

1 HOUSE BILL NO. 297

2 INTRODUCED BY V. COURT

3
4 A BILL FOR AN ACT ENTITLED: "~~AN ACT PROHIBITING THE USE OR IMMEDIATE PHYSICAL POSSESSION~~
5 ~~OF A HAND-HELD ELECTRONIC COMMUNICATIONS~~ OF A WIRELESS COMMUNICATION DEVICE TO
6 WRITE, SEND, OR READ A WRITTEN COMMUNICATION WHILE A PERSON IS OPERATING A MOTOR
7 VEHICLE; PROVIDING FOR PENALTIES AND EXEMPTIONS; REQUIRING THE DEPARTMENT OF JUSTICE
8 TO INCLUDE INFORMATION ON DISTRACTED DRIVING IN ITS DRIVER EDUCATION PROGRAMS AND
9 DRIVER'S LICENSE MANUAL; AND AMENDING SECTION 61-5-110, MCA."

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

12
13 **Section 1.** Section 61-5-110, MCA, is amended to read:
14 **"61-5-110. Records check of applicants -- examination of applicants -- cooperative driver testing**
15 **programs -- reciprocal agreement with foreign country.** (1) Prior to examining an applicant for a driver's
16 license, the department shall conduct a check of the applicant's driving record by querying the national driver
17 register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established
18 under 49 U.S.C. 31309.

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

27 (b) The knowledge test, road test, or skills test may be waived by the department:

28 (i) upon certification of the applicant's successful completion of the test by a certified cooperative driver
29 testing program as provided in subsection (3) or by a certified third-party commercial driver testing program as
30 provided in 61-5-118; or

1 (ii) in accordance with a driver's license reciprocity agreement between the department and a foreign
2 country.

3 (c) The skills test may be waived by the department upon the applicant's completion of the requirements
4 of 61-5-123.

5 (3) The department is authorized to certify as a cooperative driver testing program any state-approved
6 high school traffic education course offered by or in cooperation with a school district that employs an approved
7 instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic
8 education or any motorcycle safety training course approved by the board of regents and that employs an
9 approved instructor of motorcycle safety training and who agrees to:

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

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

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

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

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

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

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

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

29 (c) When a license from another jurisdiction is surrendered, the department shall notify the issuing
30 agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain

1 the license from another jurisdiction for identification or other nondriving purposes, the department shall place
 2 a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return
 3 the marked license to the applicant.

4 (5) The department may enter into a reciprocity agreement with a foreign country to provide for the
 5 mutual recognition and exchange of a valid driver's license issued by this state or the foreign country if the
 6 department determines that the licensing standards of the foreign country are comparable to those of this state.
 7 The agreement may not include the reciprocal exchange of a commercial driver's license."

8

9 **NEW SECTION. Section 2. Hand-held electronic communications WIRELESS COMMUNICATION device**
 10 **use FOR WRITTEN COMMUNICATION prohibited -- penalties -- exceptions.** (1) (a) Except as provided in
 11 subsections (1)(b) and (5), a person may not use ~~or have in the person's immediate physical possession a~~
 12 ~~hand-held electronic communications~~ A WIRELESS COMMUNICATION device TO WRITE, SEND, OR READ A WRITTEN
 13 COMMUNICATION while operating a motor vehicle on a highway, AS DEFINED IN 61-1-101, including operation while
 14 temporarily stationary because of traffic, a traffic light, or a stop sign.

15 (b) A person may use ~~or have in the person's immediate physical possession a hand-held electronic~~
 16 ~~communications~~ A WIRELESS COMMUNICATION device TO WRITE, SEND, OR READ A WRITTEN COMMUNICATION while
 17 operating a motor vehicle if the vehicle has been driven off of or to the side of an active roadway and has stopped
 18 in a location where it can safely remain stationary.

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

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

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

28 (4) The provisions of this section may not be construed as authorizing the ~~seizure~~ SEARCH or forfeiture
 29 of a ~~hand-held electronic communications~~ WIRELESS COMMUNICATION device unless otherwise provided by law.

30 (5) This section does not apply to an operator of a motor vehicle who, while the vehicle is in motion:

1 (a) is using the ~~hand-held electronic communications~~ WIRELESS COMMUNICATION device IN THE MANNER
 2 DESCRIBED IN SUBSECTION (1)(A) to obtain emergency assistance, to report a fire or police emergency, or in the
 3 reasonable belief that an individual's life or safety is in danger;

4 ~~(b) is using a hands-free accessory;~~

5 ~~(c)(B)~~ is an employee of a governmental fire agency, ambulance service, or law enforcement OR PUBLIC
 6 SAFETY agency, is an emergency responder, or is the operator of an authorized emergency vehicle, as defined
 7 in 61-8-102, while operating an authorized emergency vehicle in the performance of the person's duties as an
 8 emergency service provider; OR

9 ~~(d) is registered with a county sheriff to assist in emergency response and holds a valid amateur radio~~
 10 ~~operator license issued by the federal communications commission and is using a two-way radio while engaged~~
 11 ~~in an emergency response; or~~

12 ~~(e)(C)~~ is employed as a commercial motor vehicle operator or a school bus driver and who uses a
 13 ~~hand-held electronic communications~~ WIRELESS COMMUNICATION device IN THE MANNER DESCRIBED IN SUBSECTION
 14 (1)(A) within the permissible scope of the person's employment.

15 (6) The department shall include information on the provisions of this section and the dangers of
 16 distracted driving in its driver's license manual and in its driver's license examination. The department shall
 17 encourage schools that offer traffic education to include information on the provisions of this section in the
 18 distracted driving education information provided for in 61-5-135.

19 (7) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A LOCAL GOVERNING BODY TO ENACT AN ORDINANCE THAT
 20 IS MORE RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION.

21 ~~(7)(8)~~ As used in this section, the following definitions apply:

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

27 ~~(b) "Hands-free accessory" means an external accessory that connects to an electronic communications~~
 28 ~~device and enables the operator or a motor vehicle to use the electronic communications device without touching~~
 29 ~~it.~~

30 ~~(c) "Immediate physical possession" means touching the hand-held electronic communications device.~~

1 ~~Having the device on one's person or in a motor vehicle does not constitute immediate physical possession.~~
2 (A) "WIRELESS COMMUNICATION DEVICE" MEANS A WIRELESS TELEPHONE, A TEXT-MESSAGING DEVICE, A
3 PERSONAL DIGITAL ASSISTANT, A LAPTOP COMPUTER, OR ANY OTHER SUBSTANTIALLY SIMILAR COMMUNICATION DEVICE
4 THAT IS READILY REMOVABLE FROM THE VEHICLE AND IS USED TO WRITE, SEND, OR READ TEXT OR DATA THROUGH MANUAL
5 INPUT. THE TERM DOES NOT INCLUDE:
6 (I) A DEVICE USED FOR GLOBAL POSITIONING OR NAVIGATION SERVICES;
7 (II) A SYSTEM OR DEVICE THAT IS PHYSICALLY OR ELECTRONICALLY INTEGRATED INTO THE VEHICLE; OR
8 (III) CITIZENS' BAND RADIOS, CITIZENS' BAND RADIO HYBRIDS, COMMERCIAL TWO-WAY RADIO COMMUNICATION
9 DEVICES, OR ELECTRONIC COMMUNICATION DEVICES WITH A PUSH-TO-TALK FUNCTION.
10 (B) "WRITE, SEND, OR READ A WRITTEN COMMUNICATION" MEANS TO USE A WIRELESS COMMUNICATION DEVICE
11 TO MANUALLY TYPE, SEND, OR READ A WRITTEN COMMUNICATION, INCLUDING BUT NOT LIMITED TO A TEXT MESSAGE, AN
12 INSTANT MESSAGE, AND ELECTRONIC MAIL.

13
14 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
15 integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 2].

16 - END -