

SENATE BILL NO. 251

INTRODUCED BY C. KAUFMANN, ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF HAND-HELD MOBILE TELEPHONES AND MOBILE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING EXCEPTIONS TO THE RESTRICTION ON USE; AND PROVIDING A PENALTY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Use of hand-held mobile telephones and mobile electronic devices by motor vehicle operators prohibited -- definitions DEFINITION. (1) For purposes of this section, the following definitions apply:

—— (a) "Engage in a call" means talking into or listening on a hand-held mobile telephone but does not include holding a hand-held mobile telephone to activate, deactivate, or initiate a function of the telephone.

—— (b) "Hand-held mobile telephone" means a mobile telephone with which a user engages in a call using at least one hand.

—— (c) "Hands-free accessory" means an attachment, add-on, built-in feature, or addition to a mobile telephone, whether or not permanently installed in a motor vehicle, that when used allows the vehicle operator to maintain both hands on the steering wheel.

—— (d) "Hands-free mobile telephone" means a hand-held mobile telephone that has an internal feature or function or that is equipped with a hands-free accessory, whether or not permanently part of the hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of the telephone.

—— (e) "Immediate proximity" means the distance that permits the operator of a hand-held mobile telephone to hear telecommunications transmitted over a hand-held mobile telephone but does not require physical contact with the operator's ear.

—— (f) (i) "Mobile electronic device" means any hand-held or other portable electronic equipment capable of providing data communication between two or more persons, including a text messaging device, a paging device, a personal digital assistant, a laptop computer, equipment that is capable of playing a video game or a digital video disk, equipment on which digital photographs are taken or transmitted, or any combination of those

1 functions.

2 ~~—— (ii) The term does not include two-way radios, audio equipment, or any equipment installed in a motor~~
 3 ~~vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or~~
 4 ~~video entertainment to the passengers in the rear seats of the motor vehicle.~~

5 ~~—— (g) "Mobile telephone" means a cellular, analog, wireless, or digital telephone capable of sending or~~
 6 ~~receiving telephone communications without an access line for service.~~

7 ~~—— (h) "Using" or "use" means holding a hand-held mobile telephone in the user's hand or holding a~~
 8 ~~hand-held mobile telephone to the user's ear or in immediate proximity to the user's ear.~~

9 (1) (A) FOR THE PURPOSES OF THIS SECTION, "MOBILE ELECTRONIC DEVICE" MEANS ANY HAND-HELD OR OTHER
 10 PORTABLE ELECTRONIC EQUIPMENT CAPABLE OF PROVIDING DATA COMMUNICATION BETWEEN TWO OR MORE PERSONS,
 11 INCLUDING A TEXT MESSAGING DEVICE, A PAGING DEVICE, A PERSONAL DIGITAL ASSISTANT, A LAPTOP COMPUTER,
 12 EQUIPMENT THAT IS CAPABLE OF PLAYING A VIDEO GAME OR A DIGITAL VIDEO DISK, EQUIPMENT ON WHICH DIGITAL
 13 PHOTOGRAPHS ARE TAKEN OR TRANSMITTED, OR ANY COMBINATION OF THOSE FUNCTIONS.

14 (B) THE TERM DOES NOT INCLUDE TWO-WAY RADIOS, AUDIO EQUIPMENT, OR ANY EQUIPMENT INSTALLED IN A
 15 MOTOR VEHICLE FOR THE PURPOSE OF PROVIDING NAVIGATION, EMERGENCY ASSISTANCE TO THE OPERATOR OF THE
 16 MOTOR VEHICLE, OR VIDEO ENTERTAINMENT TO THE PASSENGERS IN THE REAR SEATS OF THE MOTOR VEHICLE.

17 (2) ~~(a)~~ Except as otherwise provided in this section, a person may not operate a motor vehicle when the
 18 vehicle is in motion while using ~~a hand-held mobile telephone to engage in a call or while using~~ a mobile
 19 electronic device.

20 ~~(b) An operator of a motor vehicle who holds a hand-held mobile telephone to or in immediate proximity~~
 21 ~~to the operator's ear while the motor vehicle is in motion is presumed to be engaging in a call within the meaning~~
 22 ~~of this section. The presumption established by this section is rebuttable by evidence tending to show that the~~
 23 ~~operator was not engaged in a call.~~

24 ~~(c)(3) The provisions of this subsection (2) may not be construed as authorizing the seizure or forfeiture~~
 25 ~~of a hand-held mobile telephone or a mobile electronic device unless otherwise provided by law.~~

26 ~~(3) Subsection (2) does not apply to:~~

27 ~~—— (a) the use of a hand-held mobile telephone for the sole purpose of communicating with any of the~~
 28 ~~following regarding an emergency situation:~~

29 ~~—— (i) an emergency response operator;~~

30 ~~—— (ii) a hospital, physician's office, or health clinic;~~

- 1 ~~—— (iii) an ambulance company or service;~~
 2 ~~—— (iv) a fire department; or~~
 3 ~~—— (v) a police department;~~
 4 ~~—— (b) any of the following persons while in the performance of their official duties and within the scope of~~
 5 ~~their employment:~~
 6 ~~—— (i) a public safety officer as defined in 44-4-401;~~
 7 ~~—— (ii) a firefighter or an operator of an ambulance or authorized emergency vehicle as defined in 61-8-102;~~
 8 ~~—— (iii) the operator of a commercial tow truck as defined in 61-9-416; or~~
 9 ~~—— (iv) an employee of a construction company while working in a construction zone as defined in 61-8-314;~~
 10 ~~—— (c) a federally licensed amateur radio operator engaged in public service; or~~
 11 ~~—— (d) the use of a hands-free mobile telephone.~~

12 (4) A person who violates subsection (2) shall be fined not more than \$100. A violation of this section
 13 may not be recorded or charged against a driver's record, points may not be assessed against the driver's record
 14 pursuant to 61-11-203, and an insurance company may not hold a violation of this section against the insured.

15 (5) An operator of a motor vehicle who commits a moving violation, as defined in 61-11-203, while
 16 engaged in any activity prohibited in this section shall be fined \$100 in addition to any penalty or fine imposed
 17 for the moving violation.

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 19 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
 20 integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

21 - END -