

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

590B0405

HOUSE BILL NO. 1088

Introduced by: Representatives Barthel, Duvall, Glanzer, Johns, Lesmeister, Rasmussen, Reed, Smith (Jamie), Willadsen, and Zikmund and Senators Soholt, Curd, Ewing, Heinert, Kennedy, Novstrup, Otten (Ernie), Rusch, Solano, and White

1 FOR AN ACT ENTITLED, An Act to prohibit the use of certain electronic devices while
2 driving.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-26 be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Operate," to drive or assume physical control of a motor vehicle upon a highway,
7 including operation while temporarily stationary because of traffic, road conditions,
8 a traffic light, or a stop sign. The term does not include a motor vehicle that is
9 lawfully parked;
- 10 (2) "Mobile electronic device," any hand-held or portable electronic device capable of
11 providing wireless data or voice communication between two or more persons or
12 amusement, including a cellular telephone, broadband personal communication
13 device, two-way messaging device, text messaging device, pager, electronic device
14 that can receive or transmit text or character-based images, access or store data, or



1 connect to the internet, personal digital assistant, laptop computer, computer tablet,
2 stand-alone computer, portable computing device, mobile device with a touchscreen
3 display that is designed to be worn, electronic game, equipment that is capable of
4 playing a video, taking photographs, capturing images, or recording or transmitting
5 video, and any similar device that is readily removable from a vehicle and is used to
6 write, send, or read text or data or capture images or video through manual input. The
7 term does not include a radio designed for the citizens band service or the amateur
8 radio service of the Federal Communications Commission or a commercial two-way
9 radio communications device;

10 (3) "Social networking site," any web-based service that allows persons to construct a
11 profile within a founded system and communicate with other users of the site.

12 Section 2. That chapter 32-26 be amended by adding a NEW SECTION to read:

13 No person may operate a motor vehicle while using a mobile electronic device. A violation
14 of this section is a Class 2 misdemeanor.

15 This section does not apply to:

16 (1) A law enforcement officer, firefighter, emergency medical technician, paramedic,
17 operator of an authorized emergency vehicle, or similarly engaged paid or volunteer
18 public safety first responder during the performance of that person's official duties,
19 and a public utility employee or contractor acting within the scope of that person's
20 employment when responding to a public utility emergency;

21 (2) The use of a mobile electronic device for emergency purposes, including a text
22 messaging device to contact a 911 system, an emergency call to a law enforcement
23 agency, health care provider, fire department, or other emergency services agency or
24 entity, or to report to appropriate authorities a fire, traffic accident, serious road

1 hazard, or medical or hazardous materials emergency, or to report the operator of
2 another motor vehicle who is driving in a reckless or otherwise unsafe manner or
3 who appears to be driving under the influence of alcohol or drugs, or to report a
4 crime;

5 (3) The use of a global positioning or navigation system feature of a mobile electronic
6 device, but does apply to manually entering information into the global positioning
7 or navigation system feature of the device;

8 (4) Reading, selecting, or entering a telephone number or name in a mobile electronic
9 device for the purpose of making or receiving a telephone call or if a person
10 otherwise activates or deactivates a feature or function of a mobile electronic device;
11 or

12 (5) The use of a mobile electronic device in a voice-operated or hands-free mode if the
13 operator of the motor vehicle does not use his or her hands to operate the device,
14 except to activate or deactivate a feature or function of the device.

15 Section 3. That chapter 32-26 be amended by adding a NEW SECTION to read:

16 No person may access, read, or post to a social networking site while operating a motor
17 vehicle. A violation of this section is a Class 2 misdemeanor.

18 Section 4. That § 32-26-46 be repealed.

19 ~~32-26-46. Terms used in §§ 32-26-47 and 32-26-48 mean:~~

20 ~~(1) "Electronic wireless communication device," a mobile communication device that~~
21 ~~uses short-wave analog or digital radio transmissions or satellite transmissions~~
22 ~~between the device and a transmitter to permit wireless telephone communications~~
23 ~~to and from the user of the device within a specified area;~~

24 ~~(2) "Voice operated or hands free technology," technology that allows a user to write,~~

1 ~~send, or listen to a text-based communication without the use of either hand except~~
2 ~~to activate, deactivate, or initiate a feature or function; and~~

3 ~~— (3) — "Write, send, or read a text-based communication," using an electronic wireless~~
4 ~~communications device to manually communicate with any person using text-based~~
5 ~~communication including communications referred to as a text message, instant~~
6 ~~message, or electronic mail.~~

7 Section 5. That § 32-26-47 be repealed.

8 ~~— 32-26-47. No person may operate a motor vehicle on a highway while using a handheld~~
9 ~~electronic wireless communication device to write, send, or read a text-based communication.~~
10 ~~This section does not apply to a person who is using a handheld electronic wireless~~
11 ~~communication device:~~

12 ~~— (1) — While the vehicle is lawfully parked;~~

13 ~~— (2) — To contact any emergency public safety answering point or dispatch center;~~

14 ~~— (3) — To write, read, select, or enter a telephone number or name in an electronic wireless~~
15 ~~communications device for the purpose of making or receiving a telephone call; or~~

16 ~~— (4) — When using voice operated or hands free technology.~~

17 ~~— State or local law enforcement agencies shall enforce this section as a secondary action. A~~
18 ~~violation of this section is a petty offense with a fine of one hundred dollars.~~

19 Section 6. That § 32-26-48 be amended to read:

20 ~~32-26-48. No handheld electronic wireless communication device used in violation of § 32-~~
21 ~~26-47 mobile electronic device used in violation of section 2 or section 3 of this Act may be~~
22 ~~seized by a law enforcement officer to establish a violation of § 32-26-47 either of those~~
23 ~~sections. However, a ~~handheld electronic wireless communication~~ mobile electronic device may~~
24 ~~be seized upon compliance with the search and seizure requirements in chapter 23A-35.~~