

D R A F T

SUMMARY

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.

Prescribes additional minimum fines.

A BILL FOR AN ACT

1
2 Relating to the offense of operating a motor vehicle while using a mobile
3 communication device; creating new provisions; and amending ORS
4 811.507.

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

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

7 811.507. (1) As used in this section:

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

12 [(b) “Mobile communication device” means a text messaging device or a
13 wireless, two-way communication device designed to receive and transmit voice
14 or text communication.]

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

17 (B) “**Mobile electronic device**” includes but is not limited to a device

1 **capable of text messaging, voice communication, entertainment, nav-**
2 **igation, accessing the Internet or producing electronic mail.**

3 (c) **“Using a mobile electronic device” includes but is not limited to**
4 **using a mobile electronic device for text messaging, voice communi-**
5 **cation, entertainment, navigation, accessing the Internet or producing**
6 **electronic mail.**

7 (2) A person commits the offense of operating a motor vehicle while using
8 a mobile [*communication*] **electronic** device if the person, while operating a
9 motor vehicle on a highway[,]:

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

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

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

14 (a) Uses the **mobile electronic** device [*for voice communication*] **to**
15 **communicate** if the person:

16 [(a)] (A) Is summoning medical or other emergency help if no other per-
17 son in the vehicle is capable of summoning help; **or**

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

20 [(c)] (B) Is operating an ambulance or emergency vehicle **while acting**
21 **in the scope of the person’s employment; or**

22 [(d)] (b) Is 18 years of age or older and is using a hands-free
23 accessory[;].

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

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

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

30 [(h)] *Holds a valid amateur radio operator license issued or any other li-*
31 *cence issued by the Federal Communications Commission and is operating an*

1 *amateur radio;*]

2 [(i) *Is operating a two-way radio device that transmits radio communication*
3 *transmitted by a station operating on an authorized frequency within the*
4 *citizens' or family radio service bands in accordance with rules of the Federal*
5 *Communications Commission;*]

6 [(j) *Is operating a vehicle owned or contracted by a utility for the purpose*
7 *of installing, repairing, maintaining, operating or upgrading utility service,*
8 *including but not limited to natural gas, electricity, water or telecommuni-*
9 *cations, while acting in the scope of the person's employment; or]*

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

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

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

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

15 (4) **Except as provided in subsection (5) of this section,** the offense
16 described in this section, operating a motor vehicle while using a mobile
17 [communication] **electronic** device, is a Class [C traffic violation] **A**
18 **misdemeanor.**

19 (5) **Operating a motor vehicle while using a mobile electronic device**
20 **is a Class C felony if the person who committed the offense has, at**
21 **least three times in the 10 years prior to the date of the current of-**
22 **fense, been convicted of, or has been found to be within the jurisdic-**
23 **tion of the juvenile court for an act that if committed by an adult**
24 **would be considered, operating a motor vehicle while using a mobile**
25 **electronic device in violation of this section or the statutory counter-**
26 **part to this section in another jurisdiction.**

27 (6) **In addition to any other sentence that may be imposed, the**
28 **court shall impose one or more of the following fines on a person**
29 **convicted of operating a motor vehicle while using a mobile electronic**
30 **device:**

31 (a) **For a person's first conviction, a minimum of \$1,000.**

1 **(b) For a person's second conviction, a minimum of \$1,500.**

2 **(c) For a person's third or subsequent conviction, a minimum of**
3 **\$2,000 if the person is not sentenced to a term of imprisonment.**

4 **(7) Notwithstanding ORS 161.635, the maximum fine that a court**
5 **may impose on a person convicted of operating a motor vehicle while**
6 **using a mobile electronic device is \$10,000 if there was a passenger in**
7 **the motor vehicle who was under 18 years of age and was at least three**
8 **years younger than the person driving the motor vehicle at the time**
9 **of the offense.**

10 **[(5)] (8) The Department of Transportation shall place signs on state**
11 **highways to notify drivers that violation of this section is subject to a**
12 **maximum [fine of \$500] of one year's imprisonment, a \$6,250 fine, or**
13 **both, and that if a driver violates this section multiple times within**
14 **a 10-year period, the driver may be subject to additional penalties as**
15 **described in this section.**

16 **SECTION 2. Sections 3 and 4 of this 2017 Act are added to and made**
17 **a part of the Oregon Vehicle Code.**

18 **SECTION 3. (1) The Oregon Criminal Justice Commission shall**
19 **classify felony operating a motor vehicle while using a mobile elec-**
20 **tronic device that is committed under the circumstances described in**
21 **ORS 811.507 (5) as crime category 6 of the sentencing guidelines grid**
22 **of the commission.**

23 **(2) In determining criminal history for a person convicted of a fel-**
24 **ony that has operation of a motor vehicle as an element, or of a felony**
25 **that involved death, injury or property damage caused by the use of**
26 **a motor vehicle, the commission shall consider:**

27 **(a) Two prior convictions of misdemeanor operating a motor vehicle**
28 **while using a mobile electronic device to be equivalent to one con-**
29 **viction of felony operating a motor vehicle while using a mobile elec-**
30 **tronic device;**

31 **(b) Any conviction of felony operating a motor vehicle while using**

1 a mobile electronic device to be a person felony as defined in the rules
2 of the commission; and

3 (c) Any conviction of misdemeanor operating a motor vehicle while
4 using a mobile electronic device to be a person Class A misdemeanor
5 as defined in the rules of the commission.

6 **SECTION 4.** When a person is convicted of operating a motor ve-
7 hicle while using a mobile electronic device in violation of ORS 811.507,
8 in addition to any fine or other penalty imposed upon the person under
9 ORS 811.507 the court shall impose and may not suspend execution of
10 a sentence requiring the person either to serve at least 48 hours'
11 imprisonment, which shall be served consecutively unless justice re-
12 quires otherwise, or to perform community service for times specified
13 by the court under ORS 137.129. For purposes of this section:

14 (1) A court may provide for the imprisonment to be served in jail
15 or minimum security facilities.

16 (2) Whenever the judge provides for the mandatory imprisonment
17 to be served other than consecutively, the judgment must specifically
18 so provide and the judge must state the reasons in writing.

19 **SECTION 5.** Sections 3 and 4 of this 2017 Act and the amendments
20 to ORS 811.507 by section 1 of this 2017 Act apply to conduct occurring
21 on or after the effective date of this 2017 Act.

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