

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Rep. Matt Lehman, IN
VICE PRESIDENT: Asm. Ken Cooley, CA
TREASURER: Asm. Kevin Cahill, NY
SECRETARY: Rep. Joe Fischer, KY

IMMEDIATE PAST PRESIDENTS:
Sen. Jason Rapert, AR
Sen. Travis Holdman, IN

National Council of Insurance Legislators (NCOIL)

Distracted Driving Model Act

**Sponsored by Sen. Bob Hackett (OH) and Asm. Ken Cooley (CA)*

**Draft as of ~~March 16, 2021~~ ~~November 9, 2020~~ ~~August 25, 2020~~*

**To be discussed and considered during the NCOIL Property & Casualty Insurance Committee on ~~April 18, 2021~~ ~~December 12, 2020~~ ~~September 24, 2020~~.*

Table of Contents

<u>Section 1.</u>	<u>Title</u>
<u>Section 2.</u>	<u>Purpose</u>
<u>Section 3.</u>	<u>Definitions</u>
<u>Section 4.</u>	<u>Operation</u>
<u>Section 5.</u>	<u>Penalties</u>
<u>Section 6.</u>	<u>Enforcement and Reporting</u>
<u>Section 7.</u>	<u>Effective Date</u>

Section 1. Title

This Act shall be known and may be cited as the “[State] Distracted Driving Act.”

Section 2. Purpose

This Model provides a structure to strengthen distracted driving laws across the country by establishing a comprehensive hands-free law to curb driver distraction, including manual, visual and cognitive distraction, to reduce highway fatalities, save lives, reduce auto crashes and make roads safer. The Model enables law enforcement to ticket drivers for holding a mobile device and limits use of a mounted or “hands-free” device while operating a motor vehicle, including texting, viewing videos or images, entering data, and talking or broadcasting content. Exceptions are provided for emergencies, for certain voice-activated technology, for

navigation, and for “single swipe” activation as long as the device is not held by the driver or used to engage in viewing distracting content. The increased prevalence of smartphone technology and expansion of its capability and potential for use has exacerbated distraction behind the wheel. Along with heightened public awareness, targeted research, and the development of technology to mitigate risks, the enactment of primary enforcement laws is an important part of the strategy to reduce traffic deaths and life altering crashes.

Section ~~31~~ – Definitions

'Stand-alone electronic device' means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

'Utility services' means and includes electric, natural gas, water, waste-water, cable, telephone, or telecommunications services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, or associated infrastructure.

'Wireless telecommunications device' means one of the following portable devices:

- (1) a cellular telephone;
- (2) a portable telephone;
- (3) a text-messaging device;
- (4) a personal digital assistant;
- (5) a stand-alone computer, including but not limited to a tablet, laptop or notebook computer;
- (6) a global positioning system receiver;
- (7) a device capable of displaying a video, movie, broadcast television image, or visual image; or
- (8) Any substantially similar portable wireless device that is used to initiate or receive communication, information or data.

Such term shall not include a radio, citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, subscription-based emergency communication device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, communications or remote diagnostics system.

"Voice-operated or hands-free feature or function" means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

Section 42 – Operation

(A) The driver of a school bus shall not use or operate a wireless telecommunications device, as such term is defined in Section 32 of this Act, or two-way radio while loading or unloading passengers.

(B) The driver of a school bus shall not use or operate a wireless telecommunications device, as such term is defined in Section 32 of this Act, while the bus is in motion, unless it is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(C) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle.

(D) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, no individual shall:

(1) Physically hold or support, with any part of his or her body a:

- (a) Wireless telecommunications device; or
- (b) Stand-alone electronic device;

(2) Write, send, or read any text-based communication, including but not limited to a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device; provided, however, that such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form; or

(3) Make any communication, including a phone call, voice message, or one-way voice communication; provided, however, that such prohibition shall not apply to a voice-operated or hands-free communication feature or function

(4) Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

(6) Watch a video or movie on a wireless telecommunications device or stand-alone electronic device other than watching data related to the navigation of such vehicle; or

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device; provided that such prohibition shall not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.

(E) While operating a commercial motor vehicle on any highway of this state, no individual shall:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be:

(a) In a seated driving position; or

(b) Properly restrained by a safety belt.

(F) Each violation of this Code section shall constitute a separate offense.

Section ~~53~~ – Penalties

(A) Except as provide for in paragraph (B) of this section, any person convicted of violating this Act shall be guilty of an unclassified misdemeanor which shall be punished as follows:

(1) For a first conviction with no conviction of and no plea of no contest accepted to a charge of violating this Act within the previous 24 month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$150.00 and charged two (2) points.

(2) For a second conviction within a 24-month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$250.00 and charged three (3) points.

(3) For a third or subsequent conviction within a 24-month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$500.00, charged four (4) points, and at the court's discretion, suspension of the offender's driver's license for a period of 90 days.

(B) Any person appearing before a court for a first charge of violating Section 42 (D)(1) of this Act who produces in court a device or proof of purchase of such device that would allow such person to comply with such paragraph in the future shall not be guilty of such offense. The court shall require the person to affirm that they have not previously utilized the privilege under this paragraph.

(C) Any person convicted of a violation of any law or ordinance pertaining to speed when the offender also was distracted, as defined in this Act, shall be charged points as follows:

(1a) when the speed exceeds the lawful limit by thirty miles per hour or more, six (6) points

(2b) When the speed exceeds the lawful speed limit of fifty-five miles per hour or more by more than ten miles per hour, four (4) points

(3e) When the speed exceeds the lawful speed limit of less than fifty-five miles per hour by more than five miles per hour, four (4) points

(D) Any person who causes physical harm to property as the proximate result of committing a violation of this Act is guilty of a misdemeanor of the first degree. In addition to any other authorized penalty, the court shall impose upon the offender a fine not less than five hundred dollars and not more than one thousand dollars.

(E) Any person who causes serious physical harm to another person as the proximate result of committing a violation of this Act is guilty of aggravated vehicular assault and shall be punished according to this STATE'S CRIMINAL CODE.

(F) Any person who causes the death of another as the proximate result of committing a violation of this Act is guilty of aggravated vehicular homicide and shall be punished according to this STATE'S CRIMINAL CODE.

DRAFTING NOTE: States should consider aligning property damage, injury, and/or death with equivalent driver intoxication offenses and penalties.

(G) Section 42 (D) and (E) of this Act shall not apply when the prohibited conduct occurred:

(1) While reporting to state, county or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or road condition that causes an immediate and serious traffic or safety hazard;

(2) By an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency.

(3) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(4) By a law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) While in a motor vehicle which is lawfully parked.

Section 6. Enforcement and Reporting

(A) When a law enforcement officer issues a citation for a violation of this Act, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the [State Agency] in a form and manner determined by the [State Agency]. Beginning one year after enactment, the [State Agency] shall annually report the data collected under this Act to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies shall combine the data for the county sheriffs and the municipal law enforcement agencies.

(B) A law enforcement officer who stops a motor vehicle for a violation of this Act must inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device and may not:

(1) Access the wireless communications device without a warrant.

(2) Confiscate the wireless communications device while awaiting issuance of a warrant to access such device.

(3) Obtain consent from the motor vehicle operator to search his or her wireless communications device through coercion or other improper method. Consent to search a motor vehicle operator's wireless communications device must be voluntary and unequivocal.

Section 76. Effective Date

This Act shall become effective _____.