

SENATE, No. 2297

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 6, 2016

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

SYNOPSIS

Allows law enforcement officers to scan drivers' cell phones under certain circumstances; imposes penalties for refusal.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the unlawful use of a wireless telephone or
2 electronic communication device while driving and
3 supplementing Title 39 of the Revised Statutes.
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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
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8 1. a. As used in this act, “field test” means the use of an
9 electronic scanning device, approved by the Attorney General, to
10 determine whether the operator of a motor vehicle was using a
11 wireless telephone or electronic communication device in violation
12 of section 1 of P.L.2003, c.310 (C.39:4-97.3) at or near the time of
13 a motor vehicle accident. The electronic scan shall not include the
14 content or origin of any communication, image, electronic data, or
15 game contained on the wireless telephone or electronic
16 communication device.

17 b. At the request of a law enforcement officer, a person
18 operating a motor vehicle that has been involved in an accident
19 resulting in death, bodily injury, or property damage and who has in
20 his possession a wireless telephone or electronic communication
21 device at or near the time of the accident shall surrender the
22 wireless telephone or electronic communication device to the law
23 enforcement officer solely for the purpose of conducting a field test
24 on the wireless telephone or electronic communication device.

25 c. Any person who operates a motor vehicle on any public road,
26 street or highway, or quasi-public area in this State shall be deemed
27 to have given his consent to have a field test conducted on his
28 wireless telephone or electronic communication device pursuant to
29 subsection b. of this section; provided, however, the field test shall
30 be conducted in accordance with the provisions of P.L. , c. (C.)
31 (pending before the Legislature as this bill) and at the request of a
32 law enforcement officer who has reasonable grounds to believe that
33 the person operated a motor vehicle that has been involved in an
34 accident resulting in death, bodily injury, or property damage.

35 d. A record of the field test, including the date, time, and results
36 of the test shall be made and a copy shall be provided or made
37 available to the operator of the motor vehicle, upon request.

38 e. In addition to the field test performed by a law enforcement
39 officer pursuant to this section, the operator of a motor vehicle shall
40 be permitted to select a person of his own choosing to conduct an
41 analysis of his wireless telephone or electronic communication
42 device to determine whether the operator was using the wireless
43 telephone or electronic communication device in violation of
44 section 1 of P.L.2003, c.310 (C.39:4-97.3) at or near the time of the
45 motor vehicle accident.

46 f. The law enforcement officer shall inform the operator of the
47 motor vehicle of the operator’s rights pursuant to subsections d. and
48 e. of this section.

1 g. A field test on a wireless telephone or electronic
2 communication device shall not be conducted forcibly and against
3 physical resistance by the operator of the motor vehicle. The law
4 enforcement officer shall, however, inform the operator of the
5 motor vehicle of the consequences of refusing to allow a law
6 enforcement officer to conduct a field test on the operator's wireless
7 telephone or electronic communication device pursuant to section 2
8 of P.L. , c. (C.) (pending before the Legislature as this
9 bill). A standard statement, prepared by the chief administrator,
10 shall be read by the law enforcement officer to the operator of the
11 motor vehicle.

12 h. In order to be considered valid, a field test on a wireless
13 telephone or electronic communication device pursuant to this act
14 shall have been performed in accordance with methods approved by
15 the Attorney General.

16 i. The Attorney General shall develop and undertake a public
17 education campaign to inform the public about the provisions of
18 this act.

19 j. In order to promote the uniform enforcement of this act, the
20 Attorney General shall promulgate guidelines concerning the
21 prosecution of violations of this act. The guidelines shall be
22 disseminated to county and municipal prosecutors within 120 days
23 of the effective date of this act.

24 k. The Attorney General, pursuant to the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
26 rules and regulations necessary to effectuate the provisions of this
27 act.

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29 2. a. Except as provided in subsection b. of this section, the
30 municipal court shall revoke the right to operate a motor vehicle of
31 any operator who, after being involved in an accident resulting in
32 death, bodily injury, or property damage, refuses to allow a law
33 enforcement officer to perform a field test on the operator's
34 wireless telephone or electronic communication device pursuant to
35 section 1 of P.L. , c. (C.) (pending before the Legislature
36 as this bill) when requested to do so, for not less than seven months
37 or more than one year. If the refusal was in connection with a
38 second offense under this section, the revocation shall be for two
39 years and if the refusal was in connection with a third or subsequent
40 offense under this section, the revocation shall be for 10 years. A
41 conviction or administrative determination of a violation of a law of
42 a substantially similar nature in another jurisdiction, regardless of
43 whether that jurisdiction is a signatory to the Interstate Driver
44 License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.)
45 shall constitute a prior conviction under this section.

46 The municipal court shall determine by a preponderance of the
47 evidence whether the law enforcement officer had probable cause to
48 believe that the person was driving or was in actual physical control

1 of the motor vehicle on the public highways or quasi-public areas of
2 this State and was involved in an accident resulting in death, bodily
3 injury, or property damage; whether the person possessed a wireless
4 telephone or electronic communication device at or near the time of
5 the accident; and whether the person refused to allow a law
6 enforcement officer to conduct a field test on his wireless telephone
7 or electronic communication device upon request of the officer. If
8 these elements of the violation are not established, no conviction
9 shall issue.

10 In addition to issuing a revocation, except as provided in
11 subsection b. of this section, the municipal court shall fine a person
12 convicted under this section a fine of not less than \$300 or more
13 than \$500 for a first offense; a fine of not less than \$500 or more
14 than \$1,000 for a second offense; and a fine of \$1,000 for a third or
15 subsequent offense.

16 b. For a first offense, the fine imposed upon the convicted
17 person shall be not less than \$600 or more than \$1,000 and the
18 period of license suspension shall be not less than one year or more
19 than two years; for a second offense, a fine of not less than \$1,000
20 or more than \$2,000 and a license suspension for a period of four
21 years; and for a third or subsequent offense, a fine of \$2,000 and a
22 license suspension for a period of 20 years when a violation of this
23 section occurs while:

24 (1) on any school property used for school purposes which is
25 owned by or leased to any elementary or secondary school or school
26 board, or within 1,000 feet of school property;

27 (2) driving through a school crossing as defined in R.S.39:1-1 if
28 the municipality, by ordinance or resolution, has designated the
29 school crossing as such; or

30 (3) driving through a school crossing as defined in R.S.39:1-1
31 knowing that juveniles are present if the municipality has not
32 designated the school crossing as such by ordinance or resolution.

33 A map or true copy of a map depicting the location and
34 boundaries of the area on or within 1,000 feet of any property used
35 for school purposes which is owned by or leased to any elementary
36 or secondary school or school board produced pursuant to section 1
37 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
38 paragraph (1) of this subsection.

39 It shall not be relevant to the imposition of sentence pursuant to
40 paragraph (1) or (2) of this subsection that the defendant was
41 unaware that the prohibited conduct took place while on or within
42 1,000 feet of any school property or while driving through a school
43 crossing. Nor shall it be relevant to the imposition of sentence that
44 no juveniles were present on the school property or crossing zone at
45 the time of the offense or that the school was not in session.

46 3. This act shall take effect on the first day of the seventh month
47 after enactment, but the Attorney General and the Chief
48 Administrator of the Motor Vehicle Commission may take any

1 administrative action in advance of the effective date as may be
2 necessary.

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STATEMENT

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7 This bill allows law enforcement officers to scan drivers' cell
8 phones under certain circumstances and imposes penalties for
9 refusal.

10 Specifically, under the provisions of this bill, every person who
11 operates a motor vehicle that has been involved in an accident
12 resulting in death, bodily injury, or property damage and who has in
13 his possession a wireless telephone or electronic communication
14 device at or near the time of the accident is required, at the request
15 of a law enforcement officer, to surrender the telephone or device to
16 the officer solely for the purpose of conducting a field test.

17 Under the bill, a "field test" is defined as the use of an electronic
18 scanning device, approved by the Attorney General, to determine
19 whether the operator of a motor vehicle was using a wireless
20 telephone or electronic communication device in violation of
21 current law at or near the time of the accident. The electronic scan
22 is not to include the content or origin of any communication, image,
23 electronic data, or game contained on the telephone or device. The
24 bill requires the Attorney General to promulgate guidelines
25 concerning the prosecution of violations under the bill and
26 disseminate the guidelines to county and municipal prosecutors. In
27 addition, the Attorney General is to adopt rules or regulations
28 necessary to effectuate the provisions of this bill.

29 The bill also provides that any person who operates a motor
30 vehicle on any public road or highway in this State is deemed to
31 have consented to having a field test conducted on his or her
32 wireless telephone or electronic communication device. The test is
33 required to be conducted in accordance with the provisions of this
34 bill and at the request of a law enforcement officer who has
35 reasonable grounds to believe that the person operated a motor
36 vehicle that was involved in an accident resulting in death, bodily
37 injury, or property damage.

38 Under the bill, a field test is not to be conducted forcibly;
39 however, the law enforcement officer is required to inform the
40 operator of the motor vehicle of the consequences of refusing to
41 allow a field test to be conducted on the operator's wireless
42 telephone or electronic communication device. The penalties are
43 the same as the penalties imposed on a driver who refuses to submit
44 to a breath test under the current driving while intoxicated laws.

45 For a first offense, a person would be subject to a license
46 revocation for seven months to one year and a fine of \$300 to \$500;
47 for a second offense, a license revocation of two years and a fine of

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1 \$500 to \$1,000; and for a third or subsequent offense, a license
2 revocation of 10 years and a fine of \$1,000.

3 If the violation occurred while on school property or driving
4 through a school crossing, the person would be subject to the
5 increased penalties imposed on a driver who refuses to submit to a
6 breath test under current law as follows: for a first offense, license
7 suspension for one to two years and a fine of \$600 to \$1,000; for a
8 second offense, license suspension for four years and a fine of
9 \$1,000 to \$2,000; and for a third or subsequent offense, license
10 suspension for 20 years and a fine of \$2,000.

11 Finally, the bill requires the Attorney General to develop and
12 undertake a public education campaign to inform the public about
13 the provisions of this bill.