

1 SENATE BILL NO. 390

2 INTRODUCED BY C. KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OR IMMEDIATE PHYSICAL POSSESSION
5 OF A HAND-HELD ELECTRONIC COMMUNICATIONS DEVICE WHILE A PERSON IS OPERATING A MOTOR
6 VEHICLE; PROVIDING FOR PENALTIES AND EXEMPTIONS; REQUIRING THE DEPARTMENT OF JUSTICE
7 TO INCLUDE INFORMATION ON DISTRACTED DRIVING IN ITS DRIVER EDUCATION PROGRAMS AND
8 DRIVER'S LICENSE MANUAL; AND AMENDING SECTION 61-5-110, MCA."

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

11

12 **Section 1.** Section 61-5-110, MCA, is amended to read:13 **"61-5-110. Records check of applicants -- examination of applicants -- cooperative driver testing**

14 **programs.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the
15 applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the
16 commercial driver's license information system, established under 49 U.S.C. 31309.

17 (2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement,
18 except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a
19 knowledge test examining the applicant's ability to read and understand highway signs and the applicant's
20 knowledge of the traffic laws of this state, including the provisions of [section 2], and, except as provided in
21 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable
22 control in the safe operation of a motor vehicle or motorcycle. The road test or skills test must be performed by
23 the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle
24 for which the applicant is seeking a license or endorsement.

25 (b) The knowledge test, road test, or skills test may be waived by the department upon certification of
26 the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in
27 subsection (3) or by a certified third-party commercial driver testing program as provided in 61-5-118.

28 (3) The department is authorized to certify as a cooperative driver testing program any state-approved
29 high school traffic education course offered by or in cooperation with a school district that employs an approved
30 instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic

1 education or any motorcycle safety training course approved by the board of regents and that employs an
2 approved instructor of motorcycle safety training and who agrees to:

3 (a) administer standardized knowledge and road tests or skills tests required by the department to
4 students participating in the district's high school traffic education courses or motorcycle safety training courses
5 approved by the board of regents;

6 (b) certify the test results to the department; and

7 (c) comply with regulations of the department, the superintendent of public instruction, and the board of
8 regents.

9 (4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another
10 jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon
11 payment of the required fees and successful completion of a vision examination. In addition, a resident
12 surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any
13 examination required by federal regulations before being issued a commercial driver's license by the department.

14 (b) The department may require an applicant who surrenders a valid driver's license issued by another
15 jurisdiction to submit to a knowledge and road or skills test if:

16 (i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair,
17 the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the
18 highway; and

19 (ii) the surrendered license does not include readily discernible adaptive equipment or operational
20 restrictions appropriate to the applicant's functional abilities; or

21 (iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

22 (c) When a license from another jurisdiction is surrendered, the department shall notify the issuing
23 agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain
24 the license from another jurisdiction for identification or other nondriving purposes, the department shall place
25 a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return
26 the marked license to the applicant."
27

28 **NEW SECTION. Section 2. Hand-held electronic communications device use prohibited --**
29 **penalties -- exemptions -- driver information.** (1) (a) Except as provided in subsections (1)(b) and (5), a person
30 may not use or have in the person's immediate physical possession a hand-held electronic communications

1 device while operating a motor vehicle on a public road, including operation while temporarily stationary because
2 of traffic, a traffic light, or a stop sign.

3 (b) A person may use or have in the person's immediate physical possession a hand-held electronic
4 communications device while operating a motor vehicle if the vehicle has been driven off of or to the side of an
5 active roadway and has stopped in a location where it can safely remain stationary.

6 (2) (a) A person who violates subsection (1) shall be fined \$50. A person who commits a second violation
7 of subsection (1) shall be fined \$100. A person who commits a third or subsequent violation of subsection (1) shall
8 be fined \$200.

9 (b) A violation of this section may not be recorded or charged against a driver's record, points may not
10 be assessed against the driver's record pursuant to 61-11-203, and an insurance company may not hold a
11 violation of this section against the insured driver.

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

15 (4) The provisions of this section may not be construed as authorizing the seizure or forfeiture of a
16 hand-held electronic communications device unless otherwise provided by law.

17 (5) This section does not apply to:

18 (a) a person reporting a health, fire, safety, or police emergency; or

19 (b) a person 18 years of age or older who is:

20 (i) using a hands-free accessory;

21 (ii) an employee of a governmental fire agency, ambulance service, or law enforcement agency, an
22 emergency responder, or the operator of an authorized emergency vehicle, as defined in 61-8-102, while
23 operating an authorized emergency vehicle in the performance of the person's duties as an emergency service
24 provider;

25 (iii) registered with a county sheriff to assist in emergency response and who holds a valid amateur radio
26 operator license issued by the federal communications commission and is using a two-way radio while engaged
27 in an emergency response; or

28 (iv) employed as a commercial motor vehicle driver or a school bus driver and who uses a hand-held
29 electronic communications device within the permissible scope of the person's employment.

30 (6) The department shall included information on the provisions of this section and the dangers of

1 distracted driving in its driver's license manual and in its driver's license examination and shall encourage schools
2 providing traffic education to include information on the provisions of this section in the distracted driving
3 education information provided for in 61-5-135.

4 (7) As used in this section, the following definitions apply:

5 (a) "Hand-held electronic communications device" means a hand-held or portable electronic device that
6 uses shortwave analog or digital radio transmissions between the device and a transmitter to permit wireless
7 communications to and from the user of the device. A hand-held electronic communications device includes but
8 is not limited to a cell phone, text messaging device, paging device, personal digital assistant, and laptop
9 computer.

10 (b) "Hands-free accessory" means an external accessory that connects to an electronic communications
11 device and enables the operator of a motor vehicle to use the electronic communications device without touching
12 it.

13 (c) "Immediate physical possession" means touching the hand-held electronic communications device.
14 Merely having the device on one's person or in a motor vehicle does not constitute immediate physical
15 possession.

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

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