

REFERENCE TITLE: prohibition; texting while driving

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

SB 1165

Introduced by
Senators Brophy McGee: Bradley, Carter, Fann, Navarrete, Otondo;
Representatives Bolding, Bowers, Campbell, Chávez, Espinoza, Friese,
Hernandez D

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 28-3154, 28-3164 AND 28-3174, 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. 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 12. SECTION 28-3174, SUBSECTION F OR O.

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

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

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

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

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

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

1 shall promptly suspend the driver license or permit of the driver or the
2 privilege of a nonresident to drive a motor vehicle in this state until
3 the order is satisfied.

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

12 G. Restitution awarded pursuant to section 13-603 as a result of a
13 violation of this section shall not exceed ~~one hundred thousand dollars~~
14 \$100,000.

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

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

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

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

26 28-914. Use of portable wireless communication device while
27 driving; prohibition; violation; classification;
28 fine; state preemption

29 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, AN OPERATOR
30 MAY NOT OPERATE A MOTOR VEHICLE WHILE HOLDING IN THE OPERATOR'S HAND,
31 TYPING ON OR OTHERWISE MANUALLY OPERATING A PORTABLE WIRELESS
32 COMMUNICATION DEVICE UNLESS THE VEHICLE IS PARKED OR STOPPED PURSUANT TO
33 SECTION 28-645, SUBSECTION A, PARAGRAPH 3 OR SECTION 28-851.

34 B. AN OPERATOR MAY USE A PORTABLE WIRELESS COMMUNICATION DEVICE IN
35 A MANNER REQUIRING THE USE OF THE OPERATOR'S HAND WHILE OPERATING THE
36 MOTOR VEHICLE ONLY IF BOTH OF THE FOLLOWING CONDITIONS ARE MET:

37 1. EXCEPT AS PROVIDED IN SECTION 28-693, THE PORTABLE WIRELESS
38 COMMUNICATION DEVICE IS MOUNTED ON A VEHICLE WINDSHIELD OR AFFIXED TO A
39 MOTOR VEHICLE DASHBOARD OR CENTER CONSOLE IN A MANNER THAT DOES NOT HINDER
40 THE OPERATOR'S VIEW OF THE ROAD.

41 2. THE OPERATOR'S HAND IS USED TO ACTIVATE OR DEACTIVATE A FEATURE
42 OR FUNCTION OF THE PORTABLE WIRELESS COMMUNICATION DEVICE WITH THE MOTION
43 OF A SINGLE SWIPE OR TAP OF THE OPERATOR'S FINGER.

1 C. IT IS AN AFFIRMATIVE DEFENSE TO A CITATION OR PROSECUTION
2 RESULTING FROM A VIOLATION OF THIS SECTION THAT THE OPERATOR USED A
3 PORTABLE WIRELESS COMMUNICATION DEVICE:

4 1. TO REPORT ILLEGAL ACTIVITY OR SUMMON EMERGENCY HELP.

5 2. THAT WAS PERMANENTLY OR TEMPORARILY AFFIXED TO THE VEHICLE TO
6 RELAY INFORMATION IN THE COURSE OF THE OPERATOR'S OCCUPATIONAL DUTIES
7 BETWEEN THE OPERATOR AND EITHER:

8 (a) A DISPATCHER.

9 (b) A DIGITAL NETWORK OR SOFTWARE APPLICATION SERVICE.

10 D. THIS SECTION DOES NOT APPLY TO:

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

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

17 E. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A PETTY OFFENSE
18 AND IS SUBJECT TO A FINE AS FOLLOWS:

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

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

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

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

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

30 G. A PEACE OFFICER WHO STOPS A MOTOR VEHICLE FOR AN ALLEGED
31 VIOLATION OF THIS SECTION MAY NOT TAKE POSSESSION OF OR OTHERWISE INSPECT
32 A PORTABLE WIRELESS COMMUNICATION DEVICE IN THE POSSESSION OF THE OPERATOR
33 UNLESS OTHERWISE AUTHORIZED BY LAW.

34 H. A DEPARTMENT OR AGENCY OF THIS STATE MAY NOT CONSIDER A
35 CONVICTION FOR A VIOLATION OF THIS SECTION FOR THE PURPOSE OF DETERMINING
36 WHETHER THE PERSON'S DRIVER LICENSE SHOULD BE SUSPENDED OR REVOKED. A
37 COURT MAY NOT TRANSMIT ABSTRACTS OF RECORDS OF VIOLATIONS OF THIS SECTION
38 TO THE DEPARTMENT.

39 I. AN INSURER MAY NOT CONSIDER A VIOLATION OF THIS SECTION FOR THE
40 PURPOSES OF ESTABLISHING RATES FOR MOTOR VEHICLE LIABILITY INSURANCE OR
41 DETERMINING THE INSURABILITY OF THE PERSON. AN INSURER MAY NOT CANCEL OR
42 REFUSE TO RENEW A POLICY OF INSURANCE BECAUSE OF THE VIOLATION.

43 J. THE REGULATION AND USE OF PORTABLE WIRELESS COMMUNICATION
44 DEVICES WHILE OPERATING A MOTOR VEHICLE ARE OF STATEWIDE CONCERN. THE
45 REGULATION OF PORTABLE WIRELESS COMMUNICATION DEVICES PURSUANT TO THIS

1 SECTION AND THEIR USE WHILE OPERATING A MOTOR VEHICLE IS NOT SUBJECT TO
2 FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION
3 OF THIS STATE. A REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL
4 SUBDIVISION THAT VIOLATES THIS SUBSECTION, WHETHER ENACTED BEFORE OR AFTER
5 THE EFFECTIVE DATE OF THIS SECTION, IS VOID.

6 Sec. 3. Section 28-3154, Arizona Revised Statutes, is amended to
7 read:

8 28-3154. Instruction permit for a class D or G license

9 A. A person who is at least fifteen years and six months of age may
10 apply to the department for an instruction permit for a class D or G
11 license. The department may issue an instruction permit to the applicant
12 after the applicant successfully passes all parts of the examination other
13 than the driving test.

14 B. The instruction permit entitles the permittee to drive a motor
15 vehicle requiring a class D or G license on the public highways for twelve
16 months when both of the following conditions are met:

17 1. The permittee has the permit in the permittee's immediate
18 possession.

19 2. The permittee is accompanied by a person who has a class A, B, C
20 or D license, who is at least twenty-one years of age and who occupies a
21 seat beside the permittee.

22 ~~C. A permittee may not drive a motor vehicle while using a wireless
23 communication device for any reason except during an emergency in which
24 stopping the motor vehicle is impossible or will create an additional
25 emergency or safety hazard. A peace officer may not stop or issue a
26 citation to a person operating a motor vehicle on a highway in this state
27 for a violation of this subsection unless the peace officer has reasonable
28 cause to believe there is another alleged violation of a motor vehicle law
29 of this state.~~

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

32 28-3164. Original applicants; examination

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

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

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

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

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

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

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

5 1. A test of the applicant's:

6 (a) Eyesight.

7 (b) Ability to read and understand official traffic control
8 devices.

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

11 (d) KNOWLEDGE OF THE EFFECT OF USING A PORTABLE WIRELESS
12 COMMUNICATION DEVICE OR ENGAGING IN OTHER ACTIONS THAT COULD DISTRACT A
13 DRIVER ON THE SAFE OR EFFECTIVE OPERATION OF A MOTOR VEHICLE.

14 2. An actual demonstration of ability to exercise ordinary and
15 reasonable control in the operation of a vehicle or vehicle combination of
16 the type covered by the license classification or endorsement for which
17 the applicant applies.

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

21 C. The department may examine an original applicant for a class M
22 license or a motorcycle endorsement or the department may accept the
23 examination conducted by an authorized third party pursuant to chapter 13,
24 article 1 of this title or documentation of successful completion of a
25 motorcycle training program approved by the department. Beginning July 1,
26 2014, the documentation of successful completion of a motorcycle training
27 program must be provided by a third party motorcycle driver license
28 training provider authorized pursuant to section 28-5101.02 or a
29 motorcycle training program approved by the department and provided in
30 another state or by the United States military. The department may
31 examine an applicant who has a motorcycle license from another
32 jurisdiction. This examination shall be the same as for all applicants,
33 except that the department may make modifications it finds necessary to
34 determine the applicant's fitness to operate a motorcycle, motor driven
35 cycle or moped on the highways.

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

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

4 1. The applicant's current license indicates the applicant has been
5 specifically licensed to operate a motorcycle.

6 2. The applicant appears to meet the department's medical
7 qualifications.

8 3. The applicant's out-of-state license is not revoked or is not
9 expired for more than one year.

10 Sec. 5. Section 28-3174, Arizona Revised Statutes, is amended to
11 read:

12 28-3174. Class G driver licenses; restrictions; civil
13 penalties; violation; classification; fines;
14 motorcycles

15 A. A person who is under eighteen years of age may apply to the
16 department for a class G driver license if all of the following apply:

17 1. The person is at least sixteen years of age.

18 2. The person has a valid instruction permit issued pursuant to
19 this article and the person has held the instruction permit for at least
20 six months, except that this requirement does not apply to a person who
21 has a currently valid driver license issued by another jurisdiction.

22 3. Either:

23 (a) The person has satisfactorily completed a driver education
24 program that is approved by the department of transportation. If the
25 driver education program is offered by a public high school, the program
26 shall be approved by the department of transportation in consultation with
27 the department of education.

28 (b) A custodial parent or guardian of the person certifies in
29 writing to the department that the applicant has completed at least thirty
30 hours of supervised driving practice and that at least ten of the required
31 practice hours were at night.

32 B. If the applicant successfully passes the examination prescribed
33 in section 28-3164 and satisfies the requirements prescribed in subsection
34 A of this section, the department may issue a class G driver license to
35 the applicant.

36 C. Except as provided in subsection D of this section, a class G
37 driver license entitles the licensee to drive a motor vehicle that
38 requires a class G license on the public highways.

39 D. Except as provided in subsection ~~K~~ L of this section, for the
40 first six months that a class G licensee holds the license, the licensee
41 shall not drive a motor vehicle on a public highway from 12:00 a.m. to
42 5:00 a.m. unless either:

43 1. The licensee is accompanied by a parent or legal guardian who
44 has a class A, B, C or D license and who occupies a seat beside the class
45 G licensee.

1 2. The licensee is driving directly to or from a sanctioned school
2 sponsored activity, the licensee's place of employment, a sanctioned
3 religious activity or a family emergency.

4 E. Except as provided in this subsection and subsection ~~K~~ L of
5 this section, for the first six months that a class G licensee holds the
6 license, the licensee shall not drive a motor vehicle on a public highway
7 at any time if the licensee is driving a motor vehicle containing more
8 than one passenger under the age of eighteen. This restriction does not:

9 1. Prohibit the licensee from driving a motor vehicle containing
10 passengers under the age of eighteen if the passengers are the licensee's
11 siblings.

12 2. Apply if the licensee is accompanied by a parent or legal
13 guardian who has a class A, B, C or D license and who occupies a seat
14 beside the class G licensee.

15 F. ~~Except as provided in subsection K of this section, for the~~
16 ~~first six months that a class G licensee holds the license,~~ The licensee
17 may not drive a motor vehicle while using a PORTABLE wireless
18 communication device for any reason except either:

19 1. During an emergency ~~in which stopping the motor vehicle is~~
20 ~~impossible or will create an additional emergency or safety hazard.~~

21 2. When using an audible turn-by-turn navigation system if both of
22 the following apply:

23 (a) The destination is not manually entered into the wireless
24 communication device while the licensee is driving the motor vehicle.

25 (b) The licensee does not manually adjust the wireless
26 communication device while driving the motor vehicle.

27 G. THE RESTRICTIONS IMPOSED PURSUANT TO SUBSECTION F OF THIS
28 SECTION DO NOT APPLY TO A PERSON WHO IS LICENSED BY THE FEDERAL
29 COMMUNICATIONS COMMISSION WHILE THE PERSON OPERATES A RADIO FREQUENCY
30 DEVICE OTHER THAN A PORTABLE WIRELESS COMMUNICATION DEVICE.

31 ~~G.~~ H. A peace officer shall not stop or issue a citation to a
32 person operating a motor vehicle on a highway in this state for a
33 violation of subsection D, E or F of this section unless the peace officer
34 has reasonable cause to believe there is another alleged violation of a
35 motor vehicle law of this state.

36 ~~H.~~ I. If a licensee is found responsible for violating subsection
37 D, ~~OR E OR F~~ of this section, the licensee:

38 1. For a first violation, is subject to a maximum civil penalty of
39 ~~seventy-five dollars~~ \$75. The department shall extend the restriction
40 prescribed by subsection D, ~~OR E OR F~~ of this section for thirty days, or
41 if the restriction prescribed by subsection D, ~~OR E OR F~~ of this section
42 is complete, the thirty day restriction begins on the department's receipt
43 of the report of the finding of responsibility.

44 2. For a second violation, is subject to a maximum civil penalty of
45 ~~one hundred dollars~~ \$100. The department shall extend the restriction

1 prescribed by subsection ~~D,~~ OR ~~E~~ ~~or~~ ~~F~~ of this section for sixty days, or
 2 if the restriction prescribed by subsection ~~D,~~ OR ~~E~~ ~~or~~ ~~F~~ of this section
 3 is complete, the sixty day restriction begins on the department's receipt
 4 of the report of the finding of responsibility. If at the time of the
 5 second violation the licensee is subject to an extension of the six month
 6 period pursuant to paragraph 1 of this subsection, the extensions run
 7 consecutively.

8 3. For a third or subsequent violation, is subject to a maximum
 9 civil penalty of ~~one hundred dollars~~ \$100. On the department's receipt of
 10 the report of the finding of responsibility, the department shall suspend
 11 the licensee's driving privilege for thirty days. If the licensee also
 12 has a suspension resulting from a moving civil traffic violation or a
 13 moving criminal traffic offense as prescribed by section 28-3321, the
 14 suspensions run consecutively.

15 ~~I.~~ J. A citation issued for violating subsection D of this section
 16 shall be dismissed if the licensee to whom the citation was issued
 17 produces any of the following evidence to the appropriate court officer on
 18 or before the date and time specified on the citation for court appearance
 19 and in a manner specified by the court:

20 1. A written, notarized letter from the parent or legal guardian of
 21 the licensee that the licensee was going to or returning from a sanctioned
 22 school sponsored activity, the licensee's place of employment, a
 23 sanctioned religious activity or a family emergency.

24 2. A written, notarized letter from a representative of the
 25 sanctioned school sponsored activity certifying that the licensee was
 26 returning from the school activity.

27 3. A written, notarized letter from the licensee's employer
 28 certifying that the licensee was returning from the licensee's place of
 29 employment.

30 4. A written, notarized letter from a representative of the
 31 sanctioned religious activity certifying that the licensee was returning
 32 from the religious activity.

33 ~~J.~~ K. A citation issued for violating subsection E of this section
 34 shall be dismissed if the licensee to whom the citation was issued
 35 produces a written, notarized letter from the parent or legal guardian of
 36 the licensee to the appropriate court officer on or before the date and
 37 time specified on the citation for court appearance and in a manner
 38 specified by the court that states the passengers in the vehicle with the
 39 licensee at the time of the violation were the siblings of the licensee.

40 ~~K.~~ L. The restrictions imposed by subsection ~~D,~~ OR ~~E~~ ~~or~~ ~~F~~ of this
 41 section do not apply beginning on the licensee's eighteenth birthday. Any
 42 penalties or restrictions imposed pursuant to subsection ~~H~~ I of this
 43 section shall be fully satisfied even if the licensee is eighteen years of
 44 age or older.

1 ~~L.~~ M. A person who holds a class G driver license may apply for a
2 class D license on or after the person's eighteenth birthday, except that
3 a person whose class G driver license is suspended pursuant to section
4 28-3321 is not entitled to receive a class D driver license until after
5 the suspension period expires.

6 ~~M.~~ N. If a person who is under eighteen years of age and at least
7 sixteen years of age applies for a class M license or a motorcycle
8 endorsement, the department shall not issue the class M license or
9 motorcycle endorsement to the person unless both of the following apply:

10 1. The applicant has held an instruction permit issued pursuant to
11 section 28-3156 for at least six months, except that this requirement does
12 not apply to a person who has a currently valid motorcycle driver license
13 or endorsement issued by another jurisdiction.

14 2. Either:

15 (a) The person has satisfactorily completed a motorcycle driver
16 education program that is approved by the department. If the driver
17 education program is offered by a public high school, the program shall be
18 approved by the department of transportation in consultation with the
19 department of education.

20 (b) A custodial parent or guardian of the person certifies in
21 writing to the department that the applicant has completed at least thirty
22 hours of motorcycle driving practice.

23 O. A PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE AND WHO HAS A CLASS
24 M LICENSE OR A MOTORCYCLE ENDORSEMENT MAY NOT DRIVE A MOTORCYCLE WHILE
25 USING A PORTABLE WIRELESS COMMUNICATION DEVICE FOR ANY REASON EXCEPT
26 DURING AN EMERGENCY. THE RESTRICTIONS IMPOSED PURSUANT TO THIS SUBSECTION
27 DO NOT APPLY TO A PERSON WHO IS LICENSED BY THE FEDERAL COMMUNICATIONS
28 COMMISSION WHILE THE PERSON OPERATES A RADIO FREQUENCY DEVICE OTHER THAN A
29 PORTABLE WIRELESS COMMUNICATION DEVICE.

30 P. A PERSON WHO VIOLATES SUBSECTION F OR O OF THIS SECTION IS
31 GUILTY OF A PETTY OFFENSE AND IS SUBJECT TO A FINE AS FOLLOWS:

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

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