

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SENATE BILL 1165

AN ACT

AMENDING SECTION 28-672, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 3, ARTICLE 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-914; AMENDING SECTIONS 28-963 AND 28-3164, ARIZONA REVISED STATUTES; RELATING TO USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 28-672, Arizona Revised Statutes, is amended to
3 read:

4 **28-672. Causing serious physical injury or death by a moving**
5 **violation; time limitation; penalties; violation;**
6 **classification; definition**

7 A person is guilty of causing serious physical injury or death
8 by a moving violation if the person violates any one of the following and
9 the violation results in an accident causing serious physical injury or
10 death to another person:

- 11 1. Section 28-645, subsection A, paragraph 3, subdivision (a).
- 12 2. Section 28-729.
- 13 3. Section 28-771.
- 14 4. Section 28-772.
- 15 5. Section 28-773.
- 16 6. Section 28-792.
- 17 7. Section 28-794.
- 18 8. Section 28-797, subsection F, G, H or I.
- 19 9. Section 28-855, subsection B.
- 20 10. Section 28-857, subsection A.

21 **11. SECTION 28-914.**

22 B. A person who violates this section shall attend and successfully
23 complete traffic survival school educational sessions that are designed to
24 improve the safety and habits of drivers and that are approved by the
25 department. In addition, the court may order the person to perform
26 community restitution.

27 C. The court shall report a conviction for a violation of this
28 section to the department and:

29 1. For a first violation of this section, may direct the department
30 to suspend the person's driving privilege for not more than one hundred
31 eighty days if the violation results in serious physical injury and not
32 more than one year if the violation results in death.

33 2. For a second or subsequent violation of this section within a
34 period of thirty-six months, shall direct the department to suspend the
35 person's driving privilege for one hundred eighty days if the violation
36 results in serious physical injury and one year if the violation results
37 in death.

38 D. If a person's driving privilege is suspended pursuant to any
39 other statute because of an incident involving a violation of this
40 section, the suspension period prescribed in subsection C of this section
41 shall run consecutively with the other suspension period.

42 E. If a person fails to successfully complete traffic survival
43 school educational sessions or perform community restitution pursuant to
44 this section, the court shall notify the department and the department
45 shall promptly suspend the driver license or permit of the driver or the

1 privilege of a nonresident to drive a motor vehicle in this state until
2 the order is satisfied.

3 F. If the person who suffers serious physical injury as a result of
4 a violation of this section appears before the court in which the action
5 is pending at any time before trial and acknowledges receipt of
6 satisfaction for the injury, on payment of the costs incurred, the court
7 shall order that the prosecution be dismissed and the defendant be
8 discharged. The reasons for the order shall be set forth and entered of
9 record, and the order shall be a bar to another prosecution for the same
10 offense.

11 G. Restitution awarded pursuant to section 13-603 as a result of a
12 violation of this section shall not exceed ~~one hundred thousand dollars~~
13 \$100,000.

14 H. A prosecution for a violation of this section must be commenced
15 within two years after actual discovery of the offense by the state or the
16 political subdivision having jurisdiction or discovery by the state or the
17 political subdivision that should have occurred with the exercise of
18 reasonable diligence, whichever first occurs.

19 I. A person who violates this section is guilty of a class 1
20 misdemeanor.

21 J. For the purposes of this section, "serious physical injury" has
22 the same meaning prescribed in section 13-105.

23 Sec. 2. Title 28, chapter 3, article 15, Arizona Revised Statutes,
24 is amended by adding section 28-914, to read:

25 28-914. Use of portable wireless communication device while
26 driving; prohibition; civil penalty; state
27 preemption; definitions

28 A. UNLESS A MOTOR VEHICLE IS PARKED OR STOPPED PURSUANT TO SECTION
29 28-645, SUBSECTION A, PARAGRAPH 3 OR SECTION 28-851, A PERSON MAY NOT
30 OPERATE A MOTOR VEHICLE ON A STREET OR HIGHWAY IF THE PERSON DOES EITHER
31 OF THE FOLLOWING:

32 1. PHYSICALLY HOLDS OR SUPPORTS WITH ANY PART OF THE PERSON'S BODY
33 EITHER OF THE FOLLOWING:

34 (a) A PORTABLE WIRELESS COMMUNICATION DEVICE, EXCEPT THAT A PERSON
35 MAY USE A PORTABLE WIRELESS COMMUNICATION DEVICE WITH AN EARPIECE,
36 HEADPHONE DEVICE OR DEVICE WORN ON A WRIST TO CONDUCT A VOICE-BASED
37 COMMUNICATION.

38 (b) A STAND-ALONE ELECTRONIC DEVICE.

39 2. WRITES, SENDS OR READS ANY TEXT-BASED COMMUNICATION, INCLUDING A
40 TEXT MESSAGE, INSTANT MESSAGE, E-MAIL OR INTERNET DATA, ON A PORTABLE
41 WIRELESS COMMUNICATION DEVICE OR STAND-ALONE ELECTRONIC DEVICE. THIS
42 PARAGRAPH DOES NOT APPLY TO EITHER OF THE FOLLOWING:

43 (a) A VOICE-BASED COMMUNICATION THAT IS AUTOMATICALLY CONVERTED BY
44 A PORTABLE WIRELESS COMMUNICATION DEVICE OR STAND-ALONE DEVICE TO BE SENT
45 AS A MESSAGE IN A WRITTEN FORM.

(b) THE USE OF A PORTABLE WIRELESS COMMUNICATION DEVICE OR STAND-ALONE DEVICE WHEN USED IN A HANDS-FREE MANNER FOR:

- (i) NAVIGATION OF THE MOTOR VEHICLE.
- (ii) USE OF A GLOBAL POSITIONING SYSTEM.
- (iii) OBTAINING MOTOR VEHICLE INFORMATION OR INFORMATION RELATED TO DRIVING A MOTOR VEHICLE.

B. THIS SECTION DOES NOT PROHIBIT THE OPERATION OF A MOTOR VEHICLE WHILE USING A DEVICE OR SYSTEM THAT IS EMBEDDED IN A MOTOR VEHICLE AND THAT ALLOWS COMMUNICATION WITHOUT THE USE OF EITHER OF THE DRIVER'S HANDS, EXCEPT TO ACTIVATE OR DEACTIVATE A FUNCTION OF THE DEVICE OR SYSTEM BY A SINGLE PRESS, TAP OR SWIPE OF THE OPERATOR'S FINGER.

C. THIS SECTION DOES NOT APPLY TO:

1. AN OPERATOR OF AN AUTHORIZED EMERGENCY, LAW ENFORCEMENT OR PROBATION VEHICLE WHO USES A PORTABLE WIRELESS COMMUNICATION DEVICE WHILE ACTING IN AN OFFICIAL CAPACITY.

2. AN OPERATOR WHO IS LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION WHILE OPERATING A RADIO FREQUENCY DEVICE OTHER THAN A PORTABLE WIRELESS COMMUNICATION DEVICE.

3. AN OPERATOR WHO USES A TWO-WAY RADIO OR PRIVATE LAND MOBILE RADIO SYSTEM, WITHIN THE MEANING OF 47 CODE OF FEDERAL REGULATIONS PART 90, WHILE IN THE PERFORMANCE AND SCOPE OF THE OPERATOR'S WORK-RELATED DUTIES AND WHO IS OPERATING A FLEET VEHICLE OR WHO POSSESSES A COMMERCIAL DRIVER LICENSE.

4. AN OPERATOR WHO USES A PORTABLE WIRELESS COMMUNICATION DEVICE
EITHER:

(a) TO REPORT ILLEGAL ACTIVITY OR SUMMON EMERGENCY HELP.

(b) THAT WAS PERMANENTLY OR TEMPORARILY AFFIXED TO THE MOTOR VEHICLE TO RELAY INFORMATION IN THE COURSE OF THE OPERATOR'S OCCUPATIONAL DUTIES BETWEEN THE OPERATOR AND EITHER:

(i) A DISPATCHER.

(ii) A DIGITAL NETWORK OR SOFTWARE APPLICATION SERVICE.

D. BEGINNING JANUARY 1, 2021, A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY AS FOLLOWS:

1. AT LEAST \$75 BUT NOT MORE THAN \$149 FOR A FIRST VIOLATION.

2. AT LEAST \$150 BUT NOT MORE THAN \$250 FOR A SECOND OR SUBSEQUENT VIOLATION.

E. THE DEPARTMENT SHALL POST A SIGN AT EACH POINT AT WHICH AN INTERSTATE HIGHWAY OR UNITED STATES HIGHWAY ENTERS INTO THIS STATE THAT INFORMS AN OPERATOR THAT BOTH:

1. THE USE OF A PORTABLE WIRELESS COMMUNICATION DEVICE WHILE OPERATING A MOTOR VEHICLE IS PROHIBITED IN THIS STATE.

2. THE OPERATOR IS SUBJECT TO A CIVIL PENALTY IF THE OPERATOR USES A PORTABLE WIRELESS COMMUNICATION DEVICE IN VIOLATION OF THIS SECTION WHILE OPERATING A MOTOR VEHICLE IN THIS STATE.

1 F. A PEACE OFFICER WHO STOPS A MOTOR VEHICLE FOR AN ALLEGED
2 VIOLATION OF THIS SECTION MAY NOT:

3 1. TAKE POSSESSION OF OR OTHERWISE INSPECT A PORTABLE WIRELESS
4 COMMUNICATION DEVICE IN THE POSSESSION OF THE OPERATOR UNLESS OTHERWISE
5 AUTHORIZED BY LAW.

6 2. ISSUE A CITATION FOR A VIOLATION OF THIS SECTION BEFORE
7 JANUARY 1, 2021 AND MAY ISSUE ONLY A WARNING BEGINNING ON THE EFFECTIVE
8 DATE OF THIS SECTION THROUGH DECEMBER 31, 2020.

9 G. A DEPARTMENT OR AGENCY OF THIS STATE MAY NOT CONSIDER A
10 VIOLATION OF THIS SECTION FOR THE PURPOSE OF DETERMINING WHETHER THE
11 PERSON'S DRIVER LICENSE SHOULD BE SUSPENDED OR REVOKED.

12 H. THE REGULATION AND USE OF PORTABLE WIRELESS COMMUNICATION
13 DEVICES WHILE OPERATING A MOTOR VEHICLE ARE OF STATEWIDE CONCERN. FROM
14 AND AFTER DECEMBER 31, 2020, THE REGULATION OF PORTABLE WIRELESS
15 COMMUNICATION DEVICES PURSUANT TO THIS SECTION AND THEIR USE WHILE
16 OPERATING A MOTOR VEHICLE IS NOT SUBJECT TO FURTHER REGULATION BY A
17 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE. FROM AND
18 AFTER DECEMBER 31, 2020, A REGULATION BY A COUNTY, CITY, TOWN OR OTHER
19 POLITICAL SUBDIVISION THAT VIOLATES THIS SUBSECTION, WHETHER ENACTED
20 BEFORE OR AFTER JANUARY 1, 2021, IS VOID.

21 I. FOR THE PURPOSES OF THIS SECTION:

22 1. "PORTABLE WIRELESS COMMUNICATION DEVICE":

23 (a) MEANS A CELLULAR TELEPHONE, A PORTABLE TELEPHONE, A
24 TEXT-MESSAGING DEVICE, A PERSONAL DIGITAL ASSISTANT, A STAND-ALONE
25 COMPUTER, A GLOBAL POSITIONING SYSTEM RECEIVER OR A SUBSTANTIALLY SIMILAR
26 PORTABLE WIRELESS DEVICE THAT IS USED TO INITIATE OR RECEIVE
27 COMMUNICATION, INFORMATION OR DATA.

28 (b) DOES NOT INCLUDE A RADIO, CITIZENS BAND RADIO, CITIZENS BAND
29 RADIO HYBRID, COMMERCIAL TWO-WAY RADIO COMMUNICATION DEVICE OR ITS
30 FUNCTIONAL EQUIVALENT, SUBSCRIPTION-BASED EMERGENCY COMMUNICATION DEVICE,
31 PRESCRIBED MEDICAL DEVICE, AMATEUR OR HAM RADIO DEVICE OR IN-VEHICLE
32 SECURITY, NAVIGATION OR REMOTE DIAGNOSTICS SYSTEM.

33 2. "STAND-ALONE ELECTRONIC DEVICE" MEANS A PORTABLE DEVICE OTHER
34 THAN A PORTABLE WIRELESS COMMUNICATION DEVICE THAT STORES AUDIO OR VIDEO
35 DATA FILES TO BE RETRIEVED ON DEMAND BY A USER.

36 Sec. 3. Section 28-963, Arizona Revised Statutes, is amended to
37 read:

38 28-963. Image display device; prohibition; exceptions;
39 definitions

40 A. ~~AT~~ WHILE A PERSON IS DRIVING A MOTOR VEHICLE AND THE MOTOR
41 VEHICLE IS IN MOTION ON A PUBLIC ROADWAY OR ON AN OFF-HIGHWAY VEHICLE
42 TRAIL AS DEFINED IN SECTION 28-1171, THE person shall not:

43 1. View a broadcast television image or a visual image from an
44 image display device ~~while that person is driving a motor vehicle and the~~

1 ~~motor vehicle is in motion on a public roadway or on an off highway~~
2 ~~vehicle trail as defined in section 28-1171.~~

3 2. WATCH A VIDEO OR MOVIE ON A PORTABLE WIRELESS COMMUNICATION
4 DEVICE OR STAND-ALONE ELECTRONIC DEVICE OTHER THAN WATCHING DATA RELATED
5 TO THE NAVIGATION OF THE MOTOR VEHICLE, EXCEPT THAT A PERSON MAY VIEW DATA
6 RELATED TO THE NAVIGATION OF THE MOTOR VEHICLE, VEHICLE INFORMATION OR
7 INFORMATION RELATED TO DRIVING A MOTOR VEHICLE.

8 3. RECORD OR BROADCAST A VIDEO ON A PORTABLE WIRELESS COMMUNICATION
9 DEVICE OR STAND-ALONE ELECTRONIC DEVICE, EXCEPT THAT THE PERSON MAY USE
10 THE DEVICES FOR THE SOLE PURPOSE OF CONTINUOUSLY RECORDING OR BROADCASTING
11 VIDEO WITHIN OR OUTSIDE OF THE MOTOR VEHICLE.

12 B. A person shall not operate a motor vehicle with an image display
13 device that is visible to a driver seated in a normal driving position
14 when the vehicle is in motion.

15 C. This section does not apply to any of the following:

16 1. Emergency vehicles.

17 2. Image display devices that do any of the following:

18 (a) Display images that provide a driver with navigation and
19 related traffic, road and weather information.

20 (b) Provide vehicle information, controls or information related to
21 driving a vehicle.

22 (c) Enhance or supplement a driver's view of the area to the front,
23 rear or side of the vehicle.

24 (d) Permit a driver to monitor the vehicle occupants seated behind
25 the driver.

26 (e) Display information intended to enhance traffic safety.

27 3. Image display devices that are built into the motor vehicle and
28 that do not display images to a driver while the vehicle is in motion.

29 4. Image display devices that are portable and are not used to
30 display dynamic visual images other than for purposes of navigation or
31 global positioning to a driver while the vehicle is in motion.

32 5. Image display devices present in vehicles of a public service
33 corporation or any political subdivision of this state and used for
34 service or maintenance of its facilities.

35 6. Any use of an image display device while the vehicle is parked.

36 D. For the purposes of this section: ~~,~~

37 1. "Image display device" means equipment capable of displaying to
38 the driver of a motor vehicle rapidly changing images that are either of
39 the following:

40 ~~1.~~ (a) A broadcast television image or similar entertainment
41 content transmitted by other wireless means to the image display device.

42 ~~2.~~ (b) A dynamic visual image, other than text, from a digital
43 video disc or other storage device.

44 2. "PORTABLE WIRELESS COMMUNICATION DEVICE" HAS THE SAME MEANING
45 PRESCRIBED IN SECTION 28-914.

1 3. "STAND-ALONE ELECTRONIC DEVICE" HAS THE SAME MEANING PRESCRIBED
2 IN SECTION 28-914.

3 Sec. 4. Section 28-3164, Arizona Revised Statutes, is amended to
4 read:

5 28-3164. Original applicants; examination

6 A. The department may do any of the following:

7 1. Examine an applicant for an original driver license.

8 2. Accept the examination conducted by an authorized third party
9 pursuant to chapter 13 of this title. Beginning July 1, 2014, the third
10 party must be authorized pursuant to section 28-5101.01 or 28-5101.03.

11 3. Accept documentation of successful completion of a driver
12 training course approved by the department. Beginning July 1, 2014, for a
13 class D or G license the documentation must be provided by a third party
14 authorized pursuant to section 28-5101.02.

15 4. Accept documentation that the applicant has successfully
16 completed education on special performance equipment and medically related
17 driving circumstances. Beginning July 1, 2014, the documentation must be
18 provided by a third party authorized pursuant to section 28-5101.02.

19 5. Accept documentation that the applicant has successfully
20 completed driver education lessons provided by an instructor who is
21 certified by the superintendent of public instruction.

22 B. The examination shall include all of the following:

23 1. A test of the applicant's:

24 (a) Eyesight.

25 (b) Ability to read and understand official traffic control
26 devices.

27 (c) Knowledge of safe driving practices and the traffic laws of
28 this state, including those practices and laws relating to bicycles.

29 (d) KNOWLEDGE OF THE EFFECT OF USING A PORTABLE WIRELESS
30 COMMUNICATION DEVICE AS DEFINED IN SECTION 28-914 OR ENGAGING IN OTHER
31 ACTIONS THAT COULD DISTRACT A DRIVER ON THE SAFE OR EFFECTIVE OPERATION OF
32 A MOTOR VEHICLE.

33 2. An actual demonstration of ability to exercise ordinary and
34 reasonable control in the operation of a vehicle or vehicle combination of
35 the type covered by the license classification or endorsement for which
36 the applicant applies.

37 3. Other physical and mental examinations if the department finds
38 them necessary to determine the applicant's fitness to safely operate a
39 motor vehicle on the highways.

40 C. The department may examine an original applicant for a class M
41 license or a motorcycle endorsement or the department may accept the
42 examination conducted by an authorized third party pursuant to chapter 13,
43 article 1 of this title or documentation of successful completion of a
44 motorcycle training program approved by the department. Beginning July 1,
45 2014, the documentation of successful completion of a motorcycle training

1 program must be provided by a third party motorcycle driver license
2 training provider authorized pursuant to section 28-5101.02 or a
3 motorcycle training program approved by the department and provided in
4 another state or by the United States military. The department may
5 examine an applicant who has a motorcycle license from another
6 jurisdiction. This examination shall be the same as for all applicants,
7 except that the department may make modifications it finds necessary to
8 determine the applicant's fitness to operate a motorcycle, motor driven
9 cycle or moped on the highways.

10 D. The department shall examine a person who holds a driver license
11 issued by another country and who applies for an initial license in this
12 state as an original applicant, except that the department may waive an
13 actual demonstration of the ability to exercise ordinary and reasonable
14 control in the operation of a motor vehicle if the person applies for a
15 class D or G license and appears to meet the department's medical
16 qualifications and if the out-of-state license is not revoked or is not
17 expired for more than one year.

18 E. The department may waive the driving examination for initial
19 applicants for a class M license or a motorcycle endorsement if all of the
20 following conditions exist:

- 21 1. The applicant's current license indicates the applicant has been
22 specifically licensed to operate a motorcycle.
- 23 2. The applicant appears to meet the department's medical
24 qualifications.
- 25 3. The applicant's out-of-state license is not revoked or is not
26 expired for more than one year.

27 Sec. 5. Use of portable wireless communication device while
28 driving; local authority laws

29 A. If, before the effective date of this act, a local authority
30 enacts a law regulating the use of a portable wireless communication
31 device, as defined in section 28-914, Arizona Revised Statutes, as added
32 by this act, while driving, the local authority may:

33 1. Issue citations for violations under the local authority's law
34 through December 31, 2020, and the local authority is not subject to the
35 warning period prescribed in section 28-914, Arizona Revised Statutes, as
36 added by this act.

37 2. Change the local authority's law to mirror section 28-914,
38 Arizona Revised Statutes, as added by this act, except that the local
39 authority is not subject to the warning period prescribed in section
40 28-914, Arizona Revised Statutes, as added by this act.

41 B. A local authority that before the effective date of this act has
42 not enacted a law regulating the use of a portable wireless communication
43 device, as defined in section 28-914, Arizona Revised Statutes, as added
44 by this act, while driving may adopt a law to mirror section 28-914,
45 Arizona Revised Statutes, as added by this act.

1 Sec. 6. Emergency

2 This act is an emergency measure that is necessary to preserve the
3 public peace, health or safety and is operative immediately as provided by
4 law.