_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE TRANSPORTATION INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING DISTRACTED DRIVING LAWS RELATED TO ENACTING CHLOE'S LAW; PROHIBITING DISTRACTED DRIVING RELATED TO MOBILE DEVICES; REQUIRING THE USE OF HANDS-FREE DEVICES WHILE OPERATING A MOTOR VEHICLE; PROHIBITING THE USE OF PORTABLE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING EXCEPTIONS; PROVIDING PENALTIES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 61-11-203 AND 61-13-104, MCA.”

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Mobile Device Distracted Driving Act".

NEW SECTION. **Section 2. Purpose.** The legislature finds that the regulation and use of mobile devices while operating a motor vehicle are of statewide concern. The purpose of [sections 1 through 5] is to address and provide remedy for the hazard incurred by the use of a mobile device while operating a motor vehicle.

NEW SECTION. **Section 3. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Internet data" includes but is not limited to any conceivable application in which information is conveyed by the internet that requires the visual or tactile attention of the user. The term includes social media in any form.

(2) (a) "Portable wireless communication device" means a cellular telephone, a portable telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, a global positioning system

receiver, or a substantially similar portable wireless device that is used to initiate or receive communication, information, or data.

(b) The term does not include a radio, a citizens band radio, a citizens band radio hybrid, a commercial two-way radio communication device or its functional equivalent, a subscription-based emergency communication device, a prescribed medical device, an amateur or ham radio device or in-vehicle security, or a navigation or remote diagnostics system.

(3) "Stand-alone electronic device" means a portable device other than a portable wireless communication device that stores audio or video data files to be retrieved on demand by a user.

(4) (a) "Using a mobile device" means that a person:

(i) physically holds or supports with any part of the person's body a portable wireless communication device, except that a person may use a portable wireless communication device with an earpiece, a headphone device, or a device worn on a wrist to conduct a voice-based communication if the wrist device is operated without the use of hands;

(ii) physically holds or supports with any part of the person's body a stand-alone electronic device;

(iii) writes, sends, watches, or reads any text-based or video-based communication, including a text message, instant message, email, video, or any internet data, on a portable wireless communication device or a stand-alone electronic device;

(iv) watches a video or movie on a portable wireless communication device or a stand-alone electronic device, unless the person is watching data related to the navigation of the vehicle; or

(v) records, posts, sends, or broadcasts video, including a videoconference, on a portable wireless communication device or a stand-alone electronic device, except for electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.

(b) The term does not apply to:

(i) the use of voice-based communications, including through the use of a portable wireless communication device or a stand-alone electronic device, to direct the writing, sending, reading, or other dictation of any text-based communication; or

(ii) the use of a portable wireless communication device or a stand-alone electronic device when used in a hands-free manner for navigation of the motor vehicle, use of a global positioning system, or

obtaining motor vehicle information or information related to driving a motor vehicle.

NEW SECTION. **Section 4. Distracted driving -- hands-free device.** (1) Except as provided in subsection (2) or (3), a person may not operate a motor vehicle on a street or highway while using a mobile device unless the motor vehicle is parked.

(2) This section does not prohibit:

(a) the operation of a motor vehicle while using a device that is accessible through an interface that is embedded in the motor vehicle and allows communication without the use of either of the driver's hands except to activate or deactivate a function of the device; or

(b) the use of technology that is physically integrated into the vehicle.

(3) This section does not apply to:

(a) an operator of an authorized emergency, law enforcement, or probation vehicle who uses a portable wireless communication device while acting in an official capacity;

(b) an operator who is licensed by the federal communications commission while that person is operating a radio frequency device other than a portable wireless communication device;

(c) an operator who uses a two-way radio or private land mobile radio system, within the meaning of 47 CFR, part 90, while in the performance and scope of the operator's work-related duties and who is operating a fleet vehicle or who possesses a commercial driver license; or

(d) an operator who uses a portable wireless communication device:

(i) to report illegal activity or summon emergency help; or

(ii) to relay information, provided the device is permanently or temporarily affixed to the motor vehicle, in the course of the operator's occupational duties between the operator and:

(A) a dispatcher; or

(B) a digital network or software application service.

NEW SECTION. **Section 5. Penalties -- duty of peace officers.** (1) A person who violates [sections 1 through 5] is subject to a civil penalty as follows:

(a) a fine of not less than $75 or more than $149 for a first violation; and

(b) a fine of not less than $150 or more than $250 for a second or subsequent violation.

(2) A suspected violation of [section 4] is not independent permissible grounds for the search and seizure of a person's portable wireless communications device.

Section 6. Section 61-11-203, MCA, is amended to read:

"**61-11-203. Definitions -- habitual traffic offenders -- point schedule.** (1) As used in this part, the following definitions apply:

(a) "Conviction" has the meaning provided in 61-5-213 resulting from a violation of traffic regulations on highways in this state or a traffic statute or traffic regulation in another jurisdiction.

(b) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in subsection (2).

(c) "License" means any type of license or permit to operate a motor vehicle.

(d) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.

(e) "Traffic regulation" includes any provision governing motor vehicle operation, equipment, safety, or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.

(2) Subject to subsection (3), when the department receives a report of conviction, the department shall assign points based on the point schedule to determine whether an individual is a habitual traffic offender, as follows:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $1,000 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of Title 61, chapter 7, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.

(l) speeding, except as provided in 61-8-725(2)(a), 3 points;

(m) distracted driving as described in [section 4], 3 points;

~~(m)~~ (n) all other moving violations, 2 points.

(3) If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant."

Section 7. Section 61-13-104, MCA, is amended to read:

"**61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 shall be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(2)(m)~~. Bond for this offense is $20, and a jail sentence may not be imposed.

(2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person violating 61-13-103.

(3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the insured's premiums due to a violation of 61-13-103."

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1

through 5].

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