

# HOUSE BILL No. 1295

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-13-2; IC 9-21-8; IC 9-27-8; IC 9-30-10-4; IC 35-52-9-19.5.

**Synopsis:** Use of an electronic device while driving. Creates the offense of "unlawful use of an electronic communications device". Provides that use of an electronic communications device to perform certain actions while operating a motor vehicle is a Class C infraction. Creates certain exemptions. Specifies that the offense may be enhanced to a: (1) Class A misdemeanor, if a person has two prior unrelated convictions for the offense within the past five years; (2) Level 6 felony, if the offense results in bodily injury to another person or the person has three prior unrelated convictions for the offense within the past five years; (3) Level 5 felony, if the offense results in serious bodily injury to another person and the person has a prior unrelated conviction for the offense within the past five years or the offense results in the death of another person; or (4) Level 4 felony, if the offense results in the death of another person and the person has a prior unrelated conviction within the past five years. Provides that certain convictions for the offense of unlawful use of an electronic communications device may constitute a predicate offense for a habitual traffic violator determination. Requires the bureau of motor vehicles to develop and administer a distracted driving public education campaign. Defines certain terms. Makes conforming amendments.

**Effective:** January 1, 2019.

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## Pressel, Schaibley, Forestal

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January 16, 2018, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

# HOUSE BILL No. 1295

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-13-2-49.4 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2019]: **Sec. 49.4. (a) "Electronic communications**  
4 **device", for purposes of IC 9-21-8-59, means any of the following:**  
5 **(1) A broadband personal communications device.**  
6 **(2) A gaming system or device capable of displaying games.**  
7 **(3) A handheld device, laptop computer, or tablet computer**  
8 **with mobile data access.**  
9 **(4) A pager or two way messaging device.**  
10 **(5) A personal digital assistant.**  
11 **(6) A wireless telephone.**  
12 **(7) The functional equivalent or successor to any device listed**  
13 **in subdivisions (1) through (6).**  
14 **(b) The term does not include:**  
15 **(1) amateur radio equipment that is being operated by a**  
16 **person licensed as an amateur radio operator by the Federal**  
17 **Communications Commission under 47 CFR Part 97; or**



1           **(2) a communications system installed in a commercial motor**  
 2           **vehicle weighing more than ten thousand (10,000) pounds.**

3           SECTION 2. IC 9-13-2-142 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JANUARY 1, 2019]: Sec. 142. "Public  
 5 highway", for purposes of **IC 9-21-8-59** and IC 9-25, has the meaning  
 6 set forth in IC 9-25-2-4.

7           SECTION 3. IC 9-13-2-177.3, AS AMENDED BY P.L.198-2016,  
 8 SECTION 171, IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE JANUARY 1, 2019]: Sec. 177.3. (a)  
 10 "Telecommunications device", for purposes of ~~IC 9-21-8~~, IC 9-25-4-7,  
 11 IC 9-24-11-3.3 (before its repeal), and IC 9-24-11-3.7, means an  
 12 electronic or digital telecommunications device. The term includes a:

- 13           (1) wireless telephone;  
 14           (2) personal digital assistant;  
 15           (3) pager; or  
 16           (4) text messaging device.

17           (b) The term does not include:

- 18           (1) amateur radio equipment that is being operated by a person  
 19 licensed as an amateur radio operator by the Federal  
 20 Communications Commission under 47 CFR Part 97; or  
 21           (2) a communications system installed in a commercial motor  
 22 vehicle weighing more than ten thousand (10,000) pounds.

23           SECTION 4. IC 9-21-8-0.5, AS ADDED BY P.L.185-2011,  
 24 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JANUARY 1, 2019]: Sec. 0.5. As used in this chapter, "text message"  
 26 means a communication in the form of electronic text sent from a  
 27 ~~telecommunications~~ **an electronic communications** device.

28           SECTION 5. IC 9-21-8-59, AS AMENDED BY P.L.191-2014,  
 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JANUARY 1, 2019]: Sec. 59. **(a) This section does not apply to the**  
 31 **following:**

- 32           **(1) Any law enforcement officer who is operating within the**  
 33 **scope of the officer's employment while:**  
 34           **(A) working in a plainclothes capacity;**  
 35           **(B) working in an undercover capacity; or**  
 36           **(C) responding to an emergency.**  
 37           **(2) A driver using an electronic communications device for the**  
 38 **sole purpose of communicating with emergency personnel or**  
 39 **law enforcement regarding an emergency.**  
 40           **(3) A driver using an electronic communications device in a**  
 41 **hands free or voice operated capacity, which may include the**  
 42 **use of a headset.**



- 1           **(4) A driver using an electronic communications device while**  
 2           **parked on the shoulder of a public highway.**  
 3           **(5) A driver using an electronic communications device when:**  
 4               **(A) the vehicle is not in motion; and**  
 5               **(B) the vehicle's transmission is in "park".**  
 6           **(6) Any manufacturer installed system that is embedded or**  
 7           **integrated into the vehicle.**  
 8           **(a) (b) A person may not:**  
 9               **(1) use a telecommunications an electronic communications**  
 10              **device to:**  
 11                   **(1) (A) type a text message or an electronic mail message;**  
 12                   **(2) (B) transmit a text message or an electronic mail message;**  
 13                   **or**  
 14                   **(3) (C) read a text message or an electronic mail message;**  
 15                   **(D) access, save, transmit, or view images or data;**  
 16                   **(E) play a game;**  
 17                   **(F) engage in a call;**  
 18                   **(G) receive a call;**  
 19                   **(H) send a call;**  
 20                   **(I) access or navigate the Internet; or**  
 21                   **(J) access, browse, compose, read, save, send, transmit, or**  
 22                   **view an electronic mail message or any other form of**  
 23                   **electronic data; or**  
 24               **(2) hold or handle an electronic communications device;**  
 25           while operating a moving motor vehicle. ~~unless the device is used in~~  
 26           ~~conjunction with hands free or voice operated technology, or unless the~~  
 27           ~~device is used to call 911 to report a bona fide emergency.~~  
 28           **(c) Except as provided in subsection (d), a person who**  
 29           **knowingly or intentionally uses, holds, or handles an electronic**  
 30           **communications device while operating a moving motor vehicle on**  
 31           **a public highway commits unlawful use of an electronic**  
 32           **communications device, a Class C infraction.**  
 33           **(d) An offense under this section is a:**  
 34               **(1) Class A misdemeanor if, not more than five (5) years**  
 35               **before the commission of the offense, the person was**  
 36               **convicted of two (2) prior unrelated offenses under this**  
 37               **section;**  
 38               **(2) Level 6 felony if:**  
 39                   **(A) the offense results in bodily injury to any person; or**  
 40                   **(B) not more than five (5) years before the commission of**  
 41                   **the offense, the person was convicted of three (3) or more**  
 42                   **prior unrelated offenses under this section;**



**(3) Level 5 felony if:**

- (A) the offense results in the death of another person; or**
- (B) the offense results in serious bodily injury to any person and, not more than five (5) years before the commission of the offense, the person was convicted of one (1) or more prior unrelated offenses under this section; or**

**(4) Level 4 felony if:**

- (A) the offense results in the death of another person; and**
- (B) not more than five (5) years before the commission of the offense, the person was convicted of one (1) or more prior unrelated offenses under this section.**

**(b) (e)** A police officer may not, without the consent of the person:

- (1) confiscate a ~~telecommunications~~ **an electronic communications** device for the purpose of determining compliance with this section;**
- (2) confiscate a ~~telecommunications~~ **an electronic communications** device and retain it as evidence pending trial for a violation of this section; or**
- (3) extract or otherwise download information from a ~~telecommunications~~ **an electronic communications** device for a violation of this section unless:**
  - (A) the police officer has probable cause to believe that the ~~telecommunications~~ **electronic communications** device has been used in the commission of a crime;**
  - (B) the information is extracted or otherwise downloaded under a valid search warrant; or**
  - (C) otherwise authorized by law.**

SECTION 6. IC 9-27-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019]:

**Chapter 8. Distracted Driving Education Program**

**Sec. 1. The bureau shall develop and administer a distracted driving education program that educates the public about:**

- (1) the dangers of distracted driving;**
- (2) the substance of IC 9-21-8-59, as amended effective January 1, 2019 (unlawful use of an electronic communications device);**
- (3) the:**
  - (A) administrative; and**
  - (B) criminal;****penalties associated with a conviction for unlawful use of an electronic communications device, as amended effective**



1           **January 1, 2019 (IC 9-21-8-59); and**

2           **(4) any other issue or topic that:**

3                 **(A) is deemed necessary by the bureau; and**

4                 **(B) is relevant to the issue of distracted driving.**

5           **Sec. 2. The bureau may enter into contracts with third party**  
6 **agencies approved by the commissioner in order to implement this**  
7 **chapter.**

8           **Sec. 3. (a) The bureau may adopt emergency rules in the**  
9 **manner provided under IC 4-22-2-37.1 to implement this chapter.**

10           **(b) An emergency rule described in subsection (a) shall expire**  
11 **on the earlier of the following dates:**

12                 **(1) The expiration date stated in the emergency rule.**

13                 **(2) The date the emergency rule is amended or repealed by a**  
14 **later rule adopted under IC 4-22-2-24 through IC 4-22-2-36**  
15 **or under IC 4-22-2-37.1.**

16           SECTION 7. IC 9-30-10-4, AS AMENDED BY P.L.188-2015,  
17 SECTION 113, IS AMENDED TO READ AS FOLLOWS  
18 [EFFECTIVE JANUARY 1, 2019]: Sec. 4. (a) A person who has  
19 accumulated at least two (2) judgments within a ten (10) year period  
20 for any of the following violations, singularly or in combination, and  
21 not arising out of the same incident, is a habitual violator:

22                 (1) Reckless homicide resulting from the operation of a motor  
23 vehicle.

24                 (2) Voluntary or involuntary manslaughter resulting from the  
25 operation of a motor vehicle.

26                 (3) Failure of the operator of a motor vehicle involved in an  
27 accident resulting in death or injury to any person to stop at the  
28 scene of the accident and give the required information and  
29 assistance.

30                 (4) Operation of a vehicle while intoxicated resulting in death.

31                 (5) Before July 1, 1997, operation of a vehicle with at least  
32 ten-hundredths percent (0.10%) alcohol in the blood resulting in  
33 death.

34                 (6) After June 30, 1997, and before July 1, 2001, operation of a  
35 vehicle with an alcohol concentration equivalent to at least  
36 ten-hundredths (0.10) gram of alcohol per:

37                         (A) one hundred (100) milliliters of the blood; or

38                         (B) two hundred ten (210) liters of the breath;

39 resulting in death.

40                 (7) After June 30, 2001, operation of a vehicle with an alcohol  
41 concentration equivalent to at least eight-hundredths (0.08) gram  
42 of alcohol per:



- 1 (A) one hundred (100) milliliters of the blood; or  
 2 (B) two hundred ten (210) liters of the breath;  
 3 resulting in death.  
 4 **(8) Unlawful use of an electronic communications device**  
 5 **(IC 9-21-8-59(d)) as a felony.**  
 6 (b) A person who has accumulated at least three (3) judgments  
 7 within a ten (10) year period for any of the following violations,  
 8 singularly or in combination, and not arising out of the same incident,  
 9 is a habitual violator:  
 10 (1) Operation of a vehicle while intoxicated.  
 11 (2) Before July 1, 1997, operation of a vehicle with at least  
 12 ten-hundredths percent (0.10%) alcohol in the blood.  
 13 (3) After June 30, 1997, and before July 1, 2001, operation of a  
 14 vehicle with an alcohol concentration equivalent to at least  
 15 ten-hundredths (0.10) gram of alcohol per:  
 16 (A) one hundred (100) milliliters of the blood; or  
 17 (B) two hundred ten (210) liters of the breath.  
 18 (4) After June 30, 2001, operation of a vehicle with an alcohol  
 19 concentration equivalent to at least eight-hundredths (0.08) gram  
 20 of alcohol per:  
 21 (A) one hundred (100) milliliters of the blood; or  
 22 (B) two hundred ten (210) liters of the breath.  
 23 (5) Reckless driving.  
 24 (6) Criminal recklessness as a felony involving the operation of  
 25 a motor vehicle.  
 26 (7) Drag racing or engaging in a speed contest in violation of law.  
 27 (8) Violating IC 9-4-1-40 (repealed July 1, 1991), IC 9-4-1-46  
 28 (repealed July 1, 1991), IC 9-26-1-1(1) (repealed January 1,  
 29 2015), IC 9-26-1-1(2) (repealed January 1, 2015), IC 9-26-1-2(1)  
 30 (repealed January 1, 2015), IC 9-26-1-2(2) (repealed January 1,  
 31 2015), IC 9-26-1-3 (repealed January 1, 2015), IC 9-26-1-4  
 32 (repealed January 1, 2015), or IC 9-26-1-1.1.  
 33 (9) Resisting law enforcement under IC 35-44.1-3-1(b)(1)(A),  
 34 IC 35-44.1-3-1(b)(2), IC 35-44.1-3-1(b)(3), or  
 35 IC 35-44.1-3-1(b)(4).  
 36 (10) Any felony under this title or any felony in which the  
 37 operation of a motor vehicle is an element of the offense.  
 38 **(11) Unlawful use of an electronic communications device**  
 39 **(IC 9-21-8-59(d)) as a Class A misdemeanor or felony.**  
 40 A judgment for a violation enumerated in subsection (a) shall be added  
 41 to the violations described in this subsection for the purposes of this  
 42 subsection.



1 (c) A person who has accumulated at least ten (10) judgments  
 2 within a ten (10) year period for any traffic violation, except a parking  
 3 or an equipment violation, of the type required to be reported to the  
 4 bureau, singularly or in combination, and not arising out of the same  
 5 incident, is a habitual violator. However, at least one (1) of the  
 6 judgments must be for:

- 7 (1) a violation enumerated in subsection (a);  
 8 (2) a violation enumerated in subsection (b);  
 9 (3) operating a motor vehicle while the person's license to do so  
 10 has been suspended or revoked as a result of the person's  
 11 conviction of an offense under IC 9-1-4-52 (repealed July 1,  
 12 1991), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-2, or  
 13 IC 9-24-19-3; or  
 14 (4) operating a motor vehicle without ever having obtained a  
 15 license to do so.

16 A judgment for a violation enumerated in subsection (a) or (b) shall be  
 17 added to the judgments described in this subsection for the purposes of  
 18 this subsection.

19 (d) For purposes of this section, a judgment includes a judgment in  
 20 any other jurisdiction in which the elements of the offense for which  
 21 the conviction was entered are substantially similar to the elements of  
 22 the offenses described in subsections (a), (b), and (c).

23 (e) For purposes of this section, the offense date is used when  
 24 determining the number of judgments accumulated within a ten (10)  
 25 year period.

26 SECTION 8. IC 35-52-9-19.5 IS ADDED TO THE INDIANA  
 27 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 28 [EFFECTIVE JANUARY 1, 2019]: **Sec. 19.5. IC 9-21-8-59 defines a**  
 29 **crime concerning traffic regulation.**

