

# SENATE BILL REPORT

## ESSB 5037

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As Amended by House, April 11, 2007

**Title:** An act relating to the use of a wireless communications device while operating a moving motor vehicle.

**Brief Description:** Restricting the use of a wireless communications device while operating a moving motor vehicle.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Eide, Weinstein, Murray, Berkey, Regala, Rockefeller, Kauffman, Keiser, Spanel, Jacobsen and Kohl-Welles).

**Brief History:**

**Committee Activity:** Transportation: 2/15/07, 2/20/07 [DPS, DNP].

Passed Senate: 3/08/07, 29-18.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5037 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Marr, Vice Chair; Murray, Vice Chair; Swecker, Ranking Minority Member; Berkey, Delvin, Eide, Kastama, Kauffman, Kilmer and Spanel.

**Minority Report:** Do not pass.

Signed by Senators Clements, Holmquist and Sheldon.

**Staff:** Dory Nicpon (786-7321)

**Background:** Under current law, a Washington State Patrol officer may cite a driver with second-degree negligent driving if the driver exhibits dangerous driving behavior while using a wireless device. A rule adopted by the Washington State Patrol provides that a hands-free listening device that covers no more than one ear may be used by a motorist while driving.

**Summary of Substitute Bill:** A person operating a moving vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction, the enforcement of which may be accomplished only as a secondary action. The prohibition against operating a moving vehicle while holding a wireless communications device to one's ear does not apply to: (1) a person operating an authorized emergency vehicle, or a tow truck driver responding to a disabled vehicle; (2) a person using a wireless communications device in hands-free mode; or (3) a person using the device to report illegal activity, summon emergency help, or prevent injury to a person or property. The prohibition against operating a moving vehicle

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while holding a wireless communications device to one's ear does not restrict the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the Federal Communications Commission.

Infractions from the use of a wireless communications device under the act must not: become part of the driver's driving abstract record; or be reported to insurance companies or employers.

This act supersedes any local laws regulating the use of wireless devices in motor vehicles.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on July 1, 2008.

**Staff Summary of Public Testimony:** PRO: This bill addresses an important safety issue. Drivers talking on cell phones pose dangers to pedestrians and other motorists. Government regulation is needed to impose control upon those drivers who lack good self governance concerning cell phone use while driving. The exceptions contained within the bill (i.e., permitting emergency use, etc.) are appropriately crafted, although perhaps the infraction should be enforceable as a primary action. Using two hands on the steering wheel is a safer driving practice.

CON: The use of a hands-free device is not necessarily a safer practice. The existing statutes regarding negligent driving are appropriate to govern cases where a driver operates a vehicle unsafely while talking on a cell phone. The issue of cell phone use while driving is better addressed through public education and awareness.

OTHER: The bill should include exemptions for tow truck drivers responding to disabled vehicles and public utility workers using cell phones for work related purposes.

**Persons Testifying:** PRO: Senator Eide, prime sponsor; Kate Martin, Pedestrian In Roads; Lester Goldstein, Cindy Baker-Williams, citizens; Desiree Douglass, Headstrong; Ashley Probart, Association of Washington Cities; Joyce Masamitsu, Verizon Wireless; Captain Jeff DeVere, Washington State Patrol; Frank Video, on behalf of the Office of Seattle City Councilmember Licata.

CON: Nancee Wildermuth, Sprint Nextel.

OTHER: Stu Halsan, Towing and Recovery Association; Kent Lopez, Washington Rural Electric Cooperative Association.

**House Amendment(s):** Exempts hearing aid users from the prohibitions in the bill; an individual who uses a hearing aid may operate a moving vehicle while holding a wireless device to his or her ear.