

SHB 1371 - H AMD 208

By Representative Farrell

ADOPTED AS AMENDED 03/07/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61
4 RCW to read as follows:

5 (1) A person who uses a personal electronic device while driving
6 a motor vehicle on a public roadway is guilty of a traffic infraction
7 and must pay a fine as provided in RCW 46.63.110(3).

8 (2) Subsection (1) of this section does not apply to:

9 (a) A driver who is using a personal electronic device to contact
10 emergency services;

11 (b) The use of a system by a transit system employee for time-
12 sensitive relay communication between the transit system employee and
13 the transit system's dispatch services;

14 (c) An individual employed as a commercial motor vehicle driver
15 who uses a personal electronic device within the scope of such
16 individual's employment if such use is permitted under 49 U.S.C. Sec.
17 31136 as it existed on the effective date of this section;

18 (d) A person operating an authorized emergency vehicle;

19 (e) A person operating a tow truck, to the extent that person is
20 using the telephone call functionality of a wireless communications
21 device; and

22 (f) Beginning January 1, 2021, a person operating an autonomous
23 vehicle while it is being operated in a mode that does not require
24 the person to be in active physical control of or continuously
25 monitoring the vehicle.

26 (3) Subsection (1) of this section does not restrict the
27 operation of:

28 (a) An amateur radio station by a person who holds a valid
29 amateur radio operator license issued by the federal communications
30 commission; or

31 (b) Two-way or citizens band radio services by a person driving a
32 commercial motor vehicle.

1 (4) The state preempts the field of regulating the use of
2 personal electronic devices in motor vehicles while driving, and this
3 section supersedes any local laws, ordinances, orders, rules, or
4 regulations enacted by any political subdivision or municipality to
5 regulate the use of a personal electronic device by the operator of a
6 motor vehicle.

7 (5) A second or subsequent offense under this section within five
8 years is subject to two times the penalty amount under RCW 46.63.110.

9 (6) The first and second offense under this section within five
10 years must not become part of the driver's record under RCW 46.52.101
11 and 46.52.120, and a finding that a person has committed a first and
12 second offense under this section within five years must not be made
13 available to insurance companies.

14 (7) For purposes of this section:

15 (a) "Autonomous vehicle" means any vehicle equipped with
16 technology that has the capability of operating or driving the
17 vehicle without the active physical control or monitoring of a human
18 operator, whether or not the technology is engaged, excluding
19 vehicles equipped with one or more systems that enhance safety or
20 provide driver assistance but are not capable of driving or operating
21 the vehicle without the active physical control or monitoring of a
22 human operator. An "autonomous vehicle" meets the definition of level
23 3, 4, or 5 of the society of automotive engineers' taxonomy and
24 definitions for terms related to on-road motor vehicle automated
25 driving systems.

26 (b) "Driving" means to operate a motor vehicle on a public
27 roadway, including while temporarily stationary because of traffic, a
28 traffic control device, or other momentary delays. "Driving" does not
29 include when the vehicle has pulled over to the side of, or off of,
30 an active roadway and has stopped in a location where it can safely
31 remain stationary.

32 (c) "Personal electronic device" means any portable electronic
33 device that is capable of wireless communication or electronic data
34 retrieval and is not manufactured primarily for hands-free use in a
35 motor vehicle. "Personal electronic device" includes, but is not
36 limited to, a cell phone, tablet, laptop, two-way messaging device,
37 or electronic game.

38 (d) "Use" or "uses" means:

39 (i) Holding a personal electronic device in either hand or both
40 hands;

1 (ii) Using your hand or finger to compose, send, read, view,
2 access, browse, transmit, save, or retrieve email, text messages,
3 instant messages, photographs, or other electronic data; however,
4 this neither precludes the minimal use of a finger to activate,
5 deactivate, or initiate a function of the device, nor precludes the
6 use of a hand or finger to control the built-in features of a motor
7 vehicle through the use of a touch screen control panel;

8 (iii) Watching video on a personal electronic device.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61
10 RCW to read as follows:

11 (1)(a) It is a traffic infraction to drive dangerously
12 distracted. Any driver who commits this infraction must be assessed
13 the unscheduled infraction base penalty amount prescribed by rule by
14 the supreme court in its schedule of monetary penalties for
15 infractions, as directed under RCW 46.63.110(3).

16 (b) Enforcement of the infraction of driving dangerously
17 distracted may be accomplished only as a secondary action when a
18 driver of a motor vehicle has been detained for a suspected violation
19 of a separate traffic infraction or an equivalent local ordinance.

20 (c) For the purposes of this section, "dangerously distracted"
21 means a person who engages in any activity not related to the actual
22 operation of a motor vehicle in a manner that interferes with the
23 safe operation of such motor vehicle on any highway.

24 (2) The additional monetary penalty imposed under this section
25 must be deposited into the distracted driving prevention account
26 created in subsection (3) of this section.

27 (3) The distracted driving prevention account is created in the
28 state treasury. All receipts from the base penalty in subsection (2)
29 of this section must be deposited into the account. Moneys in the
30 account may be spent only after appropriation. Expenditures from the
31 account may be used only by the Washington traffic safety commission
32 solely to support programs dedicated to reducing distracted driving
33 and improving driver education on distracted driving.

34 **Sec. 3.** RCW 43.84.092 and 2016 c 194 s 5, 2016 c 161 s 20, and
35 2016 c 112 s 4 are each reenacted and amended to read as follows:

36 (1) All earnings of investments of surplus balances in the state
37 treasury shall be deposited to the treasury income account, which
38 account is hereby established in the state treasury.

1 (2) The treasury income account shall be utilized to pay or
2 receive funds associated with federal programs as required by the
3 federal cash management improvement act of 1990. The treasury income
4 account is subject in all respects to chapter 43.88 RCW, but no
5 appropriation is required for refunds or allocations of interest
6 earnings required by the cash management improvement act. Refunds of
7 interest to the federal treasury required under the cash management
8 improvement act fall under RCW 43.88.180 and shall not require
9 appropriation. The office of financial management shall determine the
10 amounts due to or from the federal government pursuant to the cash
11 management improvement act. The office of financial management may
12 direct transfers of funds between accounts as deemed necessary to
13 implement the provisions of the cash management improvement act, and
14 this subsection. Refunds or allocations shall occur prior to the
15 distributions of earnings set forth in subsection (4) of this
16 section.

17 (3) Except for the provisions of RCW 43.84.160, the treasury
18 income account may be utilized for the payment of purchased banking
19 services on behalf of treasury funds including, but not limited to,
20 depository, safekeeping, and disbursement functions for the state
21 treasury and affected state agencies. The treasury income account is
22 subject in all respects to chapter 43.88 RCW, but no appropriation is
23 required for payments to financial institutions. Payments shall occur
24 prior to distribution of earnings set forth in subsection (4) of this
25 section.

26 (4) Monthly, the state treasurer shall distribute the earnings
27 credited to the treasury income account. The state treasurer shall
28 credit the general fund with all the earnings credited to the
29 treasury income account except:

30 (a) The following accounts and funds shall receive their
31 proportionate share of earnings based upon each account's and fund's
32 average daily balance for the period: The aeronautics account, the
33 aircraft search and rescue account, the Alaskan Way viaduct
34 replacement project account, the brownfield redevelopment trust fund
35 account, the budget stabilization account, the capital vessel
36 replacement account, the capitol building construction account, the
37 Cedar River channel construction and operation account, the Central
38 Washington University capital projects account, the charitable,
39 educational, penal and reformatory institutions account, the Chehalis
40 basin account, the cleanup settlement account, the Columbia river

1 basin water supply development account, the Columbia river basin
2 taxable bond water supply development account, the Columbia river
3 basin water supply revenue recovery account, the common school
4 construction fund, the community forest trust account, the connecting
5 Washington account, the county arterial preservation account, the
6 county criminal justice assistance account, the deferred compensation
7 administrative account, the deferred compensation principal account,
8 the department of licensing services account, the department of
9 retirement systems expense account, the developmental disabilities
10 community trust account, the diesel idle reduction account, the
11 distracted driving prevention account, the drinking water assistance
12 account, the drinking water assistance administrative account, the
13 drinking water assistance repayment account, the Eastern Washington
14 University capital projects account, the Interstate 405 express toll
15 lanes operations account, the education construction fund, the
16 education legacy trust account, the election account, the electric
17 vehicle charging infrastructure account, the energy freedom account,
18 the energy recovery act account, the essential rail assistance
19 account, The Evergreen State College capital projects account, the
20 federal forest revolving account, the ferry bond retirement fund, the
21 freight mobility investment account, the freight mobility multimodal
22 account, the grade crossing protective fund, the public health
23 services account, the high capacity transportation account, the state
24 higher education construction account, the higher education
25 construction account, the highway bond retirement fund, the highway
26 infrastructure account, the highway safety fund, the high occupancy
27 toll lanes operations account, the hospital safety net assessment
28 fund, the industrial insurance premium refund account, the judges'
29 retirement account, the judicial retirement administrative account,
30 the judicial retirement principal account, the local leasehold excise
31 tax account, the local real estate excise tax account, the local
32 sales and use tax account, the marine resources stewardship trust
33 account, the medical aid account, the mobile home park relocation
34 fund, the money-purchase retirement savings administrative account,
35 the money-purchase retirement savings principal account, the motor
36 vehicle fund, the motorcycle safety education account, the multimodal
37 transportation account, the multiuse roadway safety account, the
38 municipal criminal justice assistance account, the natural resources
39 deposit account, the oyster reserve land account, the pension funding
40 stabilization account, the perpetual surveillance and maintenance

1 account, the pollution liability insurance agency underground storage
2 tank revolving account, the public employees' retirement system plan
3 1 account, the public employees' retirement system combined plan 2
4 and plan 3 account, the public facilities construction loan revolving
5 account beginning July 1, 2004, the public health supplemental
6 account, the public works assistance account, the Puget Sound capital
7 construction account, the Puget Sound ferry operations account, the
8 Puget Sound taxpayer accountability account, the real estate
9 appraiser commission account, the recreational vehicle account, the
10 regional mobility grant program account, the resource management cost
11 account, the rural arterial trust account, the rural mobility grant
12 program account, the rural Washington loan fund, the site closure
13 account, the skilled nursing facility safety net trust fund, the
14 small city pavement and sidewalk account, the special category C
15 account, the special wildlife account, the state employees' insurance
16 account, the state employees' insurance reserve account, the state
17 investment board expense account, the state investment board
18 commingled trust fund accounts, the state patrol highway account, the
19 state route number 520 civil penalties account, the state route
20 number 520 corridor account, the state wildlife account, the
21 supplemental pension account, the Tacoma Narrows toll bridge account,
22 the teachers' retirement system plan 1 account, the teachers'
23 retirement system combined plan 2 and plan 3 account, the tobacco
24 prevention and control account, the tobacco settlement account, the
25 toll facility bond retirement account, the transportation 2003
26 account (nickel account), the transportation equipment fund, the
27 transportation fund, the transportation future funding program
28 account, the transportation improvement account, the transportation
29 improvement board bond retirement account, the transportation
30 infrastructure account, the transportation partnership account, the
31 traumatic brain injury account, the tuition recovery trust fund, the
32 University of Washington bond retirement fund, the University of
33 Washington building account, the volunteer firefighters' and reserve
34 officers' relief and pension principal fund, the volunteer
35 firefighters' and reserve officers' administrative fund, the
36 Washington judicial retirement system account, the Washington law
37 enforcement officers' and firefighters' system plan 1 retirement
38 account, the Washington law enforcement officers' and firefighters'
39 system plan 2 retirement account, the Washington public safety
40 employees' plan 2 retirement account, the Washington school

1 employees' retirement system combined plan 2 and 3 account, the
2 Washington state health insurance pool account, the Washington state
3 patrol retirement account, the Washington State University building
4 account, the Washington State University bond retirement fund, the
5 water pollution control revolving administration account, the water
6 pollution control revolving fund, the Western Washington University
7 capital projects account, the Yakima integrated plan implementation
8 account, the Yakima integrated plan implementation revenue recovery
9 account, and the Yakima integrated plan implementation taxable bond
10 account. Earnings derived from investing balances of the agricultural
11 permanent fund, the normal school permanent fund, the permanent
12 common school fund, the scientific permanent fund, the state
13 university permanent fund, and the state reclamation revolving
14 account shall be allocated to their respective beneficiary accounts.

15 (b) Any state agency that has independent authority over accounts
16 or funds not statutorily required to be held in the state treasury
17 that deposits funds into a fund or account in the state treasury
18 pursuant to an agreement with the office of the state treasurer shall
19 receive its proportionate share of earnings based upon each account's
20 or fund's average daily balance for the period.

21 (5) In conformance with Article II, section 37 of the state
22 Constitution, no treasury accounts or funds shall be allocated
23 earnings without the specific affirmative directive of this section.

24 NEW SECTION. **Sec. 4.** The following acts or parts of acts are
25 each repealed:

26 (1) RCW 46.61.667 (Using a wireless communications device or
27 handheld mobile telephone while driving) and 2013 c 224 s 15, 2010 c
28 223 s 3, & 2007 c 417 s 2; and

29 (2) RCW 46.61.668 (Sending, reading, or writing a text message
30 while driving) and 2013 c 224 s 16, 2010 c 223 s 4, & 2007 c 416 s 1.

31 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2018."

32 Correct the title.

EFFECT: Makes the following additions to distracted driving
infractions and penalties:

(1) Broadens the exemption from the prohibition on the use of the
telephone call functionality of a wireless communications device for
tow truck operators to permit all use of the telephone call
functionality of the device;

(2) Exempts drivers of autonomous vehicles, beginning in 2021, from the prohibition on the use of personal electronic device usage while the vehicle is being operated in a mode that does not require the person to be in active physical control of or continuously monitoring the vehicle;

(3) Defines "autonomous vehicle" as any vehicle equipped with technology that has the capability of operating or driving the vehicle without the active physical control or monitoring of a human operator;

(4) Prohibits the first and second offense for using a personal electronic device while driving from becoming part of the driver's record;

(5) Prohibits a finding that a person has committed a first and second offense for using a personal electronic device while driving from being made available to insurance companies;

(6) Defines driving in a dangerously distracted manner as engaging in any activity not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such motor vehicle on a highway;

(7) Establishes dangerously distracted driving as a secondary traffic infraction, limiting enforcement to when a driver of a motor vehicle has been detained for a suspected violation of a separate traffic infraction or an equivalent local ordinance;

(8) Sets the monetary penalty for dangerously distracted driving to equal the unscheduled infraction base penalty amount established by rule by the Supreme Court in its schedule of monetary penalties for infractions;

(9) Restricts the use of revenues obtained from the secondary infraction of dangerously distracted driving to the support of programs dedicated to reducing distracted driving and improving driver education on distracted driving;

(10) Establishes an appropriated account, the Distracted Driving Prevention Account, and restricts use of its funds to the support of programs dedicated to reducing distracted driving and improving driver education on distracted driving, as directed by the Washington Traffic Safety Commission; and

(11) Specifies that the Distracted Driving Prevention Account is required to receive any interest earned based on its average daily balance.

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