....., 2018

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2018

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Dennis Richardson, Secretary of State