

JAN 19 2018

A BILL FOR AN ACT

RELATING TO MOBILE ELECTRONIC DEVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the use of mobile
2 electronic devices contributes to the increase of distracted
3 driving. The use of mobile electronic devices, such as cellular
4 phones during the task of driving can be a distraction and pose
5 a risk of harm to the driver and others in the vehicle or on the
6 road. According to the National Safety Council, in 2016 more
7 than forty thousand Americans died in automobile accidents,
8 which was an increase of six per cent over 2015 and a fourteen
9 per cent increase over 2014.

10 The legislature notes that existing law prohibits a person
11 from operating a motor vehicle or commercial motor vehicle while
12 using a mobile electronic device. However, law enforcement has
13 a difficult time enforcing these laws, especially after an
14 accident where it is impossible to discern whether the driver of
15 the motor vehicle was using a cellular phone immediately prior
16 to or at the time of the accident. Enabling law enforcement
17 with technology that is able to immediately determine mobile



1 electronic device usage without an inquiry into the device's
2 content, will allow better enforcement of the laws prohibiting
3 the use of a mobile electronic device while operating a motor
4 vehicle while protecting the privacy rights.

5 The purpose of this Act is to:

6 (1) Require the driver of any motor vehicle that is
7 involved in an accident involving death, serious
8 bodily injury, substantial bodily injury, bodily
9 injury, or damage to vehicle or property and in
10 possession of a mobile electronic device at or near
11 the time of the accident to, at the request of a
12 police officer, submit the mobile electronic device to
13 the police officer for the sole purpose of field
14 testing of the device;

15 (2) Establish procedures to allow police officers
16 responding to a motor vehicle accident involving death
17 or serious bodily injury, substantial bodily injury,
18 bodily injury, or damage to vehicle or property to
19 field test a mobile electronic device; and



(3) Impose penalties if a driver of the motor vehicle involved in an accident fails to submit the driver's mobile electronic device for the field testing.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

FIELD TESTING OF A MOBILE ELECTRONIC DEVICE USED WHILE OPERATING

A MOTOR VEHICLE INVOLVED IN AN ACCIDENT

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Driver" means every person who drives or is in actual physical control of a motor vehicle.

"Field testing" means the use of an electronic scanning device to determine whether the driver of a motor vehicle was using a mobile electronic device in violation of section 291-17 or 291C-137, as applicable; provided that the use of the electronic scanning device shall be limited to determining whether the driver of a motor vehicle was using a mobile



1 electronic device in violation of section 291-17 or 291C-137, as
2 applicable, at or near the time of the accident. The electronic
3 scanning device shall not include the content or origin of any
4 communication or game conducted, or image or electronic data
5 viewed on a mobile electronic device.

6 "Highway" means the entire width between the boundary lines
7 of every way publicly maintained and those private streets, as
8 defined in section 46-16, over which the application of this
9 chapter has been extended by ordinance, when any part thereof is
10 open to the use of the public for purposes of vehicular travel.

11 "License" means any driver's license or any other license
12 or permit to operate a motor vehicle issued under, or granted
13 by, the laws of this State and includes:

- 14 (1) Any learner's permit or instruction permit;
- 15 (2) The privilege of any person to operate a motor
16 vehicle, regardless of whether the person holds a
17 valid license;
- 18 (3) Any nonresident's operating privilege; and
- 19 (4) The eligibility, including future eligibility, of any
20 person to apply for a license or privilege to operate
21 a motor vehicle.



1 "Mobile electronic device" means any handheld or other
2 portable electronic equipment capable of providing wireless or
3 data communication between two or more persons or of providing
4 amusement, including but not limited to a cellular phone, text
5 messaging device, paging device, personal digital assistant,
6 laptop computer, video game, or digital photographic device, but
7 does not include any audio equipment or any equipment installed
8 in a motor vehicle for the purpose of providing navigation,
9 emergency assistance to the driver of the motor vehicle, or
10 video entertainment to the passengers in the rear seats of the
11 motor vehicle.

12 "Motor vehicle" means every vehicle that is self-propelled
13 or propelled by electric power, but not operated upon rails.

14 "Police officer" means every officer authorized to direct
15 or regulate traffic or to make arrests for violations of traffic
16 regulations.

17 "Serious bodily injury" means bodily injury that creates a
18 substantial risk of death or causes serious, permanent
19 disfigurement, or protracted loss or impairment of the function
20 of any bodily member or organ.



1 "Substantial bodily injury" means bodily injury that causes
2 a major avulsion, laceration, or penetration of the skin; a
3 chemical, electrical, friction, or scalding burn of second
4 degree severity; a bone fracture; a serious concussion; or a
5 tearing, rupture, or corrosive damage to the esophagus, viscera,
6 or other internal organs.

7 "Use" or "using" means holding a mobile electronic device
8 while operating a motor vehicle.

9 § -2 Accidents involving the use of a mobile electronic
10 device; field testing. (a) In addition to any requirements
11 under part II of chapter 291C, the driver of any motor vehicle
12 that is involved in an accident involving death, serious bodily
13 injury, substantial bodily injury, bodily injury, or damage to
14 vehicle or property and in possession of a mobile electronic
15 device at or near the time of the accident shall, at the request
16 of a police officer, submit the mobile electronic device to the
17 police officer for the sole purpose of field testing of the
18 device.

19 (b) If the field testing determines that the driver of the
20 motor vehicle was using the mobile electronic device, the



1 results of the field test shall be evidence of a violation of
2 section 291-17 or 291C-137, as applicable.

3 **§ -3 Implied consent.** Any driver who operates a motor
4 vehicle upon highways and elsewhere throughout the State shall
5 be deemed to have given consent to field testing of the driver's
6 mobile electronic device for the purpose of determining the use
7 of the mobile electronic device while operating a motor vehicle;
8 provided that field testing:

9 (1) Is conducted by or under the direction of a police
10 officer; and

11 (2) Occurs after the driver is involved in an accident
12 involving death, serious bodily injury, substantial
13 bodily injury, bodily injury, or damage to vehicle or
14 property.

15 **§ -4 Refusal to submit mobile electronic device for**
16 **field testing.** If a driver of any motor vehicle involved in an
17 accident involving death, serious bodily injury, substantial
18 bodily injury, bodily injury, or damage to vehicle or property
19 refuses to submit the driver's mobile electronic device to a
20 police officer for the sole purpose of field testing, field
21 testing shall not be conducted and the driver shall be subject



1 to penalties pursuant to section -5; provided that the police
2 officer shall:

3 (1) Request the driver of the motor vehicle involved in an
4 accident submit the driver's mobile electronic device
5 for the sole purpose of field testing; and

6 (2) Inform the driver of the motor vehicle involved in an
7 accident that refusal to submit the driver's mobile
8 electronic device for field testing shall subject the
9 driver to penalties pursuant to section -5,
10 regardless of whether the driver is convicted of
11 violating section 291-17 or 291C-137, as applicable;
12 provided further that if the police officer fails to comply with
13 paragraphs (1) and (2), the driver shall not be subject to the
14 penalties pursuant to section -5.

15 § -5 Refusal to submit mobile electronic device for
16 field testing; affidavit; penalties. (a) If the police officer
17 complies with section -4, but the driver refuses to submit
18 the driver's mobile electronic device for field testing, then
19 the police officer, as soon as practicable, shall submit an
20 affidavit to a district court judge of the circuit in which the
21 accident occurred, stating that:



(1) The police officer who responded to the motor vehicle accident involving death, serious bodily injury, substantial bodily injury, bodily injury, or damage to vehicle or property, requested that the driver of the motor vehicle involved in the accident submit the driver's mobile electronic device for field testing;

(2) The driver of the motor vehicle involved in the accident refused to submit the driver's mobile electronic device for field testing;

(3) The driver of the motor vehicle involved in the accident was:

(A) Informed of the penalties pursuant this section;

and

(B) Asked if the driver still refuses to submit the driver's mobile electronic device in compliance with section -2; and

(4) The driver continued to refuse to submit the driver's mobile electronic device.

(b) Upon receipt of the affidavit, the district court judge shall hold a hearing within twenty-one days. The district court judge shall hear and determine:



1 (1) Whether the police officer who responded to the motor
2 vehicle accident involving death, serious bodily
3 injury, substantial bodily injury, bodily injury, or
4 damage to vehicle or property, requested that the
5 driver of the motor vehicle involved in the accident
6 submit the driver's mobile electronic device for field
7 testing;

8 (2) Whether the driver of the motor vehicle involved in
9 the accident refused to submit the driver's mobile
10 electronic device for field testing;

11 (3) Whether the driver of the motor vehicle involved in
12 the accident was:

13 (A) Informed of the penalties pursuant this section;
14 and

15 (B) Asked if the driver still refuses to submit the
16 driver's mobile electronic device in compliance
17 with section -2; and

18 (4) Whether the driver continued to refuse to submit the
19 driver's mobile electronic device.



(c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the driver's license to operate a motor vehicle as follows:

- (1) For the first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
- (2) For any subsequent suspension under this section, for a period no less than two years and no more than five years.

(d) An order of the district court issued under this section may be appealed to the supreme court.

§ -6 Proof of refusal; admissibility. If a driver of any motor vehicle involved in an accident involving death, serious bodily injury, substantial bodily injury, bodily injury, or damage to vehicle or property refuses to submit the driver's mobile electronic device to a police officer for the sole purpose of field testing, evidence of refusal shall be admissible only in a proceeding under section -5 and shall not be admissible in any other action or proceeding, whether civil or criminal."

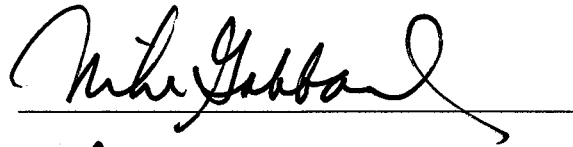


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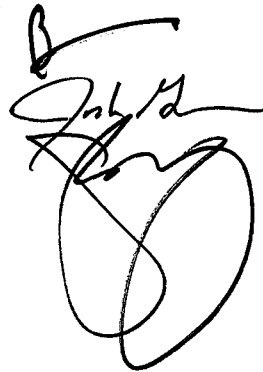
1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

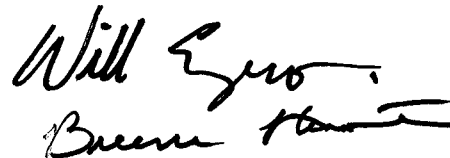
4 SECTION 4. This Act shall take effect upon its approval.
5

INTRODUCED BY:








Brown



S.B. NO. 2119

Report Title:

Mobile Electronic Devices; Motor Vehicle; Field Testing;
Penalties

Description:

Requires the driver of any motor vehicle that is involved in an accident and in possession of a mobile electronic device at or near the time of the accident to, at the request of a police officer, submit the mobile electronic device to the police officer for the sole purpose of field testing of the device. Establishes procedures to allow police officers responding to a motor vehicle accident to field test a mobile electronic device. Imposes penalties if a driver of the motor vehicle involved in an accident fails to submit the driver's mobile electronic device for the field testing.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

