

REFERENCE TITLE: **texting while driving; prohibition**

State of Arizona  
Senate  
Fifty-third Legislature  
Second Regular Session  
2018

# **SB 1261**

Introduced by  
Senators Farley: Fann

**AN ACT**

**AMENDING TITLE 28, CHAPTER 3, ARTICLE 15, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 28-913; 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. Title 28, chapter 3, article 15, Arizona Revised  
3 Statutes, is amended by adding section 28-913, to read:

4 28-913. Use of portable wireless communication device while  
5 driving; prohibition; violation; classification;  
6 finest; definitions

7 A. AN OPERATOR MAY NOT USE A PORTABLE WIRELESS COMMUNICATION DEVICE  
8 TO READ, WRITE OR SEND AN ELECTRONIC MESSAGE WHILE OPERATING A MOTOR  
9 VEHICLE UNLESS THE VEHICLE IS STOPPED. TO BE PROSECUTED FOR A VIOLATION  
10 OF THIS SECTION, THE BEHAVIOR MUST BE COMMITTED IN THE PRESENCE OF OR  
11 WITHIN THE VIEW OF A PEACE OFFICER OR BE ESTABLISHED BY OTHER EVIDENCE.

12 B. IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SECTION  
13 THAT THE OPERATOR USED A PORTABLE WIRELESS COMMUNICATION DEVICE:

14 1. IN CONJUNCTION WITH A HANDS-FREE DEVICE.

15 2. TO NAVIGATE USING A GLOBAL POSITIONING SYSTEM OR NAVIGATION  
16 SYSTEM.

17 3. TO REPORT ILLEGAL ACTIVITY, SUMMON EMERGENCY HELP OR ENTER  
18 INFORMATION INTO A SOFTWARE APPLICATION THAT PROVIDES INFORMATION RELATING  
19 TO TRAFFIC AND ROAD CONDITIONS TO USERS OF THE APPLICATION.

20 4. TO READ AN ELECTRONIC MESSAGE THAT THE PERSON REASONABLY  
21 BELIEVES CONCERNS AN EMERGENCY.

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

25 (a) A DISPATCHER.

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

27 6. TO ACTIVATE A FUNCTION THAT PLAYS MUSIC.

28 C. THIS SECTION DOES NOT APPLY TO:

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

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

35 D. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF:

36 1. A PETTY OFFENSE AND IS SUBJECT TO A FINE AS FOLLOWS:

37 (a) AT LEAST TWENTY-FIVE DOLLARS BUT NOT MORE THAN NINETY-NINE  
38 DOLLARS FOR A FIRST OFFENSE.

39 (b) AT LEAST ONE HUNDRED DOLLARS BUT NOT MORE THAN TWO HUNDRED  
40 DOLLARS FOR A SECOND OR SUBSEQUENT OFFENSE.

41 2. A CLASS 2 MISDEMEANOR IF THE VIOLATION CAUSED THE DEATH OF OR  
42 SERIOUS BODILY INJURY TO ANOTHER PERSON AND, NOTWITHSTANDING SECTION  
43 13-802, IS SUBJECT TO A FINE OF NOT MORE THAN FOUR THOUSAND DOLLARS.

1 E. IF CONDUCT CONSTITUTING A VIOLATION UNDER THIS SECTION ALSO  
2 VIOLATES ANOTHER LAW, THE PERSON MAY BE PROSECUTED UNDER THIS SECTION OR  
3 THE OTHER LAW OR BOTH.

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

7 1. THE USE OF A PORTABLE WIRELESS COMMUNICATION DEVICE FOR  
8 ELECTRONIC MESSAGING WHILE OPERATING A MOTOR VEHICLE IS PROHIBITED IN THIS  
9 STATE.

10 2. THE OPERATOR IS SUBJECT TO A FINE IF THE OPERATOR USES A  
11 PORTABLE WIRELESS COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING WHILE  
12 OPERATING A MOTOR VEHICLE IN THIS STATE.

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

17 H. A DEPARTMENT OR AGENCY OF THIS STATE MAY NOT CONSIDER A  
18 CONVICTION FOR A VIOLATION OF THIS SECTION FOR THE PURPOSE OF DETERMINING  
19 WHETHER THE PERSON'S DRIVER LICENSE SHOULD BE SUSPENDED OR REVOKED. A  
20 COURT MAY NOT TRANSMIT ABSTRACTS OF RECORDS OF VIOLATIONS OF THIS SECTION  
21 TO THE DEPARTMENT.

22 I. AN INSURER MAY NOT CONSIDER A VIOLATION OF THIS SECTION FOR THE  
23 PURPOSES OF ESTABLISHING RATES FOR MOTOR VEHICLE LIABILITY INSURANCE OR  
24 DETERMINING THE INSURABILITY OF THE PERSON. AN INSURER MAY NOT CANCEL OR  
25 REFUSE TO RENEW A POLICY OF INSURANCE BECAUSE OF THE VIOLATION.

26 J. FOR THE PURPOSES OF THIS SECTION:

27 1. "ELECTRONIC MESSAGE" MEANS DATA THAT IS READ FROM OR ENTERED  
28 INTO A WIRELESS COMMUNICATION DEVICE FOR THE PURPOSE OF COMMUNICATING WITH  
29 ANOTHER PERSON.

30 2. "HANDS-FREE DEVICE":

31 (a) MEANS SPEAKERPHONE CAPABILITY, A TELEPHONE ATTACHMENT OR  
32 ANOTHER FUNCTION OR OTHER PIECE OF EQUIPMENT REGARDLESS OF WHETHER  
33 PERMANENTLY INSTALLED IN OR ON A WIRELESS COMMUNICATION DEVICE OR IN A  
34 MOTOR VEHICLE THAT ALLOWS USE OF THE WIRELESS COMMUNICATION DEVICE WITHOUT  
35 USE OF EITHER OF THE OPERATOR'S HANDS EXCEPT TO ACTIVATE OR DEACTIVATE A  
36 FUNCTION OF THE WIRELESS COMMUNICATION DEVICE OR HANDS-FREE DEVICE.

37 (b) INCLUDES VOICE-OPERATED TECHNOLOGY AND A PUSH-TO-TALK FUNCTION.

38 Sec. 2. Section 28-3154, Arizona Revised Statutes, is amended to  
39 read:

40 28-3154. Instruction permit for a class D or G license

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

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

4 1. The permittee has the permit in the permittee's immediate  
5 possession.

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

9 ~~C. A permittee may not drive a motor vehicle while using a wireless  
10 communication device for any reason except during an emergency in which  
11 stopping the motor vehicle is impossible or will create an additional  
12 emergency or safety hazard. A peace officer may not stop or issue a  
13 citation to a person operating a motor vehicle on a highway in this state  
14 for a violation of this subsection unless the peace officer has reasonable  
15 cause to believe there is another alleged violation of a motor vehicle law  
16 of this state.~~

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

19 28-3164. Original applicants; examination

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

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

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

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

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

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

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

37 1. A test of the applicant's:

38 (a) Eyesight.

39 (b) Ability to read and understand official traffic control  
40 devices.

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

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

4 2. An actual demonstration of ability to exercise ordinary and  
5 reasonable control in the operation of a vehicle or vehicle combination of  
6 the type covered by the license classification or endorsement for which  
7 the applicant applies.

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

11 C. The department may examine an original applicant for a class M  
12 license or a motorcycle endorsement or the department may accept the  
13 examination conducted by an authorized third party pursuant to chapter 13,  
14 article 1 of this title or documentation of successful completion of a  
15 motorcycle training program approved by the department. Beginning July 1,  
16 2014, the documentation of successful completion of a motorcycle training  
17 program must be provided by a third party motorcycle driver license  
18 training provider authorized pursuant to section 28-5101.02 or a  
19 motorcycle training program approved by the department and provided in  
20 another state or by the United States military. The department may  
21 examine an applicant who has a motorcycle license from another  
22 jurisdiction. This examination shall be the same as for all applicants,  
23 except that the department may make modifications it finds necessary to  
24 determine the applicant's fitness to operate a motorcycle, motor driven  
25 cycle or moped on the highways.

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

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

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

39 2. The applicant appears to meet the department's medical  
40 qualifications.

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

1           Sec. 4. Section 28-3174, Arizona Revised Statutes, is amended to  
2 read:

3           28-3174. Class G driver licenses; restrictions; civil  
4                                   penalties; violation; classification; fines;  
5                                   motorcycles

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

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

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

13                 3. Either:

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

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

23           B. If the applicant successfully passes the examination prescribed  
24 in section 28-3164 and satisfies the requirements prescribed in subsection  
25 A of this section, the department may issue a class G driver license to  
26 the applicant.

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

30           D. Except as provided in subsection ~~←~~ L of this section, for the  
31 first six months that a class G licensee holds the license, the licensee  
32 shall not drive a motor vehicle on a public highway from 12:00 a.m. to  
33 5:00 a.m. unless either:

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

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

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

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

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

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

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

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

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

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

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

23 ~~H.~~ H. A peace officer shall not stop or issue a citation to a  
24 person operating a motor vehicle on a highway in this state for a  
25 violation of subsection D, E or F of this section unless the peace officer  
26 has reasonable cause to believe there is another alleged violation of a  
27 motor vehicle law of this state.

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

30 1. For a first violation, is subject to a maximum civil penalty of  
31 seventy-five dollars. The department shall extend the restriction  
32 prescribed by subsection D, ~~OR E~~ ~~OR F~~ of this section for thirty days, or  
33 if the restriction prescribed by subsection D, ~~OR E~~ ~~OR F~~ of this section  
34 is complete, the thirty day restriction begins on the department's receipt  
35 of the report of the finding of responsibility.

36 2. For a second violation, is subject to a maximum civil penalty of  
37 one hundred dollars. The department shall extend the restriction  
38 prescribed by subsection D, ~~OR E~~ ~~OR F~~ of this section for sixty days, or  
39 if the restriction prescribed by subsection D, ~~OR E~~ ~~OR F~~ of this section  
40 is complete, the sixty day restriction begins on the department's receipt  
41 of the report of the finding of responsibility. If at the time of the  
42 second violation the licensee is subject to an extension of the six month  
43 period pursuant to paragraph 1 of this subsection, the extensions run  
44 consecutively.

1           3. For a third or subsequent violation, is subject to a maximum  
2 civil penalty of one hundred dollars. On the department's receipt of the  
3 report of the finding of responsibility, the department shall suspend the  
4 licensee's driving privilege for thirty days. If the licensee also has a  
5 suspension resulting from a moving civil traffic violation or a moving  
6 criminal traffic offense as prescribed by section 28-3321, the suspensions  
7 run consecutively.

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

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

17           2. A written, notarized letter from a representative of the  
18 sanctioned school sponsored activity certifying that the licensee was  
19 returning from the school activity.

20           3. A written, notarized letter from the licensee's employer  
21 certifying that the licensee was returning from the licensee's place of  
22 employment.

23           4. A written, notarized letter from a representative of the  
24 sanctioned religious activity certifying that the licensee was returning  
25 from the religious activity.

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

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

38           ~~L.~~ M. A person who holds a class G driver license may apply for a  
39 class D license on or after the person's eighteenth birthday, except that  
40 a person whose class G driver license is suspended pursuant to section  
41 28-3321 is not entitled to receive a class D driver license until after  
42 the suspension period expires.

43           ~~M.~~ N. If a person who is under eighteen years of age and at least  
44 sixteen years of age applies for a class M license or a motorcycle

1 endorsement, the department shall not issue the class M license or  
2 motorcycle endorsement to the person unless both of the following apply:

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

7 2. Either:

8 (a) The person has satisfactorily completed a motorcycle driver  
9 education program that is approved by the department. If the driver  
10 education program is offered by a public high school, the program shall be  
11 approved by the department of transportation in consultation with the  
12 department of education.

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

16 O. A PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE AND WHO HAS A CLASS  
17 M LICENSE OR A MOTORCYCLE ENDORSEMENT MAY NOT DRIVE A MOTORCYCLE WHILE  
18 USING A PORTABLE WIRELESS COMMUNICATION DEVICE FOR ANY REASON EXCEPT  
19 DURING AN EMERGENCY. THE RESTRICTIONS IMPOSED PURSUANT TO THIS SUBSECTION  
20 DO NOT APPLY TO A PERSON WHO IS LICENSED BY THE FEDERAL COMMUNICATIONS  
21 COMMISSION WHILE THE PERSON OPERATES A RADIO FREQUENCY DEVICE OTHER THAN A  
22 PORTABLE WIRELESS COMMUNICATION DEVICE.

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

25 1. AT LEAST TWENTY-FIVE DOLLARS BUT NOT MORE THAN NINETY-NINE  
26 DOLLARS FOR A FIRST OFFENSE.

27 2. AT LEAST ONE HUNDRED DOLLARS BUT NOT MORE THAN TWO HUNDRED  
28 DOLLARS FOR A SECOND OR SUBSEQUENT OFFENSE.